



2024:DHC:8655



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

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Date of Decision: 07th November, 2024

+ W.P.(C) 15474/2024 and CM APPL. 64947/2024

NEETU YADAV

.....Petitioner

Through: Ms. Sonika Gill and Mr. Yogesh
Sharma, Advocates.

versus

UNION OF INDIA AND ANR.

.....Respondents

Through: Ms. Richa Dhawan, SPC with Mr.
Chetan Jadon and Ms. Shivangi Rajawat,
Advocates for Respondent No.1/UOI.Mr. Amartya Ashish Sharan and Mr. Akash
Kishore, Advocates for Respondent No.2/NESTS.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Articles 226/227 of the Constitution of India laying a challenge to communication dated 24.06.2024, whereby her candidature for appointment to the post of TGT (Maths) has been cancelled by Respondent No.2/National Education Society for Tribal Students ('NESTS').

2. Factual matrix to the extent necessary is that NESTS is an autonomous organisation under the Ministry of Tribal Affairs, Government of India. NESTS published an advertisement in 2023 inviting applications for EMRS Staff Selection Exam (ESSE)-2023 for filling up various posts in Eklavya Model Residential School (EMRS) which included 686 posts of



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TGT (Maths). The eligibility conditions including essential educational qualifications for the post of TGT (Maths) were prescribed in the advertisement.

3. Petitioner avers that as she fulfilled all eligibility conditions including the essential educational qualifications, she applied for the post of TGT (Maths) under the Other Backward Classes ('OBC') category and was allotted Roll No.110611812. Petitioner appeared in the selection examination and cleared the same as per the final result declared on 22.01.2024. Petitioner was called for document verification on 12.02.2024 and was informed, as per the averment in the writ petition, that all her documents were in order. After document verification, NESTS issued five lists of candidates who had not submitted complete documents or in respect of whom some doubts were raised during verification, but the name of the Petitioner was not mentioned in these lists, meaning thereby that her documents were in order.

4. It is further averred that after the process of verification was over, Petitioner was given an offer of appointment on 02.03.2024, which she accepted immediately. However, subsequently instead of permitting the Petitioner to join, her candidature was cancelled by NESTS vide communication dated 24.06.2024, on the ground that she did not possess the requisite educational qualifications and was thus ineligible for the post.

5. Learned counsel for the Petitioner assails the impugned communication on the ground that Petitioner is duly qualified and eligible as she possesses a Bachelor's Degree in Engineering as also an M.Tech. degree. She also has B.Ed. Degree in Maths and has qualified CTET Examination. It is claimed that Petitioner studied Maths in all the three years



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with Physics and Electronics in the Bachelor's Degree and thus qualifies the criteria of possessing Bachelor's Degree along with Physics and any of the subjects: Chemistry, Electronics, Computer Science and Statistics. It is also argued that Petitioner cannot be denied appointment on the ground that she has B.Tech. Degree inasmuch as another candidate, namely Ms. Sonika Pranveer having B.Tech. Degree from M.D. University, Rohtak was also given appointment by NESTS.

6. Issue notice.

7. Learned counsels, as above, accept notice on behalf of the respective Respondents.

8. Learned counsel for NESTS submits that there is no infirmity in the impugned decision taken by NESTS cancelling the candidature of the Petitioner as she does not fulfil the essential educational qualifications stipulated in the advertisement. Drawing the attention of the Court to the requisite educational qualifications for the post of TGT (Maths), it is submitted that the candidates were required to possess Bachelor's Degree in Mathematics and not Engineering, while the Petitioner admittedly holds B.Tech. and M.Tech. Degrees and is thus ineligible. It is submitted that Petitioner cannot call upon this Court to substitute the essential educational qualifications from a Bachelor's Degree in Maths to a Bachelor's Degree in Engineering as that is not the domain of this Court exercising power of judicial review.

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

10. It is not in dispute that Petitioner applied for the post of TGT (Maths) pursuant to an advertisement issued in 2023 by NESTS for filling up various



posts in EMRS which included 686 posts of TGT (Maths). Petitioner was declared successful in the examination when the final result was declared on 22.01.2024. It is equally undisputed that a provisional offer of appointment was issued to the Petitioner on 02.03.2024, wherein it was stated that the appointment will be subject to producing the original certificates/documents mentioned in paragraph 2 of the letter, which included documents pertaining to educational qualifications, constituting the minimum eligibility criteria. Subsequently, however, Petitioner's candidature has been cancelled on the ground that she does not possess the requisite essential educational qualifications.

11. Since the bone of contention between the parties relates to essential educational qualifications, it would be useful and pertinent at this stage to refer to the requisite qualifications as stipulated in the '*Information Bulletin & Guidelines for filling of online application form for EMRS-Staff Selection Exam (ESSE), 2023*', which are 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). ”

12. A bare perusal of the essential educational qualification stipulated in the Information Bulletin and as extracted above, leaves no trace of doubt



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that for TGT (Maths), the requisite qualification was Bachelor's Degree in Maths along with Physics and the option was with respect to any one of the following 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. It is evident that Petitioner does not fulfil the requisite educational qualifications since she does not possess a Bachelor's Degree in Mathematics and admittedly possesses Degrees in the field of Engineering. Broadly understood, learned counsel for the Petitioner calls upon this Court to hold that the Engineering degrees possessed by her be treated as the requisite qualification as she has studied maths in the said courses. It is not open to this Court to substitute the requirement of Bachelor's Degree in Mathematics with Bachelor's Degree in Engineering, stipulated by NESTS in the advertisement based on the requirement for the post of TGT (Maths).

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 power of judicial review of this Court to hold Bachelor's Degree in Mathematics be read as Bachelor's Degree in Engineering and therefore, the argument of the Petitioner that she studied Maths and Electronics in the three years of the Degree Course is irrelevant and of no consequence. The argument that another candidate with a B.Tech. Degree has been appointed cannot aid the Petitioner in view of the settled law that there is no negative equality, assuming for the sake of argument that any such appointment has been made. Therefore, in my view, the impugned communication dated 24.06.2024 does not suffer from any legal infirmity and warrants no interference.



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

JYOTI SINGH, J

NOVEMBER 7, 2024

B.S. Rohella

Signature Not Verified

Digitally Signed
By: KAMAL KUMAR
Signing Date: 13.11.2024
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