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

+ **W.P.(C) 1504/2015**

Date of decision: 20<sup>th</sup> March, 2017

**DELHI SUBORDINATE SERVICE SELECTION BOARD & ANR**

..... Petitioner

Through Mr. Satyakam, Additional Standing  
Counsel with Mr. Manish Jain, DS (CC-I),  
DSSSB.

versus

**RICHA GUPTA**

....Respondent

Through Mr. Prag Chawla, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE CHANDER SHEKHAR**

**SANJIV KHANNA, J. (ORAL)**

Delhi Subordinate Service Selection Board (DSSSB) and the Government of NCT of Delhi in this writ petition have impugned order dated 21<sup>st</sup> July, 2014, passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, in short) in OA No.926/2013.

2. The impugned order allows the aforesaid OA filed by Richa Gupta, the respondent before us, with a direction that the petitioner shall finalise the selection process for the Post Code 163/07 (Advertisement No.07/2007) and if Richa Gupta is selected on the basis of her position in the merit list, her dossiers shall be sent to the Directorate of Education, Government of NCT of Delhi, for necessary action.

3. DSSSB by Advertisement No.07/2007 published in the Employment News 6-12 October, 2007 had invited applications for 39 vacant posts of

Librarian (Grade-B) in the Directorate of Education under Post Code 163/07. DSSSB had earlier published an Advertisement No. 2/07 for filling up 147 vacant posts of Librarian (Grade B) in the Directorate of Education vide Post Code No.17/07 and one OBC vacancy vide Post Code No.18/07.

4. The petitioner-DSSSB conducted a combined written examination in respect of Advertisement No.2/07 for Post Codes 17/07, 18/07 and Advertisement No.07/2007 for Post Code 163/07. It appears that in this examination candidates/applicants, who had applied under Post Code 182/07 and 30/08 for the post of Librarian, had also participated.

5. The combined written examination was held on 18<sup>th</sup> January, 2009 and the results were declared after about one year on 18<sup>th</sup> January, 2010.

6. The respondent being an applicant under the Post Code 17/07 and 163/07 (Librarian, Grade B) had secured 91 marks out of 200 marks in the main examination. The petitioner missed her selection under Post Code 17/07 by a close margin.

7. The results for Post Code 163/07 were never declared.

8. This had prompted Richa Gupta to file OA No. 926/2013, which as noticed above has been allowed by the impugned order dated 21<sup>st</sup> July, 2014.

9. The stand and contention raised by the DSSSB before us is that the requisitioning department i.e. Directorate of Education vide their letter dated 13<sup>th</sup> March, 2009 had requested them to keep the selection process for 39 vacancies of Librarian (Grade B) vide Post Code 163/07 in abeyance till the appointment process is completed against Post Code 17/07. The contention of the DSSSB was that the Tribunal could not have issued any direction to finalize the selection process, as the requisitioning department i.e. the

Directorate of Education had itself asked the appointing authority to keep the appointment process in abeyance.

10. After notice was issued in the present writ petition, the Directorate of Education was asked to clarify the position. The petitioner has filed on record letter dated 21<sup>st</sup> March, 2016, written by the Directorate of Education, Government of NCT of Delhi. This letter, in fact, gives a different picture altogether and sets out the correct and true facts. As the facts narrated in the said letter dated 21<sup>st</sup> March, 2016 are crucial and important, we would like to reproduce the said letter in entirety:-

“Please refer to your letter dated 26/02/2016 on the subject cited above, the point-wise reply is as under:-

1. A requisition vide letter dated 25/11/2006 for 147 posts was sent to the DSSSB, which was revised to 42 posts vide letter dated 27/04/2007. However, 147 vacancies were already advertised by DSSSB (post code 17/07) on 16/10/2007 (closing date was 29/10/2007)
2. On 21/05/2007 and 05/07/07, Directorate of Education, GNCTD sent a requisition for 23 & 16 anticipated vacant post of Librarian to DSSSB (Copies enclosed). These vacancies (39) were advertised vide post code No.163/07 on 16/04/2007 (closing date was 02/05/2007).
3. The combined exam for post code No. 17/07 and 163/07 was conducted by DSSSB on 18/01/2009 along with other posts.
4. A meeting was held on 04/02/2009 at the level of Secretary, DSSSB wherein issue regarding exploring the possibilities to accommodate maximum number of candidates of post code No. 17/07 was discussed & decided that the requisition for 147 posts which was modified to 42 posts and further to 87 posts after adjusting 45 unfilled vacancies from the requisition sent to the DSSSB in the year 2004 to pre-empt litigation. The same was conveyed vide letter dated

- 13.03/2009 (Copy enclosed). It was further requested to the DSSSB that selection process for 39 vacancies advertised vide post code 163/2007 may be kept in abeyance till the appointment process for post code No.17/07 is completed.
5. Result of 87 posts was declared by DSSSB on dated 18/01/2010.
  6. On 11/02/2010, the Directorate of Education sent a letter to DSSSB to initiate the selection process & send the dossier in respect of post code 163/07 for the said 39 vacancies.
  7. Vide letter 24/05/2010 (copy enclosed) , DSSSB was informed that “As regard requisition for 39 vacancies in post code 163/07 which were earlier requested to be kept in abeyance vide this office letter No. DE.4(9)(72)/E-IV/2006/9118 dated 13.03/2009, now I am directed to say that no fresh requisition is required to be sent at our end and therefore the same kindly now be filled up as per our earlier requisition sent to DSSSB vide letter No.DE 4(9)/72/E-IV/06/4211 dated 11/2/2010”.
  8. Subsequently, a reminder dated 13.07/2010 was also sent to DSSSB (copy enclosed). OIC/Economist, CC-I, DSSSB, GNCT of Delhi vide letter dated 02/08/2010 (copy enclosed) informed that DSSSB do not make/maintain any panel for selection to the various categories of posts, it is necessary to send the fresh requisition so that fresh advertisement of the vacancies can be published to obtain fresh application for the aforementioned vacancies.
  9. Therefore, a requisition of 105 vacancies including 39 vacancies was sent to DSSSB vide letter dated 06/12/2010 (copy enclosed).
  10. The dossier against requisition of 105 vacant post of Librarian are expected to come from DSSSB shortly. As on date 01/01/2016, there are 46 vacancies still left with Directorate of Education, if the requisition of total 407 vacant post of Librarian pending with DSSSB are excluded out of 453 total vacant posts of Librarian in Directorate of Education. The break up of post of Librarian is as under:-

|                                    |                             |
|------------------------------------|-----------------------------|
| Total sanctioned post of Librarian | -961                        |
| Total filled                       | 508 (including re-employed) |
| Total vacant                       | 453                         |
| Requisition sent to DSSSB          |                             |
| & still pending with DSSSB         | 407                         |
| Vacancies left with department     | 46                          |

This issue with the prior approval of Competent Authority”

11. The aforesaid letter admits that a combined examination for the Post Codes 17/07 and 163/07 was conducted by the DSSSB on 18<sup>th</sup> January, 2009 along with other posts. On 4<sup>th</sup> February, 2009, a meeting was held at the level of Secretary, DSSSB to explore the possibilities of accommodating maximum number of candidates under Post Code 17/07, for the requisition had been reduced to 42 posts as against the initial requisition of 147 posts. On this account, it was initially decided that DSSSB should not process the vacancies advertised vide Post Code 163/07 till appointment process for the Post Code 17/07 was completed. Accordingly, results of 87 posts were declared by DSSSB on 18<sup>th</sup> January, 2010 under Post Code 17/07. Thereafter, the Directorate of Education had sent letter dated 11<sup>th</sup> February, 2010 to the DSSSB to initiate selection process and send dossiers in respect of eligible candidates for the Post Code 163/07. This was followed by another letter dated 24<sup>th</sup> May, 2010, informing DSSSB that the 39 vacancies under Post Code 163/07, which were earlier requested to be kept in abeyance, may be filled up. Thereafter, vide letter dated 11<sup>th</sup> February, 2010, the Directorate of Education had asked the DSSSB to initiate (sic. complete) the selection process. In fact, Directorate of Education had stated that no fresh requisition was required as requisition had already been sent to the DSSSB. The Directorate of Education thereafter had sent another

reminder dated 13<sup>th</sup> July, 2010 to the DSSSB.

12. The stand of the DSSSB stands reflected in their letter dated 2<sup>nd</sup> August, 2010. The DSSSB claimed that they do not make or maintain a panel for selection of posts, and therefore, the Directorate of Education should send a fresh requisition.

13. In these circumstances, the Directorate of Education vide their letter dated 21<sup>st</sup> March, 2016 had sent requisition of 105 vacancies including 39 vacancies to the DSSSB vide letter dated 6<sup>th</sup> December, 2010.

14. The State is not under legal duty to fill up all or any of the vacancies, including notified vacancies, even if there are adequate number of successful candidates. To this extent, the respondent does not have any right to a post. However, this does not mean the State has a licence to act in an arbitrary manner and not fill up the notified vacancies. The State must act bonafidely and for appropriate reasons (*Shankarsan Dash versus Union of India*, (1991) 3 SCC 47). It is in this context, we have reproduced the letter dated 21<sup>st</sup> March, 2016 written by the Directorate of Education, Government of NCT of Delhi, the requisitioning Department. The stand of the DSSSB, according to us, is irrational and arbitrary. Selection process was held and marks of the candidates were declared. Between holding of the written tests and declaration of results, it was decided that the appointment process under Post Code No. 163/07 would be kept in abeyance till recruitment is completed against Post Code No. 17/07. Abeyance did not mean cancellation. Clearly thereafter the Directorate of Education had sent repeated letters from 11<sup>th</sup> February, 2010 calling upon the DSSSB to send dossiers in respect of Post Code No. 163/07.

15. There have been other similar cases the DSSSB's stand that they do

not draw a panel has been adversely commented upon. Reference can be made to judgment dated 7<sup>th</sup> March, 2013 in W.P. (C) No. 5236 titled ***Delhi Subordinate Service Selection Board v. Lokesh Kumar*** wherein it has been held:-

“ 11. Before bringing the curtains down we wish to bring on record that the budget of the Delhi Subordinate Services Selection Board runs into crores of rupees every year. It is the duty of the Selection Board to ensure that as far as possible every vacancy notified to be filled up is filled up if eligible candidates are available. It does not sub-serve public interest if public post remains unfilled. We are finding in very second litigation being fought against the Selection Board that a panel is drawn up limited to the number of vacancies notified to the Selection Board by the Government of Delhi or autonomous bodies under the aegis of the Government of Delhi. The Selection Board does not scrutinize the certificates filed by the applicants before permitting them to take the competitive examinations. The result is that if 10 vacancies have to be filled up, a Select Panel of 10 is drawn up. Thereafter, the said 10 candidates are called for the certificate submitted by them to be verified. If any deficiency is found or noted in a certificate issued, the empanelled candidate is de-empanelled and the Board then takes a stand that since it has not drawn up a reserve list, it would not forward the name of the next selected candidate who is also above the qualifying mark

limit prescribed. Not only does this breed litigation but even results in public posts remaining unfilled. As in the instant case, the Delhi Jal Board urgently requires an Assistant Chemist and we have respondent No.1 as a selected candidate but yet the post is not being filled up because the Selection Board is refusing to send the dossier of respondent No.1 to the Delhi Jal Board. We make it clear that the decision to fill up or not fill up the vacancy cannot be the decision of the Selection Board, which is merely a recruiting agency. The employer is not the Selection Board. The office or the department of the Government which sends the requisition to the Selection Board would alone have the right to determine whether or not to fill up the vacancy. In future the Selection Board would forward the names of all candidates who have secured marks above the eligible cut-off mark to the office or the department which has sent the requisition to the Selection Board to conduct the examination. It would then be for the said department to decide whether or not it would like to have candidates in the wait list. This would ensure that it is the employer who would decide whether to fill up the vacancy from the wait listed candidate if the candidates in the select list are found either ineligible or do not respond to the letters offering appointment.

12. We concur with the view taken by the Central Administrative Tribunal that the Delhi Subordinate Services

Selection Board shall forward the name of respondent No.1 to the Delhi Jal Board for being appointed as an Assistant Chemist. ”

16. This being the position, we do not see any reason or ground to interfere with the impugned order. The Tribunal in the impugned order has asked the DSSSB to declare the result and thereafter, process the case of the petitioner as per the merit list. This will mean that in case the respondent-Richa Gupta had secured meritorious position and is eligible, she would be entitled to and her case will be processed for appointment in accordance with law. The said process would be completed within three months from the date a copy of this order is received.

**SANJIV KHANNA, J.**

**MARCH 20, 2017**  
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**CHANDER SHEKHAR, J.**