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

Date of Decision: 21.05.2019

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W.P.(C) 5543/2019

KAVITA PRAKASH

..... Petitioner

Through: Mr.S.P. Sethi, Adv. for Mr.G.D.
Bhardwaj, Adv.

Versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through: Ms.Avnish Ahlawat, Adv. with Mr.N.K.
Singh, Adv. & Ms.Sakshi Shairwal, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

C.M. No. 24308/2019

Exemption allowed subject to all just exceptions.

W.P.(C) 5543/2019 & C.M. No. 24309/2019

1. Issue Notice.
2. Ms. Ahlawat accepts notice on behalf of the respondents and submits that as the entire pleadings before the Tribunal have been filed along with the present petition, she does not propose to file any reply. With the consent of the parties, the petition is taken up for disposal.
3. The present writ petition under Articles 226 and 227 of the Constitution of India assails the order dated 26.02.2019 passed by the Principal Bench, Central Administrative Tribunal, New Delhi ('Tribunal') dismissing O.A. No. 2788/2017 filed by the petitioner.

The petitioner also assails the order dated 18.03.2019 whereby the Tribunal rejected her Review Application No. 77/2019 seeking review of the order dated 26.02.2019.

4. The aforesaid Original Application (OA) had been preferred by the petitioner seeking a direction to the respondents to consider her candidature for the post of Domestic Science Teacher (T.G.T.) post Code 67/10, as per the merit list of Schedule Caste (SC) candidates dated 24.06.2016. The petitioner, who belongs to the SC community as notified by the Government of the National Capital Territory of Delhi (GNCTD), had completed her B.A. (Distant Mode Education) from the University of Delhi in the year 2004. Simultaneously, the petitioner was also pursuing a two year Diploma course in Home Science from the Board of Technical Education, Lucknow (U.P.) as a regular student. Thus, in 2005, she had obtained both her B.A. degree through correspondence mode as also her Diploma certificate through the regular mode.

5. Pursuant to a requisition made by the Directorate of Education, GNCTD/respondent no.2, the Delhi Subordinate Service Selection Board/respondent no.3 issued an advertisement in the year 2010 inviting applications for the post of Domestic Science Teacher (T.G.T.) with the Post Code 67/10. The petitioner applied for the said post and appeared for the written examination held on 28.12.2014 and the result thereof, was declared on 28.06.2016 in which she was placed at merit position No. 1 in the category of SC candidates. Subsequently, on 11.05.2017, the respondents issued two notices being Result Notice No. 142 and Rejection Notice No. 143; while the

first notice enlisted the names of those candidates who were found provisionally eligible for selection to the said post, the second notice contained the names of candidates who were found ineligible for such selection. The name of the petitioner, despite her having obtained merit position No. 1 in the selection process, did not appear in either of these lists.

6. Aggrieved by the non inclusion of her name in either of the two lists, the petitioner filed an RTI application on 15.05.2017 and from the reply thereto, she learnt that her name had been kept pending in order to seek certain clarification about her educational qualifications. After waiting for some time, the petitioner then approached the Tribunal on 10.08.2017 by way of the aforesaid OA. Before the Tribunal, the petitioner contended that she fulfilled all the educational and eligibility conditions, and had been placed at merit position No. 1 in the SC category and, therefore, there was no reason as to why she had not been issued the appointment letter when there was no dispute regarding the validity of her degree or the diploma. In support of her contention, the petitioner had also placed reliance on an earlier decision of the Tribunal in *Nisha Rani v. GNCTD (OA No. 2248/2008)* wherein the Tribunal had, in similar circumstances, after considering the clarification issued by the University Grants Commission (UGC) that it was permissible for a candidate to simultaneously undergo two courses, i.e., one by regular mode and the other by distance mode, allowed the OA. On the other hand, the respondents, while opposing the OA, contended that the case of the petitioner had been kept pending till a clarification was received from

the UGC with respect to the query, i.e., whether a candidate could pursue two courses simultaneously, and that, in the interest of fairness, one vacancy had been kept aside till the receipt of such clarification.

7. After considering the rival contention of the parties, the Tribunal, vide its impugned order, dismissed the OA by observing as under:

“7. From the factual matrix of the case it appears that applicant was enrolled for a Bachelor of Arts degree from Delhi University and simultaneously for diploma in Home Science from a Technical Institute affiliated to Board of Technical Education, Lucknow and no clarification has been obtained from the said Board of Technical Education, Lucknow, to show that the applicant can pursue; a diploma at the same time from the Board of Technical Education, Lucknow when he had already enrolled for Bachelor of Arts degree through correspondence from Delhi University. We do not find that neither of the two courses are regular courses.

The said clarification of UGC only allows pursuing of the correspondence course in case where one course is regular course, which is not the case in hand. Therefore, we found prima facie both the aforesaid courses are correspondence courses and hence the case cited by the applicant is based on different footing and accordingly, plea of the applicant is not permissible as both the aforesaid courses pursued by the applicant are correspondence courses and do not come within the aforesaid clarification given by the UGC.

8. In view of the above, and for the foregoing reasons, the present QA is dismissed being devoid of merit. There shall be no order as to costs.”

8. Against the order dated 26.02.2019, the petitioner preferred a review application before the Tribunal which was rejected. In these

circumstances, the present petition has been filed impugning the orders passed in the aforesaid OA and review application.

9. Before us, Mr Sethi, learned counsel for the petitioner submits that the Tribunal has, while dismissing the OA, erred in holding that the petitioner was undergoing both the courses by correspondence, whereas a perusal of her certificates clearly shows that she had undergone the Bachelors of Arts from the University of Delhi as an external candidate, while she had obtained the diploma certificate in Home Science from the Board of Technical Education, Lucknow (U.P.) through regular mode. He, thus, submits that once the Tribunal itself had noted that, as per the clarification obtained from the UGC, there is no bar to pursuing two courses simultaneously as long as one course is through the regular mode, while the other course is through distance education, the OA deserved to be allowed in the light of the aforesaid factual position.

10. Insofar as the respondents are concerned, Ms Ahlawat is unable to dispute the position that the petitioner had, indeed, undergone one course in regular mode and the other by distance education. She is also unable to dispute that the UGC permits a candidate undergoing a regular course to pursue a correspondence course simultaneously. She, however, states that the respondents have acted fairly in the present matter as they had clearly stated in their counter affidavit that they were awaiting clarification in this regard from the UGC and had, till pendency of such clarification, reserved a single vacancy for the post of Domestic Science Teacher (T.G.T.) for the petitioner.

11. In the light of the aforesaid facts emerging from the record, it becomes evident that the Tribunal has committed a factual error, while dismissing the OA, in observing that both the courses undergone by the petitioner are correspondence courses and that the petitioner's case did not fall within the ambit of the clarification provided by the UGC. The OA of the petitioner was, thus, dismissed on a wholly misconceived premise that both her educational qualifications were obtained through the mode of distance education.

12. We find that, even though the petitioner duly brought this factual error to the notice of the Tribunal by the petitioner by filing the review application, the same was rejected by observing that there was no error apparent on the face of the record. We are unable to appreciate as to how a blatant factual error, whereby the Tribunal had presumed that both the courses undergone by the petitioner had been pursued through correspondence, even though the record shows that one of the courses, i.e., the diploma course, has been acquired by the petitioner through the regular mode, cannot fall within the ambit of an error apparent on the face of the record. In our view, the Tribunal ought to have corrected its mistake when the said error was brought to its notice and ought not to have dismissed the review application without giving due consideration to the said factual error.

13. For the aforesaid reasons, the impugned orders of the Tribunal cannot be sustained and are, accordingly, set aside.

14. In the light of the admitted position that as per the clarification given by the UGC, there is no bar to a candidate pursuing two courses simultaneously, as long as one of them is by correspondence while the other is through regular mode, there is no reason as to why the petitioner – who possesses the requisite educational qualifications and has obtained merit position No. 1 in the SC category, should be denied appointment as Domestic Science Teacher (T.G.T.), in accordance with the selection process initiated pursuant to the Advertisement No. 02/2010.

15. Accordingly, the respondents are directed to appoint the petitioner to the post of Domestic Science Teacher (T.G.T.), in accordance with her selection as per the merit list dated 24.06.2016, and grant her all consequential benefits, except backwages, from the date on which other persons, selected in accordance with the same merit list, were appointed.

16. The above directions be carried out within six weeks.

17. The writ petition is allowed in the aforesaid terms.

(REKHA PALLI)
JUDGE

(VIPIN SANGHI)
JUDGE

MAY 21, 2019
sr/rr