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

% *Decision delivered on: 24.09.2021*

+ **W.P.(C) 7452/2021 & CM No.23446/2021**

AKASH AKHIL & ORS.

..... Petitioners

Through : Mr. Ashok Agarwal, Adv.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through : Ms. Vibha Mahajan Seth, Adv. for
R-1 & 3.

Mrs Avnish Ahlawat, SC with Mrs
Tania Ahlawat Mr Nitesh Kumar
Singh and Ms Palak Rohemetra for
R-2/DSSSB.

Ms. Sangita Rai, Adv. for some
private respondents.

Mr. Manish Mohan, CGSC with Ms.
Manisha Saroha, Adv. for R-23/
NIELIT.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Physical Court Hearing]

RAJIV SHAKDHER, J. (ORAL):

1. This writ petition is directed against the order dated 09.07.2021, passed by the Central Administrative Tribunal (in short 'the tribunal') in O.A.No.2652/2017.

2. The petitioners before us, presently, are aggrieved by the fact that, they have not been considered for appointment to the post of Trained Graduate Teacher (Computer Science) (Post Code 192/14) [hereafter referred as "TGT (Computer Science)"].

2.1 We may also note that, apart from the official respondents, some private respondents are also arrayed as parties to the instant petition. While Mr. Ashok Agarwal, Advocate, represents the petitioners, Ms. Sangita Rai, Advocate, represents some of the private respondents. The private respondents, we are told, are arrayed as respondent nos.4 to 22 in the writ petition.

3 It would also be relevant to note that, some of the private respondents had approached this court on an earlier occasion, which resulted in the Division Bench of this court passing a judgment, on 21.12.2018. This judgment was rendered in W.P.(C.) No.13885/2018, titled ***Dayanand & Ors. v. Government of NCT of Delhi & Ors.***

3.1. Interestingly, Ms. Rai represented the petitioners, at that stage. Via the aforesaid petition, challenge had been laid to the tribunal's order dated 12.10.2018. The court, after hearing the parties in the matter, set aside the said order of the tribunal and remanded the case to the tribunal for a fresh hearing.

3.2. The rationale provided by the Division Bench, vide its judgment dated 21.12.2018, is adverted to in paragraph 3. For the sake of convenience, the same is extracted hereafter:

*“3. Mr. Luthra has sought to justify the findings returned by the Tribunal by relying upon inter alia on the judgment of the **Anamika Shakla v. State of Madhya Pradesh** in WA No. 917/2016 decided on 14.12.2016. He also submits that the MCA Degree obtained by the respondents is equivalent to graduation in any subject with ‘A’ level course from DOEACC, Ministry of Information and Communication and Technology, Government of India, which is also one of the qualifications prescribed. In our view, the Tribunal should have undertaken a more detailed and in-depth examination of this particular issue i.e. as to whether the two year degree of MCA obtained after graduation in any subject, could be considered to be a higher qualification, or at par., with*

the three year BCA degree, and whether the attainment of MCA qualification subsumes within it the qualification of BCA. The views of the Governing Councils such as AICTE, Association of Indian Universities, who are concerned with the field of Computer Education, should also have been called for.”

4. Mr. Agarwal has drawn our attention to the essential qualification, provided in the relevant recruitment rules [in short “RRs”] for being considered for appointment to the subject post. It would be relevant, therefore, to allude to that part of the RRs, which concerns essential qualifications:

“Essential Qualification-

1. Bachelors Degree in Computer Application (BCA) from a recognized University

OR

Graduation in Computer Science from a recognised University (Provided that the Computer Science subject must be studied in all years as main subject)

OR

B.E./B.Tech. (Computer Science/Information Technology) from a recognised University

OR

Graduation in any subject and ‘A’ level course from DOEACC, Ministry of Information & Communication and Technology, Govt. of India.”

4.1. Mr. Agarwal has argued, and in our view, quite correctly, that, the tribunal has not examined the issue as to, whether or not the petitioners have qualifications which are equivalent to the following essential qualification provided in the RRs:

“1.....OR Graduation in any subject and ‘A’ level course from DOEACC, Ministry of Information & Communication and Technology, Government of India”

4.2. Mr. Agarwal says that, the petitioners have acquired a degree in

Master of Computer Application (MCA), and that MCA is equivalent to the 'A' Level Course, which is conducted by the Department of Electronics and Accreditation of Computer Courses [in short "DOEACC"; presently known as, National Institute of Electronics and Information Technology (NIELIT)]. For this purpose, Mr. Agarwal relies upon the notification dated 26.09.2000, issued by the Government of India, Ministry of Human Resources & Development, Department of Secondary Education & Higher Education, which is appended to the affidavit filed by NIELIT, before the tribunal.

4.3. In addition, thereto, Mr. Agarwal also relies upon a report prepared by the, then Director (Education), Directorate of Education (DoE) i.e., Ms. Saumya Gupta. In particular, emphasis has been laid by Mr. Agarwal on the following portions of the report:

"32. Coming to the point of whether the higher education pre supposes the acquisition of the lower qualification it is seen that the candidates have either the qualification of Masters in Computer Application (MCA) or M.Sc in Computer Science. The qualification prescribed in the RRs for the post of TGT (Computer Science) provide for (1) BCA or (2) Graduation in Computer Science or (3) Graduation in any subject and 'A' level course from DOEACC Ministry of Information and Communication Technology. The qualification prescribed for PGT (Computer Science) provides for (1) M.Sc Computer Science/MCA plus One year teaching experience, amongst other qualifications. Therefore, the qualifications of M.Sc Computer Science as well as MCA appear to the standing up to the principle laid down by the Hon'ble Supreme Court as mentioned at serial no.2 above.

33. The matter was also examined to check whether the candidates also fulfil the principle (1) laid down by the Hon'ble Supreme Court a stated above. In this context, it was observed that as per information available on the site of NIELIT (erstwhile DOEACC Society, Ministry of Electronics and Information Technology Govt. of India, 'A' Level Course of NIELIT Scheme is equivalent to advance diploma in Computer Application. After completion of 'A' Level course, students can further enrol in 'B' Level course of

NIELIT scheme. Further, 'B' Level course of NIELIT Scheme has been recognised by the Ministry of Human Resource Development as professionally equivalent to MCA degree course. As per the eligibility condition laid down by NIELIT for admission for 'B' Level course, students who have done an 'A' Level course are exempted from the first two semesters. Further, a comparative chart of the syllabus of 'A' level and 'B' level was also examined as per detail below:-

Comparison between 'A' level course and 'B' level course

'A' Level		'B' Level	
A1-R4	IT Tools and Business System	B1.1-R4	IT Tools and Business Systems
A2-R4	Internet Technology and Web Design	B1.2-R4	Internet Technology and Web Design
A3-R4	Programming and Problem Solving through 'C'	B1.3-R4	Programming and Problem Solving through 'C' Language
A4-R4	Computer System Architecture	B1.4-R4	Computer System Architecture
A5-R4	Structural System Analysis and Design	B1.5-R4	Structural System Analysis and Design
A6-R4	Data Structure through 'C++'	B2.1-R4	Data Structure through C++
A7-R4	Introduction of Data Base Management System	B2.2-R4	Introduction of Data Base Management System
A8-R4	Basics of OS, UNIX and Shell Programming	B2.3-R4	Basics of OS, UNIX and Shell Programming
A9-R4	Data Communication and Network Technologies	B2.4-R4	Data Communication and Network Technologies
		B2.5-R4	Elective 1 (one of the following two subjects to be chosen) ____1-R4 introduction to object Oriented Programming through Java B2.52-R4 Software Testing and

			<i>Quality Management</i>
		<i>B3.1-R4</i>	<i>Management Fundamentals and Information Systems</i>
		<i>B3.2-R4</i>	<i>Basic Mathematics</i>
		<i>B3.3-R4</i>	<i>Software Engineering & CASE Tools</i>
		<i>B3.4-R4</i>	<i>Operating Systems</i>
		<i>B3.5-R4</i>	<i>Networking & Mobile Communications</i>
		<i>B4.1-R3</i>	<i>Computer Based Statistical & Numerical Techniques</i>
		<i>B4.2-R3</i>	<i>Discrete Structure</i>
		<i>B4.3-R3</i>	<i>Software Testing and Quality Management</i>
		<i>B4.4-R3</i>	<i>Computer Graphics & Multimedia Systems</i>
		<i>B4.5-R3</i>	<i>Internet Technologies and Tools</i>
		<i>B5.1-R3</i>	<i>Professional and Business Communications</i>
		<i>B5.2-R3</i>	<i>Object Oriented Database Management System</i>
		<i>B5.3-R3</i>	<i>Network Management and Information Security</i>
		<i>BE-R3</i>	<i>Any two Elective from BE1-Respondent No.3 to BE10-Respondent No.3</i> <i>**List of the Subjects from which the above electives can be chosen are:</i>
		<i>BE1-R3</i>	<i>Embedded Systems</i>
		<i>BE2-R3</i>	<i>AI and Applications</i>
		<i>BE3-R3</i>	<i>E-Business</i>
		<i>BE4-R3</i>	<i>Principle of Modeling & Simulation</i>
		<i>BE5-R3</i>	<i>Parallel Computing</i>
		<i>BE6-R3</i>	<i>Software Project Management</i>
		<i>BE7-R3</i>	<i>Applied Bio-Informatics</i>
		<i>BE8-R3</i>	<i>Digital Image Processing</i>

		BE9-R3	Accounting & Financial Management
		BE10-R3	Applied Operations Research
			At 'B' level there are two projects. The first one will be as for 'A' level and to be completed as for 'A' level. The second project should approximately amount to an effort of 500 man-hours, 300 marks are assigned. The project should be chosen by the candidates and approved by the DOEACC Society. The should be submitted after completion of all papers with a fee of Rs.3000/- and a certificate. DOEACC Society will constitute a Board of two experts to conduct a viva-voce.

From the above chart, it can clearly be seen that all the nine subjects studied at the 'A' Level are also the starting nine subjects for the 'B' Level course. Thus, it can be inferred that for the qualification of MCA which is equivalent to 'B' Level course, has been acquired in the same faculty and thus pre supposes the acquisition qualification of 'A' Level prescribed for the post of TGT (Computer Science).

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35. Thus the only objection of the branch that now remains to be seen is there could be numerous candidates who possess such higher qualifications/degree who may not have applied as RRs did not contain these qualifications and therefore, giving appointments to these candidates would amount to depriving the other highly qualified candidates who did not apply. In this context, it is seen that this issue was also considered by the Hon'ble Supreme Court of India in the matter of Jyoti K.K. and

others VS. Kerala Public Service Commission. The Hon'ble Supreme Court at para 7 of the judgment has mentioned that the High Court while dismissing the petition of the petitioners had been of the view that "all those who had similar or even better qualifications than those candidates would not have applied for the post because they did not possess the qualifications mentioned in the advertisement and such a position would result in fraud on public to appoint persons with inferior qualifications". The Hon'ble Supreme Court, while holding that the stand of the High Court was not justified, has at para 9 of the judgment held as under:-

"In this case we are not concerned with the question whether all those who possess such qualifications could have applied or not. When statutory rules have been published and those rules are applicable, it presupposes that everyone concerned with such appointments will be aware of such rules or make himself aware of the rules before making appropriate applications. The High Court, therefore, is not justified in holding that recruitment of appellants would amount to fraud on the public".

*36. In view of the facts and circumstances mentioned above, the judgments passed by the various courts including Division Bench of the Delhi High Court and Hon'ble Supreme Court, **I am of the concerned view that the candidates possessing the qualification of MCA/M.Sc (Computer Science) should be given appointment to the post of TGT (Computer Science). This would not only give us the opportunity to engage the services of better qualified and meritorious teachers in a timely manner but would also spare the department unnecessary litigation.***

5. Ms. Vibha Mahajan Seth, who appears on behalf of respondent nos.1 and 3, cannot but accept the fact that, the issue brought to fore by Mr. Agarwal has not been dealt with, in the impugned order, by the tribunal.
- 5.1. Ms. Avnish Ahlawat, who appears on behalf of respondent no.2, submits likewise.
- 5.2. Mr. Manish Mohan, who appears on behalf of respondent

no.23/NIELIT, also takes the same position.

6. Insofar as Ms. Rai is concerned, while she represents, as indicated above, some of the private respondents, and contends that, the petitioners are not qualified for the subject post, she does fairly concede that, the issue raised by Mr. Agarwal has not been dealt with, in the impugned order.

6.1. According to Ms. Rai as well, the matter needs to be remanded to the tribunal for a *de novo* hearing in the matter.

7. Given this position, the order of the tribunal, dated 09.07.2021, is set aside.

7.1. The tribunal is directed, once again, to decide the matter afresh, bearing in mind, *inter alia*, the issue brought to fore by the petitioners before us i.e., that 'A' level course is equivalent to MCA.

7.2. Needless to add, that before a final order is rendered by the tribunal, all sides will be heard, including the private respondents who are represented by Ms. Rai.

7.3 We may also add that, the order passed by us will not impact the merits of the case.

7.4. In order to hasten the proceedings, the parties and/or their respective counsels will appear before the Registrar of the tribunal, on 28.10.2021.

8. The petition is disposed of in the aforesaid terms. Consequently, the pending application shall also stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

SEPTEMBER 24, 2021/aj

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