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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgement reserved on: 09.09.2021
Judgement pronounced on: 22.11.2021

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W.P.(C) 4531/2021

GOVT OF NCT OF DELHI & ORS.

.....Petitioners

Through : Mrs. Avnish Ahlawat, Standing Counsel, with Mrs. Tania Ahlawat, Mr. Nitesh Kumar Singh and Ms. Palak Rohemetra, Advs. .

versus

PARUL RATHEE & ORS.

.....Respondents

Through : Mr. M.K. Bhardwaj and Mr. Ridam Arora, Advs. for R-1. Mr. Arun Bhardwaj, Sr. Adv. with Mr. J.S. Mann, Adv. for R-11. Mr. Rajesh Chauhan, Adv. for Mr. Sachin Chauhan, Adv. for R-3, 5, 6, 9, 10, 12, 20, 21 & 22.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

TALWANT SINGH, J.

1. This writ petition has been preferred by the Government of National Capital Territory of Delhi [in short "GNCTD"] and others challenging the order dated 12.10.2020 passed by learned Central Administrative Tribunal (in short, the "Tribunal"), in O.A. No. 1843/2019, which was filed by the present respondents and the same was allowed. Notices were issued in the present writ petition; few respondents have filed counter replies. Written submissions and synopsis were filed by both the sides. We have heard

learned counsel for the parties.

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2. The matter pertains to the recruitment of Drawing Teachers, for which an advertisement was issued by the present petitioners on 20.12.2017 bearing advertisement No. 4/2017. The last date for applying for the said post, along with some other posts, was 31.01.2018. The essential qualifications prescribed for the post of drawing teacher were as under:

(i) *5 years Diploma in Drawing/Painting/Sculpture/ Graphic Art from a University/Institution recognized by the Govt. of India.*

or

(ii) *Master's degree in Drawing/Painting/Fine Arts from a recognized University.*

Or

(iii) *Bachelor's degree in Drawing/Painting/Fine Arts plus two years full time Diploma in Painting/Fine Arts from a recognized University/Institution.*

3. The written examination was conducted on 29.09.2018, the present respondents had participated in the same, and the result was declared on 18.02.2019. The short-listed candidates were asked to upload their e-dossiers but names of the present respondents were not there in the list of successful candidates. It is pertinent to mention that all the respondents have four years' Bachelor's degree in Fine Arts (BFA). Representations were submitted by the respondents but the same were rejected vide rejection notice dated 27.05.2019 on the ground that they did not fulfil the requisite qualifications of having a degree of graduation alongwith two years diploma. The said rejection notice was challenged by the respondents by filing an O.A. No. 1843/2019 before the Tribunal. The main ground taken before the Tribunal by respondents was that, as per Annexure-II to the advertisement No. 04/2017, it was clarified that the degree of Bachelor of Fine Arts (BFA) was to be considered equivalent to five years Diploma and accordingly the respondents were eligible to appear in the said examination for the post of the Drawing Teachers.

4. The present petitioners filed their response before the Tribunal and reiterated their stand that the respondents did not fulfil the educational qualifications prescribed in the recruitment rules as all of them were not having two years Diploma in addition to their degree of graduation. Certain committees were also constituted by GNCTD to clarify the position. As per the petitioners, the said committees came to a reasoned conclusion that the BFA cannot be taken as the essential educational qualification for the post of Drawing Teachers. The corrigendum dated 13.06.2019 was also issued by the petitioners by which Annexure-II of the recruitment advertisement No. 04/2017 was ordered to be deleted.

5. The only question to be decided in this writ petition is as to whether the Tribunal is right in holding that the BFA Degree, which is a four years course, is equivalent to the five years Diploma in Drawing/ Painting/ Sculpture/Graphic Art from a University/Institution recognized by Government of India or not.

6. The categorical findings of the Tribunal in this regard are as under:

"6. The only issue that arises for consideration in this OA is as to whether the applicants who studied 4 years of Degree in Bachelor of Fine Arts can be said to have possessed the qualification, stipulated for the post of Drawing Teacher.

7. The qualifications stipulated for the posts are extracted in the preceding paragraphs.

8. This accords the recruitment rules framed by the 1st respondent. It is no doubt true that mention is made to the Bachelors Degree in Fine Arts also, in item 3 and a candidate with that Degree is required to hold 2 years full time diploma in painting/fine arts, as qualification. Had the advertisement not indicated anything further, as regards the qualifications, things would have been different altogether. In Annexure-II the respondents have elaborated the qualifications for the post. It reads as under:-

The list of Diplomas/Certificates recognized by the Central Board Secondary Education is given below:

For five Year's Diploma:

1. National Diploma of A.I.C.T.E.

2. Bachelor of Fine Arts Degree from a recognized University.

Particulars of the certificates and institutions are also mentioned about the Diplomas of four, three and two years. A perusal of this discloses that a Bachelors Degree in Fine Arts is treated as equivalent to the 5 years diploma. This is not a contention which the applicants want us to accept independently. On the other hand they rely upon the material, which is part of the advertisement.

9. Once the 5 years diploma is treated as an independent qualification by itself, and the respondents have recognized the Bachelors degree in Fine Arts as equivalent thereto the applicants can be said to have possessed the qualification.

10. It is true that the same degree i.e. B.F.A. figures as item 3 enlist of qualifications. However, a close analysis of the same discloses that it is in confirmation with other Bachelor's Degree, such as Drawing/Painting, that mention is made to the Bachelor's Degree in Fine Arts. The plea of the applicants that the course studied by them is of 4 years duration and the various institutions have introduced 4 years degree course of Fine Arts, in the place of 5 years diploma, remains un rebutted.

11. It is argued strenuously by the learned counsel for the respondent that the Annexure-II was referable to the qualifications under the old recruitment rules, we find that there is no mention about the 5 years diploma course at all. Under the various combinations, the diploma courses occur along with the degrees and the secondary school certificate. While for the former it is 2 years diploma, for the latter it is diploma of 5 years. We do not found[sic:find] the diploma of 5 years, under the old rules. Having stipulated 5 years diploma as an independent qualification by itself, under new recruitment rules, the respondents cannot disown Annexure-II, nor can it be treated as not valid.

12. Assuming that any mistake has crept into the advertisement in the context of stipulating the qualifications, the respondents should have cautioned the candidates

before any tangible steps in the selection have been taken place. As mentioned earlier, the written test was conducted on 29.09.2018. It was only on 13.06.2019, that too after the impugned rejection notice was issued, that a corrigendum is said to have been issued. It cannot be gainsaid that the participation on the examination on the basis of the qualifications stipulated by the respondents, as valuable right as well as the legitimate expectations accrue to the applicants. The so called corrigendum, issued after the completion of selection process is of no legal consequences.

13. We are of the view that the impugned order cannot be sustained in law and it runs contrary to the very stipulations made by the respondents, in their advertisement.

14. We are also convinced that there is no contradiction between Annexure-II on the one hand and the recruitment rules on the other hand. In fact the former supplements the latter and does not alter the qualifications.

15. Reliance is placed upon the judgment of Hon'ble Supreme Court in 2006(9) SCC 507 by the respondents in support of their contention that the stipulation in the advertisement cannot override the qualifications prescribed under the recruitment rules. We have already mentioned that the Annexure-II does nothing more, than explaining the qualifications prescribed in the recruitment rules and it became necessary in as much as the rules were amended recently.

16. Hence we allow the OA and set aside the impugned order. The applicants shall be treated as qualified and their cases shall be processed as per the merit obtained by them in the written test and in the selection process. There shall be no order as to costs."

7. The bone of contention is Annexure-II, which was attached with advertisement No. 04/2017. Part I of the said Annexure-II reads as under:

"The list of Diploma/Certificates recognized by the central Board

Secondary Education is given below:

For Five Year's Diploma:

1. *National Diploma of A.I.C.T.E.*
2. ***Bachelors of Fine Arts Degree from a recognized University.***
3. *College of Art and Architecture, Hyderabad (State Board of Technical Education & Training, Andhra Pradesh).*
4. *School/College of Art & Craft, Lucknow (Directorate of Industries, Uttar Pradesh/Cultural Affairs & Scientific Research, UP)*
5. *Sir J.J. School of Art, Bombay, (Government of Maharashtra).*
6. *College of Art & Craft, Calcutta (Directorate of public instructions, West Bengal)*
7. *College of Art & Craft, Madras (Directorate of Industries, Madras)*
8. *School/College of Art & Craft, Patna.*
9. *Viswa Bharti (West Bengal, Shanti Niketan.*
10. *School/College of Art & Craft, Chandigarh, Punjab.*
11. *Registrar, Departmental Examination, Bikaner, (Government of Rajasthan provided the candidate attended full five years duration.” [Emphasis supplied]*

8. The submissions of the petitioners as mentioned in the grounds of the writ petition in this regard are as under:

“A. Because the Ld. Tribunal failed to appreciate that Recruitment Rules as notified by Gazette Notification dated 28.01.2016 has referred to the essential educational qualification as follow:

(i) 5 years Diploma in Drawing/ Painting/ Sculpture/ Graphic card from a University/Institution recognized by the Govt. of India,

or

(ii) Master’s degree in Drawing/Painting/Fine Arts from a recognized University.

or

(iii) Bachelor’s degree in Drawing/Painting/Fine Arts plus two years full time Diploma in Painting/Fine Arts from a recognized University/Institution.

And there is no reference to Annexure II in the whole advertisement.

B. Because the Ld. Tribunal’s reliance on Annexure-II of the advertisement is totally misconceived. The Annexure-II is only a list of Diplomas/Certificate recognized by the Central Board of Secondary Education (CBSE) and it gives

the name of various Institution/University which are providing 5 years Diploma/ 4 years Diploma/3 years Diploma/2 years Diploma. The essential qualifications under the Recruitment Rules/advertisement also does not provide for any equivalency.

C. Because the Ld. Tribunal failed to appreciate that since Annexure-II was not a relevant document and not part of RRs the same was withdrawn through corrigendum dated 13.06.2019 same having been erroneously appended with advertisement No. 04/2017 dated 20.12.2017. It was not even referred in any of the 64 post codes including post code 91/17.”

9. On the other hand, learned counsels for the respondents have submitted that the Tribunal has rightly relied upon Annexure-II, which prescribes the equivalence to five-year Diploma course with BFA. It has been further submitted that the said Annexure-II can not be separated from the recruitment advertisement.

10. The Annexure-II, in our view, is an integral part of the recruitment advertisement and the stand taken by the present petitioners that the said annexure is not a relevant document, is without any basis. The petitioners are right to the extent that the said Annexure-II was not part of the recruitment rules. The recruitment rules provide that the five years Diploma from a University/Institution is the requisite qualification as given at point no. (i) of the educational qualification for the post of Drawing Teacher. However, Annexure-II only provides an explanation as to what is to be taken as equivalent to the said five years Diploma and a degree from a recognized University in Fine Arts (BFA) is one of the qualifications, which is equivalent to the said Diploma. Annexure-II is only an explanation to the requisite qualification and there is no need for the said details to be part of the recruitment rules. The recruitment rules have duly provided that the candidate for the post of Drawing Teacher should have a five years

Diploma, but explanation as to which University/Institution/Colleges are authorised to issue the said five years Diploma, the said list is only found in Annexure-II of the said advertisement.

11. Sole stand of the petitioners that Annexure-II is not an integral part of the advertisement is not borne out from the facts of the case and this stand has been taken without even considering the consequence thereof. If Annexure-II is not to be treated as part of the said advertisement, the qualification regarding five years Diploma becomes directionless as nobody will ever come to know as to which are the Institutions/Universities authorised to issue the said five years Diploma. Moreover, Annexure-II also provides list of the Schools/Colleges/Institutions, whose Diplomas for two, three and four years are recognized and these details are relevant for the posts concerned.

12. Another pertinent fact to be noticed is that for the post code 97/17, i.e., PGT Fine Arts, one of the essential qualifications prescribed is Bachelor in Fine Arts (BFA). The said post and the present post, i.e., Drawing Teacher are in the same pay scale, i.e., Rs.9300-34800/- and the only difference is in Grade Pay which is Rs.4800/- for PGT Fine Arts and Rs.4600/- for Drawing Teacher. Moreover, both the posts belong to Group-B. The learned Tribunal is right in its observation that the stand of the present petitioners that Annexure-II was part of its earlier recruitment drive and was inadvertently attached with the present advertisement is also not supported by any independent evidence. It is rightly observed that the five years Diploma was never a qualification for direct recruitment to the post of Drawing Teacher. Rather it was a part of the qualifications for the “existing teachers”, who might have passed High School Examination with five years full time Diploma as is evident from para 1 of the brief facts as detailed in counter affidavit filed by the present petitioners in OA No. 2309/2018 titled

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hereunder for the sake of convenience:

“1. That the Board advertised the vacancies for the post of Drawing Teacher, Post Code-208/14 vide advertisement No.02/14. The essential qualifications as mentioned in the RR as well as in the advertisement No. 02/14 are as under:-

M.A. in Drawing and Painting/Fine Art from a recognized University

OR

B.A. (Hons.) in Art and Art Education

OR

BA/BA with drawing & painting/ Fine Art/Art with minimum 2 years full time Diploma from a recognized institution.

OR

Higher Secondary/Intermediate with minimum 4 years full time Diploma in painting/fine art from a recognized Institution/University. (However, for existing teachers the essential qualification shall be high school with 5 years full time Diploma.”

13. If we take the arguments of the petitioners a little further then Annexure-II is in contradiction of the advertisement issued in the year 2014, i.e., the earlier advertisement before so called amendment of rules. The five years full time Diploma could not have been equivalent to BFA even in 2014 because a candidate, who is already employed with the present petitioners, ought to have only High School qualifications with five years full time Diploma and obviously one cannot get Bachelor of Fine Arts Degree only after High School. This degree can be obtained only after completing 12 years of school education (Senior Secondary) and thereafter, four years study at graduation level. So, the arguments of the petitioners that this Annexure-II was part of the earlier recruitment drive is only an afterthought. This wrong stand has been further compounded by the hastily issued corrigendum dated 13.06.2019 by which, without thinking about the consequences of withdrawal of the said annexure and apparently only with a

view to defeat the legitimate claims of the present respondents, the

petitioners had withdrawn/deleted said Annexure-II.

14. Another interesting fact to be noted here is that the examination was conducted on 29.09.2018 and result was declared on 18.02.2019. The representations given by the present respondents were rejected on 27.05.2019 and after about more than two weeks, the present petitioners suddenly woke up and took a half-hearted measure of withdrawing/deleting Annexure-II vide their corrigendum dated 13.06.2019. Annexure-II was part of the advertisement bearing No. 04/2017 issued on 20.12.2017 and for about one and half years, no official of petitioner No. 1 applied its mind to its content, although the present respondents had filed their applications online wherein, they had unequivocally stated that they possessed BFA degree. In other words, the disclosure was made right in the beginning, before closing date for registration of the applications i.e., 31.01.2018.

15. The learned Tribunal has rightly held that the corrigendum dated 13.06.2019, which was issued after completion of selection process is of no legal consequences. In our view, the said corrigendum dated 13.06.2019 cannot have a retrospective effect and hence has no legal sanctity.

16. One of the aspects that came up during hearing on the basis of submissions of the respondents is that clarification via Annexure -II was issued as Universities/Institutions are no longer awarding any 5 years Diplomas in Art. In support of this arguments, learned counsel for respondents has drawn our attention to letters/clarifications issued by various Universities/Institutions and one such institution is Delhi College of Art, run by GNCTD.

17. Learned Counsel for GNCTD has emphasized that if intention of the petitioners was to include BFA as a qualification, then Annexure-II would have been included in the Recruitment Rules by way of an amendment but the same was not done. So, it was never the intent of the GNCTD to

recognize BFA as an essential qualification for the post of Drawing Teacher.

In our view, Annexure-II need not be part of the Recruitment Rules as it is only a clarification to the RRs, which supplement the said RRs and is not contradictory of the same. It does not move away from the spirit of RRs and it is an admitted document of the petitioners.

18. The counsel for the petitioners has rightly pointed out that a judgment of this Court in the matter of *Nirmala and Ors. v. GNCTD* in W.P.(C) No.7263/2007 has no bearing as in the said judgment this Court had come to a conclusion that the Bachelors of Fine Arts degree was equivalent to B.A. (Hons.) and in the selection process under challenge at that time, B.A.(Hons.) was one of the educational qualifications, for which no Diploma was required. However, the said judgment is not relevant to the present litigation as claim of the respondents is that the Bachelors of Fine Arts Degree is equivalent to five years Diploma as per Annexure-II and in our view, they are right in taking the said stand. Moreover, all the deliberations and outcome of the expert committees appointed by the petitioners from time to time, whether their recommendations have been accepted or rejected, will have bearing only on the future recruitments and not on the recruitment under challenge as all the said committees were appointed later on and they had suggested amendment to the recruitment rules so as to directly incorporate Degree in Bachelors of Fine Arts as one of the educational qualifications. The respondents have rightly relied upon the judgment of the Supreme Court in the case of *Maharashtra State Transport v. Rajendra Bhimrao Mandve & Ors* in W.P.(C) No. 1492/2000 dated 22.11.2001, wherein it was held that the criteria for selection cannot be altered by the authorities in the middle or after the process of selection commenced.

19. The sum and substance of the above discussion is that:

(i) Annexure-II was part and parcel of advertisement No.04/2017 dated 20.12.2017, duly issued by the petitioners.

(ii) The Recruitment Rules provide five years Diploma course as one of the essential qualifications for the post of Drawing Teacher.

(iii) Annexure-II, only goes on to explain what would be considered/ treated as equivalent to five years Diploma course.

(iv) Degree in Bachelor of Fine Arts is detailed as one of those qualifications, which is equivalent to five years Diploma course.

(v) Hence, respondents have requisite qualification (BFA) for participating in the recruitment process for the post of Drawing Teacher in response to Advertisement no. 4/2017.

20. In view of the above, we do not find any illegality or infirmity in the judgement of the Tribunal dated 12.10.2020 passed in O.A. No. 1843/2019. As a result, the writ petition is dismissed and consequently the judgment of the Tribunal is upheld.

**TALWANT SINGH
(JUDGE)**

**RAJIV SHAKDHER
(JUDGE)**

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