



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 31, 2023

+ W.P.(C) 11504/2023 & CM APPL. 44781/2023

GOVT OF NCT OF DELHI AND ORS. Petitioners

Through: Mrs. Avnish Ahlawat, SC with
Ms. Tania Ahlawat, Mr. Nitesh
Kumar Singh, Ms. Aliza Alam,
Ms. Laavanya Kaushik and
Mr. Mohnish Sehrawat, Advs.

versus

POOJA DEVI Respondent

Through: Mr. Amarjit Singh Bedi, Mr. Varun
Chandiok and Ms. Riya Seth, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this petition by the Government of NCT of Delhi and its functionaries is to an order dated April 19, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. 983/2020, whereby the Tribunal has allowed the O.A. filed by the respondent herein by stating in paragraph 7 as under:-

“7. CONCLUSION

*7.1 In present case, the respondents have misapplied and misquoted the decision rendered in the case of **GNCT VS Snehlata** in facts of the present case. The facts of*



*Snehlata (supra) are quite distinguishable, as already quoted in detail herein above, it is only **Snehlata** case the order passed in the OA was set aside. The respondents ought to have considered the ratio of the case of **Neelam Rana** in W.P.(C) No.575/2013, which is squarely applicable in the case of the present applicant. Therefore, the deficiency memo dated 31.10.2019 and Office Order dated 19.8.2020 are quashed and set aside. The respondents are directed to offer the letter of appointment to the applicant within two months from the date of receipt of a certified copy of this Order. It is further made clear that the applicant shall only be entitled for consequential benefits on notional basis from the date of offer of appointment issued to her immediate junior. Also, the applicant shall be entitled to actual salary and benefits from date of her joining. It is also made clear that in absence of any vacancy; the applicant shall be adjusted against anticipated vacancy or future vacancy.*

7.2 The OA is allowed in aforesaid terms.

7.3 No order as to costs.”

2. The respondent / candidate had applied for appointment to the post of TGT (Punjabi- Female) in the Schools of Government of NCT of Delhi. Though, she had cleared the requisite examination, her candidature was rejected by the petitioners on the ground that she did not have the essential educational qualifications as provided in the vacancy notification published by the petitioners. As a result, the Deficiency Memo dated October 31, 2019 and the Office Order dated August 19, 2020, were issued by the petitioners, cancelling the candidature of the respondent.

3. Aggrieved by the issuance of the Deficiency Memo as well as the Office Order passed by the petitioners, the respondent preferred



the OA being 983/2020 before the Tribunal and sought the following reliefs:

“i. declare that applicant is eligible and qualified to be appointed to the post of TGT, Punjabi and accordingly, direct the respondents to issue appointment order in favour of the applicant for appointment to the post of TGT, Punjabi against Post-Code 143/17 qua Advt. No.04/17 under the Directorate of Education Govt. of N.C.T, Delhi along with all consequential benefits;

AND/OR

ii. pass such other order/s as may be deemed fit & proper.”

4. It was the case of the respondent before the Tribunal that she possesses a post-graduate degree in Punjabi and prior to that she had studied Punjabi as one of the elective subjects in her Graduation. It was also her case that before pursuing the Post Graduation in Punjabi, she had even obtained a degree of B.Ed, in which too, Punjabi was one of her subjects. Even during her schooling, the respondent had studied Punjabi as one of the subjects. So, it was pleaded before the Tribunal that she had the qualification, higher than the minimum educational qualification as required in the Recruitment Rules. It was also pleaded by the respondent that it is a settled position of law that having a higher qualification necessarily presupposes the acquisition of lower qualification. In other words, once the respondent had the post-graduate degree in Punjabi, it has to be presumed that the qualification of the Graduation, as mentioned in the Recruitment Rules, is also possessed by the respondent. It was stated that the candidature of the respondent was rejected by the petitioners by



relying upon the judgment of this Court in ***W.P.(C) 2514/2012***, titled as ***GNCT of Delhi & Ors. v. Snehlata, decided on August 07, 2013.***

5. It was also the case of the respondent that the aforesaid judgment of this Court supports the case of the respondent and not of the petitioners. On the other hand, it was the case of the petitioners before the Tribunal that the judgment of this Court in ***Snehlata (supra)*** is squarely applicable in the facts of the present case. The petitioners had also relied upon the judgment of the Supreme Court in the case of ***Zahoor Ahmad Rather & Ors. v. Mr. Sheikh Imtiyaz Ahmad & Ors., (2019) 2 SCC 404.*** It was also stated that though the petitioners had issued the Deficiency Memo, the respondent had filed the representation dated November 04, 2019 against the issuance of the Deficiency Memo and the respondent without awaiting the outcome of the decision of the department and neither impugning the said Deficiency Memo had filed the OA. It was also stated that even the cancellation order dated August 19, 2020 passed by the petitioners was not challenged before the Tribunal.

6. After analyzing the submissions of the petitioners and the respondent as well as the judgments relied upon by them, the Tribunal was of the view that the petitioners herein were not justified in relying upon the judgment of this Court in ***Snehlata (supra)*** to cancel the candidature of the respondent. Instead, it was held that the case of the respondent is squarely covered by the judgments of this Court in ***W.P.(C) 1520/2012 (Sachin Gupta)***, ***W.P.(C) 4483/2012 (Vikram Singh)***, ***W.P.(C) 4301/2012 (Nainika)*** and ***W.P.(C) 575/2013 (Neelam Rana).***



7. The Tribunal has also relied upon the judgment of the Supreme Court in *Civil Appeal No. 1318-1322/2021* titled as *Puneet Sharma and Ors. v. Himachal Pradesh State Electricity, decided on April 17, 2021*, to observe that when the respondent after passing her Graduation in 2009 had also studied Punjabi (Elective) subject of Graduation from 2009 to 2011, continuously for two years and thereafter she had passed Master's degree in Punjabi in the year 2014-2015, she is eligible to get the benefit of having studied Punjabi subject in her Graduation degree, and more so, when she has studied Punjabi, all throughout her schooling.

8. On the afore-said reasoning, the Tribunal quashed the Deficiency Memo as well as the Office Order dated August 19, 2020. Also, the petitioners were directed to offer the letter of appointment to the respondent within two months from the date of the receipt of the certified copy of the Tribunal's order and it was also made clear that the respondent shall be entitled for the consequential benefits on notional basis from the date of offer of appointment issued to her immediate junior and she was also directed to be given salary and benefits from the date of her joining.

9. Aggrieved by the findings given by the Tribunal in the impugned judgment, the petitioners have filed the present petition with the following submissions:-

SUBMISSIONS ON BEHALF OF THE PETITIONERS

10. It is the case of Mrs. Ahlawat, learned Standing Counsel appearing on behalf of the petitioners that after offering of appointment letter, the respondent was called for document



verification and during verification it was found that the she had not studied Punjabi during her Graduation (2007-2009) from Kurukshetra University. It is her submission that as per existing Recruitment Rules ('RR', for short), a candidate applying for the post of TGT (Punjabi-Female), should have studied Punjabi for at least two years as her subject in the course of BA / BA (Hons.) and since the respondent in the present case had not studied Punjabi in her Graduation and only studied Punjabi after completing her BA as an additional subject, the Deficiency Memo was issued to the respondent. As a consequence of this, the offer of appointment issued to the respondent was withdrawn and her candidature was cancelled vide order dated August 19, 2020.

11. It is also the case of Mrs. Ahlawat that the Tribunal has failed to appreciate that as per existing RRs, the respondent has not studied Punjabi during her Graduation and she has only studied Punjabi as an additional subject after completing her Graduation. The Tribunal has further failed to notice that having a Post Graduation degree, is not relevant in the present case and relaxation is only given to a candidate who has studied Punjabi in Post Graduation only when such candidate has scored less than 45% marks in Graduation, which in any case, is not the case of the respondent. In other words, if the respondent had completed her Graduation in B.A. (Hons.) Punjabi and secured less than 45% aggregate, then the factum of she possessing the post-graduate degree in Punjabi would have come to her rescue. However, it is not such a case here and therefore the direction passed by the Tribunal was not as per settled position of law.



12. It is further her case that the Tribunal has also failed to appreciate that the case of the respondent is not covered, by the Corrigendum dated March 30, 2010 as per which the term ‘elective’ is defined as the candidate having studied the subject concerned as mentioned in the RRs in all the parts / years of Graduation, as well as, by Corrigendum dated July 5, 2017, wherein, word ‘elective’ is defined as, the candidate to have studied the subject concerned, for at least two years during the Graduation course. So, it is clear that it was mandatory on the part of the respondent to have studied Punjabi as the main subject for at least two years in her Graduation. In other words, the respondent not having studied Punjabi in her Graduation and having studied Punjabi as an additional subject after Graduation would not make her eligible for appointment to the post of TGT (Punjabi-Female).

13. It is also her submission that the position of law that having a Post Graduation degree in a concerned subject will not subsume the requirement of having the Graduation in the concerned subject is no more *res integra* and has undergone a sea change. As per her, the present case is squarely covered by the judgment of the Supreme Court in the case of **Zahoor Ahmed Rather (supra)**, wherein the Supreme Court has held that where the Rules and the advertisement provide ‘essential qualifications’, the same cannot be read to mean ‘minimum qualification’. In other words, the higher qualification does not pre-suppose the acquisition of lower qualification. The Tribunal has also failed to appreciate the decision of the Supreme Court in the case of **North Delhi Municipal Corporation v. Kavinder and others**,



(2021) 11 SCC 353, wherein the Supreme Court has held that the equivalence of the qualification has to be decided by a competent authority. She has also relied upon the latest judgment passed by the Coordinate Bench of this Court in *GNCTD and Ors. v. Seema Kumari, W.P.(C) 8945/2023, decided on August 08, 2023*, to submit that the issue in hand is squarely covered by the judgment of this Court.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

14. Whereas it is the submission of Mr. Amarjit Singh Bedi, learned counsel appearing on behalf of the respondent that the Tribunal has rightly allowed the OA in favour of the respondent herein. It is his case that the petitioners have failed to explain as to how a person with higher qualification is less qualified and not suitable for teaching standard VI – X and while the same candidate is found suitable for teaching standard XI & XII. In series of judgments pertaining to the same issue, it has been held by this Court as well as by the Supreme Court, that a person holding a higher degree cannot be denied appointment on the ground of not having a lower degree. Even the petitioners have given appointments until year 2018-2019 by relying upon the same judgments. Besides, in 2023, the petitioners have even accepted the judicial verdicts qua issue involved in the present case and issued the gazette notification dated June 28, 2023, which was published on June 30, 2023, whereby they have amended the qualifications for TGT [Modern India Language, ('MIL', for short)] and included a stipulation that having a Master's degree is an



essential educational qualification for appointment to the post of TGT (MIL).

15. It is also his submission that the respondent has studied Punjabi right from the beginning, i.e., in middle and matriculation examination and thereafter as an elective subject for two years at Graduation level with similar syllabus as of a regular student. She also holds an M.A. degree in Punjabi. The advertisement in question merely requires that a candidate to have studied Punjabi as an elective subject. He submits that the facts in *Snehlata (supra)* are different from the present case as this Court had rejected the case of Snehlata as she had studied three papers of Sanskrit in one year. On the contrary, in the present case the respondent has pursued Punjabi for two years continuously with the same registration. He has relied upon the judgment of this Court in *Neelam Rana (supra)*, wherein, this Court had directed the appointment of the candidate to the post of TGT (English) on the basis of having an M.A. degree in English, despite the candidate concerned therein had not studied English subject at Graduation level. According to him, the judgment of Neelam Rana is squarely applicable in the present case. He submits that when the petitioners have accepted higher qualification in the past based on the judicial pronouncements, they are now estopped from refusing the appointment to the similarly situated candidates to the post of TGT (MIL).

16. It is his submission that in the case of *Rinku Singh v. Delhi Subordinate Services Selection Board (DSSSB) & Ors. in O.A. 2950/2016, decided on January 03, 2018*, it has been held that a



person having higher qualification than prescribed in the advertisement concerned could not be said to be ineligible for appointment to the post in question and accordingly, the candidate concerned therein was given appointment by the petitioners. Moreover, the candidates viz. Ms. Shrishti and Ms. Parminder Kaur, who had approached this Court as well as the Tribunal vide **W.P.(C) 10392/2016**, titled as **Srishti v. GNCTD and Ors., decided on May 23, 2017**, and **O.A. No.1949/2015**, respectively were appointed to the post of TGT (English) on the basis of their M.A. degree.

17. Even in the case of **Baboo Lal Sharma v. Government of NCT of Delhi, (2015) SCC OnLine Del 12848**, the Coordinate Bench of this Court has held that the acquisition of Post Graduation degree in Sanskrit by the petitioner therein renders him even better qualified to teach in the position than a person with a mere Graduation degree. Further, in the case of **Government of NCT of Delhi v. Monika Sharma, (2016) SCC OnLine Del 3694**, it has been held that a candidate possessing a higher degree in the same line cannot be denied consideration for selection even though, he does not hold the lower qualification. In the case of **Monika Sharma (supra)**, this Court had relied upon the full Bench judgment of High Court of Punjab & Haryana at Chandigarh in **Manjit Singh v. State of Punjab and another, CWP No. 451/2008, decided on February 05, 2010**, wherein it was held that a candidate having a higher degree in the same line cannot be denied consideration for selection on the ground of not holding the lower qualification. It is clear from the pronouncements of this Court that a candidate holding a higher degree in the same line



cannot be denied appointment merely because he does not have the lower degree. Even the petitioners have accepted this position of law, as in 2023 by a gazette notification dated June 28, 2023 published on June 30, 2023, they have amended the qualification for TGT (MIL) and have recognized that the qualification of having a Master's degree as part of essential educational qualification for appointment to the post of TGT (MIL). Reliance has been placed upon the following judgments to contend the same:-

- a. ***Chandrakant Thakur Vs. DSSSB (O.A. No. 1241/2019 decided on 10.10.2022)***
- b. ***Mahesh Kumar Vs. Directorate Medical, (2017) SCC Online Del 7603***

18. It is also his submission that the judgment in ***Seema Kumari (supra)*** does not apply to the facts of the present case as the judgment of Coordinate Bench of this Court in ***Neelam Rana (supra)*** has already held, that possessing a higher qualification must necessarily presuppose possession of a lower qualification and thus the judgment of ***Seema Kumari (supra)*** is *per incuriam*. It is also no longer *res integra* that in case of conflicting decisions of Coordinate Benches, the matter ought to be referred to a Larger Bench for final adjudication. He has also relied on the judgment of the Supreme Court in the case of ***Jyoti K.K. & Ors. v. Kerala Public Service Commission & Ors., (2010) 15 SCC 596***, to contend that if a person possesses a higher qualification in the same faculty, such a qualification presupposes the acquisition of the lower qualification prescribed for the post in concern. As per him, the judgment of the Supreme Court in



Puneet Sharma (supra), squarely applies to the facts of this case. Even the very clause, which stipulates that relaxation can be given to a candidate possessing a Post Graduate degree in one of the subjects of MIL in case a candidate has secured less than 45% aggregate marks in Graduation, has been in existence since 2000 and interpreted by this Court in **Neelam Rana (supra)** and **Shristi (supra)** to allow the appointment of the candidates possessing a higher qualification despite not possessing the lower qualification.

19. He submits that the judgment in **Zahoor Ahmed Rather (supra)** does not apply in the facts of the present case. Even judgment in **North Delhi Municipal Corporation (supra)**, which has been relied upon by this Court in **Seema Kumari (supra)** has no applicability to the facts of the present case. It is his submission that the petitioners have themselves amended the qualifications for TGT (MIL) by publishing the gazette notification on June 30, 2023, wherein they have prescribed Master's degree in one of the MIL, as acceptable for the appointment to the post of TGT (MIL). Even in the past, the petitioners had issued a circular dated July 09, 2015, wherein they have accepted Master's degree for the purpose of appointment to the post of TGT (MIL) and when the petitioners have accepted Master's degree for the purpose of appointment to the post of TGT (MIL), no prejudice shall be caused if the said standard is applied to the case of the respondent in the present writ petition.

20. He further submits that the petitioners have even permitted several candidates to serve as contractual employees who hold MA degree in respective subjects. Therefore, when such candidates are



qualified for teaching, how the likes of the respondent are deemed less qualified. It is an admitted fact that the petitioners do not have requisite number of candidates to fill up the vacancies and the same can be inferred from the issuance of notification dated July 15, 2022, whereby, the petitioners chose to proceed with filling up the vacant posts with less meritorious candidate, i.e., by candidates who did not even secure the minimum marks in the first part of entrance test and at the same time, the respondent has been denied the right to the said post, despite she being fully qualified and has already passed both parts of the eligibility test.

21. Even the advertisement for teaching children of higher classes, i.e., XI and XII, in case of MIL, the only requirement is that the candidate to have Post Graduation and B.Ed. So, on the basis of the aforesaid submissions, the respondent is seeking dismissal of the present petition filed by the petitioners.

ANALYSIS

22. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the respondent fulfills the eligibility conditions as laid down in the advertisement and RRs concerned herein for appointment to the post of TGT (Punjabi-Female).

23. It was the case of the respondent before the Tribunal as well as before this Court that she has studied Punjabi right from the beginning, i.e., in middle and matriculation examination and thereafter as an elective subject for two years at Graduation level with similar syllabus as of a regular student and holds the Master's degree



in Punjabi and as such, she is eligible to be appointed to the post concerned.

24. On the other hand, it was / is the case of the petitioners before the Tribunal and before this Court, that the respondent has not studied Punjabi during her Graduation and has only studied Punjabi as an additional subject that too after completing her Graduation and as such she does not fulfill the eligibility criteria, in terms of the advertisement, which was issued based on the RRs, for appointment to the post of TGT (Punjabi-Female).

25. We have already reproduced the conclusion arrived at by the Tribunal while allowing the O.A. In order to arrive at any decision in this writ petition, it has to be seen, whether possessing Master's degree in Punjabi by the petitioner, would conform to the essential educational qualifications as stipulated in the advertisement based on RRs. That apart, it is also to be seen, whether the fact of respondent having studied Punjabi as elective subject for two years, after her Graduation, would also meet the requirement of possessing the essential educational qualification. In order to decide these issues, it is relevant to reproduce the eligibility conditions as well as essential educational qualifications, as stipulated in the advertisement concerned herein, which is as follows:-

R.No	F.No.DE.3(36)/Notification/DR/ 2017/6442, 6443, 6444 & 6445		Dt. 13/12/2017
Post Code	Name of the posts	Vacancies	
139/17	TGT (Bengali)-Female	(Total-1) (UR-1)	
140/17	TGT (Hindi)-Male	(Total-27) (UR-143, OBC-87, SC-24, ST-17) including PH-8 (VI-4, OH-4)	
141/17	TGT (Hindi)-Female	(Total-15) (UR-83, OBC-16, SC-26, ST-18) including PH-5 (VI-2, OH-3)	
142/17	TGT (Punjabi)-Male	(Total-88) (UR-45, OBC-34, SC-12, ST-7) including PH-3 (VI-1, OH-2)	
143/17	TGT (Punjabi)-Female	(Total-126) (UR-59, OBC-38, SC-18, ST-11) including PH-4 (VI-2, OH-2)	
144/17	TGT (Sanskrit)-Male	(Total-144) (UR-57, OBC-39, SC-10, ST-8) including PH-3 (VI-1, OH-2)	
145/17	TGT (Sanskrit)-Female	(Total-148) (UR-51, OBC-69, SC-12, ST-8) including PH-4 (VI-2, OH-2)	
146/17	TGT (Urdu)-Male	(Total-78) (UR-39, OBC-20, SC-13, ST-6) including PH-2 (VI-1, OH-1)	
147/17	TGT (Urdu)-Female	(Total-125) (UR-63, OBC-38, SC-24, ST-10) including PH-4 (VI-2, OH-2)	
Educational Qualification:-		Essential:-	(i) B.A. (Honours) in one of the Modern Indian Languages (MIL) concerned or BA with MIL concerned as one of the Elective subjects from a recognized University having 45% marks in aggregate with one



	additional language or one school subject at Degree Level. OR Equivalent Oriental Degree in MIL, conferred from a recognized University having 45% marks in aggregate. OR (For appointment as Hindi Teachers only) Sahitya Bhatnagar of Hindi Sahitya Sammelan Prayaga having secured at least 45% marks in aggregate with English in Matriculation provided further that the requirement as to the minimum of 45% marks in the aggregate shall be relaxable in the case of (a) Candidate who possess a Post Graduate Qualification in MIL conferred from a recognized University (b) candidates belonging to SC/ST (c) Physically handicapped candidates. (ii) Degree/ Diploma in teaching OR Senior Anglo Vernacular Certificate (iii) "Knowledge of Hindi is essential". (iv) Should have qualified CTET from CBSE. N.B :- "The candidate should have studied the subject concerned as mentioned in the RR's for atleast 02 years during the Graduation course. The elective word may also include main subject as practiced in different Universities"
	Desirable:- NA
Experiences:-	Essential:- NA
	Desirable:- NA
Pay Scales:-	₹ 9300-34800 + Grade Pay 4600 Group: 'B' Non-gazetted

26. Having noted and perused the advertisement along with the RRs, it is clear that a candidate applying for the post of TGT (MIL), must have studied the subject concerned (in the present case 'Punjabi') for at least 2 years at the Graduation level and it is her own case that she has not studied Punjabi at her Graduation level and as such, she has not done her B.A. with Punjabi as an elective subject and only studied Punjabi for two years, that too, after completing her Graduation.

27. The plea of Mr. Bedi that the respondent having possessed the Master's degree in Punjabi, would subsume the requirement of having studied Punjabi, at the Graduation level, is not appealing, in view of the judgment of the Supreme Court in the case of **Zahoor Ahmad Rather (supra)**.

28. To further his argument, he has also relied upon the judgment of the Coordinate Bench of this Court in the case of **Baboo Lal**



Sharma (supra) by contending that in this case, it was held that the acquisition of a post-graduate degree in a special subject, renders a candidate even better qualified to teach, than a candidate having a mere graduate degree. It is to be noted that in view of the judgment of the Supreme Court in *Zahoor Ahmad Rather (supra)*, this argument of Mr. Bedi is totally misconceived. Similarly, reliance placed on other judgments, on similar lines, such as, judgments of this Court in *Monika Sharma (supra)*, *Neelam Rana (supra)*, *Mahesh Kumar (supra)*, *Shristi (supra)*, the Full Bench judgment of High Court of Punjab & Haryana at Chandigarh in *Manjit Singh (supra)*, and the judgments of the Supreme Court in *Jyoti K.K. (supra)* and *Puneet Sharma (supra)*, shall also have no applicability, in view of the authoritative pronouncement in *Zahoor Ahmad Rather (supra)*.

29. Suffice to state, though Mr. Bedi has heavily relied upon paragraphs 38 and 39 of the latest judgment of the Supreme Court in the case of *Puneet Sharma (supra)*, the said judgment is clearly distinguishable on facts, inasmuch as, in that judgment, the Supreme Court, on an interpretation of the relevant rules concerned therein i.e., HPSEB Rules, was of the view, that the intent of the rule makers therein, was not to exclude degree holders from consideration for the lower post of Junior Engineers. It was also observed on interpreting the HPSEB Rules, that the higher post of Assistant Engineer (next in hierarchy to Junior Engineer) had nearly 64% of the promotional quota and amongst such individuals (Junior Engineers), those who held degrees before appointment as a Junior Engineers, were also entitled for consideration in a separate and distinct sub-quota,



provided they function as a Junior Engineer continuously for a prescribed period.

30. It is also relevant to reproduce below, paragraphs 31 and 32 of the said judgment, which would make clear, that it was on those peculiar facts and circumstances and on an interpretation of the peculiar Rules concerned therein i.e., HPSEB Rules, the appeals preferred by the degree holders therein, were allowed:-

“31. This Court is conscious that the issue in question is whether the minimum qualification of a diploma in electrical or electronic engineering or other prescribed qualifications includes a degree in that discipline. However, the rules have to be considered as a whole. So viewed, the two sub-quotas are:

(1) 5% enabling those diploma holders who acquire degree qualifications during service as Junior Engineers; and

(2) 5% enabling among those who hold degrees before joining as Junior Engineers;

32. The latter (2) conclusively establishes that what the rule making authority undoubtedly had in mind was that degree holders too could compete for the position of JEs as individuals holding equivalent or higher qualifications. If such interpretation were not given, there would be no meaning in the 5% sub-quota set apart for those who were degree holders before joining as Junior Engineers – in terms of the recruitment rules as existing.”

31. Having said that, reliance placed by Mr. Bedi on the fact that the respondent has additionally done two years elective course in Punjabi, would also not meet the essential educational requirement of having studied Punjabi for two years at the Graduation level, for the reason that no such requirement has been stipulated in the



advertisement concerned herein. The advertisement as reproduced above, clearly stipulates that a person must have studied Punjabi for two years at the Graduation level and it is a conceded case here, that the respondent has not done her B.A. with Punjabi as an elective subject for at least two years. In that sense, the respondent does not fulfill the requirement of possessing essential educational qualification under the RRs.

32. As far as the plea of Mr. Bedi, that in terms of gazette notification dated June 28, 2023, the petitioners themselves have recognised the qualification of having a Master's degree as an essential educational qualification for appointment to the post of TGT (MIL), is concerned, the said plea, though looks appealing on a first blush but on a deeper consideration, it must be held that the aforementioned notification shall have a prospective effect. In other words, the notification shall not cover the cases, where the selection process has already been initiated and culminated in terms of the advertisement concerned herein. Otherwise, it would be injustice/discriminatory, qua those candidates, who may have possessed the Master's degree in Punjabi and had not applied.

33. It is also the plea of Mr. Bedi that the judgment of this Court in the case of *Seema Kumari (supra)*, has no applicability in the facts of this Case. We have seen the judgment, and we do not agree with the submission of Mr. Bedi. In the said judgment, two fold questions arose for the consideration. Firstly, whether possession of higher qualification of Post Graduation degree presupposes the acquisition of lower qualification of Graduation. Secondly, whether the respondent



therein, having studied Political Science in Graduation with two papers, would also meet the eligibility of studying political science at the Graduation level. Both the questions were answered in the negative by us. It was also stated that the only benefit a candidate could have accrued having studied Post Graduation, is to the extent of relaxation of the requirement of securing at least 45% marks at the Graduation level and nothing more and the same will not be construed to mean that a candidate having a Post Graduation in any of the MIL subject, shall be deemed to have a Graduation degree in the concerned MIL subject. Hence, the said judgment squarely covers the issue involved in the present case that too against the respondent.

34. Suffice to state, in the case of *North Delhi Municipal Corporation (supra)*, the Supreme Court has held that if an advertisement does not specifically provide as to how equivalence is to be established between two degrees, then an employer is best suited to judge whether a particular degree is equivalent to the degree which is required to be possessed by a candidate who applies for particular post.

35. It is to be noted here, though the petitioners had relied upon the judgment in the case of *Snehlata (supra)* while issuing the Deficiency Memo to the respondent, the same has been distinguished by the Tribunal by observing as under:-

“6.1 We must, for sake of addressing and understanding the issue, quote the deficiency memo No. DE-3(2)/DRC(EIII)/TGT(PUNJABI)/2019/2873 dated 31.10.2019 issued by the respondent is reproduced below.



“DEFICIENCY MEMO

During the course of document verification on 31/10/2019 in r/o Mr./Ms. POOJA DEVI (ROLL NO. 120214300094) for the post of TGT PUNJABI (POST CODE143/17) the following deficiency(s) was being found:

- (i) Punjabi subject is not studied as per RR in graduation*
- (ii) Provide the backside photocopy of graduation marksheet.*

You are thereafter directed to submit the requisite documents/clarification as mentioned above to DR Cell, Establishment-III Branch of Directorate of Education, Delhi within 15 days from the date of issue of this letter.”

Thereafter, the respondents have reiterated there stand in the subsequent office order dated 19.8.2020, the relevant para of the same reproduced below:-

“Whereas, the order of Hon’ble High Court in W.P.(C) 2514/2012, GNCT of Delhi Vs Snehlata, has given decision and rejected the contentions of the Respondent, & the likewise cases has already been rejected by the DSSSB also”

6.2 It is astonishing to observe that above quoted para in Office Order dated 19.8.2020 is quite contrary to what has been said in the Writ Petition No.2514/2012 GNCT vs. Snehlata in facts of the said case which cannot be applied to the facts of the present case. It is the facts of Sachin Gupta (W.P.(C) No.1520/2012), Vikram Singh (W.P.(C) No.4483/2012), Nainika (W.P.(C)4301/2012) and Neelam Rana (W.P.(C) No. 575/2013) (as narrated in para 47 to 53) ought to have been applied.”

(emphasis supplied)

36. As we have already held, in view of the judgment of the Supreme Court in the case of **Zahoor Ahmad Rather (supra)**, that the



plea of Mr. Bedi, that the possession of a higher qualification would subsume the possession of the lower qualification, as not tenable, we find the Tribunal has distinguished the judgment in **Zahoor Ahmad Rather (supra)** and instead relied upon the judgment of this Court in **Neelam Rana (supra)**, which held the position of law, that having a higher qualification will subsume the lower qualification but that was a judgment rendered much before the case of **Zahoor Ahmad Rather (supra)**, was decided. The latest judgment is binding on us under Article 141 of the Constitution.

37. Therefore, we are not in agreement with such a finding of the Tribunal, more so, when the Supreme Court in **Zahoor Ahmad Rather (supra)** has clearly stated as under:-

“26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] in the subsequent decision in Anita [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329] . The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a



particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench [Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the High Court was justified in reversing the judgment [Zahoor Ahmad Rather v. State of J&K, 2017 SCC OnLine J&K 936] of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision [Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the Division Bench.

27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] must be understood in the context of a specific statutory rule under which the



holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in *Jyoti K.K.* [*Jyoti K.K. v. Kerala Public Service Commission*, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned.”

(emphasis supplied)

38. Therefore, the case of ***Zahoor Ahmad Rather (supra)*** is squarely applicable to the facts of this case, as it is not the case of the respondent, that the advertisement or the statutory rules (RRs) concerned herein, stipulate that the possession of higher qualification shall also subsume the lower qualification, as it was the case in ***Jyoti K.K. (supra)***.

39. In view of our discussion above, we are of the view that the Tribunal has erred in allowing the O.A. in favour of the respondent, specifically in the manner, it has done in paragraph 7 of the impugned judgment, which we have already reproduced above. Suffice to state, that the Tribunal has held contrary to the law laid down by the Supreme Court regarding the issue involved in the present case. Thus, the impugned judgment dated April 19, 2023, of the Tribunal is set aside. No costs.

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Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J.

OCTOBER 31, 2023/ds