

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 29.01.2016

+ W.P.(C) 8684/2015

TARA RANI RANGA Petitioner

Through: Mr. Atul T.N., Adv.

versus

GOVT. OF NCT OF DELHI & ORS Respondents

Through: Mr. Sanjoy Ghose, ASC with
Mr. Dhananjai Rana, Adv.

+ W.P.(C) 8862/2015

MONIKA YADAV & ANR Petitioners

Through: Mr. Atul T.N., Adv.

versus

GOVT. OF NCT OF DELHI & ORS Respondents

Through: Mr. Shubhanshu Gupta, Adv. for
Mr. Anuj Aggarwal, Adv. for
R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MR. JUSTICE SANJIV KHANNA(Oral)

These two writ petitions pray for identical relief and as similar contentions have been raised, they are being disposed of by this common order. For convenience, we would primarily refer to the facts in the writ petition filed by Tara Rani Ranga.

2. Pursuant to advertisement No.001/2010, the petitioners had applied for selection to the 127 posts of Physical Education Teachers as advertised by the Directorate of Education. The advertisement did not state or specify the gender of the candidates and did not divide the 127 vacant posts between female and male candidates. The eligibility prescribed was a graduate from a recognized university with diploma in physical training from a recognized institution/university or B.P.Ed. from a recognized university and higher secondary or BSc. (Physical Education in Health Education and Sports) or its equivalent from a recognized institution/university. A number of other vacant posts were also advertised in the same advertisement. In the case of Trained Graduate Teachers (TGT), bifurcation between male and female teachers was specifically indicated.

3. The petitioners participated in the selection process. On 4th March, 2011, final results were declared and 89 candidates (62 male and 27 female candidates) were provisionally declared selected and candidature of 17 candidates (12 male and 5 female candidates) were kept pending for verification and clarification. The petitioners were not selected.

4. Tara Rani Ranga claims that she had made applications and procured documents under the Right to Information Act, 2005 and thereupon had made a representation dated 21.6.2011, raising the plea that the 127 posts of Physical Education Teachers, as advertised, should have been bifurcated between male and female teachers. She had relied on the circular dated 26.10.2005 of the Directorate of Education that no male teachers may be posted in the girls' school and that female teachers should not be posted in the boys' school. Aggrieved, Tara Rani Ranga had filed WP(C) No.485/2011 which was disposed off vide order dated 18.7.2011 recording that the only prayer made was that the representation dated 21st June, 2011, should be disposed off by the Directorate of Education on an early date. The Court also observed that, if aggrieved, Tara Rani Ranga could seek appropriate remedy.

5. The representation of Tara Rani Ranga was considered and rejected vide order dated 8.9.2011, *inter alia*, holding that the posts of Physical Education Teacher, Music Teacher, Drawing Teacher, etc. were miscellaneous category posts and that for the said category separate lists of male and female candidates were not maintained. The miscellaneous category cadre was different and not equivalent

to the posts in the TGT cadre, for which separate male and female lists were maintained. The posts in miscellaneous category were filled entirely through direct recruitment. In the case of TGT cadre, 75% posts were filled by promotion and balance 25% were filled by direct recruitment.

6. Order dated 8.9.2011, highlights that Tara Rani Ranga had not raised any grievance or objection when the advertisement was published or when she had appeared and participated in the selection process. It was only when Tara Rani Ranga did not qualify and was declared unsuccessful, that she had belatedly raised her objection and grievance, nearly three months after declaration of the results.

7. The two petitioners in WP(C) No.8862/2015 namely Monika Yadav and Sonika Yadav, had filed and challenged the advertisement and selection in the original application filed by them on or about 21st Nov. 2011. They had not made any representation or objection before the results were declared.

8. We are in agreement with the Tribunal that the petitioners' challenge to the recruitment, post declaration of the results should be rejected. The petitioners had participated in the selection process knowing fully well that there was no bifurcation and

division of the advertised 127 posts of Physical Education Teachers between male and female candidates. They took their chance, without protest or challenge. The result and selection list was declared on 4th March, 2011. It is not the case of the petitioners that Recruitment Rules mandated bifurcation of the posts into male and female posts. The recruitment process undertaken was as per the Recruitment Rules. Violation of the Recruitment Rules is neither contended nor raised.

9. The Supreme Court in **Chandra Prakash Tiwari vs. Shakuntala Shukla**, (2002) 6 SCC 127, has held that acquiescence while participating in selection process amounts to estoppel by conduct. It was observed:-

“32. In conclusion, this Court recorded that the issue of estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and it is on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status — the situation, however, presently does not warrant such a conclusion and we are thus not in a position to lend concurrence to the contention of Dr Dhavan pertaining to the doctrine of estoppel by conduct. It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not bar a contention as regards the right to challenge an appointment upon due participation at the

interview/selection. It is a remedy which stands barred and it is in this perspective in *Om Prakash Shukla v. Akhilesh Kumar Shukla* [1986 Supp SCC 285 : 1986 SCC (L&S) 644] a three-Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise.

33. Subsequently, the decision in *Om Prakash* [1986 Supp SCC 285 : 1986 SCC (L&S) 644] stands followed by a later decision of this Court in *Madan Lal v. State of J&K* [(1995) 3 SCC 486 : 1995 SCC (L&S) 712 : (1995) 29 ATC 603] wherein this Court stated as below: (SCC p. 493, paras 9-10)

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because

the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla* [1986 Supp SCC 285 : 1986 SCC (L&S) 644] it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of

appeal over the assessment made by such an expert committee.”

34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seems to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not “palatable” to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process. ”

10. The present issue raised by petitioners is no different. The petitioners, having participated in the selection process, cannot now, after the results have been declared and the candidates selected, challenge the advertisement itself or the selection process. Participation in the selection process would reflect their concurrence and principle of estoppel by conduct would apply.

11. Learned counsel for the petitioners had drawn our attention to the orders passed by the Delhi High Court in WP(C) No.4638/1998 titled *Nitika Garg vs. Government of Delhi and Anrs.* This writ petition was disposed of vide order dated 16.9.2008, the operative portion of which reads as under:-

“The respondents had devised a marking scheme whereby marks were given to candidates depending upon the percentage marks obtained at the school level, graduation level, post-graduation level and sports. The

marking scheme is not under challenge before us. The petitioner obtained 50 marks in terms of the scheme. When the selection results were declared, the respondents decided to engage male Trained Graduate Teachers in English, if they had a minimum of 39 marks but for females, the minimum cut off mark was 52. As mentioned above, the petitioner is a lady and although she obtained 50 marks, she did not meet the cut off marks for female candidates. The petitioner challenged the discriminatory cut off marks but her Original Application was rejected by the Tribunal and that is how the petitioner is now before us.

There is no dispute about the fact that reservations can be made in favour of women. In this particular case, what has been done is that a reverse reservation has been made in favour of male candidates to the detriment of female candidates. Ex-facie this is impermissible.

Learned counsel for the respondents submitted that a separate cadre is maintained for male teachers and female teachers and they are posted in schools for boys and schools for girls respectively and the vacancy position is also maintained in that fashion. Obviously, there can be no objection to having only female teachers in schools for girls, but it is not permissible for the respondents to have only male teachers in schools for boys. Female teachers are also entitled to be considered against posts meant for teachers on schools for boys. Male teachers may not be permitted to teach in schools for girls but the converse is not permissible. The policy adopted by the respondent completely flies in the face of Article 15 of the Constitution and the reverse reservation policy is clearly violative of Articles 14 and 16 of the Constitution.

During the proceedings before the Tribunal as well as before us, the respondents were directed to keep

one post of female TGT available for the petitioner. Since we do not agree with the view taken by the Tribunal, we set aside the order passed by it and direct the respondents to fill up that one vacancy kept available for the petitioner against the quota for males in English language.

The petitioner will be given notional seniority but not back wages.

The writ petition is disposed of accordingly. ”

12. The directions given in the said order are not apposite and the reasoning observes that there should not be any reverse discrimination in favour of male candidates to the detriment of female candidates for this would violate Articles 14, 15 and 16 of the Constitution. The aforesaid observations were made as it was noticed that the respondent, i.e., Government of NCT of Delhi, were maintaining two separate cadres of male and female teachers and the qualifying marks for male teachers in the selection process was lower than the qualifying marks of female candidates. Thus, an anomalous situation had arisen. The Court deprecated and rejected the contention of the Government of NCT of Delhi that they were required to maintain separate cadres for male and female teachers, as male teachers and female teachers were posted in boys' and girls' schools respectively, and that it was for this reason that

separate vacancy positions were maintained. The Court observed that female teachers could always be employed and work as teachers in schools for boys and as such it would be wrong to exclude female candidates from consideration and selection against posts meant for teachers in boys' school.

13. Learned counsel for the petitioners had drawn our attention to the observations made in the said judgment that the female teachers may be permitted to teach in the schools for boys. This is correct and unexceptionable. It was also observed that there could be no objection to having female teachers in schools for girls. The learned counsel has, however, missed the context in which the said observations were made. These observations were in the context of maintaining separate cadres for male and female teachers.

14. Our attention was also drawn to the report of the Committee dated 27.3.2003. We would observe that these are matters for the Government of NCT of Delhi to consider and examine. As far as challenge made to the recruitment process advertisement No.02/2014 is concerned, the same cannot be questioned by the petitioners post declaration of the result, for they had participated in the said selection process and the principle of estoppel by conduct

would apply here. The said process which was in terms and as per the Recruitment Rules. Their challenge is also belated.

15. We would clarify that we have not examined "other" aspects raised and do not make any pronouncement on them.

16. For the aforesaid reasons, the writ petitions are dismissed.

SANJIV KHANNA, J

NAJMI WAZIRI, J

JANUARY 29, 2016/ak