

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

Date of Decision: January 15, 2018

+ W.P.(C) 8508/2015

LALIT KUMAR

..... Petitioner

Through: Dr. K.C. Rakesh, Advocate

Versus

EAST DELHI MUNICIPAL CORPORATION & ORS.

..... Respondents

Through: Mr. Kumar Rajesh Singh, Standing
Counsel EDMC & Mr. Puran Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

ORAL

1. Petitioner is a Scheduled Caste (SC) candidate, who on the basis of information sought under Right to Information Act, 2005, claims to have been selected in the SC category for the post of Primary Teacher in pursuance to Advertisement of 25th January, 2011 (*Annexure P-1*). As per Advertisement (*Annexure P-1*), qualifications and conditions, as prescribed by the Department of Education in MCD, shall be applicable for the selection of candidates.

2. In this petition, a mandamus is sought to respondents to declare the result of interview held on 16th March, 2011 by the Selection Committee constituted by the second respondent with consequential relief of petitioner being appointed against SC category post of primary teacher.

3. In the counter affidavit filed by respondents, it is maintained that

the school which had issued Advertisement (*Annexure P-1*) does not belong to East Delhi Municipal Corporation (EDMC) and the management of the said school had expressed its inability to run the school. It is asserted by respondents in the counter affidavit that no candidate acquires an indefeasible right to post merely because he has appeared in the examination or even found a place in the select list. It is also the stand of respondents in the counter affidavit that the recruitment rules for the post of primary teacher are pending notification with the Urban Development Department and appointments would be made as per Notification of 25th August, 2015 and till then, respondents will not hold any interview and the interview so conducted would be cancelled.

4. It is a matter of record that the aforesaid Notification of 25th August, 2015 has not been placed on record. Learned counsel for petitioner maintains that there is no such Notification.

5. It is submitted on behalf of petitioner that the applicable recruitment rules/ guide lines will prevail in the absence of approval of recruitment rules for the post in question by the concerned department and so, there is no justification to keep pending the interview result and that respondents be directed to declare the results of the interview held on 16th March, 2011. On the other hand, learned counsel for respondents maintains that till the recruitment rules are not finalized, no appointment can be made.

6. Learned counsel for petitioner on instructions submits that *Sanatan Dharam Devnagri Patshala , Shahdara, Delhi* is an aided school and the said school is still functional and so, there is no justification for not appointing petitioner on the post in question. At this stage, counsel for

respondents clarifies that the Notification is of 23rd August, 2010 and not of 25th August, 2015 but inadvertently it is mentioned as 25th August, 2015 in the counter affidavit filed by respondents.

7. Upon hearing and on perusal of the material on record, I find that there is an ambiguity regarding the factual aspects. That is, whether the school who had issued the advertisement in question, is functional or not and respondents are required to clarify as to why the selection already made in pursuance to advertisement (*Annexure P-1*) cannot be finalized in the light of Notification of 25th August, 2015, laying down the guidelines for making appointment in MCD aided schools. Even if the school in question is not run by concerned MCD, still as per the counter affidavit filed by respondents, parity in appointment of teachers in an aided schools and MCD schools ought to be maintained. The above aspect needs to be clarified. It needs no clarification that petitioner may not have vested right but still petitioner has a legitimate expectation to be employed, particularly when he has been selected.

8. In the above background, it is deemed appropriate to dispose of this petition with direction to second respondent to look into the above referred aspects within a period of twelve weeks and thereafter, intimate petitioner about fate of interview held on 16th March, 2011. It is also required to be clarified by respondents that why the guidelines issued by Government of India on 25th August, 2015 cannot be applied in the case of petitioner and as to why the recruitment rules, which were not notified on the date of advertisement in question, would prevail.

9. The fate of interview held on 16th March, 2011 be positively conveyed to petitioner within two weeks thereafter, with reasons if

petitioner is not appointed. Such a course is being adopted, so that petitioner may avail of the remedies, as available in law, if need be. It is also made clear that if the school in question is not functional, then respondents are not required to carry such exercise, as petitioner's claim would no longer survive.

10. With aforesaid directions, this petition is disposed of.

Dasti.

**SUNIL GAUR
(JUDGE)**

JANUARY 15, 2018

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