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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA 137/2024 and CM APPL. 10070/2024, CM APPL. 10071/2024**

JAMIA MILLIA ISLAMIA

..... Appellant

Through: Mr. Pritish Sabharwal, Standing
Counsel for JMI with Ms. Pooja and
Mr. Sharad Pandey, Advocates

versus

MD DILWAR HUSSAIN

..... Respondent

Through: Mr. Aayush Agarwala and Ms.
Bhumika Sharma, Advocates

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Date of Decision: 19th February, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal filed under Clause X of the Letters Patent of the then High Court of Judicature at Lahore, which stands extended to the High Court of Delhi, impugns the judgment dated 06th February, 2024, wherein the learned Single Judge had set aside the decision of Jamia Millia Islamia University ('JMI/University') i.e., Appellant University to reject the Respondent's candidature for pursuing B.Ed. (Urdu) course for the academic year 2023-2024 and subsequently, directed the Appellant University to grant admission to the Respondent to B.Ed. (Urdu) programme in JMI for the academic year 2023-2024. Accordingly, the W.P. (C) 16575/2023 ('writ



petition') filed by the Respondent against the Appellant University was allowed.

2. The Respondent herein who suffers from blindness, had applied for admission to the B.Ed. (Urdu) programme conducted by the Appellant University. A written test and an interview were conducted as part of the selection process. The cut-off marks for candidates with disability and candidates under general category were set by the University at 57.75 and 86.50, respectively. The Respondent scored 106.75 marks in the said written exam and subsequently, appeared for the interview round. However, the Respondent was not selected as he was declared 'not eligible' without any explanation/reasons.

2.1. Aggrieved by the opaqueness in the decision making and non-intimation of the reason as to why he was not considered eligible for admission to the said course, the Respondent had filed the said writ petition seeking quashing of the rejection of candidature of the Respondent by the Appellant University herein for admission to B.Ed. (Urdu) programme for the academic year 2023-2024 and consequently, seeking a direction to the Appellant University to grant admission to the Respondent in the said course for the said academic year.

3. Learned counsel for the Appellant University states that the Respondent herein has applied for admission to B.Ed. (Urdu) programme but could only have chosen B.Ed. (History) programme, because he had pursued his graduation in B.A. (Hons.) History.

3.1. He states that since the Respondent has studied Urdu for two years/ four semesters during his graduation in B.A. (Hons.) History, therefore, the eligibility criteria stipulated in condition (ii) for admission to B.Ed.



programme, as prescribed in the JMI Prospectus 2023-2024 ('prospectus') is satisfied. However, there is a dispute regarding fulfilment of condition (iii) which reads as under: -

"Bachelor's (Hons.) Degree in any school teaching subject as shown in annexure-II will be considered as a main teaching subject."

He further states that the aforesaid conditions are not alternate conditions and each condition must be fulfilled/satisfied separately.

3.2. He states that the learned Single Judge has erroneously held that the Appellant University had raised a new ground orally that in view of the eligibility condition (iii), Respondent ought to have selected History as his main teaching subject and the same was not pleaded in its counter affidavit filed in the writ proceedings. In this regard, he contends that it was categorically stated in the paragraph nos. 4 and 8 of the said counter affidavit that it is mandatory for the prospective candidate to choose the main teaching subject as the subject, which has been studied/pursued in the graduation.

3.3. He states that finding by the learned Single Judge that instead of the indefinite article 'a', article 'the' should have been used in condition (iii), is a hyper-technical interpretation. He states that the intention of the Appellant University is that a prospective candidate, at the time of applying for the B.Ed. programme in JMI, can 'only' choose a main teaching subject, which has been pursued by the prospective candidate in its graduation degree as well.

4. In reply, learned counsel for the Respondent states that the University wants to check the proficiency of the prospective candidate in the selected teaching subject. He states that there is a reason why condition (ii) comes



before condition (iii). He states that condition (ii) checks the proficiency of the prospective candidate, whereas condition (iii) provides convenience, that if a prospective candidate happened to have an Hons. degree in a particular subject, the University will treat it as a main subject and no further inquiry/scrutiny will be required. He states that a plain reading of the prospectus would show that if a prospective candidate falls under condition (iii) then he/she is exempted from condition (ii). He further states that points (iii) and (iv) are not conditions but these are clarifications to condition (ii), as they are only facilitating the discovery of the fact whether a candidate is proficient or not in the subject he/she has applied for admission in B.Ed. programme.

4.1. In this regard, he states that the prospectus contemplates that the first way in selecting the teaching subject is whether the applicant has studied a subject for two years/ four semesters in graduation. The other way is that the applicant has an Hons. degree in a subject and therefore he/she is proficient in that subject. He states that in the present case, the Respondent has pursued his graduation in B.A. (Hons.) History programme and the fact that the Respondent has studied Urdu for two years / four semesters in graduation has not been disputed by the University. He contends that it is not possible for the University to admit that the Respondent is proficient in both subjects i.e., Urdu and History and then compel the Respondent to pursue B.Ed. (History) programme and not to pursue B.Ed. (Urdu) programme. He states that as per the conditions stipulated in the prospectus, it is permissible for the Respondent to study a subject other than in which the Respondent has studied his bachelors, otherwise condition (ii) is rendered redundant.

4.2. He further states that there are three groups in which a prospective



candidate can choose his/her subject, the first being Language group, second being Social Science group and third being Science group. Therefore, there is no requirement, that the Respondent has studied both History and Urdu. Urdu, in itself, is a subject in B.Ed. programme and that is why, it has been separately identified in the Language group.

4.3. He states that the Appellant University has continuously innovated its stand in the writ proceedings and in present proceedings as well. At first instance, the Respondent was never informed as to why he was not eligible to admission to the B.Ed. (Urdu) programme and later on, the University in paragraph no. 8 of its counter affidavit filed in the writ petition has taken a plea that the Respondent failed to study the main teaching subject for two years or four semesters in the graduation degree, as the graduation degree i.e., B.A. (Hons.) History programme fails to include any subject of Urdu i.e. 'main teaching subject'. Thereafter, the Appellant in its oral arguments before the learned Single Judge contends that even though the Respondent has studied Urdu for two years or four semesters during his graduation degree but has a degree in History, yet the Respondent is compelled to study B.Ed. (History) programme only. He further states that the University, throughout the entire admission process from issuance of admit card, writing exam and calling for interview, never objected to the Respondent's application selecting to study B.Ed. (Urdu) programme.

5. We have considered the submissions of the learned counsel for the parties and perused the record.

6. The eligibility conditions for the B.Ed. programme in JMI reads as under: -

“B.Ed.



Eligibility: (i) Bachelor's Degree in any School teaching subject with not less than 50% marks.

(OR)

Bachelor's Degree in any school teaching subject with not less than 45% marks and minimum 50% marks in Master's Degree examination in the same school teaching subject in which the candidate has applied.

ii) The main school teaching subject in which the candidate is applying should have been studied in two years/Four Semesters in graduation. Teaching Subjects are shown in annexure-II, under the heading "Breakup of seats under different school teaching subjects for B.Ed. Programme".

iii) Bachelor's (Hons.) Degree in any school teaching subject as shown in annexure-II will be considered as a main teaching subject.

iv) B.com {Hons.} alone are not eligible. M.com are eligible to opt. for commerce as a main teaching subject.

Note: (i) Department will allot **second** teaching subject to all admitted students from amongst the subjects which the candidate has studied during graduation. So, all the candidate applying for B.Ed. must have studied at least two teaching subjects in graduation.

(ii) We prepare Teachers in 17 school teaching subjects only as shown in annexure-II so, all applicants should have studied the subject in which they are applying in the same name as shown in the annexure-II. The candidates having bachelor's/Master Degree in subjects other than school subjects as shown in annexure -II are not eligible."

(Emphasis Supplied)

7. The Appellant University has conceded that the Respondent satisfies the eligibility condition (ii) and therefore, the initial objection raised in the counter affidavit, basis condition (ii), in the writ proceedings has not been pressed in this appeal. The Appellant University has also not disputed the proficiency of the Respondent in Urdu language, the main teaching subject selected by the Respondent.

8. In the present appeal, the objection of the Appellant University to the eligibility of the Respondent is premised on non-fulfilment of eligibility condition (iii). The learned Single Judge has rejected the said objection of



the University by detailed reasoning, which reads as under: -

"16. I have, for satisfying myself, considered whether the petitioner's candidature for admission to the B.Ed (Urdu) course could have been rejected on the ground that he was in breach of eligibility condition (iii).

*17. To my understanding, the stipulation in condition (iii) below the eligibility conditions governing admission to the B.Ed course merely stipulates that a Bachelor's (Hons) degree in a school teaching subject shown in Annexure II will be considered as a main teaching subject. **The use of the indefinite article "a" in this clause is significant. The clause does not say that the Bachelor's (Hons) degree in the school teaching subject shown in Annexure II would be considered as the main teaching subject.***

*18. Plainly read, therefore, eligibility condition (iii) merely entitles the subject in which the Bachelor 's (Hons.) degree was obtained by the candidate to be selected by him as his main teaching subject. It does not act as a fetter to the candidate choosing any other subject as his main teaching subject. **There is no stipulation, either express or implied, in the eligibility conditions for admission to the B.Ed course which states what Mr. Sabharwal would seek to contend, which is that the candidate had necessarily to select, as his main teaching subject for his B.Ed course, the subject in which he had obtained his Bachelors (Hons.) degree.** Had the Prospectus so intended, it should have plainly said so. It has not, however. **There is no prescription that the candidate has to chose, as his main teaching subject for his B.Ed course, the subject in which he had obtained his graduation degree.** At the cost of repetition, condition (iii) only states that the subject in which the candidate obtained his Bachelor's (Hons) degree was also eligible to be considered as a main teaching subject. In the event that the candidate did not choose to seek admission to the B.Ed programme in the JMI in the subject in the main subject in which the candidate had pursued his Bachelor's (Hons.) Course - as in the present case - the candidate would nonetheless be entitled and eligible to apply and be admitted to the B.Ed course, subject, of course, to his satisfying eligibility condition (ii), which was that he had studied the subject in which he desired to pursue the B.Ed course in two years/four semesters in graduation.*

*19. Assuming, arguendo, that the intention of the prospectus was to require the aspiring B.Ed candidate to necessarily select, as his main teaching subject, the main subject in which he had undertaken his graduation, there was nothing which prevented the JMI from saying so. At the very least, the eligibility conditions are ambiguous on this score. **The petitioner has weathered a written examination, in which he scored much more than the***



cut off marks, and has also undertaken the interview. His proficiency in Urdu does not, therefore, appear to be disputable. The benefit of the ambiguity in the stipulated eligibility conditions - assuming the stand of the JMI in the Court is at all acceptable - has, in such circumstances, necessarily to enure to the benefit of the petitioner.

Eligibility of the petitioner

20. The petitioner undisputedly had studied Urdu for the 2 year/4 semesters of his B.A. (Hons) History graduation course. This is apparent from his marksheet. In these circumstances, the petitioner entirely satisfied the eligibility condition (ii) contained in the JMI prospects for admission to the B.Ed course. As already noted, Mr. Sabharwal himself conceded this position.

21. In as much as there is no stipulation in the JMI prospectus, which required the candidate mandatorily to select only the main subject in which he had obtained his Bachelor's (Hons.) degree as his main teaching subject for his B.Ed course, the denial of admission to the petitioner cannot be sought to be justified by resort to eligibility condition (iii) in the JMI prospectus.

22. That apart, at the cost of repetition, this is not the ground on which, the JMI has chosen, in his counter-affidavit, to justify rejection of the petitioner's candidature for admission to the B.Ed (Urdu) course.

23. The decision to reject the petitioner's candidature for admission to the B.Ed (Hons) Urdu course cannot, therefore, sustain on facts or in law.”

(Emphasis Supplied)

9. We are in agreement with the reasons recorded by the learned Single Judge for rejecting the interpretation of the Appellant University as regards mandatory nature eligibility condition (iii). This is additionally for the reason that as rightly contended by the Respondent that if the interpretation accorded by the Appellant University to eligibility condition (iii) is accepted than the fulfilment of the eligibility condition (ii) is rendered otiose. Even during the course of arguments, learned counsel for the Appellant University was unable to illustrate the ‘peculiar facts’ in which a candidate would be eligible for admission in B.Ed. programme on fulfilment of condition (ii).



This inability of the Appellant University is, in fact, evidence of the fact that the condition (ii) is independent of condition (iii) and therefore, if the candidate satisfies the criteria in either of these conditions i.e., (ii) or (iii) he/she is entitled to admission for the B.Ed. course in the selected main teaching subject.

10. We also find merit in the submission of the Respondent that the objection, if any, to the selection of the main teaching subject by Respondent could have been pointed out by the Appellant University to the Respondent right at the beginning, when the application form was received and processed. The error/ineligibility, if any, in selection of subject could have been pointed out to the Respondent, enabling him to make an appropriate selection, if necessary. Admittedly, the Respondent had graduated with degree in B.A. (Hons.) History and he, therefore, had an option (at the outset) to select History as his 'main teaching subject' from Annexure-II to the prospectus. However, by not raising any objection at the initial stage; processing the application and permitting the Respondent to write the entrance test, the Appellant University led the Respondent to believe that he had an option to select Urdu as his main teaching subject as per condition (ii).

11. The learned counsel for the Appellant University had no explanation for the action of the Appellant University in accepting and processing the application of the Respondent in the first instance. By not raising any such objection at the initial stage, the Appellant University has deprived the Respondent of a fair chance of making changes to his selection of main teaching subject and the belated rejection by the Appellant University is to the detriment of the Respondent, who has otherwise proved himself to be a



meritorious candidate. The Respondent has sufficiently proved his eligibility to be granted admission considering the fact that he has scored 106.75 marks in the written examination, which is higher than the cut-off marks, for person with disability as well as general category.

12. We, accordingly, find no merit in the present appeal and the same is dismissed along with pending applications.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 19, 2024/rhc/MG

Click here to check corrigendum, if any