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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 13591/2009

15th February, 2017

MS. KAMALE ZEHRA

..... Petitioner

Through: None.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr.Rahul Sharma and Mr. C.K.Bhatt,
Advocates for R-1 and 2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the direction of quashing the impugned order dated 29.10.2009 passed by the respondent no.2/Director of Education whereby the respondent no.2/Director of Education refused to grant approval to the appointment of the petitioner as an Assistant Teacher with the respondent no.3/Shafiq Memorial Sr. Secondary School, Bara Hindu Rao, Delhi on the ground that for appointment of an Assistant Teacher, a candidate must have studied Maths at Class 10th or Matric level but petitioner has not studied Maths at Class 10th level and hence petitioner

cannot be appointed as an Assistant Teacher in the respondent no.3/school.

Respondent no.3/school is an aided school.

2. The facts of the case are that it is an admitted position that the post in question of Assistant Teacher with the respondent no.3/school was a post duly sanctioned by the respondent no.2/Director of Education. That there was a vacancy in this sanctioned post is also not disputed by the respondent no.2/Director of Education. It is also not disputed that petitioner was appointed by the regular recruitment process wherein advertisement was issued, and out of various candidates who were interviewed by the duly constituted Selection Committee it was the petitioner who was selected in terms of the decision of the meeting of Managing/Selection Committee of the respondent no.3/school dated 30.7.2008 and which Minutes of Meeting dated 30.7.2008 reads as under:-

“Ref. No.....

Date:30/07/2008

MINUTES OF SSC FOR SELECTION OF ASSISTANT TEACHER-UR-01(ONE).

A meeting of the Selection Committee constituted under Rule 96(3)(b) of D.S.E.R, 1973 was held on 30/07/2008 at 2:00 P.M. in Shafiq Memorial Sr. Sec. School (An Aided Minority School), Bara Hindu Rao, Delhi-110006 to select and recommend most suitable candidate for appointment to one post of Assistant Teacher (UR Category).

The following members were present:

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|-----|---------------------------|---------------------------|
| 01. | Prof. Azra Razzack | Chairman's Nominee |
| 02. | Dr. Rakesh Chandra Tiwari | D.E'S Nominee |
| 03. | Mr. Jang Bahadur | E.O. (Zone-22) |
| 04. | Smt. Vimla Paul | Subject Expert |
| | | S.K.V.Padam Nagar, Delhi. |
| 05. | Dr. Sarwat Ali | Manager of the School |

The school records reveal that 01(One) post of Assistant Teacher is lying vacant in the school w.e.f 31/01/1993 due to the Retirement of Mr. Mohd. Ilyas and covered under the post fixation for the year 2006-2007. The said post is of UR category. The clearance letter to fill up the said post was issued by the Directorate of Education, Delhi vide letter no. **FZ./VIII/DN/2008/400** dated **06/06/2008**. Consequent to which the post was advertised in the Times of India 18/06/2008, Nav Bharat Times 15/06/2008 and Rashtriya Sahara 15/06/2008, for inviting applications and to select 01(One) suitable candidate for the 01 (One) vacant post of Assistant Teacher.

The Chairman's Nominee and Principal of the school certified that:

01. The concerned post of Assistant Teacher is covered under the current post fixation 2006-2007.
02. The post is free from any dispute/Court Case and vigilance enquiry.
03. As per the applicability of Roster, the said post is to be filled by UR-reserved candidate.
04. The candidates are eligible for appointment to the post of Assistant Teachers as per Recruitment Rules.
05. All surplus staff has been adjusted and the post is lying vacant.
06. All the Orders regarding relieving and joining of surplus staff have been complied with.
07. The promotional posts have been filled by holding, DPC- wherever applicable.
08. All promotion cases of the staff wherever due have been cleared.
09. The Employment Exchange was also requested to supply the list of the suitable candidates for 01(One) vacant post of Assistant Teacher.
10. 59 (Fifty Nine) applications were received through open advertisement and 20(Twenty) candidates from Employment Exchange were received in the school. 20(Twenty) candidates which were sponsored by Employment Exchange, called for verification latest by 21/07/2008. Out of which 49(Forty Nine) candidates were found eligible. Out of which only 37 (Thirty Seven) candidates were present. As regards verification of original documents in r/o open candidates and the same were verified before the interview.
11. No fresh applications were added.
12. None of the candidates who appeared for interview is related to any members of the SSC's.
13. Percentage of academics were posted in Board Sheet by School Authority and merit index was calculated, checked and also verified by school authority.

Only 37 (Thirty Seven) candidates turned up for interview. All were interviewed one by one. After interview of all the candidates, the Staff Selection Committee recommended the under noted name of candidate for appointment to the post of Assistant Teacher in the Pay-Scale 4500-125-7000 in

order to merit on the basis of educational & Professional qualifications, experience and interview performance subject to confirmation by the School Managing Committee.

a) **Category: UR**

Select Panel

	<u>Name</u>	<u>Father's Name</u>	<u>D.O.B</u>
01.	Kamal-E-Zehra	Mr. Ali Bin Imran	05/03/1976

b) **Waiting List**

	<u>Name</u>	<u>Father's Name</u>	<u>D.O.B</u>
01.	Shakeel Parveen Ali	Mr. Meherban Ali	08/02/1973
02.	Mohd. Azeem Khan	Mr. Mohd. Waseem Khan	07/05/1983

The Selection of the above candidate is subject to the verification of their educational qualification, Medical and Character antecedents etc.

Sd/- (Mr. Sidghatullah Siddiqui) Principal	Sd/- (Smt. Vimla Paul) Subject Expert	Sd/- (Dr. Sarwat Ali) Manager
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Sd/- (Mr. Jang Bahadur) Education Officer Zone 22"	Sd/- (Dr. Rakesh Chandra Tiwari) DE Nominee	Sd/- (Prof. Azra Razzack) Chairman's Nominee
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3. Petitioner was accordingly given the appointment letter dated 29.8.2008, but, in view of the impugned order of the respondent no.2/ Director of Education dated 29.10.2009 declining the approval to the appointment of the petitioner as an Assistant Teacher, hence the salary of the petitioner was not released, and thus the petitioner was hence forced to approach this Court.

4. Let me at this stage reproduce the impugned letter of the respondent no.2/Director of Education dated 29.10.2009 and the same reads as under:-

“OFFICE OF THE EDUCATION OFFICER ZONE VIII DISTT. NORTH
PARTAP NAGAR, DELHI:

No. F.Zone VIII/DN/2009/2050

Dated.29-10-2009

To

The Principal,
Shafiq Memorial Senior Secondary School.
Bara Hindu Rao, Delhi.

Sub:- G.I.A and salary arrears in r/o Ms. Kamle Zehra, Asstt. Teacher
(Newly appointed).

Sir,

With reference to your letter No.SMSSS/09/25 dated 20.01.09 on the subject cited above, it is stated that as per recruitment rule a candidate should be Hr. Sec./Sr. Sec. or intermediate and should have studied Maths and Science at Class X or matric level. The selected candidate has not studied Maths at X level, so the selection of Ms. Kamale Zehra as Asstt. Teacher has been rejected by the competent authority. This is for your information and necessary action.

Yours faithfully

Sd/-

(E.D.THOMAS)

DY. EDUCATION OFFICER ZONE VII

(underlining added)”

5. The relevant recruitment rules for appointment of an Assistant Teacher have been given by the respondent no.2/Director of Education in its counter-affidavit and these relevant rules read as under:-

“R.R. for the Post of Assistant Teacher

Vide Notification No.F.5/ADC/RR/AT/88/241-644, dt. 23.1.1989, as Circulated
Vide No DE.15/Act/59/93/RR/14680-14736, 27.10.1993

- | | | |
|----|--|--|
| 1. | Name of the post | : Assistant Teacher |
| 2. | Classification | :Group ‘C’, Non-ministerial |
| 3. | Scale of pay | :Rs 1200-2040 (Pre-revised) Rs.4500-7,000 (Revised as per V C.P.C) |
| 4. | Whether selection post or non-selection post | :Non-selection post |

5. Age limit for direct recruitment : Below 30 years.
(Relaxation in case of Govt. servants of Delhi Admn. Below 40 years in case of Female candidates)
6. Educational Qualifications :Essentials:

1.Hr. Secondary or Sr.Sec./Intermediate.

2.Should have studied Sc. & Maths Upto Matric/10th std.

(Qualification shown at Sr. No.2 is relaxable for the candidate passed Hr. Sec. Examination)

3.JBT/HTC(Relaxable on the recommendation of selection committee, in case the candidate possessed higher teacher training qualification).

X. Desirable
1.B.A with English
7. Whether age and educational qualifications prescribed for direct recruits will apply in case of promotions. :N.A
8. Period of probation, if any :One year
9. Method of recruitment whether by direct rectt. or by promotion or by deputation/transfer & percentage of the vacancies to be filled by various methods. :By Direct Recruitment

10. In case of rectt. by :N.A
promotion/deputation/transfer grade
from which promotion/transfer to be
made
11. If a DPC/Selection committee :Yes (as per
exists, what is composition provision)
12. Circumstances in which UPSC is to : N.A
be consulted on making recruitment.

Editor'sNote: RR for Assistant Teachers in Govt. schools have
been notified and amended. (underlining added)

6. No doubt, it is seen that as per para 6 the educational qualification required is that a candidate must have studied Maths and Science up to Matric/10th standard, however, the very next line the same recruitment rule provides that the qualification of having studied Science and Maths upto 10th standard is relaxable for the candidate who has passed the Higher Secondary examination. The petitioner after schooling has done B.A, M.A and in fact thereafter had obtained a diploma in Elementary Teacher Education (ETE) from the Jamia Milia Islamia University. The letter of the petitioner dated 28.5.2009 addressed to the Chief Minister shows that petitioner while getting her diploma in ETE, taught Mathematics during the first and second year training in the ETE upto fifth and eighth level respectively. Petitioner therefore has studied and taught Maths upto a much higher level than the intermediate level/Class 10th i.e at the higher

level of ETE and which is after the post graduation qualification of the petitioner.

7. Since the very next line of para 6 of the recruitment rule states that the requirement of having studied Maths upto 10th Standard is exempted once there is higher secondary qualification, and since petitioner not only has higher secondary qualification but also much higher qualifications thereafter of graduation and post graduation besides having an ETE diploma from Jamia Milia Islamia University, hence the respondent no.2/Director of Education was clearly unjustified in holding that petitioner was not qualified to be appointed as an Assistant Teacher.

8. In somewhat similar circumstances I have in the case of ***Sh. Yogesh Dutt Vs. Director of Education & Ors.*** W.P.(C) 11470/2009 decided on 15.7.2013 held that if a candidate has a higher qualification than what is prescribed by the recruitment rule, then surely it is something better and consequently, if a candidate at a lower level does not have the qualification but has the same at a higher level, this is good enough qualification. The ratio of ***Yogesh Dutt's*** case (*supra*) will also therefore apply in the facts of the present case.

9. Accordingly, for both the reasons that the petitioner is not disqualified as per para 6 of the recruitment rule for appointment of an

Assistant Teacher because there was no requirement of studying up to 10th Standard once a candidate is having higher secondary qualification i.e higher school qualifications/senior secondary qualifications with the petitioner going much above to the level of post graduation in MA, and the fact that petitioner has in fact studied and taught Maths in the ETE course, hence it is held that the respondent no.2/Director of Education has clearly erred in issuing the impugned letter dated 29.10.2009. The impugned letter/order dated 29.10.2009 is therefore quashed.

10. In view of the above discussion this writ petition is allowed and the impugned order dated 29.10.2009 of the respondent no.2/Director of Education will stand quashed and petitioner will be held to have been validly appointed to the respondent no.3/school in terms of the Selection Committee Meeting dated 30.7.2008 and which Selection Committee also had the representatives of the respondent no.2/Director of Education.

11. The writ petition is accordingly allowed and disposed of, leaving the parties to bear their own costs.

FEBRUARY 15, 2017
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VALMIKI J. MEHTA, J