



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

% Date of decision: August 8, 2023

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+ W.P.(C) 8945/2023, CM APPL. 33927/2023

GOVT OF NCT OF DELHI AND ORS. Petitioners

Through: Mrs. Avnish Ahlawat, Standing
Counsel, GNCTD (Services) with
Ms. Tania Ahlawat, Mr. Nitesh Kr.
Singh, Ms. Palak Rohmetra,
Ms. Laavanya Kaushik and
Ms. Aliza Alam, Advs.

versus

MS SEEMA KUMARI Respondent

Through: Mr. Arun Bhardwaj, Sr. Adv. with
Mr. Anmol Pandita, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this petition is to an order dated November 24, 2022 passed by the Central Administrative Tribunal, Principal Bench in OA 3212/2017, whereby the Tribunal has allowed the Original Application filed by the respondent herein by stating as under:

“8. We have heard the learned counsel for the parties and also gone through the documents on record. The basic facts are not disputed. The applicant possesses the degree of B.A. (Honours) with Hindi as the main subject and Political Science as a subsidiary subject. She responded to



the vacancy notice, referred to in the preceding paragraphs of this order, and was successful. Subsequently, an offer of appointment was issued to her which got cancelled vide order dated 04.08.2017 which is impugned in the present O.A. The Recruitment Rules provide that B.A. (Honours) with one of the subjects of Social Science would be the essential qualifications for appointment to the post of TGT Social Science. Further, eligibility is that the candidate for this position should have secured a minimum of 45% in aggregate in two of the subjects, one of which should be a Social Science subject. To that extent, we agree with the learned counsel for the respondents and the arguments put forth by him that the applicant does not possess the essential qualifications of B.A. (Honours) or B.A. Pass with Social Science as one of the elective subjects. The fact that the applicant had Political Science as a subsidiary subject in B.A. (Honours) would not come to her rescue because the marks obtained in Political Science have not been added to the aggregate. However, it is to be noted that at the relevant time the applicant, as per her own claim and as per the submissions made by the learned counsel for the applicant, possessed a degree of Post Graduation in Political Science. Thus, the fact of the applicant having done M.A. (Political Science) makes her eligible in terms of the basic principle that a higher degree leads to the presumption that the applicant or any such identically placed persons holds the essential qualification if such a qualification requires a lower degree in the relevant discipline. This principle has already adequately been discussed and established by the Hon'ble High Court of Delhi as referred to in the preceding paragraphs.

9. Moreover, the advertisement notice also clearly mentions that the requirement of a minimum of 45% marks in aggregate at graduation level shall be relaxable in case the candidate possesses a Post Graduate qualification in the relevant subject. This being so, the applicant by virtue of possessing a Post Graduation degree becomes eligible.



10. However, there is a twist in the tale. There is no Post Graduate degree of the applicant available on record nor did the applicant submit the same at the time of verification of the documents.

11. Learned counsel for the applicant has placed before us the marksheet of M.A. (Political Science) of the applicant along with the degree awarded to her by the Bundelkhand University, Jhansi.

12. We fail to understand as to what prevented the applicant from submitting the same before the appropriate authorities at the time of document verification. Had she done so, she would have saved herself the prolonged harassment of this long standing litigation.

13. Learned counsel for the applicant has clarified to us that the applicant was a victim of a theft wherein all her belongings including the degree and marksheets were stolen. An averment to this has been made in the O.A., though without any supporting documents.

14. Without going into this controversy at this stage, we are of the considered view that this O.A. can be disposed of with appropriate directions to the respondents to consider this Post Graduation degree of the applicant and if she is meeting all the other eligibility for which document verification has already been done she be given appointment to the post of TGT Social Science forthwith in OBC category.

15. Accordingly, such directions are issued to the competent authority of the respondents to be complied with within a period of four weeks from the date the applicant submits the relevant documents in the form of a copy of the Post Graduation degree along with the relevant marksheets. The applicant may submit the relevant documents as early as possible and preferably within a period of ten days from the date of receipt of a copy of this order

16. The applicant's appointment, if all her other documents and qualifications are found to be in order, shall be with



prospective effect i.e. with effect from the date such an appointment is made.

17. While disposing these directions it is made clear that the applicant's degree of B.A. (Honours) wherein she had Political Science only as subsidiary subject in B.A. (Honours) shall not be allowed to serve as an impediment to the applicant's appointment.

18. The O.A. is disposed of in the aforesaid terms. There shall be no order as to costs."

2. The submission of Mr. N.K. Singh, learned counsel appearing for the petitioners is that the Tribunal has erred in allowing the OA when admittedly the respondent was not eligible for being considered for appointment to the post of TGT (SST). According to him, the essential qualifications required in terms of the recruitment rules as well as the advertisement are that the candidate should have a Bachelors Degree (Hons. / Pass) from recognized University or equivalent, having secured at least 45% marks in aggregate, having studied the following ancillary / subsidiary subjects at a level not lower than prescribed as under:

1. Social Science – At least 2 of the following main subjects at graduation level: History / Political Science / Economics / Commerce / Geography / Agriculture / Horticulture.
2. Degree / Diploma in Training Education or SAV Certificate.



3. Working knowledge of Hindi at least up to a secondary level or equivalent on March 30, 2010.

3. A Corrigendum was issued as per which the word “elective” is defined as *“The candidate should have studied the subject concerned as mentioned in the RRs in all parts/ years of graduation. The elective word may also include main subject as practiced in different Universities”*.

4. According to him, the petitioner had appeared in the test, in which she had secured 83 marks and was shortlisted for the post, and the offer of appointment has been issued on March 8, 2017 with a direction to appear on March 15, 2017 for documents verification and completion of other process. She submitted her acceptance of offer of appointment and certificates of educational qualification of Class-X, Class-XII, B.A. and B.Ed Course. She submitted her Bachelor of Arts (Hons.) Degree in Hindi during 2007 in which the subsidiary papers are Political Science-I and II. In other words, the petitioner did not study Political Science in all the years of Graduation. She studied the same only in second year, but she failed. She again appeared in Political Science Papers I and II in third year and therefore she was ineligible for TGT (SST) as per the recruitment rules.

5. According to him, no doubt the respondent submitted the M.A. (Political Science) Degree from Bundelkhand University, Jhansi for appointment to the post of TGT (Social Science), but in any case, the said qualification could not have been taken into



consideration for the purpose of appointment as TGT (SST) for more than one reason, i.e., M.A. (Political Science) is not the essential qualification as the essential qualification necessarily means that a candidate must have studied graduation in the subject concerned. In other words, it is his submission, if the respondent had studied Graduation in Political Science, she would have been eligible for being considered for TGT (SST). Hindi is nowhere connected with the subject SST. Even if she has studied Political Science at the graduation level, the same was as a subsidiary subject and she had not studied the same in all three years as was the requirement.

6. Even otherwise, it is his plea that Post-Graduation qualification is only relevant for the purpose of relaxation if a candidate has not secured 45% marks in graduation and nothing more. In other words, the Post Graduation degree (of Political Science) would not be relevant for appointment as TGT (SST). In any case, the relaxation below 45% marks is not applicable in the case of the respondent as she has not studied graduation in any subject connected to SST. He has relied upon the Judgment of the Supreme Court in the case of *Ahmed Rather & Ors. vs. Sheikh Imtiyaz Ahmad & Ors. (2019) 2 SCC 404* to contend that the law is well settled inasmuch as where the rules and the advertisement mention essential qualifications, the same cannot be read to mean, that higher qualification pre-suppose acquiring lower / essential qualification. He seeks the prayers as made in the petition.



7. On the other hand, Mr. Arun Bhardwaj, learned Senior Counsel appearing for the respondent would justify the order passed by the Tribunal. According to him, the respondent has studied Political Science which is part of Social Science, at Post Graduation level and therefore is competent to teach the students as TGT (SST).

8. He states that an objective assessment needs to be made while determining the eligibility of a candidate for the post in question. He submits that the respondent has Post Graduation degree in Political Science and the advertisement / rules do not exclude a candidate having a higher qualification as ineligible. In this regard, he relies upon the judgment of the Supreme Court in the case of *Puneet Sharma & Ors. Etc. v. Himachal Pradesh State Electricity Board Ltd. & Anr. Etc., Civil Appeal No(s). 1318-1322/2021*, decided on April 7, 2021 in support of his contentions.

9. Having heard the learned counsel for the parties, the issue which arises for determination is whether the Tribunal is justified in allowing the OA. The answer to the same has to be in the negative. We have perused the recruitment rules / advertisement issued for the post in question, from which it is clear that the essential qualification is Bachelors Degree from a recognized University in the subject concerned. The requirement of Post Graduation is only to the extent of relaxing the requirement of 45% in Bachelors Degree. So, the plea of Mr. Bhardwaj in that regard, that the respondent possesses Post Graduation in Political Science



which is a social science and hence meets the eligibility condition, does not appeal to us.

10. Even the plea that a higher qualification must necessarily pre-suppose possession of a lower qualification of graduation in Political Science is also without any merit.

11. Mr. Bhardwaj has placed reliance on paragraph 37 of the judgment of the Supreme Court in the case of **Puneet Sharma & Ors. Etc. (supra)**, which reads as under:

“37. The considerations which weighed with this court in the previous decisions i.e. P.M. Latha, Yogesh Kumar, Anita (Supra) were quite different from the facts of this case. This court’s conclusions that the prescription of a specific qualification, excluding what is generally regarded as a higher qualification can apply to certain categories of posts. Thus, in Latha and Yogesh Kumar as well as Anita (supra) those possessing degrees or post-graduation or B.Ed. degrees, were not considered eligible for the post of primary or junior teacher. In a similar manner, for “Technician-III” or lower post, the equivalent qualification for the post of Junior Engineer i.e. diploma holders were deemed to have been excluded, in Zahoor Ahmed Rather (supra). This court is cognizant of the fact that in Anita as well as Zahoor (supra) the stipulation in Jyoti (supra) which enabled consideration of candidates with higher qualifications was deemed to be a distinguishing ground. No such stipulation exists in the HPSEB Rules. Yet, of material significance is the fact that the higher post of Assistant Engineer (next in hierarchy to Junior Engineer) has nearly 2/3rds (64%) promotional quota. Amongst these individuals, those who held degrees before appointment as a Junior Engineers are entitled for consideration in a separate and distinct sub-quota, provided they function as a Junior Engineer continuously for a prescribed period. This salient aspect cannot be



overlooked; it only shows the intent of the rule makers not to exclude degree holders from consideration for the lower post of Junior Engineers.”

12. The Supreme Court has held that if the intent of the rule makers is not to exclude degree holders (person with higher qualification) from consideration for the lower post of Junior Engineers, then such person cannot be said to be ineligible. Suffice to state, the said judgment has no applicability to the facts of this case inasmuch as, the rule / advertisement clearly stipulates the purpose of a person possessing Post Graduation in Political Science is only for relaxing the 45% marks required at the graduation level and not for any other purpose.

13. So, in that sense the respondent not having the required essential qualification in Social Science at graduation level, would not meet the eligibility criteria.

14. The plea of Mr. Bhardwaj that the respondent having studied in Political Science in graduation with two papers would also meet the eligibility is also not appealing. This we say so, because the candidate is required to have studied the subject as elective. In other words, the elective subject is that subject which is counted and included in the marks or the grading awarded to the students. Concedingly, the marks of Political Science as a subsidiary subject are not included in the marks or the grading awarded to the respondent.

15. So in that sense, having studied Political Science as a subsidiary subject would not help the case of the respondent.



16. Mr. Singh is justified in relying upon the judgment of the Supreme Court in the case of *North Delhi Municipal Corporation v. Kavinder and Ors., (2021) 11 SCC 353*, wherein the facts of the case are that an advertisement was issued for inviting applications for various posts in the Municipal Corporation of Delhi on a competitive basis. Among the posts that were advertised included the post of Labour Welfare Superintendent in the Municipal Corporation. The qualification and experience required for the post were prescribed as follows:

“2. An advertisement was issued for inviting applications for various posts in the Municipal Corporation of Delhi on a competitive basis. Among the posts that were advertised was that of a Labour Welfare Superintendent in the Municipal Corporation. The qualifications and experience required for the post were prescribed as follows:

“Essential Qualifications:

- (1) Degree of a recognised University or equivalent.*
- (2) Postgraduate Degree/Diploma in Social Work or Labour Welfare or Industrial Relations or Personnel Management or in any other allied subject of recognised University/institution or equivalent.*

Desirable:

- (1) Degree in Law of a recognised University or equivalent.*
- (2) Experience in the field in responsible capacity of Labour Welfare/Industrial Relations/Personnel Management and/or in allied fields.”*

17. The Delhi Subordinate Services Selection Board (DSSSB) held written examination. Even after the candidate had appeared



for the examination, the Board retained the authority to cancel her / his candidature during the recruitment process, if she / he failed to meet the said eligibility criteria. The first respondent therein applied for the post and appeared in the examination conducted by the Board. He was provisionally shortlisted for the Part II examination upon the declaration of the result of the Part I objective examination. He was, however, declared not to be eligible for selection.

18. He approached the Central Administrative Tribunal. The Tribunal by its judgment and order dated May 20, 2016 came to the conclusion that the first respondent fulfilled the conditions of eligibility. The first respondent holds a B.Sc. degree from Maharshi Dayanand University, Rohtak and thus, satisfied the first condition of eligibility. With regard to the second condition, the Tribunal noted that the first respondent did not claim to have a degree or diploma in Social Work or Labour Welfare, but that as a student of the MBA degree programme of Maharshi Dayanand University, Rohtak, he had studied certain subjects which had a bearing on the eligibility requirements. The Tribunal held, he had studied Human Resource Management and Industrial Relations in the course of the MBA degree programme. It was on this basis that the first respondent was held to be eligible and having passed the competitive examination, a direction was issued for his appointment to the post. This order of the Tribunal had been affirmed by this Court. The Supreme Court while allowing the



appeal and dismissing the OA filed by the respondent before the Tribunal has in paragraph 9 stated as under:

“9. The first respondent completed the MBA degree programme from Maharshi Dayanand University, Rohtak. The mark-sheets which have been relied upon by the first respondent indicate that during the course of the second semester, he studied Human Resource Management as a subject. In the fourth semester, the first respondent had a course in Industrial Relations and Labour Legislation. Studying these two subjects would not lead to the conclusion that the first respondent holds a postgraduate degree or diploma in the disciplines which have been specifically spelt out in the advertisement or in any allied subject. The MBA degree cannot be regarded as allied to a postgraduate degree or diploma in Social Work, Labour Welfare, Industrial Relations or Personnel Management. The recruitment was being made to the service of the appellant. The advertisement did not specifically provide how equivalence was to be established between a postgraduate degree/diploma in the subjects specified in the advertisement and a postgraduate degree/diploma in an allied subject. The appellant as an employer was best suited to judge whether the degree of the first respondent was in an allied subject. Unless this assessment was perverse or contrary to the requirements prescribed, the Tribunal had no reason to interfere. We are of the view that the Tribunal was manifestly in error in holding that the first respondent was qualified merely because he studied two subjects as a part of his MBA degree programme, namely, Human Resource Management and Industrial Relations and Labour Legislation. The High Court has simply affirmed the view of the Tribunal.”

19. The judgment of the Supreme Court is clearly applicable to the fact of this case. The Tribunal could not have directed that the Post Graduation degree of the respondent be considered as meeting



the eligibility criteria overlooking the rules and the advertisement itself. The only benefit a candidate could have accrued having studied Post Graduation (Political Science in the case of the respondent herein) is to the extent of relaxation of the requirement of 45% marks at graduation level and nothing more. In other words, possessing Post Graduation was not a requirement in terms of the rules and advertisement for making appointment to the post of TGT (SST). In fact, we find that the observations of the Tribunal in paragraph 17 which we have reproduced above, could not have been given by the Tribunal, contrary to the intent of the rule / advertisement.

20. Accordingly, the appeal is allowed and the order of the Tribunal dated November 24, 2022 is set aside.

21. The writ petition is disposed of.

CM APPL. 33927/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

AUGUST 08, 2023/jg/aky