

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
Original Application No.191/2019.**

**Reserved on :24.02.2021**

**Pronounced on : 10.09.2021**

**CORAM:**

**Hon'ble Sh. Jayesh V. Bhairavia, Member (J)**

**Hon'ble Sh. Dr. A.K. Dubey, Member (A)**

Bindu Jha,  
D/o Mahendra Narayan Jha,  
Aged: 41 years, Occu: Unemployed,  
Residing at: A/90, Gayatrinagar Society,  
Near Jambuva Jakat Naka, P.O.Maneja,  
Vadodara – 390 013.

...Applicant

(By Advocate Mr. Joy Mathew)

VS

1. Union of India,  
Notice to be served through the Secretary,  
Human Resource Development,  
Shastri Bhavan, New Delhi – 110 001.
2. Kendriya Vidyalaya Sangathan,  
Notice to be served through the Commissioner,  
18, Institutional Area, Shaheed Jeet Singh Marg,  
New Delhi – 110 016.
3. Additional Commissioner (Admn.),  
Kendriya Vidyalaya Sangathan (HQ)  
18, Institutional Area, Shaheed Jeet Singh Marg,  
New Delhi – 110 016.
4. The Joint Commissioner (Admn.),  
Kendriya Vidyalaya Sangathan (HQ),  
18, Institutional Area, Shaheed Jeet Marg,  
New Delhi – 110 016.

...Respondents

By Advocate Mr. Shashikant Gade (R- 2 to 4)

**ORDER**

**Per: Shri Jayesh V Bhairavia, Member (J)**

1. By filing the present Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has called in question the Notice dated 25.08.2014 issued by respondent no.3 (Annexure A/1), whereby the respondents in superannuation of earlier notices declared that the candidates having professional qualification of B.Ed. and having passed CTET (paper I) who were allowed provisionally to appear in interview for the post of Primary Teacher, will not be considered for appointment in view of the clarification issued by NCTE and prayed for quashing and setting aside the said impugned Notice dated 25.08.2014. The applicant has also prayed for quashing and setting aside the impugned decision dated 20.03.2019 (Annexure A/2) whereby the representation of the applicant has been rejected. Also prayed is to direct the respondents to issue appointment order appointing the applicant as a Primary Teacher in Kendriya Vidyalaya Sangathan for the years 2012-13 and 2013-14 and also to release all consequential benefits including the arrears of pay, seniority etc., as if she was appointed along with other candidates in response to the advertisement No.7.
2. The brief facts in the background are that the applicant who was having education qualification of M.Sc., B.Ed., submitted her application online for the post of PRT Pursuant to the advertisement No. 07 published by the Kendriya Vidyalaya Sangathan, New Delhi – the respondent no.2 herein, inviting applications for recruitment of various posts like PGT, TGT, Primary Teacher (music), Librarian etc. for the year 2012-13 and 2013-14. The applicant successfully got through the written test and was called for interview on 10.5.2014 vide letter dated 8.4.2014 (Annexure A/5). However, by the impugned Notice dated 25.8.2014, the applicant stood disqualified giving reason that upon clarification being received from the National Council for Teacher Education (NCET), the candidates having professional qualification of B.Ed cannot be considered eligible for

appointment as teachers for classes I to V beyond 1.1.2012. The applicant made representation on 17.9.2018 against rejection her candidature, which came to be rejected by order dated 20.3.2019. Hence, the applicants have filed the present OA.

**2.1** The gap between rejection of the candidature of the applicant and filling of the representation is discussed herein below at appropriate place.

- 3.** Seeking the reliefs, the applicant vehemently relied on the case of similarly situated candidate namely Ms. Reena Tripathi. The said candidate was also possessing educational qualification of B.Ed. as the applicant possess in the present O.A and who also applied for the post of Primary Teacher pursuant to advertisement No.7 for the years 2012-2013 and 2013-2014 issued by the respondents and whose candidature was also cancelled by the respondent Sangathan holding that the qualification of B.Ed. cannot be considered for the appointment of Primary Teacher. The said candidate approached the Bangalore Bench of the Tribunal by filling of O.A. No. 1496/2014. The said OA came to be allowed on 9.6.2015 with a direction to the respondents to consider the case of the said applicant for selection as Primary Teacher pursuant to the advertisement No.7. Aggrieved by the said order, the respondent Sangathan challenged the same before the Hon'ble High Court of Karnataka by way of Writ Petition No. 34208/2015, which petition came to be dismissed on 09.12.2015. Against the said order of the Hon'ble Karnataka High Court, the respondent Sangathan approached the Hon'ble Supreme Court by way of filing Special Leave Petition No. 26678/2016. The Hon'ble Supreme Court dismissed it on 17.04.2017.

- 3.1** In spite of dismissal of Writ Petition and Special Leave Petition, the respondent Sangathan did not offer appointment to applicant Ms. Reena Tripathi. Therefore, she had to again approach the Bangalore Bench of this Tribunal by way of filing O.A. No.201/2017. The Tribunal vide order dated 14.09.2017 directed the respondents to consider the case of the applicant

for appointment immediately if the last selected candidate of General category had secured marks less than the applicant. By an order dated 01.12.2017, the respondent Sangathan once again rejected her case for appointment. She had to again third time approach the tribunal by filling of O.A. No. 869/2017. In this 3<sup>rd</sup> round of litigation, the Tribunal vide order dated 19.03.2018 allowed the said O.A. with direction to the respondents to issue appointment order in favour of the applicant within a period of 15 days from the date of receipt of a copy of the order (Annexure A/7). Costs of Rs.25,000/- was also imposed upon the respondents while allowing the said OA. The Writ petition filed by the respondent Sangathan there against was again came to be dismissed by Hon'ble High Court of Karnataka 28.05.2018 (Annexure A/8).

- 3.2** As soon as the applicant acquired the knowledge about passing of orders by the Tribunal, Hon'ble High Court of Karnataka and the Hon'ble Supreme Court in the case of said candidate Ms. Reena Tripathi, she submitted representation dated 17.09.2018 to respondent No. 2 requesting to consider her case and prayed for appointment as Primary Teacher (Annexure A/9). Since there was no decision on the representation made by the applicant dated 17.9.2018, the applicant was constrained to approach this Tribunal by filling of OA No. 505 of 2018. As the representation made by the applicant to respondent Sangathan was pending decision, the Tribunal vide order dated 26.11.2018 (Annexure A/10) disposed of said OA by directing the respondents to consider her pending representation expeditiously, at least within a week before the commencement of the examination pursuant to the advertisement NO.14 since the examination was to be held on 22.12.2018. The respondent did not comply with the order dated 26.11.2018 passed by this Tribunal. Therefore, the applicant had to again knock the doors of this Tribunal by filling Contempt Petition No.6 of 2019. However, the Contempt Petition could not be

taken up due to non-availability of Division Bench. In the meantime, vide impugned order dated 20.03.2019 (Annexure A/2), the respondents have rejected the application/representation of applicant, which led the applicant again to visit this Tribunal by filling the present O.A.

4. The respondents Sangathan filed their reply and opposed the prayers made in the present O.A. The facts narrated by the applicant are not disputed. Even the fact of the case of similarly situated candidate Ms. Reena Tripathy and the litigation successfully persuaded by her is also not disputed.

4.1 The stand taken in support of the impugned order in the reply as well as during the course of argument is that the candidates having professional qualification of B. Ed. were provisionally allowed to appear in interview subject to clarification from National Council for Teacher Education (NCET). Accordingly, it is stated, a note was placed in the website by the respondents mentioning therein that the candidates having professional qualification of B.Ed. were allowed “Provisionally” to appear in the interview for the post of Primary Teacher for the years 2012-2013 and 2013-2014. As per the clarification received from the NCET, the candidates having professional qualification of B.Ed. were held ineligible for being appointed as teachers for classes I to V by flashing notice dated 25.8.2014 in the website of the respondents.

4.2 Further, to deny the fruits of the litigations persuaded by Ms. Reena Tripathi, it has been stated and contended that the Hon’ble High Court while sustaining the order of the CAT Bangalore Bench directing appointment of Ms. Reena Tripathi, made it clear that, “*the said order shall not form a precedent for future cases*”. It is mainly on these two counts, it is prayed by the respondents that the OA be rejected.

5. Heard the learned advocates for the respective parties and perused the material available on record.

- 6.** Aspect of educational qualification for the post in question and the educational qualification possessed by the applicant, is already dealt with and adjudicated by the Bangalore Bench of the Tribunal in the case of similarly situated candidate Ms. Reena Tripathi holding in favour of the said candidate Ms. Reena Tripathi. The decision of the Tribunal came to be affirmed upto the stage of Hon'ble Supreme Court. There were other OAs also before different Benches where similar issue arose and the candidates like the present applicant and Ms. Reena Tripathi approached the Tribunals seeking similar reliefs. For instance, Ms. Neha Sharma approached before the Jabalpur Bench by filing OA No. 200 of 2014, Ms. Rajewari Katore approached also before the Circuit Bench at Gwalior of Jabalpur Bench by filing O.A. No. 202 of 2014 and Ms. Devi Priya who approached before the Ernakulam Bench by filing OA No. 180 of 2015. All these also came to be allowed granting relief to the applicant concerned in the respective OAs. Copies of the orders passed in these cases are available on record of the present OA. Therefore, the aspect of educational qualification is not touched and discussed to burden the present order as already held in favour of the several similarly situated candidates by different Benches of the Tribunal.

- 6.1** Participation by the applicant in the written test and interview for the post of Primary Teacher (PRT) on 16.12.2013 and 10.5.2014 respectively under the advertisement No.7, is an admitted fact. At both the stages the applicant was successful, is also an admitted fact. However, on 25.8.2014, the applicant was disqualified on the premise that in view of the clarification received from the NCET, the candidates having professional qualification of B.Ed. cannot be considered eligible for appointment as teachers for classes I to V beyond 1.1.2012 and further that the candidates having professional qualification of B.Ed. were allowed "Provisionally" to appear in the interview for the post of Primary Teacher for the years 2012-2013 and 2013-2014. Against her disqualification, the applicant preferred

representation dated 17.9.2018, which came to be decided and rejected on 20.3.2019.

- 6.2** It is pertinent to mention by a communication dated 31.8.2016/1.9.2016, the respondent Sangathan published the list of selected candidates for the post of PRT. The said communication clearly stated that the case of the candidates having professional qualification B. Ed. will be decided only after the outcome of various pending court cases.
- 6.3** This Tribunal is required to decide as to whether the benefit given to other candidate Ms. Reena Tripathi, who also faced the same situation, where the respondent Sangathan rejected her candidature for being appointed as Primary Teacher on the ground that the qualification of B.Ed. cannot be considered for the appointment of primary teacher, could be extended to the applicant or not. To decide this, more particularly to revisit the conduct and approach of the respondent Sangathan, the brief history of the various litigations persuaded by the said similarly candidate is relevant to be mentioned even at the cost of repetition. Ms. Reena Tripathy preferred OA 1496 of 2014 before the Bangalore Bench of this Tribunal against rejection of her candidature solely on the ground, on which the candidature of the present applicant has been rejected. The said OA came to be decided in her favour on 9.6.2015. The respondent preferred Writ Petition before the Hon'ble Karnataka High Court being Writ Petition No. 34208 of 2013, which came to be dismissed on 9.12.2015. Against which, the SLP came to be filed by the respondents, where also the respondents failed with the dismissal of the SLP on 17.4.2017 by the Hon'ble Supreme Court. In spite of this, the respondents did not offer the appointment to Ms. Tripathi. She was again constrained to approach the Bangalore Bench of the Tribunal by filing OA 201 of 2017. The said OA came to be decided on 14.9.2017 directing the respondents to consider the case of the applicant

therein for appointment immediately if the last selected candidate of General Category had secured marks less than the applicant. By order dated 1.12.2017, the respondent Sangathan again rejected her case for appointment. She had to again knock the doors of the OA by filling OA 869 of 2017, in which the Tribunal allowed the said OA directing the respondents to issue appointment order in favour of the applicant within a period of 15 days with cost of Rs. 25000. The respondents against preferred Writ Petition against the order passed in OA 869 of 2017 and miserably failed. The Hon'ble High Court dismissed the petition and further maintained the cost imposed.

- 6.4** A brief history narrated hereinabove in the case of Ms. Reena Tripathi and the treatment meted out to her by the respondent Sangathan speaks very clearly about the adamant attitude exhibited by the respondent Sangathan towards aspirants who are in queue to get appointment even after successfully undergone the rigorous selection process. There is no doubt that the facts of the present case are akin to the facts of the case of Ms. Reena Tripathy, barring few relevant dates. Both appeared under the advertisement No.7 issued by the respondent Sangathan. Both were aspirant to be appointed on the post of Primary Teacher and filled in the form for the said post in light of their education qualification for the years 2012-2013. Both were having educational qualification of B.Ed. Both were having qualification of CTET. Both successfully cleared the written exam as well as interview. However, on the same ground as mentioned hereinabove, their candidatures came to be cancelled. The only difference between these two candidates is that Ms. Reena Tripathi was more vigilant than the applicant to knock the doors of the court of law at the right time upon rejection of her candidature. However, the applicant herein could not challenge rejection of her candidature in the year 2014 itself. Leaving this aspect aside for a moment, it is also pertinent to mention that the applicant was neither indolent nor was in



slumber. As soon as the applicant came to know about the decision rendered by the Hon'ble Karnataka High Court endorsing the relief granted by the Bangalore Bench of this Tribunal to the said Ms. Reena Tripathi, the applicant herein immediately on 17.9.2018 submitted here representation before the respondent No.2 requesting him to consider her case for being appointed as Primary Teacher. This fact clearly shows that the applicant was vigilant enough to assert his rights barring the fact that she did not challenge rejection of her candidature in the year 2014. There might have been some reasons beyond the control of the applicant in not approaching the Tribunal in the year 2014.

Thus, the applicant made representation immediately after knowing the fact that other similarly candidate was offered appointment. However, the respondents continued their adamant attitude towards the present applicant too as they exhibited in the case of Ms. Reena Tripathi detailed in depth herein above. The respondents did not pay any heed to the representation of the applicant submitted by her on 17.9.2018. The applicant had to prefer OA 505 of 2018 seeking the reliefs. However, since the representation was pending consideration before the competent authority, this Tribunal disposed of the said OA directing the respondents to consider the representation of the applicant expeditiously and at least a week before commencement of the examination pursuant to the advertisement No.14. The respondents kept mum. When the representation was not decided and the time was running the applicant, the applicant preferred Contempt Petition No. 6 of 2019. However, though unfortunate, the contempt petition could not be proceeded with for want of Division Bench in this Tribunal even though it was listed for hearing on 15.2.2019.

The respondents on 20.3.2019 rejected the representation of the applicant. It is worth to be mentioned that

the respondents have decided the representation only when the contempt petition was filed before this Tribunal. Thereafter, the applicant had to again knock the doors of this Tribunal by filling the present OA. Thus, said Ms. Reena Tripathi and the present applicant have sailed in the same boat in litigating for justice too. Both have been meted out with the same treatment of adamant attitude of the respondent Sangathan. We need to go to this extent, only to show the extent to which the respondents had gone to deny the legitimate requests of the eligible aspirants.

7. When Ms. Reena Tripathi and the applicant herein are absolutely similarly placed candidates, it would be iniquitous and unequal to give rise to a situation where similarly placed persons end up in vastly different situations. It is a trite principle that when a particular set of persons are given relief by the court, all other identically situated persons needed to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of principles of Article 14 of the Constitution. This principle needs to be applied in service matters more emphatically in light of the catena of decisions of the Hon'ble Supreme Court as well as of the Hon'ble High Courts that all similarly situated persons should be treated similarly. Merely because other similarly situated persons did not approach the court earlier, they are not to be treated differently. We are oblivious that this trite principle is of course subject to well – recognised exceptions in the form of laches and delays as well as acquiescence. This Tribunal is of the view that the exception carved out does not applicable in the facts of the present case highlighted hereinabove. At the same time, this Tribunal cannot shut its eyes on the aspect that it was expected from the applicant to approach the court of law in the year 2014 itself when her candidature was rejected. However, a communication dated 31.8.2016/1.9.2016 comes to the rescue of the applicant in this regard to some extent. By the said communication the respondent Sangathan published the list of selected candidates for the post of Primary Teacher and it was clearly stated in the said communication that the case of the

candidates having professional qualification B.Ed. will be decided only after the outcome of various court cases. Still, by putting some conditions, the balance can be maintained, as reflected hereinafter.

8. Now, the other ground raised by the respondents to deny the claim of the applicant is that the fruits of the litigations persuaded by the said Ms. Reena Tripathi cannot be extended to the applicant for the reason that the Hon'ble Karnataka High Court clearly mentioned in its order dated 28<sup>th</sup> May, 2018 passed in Writ Petition No. 22522 of 2018 that, “.....Therefore, this order shall not form a precedent for future cases.” We have respectfully gone through the judgment of the Hon'ble Karnataka High Court. We have no hesitation to observe that the respondents have misinterpreted the judgment of the Hon'ble Karnataka High Court and picked up the lines which suited them, and committed an error in interpreting a particular line in isolation without taking into consideration the context of that line, thereby the respondents misdirected themselves. The Bangalore Bench of this Tribunal had to pass mandatory order of appointment, which ordinarily the Tribunal refrains from passing. However, in the peculiar facts obtaining in that case, the direction for appointment was given, which was affirmed by the Hon'ble High Court of Karnataka at Bangalore by observing as under in its para 11 of the judgment:

**Para 11**

*“Undoubtedly, the respondent has been fighting for her appointment to the post since 2014, i.e., for the last four years. She has knocked both at the doors of the learned Tribunal, as well as at the doors of this Court. Yet, her hope for justice has been belied by the conduct of the petitioner. Considering these facts, the learned Tribunal, obviously, had no other option, but to positively direct the petitioner to appoint the respondent. Therefore, considering the peculiar facts of the case, the learned Tribunal was justified in issuing an absolute and positive direction to the petitioner. Although generally the learned Tribunal would not be justified in issuing an emphatic direction for appointment, but the peculiar facts of the case left no option to the learned Tribunal, but to pass an absolute order. Therefore, this Court is not inclined to interfere with the impugned order.”*

- 8.1** It is in the above context that the High Court observed that, “this order shall not form a precedent for future cases.” The respondents further misinterpreted the words ‘future cases’. Viewed from any angle, the case of the applicant cannot be branded as “future case”. The applicant and Ms. Reena Tripathi both applied, participated and successfully got through the selection process for the post of Primary Teacher undertaken by the respondents for the years 2012-2013 and 2013-2014. Both had the similar educational qualification of B.Ed. Both were possessing educational qualification prescribed in the advertisement. The candidature of the applicant was rejected on 25.8.2014 and in the case of Ms. Reena Tripathi her candidature was rejected on 26.8.2014, i.e. just after a day. Obviously, a consequence following from the same process cannot be termed as future case.
- 9.** Besides the above, the more clinching aspect in our view is that in response to the advertisement No.14 issued by the respondent Sangathan, the applicant could not apply as she was age bar. Under the said advertisement, candidates like the present applicant who possess the educational qualification of B.Ed. are treated eligible to appear.
- 10.** In view of the aforesaid facts and circumstances of the case, we have no hesitation in holding that the applicant herein deserves to be extended the fruits of the litigation persuaded by other similarly placed candidate discussed above. We accordingly hold that applicant’s candidature for the above post is not diminished and therefore, requires to be considered for appointment. The impugned notice dated 25.08.2014 shall not be applicable in case of applicant in view of the above discussions. In ordinary circumstances, this Tribunal does not issue mandatory direction for appointment. However, in the peculiar facts of the present case and the treatment meted out to the present applicant as well as to the other similarly situated candidates as highlighted in detail hereinabove and to ensure

that the applicant may not have to suffer any further, we direct the respondents to offer the appointment to the applicant on the post of Primary Teacher if the last selected candidate in her category had secured marks less than the applicant. While directing so, in the facts of the present case, we are inclined to restrict the relief so that the appointees of the years 2014 and onwards, if any, may not be adversely affected, only for the reason that the applicant did not approach the court of law seeking relief in the year 2014, when her candidature was rejected for being appointed on the post of Primary Teacher. At least this much will have to be sacrificed by the applicant for not approaching this Tribunal to balance the situation. Therefore, it is observed that the applicant will not be entitled to the consequential benefits including the arrears of pay, seniority etc. as prayed for in the present OA. The respondents are directed to consider and issue appointment order as Primary Teacher in light of aforesaid discussion. This process shall be completed as expeditiously as possibly but certainly within three months from receipt of copy of this order.

- 11.** The OA stands allowed in part as above. No costs.

**(A K Dubey)**  
**Member(A)**

**(Jayesh V Bhairavia)**  
**Member(J)**

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