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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 10718/2016

DEVENDER YADAV AND ORS

..... Petitioner

Through: Mr. Vivek Kumar Tandon, Ms.
Prerna Tandon, Mr. Darshnik Narang, Advs.

versus

THE SECRETARY DELHI SUBORDINATE SERVICES
SELECTION BOARD AND ORS

..... Respondent

Through: Ms. Avnish Ahlawat, SC, GNCTD
(Services) with Ms. Tania Ahlawat, Mr. Nitesh
Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza
Alam, Mr. Mohnish Sehrawat, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

21.02.2024

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1. The present writ petition under Article 227 of the Constitution of India seeks to assail the order dated 12.08.2016 passed by the learned Central Administrative Tribunal in O.A.4572/2014. Vide the impugned order, the learned Tribunal has rejected the O.A. filed by the petitioners by holding that they had incorrectly filled up column 13 of their application form for the vacancy year 2013, which application form was to be filed in the OMR format.
2. On 24.01.2024, this Court after hearing the parties at length, came to a conclusion that the impugned order was unsustainable and the candidature of the petitioners for the posts of TGT in respect of advertisement no. 01/2013 issued in February, 2013 was liable to be



considered based on their performance in the examination held on 28.12.2014, wherein they had appeared pursuant to the interim orders passed by the learned Tribunal. The matter was, however, adjourned to enable the learned counsel for the respondents to obtain instructions as to whether there were any vacancies against which the petitioners could be accommodated.

3. Today, Ms. Avnish Ahlawat, seeks to re-argue the matter by contending that the decision of the respondents in rejecting the candidature of the petitioners due to incorrect bubbling of the OMR sheets was correct. She, further, submits that there are no vacancies of TGT available in respect of advertisement issued February, 2013 as all the posts which were advertised stood filled. She, however, concedes that vacancies of TGT are accruing from time to time and are being filled by fresh recruitment processes held as and when vacancies arise. She finally submits that an additional affidavit explaining why the petitioners' candidature was rejected has been filed; the same is however not on record.
4. Having perused the order dated 24.01.2024, we find that the matter was adjourned only to enable learned counsel for the respondent to obtain instructions regarding the availability of vacancies. The respondent cannot, therefore, be permitted to re-argue the matter on merits. From the submission of learned counsel for respondent, it is evident that vacancies of TGT are arising on a regular basis. We are, therefore, of the view that despite the posts advertised in 2013 having been already filled, the petitioners cannot be penalised as they had approached the learned Tribunal in 2014 itself, where the matter



remained pending till 12.08.2016. After the Tribunal rejected the OA in August 2016, the petitioners approached this Court promptly but their writ petitions could not be decided for over seven years, during which time the respondents claim to have conducted further examinations for filling the same posts of TGT. We are, therefore, of the considered view that the petitioners cannot be faulted for the delay in adjudication of their claim, which they had raised in time. We, therefore, direct that in case the petitioners are found to be meeting the merit criteria, they be accommodated, within six weeks, on the posts of TGT against the available vacancies and, if necessary, by creating supernumerary posts, which may be adjusted against the future vacancies.

5. The writ petition is, accordingly, allowed in the aforesaid terms by making it clear that in case the petitioners are found to be falling in the merit, they will be entitled to only notional seniority from the date the last candidate in the subject examination was appointed. It is further made clear that the petitioners will neither be granted any pay protection nor any arrears of wages.

REKHA PALLI, J

RAJNISH BHATNAGAR, J

FEBRUARY 21, 2024
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