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

% Judgment delivered on: 14.11.2022

+ W.P.(C) 7041/2020 & CM APPL. 24002/2020
JAYESHMA.K AND ORS Petitioners
versus

THE JOINT COMMISSIONER, KENDRIYA
VIDYAALAYA SANGATHAN (HQ) Respondent

Advocates who appeared in this case:

For the Petitioners: Mr. Ankur Chhiber, Mr. Bharpur Singh, Mr. Yogesh
Kumar and Mr. Harkesh, Advocates

For the Respondent: Mr. U.N. Singh, Advocate

CORAM:-

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioners impugn order dated 20.08.2020 whereby the Original Application filed by the petitioners has been dismissed.
2. Petitioners had filed the subject Original Application seeking to impugn though different orders but all orders dated 14.01.2020 passed by the respondent rejecting the representations of the petitioners seeking consideration for the posts of Primary Teacher in Kendriya

Vidyaalaya Sangthan.

3. The representations were rejected on the ground that petitioners did not meet the requisite eligibility criteria as published for the said posts by the respondent.

4. Learned counsel for the petitioners submits that the petitioners satisfied the eligibility criteria as specified in the public notice advertising the posts and even qualified the written examination and thereafter were even called for an interview and after the interview was over, the rules of the game were changed and additional qualification was sought to be introduced by the respondent.

5. Learned counsel for the petitioners further submits that petitioners and other similarly situated individuals had filed petitions across the country before different Tribunals and several petitions stand allowed in favour of the candidates and said orders have already been implemented by the respondent and appointments given.

6. With regard to the finding of the Tribunal that there is delay on part of the petitioners in approaching the Tribunal, reliance is placed on a notice issued by the respondent on 31.08.2016 wherein the respondents had notified that there was litigation pending across the country and that they had deferred consideration of the representation till the litigation would be decided and thereafter the decision would be taken in terms of decision taken in those proceedings.

7. Learned counsel submits that the petitioners were awaiting the

decisions on their representations pursuant to the said notifications and as soon as their representations were rejected, they approached the Tribunal.

8. Per contra, learned counsel for the respondent submits that the petitioners were ineligible for consideration for the said posts and had made incorrect statements in their application forms that that they were duly qualified whereas they were not qualified for appointment.

9. Learned counsel for the respondent further submits that the application forms had to be submitted online and in the Drop Down Menu of the online forms, it was specifically mentioned that the essential requirement is B. El. Ed. and not B. Ed. and as such petitioners should have known that they were dis-qualified and they should not have applied.

10. With regard to the notification dated 31.08.2016, it is submitted that said notification was issued and is not in dispute.

11. An affidavit dated 26.04.2022 has been filed by the respondent conceding that the orders of the other Tribunals have been duly implemented and other candidates with whom petitioners have been claiming parity, have been appointment.

12. Subject advertisement was published by the respondent advertising for vacancies for the post of Primary Teachers in Kendriya Vidyaalaya Sangthan Schools in the year 2012-13.

13. The concerned posts is Post Code 51 for Primary Teacher and

the essential qualification as published are as under:-

“ESSENTIAL QUALIFICATION FOR POST CODE 51

Essential:

- i) *Senior Secondary School Certificate with 50% marks or Intermediate 50% marks or its equivalent;*
- ii) *Pass in the Central Teacher Eligibility Test (CTET) conducted by the CBSE in accordance with the Guidelines framed by the NCTE for the purpose.*
- iii) *Competence to teach through Hindi & English media.*

Desirable: Knowledge of Computer Applications.”

14. Pursuant to the advertisement, petitioners applied giving their educational qualification. Petitioners were issued admit cards for the written examination. They all appeared in the examination and qualified the same and thereafter were called for interview which was held on 08.04.2014.

15. After the interviews were over, the following notice was published by the respondent on 29.04.2014 wherein the following notice was published by the respondent:-

NOTICE

During the conduct of interview for the post of Primary Teachers, it has been observed that some of the candidates having professional qualification of B.Ed. and having passed CTET (Paper-I) also applied for the post of Primary Teacher in Kendriya Vidyalaya Sangathan.

As per the PORTAL for filling the information for online submission of applications for the post of Primary Teacher, the following professional qualification was mentioned in the DROP DOWN.

B. El. Ed/Diploma in Elementary Education

It is observed that the candidates having professional qualification of B.Ed. have submitted their online applications by giving wrong information in the column meant for professional qualification.

As such, the candidates not having the requisite professional qualification of B. El. Ed or Diploma in Elementary Education (02 years) and having professional qualification of B.Ed. and passed CTET (Paper-I) are NOT ELIGIBLE for the post of Primary Teacher.

Accordingly, such candidates will not be allowed to appear in the interview.

Sd/-Additional Commissioner (Admn.)

16. Challenging the said notice several candidates filed petitions across the country before different Tribunals.
17. Keeping in view the filing of the several petitions, the respondent issued the following notifications dated 31.08.2016.

Notification

“As per direction of the Hon’ble Information Commissioner, Central Information Commission, New Delhi dated 29.03.2010 in the case No. CIC/CC/A/2015/002869-SA of Mrs. Ruchi Pandey, a candidate for the post of PRT in KVS for the years 2012-13 and 2013-14, the final result of written examination and interview of those candidates who were declared ineligible

due to not having required professional qualification as per Advertisement and Recruitment Rules of PRT has been uploaded on KVS website.

These ineligible candidates were having B. Ed degree instead of E. El. Ed/JBT/D. Ed. The competent authority of KVS without prejudice had provisionally permitted these candidates having professional qualification of B. Ed. degree and qualified in CTET (Paper-I) examination conducted by CBSE in June, 2011 to appear in the interview subject of clarification from NCTE in this matter. Accordingly, NCTE vide letter dated 26 June 2014 has clarified that candidates with B. Ed degree are not eligible to be considered for appointment as PRT. As such, the case of candidates having professional qualification of B. Ed will be decided only after the outcome of various pending court cases in this matter.

This disclaimer is being issued in view of the Central Information Commission, New Delhi order dated 20.03.2016 aforesaid.

(S. VIJAYA KUMAR)

Joint Commissioner (Admn.)”

18. One such petition was decided by the Central Administrative Tribunal, Bangalore in Original Application No. 170/000869/2017 in favour of the candidate. Said decision became subject matter of a challenge before High Court of Karnataka at Bengaluru in W.P. (C) No. 22522/2018 (S-CAT) titled ‘*The Joint Commissioner Vs. Reena Tripathi*’.

19. The challenge of the respondent was dismissed by the High

Court of Karnataka noticing the contentions of the respondent therein that the candidate did not possess the essential qualification and the finding of the Tribunal that the candidate did possess the essential qualification. The qualification in issue in those proceedings was B. Ed as of the candidate *vis-à-vis* B. El. Ed as allegedly required by the respondent.

20. The Tribunal held that the candidate possessing B. Ed qualification did satisfy the requirement of the advertisement which is also the issue in these proceedings.

21. The High Court of Karnataka while rejecting the challenge of the respondent Kendriya Vidyaalaaya held that the order was passed keeping in mind the unique facts and circumstances of the case and shall not form as a precedent.

22. For the sake of completion, it may be noticed that further challenge to the Supreme Court against the order of High Court of Karnataka at Bengaluru was also unsuccessful and the respondents have implemented the order in so far as that candidate was concerned.

23. Thereafter it may be noticed that in similar facts and circumstances a petition was also allowed by the Central Administrative Tribunal, Ernakulam Bench being O.A. No. 180/00323/2015 titled '*Devi Priya GB Vs. Commissioner, Kendriya Vidyaalaaya Sangathan & Anr.*', vide its judgment dated 10.09.2018.

24. The contention of the respondent before the Ernakulam Bench

was also that the candidates were duly notified on the online Portal by way of a Drop Down Menu that the essential qualification was Bachelor of Elementary Education or Diploma in Elementary Education.

25. Said argument was duly considered by the Ernakulam Bench and negated. The Ernakulam Bench held that the only point of consideration was the legality and the question of fair-play involved in changing the eligibility norms in the midst of the recruitment process.

26. Considering and negating the said contention, Ernakulam Bench allowed the Original Application of the candidate and directed the respondent to take action. It is informed that said order has also been implemented by the respondent. Thereafter another challenge was made before the Central Administrative Tribunal, Jabalpur Bench in OA No. 200/00759/2014 which was also successful and the Tribunal vide judgment dated 03.01.2020 in '*Neha Sharma Vs. UOI & Ors.*', directed the respondent to consider the case of the applicant for the subject posts.

27. We are informed that even this order has been implemented by the respondent – Kendriya Vidyaalaya.

28. In view the fact that in respect of the identically situated individuals not only one but three different Tribunals have held that the rules of the game have been changed midway and that the qualification of the candidate i.e. B. Ed satisfied the advertisement published by the respondent and a mere notification in the Drop Down

Menu will not make any difference.

29. In our view, no discriminatory treatment can be accorded to the petitioners herein and they are also entitled to be treated at par with the other candidates in whose favour there were decisions of the coordinate benches of the Tribunal which decisions have admittedly been implanted by the respondents.

30. Now coming to the question of '*delay in approaching the Tribunal*', we may notice that the notification issued by the respondents on 31.08.2016 specifically stated that case of candidate having professional qualification of B. Ed will be decided only after the outcome of various pending court cases in this matter.

31. As noticed herein above, in the case of *Reena Tripathi (supra)*, which was taken up to the Supreme Court was finally decided in the year 2018. The order of the Ernakulam Bench is dated 01.05.2019 and that of the Jabalpur Bench, in *Neha Sharma Vs. UOI & Ors.* is dated 03.01.2020.

32. We may also notice that petitioners had approached the Tribunal in the first instance in the year 2019 by way of O.A. No. 1726/2019 which was disposed of on 04.12.2019 with a direction to the respondents to pass a speaking order, which speaking order was passed on 08.01.2020 which became subject matter of the subject Original Application. On this count also, we find that there is no delay on part of the petitioners in approaching the Tribunal.

33. Consequently, on both counts, we are of the view that the Tribunal has committed an error in rejecting the Original Application of the petitioners by the impugned order dated 20.08.2020. Consequently, the impugned order dated 20.08.2020 is set aside.

34. Respondents are directed to consider the cases of the petitioners in accordance with law and in case found suitable and otherwise fit (except for the qualification criteria as decided in favour of the petitioners herein) appropriate consequential order be passed in favour of the petitioners.

35. As the issue has been pending since the year 2014, we direct the respondents to expedite the consideration and take a final decision within a period of 8 weeks from today.

36. Petition is allowed in the above terms.

SANJEEV SACHDEVA, J

TUSHAR RAO GEDELA, J

NOVEMBER 14, 2022

‘rs’