



2024:DHC:8586



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 23rd October, 2024

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W.P.(C) 11849/2024

NAVNEET

.....Petitioner

Through: Mr. Ranjit Sharma, Advocate.

versus

UNION OF INDIA AND ANR

.....Respondents

Through: Ms. Shubhra Parashar, Senior Panel Counsel with Mr. Virender Pratap Singh Charak and Mr. Pushpender Pratap Singh, Advocates for R-1/UOI.

Mr. Amartya A. Sharan, Advocate for R-2/NESTS

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)****CM APPL. 49319/2024**

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 11849/2024 and CM APPL. 49318/2024

3. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India laying a challenge to the decision of National Education Society for Tribal Students ('NESTS') communicated to the Petitioner vide e-mail dated 24.06.2024, whereby candidature of the Petitioner for appointment to the post of Trained Graduate Teacher (Mathematics) ['TGT (Maths)'] in Eklavya Model Residential School

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(‘EMRS’) was cancelled on ground of lack of essential educational qualification. Direction is sought to NESTS to appoint the Petitioner to the post of TGT (Maths) pursuant to offers of appointment dated 02.03.2024 and 03.06.2024 with all consequential benefits.

4. Genesis of this writ petition lies in an Advertisement published by NESTS in 2023 for conducting recruitment to teaching and non-teaching posts in EMRSs pursuant to a decision to hold EMRS-Staff Selection Exam (ESSE), 2023 for filling up 6329 vacancies. As per the ‘*Information Bulletin & Guidelines for filling of online application form for EMRS-Staff Selection Exam (ESSE), 2023*’, a total of 686 vacancies were advertised for the post of TGT (Maths) and the educational qualifications prescribed were as follows:-

“(i) Bachelors Degree in Mathematics along with Physics and any one of the following subjects: Chemistry, Electronics, Computer Science, Statistics.

(ii) In case of such Universities which provide for only two subjects out of the six as mentioned above in the final year of graduation, the candidate should have studied Maths and Physics in the final year of examination and three subjects, Viz, Maths, Physics and Chemistry/ Electronics/ Computer Science/Statistics in the first and second years of graduation.

(iii) Candidates who have passed B.Sc degree with Honours in Maths subject would be considered eligible only if they have studied physics and Chemistry/Electronics/ Computer Science/ Statistics in any of the two years of the Course. Candidates with B.Sc Hons) in physics or chemistry are not eligible for the post of TGT (Maths). ”

5. Holding a degree in Mathematics (Hons.) and having studied Mathematics along with Computer Science and Statistics and considering himself to be eligible for the post of TGT (Maths), Petitioner applied and was allotted Roll No.110609783. Petitioner appeared in the selection test held on 23.12.2023 and being successful, he was called for document verification vide letter dated 01.02.2024. Post the verification of the



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documents, provisional offers of appointment were issued to the Petitioner on 02.03.2024 and 03.06.2024. However, subsequent thereto vide the impugned communication dated 24.06.2024, NESTS informed the Petitioner that his candidature had been cancelled on the ground that he did not possess the requisite essential educational qualification.

6. Learned counsel for the Petitioner assails the cancellation of the Petitioner's candidature on the ground that Petitioner fulfilled the requisite educational qualification as prescribed in the advertisement/Information Bulletin as he holds a degree in Mathematics (Hons.) and has studied Computer Science and Statistics during the said degree course. Rejection of Petitioner's candidature is based on the premise that Petitioner has not studied Physics in the Honours Course, which is wholly erroneous and based on a misreading of the required qualifications, wherein Physics was not a mandatory but optional subject. Learned counsel emphasizes that initially NESTS correctly understood and appreciated this position and that is why after the Petitioner cleared the selection test, offers of appointment *albeit* provisional were issued to him. It is also asserted that assuming that it was mandatory to have studied Physics, even then Petitioner fulfils the eligibility conditions inasmuch as he has studied Statistics, which is a part of Physics subject.

7. Issue notice.

8. Ms. Shubhra Parashar, learned Senior Panel Counsel accepts notice on behalf of Respondent No. 1.

9. Mr. Amartya A. Sharan, learned counsel accepts notice on behalf of Respondent No. 2/NESTS and submits that a bare perusal of the advertisement shows that for the post of TGT (Maths), the essential



educational qualification was Bachelors degree in Maths along with Physics and any one of the subjects viz. Chemistry/Electronics/Computer Science/Statistics. In case of Universities providing for only two subjects out of the six mentioned in the earlier part of the advertisement in the final year of graduation, candidate was required to have studied Maths and Physics in the final year of the examination and three subjects, viz. Maths, Physics and Chemistry/Electronics/Computer Science/Statistics in the first and second years of graduation. Candidates who had passed B.Sc. Degree with Maths (Hons.), were considered eligible only if they had studied Physics and Chemistry/Electronics/Computer Science/Statistics in any of the two years of the course. Clearly, Petitioner has a Bachelors degree in Maths, but he has not studied Physics as per the requirement of the advertisement and thus his candidature was rightly rejected.

10. Heard learned counsels for the parties and examined their submissions.

11. There is no dispute that Petitioner applied for the post of TGT (Maths) pursuant to the advertisement issued by NESTS and was successful in the selection test conducted on 23.12.2023. It is equally undisputed that provisional offers of appointment were issued to the Petitioner on 02.03.2024 and 03.06.2024. However, post the offers of appointment being issued, Petitioner was called for document verification and finding him ineligible on account of lacking the essential educational qualifications, his candidature was cancelled vide the impugned communication dated 24.06.2024.

12. A bare perusal of the essential educational qualification stipulated in the Information Bulletin and as extracted in the earlier part of this judgment



leaves no trace of doubt that for TGT (Maths), the requisite qualification was Bachelors Degree in Maths 'along' with Physics and the option was only with respect to any one of the subjects viz. Chemistry/Electronics/Computer Science/Statistics. It was further stipulated in Clause (c)(ii) that in case of Universities which provide only two subjects out of the six mentioned in Clause (c)(i) in the final year of graduation, candidate should have studied Maths and Physics in the final year and three subjects viz. Maths, Physics and Chemistry/Electronics/Computer Science/Statistics in the first and second years of graduation. From a conjoint reading of the two clauses, it is clear that Physics was a mandatory subject along with Maths and it is not correct for the Petitioner to argue that Physics was optional. Admittedly, Petitioner has not studied Physics in his Bachelors Degree Course in Maths and was, therefore, rightly declared ineligible for the post of TGT (Maths). The alternative argument of the Petitioner that even if Physics was a mandatory subject, Petitioner should be treated to have studied the said subject as he studied Statistics, cannot be accepted. The advertisement clearly prescribed Physics as a separate subject which was mandatory and Statistics as a separate subject which was optional. Moreover, Statistics cannot be termed as 'Physics' or vice-a-versa, as the former is not a pure science and is a branch of Applied Mathematics.

13. It is a settled law that laying down essential qualifications for appointment to a post is the prerogative and domain of an employer and falls outside the scope and ambit of judicial review unless there is an ambiguity in the advertisement or the qualifications stipulated in the advertisement are contrary to the recruitment rules. In this context, I may allude to the observations of the Supreme Court in *Maharashtra Public Service*



Commission through its Secretary v. Sandeep Shriram Warade and Others, (2019) 6 SCC 362, as follows:-

“9. *The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.*

10. *The fact that an expert committee may have been constituted and which examined the documents before calling the candidates for interview cannot operate as an estoppel against the clear terms of the advertisement to render an ineligible candidate eligible for appointment.”*

14. In the present case, it is not the case of the Petitioner that there is ambiguity in the advertisement or that the stipulated essential educational qualifications are contrary to the applicable recruitment rules. It is, therefore, not within the ambit and scope of the power of judicial review of this Court to hold that Physics was an optional subject when the plain language of the advertisement reflects that Physics was a mandatory subject along with Maths for a candidate with Bachelors Degree for the post of TGT (Maths). Therefore, in my view, the impugned decision of NESTS communicated to the Petitioner vide e-mail dated 24.06.2024 does not suffer from any legal infirmity and warrants no interference.



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15. Writ petition is dismissed being bereft of merit. Pending application also stands disposed of.

OCTOBER 23, 2024/jg

JYOTI SINGH, J