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

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Date of Decision : 15.01.2019

+ W.P.(C) 318/2019 & CM APPL. 1519-1520/2019

KENDRIYA VIDYALAYA SANGATHAN AND ORS.

..... Petitioners

Through Dr. B. K. Sinha, Advocate.

versus

SUNITA KUMARI AND ANR.

..... Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

VIPIN SANGHI, J (ORAL)

1. The petitioner - Kendriya Vidyalaya Sangathan (KVS), has preferred the present writ petition to assail the order dated 15.11.2017 passed in OA no. 3387/2017, whereby, the Central Administrative Tribunal (CAT) allowed the said OA preferred by the respondents.

2. The respondents were serving Primary School Teachers (PRT) in KVS. The petitioner issued a circular dated 15.07.2014 for filling up of teaching and non-teaching posts through Limited Departmental Examination (LDE) for the year 2012-13 and 2013-14. 99 posts of TGT (Maths) for the year 2012-13 and 126 for the year 2013-14 were advertised. The

respondents participated in the said LDE for the post of TGT (maths). However, their candidature was rejected after the examination was conducted on the premise that they had not studied Mathematics in all the three years of Graduation, with any of the two other subjects i.e. Physics, Chemistry, Electronics, Computer Science and Statistics. For this purpose, the petitioner placed reliance on the notification dated 11.12.2014, whereby, the posts were advertised to be filled up through LDE.

3. The Tribunal has held in favour of the respondents on the premise that the Recruitment Rules for the posts of TGT (Maths) did not prescribe the said requirement of having studied Mathematics in all three years of Graduation as an essential qualification.

4. The submission of learned counsel for the petitioner is that the Tribunal has erred in placing reliance upon the decision in Govt. of *NCT of Delhi & Ors. vs. Sachin Gupta*, WP(C) 1520/2012. Paragraph 48 of the said decision has been relied upon by the Tribunal and the same reads as follows:

“48. This issue is no longer res integra and stands decided by a decision of a Division Bench of this Court reported as 2002 (61) DRJ 58 Manju Pal v Government of National Capital Territory of Delhi. In said case, the appellant who had studied Hindi at Graduate level applied for being appointed to the post of Primary Assistant Teacher in the MCD. Despite being successful in the selection process conducted for said purpose, the appellant was not appointed to the post of Assistant Primary Teacher on the ground that she had not studied Hindi at the Higher Secondary Level and is thus not eligible for being appointed to said post. Aggrieved by the aforesaid, the appellant had filed a writ petition before a Single Judge of this Court which got dismissed. Aggrieved thereof, the appellant

filed a Letters Patent Appeal before a Division Bench of this Court. The Division Bench allowed the appeal filed by the appellant and held that the appellant is eligible for being appointed to the post of Primary Assistant Teacher in MCD as she possessed a higher qualification than the qualification required for appointment to the post of Primary Assistant Teacher. It would be relevant to note following portion of the said judgment:-

“8. The learned counsel appearing for the appellant argued that the appellant was wrongly rejected on the spurious ground of her nt having a qualification prescribed by the advertisement read with the corrigendum. Learned counsel appearing for the Board and the MCD submit that as per the qualification prescribed in the advertisement and the corrigendum for appointment to the post of Primary Assistant Teacher, the requirement of Hindi at the Secondary level or Senior Secondary level is the essential qualification which a candidate must possess. According to them, in case a candidate having a Bachelor of Arts degree with Hindi, he/she would not be eligible for the post of Primary Assistant Teacher. We fail to see the logic and the rationale of the argument of the learned counsel for the MCD and the Board. Undoubtedly, Bachelor of Arts degree with Hindi, is a higher qualification than the higher secondary with Hindi.

10. It cannot be assumed by any stretch of imagination that a candidate possessing higher qualification like B.A. with Hindi or M.A. with Hindi will be less efficient in teaching primary classes than a person possessing lesser qualification such as higher secondary with Hindi.”

5. The petitioner submits that the said decision was rendered in the context of Govt. of NCT of Delhi and KVS is an independent entity. Learned counsel also submits that the “Important Instructions” issued in the advertisement-notification dated 11.12.2014, which described that the candidate should have studied Mathematics in all three years in Graduation with any of the other subjects i.e. Physics, Chemistry, Electronics, Computer Science and Statistics, is a mandatory condition, which a candidate should fulfil.

6. We have perused the impugned order, Recruitment Rules and also considered the submissions of the learned counsel for the petitioner.

7. So far as the decision in *Sachin Gupta* (supra) is concerned, it concerns a candidate, who possessed a higher qualification. The said decision was therefore not attracted in the facts of the present case. However, even if the said decision is ignored, we do not find any merit in the submissions of the learned counsel for the petitioner premised upon “Important Instructions” contained in the notification dated 11.12.2014.

8. The Recruitment Rules for the post of TGT are placed on record at page 140. For the purpose of TGT (Maths), essential qualification prescribed is as follows :

“Bachelor Degree in Maths with any two of the following subjects : Physics, Chemistry, Electronics, Computer Science, Statistics.”

This clearly shows that there is no prescription in the Recruitment Rules that the candidate should have studied Mathematics in each of the

three years of the Graduation course. This prescription has been introduced only when the posts were advertised vide notification dated 11.12.2014. In our view, it was not open to the petitioner to prescribe a qualification, over and above, what is prescribed in the Recruitment Rules and, by adopting such a process, to oust the candidates who are otherwise qualified to be appointed as TGT (Maths) under the Recruitment Rules. We, therefore, find no merit in the writ petition and the same is dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

JANUARY 15, 2019

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