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

Date of decision: 10.09.2025

+ **W.P.(C) 4165/2025 & CM APPL. 19335/2025**

SATISH KUMAR (ROLL NO. 12807139) (SC)Petitioner

Through: **Ms. Kaveeta Wadia, Sr. Adv
with Mr. Shashank Tripathi and
Ms. Chhavi Jain, Adv.**

versus

**DELHI SUBORDINATE SERVICE SELECTION BOARD
(DSSSB) & ANR.Respondents**

Through: **Mrs. Avnish Ahlawat, SC with
Mr. Nitesh Kumar Singh, Adv.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed challenging the Order dated 07.01.2025 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal') in O.A. No. 4548/2017, titled ***Satish Kumar & Anr. v. Delhi Subordinate Service Selection Board (DSSSB) Through its Secretary & Anr.***, whereby the learned Tribunal dismissed the said O.A. filed by the petitioner herein.

2. At the outset, it is pertinent to note that while the learned Tribunal, in its Impugned Order, has found that the petitioner, despite being eligible, had earlier been unlawfully excluded from appointment, has dismissed the O.A. solely on the ground that in the revised result the



petitioner could not secure the cut-off marks.

3. To appreciate the above controversy, a few facts are relevant to be noted.

4. The respondent no.1, the Delhi Subordinate Service Selection Board (DSSSB), had issued Advertisement No. 02/14 on 12.12.2014 inviting applications for the post of Drawing Teacher (Post Code: 208/14), with 202 vacancies.

5. The petitioner participated in the said recruitment as a SC candidate and secured 82.25 marks. The result declared on 10.11.2017 reflected a cut-off of 81.25 marks for the SC candidates. Therefore, in the normal course, the petitioner ought to have been offered appointment to the said post. However, on the ground of a discrepancy in the name of the institution from which the petitioner had obtained his two-year diploma, and by treating the said institution as not being recognized, the petitioner was denied appointment.

6. Aggrieved thereby, the petitioner filed the above O.A., that is, O.A. No. 4548 of 2017, wherein the learned Tribunal, by its *interim* Order dated 29.01.2018, passed directions in favour of the petitioner in the following terms:

“Notice. Mr. Vijay Pandita, learned counsel accepts notice on behalf of respondents. Counter be filed within four weeks. Rejoinder, if any, may be filed within two weeks thereafter. In the meantime, it is directed that the selectees/appointees to the post of Drawing Teacher shall be selected/appointed provisionally. A note shall be appended in this regard in the select list/appointment order. Such provisional appointment shall be subject to the outcome of the present O.A.



7. Eventually, by the Impugned Order, the learned Tribunal, as noted hereinabove, has held that the denial of appointment to the petitioner and treating him as ineligible for appointment was incorrect. We quote from the impugned order as under:

“16. The question before us is whether the applicants deserve appointment as drawing teachers. To our mind, the qualification of the applicants is as per the RR’s, for the reason that the institute from which they have completed the diploma is a recognized institute. The change in the name of the institute does not result in de-recognition. As such the rejection of the candidature on the ground of not qualifying as per RR’s is illegal…….”

8. However, in the meantime, pursuant to the representations made by certain candidates that their Bachelor of Fine Arts (BFA) Degree to be treated as equivalent to the essential qualification of a B.A. Degree prescribed in the recruitment notice, the Directorate of Education, vide letter dated 03.05.2018, accepted such representations and declared these candidates eligible for appointment. Accordingly, a revised result was issued on 24.05.2018, wherein the cut-off marks for the SC category candidates were increased to 84.50 marks.

9. Taking note of the same in the impugned order, the learned Tribunal has dismissed the O.A. filed by the petitioner on the ground that, having secured lesser marks than the revised cut-off, the petitioner cannot now be granted appointment.

10. The learned senior counsel for the petitioner submits that the learned Tribunal failed to appreciate that candidates who had secured marks lower than the petitioner continue to serve on the said post



pursuant to an Order dated 20.12.2019 passed by the learned Tribunal in O.A. No. 2369/2018, titled ***Yogesh Kumar & Ors. v. Govt. of NCT of Delhi & Ors.*** She submits that since, in terms of the *interim* Order dated 29.01.2018 passed by the learned Tribunal in the present O.A., the appointment of these candidates was subject to the outcome of the O.A., either their candidature ought to be cancelled to accommodate the petitioner, or, in the alternative, a supernumerary post ought to be created for accommodating the petitioner in the post. She submits that the petitioner cannot be left without a remedy, particularly as he had availed of the same at the very initial stage and had been granted protection by the *interim* Order dated 29.01.2018 passed by the learned Tribunal.

11. On the other hand, the learned counsel for the respondents submits that the learned Tribunal in ***Yogesh Kumar (supra)***, in the peculiar facts of that case, directed the respondents to create supernumerary posts for accommodating those candidates who had already been appointed and had worked in the Department. He contends that such benefit cannot be extended to the present petitioner, who admittedly did not meet the revised cut-off marks. In support of his submission, he further places reliance on the Judgments of the Supreme Court in ***Arup Das v. State of Assam***, (2012) 5 SCC 559; ***Union of India v. Kartick Chandra Mondal***, (2010) 2 SCC 422; ***Sankarsan Dash v. Union of India***, (1991) 3 SCC 47; and in ***MCD v. Surender Singh***, (2019) 8 SCC 67, and submits that Article 14 of the Constitution of India does not envisage negative equality, and merely because of an error of the respondents which resulted in candidates with lesser marks being appointed to the post, the



benefit of the same cannot be extended to the petitioner.

12. We have considered the submissions made by the learned counsels for the parties.

13. As is evident from the above, there is now no dispute that the petitioner was eligible for appointment to the post of Drawing Teacher in terms of Advertisement No. 02/2014 and had been wrongly excluded therefrom. It is also undisputed that, in the initial result notice issued on 10.11.2017, the petitioner had met the cut-off marks and was, therefore, entitled to appointment.

14. By its *interim* Order dated 29.01.2018, the learned Tribunal directed that the selection of any person to the said post would be provisional in nature and subject to the outcome of the O.A. filed by the petitioner.

15. Once the petitioner is found eligible to be considered for the post, any appointment made in favour of a candidate who had secured lesser merit than the petitioner, would automatically be liable to be cancelled and result redrawn.

16. However, as noted in **Yogesh Kumar** (*supra*), the appointment of persons lower in merit was not due to the fault of such candidates but rather due to the action of the respondents, who, without any valid reason, treated the candidates with BFA as ineligible for appointment under the advertisement. In the present case, the same reasoning will apply to the petitioner. For accommodating the petitioner, the selection of the candidates who are lower in merit to the petitioner would need to be cancelled. However, as they were not at fault, adopting such course will be unfair to them.



17. In the peculiar facts of the case, therefore, we are inclined to adopt the same method as was adopted by the learned Tribunal in ***Yogesh Kumar*** (supra), that is, not to interfere with the appointment of the candidates who, inspite of being lower in merit to the petitioner, had been appointed pursuant to the result dated 10.11.2017, but instead to direct the respondents to create a supernumerary post to accommodate the petitioner to the subject post.

18. The remaining directions of the learned Tribunal in ***Yogesh Kumar*** (supra) in respect of other such candidates shall equally apply to the petitioner.

19. The Impugned Order dated 07.01.2025 is accordingly set aside, and the petition, along with the pending applications, is disposed of with the above directions.

NAVIN CHAWLA, J

MADHU JAIN, J

SEPTEMBER 10, 2025/bs/k/DG