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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 9822/2015, CM APPL. 23685/2015

Date of decision: 22nd March, 2016

KENDRIYA VIDYALAYA SANGATHAN

..... Petitioner

Through: Mr. U.N. Singh, Adv.

Versus

AMLESH KUMAR

..... Respondent

Through: Shree Prakash Sinha
with Mr. Yogesh Goel, Advs.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

Kendriya Vidyalaya Sangathan by this writ petition impugns the final order and judgment dated 19.05.2015 passed by the Principal Bench of the Central Administrative Tribunal allowing O.A. No. 2418 of 2014 holding that Amlesh Kumar, the respondent herein, meets the minimum eligibility qualification, and he should be called for interview for final selection to the post of Trained Graduate Teacher (TGT), (Social Science) by constituting the same or another Board.

2. The primary contention and issue raised before the Tribunal and before this Court is whether the respondent fulfils the essential qualification for appointment as TGT (Social Science) as notified in

the Advertisement No.7 for the years 2012-13 and 2013-14.

3. The relevant portion of the advertisement reads:

“ 1. EDUCATIONAL AND OTHER QUALIFICATION FOR THE
POST CODE 41 TO 46

Essential:

- i) *Four years' integrated degree course of Regional Colleges of Educational of NCERT in the concerned subject with at least 50% marks in aggregate.*

OR

Bachelor's Degree with at least 50% marks in the concerned subjects/combination of subjects and in aggregate. The elective subjects and Languages in the combination of subjects are as under:

<i>Post Code</i>	<i>Post (Subject)</i>	<i>Subject(s)</i>
41	TGT (English)	<i>English as a subject in all the three years</i>
42	<i>TGT (Hindi)</i>	<i>Hindi as a subject in all the three years</i>
43	<i>TGT (S.St.)</i>	<i>Any two of the following: History, Geography, Economics and Pol. Science of which one must be either History or Geography</i>
44	<i>TGT (Science)</i>	<i>Botany, Zoology and Chemistry</i>
45	<i>TGT (Sanskrit)</i>	<i>Sanskrit as a subject in all the three years</i>
46	<i>TGT (Maths)</i>	<i>Bachelor Degree in Maths with any two of the following subjects: Physics, Chemistry, Electronics, Computer Science, Statistics</i>

- ii) *Pass in the Central Teacher Eligibility Test (CTET), conducted by CBSE in accordance with the Guidelines framed by the NCTE for the purpose.*
- iii) *Proficiency in teaching in Hindi and English medium.*

Desirable: Knowledge of Computer Applications.”

4. The respondent, it is accepted, is a Bachelor of Arts (3 Year Honours Course) from the Banaras Hindu University. He has studied English as a compulsory language subject, taught in the first and second year. He had opted for History as an Optional Subject, and had studied and cleared two papers – Paper I and Paper II in the first year, with 61% and 62% marks, respectively. In the second year, he had again studies and cleared two papers in History, i.e.– Paper III and Paper IV with 61% and 57% marks, respectively. The respondent had taken Political Science and Sociology as the second and third Optional subject and had studied and cleared the said subjects. In the third year, the respondent had taken the following subjects and cleared them:

“Paper V – Indian Government and Politics

Paper VI – Political Sociology

Paper VII – Principles of Public Administration (Suitable Illustrations from India, U.K. & U.S.A.)

*Paper VIII – International Relations:
Concept & Issues.*

*Paper XI – Indian Government and Politics of Nepal,
Pakistan and Malaysia*

Paper X – Foreign Policy of India.”

5. The respondent has secured 1035 marks out of 1800 marks

cumulatively in the three years. Marks in English, the optional papers and papers V to X mentioned in paragraph 4 above were counted.

6. The respondent thereafter enrolled and in 2007 was awarded the Degree of Bachelor of Education by the Department of Education, University of Delhi with (a) History (A level) and (b) Political Science (A level) as the teaching subjects.

7. As per the eligibility qualifications mentioned in the advertisement, a candidate should have studied two subjects out of the following : History, Geography, Economics and Political Science, out of which, History or Geography was mandatory. Thus, emphasis was on inter-disciplinary study, but with the pre-condition that the candidate must have studied either History or Geography in addition to other specified subjects. The advertisement under the heading 'Essential' further adumbrates that the candidate should possess a Bachelor's Degree with at least 50% marks in the concerned subjects/combination of subjects and in aggregate.

8. The question raised pertains to the meaning of the term "elective subject" in the advertisement. In specific honours course at the graduation level, emphasis is on one subject, which can be History, Political Science, Geography, etc. but in a general course leading to a degree in a Bachelor of Arts, emphasis is on several subjects during the tenure of the course. Pertinently, universities enjoy a substantial degree of flexibility and autonomy in designing the course content, the method/manner of teaching "elective" subjects and in the conduct of examinations. Nomenclature used by the universities to describe "elective subjects" are also divergent and not codified.

9. In the present case, the respondent had studied History (Paper-I & Paper-II) in the first year and Paper-III and Paper-IV in the second year. History was one of the the optional subject selected and studied by the respondent as per the course structure developed by the Banaras Hindu University, a recognised university offering such course. In addition, the respondent had studied Political Science as another elective subject at the graduation level in the first and the second years.

10. The petitioner however objects and per contra submits that the respondent had studied History for two years and has not studied this subject in the third year and was therefore not eligible.

11. A similar issue had earlier arisen and was decided in ***Government of NCT of Delhi & Ors vs. Sachin Gupta and Ors.*** WP(C) 1520 of 2013 and other connected matters. The Government of NCT of Delhi had disqualified several candidates on an identical plea that the candidates had not studied the “elective subject” in each of the three years. The Recruitment Rules had postulated a Bachelor’s Degree in either Honours or Pass or an equivalent course from a recognised university in two school subjects, of which at least one of them - English, Mathematics, Natural/Physical Science or Social Science - should have been at the elective level. Social Sciences were classified as (i) History, (ii) Political Science, (iii) Economics, (iv) Business Studies (v) Sociology, (vi) Geography and (vii) Psychology and the term ‘Natural Science’ was notified as Physics, Chemistry, Biology, Botany and Zoology.

12. Dealing with the issue as to what is meant by the term ‘Elective Subject’, the Division Bench had referred to different terms used by

universities and held:

“31. The necessity to issue the corrigendum was to give clarity as to what was meant by ‘elective subject’; for the reason there was no unanimity of opinion as to what would be an elective subject since different universities in India follow different procedures and methodologies of imparting education.

32. The study of various disciplines of education i.e. subjects taught is broadly classified into three categories i.e. (i) core subject (ii) elective subjects and (iii) mandatory subjects. The difference in the three is as under:

*(a) **Core Subjects:** The student shall complete successfully all the core subjects prescribed for the program to become eligible for the award of Degree. Such courses together with their grades and credits earned should be included in the Grade Card issued by the College at the end of each semester.*

*(b) **Elective Subjects:** The student shall further complete successfully the total credit equivalent subjects offered in the program to become eligible for the award of the Degree. The student can choose the subject of his/her interest from among the available credits.*

*(c) **Mandatory Subjects:** The student shall complete successfully all the mandatory courses prescribe from time to time by the college. These subjects however do not carry any credits.*

(33) Aforesaid is the classification which can be found across the board for all universities in India. We may clarify that in some universities mandatory subjects are referred to as subsidiary subjects. The difference in the three is that the marks awarded for the core and elective subjects are reckoned for the

purposes of the grade awarded but not for mandatory or subsidiary subjects.”

13. The aforesaid ratio elucidates that the terms, “Elective” and “Core” subjects refers to subjects which are counted for the purpose of award of certificate and must be cleared by the student. The marks obtained and grade earned in these subjects are included in the grade card issued by the college/university at the end of each semester/year.

14. In **Sachin Gupta** (supra), the Division Bench had also examined whether it was necessary and required that the “elective” subject should have been taught in all the three years or it would suffice if the course contents were taught in two out of three three years as per the course structure developed and followed by the university concerned. It was held:

“40. To repeat, corrigendum dated March 30, 2010 prescribes that the expression ‘elective subject’ occurring in the Recruitment Rules means that ‘The candidate should have studied the subject concerned as mentioned in the RRs in all parts/years of graduation. The elective word may also include main subject as practiced in different universities’. It is clear that the ethos of the prescription contained in the corrigendum dated March 30, 2010 that ‘the candidate should have studied the subject concerned as mentioned in the RRs in all parts/years of graduation’ is that the candidate should have a deep understanding of the subject in which he is desirous of imparting education to the children.

41. All universities in India do not offer a particular elective subject in all three years’ of graduation course as in the case of Nainika, Vikram Singh and Sachin Gupta, where Delhi University did not teach English/Hindi/Economics in all three years of B.A. program/B.Com (H) course (s) conducted by it. If the corrigendum dated March 30, 2010 is given a literal

interpretation, all such candidates who have studied concerned subject i.e. the subject for which they have applied from the Universities which are not teaching said subject in all three years' of Graduation course offered by them would be rendered ineligible for appointment to the post of T.G.T. despite the fact they have studied the concerned subject in all parts/years in which the subject is taught by the university and have a good understanding thereof. This is absurd. It is a settled legal position that where literal meaning of a statute or rule leads to an absurdity, the principle of literal interpretation need not be followed and recourse should be taken to the purposive and meaningful interpretation to avoid injustice, absurdity and contradiction so that the intent of the purpose of Legislature is given effect to. Therefore, a meaningful and practical interpretation has to be given to the corrigendum dated March 30, 2010 and same should be interpreted as follows: 'the candidate should have studied the subject concerned as mentioned in the RRs in all parts/years in which the subject was taught during the Graduation course'

42. It has also to be kept in mind that whereas the University of Delhi was teaching the concerned subject and was testing the knowledge of the students each year by assigning 100 marks to the paper i.e. three papers were being taught in the three years, as a result of restructuring, the number of papers continued to be three with marks assigned to each paper, being 100, except that now the three papers are taught in only two years. In other words the previous and the current position continues to be practically the same. It hardly matters whether three papers of 100 marks each are taught over three years or three papers of 100 marks each are taught in two years. A ready illustration could be a rational decision taken that unless a student studies History up to a particular level he may not understand the nuances of Political Science and hence a University may decide that the subject of Political Science should be taught after a foundation course in History is taught and this would mean that the subject of Political Science

is introduced in the second year of study and continued in the third. The previous position of teaching Political Science in each year with one paper each year having 100 marks is replaced by teaching Political Science only in the second and the third year but retaining the three papers each having 100 marks.”

15. A reading of the aforesaid paragraphs and the ratio expounded, elucidates that different universities follow different practices as to the nomenclature, the methods and years in which “elective” subjects are taught. There is no uniformity. What is important and relevant is whether the student was taught the said subject while he was studying in the university and the marks obtained in the said subjects were counted for the purpose of grades/marksheet. It is open to the university to teach the subject in all the three years or in two out of three years. This is not significant or would not matter. What matters is that the candidate should have studied the concerned subject during graduation and developed good understanding thereof.

16. In the absence of precise precise definition of the term “elective subject” in the Rules, in *Sachin Gupta (supra)*, the Court observed that literal interpretation, i.e., “elective” subject is one which is taught in all three years, would be counterproductive and would lead to injustice and absurdity. In the circumstances, the requirement was that the term has to be read purposely and meaningfully. In the present case also, the advertisement did not define the term “elective subject”. This expression has to given a purposive and meaningful interpretation. This exercise was not undertaken by the petitioner, who have therefore faulted. This had resulted in the decision making error.

17. In view of the above reasoning, we do not find any merit in the
W.P.(C) 9822/2015 Page 9 of 10

present case. The writ petition is therefore dismissed.

18. The petitioner will expeditiously complete exercise as directed by the Tribunal, within two months from the date a copy of this order is received in the petitioner's office.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MARCH 22, 2016/acm