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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1835 of 2002

New Delhi, this the 20th day of January, 2003

HON'BLE MR. V. K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Smt. Lata Gupta
W/o Sh. Man Mohan Gupta
R/o 29/6 Shakti Nagar,
Delhi-110 007.

-APPLICANT

(By Advocate: Shri G.S. Lobana)

Versus

1. The Director of Education,
Education Directorate,
Delhi Administration,
Old Secretariat,
Delhi-110 054.

2. The Deputy Director of Education,
North Zone,
Lucknow Road,
Delhi-110 054.

3. Government of NCT of Delhi
Through Chief Secretary,
Delhi Government Sachivalaya,
Indraprastha Estate,
New Delhi-110 002.

-RESPONDENTS

(By Advocate: Shri Mohit Madan, proxy counsel for Mrs
Avnish Ahlawat, Counsel for the respondents)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

This is a second round of litigation. The applicant having unsuccessfully challenged earlier the result for appointment to the post of teacher in Delhi Government Schools and now the applicant has again filed this OA.

2. The facts in brief are that the department had advertised certain posts of teachers. The applicant made one application for PGT (Sanskrit) and one for TGT (Sanskrit). The result was declared and her name



was at S.No. 35 out of 36 posts out of TGT (Sanskrit) though she was not there in the PGT (Sanskrit) but still she was not selected as a new marking scheme was adopted by the respondents after receipt and scrutiny of all the applications because the respondents wanted to favour certain persons with basic and essential qualifications so now the applicant impugns the marking scheme which was adopted by the respondents for selection of candidates for the post of TGT (Sanskrit) and PGT (Sanskrit).

3. The applicant further alleges that the present OA is within time because earlier the applicant challenged the result of the examination and has prayed for appointment to the post of PGT (Sanskrit) though she filed an OA but the same was dismissed. Thereafter when she filed the Writ Petition before the Hon'ble High Court of Delhi, the applicant was given liberty to challenge the marking scheme adopted by the respondents for selection of the candidates.

4. In the grounds to challenge the selection scheme the applicant alleges that the marking scheme has been adopted by the respondents contrary to the Recruitment Rules as laid down by the Delhi Administration for selection to the post and this marking scheme has been devised after receipt and scrutiny of applications just to favour certain favourite persons and scheme devised marks for additional qualifications such as Ph.D and M.Phil and no weightage was given for the experience.

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5. It is further submitted that the so called marking scheme is an after-thought as it ignored the teaching experience and gave weightage to Ph.D degree in lieu of B.Ed. The applicant further alleges that she is 1st Division throughout from 10th class upto M.A. (Sanskrit) and had also experience in teaching Sanskrit to secondary and higher secondary classes and very few candidates could be equal to her qualifications and experience as per the Recruitment Rules who could have been selected but since her experience has been ignored which is desirable as per the Recruitment Rules so the scheme vide which the marking has been assessed is totally ultra vires of the rules and the same could not have been adopted by the department and the same is liable to be quashed.

6. The OA is opposed by the respondents. Respondents submitted that the O.A. is barred by principles of res judicata inasmuch as the applicant had earlier filed an OA which was dismissed on merits inasmuch as the applicant was not able to make up in the merit as she fell short of marks from the cut off marks. CWP filed by the applicant was dismissed on 7.12.2001 on merits. Thus for the same cause of action the applicant cannot file several petitions again and again by taking additional grounds so the OA is liable to be dismissed on this short ground alone.

7. The present petition is not maintainable as the same is barred by limitation inasmuch as the applicant is challenging the Selection held in 1994.

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8. It is not denied that the applicant applied for the post of PGT (Sanskrit) as well as in TGT (Sanskrit) in female general category in response to an advertisement dated 31.5.94. It is further submitted that she was awarded 63 marks for PGT (Sanskrit) and 68 marks for Language Teacher (Sanskrit) while the cut-off marks for nomination for PGT (Sanskrit) was 75 and for Language Teacher was 69. The scheme was adopted vide Cabinet Decision No.93 dated 25.7.1991 regarding marking scheme. It cannot be said to be an after-thought because it was adopted earlier than the advertisement was issued, so the OA is liable to be dismissed.

9. We have heard the learned counsel for the parties and gone through the records of the case.

10. As far preliminary objection taken by the respondents with regard to res judicata is concerned, we find that the applicant is unable to meet this objection because it is an admitted case of the applicant that the earlier OA filed by him was dismissed on 1.9.99. The copy of the order passed in CWP filed by the applicant has been annexed by the respondents along with the counter-affidavit is annexed as Annexure-R (page 21). The reading of the order says that the Hon'ble High Court has categorically held that the petitioner had sought a direction to appoint her accordingly fails and is dismissed. The Hon'ble High Court had also observed "we feel satisfied that petitioner was allotted marks for selection to both posts in conformity with the marks allotment scheme but she fell short of one mark in one case and 12 marks in the other." Thus the petition was



dismissed on merits. So it is at that stage the learned counsel for the applicant sought liberty to challenge the marking scheme and the Hon'ble High Court considering the contention of the applicant's counsel while dismissing the Writ Petition allowed the requisite liberty but had stated that it shall be open to the petitioner to challenge the same by appropriate remedy "if so advised" (emphasis supplied). This only means that if any remedy is available at law then only the applicant is able to challenge the marking scheme by an appropriate remedy. Since the applicant had earlier sought a direction to appoint her as TGT (Sanskrit) with all consequential benefits so it was open for the applicant to take all the pleas to challenge the result of the selection which was held by the respondents and in the earlier case itself the applicant could have taken the plea to challenge the marking scheme itself and since the same was not taken by the applicant earlier so it is not open now to the applicant to challenge the marking scheme itself, hence the same is barred by the principles of constructive res judicata. Thus we find that the preliminary objection taken by the respondents has merits and the applicant cannot challenge the marking scheme as ultra vires for seeking appointment for the same selection which is barred by the principles of constructive res judicata.

11. Even on merits to challenge the marking scheme, we find that the Cabinet Decision No.93 dated 25.7.91 has been adopted to approve a proposal which was mooted on 25.2.1994 to modify the method of recruitment. It was envisaged that the recruitment of teachers would be done by adopting the screening-cum-interview scheme of



the written examination was to be done away with since there was a large number of candidates who were appearing against few vacancies. By this scheme the department has only adopted a method how a candidate is to be screened and how much marks to be given on the basis of their qualifications for a particular post. The learned counsel for the applicant submitted that in the Recruitment Rules there was a column that the desirable qualification was 3 years experience and no marks were given for the experience whereas marks have been given for Ph.D. and M.Phil etc. and as such ignoring the experience part of a candidate is violative of Recruitment Rules. However, we find that in the Recruitment Rules in the column of 'essential' qualification instead of B.Ed., a candidate could be Ph.D, M.Phil etc. whereas the experience part of the teacher was only in the 'desirable' column of the qualifications, so it cannot be said that the department while awarding higher marks for the higher qualifications being possessed by the candidates has violated the Recruitment Rules because the Recruitment Rules itself permitted that if a candidate had a qualification of Ph.D and M.Phil etc. then he could be exempted of B.Ed. which he may qualify subsequently. Thus we find that the scheme adopted by the respondents for awarding marks cannot be said to be in violation of the Recruitment Rules.

12. Moreover, the applicant is challenging the selection process after the result has been declared and he did not challenge the same when the scheme was introduced.

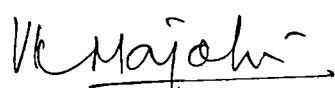


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13. The learned counsel for the applicant has also relied upon certain judgments such as N.T. Devin Katti and Others Vs. Karnataka Public Service Commission and Others reported in 1990 (3) SCC 157; Maharashtra State Road Transport Corporation and Others Vs. Rajendra Bhimrao Mandve and Others reported in 2002 (1) SC SLJ page 17 and A.K. Bhatnagar Vs. U.O.I. and Others, 1991 (1) SLR page 191. In all these cases the rules were amended subsequent to the advertisement and different qualifications were introduced for selection but in the present case in hand there was no amendment to the Recruitment Rules only marking scheme was adopted that too as observed by us above was in consonance with the Recruitment Rules and was not in violation of Recruitment Rules. Accordingly, we do not find any fault in the marking scheme itself.

14. In view of above discussion, the OA is devoid of any merit and the same is dismissed. No costs.


(KULDIP SINGH)
MEMBER (JUDL)


(V.K. MAJOTRA)
MEMBER (A)

Rakesh