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

Date of decision: 13th March, 2019

+ W.P.(C) 10093/2018 & CM No. 39344/2018

MOHAN KABIRA

..... Petitioner

Through: Ms. Shikha Sharma Bagga, Adv.
for Mr. Chandra Shekhar Yadav,
Adv.

versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Gaurav Dhingra, Adv. For R-1&2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J. (ORAL)

1. The petitioner impugns order dated 10.08.2018 made by the Central Administrative Tribunal, Principal Bench, New Delhi (the “Tribunal”) in O.A. No.2975/2018 whereby the Tribunal has rejected the petitioner’s application challenging order dated 21.05.2018 made by respondent No. 2/Directorate of Education, Government of NCT of Delhi (the “Directorate”). By way of order dated 21.05.2018 the Directorate had rejected the petitioner’s candidature for empanelment as Guest Teacher, TGT-Hindi in Delhi Government Schools.

2. The genesis of the matter is a public notice dated 26.05.2017 issued by the Directorate for drawing-up a panel of Guest Teachers in various

subjects for engagement in Delhi Government Schools for the academic year 2017-18. In response to the public notice, the petitioner filed an on-line application bearing application I.D. No.2017036381 thereby registering himself for possible empanelment.

3. It is noteworthy that one of the “*OTHER IMPORTANT CONDITIONS*” enumerated in the public notice was the following:-

6. *The candidate shall fill-up his/her name. Date of Birth, roll number, year of passing etc. as they appear in the pass certificate of class XII Examination. Any deviation in this regard will lead to disqualification. Candidates in their own interest are advised to fill up all the items in the on-line application form carefully and before submitting the form on-line he/she shall check the particulars on the “Preview” Screen. Requests for correction what so ever shall not be entertained at later stages.*

(Emphasis Supplied)

4. Subsequently however, in response to the several requests received for correction of the on-line application forms, the Directorate issued a circular dated 13.06.2017, whereby the Directorate made available a web-link to enable corrections to be made in the educational qualifications in the on-line applications for a limited period of time.

5. In the first round of litigation before the Tribunal, it transpires, the petitioner moved O.A. No.1174/2018 seeking relief against the Directorate rejecting his application, after calling the petitioner for verification of documents on being shortlisted, without giving any reasons for the rejection. OA No. 1174/2018 was disposed of by the Tribunal *vidé* order dated 22.3.2018 with the following directions :-

“ ... In view of the limited prayer made by learned counsel for the applicants, without going into the merits of the case, we direct the respondents to decide the representations moved by the applicants by a reasoned and speaking order within a period of six weeks from the date of receipt of certified copy of this order.”

6. Pursuant to order dated 22.3.2018, the Directorate considered the petitioner's representation and issued order dated 21.5.2018 whereby, upon verification of his documents, the Directorate found the petitioner unfit for empanelment/engagement as Guest Teacher TGT-Hindi. It may be mentioned that in Directorate's order dated 21.5.2018, the date of the Tribunal's aforesaid order is mentioned as 21.3.2018 and not 22.3.2018.

7. In relation to the petitioner, in order dated 21.5.2018 the Directorate recorded as under:-

“ ... 10. And whereas, the candidature of Mr. Mohan Kabira, Emp ID-2017036381, for engagement as Guest Teacher TGT Hindi was rejected by District as the Applicant had intentionally mentioned wrong percentage of Marks attained at Secondary Level in his on-line application. It should have been 60.2% (301/500) for two languages and three compulsory subjects, instead of 63.33% as mentioned by the applicant. Further, the candidate mentioned month and year of passing B.A. as September, 2014 instead of April 2014 and also incorrectly mentioned month and year of passing B.Ed as July 2016 instead of July 2015 in his on-line application. The candidate did not make necessary correction in the Educational Qualification in the on-line application for making on-line correction, as per department circular dated

13.06.2017, which provided for such correction to be made, if so desired by the applicant up to 19.06.2017. Further, as per Note:-3 in the on-line application of the candidate, no correction was to be allowed after submission of application. The applicant, therefore, had willfully submitted wrong information to the department, with a view to mislead the Govt. Department, which tantamount to fraud.”

(Emphasis Supplied)

8. Order dated 21.05.2018 made by the Directorate was challenged by the petitioner before the Tribunal by way of OA No. 2975/2018, which came to be rejected by the Tribunal *vidé* impugned order dated 10.08.2018.

9. In the above background, it is clear that, in the first instance the petitioner entered certain incorrect particulars in his on-line application/registration; and thereafter, he did not avail the opportunity to correct the particulars when offered by the Directorate by way of Circular dated 13.06.2017.

10. It is the petitioner's case that though he had corrected the details that had been erroneously entered in the on-line application, however due to some 'technical glitch' in the software, the corrected form could not be uploaded successfully. It is further the petitioner's contention in the writ petition that:

“5. The petitioner submits that his marks sheet for secondary examination is showing he has scored 380 out of 600 marks hence he correctly mentioned 63.33% as the advertisement only mentions the pass percentage and unlike Delhi all 6 subject in Haryana is compulsory subject but he came to know from some of the friend that in Delhi there is

5 subject hence he has to edit the subjects in Secondary Examination. The advertisement does not mention about the 5 subjects but he was having very good percentage in all examinations and even by consideration of 5 subjects also he was very sure for being selected hence to avoid any confusion tried to update the on-line form as per circular issued by respondent for the correction but due to technical glitches could not update the website despite make correction in website.

“11. The petitioner submits that he had tried to correct the name of subject column in application form and as per passing year and month is concerned he need not any correction as the same was correctly filled up in the on-line application form. As per number of subject in the subject column is concerned that was also as per the advertisement but to avoid any confusion only he made attempt the correct the on-line form by mentioning 5 subjects only.”

(Emphasis Supplied)

11. In short affidavit dated 10.01.2019 filed by it, the Directorate has averred that all entries made in the on-line application are used by the computer software automatically to identify the applicant, the purpose being that applicants may not fill-in more than one application in the same or different districts under the Directorate. This is important to avoid the mischief of an applicant applying from more than one district; which, if permitted, leads to a situation where posts may remain vacant in many districts except the one where a selected applicant joins. The Directorate states that even a small deviation in the information entered on-line, may provide a chance to a mischievous applicant to fill-in more than one

applications on-line. The affidavit further says that since no examination or test was to be conducted for empanelment of guest teachers, unlike what is done for appointment of regular teachers, percentage marks *upto 2 decimal points* in the five main subjects in Class 10 and Class 12 examinations alongwith the percentage marks in Graduation and B.Ed Degree are taken into account to prepare the final merit list. It was for this reason that *only* the five compulsory subjects were required to be filled-in and the percentage marks in additional/elective subjects were not to be taken into account for Class 10 and Class 12 examinations. In view of this, entering correct particulars was extremely important for a fair processing of the applications received, so as to generate a fair and accurate merit list. The affidavit further states that while the petitioner himself mentioned only five subjects of the Secondary Level Examination in the on-line application form, he filled-in the percentage of six subjects; wilfully ignoring the percentage of one of the main subjects namely Social Studies as mentioned in the guidelines and instead filled-in the percentage of an elective subject namely Physical Education, in order to raise his percentage marks and thereby improve his position on the merit list. The Directorate also avers in the affidavit that no complaint was received by it regarding any so-called technical glitch in use of the website from the petitioner or from any other candidate during the seven-day period granted for correction of entries.

12. We have considered the petitioner's contentions with due sympathy. We are afraid however, that we are unable to agree therewith. Upon an objective consideration of the matter, it is clear that *firstly*, the petitioner entered information and particulars that he knew were not in accordance with the requirements and conditions laid down in public notice dated

26.05.2017 whereby applications were invited for empanelling guest teachers. In particular the petitioner ignored condition No. 6 which was part of the important conditions of the application process. *Secondly*, the petitioner did not avail the opportunity of making corrections in his on-line application as was offered by circular dated 13.06.2017 issued by the Directorate. Had the petitioner availed of this opportunity, he could have corrected the errors in his application ; in which case however, his overall percentage marks would have fallen thereby reducing his chances of empanelment in the competitive application process.

13. As the Tribunal correctly observes in the impugned order, if the petitioner chose not to make corrections despite the opportunity available, he must now contend with the consequences. In that event the Directorate would be well within its discretion to infer that the petitioner wilfully submitted wrong information with a view to misleading the Directorate ; and in those circumstances, to reject the petitioner's application.

14. In this view of the matter, we find no infirmity in impugned order dated 10.08.2018 made by the Tribunal dismissing the petitioner's application.

15. Accordingly, we dismiss this writ petition; without however, any order as to costs.

ANUP JAIRAM BHAMBHANI, J.

THE CHIEF JUSTICE

MARCH 13, 2019

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