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

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Judgment delivered on: 04.07.2022

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W.P. (C) 9403/2019

D. RAJA SHEKHAR

..... Petitioner

Versus

GOVERNMENT OF NCT OF DELHI
AND ORS.

.....Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Pardeep Kumar and Ms. Sanskriti, Advocates.

For the Respondent:

Mrs. Avnish Ahlawat, Standing Counsel, GNCTD (Services), Mr. N.K.Singh, Mrs. Tania Ahlawat, Mrs. Palak Rohmetra, Ms. Lavnya Kaushik and Ms. Aliza Alam, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 15.05.2019 passed by the Central Administrative Tribunal, Principal Bench whereby the original applications filed by the petitioner have been dismissed by the Tribunal following the judgment of the Supreme Court in *Subhash Chandra vs. DSSSB, (2009) 15 SCC 458*.

2. The Government of NCT of Delhi had issued a notification



dated 26.12.2009 inviting applications for selection of candidates to various posts *inter-alia* Technical Assistant, Lab Technician Group IV and Lab Assistants Group IV.

3. Petitioner who belonged to SC category furnished the requisite certificate issued by the State of Andhra Pradesh.

4. In the advertisement one post was reserved in the category of Technical Assistant and 5 posts in the category of Lab Technician Group IV for SC category candidates and 19 posts for Lab Assistants Group IV for SC candidates.

5. The selection process involved a preliminary examination and a final examination.

6. The petitioner participated in the selection process and was declared successful in the preliminary examination, however, the name of the petitioner did not figure in the final list of selected candidates pursuant to the final examination.

7. On a query by the petitioner under the Right to Information Act, petitioner was informed that his status as a SC candidate could not be accepted in the Delhi Administration and he was treated as an unreserved candidate.

8. As per the petitioner, petitioner had secured 98 marks. Learned counsel submits that for the post of Lab Technician, three candidates



who got selected in the SC category, had secured marks totalling 125, 106 and 85 each. As per the petitioner, since he had secured 98 marks in the SC category, in case the candidature of the petitioner was considered in the SC category, the petitioner should have been the third candidate to be selected. He submits that since petitioner was treated as unreserved candidate, petitioner was not held to be qualified.

9. Learned counsel further submits that there are vacant posts in SC category available and in case petition is allowed, petitioner would be appropriately adjusted towards one of the vacant posts without disturbing the candidates who have already been selected.

10. Learned counsel submits that for the post of Technical Assistant the candidate in the SC category who has been selected had secured only 84 marks which is lower than the marks secured by the petitioner.

11. Learned counsel submits that petitioner is in the first instance, liable to be considered for the post of Technical Assistant, and if not, then for the lower post of Lab Technician and Lab Assistant in that hierarchy.

12. Learned counsel submits that the Tribunal in the impugned order, has erred in relying on the judgment of *Subhash Chandra (Supra)* and taken a view contrary to the decision of the Full Bench of this Court in *Deepak Kumar and Ors vs. District and Sessions Judge*,



Delhi and Ors., (2012) 132 DRJ 169.

13. He further submits that in case of similarly situated candidates the respondents have already implemented the judgment in the case of *S. Pushpa & Ors. versus Sivachanmugavelu & Ors., 2005 (3) SCC 1* as also the judgment of the Full Bench of this Court in *Deepak Kumar (Supra)*.

14. Learned counsel further submits that the Constitution Bench of the Supreme Court in *Bir Singh vs. Delhi Jal Board & Ors., 2018 (10) SCC 312*, has upheld the judgment of the Full Bench of this Court in *Deepak Kumar (Supra)* and has also held that the law declared in *S. Pushpa's (Supra)* applies to NCT of Delhi and that *S. Pushpa (Supra)* cannot be ignored. Learned counsel submits that this position of law obtains as on today too.

15. Per contra, learned counsel for the respondents submits that there is an issue as to whether the judgment in the case of *Bir Singh (Supra)* would be retrospective or not and as such an application seeking clarification has been filed before the Supreme Court with regard to the period when the judgment in *Subhash Chandra (Supra)* was in force.

16. Be that as it may, the Tribunal by the impugned order has held as under:-

“4. The undisputed fact is that the applicant participated in the selection process for the post of TA and LT as a candidate



belonging to SC category. However, his certification was by an authority of State of Andhra Pradesh. The respondents recognized only such of the SC candidates who are certified by an authority of the Delhi Administration. The law in this regard is very clear. In S. Pushpa vs. Sivachanmugavelu & Ors. (2005) 3 SCC 1 the Hon'ble Supreme Court held that caste certificate issued to SC candidates by an authority in Union Territory (UT) will hold good for the appointments and admissions made in UT. In other words, it was ascribed as Pan India status. In Subhash Chandra's case (supra), Hon'ble Supreme Court has held that judgment in S. Pushpa's case (supra) is only 'obiter'. Learned counsel for applicant has also placed before us the recent judgment of Hon'ble Supreme Court in Bir Singh vs. Delhi Jal Board and Ors. Civil Appeal No. 1085/2013 wherein the Court dealt with this very aspect but the ultimate conclusions were with reference to the posts of DANICS and DANIPS. We do not find any general proposition covering the posts of lower category.

5. *Recently, a Full Bench of Hon'ble Delhi High Court in Deepak Kumar & ors. vs. District and Sessions Judge, Delhi & Ors. decided on 12.09.2012 held that a two judge bench which has decided the Subhash Chandra's case (supra) cannot declare the judgment in S. Pushpa's case (supra) decided by three judge bench of Hon'ble Supreme Court as a obiter and that law laid down by Hon'ble Supreme Court in S. Pushpa's*



case (supra) continues to hold the field. Once the Hon'ble Supreme Court has held in Subhash Chandra's case (supra) that the judgment in S. Pushpa's case (supra) is only obiter, there is no way except to follow the principle laid down therein.

6. *Though the Full Bench of Hon'ble Delhi High Court held albeit indirectly that the judgment of Subhash Chandra's case (supra) does not lay down the correct proposition of law, we do not subscribe to that view in the absence of judgment of Hon'ble Supreme Court on that very issue."*

17. The reasoning given by the Tribunal to non-suit the petitioner is solely that the Supreme Court in *Subhash Chandra (Supra)* has held that the judgment in *S. Pushpa (Supra)* was obiter. The judgment of the Constitution Bench of the Supreme Court in *Bir Singh (Supra)* had been placed before the Tribunal however, the Tribunal did not rely upon the same holding that the ultimate conclusions in the case of *Bir Singh (Supra)* were with reference to the posts of DANICS and DANIPS and opined that there was no general proposition covering the post of lower category.

18. Tribunal has declined to follow the dicta of the Full Bench of this Court on the ground that they did not subscribe to the view of the Full Bench in view of absence of the judgment of the Supreme Court on the said issue. This approach cannot be sustained.

19. We notice that the full bench of this Court had considered the



decision both in the case of *Subhash Chandra (Supra)* and *S. Pushpa (Supra)* and declared that the judgment in *S. Pushpa (Supra)* having been decided by three judge bench of the Supreme Court could not be declared as obiter by a two judge bench in *Subhash Chander (Supra)*.

20. Even otherwise the Constitution Bench of the Supreme Court in *Bir Singh (Supra)* has, after considering the judgments in *S. Pushpa (Supra)*, *Subhash Chandra (Supra)* and the full bench of this Court in *Deepak Kumar (Supra)*, categorically held that the ratio of *S. Pushpa (Supra)* would apply to the National Capital Territory of Delhi. The judgment of the full bench in *Deepak Kumar* has also been approved by the Constitution Bench in *Bir Singh (Supra)*.

21. It may further be noticed that this petition was initially listed on 19.09.2019 along with several other petitions inter-alia W.P(C) 5640/2018 titled *Government of NCT of Delhi vs. Raut Sunita Nivrattirao* and W.P(C) 10026/2018 titled *Govt of NCT of Delhi & Ors vs. Deepika* and other connected petitions. Said petitions were filed by the Government of NCT of Delhi and were dismissed by a Coordinate Bench of this Court by its order dated 05.12.2019 holding that the respondents herein had granted relief to many of the counterparts who had applied pursuant to the same advertisement.

22. It is an admitted position that there is no direction by the Supreme Court on the application clarifying the position as to whether *S. Pushpa (Supra)* is to apply prospectively or retrospectively. As of



now the law as declared by the Constitution Bench declaring that *S. Pushpa (Supra)* is to be applied specially to Delhi shall hold the field.

23. Keeping in view the facts and circumstances of the case and also the fact that the Constitution Bench of the Supreme Court has categorically held that the ratio of the judgment in *S. Pushpa (Supra)* applies to Government of NCT of Delhi, we are of the view that the impugned order passed by the Tribunal holding that neither *S. Pushpa* nor the Full Bench of this Court would apply cannot be sustained. Consequently, the impugned judgment of the Tribunal dismissing the O.A is set aside.

24. The respondents are accordingly directed to implement the ratio of the judgment of the Supreme Court in *S. Pushpa (Supra)* and give consequential benefits to the petitioner and send his dossiers to the user department for taking appropriate action in accordance with law.

25. Petition is allowed in the above terms. In view of the facts and circumstances, there shall be no order as to costs.

26. Order *dasti* under the signature of the Court Master.

SANJEEV SACHDEVA, J.

TUSHAR RAO GEDELA, J.

JULY 04, 2022/rk