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

+ **W.P.(C) 12250/2016**

KRISHNA MURARI GUPTA Petitioner
Through **Mr. Bankey Bihari, Advocate.**

versus

UNION OF INDIA & ANR. Respondent
Through **Mr. Kirtiman Singh, Standing**
Counsel with Mr. P.A. Singh, Advocate for UOI.
Mr. S. Rajappa, Advocate for Kendriya Vidyalaya
Sangathan.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **03.01.2017**

C.M. No.48315/2016

Exemption allowed, subject to all just exceptions.

W.P.(C) 12250/2016

With the consent of the counsel for the parties, the writ petition is being taken up for hearing and disposed of at the admission stage itself.

2. The petitioner-Krishna Murari Gupta had filed OA No. 3454/2016 praying for the following reliefs:-

“RELIEFS SOUGHT:

In view of the facts mentioned in para 6 above the applicant prays for the following relief:-

8.1 An order/direction for quashing/amending the impugned Recruitment Rules dated 04.03.2014 (Annexure A-1) and the Advertisement (Annexure A-2) No.11 notified online as well as through employment news dated 24-30 September holding the same to be arbitrary, illegal and unconstitutional.

8.1 An order/direction to the respondents to consider the candidature of Trained Graduate Teachers (TGTs) with more than 14 years experience of regular service and to enable them to apply and appear in the open written examination/interview for recruitment to the post of Principals in the Kendriya Vidyalaya Sangathan (KVS) for the year 2016.

8.2 Direct the respondents to allow the applicant to fill up and submit the application form for the recruitment to the post of Principals in the Kendriya Vidyalaya Sangathan (KVS) for the year 2016, and

8.3 Pass any other order that is deemed fit and proper in the facts and circumstances of the case.”

3. The grievance of the petitioner was that he is a Trained Graduate Teacher, who has about more than 14 years of experience, but under the amended Recruitment Rules, he is not eligible for being considered for appointment to the post of Principal. It is apparent from the prayer clause that the petitioner accepts that he was not eligible under the applicable rules and had challenged the vires of the said rules and the advertisement for the grounds and reasons raised in the Original Application.

4. The OA was dismissed by the impugned order dated 13th December, 2016, recording as under:-

“At this point of time, learned counsel for the applicant produces before us recruitment rules. He claims that the applicant had Master degree and B. Ed. But for the experience, which is required, he says, that the applicant may be considered in terms of clause (B). But when we queried about the experience, it appears that the applicant had only experience as TGT alone and not the combined of PGT and TGT. Therefore, quite obviously, the applicant cannot be considered as eligible for the post in question. Therefore, there is no merit in the OA and the same is dismissed. No order as to costs.”

5. The impugned order merely notices and interprets the extant Recruitment Rules, but does not examine the question of vires raised by the petitioner in the OA. In fact, the respondents were yet to file reply to the OA, when the order dated 13th December, 2016 was passed.

6. Counsel for the petitioner states that the petitioner has filed another OA being OA No. 3452/2016, in which an identical Rule in the Navodaya Vidyalaya has been challenged and the matter is still sub-judice before the Tribunal.

7. Without expressing any opinion on merits, we would set aside the order dated 13th December, 2016 with a direction to decide the OA No. 3454/2016 afresh i.e. the question of vires of the amended Recruitment

Rules and the advertisement.

8. Counsel for the petitioner has fairly stated that he is not pressing for stay as written examination has already been conducted on 17th December, 2016. In case, the petitioner succeeds in the OA, it will be open to the Tribunal to examine what relief, if any, can be granted to the petitioner.

9. With the aforesaid observations and directions, we allow the present writ petition, setting aside the impugned order dated 13th December, 2016, with a direction that OA No.3454/2016 would be decided afresh without being influenced by the earlier order. We clarify that this Court has not expressed any opinion on merits. To cut short delay, it is directed that counsel for the parties will appear before the Tribunal on 23rd January, 2017, when a date of hearing in the present matter will be given. No costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JANUARY 03, 2017
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