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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1884/2016 & CM No.8035/2016**

Decided on : 17th May, 2016

NEELAM KUMARI

..... Petitioner

Through: Ms. Jyoti Singh, Senior Advocate
with Mr. Aman Mudgal,
Mr. Amandeep Joshi & Mr. Shameer
Sharma, Advocates

versus

GNCTD & ANR

..... Respondents

Through: Mr. Vikas Shokeen, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

1. Neelam Kumari, the petitioner in this writ petition, impugns the order dated 25th January, 2016 passed in CP No.295/2015. The contention of the petitioner is that the impugned order negates and rewrites the order of the Principal Bench of the Central Administrative Tribunal dated 20th May, 2014 in O.A No. 510/2013

2. The petitioner had applied for the post of PGT (Hindi) advertised by the Delhi Subordinate Services Selection Board. The last date for submission of the application was 30.7.2010 and one of the essential qualifications as stipulated and required by the recruitment rules was Masters Degree or equivalent Oriental degree in the concerned subject from a recognised university.

3. The petitioner had filed marksheet dated 25th September, 2009 issued by the University of Kurukshetra for M.A.(Final) Examination in Hindi. The

said marksheet was issued prior to the last date of receipt of the application, i.e., 30th July, 2010.

4. The petitioner to improve her grade had reappeared in some papers, for which examination was conducted by the Kurukshetra University in the years 2010 and 2011. This was permissible and allowed by the University. Consequently, the University of Kurukshetra had issued a second marksheet dated 19th May, 2012. This re-appearance, was not on account of the fact that the petitioner had not cleared and qualified MA (Final) Examination, but to improve and better her earlier score.

5. The controversy arose when the first marksheet dated 25th September, 2009 was rejected by the respondents as meeting the eligibility requirement M.A. (Hindi). Their stand was that the second mark-sheet dated 19th May, 2012 was relevant and the same was issued after the last date for receipt of application, 30th July, 2010. Thus, she was not eligible on 30th July, 2010.

6. The Tribunal vide order dated 20th May, 2014 in O.A. No. 513/2013 after considering the factual matrix and the position in law came to the conclusion that the first marksheet, if genuine, was the valid mark-sheet and would determine whether the petitioner was eligible. As the petitioner had merely re-appeared in some papers to improve her grade/score, the second marksheet would not determine her eligibility. The Tribunal noted that as per information provided by the University of Kurukshetra, the student could voluntarily repeat paper/re-appear in papers to improve their grade within five years, after having passed the Final Examination in M.A. (Hindi). For the said reasoning, while allowing the OA, directions were issued to the respondents to verify the authenticity of the pass provisional slip issued by the University of Kurukshetra.

7. In order to appreciate the final directions and what was directed by the Tribunal vide order dated 20th May, 2014 in O.A. No. 513/2013, we would

like to reproduce relevant paragraphs which reads as under:

“9. We have carefully considered the submissions made by the learned counsels and gone through the documents submitted by both the sides. At the outset we would refer to the objection raised by the learned counsel for respondents that the documents that have not been signed by the Registrar of the University should not be taken on record. It is observed that the documents that have been reproduced in this order have been signed by not only Dealing Official but authenticated by Superintendent-I (R-III) and Assistant Registrar (R-III) in the first document, Superintendent (Examination-III) in the second document and Public Information Officer cum Assistant Registrar (E-III) of Kurukshetra University in the third document. We do not find any reason to accept the argument that these officers are not authorized officers of the University to sign these documents.

10. The issues that need to be addressed are:

(i) whether a candidate who secured pass marks in the examination in 2009 but appeared in the improvement examination in 2010-2011 before getting the formal 'degree' can be considered to have passed MA (Final) for the purposes of meeting the essential qualification

(ii) whether the respondent can reject a candidate whose marksheet apparently carries pass marks but does not mention the word 'pass' or the 'total' marks.

11. On the question that a candidate will be treated as having Post Graduation degree only after the University formally gives a degree, we are of the view that once a candidate has secured pass marks in the examination he can be treated as possessing the prescribed qualification. It is the proposition of the learned counsel for respondents that if the candidate opts for improvement, the process of passing MA and obtaining the degree of MA will conclude only when the person has cleared all the improvement examinations taken by him. In this connection, we refer to the information provided by Public Information Officer of Kurukshetra University dated 27.05.2013 reproduced above, where in reply to the first question, it has been stated that "a candidate can appear for improvement

of papers within 5 years after the MA (Hindi) (F) exam passed". If we go by the proposition of learned counsel for respondents, a candidate who has passed an examination but dissatisfied with the marks opts for improvement, will remain ineligible for any job for next 5-6 years till he gets the final marks and the degree. Such an interpretation is neither logical nor fair to the candidates who are taking improvement examinations to further improve their career prospects and not to block even the available career prospects for the next 5 years or more. We, therefore, are not inclined to accept this interpretation and are of the view that by opting to appear in improvement examinations, a candidate is not dispossessed of the pass marks obtained in the earlier examination.

12. In Rakesh Kumar Sharma vs. Government of NCT of Delhi & Ors., Civil Appeal No.6116/2013 Hon'ble Supreme Court has observed thus:

"16. In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issue-1 to him which was provisional and conditional subject to the verification of educational qualification, i.e., eligibility, character verification etc. Clause 11 of the letter of offer of appointment dated 23.2.2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would . possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court."

(emphasis supplied)

13. With that being the settled position of law, the applicant in this case would possess the qualification on the date her MA (Final) result was declared, which is 25.09.2009."

8. The Tribunal had thereafter issued the following directions:

“17. In view of the foregoing discussions and reasons given, we allow this OA and direct the respondents to consider the candidature of the applicant as having passed MA (Final) Hindi prior to the last date of submission of the application form after satisfying themselves about the authenticity of the Pass Provisional Slip issued by Kurukshetra University, Kurukshetra. No order as to costs.”

9. The aforesaid direction merely required the respondents to ascertain and verify whether the marksheet dated 25th September, 2009, was authentic and genuine. In case it was a genuine marksheet, the case of the petitioner for appointment was to be processed.

10. The respondents thereafter entered into correspondence with the University of Kurukshetra and had received the reply dated 4th March, 2015 from the said University, which reads:

“With reference to your letter no. F-3(52) CC-iii/Res/PGT Hindi/2012-2013/526 dated 14/01/2015 and in continuation to this office letter no. 276 dated 19/8/2014 in which you were informed that Ms. Neelam Kumari D/o Poop Chand appeared in M.A. Hindi Examination in May 2009 Under Roll No. 877947 and her result was declared Pass Provisional.

It is further informed as per report of Result Branch that Ms. Neelam kumari D/o Chand Roop appeared for Improvement Examination of MA Hindi (Final) in May 2011 under Roll No. 1422430 bearing DMC Sr. no.5768 was issued and her earlier result for M.A. Hindi Final Examination under Roll No. 5768 was issued and her earlier result for M.A. Hindi Final Examination Under Roll No.877947 bearing DMC Sr. No.72536 was got cancelled.

This is for your information.”

11. Thus the University of Kurukshetra has accepted that the petitioner had appeared in Hindi Examination in May 2009 under

Roll number 877947 and was declared provisionally pass. The second paragraph states that the petitioner had appeared in the improvement examination in May, 2011 with a new Roll No.877947 and the result in the re-appeared examination was declared. In view of the new marks, the earlier result was declared cancelled. The reason is obvious, because the new marks secured in the improvement examination would be counted. However, this would not nullify the fact that the petitioner had already cleared the M.A. (Hindi) Examination from the University of Kurukshetra in 2009. In any case, the respondents could not have raised this issue, for these aspects were considered and examined by the Tribunal in their order dated 20th May, 2014. The contention of the petitioner was accepted, and the stance and stand of the respondent was rejected. The only controversy and limited issue left to be examined by the respondents was whether the marksheet dated 25th September, 2009 was genuine and authentic. Verification to this extent was required. It is obvious that as per the University of Kurukshetra, the marksheet dated 25th September, 2009 was genuine and correct marksheet.

12. As the respondents had failed to comply with the said directions, the petitioner had filed CP No.295/2015. The impugned order dated 25th January, 2016 passed in the CP takes notice of the factual controversy and records that the petitioner had appeared in M.A.(Hindi) Final Examination in 2009, and the marksheet was issued on 25th September, 2009. It further records that the petitioner was not satisfied with the marks obtained and had, therefore, appeared in the improvement/betterment examination in May, 2010 and May, 2011. The petitioner had improved her grades by securing 2nd division in the improvement examination and accordingly,

another degree was issued on 30th June, 2012. After having reached the said conclusion, the Tribunal in the impugned order has held as under:

“8. The learned counsel for the petitioner contends that once this Tribunal held that the petitioner would possess the qualification on the date her MA final result was declared on 25.09.2009, which satisfies the requirement of the notification, i.e., possessing the essential qualification before the cut off date of 30.07.2010, the respondents cannot reject the candidature of the petitioner on any other ground. On the other hand the learned counsel for the respondents submits that this Tribunal while allowing the OA directed the respondents to satisfy themselves about the authenticity of the pass provisional slip issued by Kurukshetra University, Kurukshetra, i.e., the Marks Sheet of MA (Hindi) [Final] examination dated 25.09.2009, and in pursuance of the same only they have sought for information from the said University and since the information of the University is that the petitioner passed the MA (Hindi) [Final] in May, 2011 and obtained her Degree in May, 2011 and her earlier results of the MA (Hindi) [Final] examination was cancelled, and accordingly, since the petitioner did not possess the requisite eligibility criteria on the declared cut off date i.e., 30.07.2010, her claim was rejected. Therefore, the learned counsel submits that the respondents have fully complied with the orders of this Tribunal and that there is no wilful or deliberate violation of the orders of this Tribunal.

9. This Tribunal while allowing the OA proceeded on the basis of the Marks sheet issued to the petitioner in MA (Hindi)[Final] examination dated 25.09.2009 is valid and in force and also directed the respondents to satisfy themselves about the authenticity of the same, while considering the candidature of the petitioner and when the respondents rejected the claim of the petitioner as the said Marks Sheet dated 25.09.2009 itself was cancelled by the University, we do not find any contumacious act on the part of the respondents.”

13. We do not think that the aforesaid reasoning can be sustained as it amounts to rewriting or overwriting the earlier order dated 20th

May, 2015 passed in OA No.510/2013. In the contempt proceedings, limited controversy and issue had arisen in terms of the directions issued in paragraph 17 of the order dated 20th May, 2014. The Tribunal unfortunately went into other aspects and considerations. Preferring a literal interpretation of the word 'cancelled', it was held that the marksheet dated 25th September, 2009, once cancelled, will mean that the said marks do not exist. We do not agree that the marksheet dated 25th September, 2009 was "cancelled" because of the result in the improvement or betterment examination. The word 'cancelled' can mean different things in different situations and has to be interpreted keeping in view the factual matrix and issue raised. Sometimes, literal interpretation can do injustice and lead to absurdities. In the present case, the petitioner had obviously passed M.A. (Hindi) in 2009. The improvement examination would not undo or cancel the said degree, or have the effect as suggested and understood by the Tribunal in the impugned order dated 25th January, 2016. The word 'cancelled' used/indicated by the University of Kurukshetra is to the effect that instead of the earlier marks, the marks secured in the improvement or betterment examination will now be taken into account for grading. The situation would have been different in case the eligibility norms had stipulated that the candidate should have secured at least a 2nd division or 50% marks for the candidate to be eligible for consideration. The petitioner would have been then eligible for consideration only after the marksheet dated 30th June, 2012 was issued. It is not in dispute that the petitioner satisfied the minimum eligibility qualification as per the grading or marks scored in the marksheet

dated 25th September, 2009. The petitioner is not relying on the marks scored by her as mentioned in the second marksheet dated 19th May, 2012.

15. In view of the aforesaid position, we would allow the present writ petition and set aside the impugned order dated 25th January, 2016. The matter is restored to the Tribunal for appropriate orders and direction. We hope and trust that the respondents will proceed to process the case of the petitioner for appointment to the post of PGT (Hindi) in accordance with law. In case there is any lapse, the Tribunal would ensure that necessary compliance is made. To cut short the delay, the parties are directed to appear before the Tribunal on 26th August, 2016. We are giving a long date, as we want to give sufficient time to the respondents for compliance.

16. The petition stands disposed of in the above terms. CM No.8035/2016 also stands disposed of.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MAY 17, 2016

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