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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on:- 19th December,2017
Date of Decision :- 11th January,2018.

+ **W.P.(C) 11328/2017 & C.M. No.46270/2017 (for stay) &**
C.M. No.46271/2017(for exemption)

ANNU AND ORS. Petitioner
Through Mr. M.A. Niyazi, Advocate.
versus

GOVT. OF NCT OF DELHI AND ORS. Respondent
Through Mr.Ramesh Singh, Standing
Counsel (Civil) with
Mr.Sandeepan Pathak,
Advocate for GNCTD.
Mr.Dev P. Bhardwaj, CGSC
with Mr.Santosh Kr. Pandey,
GP for UOI.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

JUGEMENT

REKHA PALLI, J

1. The present writ petition assails a judgment dated 02.06.2017, passed by the Central Administrative Tribunal, Principal Bench, New Delhi dismissing O.A. No. 3227/2016, filed by the petitioners. All the fourteen petitioners herein had approached the Tribunal praying for issuance of directions to the respondents to appoint them as Trained Graduate Teachers (hereinafter referred to as TGTs) in the schools of the respondent no.1/GNCTD, on basis of their performance in the DSSSB examination held pursuant to

Advertisement No. 02/2012, result whereof was declared in January 2016.

2. Briefly stated, the facts as emerge from the records are that, the respondent no. 3/DSSSB had issued Advertisement No. 02/2012 for selection of TGTs in different subjects for schools run by the respondent no.1 and 2/GNCTD. The closing date for receipt of the applications for the said post was 15.06.2012 and the eligibility conditions prescribed therein specified that besides meeting the other criteria, the candidates must have qualified the Central Teacher Eligibility Test (hereinafter referred to as CTET), conducted by the respondent no.5/CBSE.

3. We may note that as per the general instructions and procedure prescribed for submission of applications for the subject post, it was essential for the candidates to have the requisite qualifications as on the closing date of receipt of the application, which was 15.06.2012. It was also laid down in the general instructions that the candidates applying for the subject post should ensure that they fulfill all the eligibility conditions and merely because a candidate is allowed to appear at the examination, would not be considered as a valid ground for determining his eligibility, if at a subsequent stage, it is found that he/she did not fulfill any of the eligibility conditions on the closing date of receipt of the application.

4. The fourteen petitioners herein who were admittedly not holding the qualification of CTET, as on 15.06.2012, the cutoff date for submission of the applications against the above said advertisement, proceeded to submit their applications manually, by

leaving the column relating to CTET as blank and subsequently, as directed by the respondents, they switched over to the Online Application Registration System (OARS) where they once again, left the said column blank.

5. All the petitioners were issued e-admit cards for appearing in the examination and on 12.01.2016, when the result of the said examination was declared by the respondent no.3/DSSSB, the names of all the petitioners had appeared in the merit list as successful candidates for the subject post.

6. Soon, after the declaration of the result on 28.01.2016, the respondent no. 3/DSSSB initiated the process of document verification in respect of the successful candidates and vide separate rejection letters issued to them in April-May 2016, the petitioners were informed that their selection had been cancelled on the ground of their not possessing the CTET qualification on the cut off date of 15.06.2012. In the rejection letter of the petitioner nos. 3 and 7, an additional reason of not having the qualification of B.Ed. before the cut off date was also mentioned.

7. Aggrieved by the rejection of their candidatures, the petitioners approached the Tribunal by way of the aforesaid O.A. In their application, while seeking a direction to the respondents to appoint them as TGT in the respondent no.1 schools, the petitioners also sought a direction to the respondents to grant them relaxation in respect of the applicability of the essential qualification of CTET on the ground that they had acquired the said qualification at the time of

verification of the documents in the year 2016, instead of at the time of submission of forms on 15.06.2012.

8. Before the Tribunal, the main plea taken by the petitioners was that once they had been allowed to appear in the written examination and had qualified the same, their eligibility could not be questioned subsequently, since all of them were admittedly holding the qualification of CTET even though they had acquired the same after the cut off date of 15.06.2012.

9. The petitioners had also contended before the Tribunal that upon the Central Government authorising the National Council for Teacher Education (hereinafter referred as NCTE) to lay down the minimum qualifications for eligibility of a person to be appointed as a teacher, the NCTE had finalised the guidelines on 29.07.2011. Initially, the said guidelines were made applicable only to schools under the Central Government, that is, Kendriya Vidyalayas and Navodaya Vidyalayas and to schools under the control of Union Territory of Chandigarh and Andaman & Nicobar Islands for which purpose, the CTET exam was held on 29.01.2012, as is evident from the notice issued in October, 2011. Thereafter, CTET was made applicable to the schools in Delhi, but only in November, 2012 for which purpose, a notice was issued in July, 2012.

10. It was thus contended on behalf of the petitioners that candidates like them, seeking to apply for the post of TGT in Delhi, had no occasion or opportunity to appear in the CTET examination conducted by the CBSE on 29.01.12, pursuant to the notice dated 30.11.2011 as they were not aware that while issuing the

advertisement in the year 2012, the respondent no. 3/DSSSB would make CTET as a mandatory eligibility condition despite the same not having been made mandatorily applicable by the CBSE to the schools in the NCT of Delhi, prior to 30.11.2012.

11. The petitioners had thus contended before the Tribunal that since the last date of submitting applications for the subject post was 15.06.2012, despite their keenness to apply for taking the CTET examination in order to acquire the eligibility prescribed by the respondent no. 3/DSSSB, they were unable to do so before 15.06.2012, as the CTET Exam had already been held on 29.01.2012 and the next CTET exam was to be held only on 18.11.2012, which was well after the cut off date of 15.06.2012. They had further stated that after submitting their applications for the subject post, all the petitioners had appeared in the next CTET examination and had accordingly acquired the said qualification much prior to the date of declaration of their results.

12. In the alternative, the petitioners had also prayed for grant of relaxation by contending that when the results were finalized, they were all holding the requisite qualification and therefore in the peculiar facts of the case, especially keeping in view the fact that they had been allowed to appear in the examination without any demur, they ought to be granted relaxation in respect of the requirement of possessing the CTET qualification, as on the cut off date i.e. 15.06.2012.

13. On the other hand, while opposing the O.A. the respondents had urged before the Tribunal, that the advertisement issued by them had

clearly specified that to be eligible to submit an application for the post of TGT, it was mandatory for the candidates to have acquired the qualification of CTET before the cut off date of 15.06.2012 and in view of the admitted case of the petitioners that they did not possess the requisite qualifications of CTET as on the said cut off date, they could not be held eligible for the post in question. In response to the plea of the petitioners that once they had been allowed to appear in the examination, their candidature could not be cancelled especially when they had acquired the qualification of CTET much prior to the date of declaration of the result, while relying on the general instructions mentioned in the advertisement, the respondents had argued that in view of the large number of applications, the respondent no.3/DSSSB had not verified the documents of the candidates at the initial stage. However, it had been made clear in the advertisement itself that if at a subsequent stage, it is found that any of the candidates were not fulfilling the eligibility criteria as on the cut off date, his/her candidature will be cancelled. The respondents had thus contended that their action of cancellation of the candidature of the petitioners, was justified and was in accordance with the terms and conditions prescribed in the advertisement.

14. After considering the rival contention of the parties, the Tribunal has dismissed the O.A. filed by the petitioners by holding that once a cut off date for the purpose of determining the eligibility of a candidate is mentioned in the advertisement itself, a person who does not possess the requisite qualification as on the said cut off date, cannot be held eligible for the post in question. The Tribunal also

rejected the plea raised by the petitioners that merely because they had been allowed to appear in the examination, they automatically acquired a vested right to be appointed or that they had a right to seek relaxation in respect of the cut off date for acquiring the essential qualification. For taking such a view, the Tribunal had relied on the judgment of the Supreme Court in the case of **Rakesh Kumar Sharma v. Government of NCT of Delhi**, (2013) 11 SCC 58, wherein it was observed in para 23 as under:-

“23. There is no obligation on the court to protect an illegal appointment. The extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible.”

15. Aggrieved by the rejection of their O.A., the petitioners have preferred the present petition. Arguing for the petitioner, Mr. Niyazi, Advocate contended that the Tribunal has erred in rejecting the claim of the petitioners by ignoring the fact that it was only pursuant to the examination held on 18.11.2012, that for the first time, CTET was made applicable to the schools of NCT of Delhi and therefore, the mandatory eligibility of clearing CTET before the closing date of 15.06.2012, as prescribed in the advertisement issued by the respondent no.3/DSSSB, was wholly illegal and could not bind the petitioners.

16. He further submitted that the Tribunal, while holding that the petitioners could have appeared in the first CTET examination held on 29.01.12, overlooked the vital fact that till November, 2012 CTET examination was not mandatory for schools in the NCT of Delhi and

therefore, the petitioners could not be faulted for not appearing in the said examination held in January, 2012 specially since the advertisement issued by the respondent no.3/DSSSB for the subject post of TGT, was only in March/April, 2012.

17. Mr. Niyazi further urged that the respondent no. 3/DSSSB had discriminated against the petitioners by including the requirement of possessing the CTET qualification on the closing date fixed for submission of forms, whereas as in various other advertisements including Advertisement No. 01 of 2011, issued by them for inviting applications for the post of Special Educators, it was prescribed that the candidate must have the CTET qualification on or before the date of the written examination to be conducted as a part of the selection process. He thus submitted that if the petitioners had been given a similar latitude, they would also have been eligible as most of them had acquired the CTET qualification before appearing in the written examination conducted by the respondent no. 3/DSSSB, for the post in question.

18. Further submission made by learned counsel for the petitioners was that, the advertisement itself was faulty as the respondent no.3/DSSSB could not have prescribed the CTET qualification as a mandatory eligibility criteria for appointment of TGTs since the said qualification was not prescribed in the statutory Recruitment Rules for the said post. He submitted that if the respondent no.3 wanted to make this qualification of CTET as a mandatory condition, it ought to have first amended the Recruitment Rules for the post of TGT, as had been done in the case of primary teachers, where before inviting

applications for the said post, the Recruitment Rules had been amended first by incorporating the qualification of CTET.

19. Lastly, learned counsel for the petitioners submitted that in any event, it was a fit case where in view of the peculiar facts of the case the respondents ought to have granted relaxation to the petitioners since it was an admitted position that they had been allowed to appear in the examination despite their not possessing the CTET qualification, as on the cut off date i.e. 15.06.2012, which qualification had been acquired by them at the time of verification of documents, after the declaration of the result.

20. Per contra, Mr.Ramesh Singh, Standing Counsel(Civil), GNCTD appearing for the respondents supported the impugned judgment and asserted that the respondents have rightly rejected the candidature of the petitioners, as the eligibility conditions prescribed in the advertisement were binding on all the parties and merely because the petitioners had been allowed to appear in the said examination, despite not possessing the said qualification on the cut off date, cannot create any special equities in their favour. He further submitted that the petitioners having participated in the selection process, were bound by the conditions prescribed in the advertisement and cannot subsequently be permitted to challenge the said conditions or seek any relaxation. He therefore prayed that the writ petition be dismissed.

21. We have heard learned counsels for the parties and perused the record. We may note that the advertisement pursuant where to the petitioners had applied for the post of TGT, had not only laid down

the eligibility qualifications, but had also stated in no uncertain terms that the educational qualifications shall be determined as on the closing date of the receipt of the applications. We also find that the advertisement had clearly stated that, it was for the candidates to ensure that they fulfill all the eligibility conditions and if upon verification at any subsequent stage, it was found that they did not fulfill any eligibility qualifications, his/her candidature for the post would be cancelled by the respondent no.3/DSSSB. At this stage, we deem it appropriate to reproduce the relevant clauses of the advertisement in extenso, for ready reference:-

“Post Code:106/12 To 121/12

*Trained Graduate
Teacher/TGT(MIL)*

Essential Qualification: For TGT (English, Maths, Social Science, Natural Science) (I) A Bachelor's Degree (Honours/Pass) or equivalent from a recognized University having secured 45% marks in aggregate, in two school subjects of which atleast one out of the following should have been at the elective level :- 1. English 2. Mathematics 3. Natural/Physical Science 4. Social Science.

Note :- Main subjects for TGT (Natural Science/Phy. Science) shall be Physics, Chemistry, Biology, Botany and Zoology. Social Science :- History/Political Science/Economics/Business Studies/Sociology/Geography/Psychology. Provided further that the requirement as to minimum of 45% marks in the aggregate at graduation level shall be relaxable in case of :- (a) candidates who passes a Post Graduate qualification in any of the teaching subjects listed above (b) belonging to SC/ST (c) Physically handicapped candidates.

(II) Degree/Diploma in Training Education or SAV certificate.

(III) Working knowledge of Hindi.

*(IV) Cental Teacher Eligibility Test Conducted by CBSE.
Provided further that the requirement as to minimum of 45% marks aggregate in Bachelor's Degree (Pass/Honours) or equivalent*

(4) ELIGIBILITY CONDITIONS

(i) The candidate must be a citizen of India.

(ii) The educational qualifications, age, experience etc. as stipulated in SECTION-A shall be determined as on the closing date of receipt of applications.

(10) CANCELLATION OF CANDIDATURE (i) The candidates applying for the posts should ensure that they fulfill all the eligibility conditions. Merely because a candidate has been allowed to appear at the examination will not be considered as a valid ground for his/her being eligible for the selection. If on verification at any time before or after the written examination or at any stage of recruitment process, it is found that they do not fulfill any of the eligibility conditions on the closing date of receipt of application, his/her candidature for the post applied for, will be cancelled by the Board/Appointing Authority”

22. Perusal of the aforesaid conditions clearly show that at the time of applying for the posts of TGT, the petitioners were well aware of the fact that they did not fulfill the mandatory eligibility condition of CTET, as prescribed in the advertisement, but they still chose to apply for the subject post. Knowing fully well that their candidature was liable to be cancelled even at a subsequent stage, as they admittedly did not fulfill the mandatory eligibility criteria on the closing date, which was a crucial date for determining the eligibility of all the candidates, the petitioners ignored the instructions in the advertisement and applied from the subject post at their risk and peril.

23. Thus, we have no hesitation in concurring with the findings of the Tribunal that the petitioners were ineligible for the post of TGT, in accordance with the conditions prescribed in the advertisement. Once it is an admitted position that the CTET examination was held in January, 2012 and the petitioners, had chosen not to appear in the said

examination, they cannot subsequently contend that they should be treated as eligible for the subject post despite a specific requirement maintained in the advertisement itself that candidates applying for TGT should be holding the qualification of CTET.

24. Even otherwise, we are of the view that having applied for the aforesaid post and participated in the selection process pursuant to the advertisement issued by the respondent no.3/DSSSB, the petitioners cannot at a subsequent stage be allowed to urge that any condition in the said advertisement was unfair, arbitrary or illegal or to canvass that they ought to have been granted relaxation in respect of the mandatory requirement of possessing the CTET qualification as on the cut off date i.e. 15.06.2012. If that was the case and the petitioners felt that any of the prescribed conditions was arbitrary or unfair or that they were entitled to any relaxation, then they ought to have approached the Tribunal at that stage itself i.e. before taking part in the selection process. Having failed to do so, they cannot be permitted to challenge the conditions imposed by the respondent no.3/DSSSB, in the advertisement on seeking relaxation. Furthermore, any such relaxation claimed by the petitioners would be unfair to all those nameless aspirants who did not apply for the subject post as they were not qualified on the cut-off date merely because the petitioners submitted their applications knowing that they did not fulfill the eligibility conditions, cannot be permitted to work to their advantage by giving them any relaxation.

25. We also do not find any merit in the submission of the learned counsel for the petitioners that since the Recruitment Rules for the

post of TGT did not prescribe for the mandatory qualification of CTET, the respondents could not have made the said condition as mandatory in the advertisement while inviting applications for the post of TGT. Even if the said condition of CTET was not included in the Recruitment Rules, the same had been made applicable by virtue of the NCTE's Notification dated 23.08.10, issued under Section 23 of the Right to Education Act. Therefore, the respondents were fully justified in incorporating the requirement of CTET in the advertisement while inviting applications for the post of TGT. The petitioners having consciously taken part in the selection process initiated pursuant to the advertisement that prescribed the eligibility condition including CTET, it is too late in the day for them to turn around and challenge the very same advertisement or the conditions prescribed therein.

26. We are fortified in our aforesaid conclusion by the observation of the Supreme Court in the case of **Vijender Kumar Verma v. Public Service Commission** (2011) 1 SCC 150 where, in para 24 it was held as under:-

“24. When the list of successful candidates in the written examination was published in such notification itself, it was also made clear that the knowledge of the candidates with regard to basic knowledge of computer operation would be tested at the time of interview for which knowledge of Microsoft Operating System and Microsoft Office operation would be essential. In the call letter also which was sent to the appellant at the time of calling him for interview, the aforesaid criteria was reiterated and spelt out. Therefore, no minimum benchmark or a new procedure was ever introduced during the midstream of the selection process. All the candidates knew the requirements of the selection process

and were also fully aware that they must possess the basic knowledge of computer operation meaning thereby Microsoft Operating System and Microsoft Office operation. Knowing the said criteria, the appellant also appeared in the interview, faced the questions from the expert of computer application and has taken a chance and opportunity therein without any protest at any stage and now cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction.”(emphasis added)

27. For the aforesaid reasons, we are of the considered view that the petitioners having taken part in the process of selection despite being aware of the mandatory eligibility criteria prescribed therein, had waived their right to challenge the mandatory condition of CTET contained in the advertisement. The respondents were fully justified in not appointing the petitioners to the post of TGT especially in light of the admitted position that none of the petitioners were holding the CTET qualification on the crucial date of 15.01.12

28. As a result, we find no infirmity in the impugned order passed by the Tribunal. The present petition is dismissed as being meritless alongwith the pending applications.

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REKHA PALLI, J

HIMA KOHLI, J

JANUARY 11th , 2018/sr