



2023: DMC: 7907-00



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

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Date of decision: November 01, 2023

+ W.P.(C) 13576/2023 & CM APPL. 53612/2023

UNION PUBLIC SERVICE COMMISSION

..... Petitioner

Through: Mr. R. V. Sinha, Mr. A. S. Sinha,
Mr. Amit Sinha and Ms. Nidhi Singh,
Advs.

versus

KAILASH PRASAD & ORS.

..... Respondents

Through: Mr. Ranjit Sharma and
Mr. Yogesh Sharma, Advs.
Mrs. Avnish Ahlawat, SC, GNCTD
(Services) with Mrs. Taniya Ahlawat,
Mr. Nitesh Kumar Singh,
Ms. Laavanya Kaushik, Ms. Aliza
Alam and Mr. Mohnish Sehrawat,
Adv.

+ W.P.(C) 13590/2023 & CM APPL. 53631/2023

UNION PUBLIC SERVICE COMMISSION

..... Petitioner

Through: Mr. R. V. Sinha, Mr. A. S. Sinha,
Mr. Amit Sinha and Ms. Nidhi Singh,
Adv.

versus

SAROJ DEVI MEENA & ORS.

..... Respondents

Through: Mr. Ankur Chhibber, Dr. Swaroop
George and Mr. Mobashshir Sarwar,
Adv. for R-1 & R-2



2023: DMC: 7907-00



Dr. Amit George, Dr. Swaroop George, Mr. Mobashshir Sarwar, Mr. Bharat Raydurgam and Mr. Shashwat Kabi, Advs. for R-3 & R-4
Mr. Ranjit Sharma and Mr. Yogesh Sharma, Advs.
Mr. Gaurav Dhingra, Adv. for R-5 & R-6/GNCTD/DoE

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

V. KAMESWAR RAO, J. (ORAL)

1. As these two petitions arise from a common order dated May 15, 2023, passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in Original Application No.3724/2022 ('OA', for short) both shall be disposed of by this order, whereby the Tribunal has directed the petitioner to allow the respondents to participate in the selection process.

2. The facts as noted from the record are, the post of Principal, under the Directorate of Education, Government of NCT of Delhi ('DoE, GNCTD', for short), is filled through two modes viz. promotion and direct recruitment in the ratio of 75:25. As per the recruitment rules, the essential qualification for the post of Principal is as follows:-

"Essential Qualifications:

(A) Educational:

(i) Master s Degree from a recognized University / Institute,

(ii) Bachelor of Education from a recognized university / institute; and

(B) Experience:



2023:0111:7907-DB



Ten years' experience of teaching (Vice Principal / Post Graduate Teacher/ Trained Graduate Teacher) in a recognized High School / Higher Secondary School / Senior Secondary School / Intermediate College.”

3. The petitioner herein, Union Public Service Commission ('UPSC', for short) issued an Indicative Advertisement No.07/2021 published in the Employment News on April 24, 2021 with closing date as May 13, 2021, inviting online applications from eligible and qualified candidates for filling up 363 posts of Principal under the DoE, GNCTD which is one of the respondents herein. The said advertisement was issued during Covid-19 period and therefore, on the very next day, the petitioner had withdrawn the same without opening Online Recruitment Application ('ORA', for short) module on its website with a notice that *“Presently No Recruitment Advertisement is Available”*.

4. The UPSC republished/reissued the advertisement dated April 24, 2021, on July 10, 2021, with the closing date of July 29, 2021, with a stipulation that, *“The eligibility criteria i.e. Age, Educational Qualification, Experience, etc. will be counted as on 13.05.2021 as this vacancy was originally scheduled to be launched with vacancy details on 24.04.2021 with the closing date 13.05.2021.”*

5. Both these petitions consist of four respondents, out of 50 persons / candidates, who were before the Tribunal in the OAs.3724/2022 & 173/2023. It was the case of the respondents that they have completed the experience criteria between May 13, 2021 and July 29, 2021, however, in terms of the stipulation mentioned in the advertisement dated July 10, 2021, they are not eligible to apply against



2023:0102:7907-00



the subject post of Principal and therefore, they approached the Tribunal by taking exception to the Advertisement No.07/2021, to the extent, it prescribes that the eligibility criteria, i.e., age, educational qualification, experience etc. will be counted on the closing date of May 13, 2021.

6. The plea of the respondents before the Tribunal was also that the UPSC, should determine eligibility, experience and qualification, on the closing date of July 29, 2021.

7. The interim order dated July 27, 2021, was passed, wherein the Tribunal directed the UPSC to accept the applications of the applicants before the Tribunal (respondents), if they are eligible, with reference to July 29, 2021 and if they are selected, further steps shall be deferred till the disposal of the O.A.

8. The case of the petitioner before the Tribunal was that the original advertisement was dated April 24, 2021 with closing date May 13, 2021, which was withdrawn in the wake of Covid-19 and republished / re-advertised on July 10, 2021 with closing date July 29, 2021, however, the eligibility criteria and other conditions, i.e., age, educational qualification, experience, etc., was kept as of May 13, 2021. As per advertisement published on July 10, 2021, wherein Clause 9(b) of the “instructions and additional information to the candidates for recruitment by selection” appended with the advertisement which stipulated that the eligibility criteria regarding experience would be the closing date for submitting ORA on the website has to be read in conjunction with clear depiction that eligibility criteria shall be seen as on May 13, 2021.



2023: DMC: 7907-00



9. The Tribunal allowed the O.As. by stating in paragraph 21 onwards as under:-

“21. After going through the advertisement in question, we are of the opinion that the same is self-contradictory. As stated above, in clause 9 (b), the respondent No.1 – UPSC made it clear that the date of determining eligibility of all candidates in every respect shall be the closing date for submitting the ORA on the website. So, in terms of the advertisement re-issued on 10.07.2021, the closing date for receiving the applications was 29.07.2021, thus the eligibility of the candidate with reference to the experience also ought to be 29.07.2021 in terms of clause 9 (a) referred to above. However, the respondent No.1 in re-issued advertisement dated 10.07.2021 submitted that though the closing date for making online applications would be 29.07.2021, but the eligibility and other conditions as mentioned in the earlier advertisement dated 24.04.2021 remain unchanged, thereby making it clear that the date of receipt of applications though extended, the eligibility criteria in respect of the experience was maintained as per the earlier advertisement. It is important to note that despite the extension of closing date, the respondent No.1 maintained the earlier position of the advertisement in the re-published advertisement.

22. In our view, the above facts make it clear that the advertisement issued by the respondent No.1 is self-contradictory so far as the closing date of eligibility criteria is concerned.

23. From the perusal of clause 9 (b) of the ‘instructions and additional information to candidates for recruitment by selection’ appended with the advertisement in question, it appears to be the policy of respondent No.1 that the eligibility criteria regarding age, qualification and experience would be the closing date for submitting the ORA on the website. We find logic in this stipulation and naturally if the date of online submission of applications is extended by republishing the advertisement and the



2023: DMC: 7907-00



applications are called afresh, then the eligibility criteria regarding experience could be as on the date of the closing date for submitting ORA on the website.

24. In the facts and circumstances of the case, we find merit in these O.As. They are accordingly disposed of with the following directions:

The respondent No.1 – UPSC is directed to declare the results of the applicants and take further appropriate and necessary action in accordance with law. It is made clear that since in terms of the interim directions the applicants were permitted to participate in the selection process, the observations made hereinabove will be confined to the applicants herein only.

25. All the pending M.As., if any, shall stand disposed of. There shall be no order as to costs.”

10. The submission of Mr. R.V. Sinha, learned counsel for the UPSC, is that the Tribunal has failed to interpret the clauses of the advertisement in its proper prospective / meaning inasmuch as the educational qualification, experience, age was to be seen as on May 13, 2021, and this aspect was made clear while re-issuing / re-publishing the advertisement on July 29, 2021. According to him, Clause 9(b) on which the reliance has been placed by the Tribunal to hold that eligibility of the candidate with reference to the experience need to be seen as on July 29, 2021 by overlooking the intent of the stipulation that eligibility shall be seen as on May 13, 2021. He states, the date of July 29, 2021 has to be read only in the context of last date of receipt of the applications and nothing more.

11. He stated that the advertisement dated July 10, 2021, was re-issued because of Covid-19, and the need was felt to presume the date



2023:0111:7907-DB



of eligibility as on May 13, 2021 as any change in date would cause prejudice.

12. On the other hand, Mr. Ranjit Sharma, appearing for the respondents, would justify the order of the Tribunal by stating that the Tribunal has rightly held that the date of May 13, 2021 is at variance at Clause 9(b), which stipulates that the date of determining the eligibility of all candidates in every respect shall be the closing date for submitting the online recruitment application on the website. He submitted that the respondents having been found successful in the selection process should be allowed to seek appointment as Principal and the order of the Tribunal need to be upheld.

13. Similar submissions have been made by Mr. Ankur Chhibber and Dr. Amit George, that the Tribunal in the impugned order has reconciled the two stipulations in the republished advertisement which on one hand states that the age, qualification and experience shall be seen on May 13, 2021 and on the other hand stated that under Clause 9(b), it would be the closing date of receipt of application which would be considered as the date for eligibility.

14. Dr. George has relied upon the judgment of the High Court of Jammu & Kashmir in the case of *Astha Sharma and Ors. v. State of J&K and Ors., 2018 SCC OnLine J&K 275* more specifically paragraphs 21 and 22 of the same wherein, the High Court has held as under:

“21. The third issue highlighted by the learned counsel for the petitioners is with regard to the eligibility of the candidates with reference to the cutoff date prescribed in the notice dated 28.02.2013 as 09.02.2013. It was stated



2023: DMC: 7907-00



that although the date of receipt of application forms was extended to 28.02.2013, yet the said date was extended only for purposes of receipt of application forms and did not extend the cut-off date for acquisition of the eligibility as regards basic qualification or the technical qualification. Reference in this regard becomes once again necessary to the advertisement notice and the extension notices, which have been issued by the Board. On a perusal of the notice dated 16.02.2013, it becomes clear that the said notice did specify that the date of receipt of application forms was extended to 28.02.2013, other terms and conditions were held to remain the same, as were notified vide advertisement notice No. 28.12.2012.

22. In my opinion, when we see in Clause 11 of the advertisement notice dated 28.12.2012, it can be seen that the cut-off date for determining the eligibility for the post was the last date for receipt of application forms. Notice dated 16.02.2013 has to be read in conjunction with clause 11 of the basic advertisement notice and therefore, once the cut-off date is extended, the eligibility date also gets extended simultaneously. This argument, which has been raised by the learned counsel for the petitioner deserves to be rejected as being without any legal force.”

15. Having heard the learned counsel for the parties, we are not impressed by the submissions made by learned counsel for the respondents/applicants for the reason that the issue need to be seen in the perspective that the initial advertisement dated April 24, 2021 had to be stalled because of the Covid-19. The said advertisement was re-issued / re-published on July 10, 2021, with a clear stipulation that the eligibility, age educational qualification, experience, etc. for the post shall be seen as on May 13, 2021. It is true that Clause 9(b), which reads, “*The date for determining the eligibility of all candidates in*



2023: DMC: 7907-00



every respect shall be the closing date for submitting the Online Recruitment Application on the website <http://www.upsconline.nic.in>.” do indicate the fact that the eligibility shall be determined on the closing date of receipt of application which according to respondents is July 29, 2021, but the date of May 13, 2021, cannot be overlooked. So, it means the issue cannot be seen from the aspect of Clause 9(b) alone. There is another aspect which is relevant, i.e., at the time of re-issuance of the advertisement, the UPSC has issued the following notice:-

“NOTICE

It is for information of all concerned that the recruitment process, for recruitment to (363) three hundred sixty three [208 Male & 155 Female] vacancies for the post of Principal in the Directorate of Education, Education Department, Government of NCT of Delhi advertised vide Commission’s Indicative Advertisement No.07/2021 published in the Employment News on 24-04-2021 with closing date as 13-05-2021, has now been reactivated. The original advertisement is reproduced below, earlier deactivated in the Month of April, 2021 the wake of sharp rise in the infected cases of covid-19 pandemic.

2. *The that Detailed Advertisement No.07/2021 for the aforesaid vacancies, along with instructions and additional information to the candidates for recruitment by selection has been uploaded on Commission’s website as well as ORA module on 10-07-2021.*

3. *The willing and eligible candidates may apply on-line on or before 29-07-2021 (Print out of the application may be taken by 23:59 hrs on 30-07-2021). However, the eligibility and other conditions as mentioned in the earlier Advertisement No.07/2021 published on 24-04-2021 for the vacancies remain unchanged.”*

(emphasis supplied)



2023: DMC: 7907-00



16. So, it is a case where the advertisement is being re-issued with the same conditions as mentioned in the earlier advertisement published on April 24, 2021, with one change of date of receipt of application as July 29, 2021.

17. Much thrust has been placed by Mr. Sharma, Mr. Chhibber and Dr. George on the words “*However, the eligibility and other conditions as mentioned in the earlier Advertisement No.07/2021 published on 24.04.2021 for the vacancies remain unchanged*” to contend that Clause 9(b) which is part of the earlier advertisement, clearly stipulate that it is on the last date of applications that eligibility shall be seen. But the said stipulation has to be seen in the context that the vacancies were crystallised on April 24, 2021 with the eligibility to be seen on May 13, 2021. In that sense, the UPSC has not included in the advertisement the vacancies which may have arisen after April 24, 2021, till July 10, 2021. It also mean that, by prescribing the eligibility as on May 13, 2021, the UPSC intended to protect the eligibility of the candidates, who were eligible on that date.

18. If the plea as canvassed by Mr. Sharma, Mr. Chhibber and Dr. George is to be accepted, it shall mean that, in a given case, a candidate who is within the age limit on May 13, 2021 may become overage by July 29, 2021, and unable to apply.

19. The intent of the UPSC appears to be as the initial advertisement could not be taken forward due to Covid-19, on re-advertisement, it is only the last date of receipt of applications is fixed as July 29, 2021 with other conditions of age, educational qualification, experience shall be as on May 13, 2021. Otherwise, it will cause



2023: DMC: 7907-00



prejudice to the candidates who though meeting eligibility as on May 13, 2021, loses the eligibility being overage etc.

20. Hence, we are of the view that, the Tribunal has clearly erred in construing the provision of 9(b) in the manner it did without going into the aspect that the advertisement issued was for the vacancies crystallised on April 24, 2021 and that the Clause 9(b) being part of the original advertisement, which stipulated the last date of receipt of application as May 13, 2021, which date has undergone change as July 29, 2021 but has no effect on the date of eligibility to be seen as on May 13, 2021.

21. Insofar as the judgment relied upon by Dr. George in ***Astha Sharma and Ors.(supra)*** is concerned, we have seen the judgment and the same is distinguishable on facts. In the said case, the High Court was concerned with the facts, wherein challenge was to a select list dated October 05, 2015 issued by the SSRB for the posts of Junior Physiotherapists. The advertisement notice No.03/2012 was issued on December 28, 2012 and the Clauses 11 and 15 of the notification was in the following manner:

*“11. The last date for the receipt of application forms as prescribed above shall be the cut off date for determining the eligibility to apply for the post. The age limit, however, is determinable with reference to the 1st of January, 2012. Any qualification/experience acquired thereafter shall not be taken into account for any purpose.
15. The candidate must produce the original qualification/category certificate before the Committee constituted for oral test or as and when the Board may call such documents so that their eligibility for participation in the interview is verified. Any candidate*



2023: DMC: 7907-00



who fails to produce the relevant original documents/testimonials on the scheduled date shall not be allowed to appear in the written/oral test.”

22. It appears that, although the last date prescribed for receipt of application forms was fixed up to February 09, 2013, the same stood extended twice, i.e., by virtue of notice dated February 11, 2013 the time was extended upto February 20, 2013 and finally by virtue of notice dated February 16, 2013 it was extended up to February 28, 2013. It was in the facts of that case, where the date of receipt of applications was extended to February 28, 2013, the Court had interpreted Clause 11 of the advertisement notice dated February 28, 2013, to mean that the cut-off date for determining the eligibility also gets extended to the last date of receipt of the application forms.

23. Whereas, in the case in hand, no doubt, clause 9(b) also stipulates that *“the date for determining the eligibility of all the candidates in every aspects shall be the closing date for submitting the Online Recruitment Application on the website”*, but the notification issued by the UPSC, in the following manner becomes relevant:



24. It is clear that, the date of eligibility for age, educational qualification, experience etc. continued to be May 13, 2021, and any tinkering shall effect the eligibility of the candidates, who otherwise meet the eligibility on May 13, 2021.



2023: DMC: 7907-00



25. Though, Mr. Sinha has relied upon the following judgments in support of his submissions, we are of the view that in view of our conclusion above, the same are not required to be dealt with:

- (i) ***Bedanga Talukdar v. Saifudaullah Khan & Ors., (2011) 12 SCC 85;***
- (ii) ***Dr. M. Vennila v. Tamil Nadu Public Service Commission, 2006 (3) CTC 449;***
- (iii) ***State of Uttar Pradesh v. Karunesh Kumar & Ors., 2022 SCC OnLine SC 1706;***
- (iv) ***Ashok Kumar & Anr. v. State of Bihar & Ors., (2017) 4 SCC 357;***
- (v) ***Zonal Manager, Bank of India, Zonal Office, Kochi & Ors. v. Aarya K. Babu & Anr., (2019) 8 SCC 587;***
- (vi) ***Yogesh Kumar & Ors. v. Govt. of NCT of Delhi & Ors., (2003) 3 SCC 548;***
- (vii) ***Hirandra Kumar v. High Court of Judicature at Allahabad & Anr., (2020) 17 SCC 401.***

26. In view of our above discussion, the writ petitions are allowed and the common order dated May 15, 2023, passed by the Tribunal in OA. 3724/2022 is set aside. No costs.

CM APPL. 53612/2023 IN W.P.(C) 13576/2023
CM APPL. 53631/2023 IN W.P.(C) 13590/2023

In view of the above, these applications are dismissed as infructuous.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 01, 2023/ds