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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 31.07.2024+ W.P.(C) 7978/2024 & CM APPL. 32921/2024

GOVT OF NCT OF DELHI & ANR.

.....Petitioners

Through: Mr. Yeeshu Jain, ASC with Ms. Jyoti Tyagi, Mr. Hitanshu Mishra and Mr. Rachit Gupta, Advocates.

versus

BHANUPRIYA SHOKEEN

.....Respondent

Through: Mr. Arun Khatri and Mr. Sahil Khurana, Advocates.

CORAM:**HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE GIRISH KATHPALIA****J U D G M E N T (O R A L)**

1. The present petition under Article 226 of the Constitution of India has been filed on behalf of the petitioners on the following grounds:

a) Because The Ld. CAT has passed the impugned judgment on surmises and conjectures as if the present OA was to be allowed on the basis of judgment passed in W.P (C) No. 14473/2005 decided on 5.9. 2005 , there was no occasion to keep the said OA tossing since 2014 when the respondent first approached it.

b) Because the Ld. CA T has failed to appreciate that the respondent has not challenged the condition of studying three years in graduation as was stipulated in the original Advertisement.

c) Because the Ld. CAT has failed to appreciate that any relaxation introduced vide Corrigendum dated 5.7.2017 was introduced subsequent to the closure of



the recruitment process for the Post Code of year 2012 and 2013 and also it was made applicable prospectively.

d) Because the Ld. CAT has failed to appreciate that dc-hors the clarification dated 1.6.2018 regarding the applicability of the Corrigendum dated 5.7.2017, the benefit cannot be granted to the respondent alone.

e) Because the Ld. CAT has failed to appreciate that Advertisement specifically provided that the candidate should have studied the subject concerned as mentioned in the RRs for at-least two years during the graduation course. The elective word may also include main subject as practiced in different Universities, respondent has not studied English in 2nd year of her graduation.

f) Because the Ld. CAT has failed to appreciate that if the Corrigendum dated 5.7.2017 is to be made applicable retrospectively, then entire merit list of all the post codes have to be revised which is highly impractical at this stage because the selected candidates have already joined the services and unfilled vacancies were returned on 3.4.2017 to the DoE along-with dossiers”

2. In the years 2012 and 2013, the petitioners herein invited applications for recruitment to various posts of Trained Graduate Teachers (TGT) in different subjects. The respondent herein, being eligible for the post of TGT (English), applied for the same as an OBC candidate for both the years. The petitioners conducted a common examination in which the respondent participated in the written examination held on 28.12.2014 under Roll No.43000130 and qualified the same. However, the petitioners vide Rejection Notice No.39 dated 24.06.2016 rejected her candidature on the ground that she did not study English subject in 2nd year of her graduation.



3. The case of the respondent before the learned Tribunal was that the act of the petitioners is in violation of the Recruitment Rules (RRs). The relevant portion of the RR for the post of TGT/TGT(MIL) reads as under:

“1. BA. with not less than 45% marks in aggregate with Hindi or Modern Indian Language concerned as an elective subject or its equivalent oriental degree with not less than 45% marks in aggregate in the Modern Indian language concerned (condition of 45% marks relaxable in the case of candidates of SC/ST and Teachers of Primary Schools under the Loco Bodies of the Union Territory of Delhi....

2. Degree/ Diploma in Training/Education”

4. The respondent submitted before the Ld. Tribunal that it is nowhere mentioned in the RRs that one should have studied the subject concerned in all the three years of graduation. Since the respondent fulfilled the eligibility conditions as she had passed B.A. Degree with English as an Elective/Subsidiary subject and also done post-graduation in English, the imposition of alleged condition of studying English in all the three years of graduation in the advertisement, that too, after the conduct of selection process was illegal, arbitrary, against the RRs and not tenable in eyes of law.

5. The case of the petitioners before this Court is that in the Advertisement, it is specifically mentioned that the eligibility shall be treated as per the RRs. However, it is admitted by the petitioners that the RRs were not attached or described with the Advertisement for the post-in-question. In that sense if there is no specific mention of the RRs and the eligibility criteria in RRs, in such a case, how it is expected from a candidate to know about the eligibility criteria.



6. Admittedly, as on the cut-off date, the respondent possesses the essential qualification i.e., B.A. (Programme) with English subject studied in 1st and 3rd year of graduation and secured 59 & 60 marks, respectively. The respondent also completed B.Ed. which is a professional degree course for teachers and that too with English as one of the subjects, i.e., Teaching of English, over and above the prescribed essential qualification.

7. It is pertinent to mention here that during the course of arguments, learned counsel for petitioners, in support of his submissions, has relied upon the corrigendum dated 05.07.2017 issued by the petitioners, however, the said corrigendum was issued after 04 years of notification of services. Thus, the said corrigendum cannot come to the rescue of the petitioners who have not specifically mentioned in the Advertisement as to what are the RRs.

8. Since the issue raised before the learned Central Administrative Tribunal has already been adjudicated in the case of **Sh. Ram Prakash Pathak vs. The Director of Education & Ors.**, in OA No.1039/2004 dated 23.02.2005, which has been followed by the learned Tribunal thereafter in various judicial pronouncements, and based on the same, the OA was allowed. Accordingly, in the light of the decision in **Sh. Ram Prakash Pathak** (supra), the impugned orders dated 29.08.2018 and 24.06.2016 were quashed.

9. Consequently, the petitioners were directed to treat the respondent as qualified for the post of TGT (English) and offer her letter of appointment, if she is otherwise found eligible for the said post, from the date her immediate junior was appointed. It was further directed that she would also be entitled to all consequential benefits on notional basis, however, on actual basis from



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the date she joins the post. Further, it was made clear that in the absence of any vacancy, the respondent shall be adjusted against the anticipated or future vacancies.

10. In view of the above discussion, we find no perversity and infirmity in the order passed by the learned Central Administrative Tribunal and therefore, find no merit in the present petition.

11. Accordingly, the present petition as well as all the pending applications stand dismissed.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 31, 2024/ry