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

+ W.P.(C) 2786/2018 & C.M. No. 43987/2018

GOVT. OF NCT OF DELHI THROUGH CHIEF SECRETARY
AND ORS.

..... Petitioner

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Ms. Palak Rohmetra
and Ms. Aarushi, Advocates

versus

JAGDEEP

..... Respondent

Through: Mr. Vivek Kumar Tandon, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

22.10.2018

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1. By the above application, the petitioner seeks stay of the contempt proceedings initiated by the respondent vide CP No. 513/2017 in O.A. No. 502/2016 till the next date of hearing and preponement of the date of hearing of the writ petition.

2. The petitioner has assailed the order dated 16.03.2017 passed by the Central Administrative Tribunal (CAT) in OA No. 502/2016 dated 16.03.2016. Formal notice has not been issued in the writ petition. The same stands adjourned to 08.03.2019. Since the respondents have initiated

the aforesaid contempt proceedings and the petitioner is apprehending coercive action by the CAT, the present application has been filed.

3. We have heard Ms. Ahlawat, counsel for the petitioner on merits. Since we do not find any merit in the present petition, we are not inclined to pass orders for stay as prayed for in the present application, and proceed to dispose of the writ petition itself.

4. The Delhi Subordinate Services Selection Board (DSSSB) issued employment notice bearing No. 02/2012 in May 2012, inviting applications for various posts including Trained Graduate Teacher (TGT) in different disciplines in the Directorate of Education, GNCTD. The respondent applicant applied for the post of TGT (Social Science) Post code (PC) 118/12. Before proceeding with the selection process for the said post, the DSSSB issued another advertisement bearing No. 01/13 again for various posts, including the post of TGT (Social Science) PC No. 12/13 in February 2013. The respondent applied against the said post as well. On the second occasion, applications were invited in the Optical Mark Recognition (OMR) form. The educational qualifications and also the eligibility criteria for the post of TGT (Social Science) was the same in both the advertisements.

5. The petitioner notified holding of common examination in respect of both the advertisements and a single admit card was issued for the said examination for all the posts. The respondent appeared in the examination and secured 101.75 marks. Though the respondent secured more marks than the cut off marks for the post code 12/13, the respondent was not selected when the result was declared on 24.11.2015 and, consequently, after making

representations in November 2015 and December 2015- to which he received no response, he preferred the Original Application.

6. The stand taken by the petitioner was that the respondent was considered as ineligible for PC 12/13 since he did not have working knowledge of Hindi. This stand of the petitioner was premised on the fact that the respondent did not fill the bubble in column No. 13 of the OMR form which reads as follows:

Whether having working knowledge of Hindi?
Yes (1)
No (2)

7. Since the respondent did not answer the aforesaid query, it was assumed that he did not have the working knowledge of Hindi.

8. The further stand taken by the petitioner was that the candidates had been put to notice with regard to their being found ineligible for one or the other Post Codes aforesaid, by issuing a notice dated 10.09.2013 on the website of DSSSB and in the said notice, the name of the respondent appeared at Serial No. 597. The reason for rejection of the respondent's candidature was also indicated in the said notice. The petitioner claimed that the respondent, even at that stage, did not respond to the public notice and did not furnish any satisfactory response to conclude that he had working knowledge of Hindi. The further submission of the petitioner was that so far as vacancies under PC 118/12 was concerned, the petitioner did not qualify since marks obtained by him were below the marks obtained by

the last selected candidate.

9. The petitioner also raised the issue about respondent approaching the Tribunal belatedly, keeping in view the fact that the rejection of the petitioner's candidature for PC 12/13 had been communicated on 10.09.2013, whereas the petitioner preferred the Original Application only in 2016 after making representations.

10. The Tribunal has rejected the objection of the petitioner on the ground of limitation by observing that, firstly, the representation of the respondent was pending and when the original application was preferred, it was not decided; and, secondly, that the respondent had averred that he had no knowledge about the issuance of the notice dated 10.09.2013.

11. The Tribunal rejected the reliance placed by the petitioner on the notice dated 10.09.2013 on the ground that the same had been published by the petitioner only on its website, and the candidates had not been put to prior notice that it was their obligation to check the website of the petitioner on their own to take notice of such communications. Consequently, the publication of the notice dated 10.09.2013 on the website of DSSSB alone was held as not sufficient notice to the respondent of the rejection of his candidature for PC 12/13.

12. So far as the merits of the controversy are concerned, the Tribunal took notice of its earlier decision in *Ms. Deepika & Anr. V. Govt. of NCT of Delhi & Ors.* in OA No. 1966/2013, decided on 02.07.2014 and O.A. No. 202/2015 and 203/2015, decided on 18.01.2016, wherein the Tribunal had ruled that there was a defect in column No. 13 of the OMR form and the

candidates could not be made to suffer on that account.

13. Mr. Tandon, who appears on advance notice, submits that in ***Pushpa Devi v. Rajesh Bhatia & Anr.*** in W.P.(C.) No. 3460/2017, this Court had affirmed the view taken by the Tribunal in O.A. No. 203/2015 decided on 18.01.2016. He further submits that the Special Leave Petition preferred by the petitioner before the Supreme Court also stands rejected vide SLP No. 12160/2018, ***Rajesh Bhatia V. Pushpa Devi & Anr.***, decided on 04.07.2018.

14. Having considered the submissions of learned counsels and perused the record, we are of the considered view that there is no merit in the present petition for the reasons recorded by the tribunal. The OA preferred by the respondent could not be said to be time barred or belated. The notice dated 10.09.2013 was not sufficient notice of the rejection of the candidature of the respondent, since the respondent was not expected to check the website of DSSSB for such a notice. The DSSSB did not, in advance, instruct the candidates to expect further notification only on their website and they were not informed that they would not be issued individual notices in relation to their candidature. Thus, the candidates could not be expected to keep checking the website of the petitioner on their own from time to time. The statement of the respondent that he did not become aware of the notice dated 10.09.2013, therefore, has to be accepted. Once the results were declared in November 2015, the respondent made successive representations in November and December 2015, which remained unanswered. Consequently, the respondent preferred the aforesaid O.A.

15. Even on merits, the rejection of the respondent's candidature for PC

12/13, only on account of his not having filled up Column 13 with regard to his working knowledge of Hindi, is bad on account of the fact that Column 13 of the said OMR form has already been struck down by the Tribunal and that decision has been upheld by this Court, and the SLP preferred before the Supreme Court also stands rejected. Even otherwise, the petitioner has not been able to point out that working knowledge of Hindi was an eligibility condition for the post of TGT (Social Science). Pertinently, the respondent's candidature for the year 2012 was found to be valid and there was no difference in the eligibility criteria in relation to the two Post Codes.

16. For all the aforesaid reasons, we find no merit in this petition and the same is, accordingly, dismissed.

17. The date already fixed stands cancelled.

VIPIN SANGHI, J

A. K. CHAWLA, J

OCTOBER 22, 2018

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