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

+ **Date of Decision: 10.01.2019**

% **W.P.(C) 6941/2015 & CM APPL. 12722-12723/2015, CM APPL. 20190/2018**

CHHATARPAL SINGH & ORS Petitioner
versus
GOVT. OF NCT DELHI & ORS Respondent

+ **W.P.(C) 6948/2015 & CM APPL. 12735-12736/2015**
MONIKA SHARMA & ORS Petitioner
versus
GOVT. OF NCT DELHI & ORS Respondent

+ **W.P.(C) 6970/2015 & CM APPL. 12768/2015, CM APPL. 831/2019**
SAREEN DABAS & ORS Petitioner
versus
GOVT. OF NCT OF DELHI & ORS Respondent

+ **W.P.(C) 7602/2015 & CM APPL. 38562/2017, CM APPL. 37169/2018**
HEMRAJ Petitioner
versus
GOVT. OF NCT OF DELHI & ORS Respondent

+ **W.P.(C) 7997/2015 & CM APPL. 16316/2015**
KAPIL MANN AND ANR Petitioner
versus
GOVT. OF NCT DELHI AND ORS. Respondent

- + **W.P.(C) 8019/2015 & CM APPL. 16439/2015**
SATYA PRAKASH SEHRAWAT & ORS Petitioner
versus
GOVT. OF NCT OF DELHI & ORS Respondent
- + **W.P.(C) 8025/2015 & CM APPL. 16451/2015**
PREETI DEVI Petitioner
versus
GOVT. OF NCT OF DELHI & ORS Respondent
- + **W.P.(C) 8028/2015 & CM APPL. 16459/2015**
LALIT KISHORE CHANDA & ORS Petitioner
versus
GOVT. OF NCT OF DELHI & ORS Respondent
- + **W.P.(C) 8034/2015 & CM APPL. 16471/2015**
SUMIT DAGAR AND ORS Petitioner
versus
GOVT. OF NCT DELHI & ORS Respondent
- + **W.P.(C) 8319/2015**
JASVINDER KAUR RAYAT AND ORS Petitioner
versus
GOVT. OF NCT DELHI & ORS Respondent
- + **W.P.(C) 8322/2015**
SANDEEP KUMAR AND ORS. Petitioner
versus
GOVT. OF NCT OF DELHI AND ORS. Respondent

- + **W.P.(C) 8323/2015**
 RICHA SHARMA Petitioner
 versus
 GOVT. OF NCT OF DELHI & ORS Respondent
- + **W.P.(C) 8369/2015**
 DEEPIKA Petitioner
 versus
 GOVT. OF NCT DELHI AND ORS. Respondent
- + **W.P.(C) 8377/2015 & CM APPL. 17459/2017, CM APPL. 24321/2017**
 LOKESH GUPTA & ORS Petitioner
 versus
 GOVT. OF NCT DELHI & ORS Respondent
- + **W.P.(C) 8563/2015 & CM APPL. 18496/2015**
 DEEPAK & ORS Petitioner
 versus
 GOVT. OF NCT OF DELHI & ORS Respondent
- + **W.P.(C) 8564/2015 & CM APPL. 18502/2015**
 MANJEET SINGH & ORS Petitioner
 versus
 GOVT. OF NCT DELHI & ORS Respondent
- + **W.P.(C) 8855/2015 & CM APPL. 19838/2015**
 SONIA & ORS. Petitioner
 versus
 GOVT OF NCT OF DELHI & ORS. Respondent

+ **W.P.(C) 497/2016 & CM APPL. 2063/2016, CM APPL. 37822/2017**

JEETENDRA MEENA & ORS

..... Petitioner

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondent

+ **W.P.(C) 11223/2016**

YADAV CHAND GUPTA & ORS

..... Petitioner

versus

GNCT OF DELHI & ORS

..... Respondent

Present:

Mr. Shankar Raju, Mr. J.S. Mann & Mr. Vipul Upadhyay, Advocate for the petitioners.

Mr. Subodh Kumar Pathak, Advocate for the petitioners.

Mr. Pradeep Gupta with Mr. Parinav Gupta and Mr. Moazzam Ali, Advocates.

Ms. Avnish Ahlawat, Standing Counsel along with Mr. Nitesh Kumar Singh, Mr. Amit Anand, Ms. Palak Rohmetra & Ms. Aarushi, Advocates for the respondent/ DSSSB.

Mr. Devesh Singh, ASC along with Ms. Sukriti Ghai & Ms. Urvashi Tripathi, Advocates for respondent / GNCTD.

Mr. Gautam Narayan, ASC, with Ms. Shivani Vij and Mr. Mahamaya Chatterjee, Advocates for GNCTD.

Mr. Tushar Sonu, Advocate for Mr. Rakesh Mittal, Advocate for respondent/ SDMC.

Ms. Mansi Gupta, Advocate for SDMC.

Mr. Ajay Digpaul & Ms. Madhuri Dhingra, Advocates. for SDMC.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K. CHAWLA

VIPIN SANGHI, J. (ORAL)

1. The aforesaid writ petitions have been preferred by the petitioners to assail the common impugned order of the Tribunal passed on 27.05.2015 in the Original Applications preferred by the present petitioners, including O.A. No.703/2014. The Central Administrative Tribunal (CAT/ Tribunal) has dismissed the Original Applications by the impugned order. The grievance of the petitioners/ applicants before the Tribunal, primarily, was that in respect of the competitive examination conducted by the Delhi Subordinate Services Selection Board (DSSSB) for the post of Teacher (Primary) under Post Code 70/09, out of the 200 questions, 58 questions were out of syllabus. The petitioners claimed that on account of the said lacuna, they were unsuccessful. The Tribunal examined the said plea of the petitioners and negated the submissions of the petitioners by holding that the questions put in the question paper could not be said to be beyond the syllabus. Consequently, the petitioners are before us raising the same plea.

2. As noticed above, the DSSSB, NCT of Delhi invited applications for the post of Teacher (Primary), vide Post Code 70/09 through Advertisement No.004/2009. The closing date of receipt of applications was 15.01.2010. The number of vacancies advertised was 4500, which included posts reserved for different categories, such as, the SC, ST, OBC and, Physically Handicapped candidates. The number of vacancies was increased to 6500 on 18.03.2010. The essential qualifications prescribed were as follows:

“1. Sr. Secondary (10+2) or Intermediate or its equivalent with 50% marks from a recognized Board.

2.Two years diploma/Certificate course in ETE/JBT or B.El.Ed. from recognized institutions or its equivalent.

3.Must have passed Hindi as a subject at Secondary level.”

3. The age limit prescribed was 20-27 years, which was relaxable for the SC/ST candidates by 5 years; for OBC category candidates by 3 years; for the Physically Handicapped category candidates by 10 years. The relaxation for the Physically Handicapped SC/ST category candidates was 15 years, and for the Physically Handicapped OBC category candidates was 13 years. For the departmental employees, the age limits were even higher.

4. The syllabus prescribed for Part – I Preliminary Examination and One Tier Examination (Objective Type) reads as follows:

“SYLLABUS:

The syllabus for PART – I Preliminary Examination and One Tier Examination

(OBJECTIVE TYPE) will be as follows:-

SECTION-A

General Awareness: Questions will be designed to test the ability of the candidate's General Awareness of the environment around him and its application to society. The questions will be designed to test knowledge of current events and of such matter of everyday observation as may be expected of an educated person. The test will also include questions relating to India and its neighboring countries, especially pertaining to History, Polity & Constitution, Sports, Art & Culture, Geography, Economics, General Policy, Everyday

Science, Scientific Research, National/International Organizations /Institutions and Current Affairs etc.

General Intelligence and Reasoning Ability: The syllabus of General Intelligence includes questions of both verbal and non-verbal types. Test may include questions on analogies, similarities, differences, space visualization, problem solving, analysis, judgment, decision making, visual memory, discrimination, observation, relationship, concepts, arithmetical reasoning, verbal and figure classification, arithmetical number series etc.

General English and General Hindi: In addition to the testing of candidate's understanding and comprehension of the English and Hindi Languages, its Vocabulary, Grammar, Sentence Structure, Synonyms, Antonyms and its correct usage etc. would also be tested.

Arithmetic and Numerical Ability: The test of Arithmetical and Numerical Abilities will cover Number System including questions on Simplification, Decimals, Fractions, L.C.M., H.C.F., Ratio & Proportion, Percentage, Average, Profit & Loss, Discount, Simple & Compound Interest, Mensuration, Time & Work, Time & Distance, Tables & Graphs, etc.

SECTION-B

Post specific subject related questions: The questions will be on the concerned subject/trade/ work/qualification of the relevant post as prescribed in the recruitment rules and will be of the same level as applicable for the concerned post.”
(emphasis supplied)

5. The grievance of the petitioners relates to the questions posed in Section–B. They have no grievance in relation to the questions posed in respect of the syllabus mentioned in Section–A.
6. The submission of Mr. Raju, learned counsel for the petitioners in the

lead matter (W.P.(C.) No. 6941/2015 arising out of O.A. No.320/2015) – which has also been adopted by the other counsel, is that the level of questions posed in Section-B was much higher than that which could be expected of candidates who had attained Senior Secondary, or Intermediate, or its equivalent qualification with 50% marks from a recognized Board, and who had qualified the Two years Diploma/ Certificate Course in ETE/JBT or B.El.Ed from a recognized institutions. 58 out of the 200 questions posed in the examination were out of syllabus, which led to non-selection of the petitioners. The petitioners have filed a tabulation – question wise, which are claimed to be beyond the syllabus.

7. Mr. Raju submits that this Court, at one stage, called upon the respondents to file a tabulated response to the tabulation prepared by the petitioners question-wise, with their remarks. The respondents were required to justify inclusion of the said questions in the said examination process, and also to indicate the source from where the questions have been lifted. In this regard, reference is made to the order dated 17.07.2017 passed in these proceedings. The said direction was reiterated on 05.09.2017. On 11.12.2017, the Court was informed that it was not feasible for the respondents to furnish the details, as directed vide orders dated 17.07.2017 & 05.09.2017 – for the reason, that the paper setting was carried out directly by the then Chairman, DSSSB, in coordination with the paper setter and the Department was not privy to the said details. Since the then Chairman, DSSSB had already superannuated, there was no record available with the DSSSB to furnish the relevant information. The Court called for a fresh affidavit from the then Deputy Secretary (Secret Cell), DSSSB.

8. On 08.03.2018, the petitioners sought to handover a compilation of documents titled “*Source of Questions: From Non-Syllabus Books*”. The submission of the petitioners was that the said compilation not only contains the list of questions, with numbers, that featured in Set-A and Set-B papers, but also the names of the books from which the said question papers have been set. The submission of the petitioners was that the questions mentioned in the compilation had been sourced from foreign books, and were not a part of the syllabus. The respondents were required to answer the issue raised by the petitioners: that 50% of the questions do not fall in the category of ‘Hindi language’ and, secondly, that 58 questions out of 100 questions in Set-B were not from the syllabus.

9. The respondents have filed a synopsis on 05.05.2018 on record and the same has also been referred to and perused.

10. The submission of the petitioners that 58 questions in Set-B were out of syllabus has been rejected by the Tribunal after detailed examination. This submission of the petitioners does not impress us. The syllabus in respect of Section-B has been extracted hereinabove. The said syllabus is in general terms. It only states that the questions will be on the concerned subject/ trade/work/ qualification of the relevant post, as prescribed in the recruitment rules, and will be of the same level as applicable for the concerned posts. The said syllabus does not limit the course/ question pool to a particular source, or textbook, or other materials. The syllabus does not state that the questions would be framed only on the basis of information/ knowledge derived from any prescribed text. Though the petitioners claim

that 58 questions are out of syllabus, they are not in a position to state, as to what they mean by the term “syllabus”, since none has been particularized. Merely to state that the questions have been lifted from a foreign source is only half truth, and misleading. This is for the reason that it is not the petitioners’ case that any of the said 58 questions were such questions, whose answers are not in the public domain. It is not that – within the Indian knowledge pool, the answers to those questions were not available. It is not pointed out that the said 58 questions, or any one of them, are such that they could not have been posed from within the available knowledge pool existing and available in India.

11. The further submission of learned counsels for the petitioners is that the respondents have claimed that they have framed the questions in Section-B on the basis of the syllabus prescribed by the National Council for Teachers Education (NCTE). For this purpose, the following extract from the synopsis of the respondents has been referred to:

“11. The National Council for Teacher Education (NCTE), a statutory body of the Government of India, came into existence in pursuance of the National Council for Teacher Education Act, 1993 (No.73 of 1993). The main objective of the NCTE is to achieve planned and coordinated development of the teacher education system throughout the country, the regulation and proper maintenance of Norms and Standards in the teacher education system and for matters connected therewith. The mandate given to the NCTE is very broad and covers the whole gamut of teacher education programmes including research and training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools, and non-formal education, part-time education, adult

education and distance (correspondence) education courses.

12. The NCTE has prescribed the syllabus for Diploma in Elementary Education, which is available on web. The Exam of Primary teacher is conducted keeping in mind the said syllabus on the basis of which states prepare their curriculum of two years diploma in ETE/JBT or equivalent. It may be pointed out that DSSSB does not prescribe any syllabus for the exam to be conducted. The candidates appearing in the exam have to prepare themselves as per the educational qualifications prescribed for the post. Thus, the question of, question paper being out of syllabus does not arise.

13. The exam being a competitive exam on All India basis, it is left to the examiner to prepare the question paper as per the scheme of the exam and the questions are prepared keeping in mind the level expected to have studied by those who did 10+2 Senior Secondary and the syllabus prescribed by the NCTE for Diploma in Elementary Education. The exam is not a qualifying exam for next higher class; it is a competitive exam to select a best Teacher (Primary).

14. In a competitive examination, where large number of candidates from all over India compete for few vacancies, the question paper cannot be expected to be based only on those books which have been studied by particular candidates while acquiring the essential qualifications for the post. It is to be left to the wisdom of the recruiting agency and the subject experts to set the standard of competitive examination and to decide the type and standard of the questions to be included in a competitive examination paper.

15. The NCTE, in their syllabus for Diploma in Elementary Education, besides giving topic wise curriculum also refers to essential readings/ readings for discussion/ advance readings/ suggested readings which are expected to be referred and read by the candidates undertaking the diploma course, and they are from various foreign publisher and authors also”.

12. The submission of learned counsel for the petitioners is that the closing date of submission of applications being 15.01.2010, the syllabus introduced for Diploma in Elementary Education (ETE) implemented with effect from the session 2012-13, as well as the syllabus introduced for Diploma in ETE from National Council for Teacher Education, after the said cut-off date, could not be treated as the basis for framing the subject related questions.

13. Once again, we find no merit in this submission. As noticed hereinabove, there is no particular syllabus mentioned in the advertisement in Section-B. Merely because some of the questions may have been formulated on the basis of knowledge/ text which may also have been prescribed as a part of the syllabus for the ETE Diploma course subsequently, it does not mean that the respondents were precluded from formulating questions for the competitive exam in question, on the basis of such knowledge/ text. In fact, this submission of the petitioners shows that the level of questions asked was commensurate with the level of education and knowledge expected of candidates, who wish to offer their service as Teacher (Primary).

14. Even if one were to assume – for the sake of argument, that some of the questions were, indeed, out of syllabus, in our view, since the examination was a competitive examination and all candidates were subjected to the same rigor, and were tested on the same set of questions, it does not lie in the mouth of the petitioners to question the legality or credibility of the said examination process. As stated by the respondents, the

said examination was not a qualifying examination for appointment to the next higher class. It was a competitive examination to select the best Teacher (Primary). Thus, if thousands of others could come out successful in the said competitive examination, the petitioners cannot put the blame on the respondents for their failure – on the ground that 58 out of 200 questions were out of syllabus.

15. At this stage, we may take note of some of the pertinent facts and also the developments which have taken place during the pendency of the writ petitions. About 24,000 candidates appeared in the examination, out of which about 250-300 candidates are before us raising a grievance with regard to some of the questions being from out of syllabus. The same translates to a little over 1.5% of the candidates who have undertaken the examination. An overwhelming majority of candidates were satisfied with the level of questions posed in the examination. As a result of the examination process in question, the DSSSB sent the dossiers of 3282 candidates which were found to be successful in the examination. Out of those, dossiers of 68 candidates were received back from the MCD. Thus, a very large number of candidates actually came out successful in the examination, despite 58 questions in Section-B (out of 200 in all) being allegedly out of syllabus.

16. During the pendency of the writ petitions – to fill up the unfilled vacancies as well as fresh vacancies, a fresh selection process was undertaken for which an advertisement was issued on 07.08.2017. The post code assigned to the post of Teacher (Primary) was 16/2017. Even though

the Tribunal while passing the impugned common order observed that the DSSB, in its own wisdom, may consider giving age relaxation to such candidates who become overage by the time the next selection process is undertaken, neither those of the petitioners- who were eligible, participated in this selection process, nor – those of the petitioners who may have become overage by then, sought age relaxation to be able to participate in the said selection process. Instead, they moved applications in the present petitions to seek reservation of requisite number of vacancies, so that they could be accommodated in case they succeed in the present proceedings. They sought withholding of the process of recruitment pursuant to the said notification dated 07.08.2017. Neither of these reliefs were granted.

17. The process in question, as noticed above, was initiated in the year 2009 and we are now in the year 2019. Nearly 10 years have since gone. The claim of the petitioners is in the realm of speculation. They claim that 58 out of 200 questions were out of syllabus. This claim, itself, has not been substantiated. They claim that the said 58 questions should, therefore, be left out from the evaluation process and the answer sheets should be evaluated afresh. They claim that they may emerge successful if that process is undertaken. Thus, it appears to us, that the petitioners are only building castles in the air. At this late stage, in our view, that process, in any event, cannot be permitted to be undertaken when there is no basis or justification for the same.

18. Mr. Raju has placed reliance on the judgment of the Supreme Court in ***Richal & Ors. Vs. Rajasthan Public Service Commission & Ors.***, 2018

SCC Online SC 488. This decision was rendered on 03.05.2018. The dispute in this case related to the school teachers examination of 2015 conducted by the Rajasthan Public Service Commission. Thus, the issue raised in the said case was still relevant, as it arose before the Supreme Court within a span of three years of the issuance of the advertisement. The examination results were declared in that case on 22.09.2016. There was still a sense of proximity between the date when the cause of action arose, and the decision of the Supreme Court was rendered. The same cannot be said about the present case on account of passage of 10 long years.

19. Same is the position with regard to the decision in ***Sumit Kumar Vs. High Court of Delhi & Anr.***, W.P.(C.) No. 3453/2016 decided on 09.05.2016. In that case, the issue raised before this Court was with regard to the questions and answer key included in the Delhi Judicial Examination held on 20.12.2016. Thus, there was proximity of time subsisting between the date of the examination, and when the Court considered the issues raised by the petitioners. That is not the case in hand.

20. For all the aforesaid reasons, we find no merit in these petitions and dismiss the same.

VIPIN SANGHI, J.

A.K. CHAWLA, J.

JANUARY 10, 2019

B.S. Rohella