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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 10300/2015

Date of decision: 11th May, 2016

ARCHANA AGARWAL

..... Petitioner

Through Mr. Manoj Ohri, Sr. Advocate with
Mr. N.S. Jaglan and Mr. S. Kalita, Advocates.

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondent

Through Mr. Devesh Singh, ASC.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA. J. (ORAL)

1. Archana Agarwal by this writ petition impugns the order dated 1st March, 2013 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) whereby OA No.639/2012 filed by her has been dismissed.

2. The short issue, which arises for consideration, is whether the petitioner meets the minimum eligibility qualification for being considered for appointment to the post of Trained Graduate Teacher (English-Female) (TGT, for short) stipulated for Post Code No.2/10 as advertised.

3. As per the advertisement, the essential educational and other qualifications prescribed for the aforesaid post are as under:-

“Advertisement

Essential: "A Bachelor's Degree (Honours/Pass) or equivalent from a recognised University having secured 45% marks in aggregate, in two school subjects of which atleast one out of the following should have been at the elective level:- 1. English, 2. Mathematics, 3. Natural/Physical Science, 4. Social Science.

Note:- Main subjects for TGT (Natural Science/Phy. Science) shall be Physics, Chemistry, Biology, Botany and Zoology.

Social Science:- History/Political Science/Economics/Business Studies/Sociology/Geography/Psychology.

Provided further that the requirement as to minimum of 45% marks in the aggregate at graduation level shall be relaxble in case of (a) candidates who possess a Post Graduate qualification in any of the teaching subjects listed above. (b) belonging to SC/ST (c) Physically handicapped candidates; (II) Degree/Diploma in Training Education or SAV certificate. (III) Working knowledge of Hindi.

Provided that Assistant Teacher (from MCD/Dte. of Education) and lab. Assistants shall not be required to have received 45% marks in aggregate in Bachelor's Degree (Pass/Honours) or equivalent.

N.B. - "The candidate should have studied the subject concerned as mentioned in the R/Rs in all parts/years of graduation. The elective word may also include main subject as practiced in different Universities."

4. The petitioner had appeared in the objective and descriptive examinations and secured merit rank 17 in the list of 139 candidates provisionally selected for the post of TGT (English-Female). However, she

was not appointed and had learnt on information furnished under the Right to Information Act, 2005, that she was considered ineligible as she had not appeared in question papers of 100 marks each in English in the three years at the graduation level. In other words, the stand of the respondents is that the petitioner should have studied English in each of the three years and passed or cleared a paper of 100 marks in English each year.

5. The respondents have relied upon the corrigendum dated 14th March, 2000 issued by them, which reads:-

“In partial modification of this office order No.2 dt. 1.7.99 issued vide endorsement No.F.DE.3(2)(2)/E.III/99/15505-519 dt. 1.7.99 the N.B. column after endorsement S.No.1, to page 50 of the said order be read as under:

“N.B.: As per policy the definition of elective in R/Rs has been framed as that the candidate should have studied the subject concerned as mentioned in the R/Rs of at least 100 marks each in all parts/years of graduation. The elective word may also include main subject as practiced in different Universities.”

The above definition of elective subject shall apply to all the orders of promotion and Direct Recruitment issued by this office from time to time.

6. However, by corrigendum dated 30th March, 2010, the aforesaid corrigendum was modified. The corrigendum dated 30th March, 2010 reads:-

“CORRIGENDUM

In Supersession of this office corrigendum no.F.DE.3(44)/E-III/99/2209 dated 14/03/2000, the terms 'Elective' as specified in Recruitment Rules may be read as under. "The candidates 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."

The above definition of the term elective shall apply to all the orders of promotion and Direct Recruitment issued by this office from time to time.

This issues with the prior approval of Competent Authority."

The effect of the corrigendum dated 30th March, 2010 was that the candidate should have studied the subject concerned as mentioned in the Recruitment Rules in all parts/years of graduation and the requirement that the candidate should have studied and passed the paper in the said subject of at least 100 marks each in all parts/years of graduation was deleted.

7. The petitioner has not been given the benefit of corrigendum dated 30th March, 2010, primarily for the reason that the last date of receipt of application as per the advertisement was 15th March, 2010 and the corrigendum dated 30th March, 2010 was issued after the said date.

8. The corrigenda were examined by a Division Bench of this Court in decision dated 7th August, 2013 passed in W.P.(C)

No.1520/2013, titled ***Government of NCT of Delhi & Ors. Vs. Sachin Gupta***. In the said case, an identical issue had arisen for consideration. An exhaustive examination of the Recruitment Rules framed by the Government of NCT of Delhi for the post of TGT in English, Mathematics, Natural/Physical Science and Social Science was undertaken. The corrigenda dated 14th March, 2000 and 30th March, 2010 defining the term “elective subject” were also considered and examined. Thereafter, the Court went on to record the three questions which had arisen:-

“27. The questions which arise and need to be answered in the present petition(s) are: (i) Whether the corrigendum was incorporated formally by amendment of the Recruitment Rules? If yes, what is the effect thereof? (ii) If the corrigendum dated March 30, 2010 remains as an executive instruction, what is the effect thereof? and (iii) What is the exact meaning of the corrigendum?”

9. Elucidating on what is meant by the term “elective subject” and the different practices adopted by the universities, it was observed and held:-

“28. On a bare reading of the afore-noted extract(s) of the Recruitment Rules existing in the year 2010 and 2011 i.e. when the advertisement(s) for appointment to the post of T.G.T. in various subjects were issued in the instant case(s), it is clear that the minimum essential educational qualification stipulated for appointment to the post of T.G.T. (MIL)/T.G.T. in is B.A.(Hons.) degree in concerned subject i.e. the subject for which the candidate applies or a B.A. degree with the

concerned subject included as an elective subject in the course from a recognized university/Bachelor's degree (Hons./Pass) in two school subjects of which at least English, Mathematics, Natural/Physical Science, Social Science should have been at elective level from a recognized University.

29. The expression '*elective subject*' was not defined in the Recruitment Rules.

30. On March 13, 2010 a corrigendum was issued by the Government defining the expression '*elective subject*' occurring in the Recruitment Rules, which corrigendum was superseded by another corrigendum issued on March 30, 2010. As per corrigendum dated March 30, 2010 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*'.

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 subjects, (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 of the elective 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.”

10. With regard to the corrigendum dated 30th March, 2010, it was stated that same had not been formally incorporated in the Recruitment Rules and remained an executive instruction. Nevertheless, when Recruitment Rules were silent on any point, the Government could fill up gaps and supplement rules by issuing executive instructions. It was noticed that the expression “elective subject” was not defined in the Recruitment Rules and, therefore, the Government could have issued circulars and corrigenda defining the expression “elective subject”. The Court went on to

examine the ethos of the corrigendum dated 30th March, 2010 and had the following observations to make:-

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."

It is, therefore, clear from the reading of the judgment that the Court had observed and held that there was no need and necessity that a candidate

should have cleared or studied the concerned subject in all the three years. As long as the subject was a core or elective subject and the marks were counted/included in the grading awarded by the university, it would meet the statutory requirements. Distinction was drawn between core and elective subjects on the one hand and mandatory or subsidiary subjects on the other hand. The mandatory or subsidiary subjects do not carry any credit. Read in this light, the Division Bench of the High Court went on to answer the questions and relief was granted to a many of the petitioners therein.

11. The judgment in *Sachin Gupta* (supra) requires some elucidation as the arguments addressed by the counsel for the petitioner, we observe, were at variance with the ratio of the said decision. We have noted the three questions raised and decided by the Division Bench in *Sachin Gupta* (supra). The first question decided was, what is meant by the term/expression “elective subject”, for this expression is not defined in the Recruitment Rules and in that context, the decision drew a distinction between core/elective subjects on the one hand, and mandatory or subsidiary subjects on the other. Core or elective subjects are those prescribed in the programme and the gross marks obtained or credits earned are included in the grade card issued by the University at the end of each semester/year. These are subjects which are counted in the final result/grading. Mandatory

or subsidiary subjects are those, which do not carry any credit and are merely qualifying subjects. The marks awarded are not reckoned for the purpose of grading. Having held so, the Division Bench then examined the corrigendums of 2000 and 2010 and in that context observed that executive instructions could be issued when the Recruitment Rules are silent on a point to fill up gaps and supplement the rules, but not to supplant them or overwrite them. Thereafter, the Court examined, whether the prescription that students should have studied the core or elective subjects in each of the three years with the question paper of minimum 100 marks in the said subject, was a valid stipulation and could have been imposed by executive instructions, though there was no such stipulation in the Recruitment Rules. It is in this context that the Division Bench had made observations in paragraphs 40 to 42 quoted above, elucidating the object and purpose behind the use of the expression “elective subject” and prescribing the same in the Recruitment Rules. It was held that the expression requires that the student should have a thorough and good knowledge of the subject. The marks assigned to a particular paper or whether or not the subject was studied in two or three years was not a determinative or rational factor. To prescribe such conditions would be contrary to law as it would suffer from the vice of arbitrariness and irrationality. Different universities follow their own pattern and have full freedom to do so. They can teach elective or core

subjects in all semesters, two or three years or can also prescribe marks for each paper. The note to the advertisement had stated that the word elective may also include the main subject, as practiced in different universities. It would be illogical to state that if a subject is not studied in all the three years and the paper is not of 100 marks each year, the said subject cannot be treated as an elective subject. The assumption as predicated was incongruous and fallible. Thus the said criteria would not be the right precept.

12. When we come to the facts of the present case, we notice that the petitioner had studied English at the graduation level in all the three years. This is also clear from the certificate issued by the Utkal University, wherein English and Economics are mentioned as the two “core subjects” in addition to the other subjects studied by the petitioner in the 1st, 2nd and the 3rd year. She therefore meets the essential criteria as mentioned in the advertisement. The contention of the respondent that the papers in English did not carry 100 marks, has to falter and is unacceptable in view of the pronouncement in the case of **Sachin Gupta** (supra). It is for the university to prescribe and fix marks for each paper, but the essential requirement is that the said subject should have been taught as a core or elective subject so that the students have a good understanding. English was one of the main or core subjects in each of the three years of graduation. That being the situation, the petitioner would satisfy the eligibility condition as stipulated

in the advertisement/Recruitment Rules. It may be noted that the degree issued by the Utkal University specifically records that the petitioner had opted for labour welfare as a subsidiary subject. As noted, English was one of the core subjects studied by the petitioner in each of the three years of graduation.

13. We accordingly allow the present writ petition and set aside the impugned order dated 1st March, 2013. OA No.639/2012 will be treated as allowed. The respondent will process the application of the petitioner in accordance with the law for appointment to the post of TGT (English-Female). The said exercise will be undertaken within a period of four weeks from the date a copy of this order is received by them. The petitioner would not be entitled to back wages, but will be entitled to fixation of her notional pay and seniority as per her merit position in the select list. There will be no order as to costs.

Dasti.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MAY 11, 2016
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