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

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Date of decision: 12th April, 2021

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W.P.(C) 4543/2021

SUMEEKSHA

..... Petitioner

Through: Mr. Siddharth, Advocate.

Versus

GOVT. OF NCT OF DELHI AND ORS. Respondent

Through: Ms. Avnish Ahlawat, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

RAJIV SAHAI ENDLAW, J.

C.M. No. 13938/2021(for exemption)

1. Allowed, subject to all just exceptions and as per extant Rules.
2. The application stands disposed of.

W.P.(C) 4543/2021 & C.M. No.13939/2021(for interim relief)

3. The petition impugns order dated 23rd November, 2020 of the Central Administrative Tribunal, Principal Bench, New Delhi, of dismissal of OA No. 1834/2020 preferred by the petitioner.
4. The petitioner, pursuant to advertisement of the year 2014 issued by the Delhi Subordinate Services Selection Board (DSSSB) inviting applications for appointment of TGT Level Drawing Teacher, applied and participated in the selection process and was shortlisted. However, post-

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shortlisting, her candidature was cancelled on the ground that she did not have the requisite qualification. The petitioner first made representation to the respondents and on the same not eliciting any response, preferred OA No. 4164/2017, which was disposed of vide order dated 28th November, 2017, directing the respondents to decide the representation of the petitioner. Aggrieved from the rejection of the representation, the OA from which this petition arises was preferred and which, as aforesaid, has been dismissed.

5. Since the issue involved is, whether the petitioner has the prescribed qualification, we have asked the counsel for the petitioner to show us the Recruitment Rules in force at the relevant time.

6. The counsel for the petitioner has drawn our attention to Page 96 of the file, being the Notification dated 15th December, 1983 containing the amendments to the schedule to the rules regarding the method of recruitment and qualifications necessary for appointment to the post of Drawing Teacher (Excluding Geometrical & Mechanical Drawing) in the Directorate of Education, Delhi Administration and which prescribes the essential qualification for the post of 'Drawing Teacher' as under:-

“ “Essential” ”

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

OR

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

OR

B.A./B.A. with Drawing & Painting/Fine Art/Art with minimum 2 years' full time Diploma from a recognised institution.

OR

Higher Secondary/Intermediate with minimum 4 years' full time Diploma in painting/Fine Art from a recognised Institution/ University (However, for existing Teachers the essential qualifications shall be high school with 5 years' full time Diploma).

DESIRABLE

At least 2 years' Drawing Teachers Training Course from a recognised Institution.

OR

2 years' teaching experience in a recognised institute.

NOTE : Particulars of recognised institutions for various courses may be specified by the Administrator from time to time. "

7. The candidature of the petitioner was rejected, on evaluation by the Expert Committee formed in this regard, reasoning in the minutes of its meeting held on 6th July, 2018, as under:-

<i>S. No.</i>	<i>Name of the Candidates</i>	<i>Qualification</i>	<i>Observation of the committee</i>
1.	Sumeeksha Sharma (Roll No.12801911, D.O.B.- 30.08.1985	• 10th class in the year 2000. • 12th class in the year 2002. • Diploma in Commercial Art (Three year) passed in	• For all the teachers of TGT level, it is mandatory that the concerned subject should be studied in Graduation. In this case the candidate has not studied any fine art subject in Graduation. • As per the RRs of Drawing Teacher

		<i>the year 2005 from Board of Technical education Delhi.</i> <i>B.A. (English, Hindi, History, Political Science) from University of Delhi in the year 2006-2009.</i>	<i>B.A./B.A. with Drawing & Painting/Fine Art/Art with minimum 2 years full time Diploma from a recognised institution is mentioned but Simple B.A. and B.A. with Drawing & Painting/Fine Art cannot be equivalent. Moreover B.A. in Fine Art is a 4 year degree course.</i> <i>Diploma in Commercial Art is not relevant to the post of Drawing Teacher, as per RRs.</i> <i>⇒ Therefore, the candidate is not found eligible /fit for the post of Drawing Teacher.</i>
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8. We have heard the counsel for the petitioner and the counsel for the respondents appearing on advance notice.

9. It is not in dispute that the petitioner, post her Higher Secondary/Intermediate education, first did a 3 years' full time Post Matriculation Diploma in Commercial Art from Board of Technical Education, Delhi and thereafter did her Bachelor of Arts degree from Delhi University.

10. Though undoubtedly the Recruitment Rules do not prescribe that the full time Diploma should be post graduation, as is the contention of the counsel for the respondents and it initially appeared to us also that since the Recruitment Rules do not provide so and also use the word 'minimum', the petitioner, who had first done the diploma of three years' and then her graduation, would be eligible.

11. However, on further consideration of the Recruitment Rules providing the various equivalent essential qualifications, it is found that if the petitioner were to claim the prescribed qualification, on the basis of Higher Secondary/Intermediate education, she was required to have a minimum

four years' full time Diploma, which she does not have and if were to claim the prescribed qualification on the basis of her graduation in Arts, then was required to have a minimum two years' full time Diploma post her graduation, and which also she does not have. The mention in the Recruitment Rules, of the minimum two years Diploma, after the mention of "B.A.", does indicate that the Diploma should be acquired after the graduation degree and not before. Though there are no pleadings before us in this regard but it can safely be assumed that the curriculum of Diploma post graduation and the curriculum of Diploma post Higher Secondary/Intermediate are different. CAT has rightly also reasoned that since the respondents are an employer, even if there were to be any ambiguity, they are best suited to assess the qualification required from the candidate to be employed and we are unable to find any fault with the said reasoning.

12. The counsel for the petitioner has also drawn our attention to Page 171 of the file, being the Reply to a query made under the Right to Information Act, 2005, to show another candidate with similar qualifications as the petitioner, had been employed as a Drawing Teacher.

13. Even if it be so, merely because someone else has been wrongly recruited, in contravention of Recruitment Rules, would not confer a right on the petitioner to seek parity with such person. Supreme Court, in a series of decisions has held that guarantee of equality before law under Article 14 of the Constitution of India is a positive concept and cannot be enforced in a negative manner and that if any illegality or irregularity is committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of courts for perpetuating the same irregularity or illegality in

their favour also, on the reasoning that they have been denied the benefits, which have been illegally extended to others. Reference in this regard may be made to the decisions in *State of U.P. Vs. Rajkumar Sharma* (2006) 3 SCC 330, *Union of India Vs. M.K. Sarkar* (2010) 2 SCC 59 and *State of Orissa Vs. Mamata Mohanty* (2011) 3 SCC 436.

14. There is thus no merit in the petition.

Dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

APRIL 12, 2021

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