

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA No 4034/2014
with
OA 605/ 2015**

Reserved on 18.04.2016
Pronounced on 15.11.2016

**Hon'ble Mr.Sudhir Kumar, Member (A)
Hon'ble Mr.Raj Vir Sharma, Member (A)**

OA 4034/2014

Rakesh Kumar Meena,
S/o Shri Chhangga Ram Meena,
R/o RZG-618/A, Raj Nagar-II,
Palam, New Delhi-110045.
Ex. Post Lecturer.

... Applicant

(By Advocates: Mr. M.N.Krishna Mani, Senior counsel
with Mr.Soumyajit Pani)

VERSUS

1. The Director,
National Council of Educational
Research & Training, NIE Campus,
Shri Aurobindo Marg,
New Delhi-110016
2. The Secretary,
National Council of Educational
Research & Training, NIE Campus,
Shri Aurobindo Marg,
New Delhi-110016

... Respondents

(By Advocates: Ms. Deepa Rai with Mr. R.K.Singh)

OA 605/2015

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 3. Ms. Vantjangpul Khobung,
13-P. CPWD Colony, Vasant Vihar,
Vasant Vihar, New Delhi-110057.
... Respondents

(By Advocate: Ms. Deepa Rai with Mr. R.K.Singh)

ORDER

Per Mr. Sudhir Kumar, Member (A):

These two OAs were filed on different dates, on 11.11.2014 and on 10.02.2015 respectively, but during the course of hearing of these two cases, on 13.08.2015 it was agreed to by the learned counsel of all the parties that these two OAs may be clubbed together, and, thereafter, from 15.10.2015 onwards, they were clubbed together for the purposes of hearing, and heard and reserved for orders together, and are, therefore, being disposed of through a common order.

2. However, for the purpose of convenience, we shall take the facts of the case as detailed in the OA 4034/2014 first.

OA 4034/2014

3. The applicant of this OA HAD approached this Tribunal because the respondents had first advertised for the post of Assistant Professor in Political Science along with many other

posts through their advertisement no.162, which the applicant has alleged to have been issued against the concerned Recruitment Rules (RRs in short) of the respondents, and had prayed for seeking necessary directions upon the respondents to consider his case for regular appointment as Assistant Professor in Political Science.

4. The applicant is a ST reserved ST Category Candidate, and was appointed as a Lecturer with the respondents-organization itself. The qualifications for the posts of Professors, Associate Professors, Assistant Professors, Lecturers and other academic staff in the respondents' organization are governed by UGC guidelines. The said advertisement no. 162 was issued in the year 2006 first, in the form of advertisement no. 153, in which the posts of Lecturers reserved for SC/ST categories under the Special Recruitment Drive had been advertised, and one post of Lecturer (Political Science) was advertised for Scheduled Caste category, and one for ST category, but with the remark that one post of Lecturer in Political Science was against lien/leave vacancy for two years or till the regularly appointed incumbent holding his lien against that post joins back, whichever is earlier.

5. The applicant had applied for the same under ST category, was selected and was issued an offer of appointment on 13.12.2006 (Annexure A/3), clearly stating that the appointment was from the date of assumption of charge, and for the period upto 30.04.2008, or till the regular appointee reported back for duty, whichever is earlier. The applicant joined the post on 21.05.2007, more than 5 months after the appointment letter

was issued to him. The applicant has submitted that the respondents had also issued other advertisement nos. 156 and 158 also on 15.11.2008 and 25.09.2010 respectively, seeking to appoint Assistant Professors in different disciplines, including the subject of Political Science, through Annexure A/4 colly.

6. The applicant has submitted that though his appointment was against the lien vacancy for a period upto 30.04.2008, the regular incumbent holding the lien against that post did not join back in the said post, and also resigned from the post for certain personal reasons. Therefore, soon after the stated period of his appointment upto 30.04.2008 was over, on 06/08/05/2008, the respondents issued an office order stating that the appointment of the applicant was extended till further orders, or till the vacancy was filled up on regular basis. The applicant was also given yearly increments, and revisions of pay, as were available to the other regular employees.

7. Subsequently, the post of Lecturer was re-designated as Assistant Professor. However, more than four years thereafter, when the applicant was away on an official duty to Udaipur, through office order dated 06.08.2012, his services were abruptly terminated by the respondents, through Annexure A/6, which he challenged before this Tribunal first in OA no. 2706/2012. The respondents contested the OA, but this Tribunal rejected the contention, and through order dated 11.04.2013, the Tribunal directed the respondents to take the applicant back in service, till the post is filled up on regular basis, and also

directed for him to be paid all consequential benefits, except for the salary for the period for which he had not worked.

8. In compliance of the orders passed by this Tribunal dated 11.04.2013, the respondents issued an office order taking the applicant back in service, on contractual basis, on a consolidated remuneration of Rs.35,000/- per month, through Annexure A/8 dated 28.05.2013. The applicant then felt aggrieved that the Tribunal's orders had not been complied with in true letter and spirit and he filed a Contempt Petition No. 135/2013 to enforce the orders passed by this Tribunal. Thereafter only the respondents had issued the advertisement no.162 (Annexure A/1) in October, 2014, to fill up the vacancy of Assistant Professor on a regular basis.

9. The applicant has alleged that this advertisement did not disclose the number of posts earmarked for reserved categories in the subjects in question, and only out of the total 81 vacancies in all subjects, an over all reservation of the posts had been indicated, as Unreserved-31, Schedule Castes-10, Schedule Tribes-7 and OBCs-33. The applicant has also alleged that this advertisement stipulated an essential qualification of 2 years of teaching experience at the school level, which, according to him, is irrelevant, as the experience of teaching at school level cannot in any way help in the job profile of an Assistant Professor with the respondent organization, which includes teachers training, text book development, material development for teachers and the students, and assisting in preparing the curriculum of other

educational institutions, and conducting research, and further submitted that under the RRs as applicable, there is no such requirement with regard to 2 years of teaching experience in a school.

10. The applicant was advised and filed a Writ Petition (Civil) no. 3454/2014 before the Hon'ble Delhi High Court on 15.04.2014. However, through its judgment and order dated 27.05.2014, the Hon'ble High Court dismissed the Writ Petition, holding that since the applicant had failed to apply in response to the said advertisement, therefore, the Writ Petition itself was not maintainable, and had to be dismissed (Annexure A/9).

11. The applicant filed a Review Petition 392/2014 before the Hon'ble High Court, submitting that the said judgment of the Hon'ble High Court had been passed without any jurisdiction, and was as such a nullity. At this juncture, vide its order dated 29.08.2014, Hon'ble High Court allowed the applicant to withdraw the Writ Petition, and granted him liberty to file an appropriate application before this Tribunal, and hence this OA.

12. The main ground taken by the applicant to file the present OA is that the impugned advertisement is not consistent with the RRs of University Grant Commission (UGC, in short) as applicable to the respondent-organization, and is, therefore, liable to be set aside. He has further taken the ground that this qualification of minimum 2 years of teaching experience in school, included in the advertisement, was aimed only at preventing him from applying for the post of Assistant Professor

in Political Science, knowing fully well that he is otherwise eligible. It was further submitted that the advertisement amounts to creating a class within a class, which is not permissible, and is violative of Article 14 of the Constitution. He has repeated his averment that since the job profile for the post does not involve teaching in schools, therefore, the criteria about having past experience in teaching in a school for two years is liable to be quashed.

13. He has further taken the ground that it is settled law that the eligibility of any candidate has to be reckoned in accordance with the RRs, and any error which had crept in the advertisement could not override the RRs, and create right in favour of a candidate, or lead to his disqualification, as per the law laid down by the Hon'ble Apex Court in **Malik Mazhar Sultan and Anr. Vs. UP Public Service Commission and Ors** (2006)9 SCC 507). He has further taken the ground that since the impugned advertisement does not disclose the number of reserved posts individual subject wise, and particularly against the subject of Political Science, the applicant, belonging to ST category, could not have even applied for the same, and hence such a vague advertisement is liable to be quashed, since it smacks of *malafide*. He has further taken the ground that he is well qualified, with a Ph.D. degree, with 8 years of experience in the post in question, and the impugned advertisement is liable to be quashed because it had rendered him ineligible even to apply for the post which had been already held by him, due to illegal conditions imposed. It had further taken the ground that he

ought to have been regularized on the post he was holding, looking at his unblemished service record for 8 years against the post, instead of advertising the vacancy. In the result, the applicant had prayed for the following reliefs:-

"7. Relief sought:

- (i) Call for the records of the case.
- (ii) Declare the impugned advertisement No.162 vide Annexure A-1 and selection process thereon as illegal, arbitrary and against the recruitment rules and quash the same.
- (iii) Direct the respondent to consider the applicant for regular appointment as Assistant Professor (Political Science) since the applicant holding the said post for more than 7 years without any break in service.
- (iv) Cost of the litigation be awarded to the applicant.
- (v) Pass any other Order or further Order as this Hon'ble Tribunal may deem fit and proper in the interest of justice and considering the facts and circumstances of the present case."

OA 605/2015

14. This second OA was also filed by the same applicant, after a gap of three months, through which he had sought quashing of the office order dated 15.12.2014, whereby he had been relieved from the post of Assistant Professor (Political Science) w.e.f. 13.12.2014, consequent upon the appointment of private respondent no.R-3 on regular basis, against the vacancies advertised, through the same advertisement no. 162, impugned in the first OA. The applicant was aggrieved that the respondents have taken such an action despite the fact that his appointment

was against the lien vacancy of the same post, which was still continuing, since out of two posts only one post had been filled up through private respondent no.R-3. Giving the same details regarding the facts, the applicant had, in this OA, filed on 10.02.2015, mentioned in para 4.10 that his Contempt Petition was still pending before the Tribunal. Though its number had been wrongly indicated as No.135/2013, it is seen that his Contempt Petition No.135/2014 arising out of OA 2706/2012 had already been disposed of one month prior to the filing of this second OA, by a Coordinate Bench, with the following orders, which he had failed to disclose:-

"This Contempt Petition has been filed by the petitioner alleging non-compliance of Order of this Tribunal dated 8.4.2013 passed in OA 2706/2012. The operative part of the said Order reads as under:-

"8. Accordingly, we allow this O.A. and quash the impugned order dated 06.08.2012. The applicant will be taken back in service and shall be allowed to continue, if otherwise eligible, till the post is filled up on regular basis. He will be entitled to all consequential benefits except for payment of salary for the period for which he has not worked. The respondents will comply with this order within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

9. As far as prayer (b) of the applicant is concerned, there appears to be no justification for giving any such directions at this stage.

2. The respondent has filed its compliance affidavit vide Order No.F.18-5/2006/E-1 dated 28.5.2013 thereby taken the petitioner back in service and allowed him to continue in service as Assistant Professor of Political Science on contractual basis, on a consolidated remuneration of Rs.35,000/- per month.

3. This Tribunal was of the view that the aforesaid order passed by the respondent was not in full compliance of the Order dated 8.4.2012. Therefore vide Order dated 19.9.2014, we gave the respondent one more opportunity to comply with our aforesaid

Order fully and file the affidavit in this regard. Accordingly, the respondent has filed the additional affidavit stating that an amount of Rs.3,95,918/- has been paid to the petitioner vide Cheque No.024685 on 19.11.2014.

4. In our considered view, the respondent has now fully complied with the aforesaid directions of this Tribunal. Accordingly, this Contempt Petition is closed. Notice issued to the alleged contemnor is discharged.

MA 4012/2014

This MA has been filed by the respondent for waiving off the cost of Rs.3000/- imposed on the respondent vide Order dated 2.12.2014. For the reasons stated therein, this MA is allowed."

15. However, in para 4.14 of this OA, the applicant had only mentioned the interim order dated 30.10.2014 passed in his Contempt Petition No.135/2014, and in para 4.15 he had acknowledged that through office orders dated 10.11.2014 and 13.11.2014, the respondents had released a sum of Rs.4,68,054/- towards payment of the differential amount of salary to him.

16. As already reproduced above, the Tribunal had, while disposing of his Contempt Petition No.135/2014 on 13.01.2015 taken notice of the payments made to him before his filing the Contempt Petition, and, therefore, the Coordinate Bench had also waived off the cost of Rs.3000/-earlier imposed on the respondents, vide order dated 02.12.2014, about which mention has been made by the applicant in para 4.17 in this OA.

17. The applicant had further alleged in this OA that though the respondents had since appointed private respondent no.R-3, and upon her selection pursuant to the impugned advertisement,

she had even joined the post on 12.12.2014, still his services were discontinued w.e.f. 13.12.2014, without the respondents saying anything as to what had happened to the second vacancy.

18. The applicant had first challenged the same through OA 466/2015, which was listed on 04.02.2015, but then permission was sought to withdraw the same, and to file a fresh OA, which permission was granted, and hence the present OA.

19. In this OA, apart from the grounds of the first OA being repeated, he had taken the further ground that the appointment order issued to private respondent no.R-3 did not indicate that it was issued against the post held by him, and that the respondents were in a hurry to fill up the post, so that he could be ousted, and the impugned relieving order dated 15.12.2014 (Annexure A-1) suffers from the voice of harassment meted out to him. All other grounds taken by him were the same as in the first OA, including reliance having been placed upon the judgment of Hon'ble Apex Court in **Malik Mazhar Sulan and Another** (supra), and he had taken the further ground that the respondents have failed to establish that the appointment of private respondent no.R-3 was against the post which the applicant was holding. In the result, he had sought for the following reliefs:-

"(i) Call for the orders of the case.

(ii). declare the impugned order dated 15.12.2014 vide Annexure A-1 and selection thereon in pursuant to the advertisement No.162 vide Annexure A-9 as illegal, arbitrary, against the recruitment rules and as actuated with mala fides and quash the same.

- (iii). Direct the respondent to consider the applicant for regular appointment as Assistant Professor (Political Science) since the applicant holding the said post for more than 8 years without any break in service.
- (iv). Cost of the litigation be awarded to the applicant.
- (v). Post any other Order or further Order as this Hon'ble Tribunal may deem fit and proper in the interest of justice and considering the facts and circumstances of the present case."

20. However, though interim reliefs had been prayed for in both the OAs, they were never considered by the Benches which had heard the two cases on various dates, and those prayers for interim relief are, therefore, deemed to have been rejected.

21. The respondents filed the counter affidavit only in the second OA 605/2015 on 04.08.2015, covering the overlapping grounds of both the cases. They had taken the preliminary objection that the OAs are wholly wrong, misconceived, and are liable to be rejected, because the applicant has not come before this Tribunal with clean hands. They had further taken the preliminary objection that when the respondents had issued the public advertisement on 27.10.2012 for recruitment to various faculty posts on regular basis, including the post against which the applicant was working in temporary capacity w.e.f 21.05.2007, the applicant did not apply at all till the last date of submission of applications was over on 26.11.2012, and, after the deadline had expired, through his letter dated 6.12.2012 (Annexure R/2), he had requested the respondents to allow him to submit his application beyond the prescribed time limit, which could not have been permitted.

22. They also submitted that the applicant had neither laid a challenge to the recruitment process, nor had sought any relief with regard to the said process for two years, till November, 2014, when he had filed the first OA 4034/2014, and later on the OA 605/2015.

23. They had taken the further preliminary objection that by filing of these OAs, the applicant is only trying to seek a back door entry into the respondent organization, stultifying the already concluded recruitment process, and that the OAs are wholly wrong and misconceived, and filed with ulterior purposes, and are liable to be rejected out-right with costs. They had taken the further objection that these OAs have already become infructuous, since the direct recruitment process under challenge was initiated vide the impugned advertisement dated 27.10.2012, with the last date of submission of the applications being 26.11.2012, and the selection process had been completed in October, 2014, and the duly selected candidates were appointed in December, 2014. They had taken the further preliminary objection that from the date of advertisement in October, 2012, till the date the regular appointee, respondent no.R-3 joined her post, the applicant did not represent against the recruitment process, nor did he apply for his own recruitment, and since he was never interested in facing the direct recruitment process, it was not now open to him to challenge the process, in which he had shown no interest at all, despite having all the opportunities to apply for and participate in it.

24. Thereafter, the role of the respondent organization was explained, and it was submitted that the advertisement under challenge is fully in accordance with the extant Direct Recruitment rules of the respondents' organization, and that there has only been a change in the manner in which the posts were advertised. In the past, the respondents had advertised for the posts through advertisement no 156 & 158 in 2008 and 2010, respectively, under a special drive, for filling up the posts on regular basis, after having categorically earmarked the posts reserved for SC/ST candidates, and leaving out the general category. However, in pursuance of the UGC Regulations, 2010, with regard to qualifications and eligibility conditions for academic posts, and for administrative reasons, when it was realised that they were not able to get the best available candidates against the respective reserved categories of posts, both the advertisement nos. 156 and 158 were cancelled on 15.07.2010 and 07.09.2012, respectively.

25. Thereafter, the competent authorities took a conscious decision, after due deliberations to advertise all the vacant posts together, and then, after selecting the best candidates according to merit, fill up the posts reservation category-wise, as per the mandated Roster points. It was submitted that in doing this, there has neither been any deviation with regard to the reservation policy, nor with regard to any eligibility criteria, and that the respondents had received 10,109 applications, out of which 256 applications were for the posts of Assistant Professor in Political Science alone. It was submitted that after scrutiny of

applications, 24 candidates for the posts were called for interviews, only 8 candidate turned up for interview, out of which 2 were SC, 1 was ST, 1 OBC, and 4 UR. It was further submitted that all the advertised posts have since been filled up, in accordance with the reservation policy of the Government.

26. It was further submitted that the respondents' organization has not violated the RRs, and has only adopted the RRs formulated by UGC by adding 'teaching experience' to the eligibility criteria, because in the respondents' organization, the main responsibility is formulation and development of School Curriculum at the national level, and hence, it was felt that the faculty, which is involved in such important tasks, must necessarily possess school teaching experience, apart from other specialised skills in research and innovation. It was submitted that while the minimum eligibility criteria as mandated by the UGC have been duly followed and adopted, the introduction of two years teaching experience at school level is one of the essential qualifications to suit the particular requirement of the functioning of the respondents' organisation, where the selectee has to prepare school curriculum for the whole nation.

27. It was submitted that though as per the Resolution passed by the Executive Committee of NCERT, the respondent-Council has been following guidelines of UGC in the case of pay structure and educational qualifications of their academic staff, but in 97th meeting of the Executive Committee held on 20.07.2012, the proposal for making requirement based amendments in

recruitment rules and other service matters, with minimum benchmarks, had been adopted, and the respondents were at liberty to improve the minimum qualifications prescribed, and to introduce additional parameters, which were required to best suit the interests and requirements of the Institution. It was further submitted that in the following cases, the law had been settled that the appointing authority is competent to fix a higher score for the purposes of selections, than the one required to be attained for mere eligibility:-

- (1) (1990) 2 SCC 189)- **JC Yadav Vs. State of Haryana.**
- (2) (2012) 9 SCC 545)- **State of Guj. Vs. Arvind Kumar.**
- (3) (2015) 1 SCC 642)-**Rajendra Kumar Agrawal Vs. State of UP.**

28. In parawise replies, it was further submitted that while two vacant posts of Assistant Professors in Political Science were to be filled up under direct recruitment, private respondent no.R-3 was selected under ST quota only, and was appointed against the available vacancy at Bhopal, and due to non-availability of a suitable candidate, the second post, which had been ear-marked for OBC category, could not be filled up, and the ST quota vacancy having already been filed up, the OBC quota post cannot be transferred to an ST candidate, which the applicant has claimed through these OAs. The remaining contentions of the applicant, and his other grounds, were denied as being wrong, incorrect and misconceived, and it was prayed that the OAs have no merit, and this Tribunal may be pleased to dismiss them. Through this counter affidavit, the respondent no.2 had also

brought on record the order dated 13.01.2015 passed in CP No.135/2014, already reproduced above, and the handwritten application of the present applicant, dated 06.12.2012, praying for his being permitted to submit his application beyond the last date of submission of applications for the post concerned.

29. The applicant filed a rejoinder to this counter reply, and submitted that while in OA No. 4034/2014 he had challenged the advertisement, in the second OA No. 605/2015 he had challenged the entire process of selection in pursuance to the same advertisement, and it is incorrect to state that he had not challenged the process of selection. Many other averments, as already made in the OAs, were repeated, and it was reiterated that the impugned advertisement did not create any scope for either the applicant, or for any other person, to know that only one of the posts was reserved for ST category, as no such reservation had been shown in the impugned advertisement, which he alleged had been done by the respondents in order to be able to manipulate the selection process.

30. It was further submitted that since one post of Assistant Professor (Political Science) was still vacant, there was no justification for the respondents to relieve him, and the impugned order dated 15.12.2014 terminating his services was uncalled for. It was denied that the UGC Regulations, 2010, had been followed in the impugned advertisement, and the allegation that the criteria of 2 years' school level teaching experience had been introduced and designed only to prevent him from applying

for the said post. It was further submitted that it is incorrect to state that the applicant had shown no interest in competing for the post against which he had been diligently and dedicatedly working with the respondents for almost 8 years, and that, therefore, he has also challenged the selection process of private respondent no.R-3.

31. It was denied that the respondents have only added the criteria of teaching experience beyond the UGC Regulations, 2010, regarding essential qualifications. It was further submitted that the decision of the respondents to not disclose any relaxation having been shown by respondent no.2 to the person who had already served with them, goes to show that he has only been victimized because of filing his OA against the respondents, and because when they had failed to comply with the order of the Tribunal, he had filed a Contempt Petition (supra), seeking compliance of the Tribunal's judgment.

32. It was submitted that all public advertisements and selections thereafter, have to be made in a transparent manner, without fixing a particular criteria, which operates only to deny the Constitutional rights of the applicant, and other similarly situated persons. The contention of the respondents that two years' teaching experience at school level was essential was denied, and it was submitted that the Selection Committee ought to have considered the candidature of the applicant, looking at his experience. It was, therefore, prayed that this Tribunal may call for all the records with regard to the advertisement and selection of private respondent no.R-3, and the OA be allowed.

33. Heard Learned Counsel for both the sides argued their cases vehemently, and written submissions were also filed by the Counsel of both the sides on 26.04.2016, within 10 days of the cases having been heard and reserved for orders.

34. In the written submissions filed on behalf of the applicant, the same submissions had been reiterated, and it was submitted that the advertisement had been issued for two posts, without earmarking as to which post was for ST Category as per the reservations, is violative of the law as laid down in the following cases:-

- (1) **Dr.Suresh Chander Verma & Ors Vs. The Chancellor, Nagpur University & Ors:** 1990 (4) SCC page 55.
- (2) **State of UP Vs. Dr. Dinanath Shukla & Anr:** 1997 (9) SCC page 662.

35. It was further submitted that the experience criteria of two years' teaching experience at School level was introduced by the respondents for the first time, just to prevent the applicant, who had already worked on the post for 7 years from applying for the post in question, in spite of the fact that the UGC Regulations do not prescribe any teaching experience at the school level. It was submitted that this peculiar requirement, *de-hors* the RRs, is liable to be quashed and set aside, as per the law laid down in the following cases:-

- (1) (1982) 3 SCC 313): **State of Maharashtra Vs. Raj Kumar.**
- (2) 124 (2005) DLT 223: **Iqbal Hussain & Ors Vs. MCD & Anr.**

36. It was further submitted that as per the law settled in **Malik Mazhar Sulan and Anr** (supra), the eligibility has to be reckoned in accordance with only the RRs, and any error in the advertisement could not override the RRs, and create any right in favour of particular candidate(s) disqualifying the unwanted ones.

37. It was further submitted that the irrelevant criteria of 2 years' teaching experience at school level cannot be held good in law, as the job profile, about which the applicant has known very well, having served in the post for 7 years, does not require any such teaching experience, and the respondents have failed to take into account his past service, which had been appreciated throughout. It was, therefore, reiterated that since out of the two posts one post is still lying vacant, the case of the applicant will have to be considered against the said vacancy. Copies of the above relied upon judgments had been filed along with the written submissions.

38. In the written submissions filed on behalf of respondents, it was submitted since the applicant had neither applied for the recruitment in response to the public advertisement, nor had participated in the process of selection, therefore, it goes to show that he had no interest at all, and also no *locus standi* to challenge the recruitment process, as has been held by the Hon'ble Apex Court in **Kumari Chitra Ghosh and Another Vs. UOI and Others** (Constitutional Bench), laying down the law that a person who does not participate and compete in the selection process has no *locus standi* to challenge the same. It

was further submitted that the earmarking of reserved categories had been clearly stated in the advertisement itself, at the bottom, and the posts had been filled up as per the roster points maintained by the NCERT establishment, strictly in accordance with the mandate of the reservation policy.

39. It was further submitted that adding teaching experience in the eligibility criteria as a part of the eligibility criteria was mandated for all the posts of Professors, Associate Professors and Assistant Professors, and thus there had been no *malafide* or illegality as alleged, and it had not been introduced only for the posts of Assistant Professors (Political Science), with which the applicant is concerned.

40. Secondly, it was submitted that when the mandate of the respondents' organization is formulation and development of the School Curriculum for children throughout the country, it was rightly felt that the faculty of the organization, which is involved in such an important task, must possess actual school teaching experience, apart from other specialized skills in research and innovation. It was submitted that, therefore, while maintaining the minimum qualifications as prescribed by the UGC, two years' teaching experience was prescribed, in order to suit the peculiar requirement of the respondents' organization, which has to prepare the school curriculum for the whole nation, which was fully justified on the basis of the law as laid down by the Hon'ble Apex Court in **J.C.Yadav and Others** (supra), **State of Gujarat & Ors** and **Rajendra Kumar Agrawal** (supra).

41. We have considered the oral and written submissions made by the learned counsels for parties, as well as the case law relied upon by them.

42. In the case of **Malik Mazhar Sultan and Another** (supra), Hon'ble Apex Court had dealt with a case of an advertisement, where there had been an error in prescribing the date according to which the age was to be reckoned for the purpose of examination. In that context, Hon'ble Apex Court had held that even when the excluded candidates were eligible in age as per the advertisement, but since recruitment to a service can only be made according to the Recruitment Rules, the errors, if any, in the advertisement, cannot override the rules, and create a right in favour of a candidate, if he is not otherwise eligible according to the RRs. It was further held that relaxation of age can be granted only as permissible under the rules, and not on the basis of an erroneous advertisement. It is seen that the instant case is not a case relating to an erroneous advertisement, and the facts of the cited case cannot come to the rescue of the applicant before us.

43. The advertisement as brought out by the respondents had first prescribed the minimum qualifications as per the UGC prescribed RRs, but since the UGC prescribed RRs for the posts of Professors/Associate Professors/Assistant Professors deal only with the recruitment of Staff only for the Degree and Post Graduate Colleges and Universities involved, who are connected with only teaching, and the respondent organization before us, NCERT, is such an organization that its Staff do not undertake

teaching of the students on their own, but actually prepare the curricula for being taught at the Schools and Colleges, if because nature of their specialized job, in their wisdom, the Council had in its meeting had decided to introduce an element of actual experience of teaching in schools also as a part of eligibility, beyond the minimum UGC prescribed qualifications, the respondent organization-NCERT cannot be faulted on that account. Their role is much different than that of the Colleges and Universities, in respect of whom the general UGC qualifications, prescribed for the fully teaching posts, relate to.

44. Learned counsel for the applicant has further relied upon the judgment in the case of **Dr.Suresh Chandra Verma and Others** (supra). That judgment also relates to the University teaching staff of Nagpur University, and is not directly related to the specialized nature of job of NCERT, which is entirely different than that of a teaching University or College. However, it is seen in that judgment that an Employment notice had been issued inviting applications for three categories of posts, Professors, Readers and Lecturers, for teaching of different subjects. In that case, the Employment notice did not indicate the numbers of reservation post-wise/subject-wise. It was, therefore, held by the Hon'ble Apex Court that the Employment notice must indicate the numbers of reservation post-wise/subject-wise and not category-wise, by upholding the Karnataka High Court Full Bench judgment in **Dr.Raj Kumar V. Gulbarga University** (ILR 1990 Kar.2125) in the following words:-

"13. On behalf of the appellants reliance was also sought to be placed on a Full Bench decision of the Karnataka High Court in Dr.Raj Kumar Vs. Gulbarga

University. We do not see how the decision in question helps the appellants, for the Full Bench has observed there that general reservation has to be cadrewise and subjectwise. But an exception could possibly be made in cases like the one of professors in which post available in each of the subjects is only one while grouping all of them together for purpose of reservation so that at least in the subjects in which the candidates belonging to the reserved category are available, they could be accommodated. It is not necessary for us in this case to express our opinion on the correct course to be adopted when only one post is available in a particular subject at a given time. The course to be adopted would depend upon the unit of reservations, the period over which the backlog is to be carried, the number of appointments already made in the said posts, the availability of candidates from the reserved category etc. What is material from our point of view in this case is to point out that even the Karnataka Full Bench has taken the view that generally reservation has to be cadrewise and subjectwise. It was also a case of the filling in of the vacancies in teaching posts in a University.

14. We are, therefore, in complete agreement with the view taken by the Full Bench that the employment notice dated July 27, 1984 was bad in law since it had failed to notify the reservations of the posts subjectwise and had mentioned only the total number of reserved posts without indicating the particular posts so reserved subjectwise."

45. The learned counsel for the applicant had further placed reliance upon the judgment in the case of **State of U.P Vs. Dr. Dina Nath Shukla and Another** (supra). That also was a case directly related to the case concerning direct recruitment to the posts of Professors, Readers and Lecturers in Universities/ Colleges established under the relevant U.P. Act. In these two judgments, the Hon'ble Apex Court had held that advertisement inviting applications must specify the reserved vacancies subject-wise, and it was further held that the single posts of Professors, Readers or Lecturers, in each faculty, discipline,

speciality or super-speciality, should be clubbed together category-wise, and for an isolated post the rule of rotation should be adopted for applying the rule of reservation. Thus, this judgment had watered down the law as laid down in **Dr.Suresh Chandra Verma and Others** (supra) in 1990, and it was recognized that there could be single posts of Professors, Readers, Lecturers in each faculty, discipline, speciality, super-speciality, and it was held that such posts could be clubbed together category-wise, by stating as follows:-

"9.....Thereby, it would be clear that while issuing any advertisement for direct recruitment to fill up any post or service in any grade or cadre in the University/educational institution established under the U.P.Act, the University/educational institution should work out the posts beforehand and to make recruitment accordingly. It is seen that in the present case the advertisement specified various posts subject-wise and the vacancies were reserved for general candidates, Dalits, Tribes and OBCs. Of course, it is not clear whether it is as per roster. It is true, as contended by the learned Addl. Advocate General (sic) that if there is only one post in a cadre/faculty, be it a post of Professor, Reader or Lecturer, necessarily, all such single posts carrying the same scale of pay are required to be clubbed and the roster applied to such single post in terms of Section 3 (5) of the Act. When such a fusion is and in fact should be worked out, and the roster is applied, necessarily advertisement should be issued inviting applications for recruitment to the posts. The University is required to earmark the posts in the roster meant for general category or Dalits, Tribes or OBCs so that every qualified candidate would apply for and seek selection in accordance with law. In this behalf, sub-section (6) of Section 3 amplifies the general law that the candidates who had applied for recruitment for the posts earmarks as per Section 3(1), if selected on merit in open competition with general candidates, then they shall not be adjusted against reserved vacancies. Sub-section (6) of Section 3 reads as under:-

"3. (6) If a person belonging to any of the categories mentioned in sub-section (1) gets selected on the basis of merit in an open competition with general candidates, he shall not be adjusted against the vacancies reserved for such category under sub-section (1)."

10. In a case where there are more than one post available in the same faculty in the cadre of Professor, Reader or Lecturer, as the case may be, necessarily and perforce, the advertisement should also be made subject-wise applying Section 3(1) and (5) of the Act. On selection, the candidates appointed should be fitted in that behalf as per the roster maintained by the University/educational institution. Thus, all eligible candidates, be they general or reserved would get equal opportunity to apply for and seek selection and recruitment in accordance with law and the Rules. In adjudging the constitutionality of the scheme or the rule of reservation, what is required to be kept at the back of the mind is the equality and adequacy of representation as per the percentage prescribed by the rules /administrative instructions. The enforcement of the Act hinges upon logistic interpretation and not on legalistic orientation; pragmatic and not pedantic approach so that all candidates get equality of opportunity to hold an office or post under the State. Cadre should also be taken to ensure that equal opportunity for selection and appointment is available to all candidates in all faculties, discipline, speciality and super-speciality and in each cadre/grade/service so that equality is spread out and no one category gains monopoly or is pushed into one category, grade or service.

11. xx xx
12. xx xx

13. Thus, it could be seen that if the subject-wise recruitment is adopted in each service or post in each cadre in each faculty, discipline, speciality or super-speciality, it would not only be clear to the candidates who seek recruitment but also there would not be an overlapping in application of the rule of reservation to the service or posts as specified and made applicable by Section 3 of the Act. On the other hand, if the total posts are advertised without subject-wise specifications, in every faculty, discipline, speciality or super-speciality it would be difficult for the candidates to know as to which of the posts be available either to the general or reserved candidates or whether or not they fulfil or qualify the requirements so as to apply for a particular post and seek selection. As indicated earlier, if there is any single post of Professor, Reader or Lecturer in each faculty discipline, speciality or super-speciality which cannot be reserved for reserved candidates, it should be clubbed, roster applied and be made available for the reserved candidates in terms of Section 3(5) of the Act. Even if there exists any isolated post, rule of rotation by application of roster should be adopted for appointment. For achieving the said object, the

Vice-Chancellor, who is the responsible authority under Section 4 to enforce the Act, would ensure that single posts in each category are clubbed since admittedly all the posts in each of the categories of Professors, Readers or Lecturers carry the same scale of pay. Therefore, their fusion is constitutional and permissible. The Vice-Chancellor should apply the rule of rotation and the roster as envisaged under sub-section (5) of Section 3. The advertisements are required to be issued so that the reserved and the general candidates would apply for consideration of their claims for recruitment in accordance therewith. This interpretation would subserve and elongate constitutional objective and public policy of socio-economic justice serving adequacy of representation in a service or post, grade or cadre as mandated and envisaged in Articles 335 and 16(4) read with Articles 14 and 16(1), Preamble, Article 38 and Article 46 of the Constitution and all other cognate provisions.

14. This ratio is consistent with the law laid down by this Court in Madhav case as elaborated earlier.”

46. Further reliance had been placed by the learned counsel for the applicant on the judgment of Hon’ble Apex Court in the case of **State of Maharashtra Vs. Raj Kumar** 1982(3) SCC 313. In that case, the Rules framed by the Government and forwarded to SSC for selecting officers, weightage had been granted in the RRs concerned to the persons coming from the rural areas. When the High Court had in that case held that the rule of weightage was manifestly unreasonable and arbitrary, and places a rural candidate in an advantageous position by the sheer accident of his passing the SSC examination from rural areas, the Hon’ble Apex Court had upheld the same. It does not appear that the law as laid down in that case can be directly made applicable to the instant case before us, as the facts of the two cases are not on all fours with each other.

47. Finally, the learned counsel for the applicant had relied upon the Delhi High Court judgment in the case of **Iqbal Hussain and Others Vs. MCD and Anr.** (124 (2005) Delhi Law Times 223). That case related to the appointments to the posts of Primary Teachers on contract basis, in which some consideration had been granted to the persons who had completed 10th or 12th examinations from within Delhi, and were registered with the Employment Exchanges in Delhi. That prescription was impugned as being a restrictive condition, and discriminatory and arbitrary, giving priority to Delhi candidates. The Hon'ble High Court had held that the respondent-MCD was not justified in making any such classification on any basis, except when it was a policy measure.

48. In the instant case, it is only as a policy measure that the respondents have decided to add two years' actual teaching experience in a school as one of the requisite qualifications, because the special nature of work of the respondents' organization NCERT which is tasked with the framing of the school syllabi, and, therefore, it does not appear that any benefit can ensue to the applicant from the ratio as laid down in that case.

49. In his counter reply and written submissions the learned Counsel for the respondents had, on the other hand, relied upon four judgments of Hon'ble Apex Court (supra). The Constitution Bench judgment in **Kumari Chitra Ghosh and Another Vs. UOI and Others** (1969) 2 SCC 228 has laid down the law that a person who had not participated in the process of selection, and

did not compete for the seat concerned, has no *locus standi* in the matter, by laying down the law as follows, and relying upon its earlier judgment in the case of **Shri Ram Krishna Dalmia**

Vs. S.R. Tendolkar (1959) SCR 279=(AIR 1958 SC 538):-

"8.....As laid down in **Shri Ram Krishna Dalmia v. S.R.Tendolkar** (1959) SCR 279=(AIR 1958 SC 538) Article 14 forbids class legislation; it does not forbid reasonable classification. In other words to pass the test of permissible classification two conditions must be fulfilled, (i) that the classification is founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (iii) that differentia must have a rational relation to the object sought to be achieved...".

9 to 11 not produced here.

12. The other question which was canvassed before the High Court and which has been pressed before us relates to the merits of the nominations made to the reserved seats. It seems to us that the appellants do not have any right to challenge the nominations made by the Central Government. They do not compete for the reserved seats and have no *locus standi* in the matter of nomination to such seats. The assumption that if nominations to reserved seats are not in accordance with the rules all such seats as have not been properly filed up would be thrown open to the general pool is wholly unfounded. The Central Government is under no obligation to release those seats to the general pool. It may in the larger interest of giving maximum benefit to candidates belonging to the non-reserved seats release them but it cannot be compelled to do so at the instance of students who have applied for admission for out of the categories for whom seats have not been reserved. In our opinion the High Court was in error in going into the question and holding that out of the nine seats filled by nomination two had been filled contrary to the admission rules and these would be converted into the general pool. Since no appeal has been filed against that part of the order we refrain from making any further observations in the matter."

50. Reliance had further been placed upon the 1990 judgment in the case of **J.C.Yadav and Others** (supra). In this judgment, in the context of Haryana Service of Engineers Class I PWD

(Public Health Branch) Rules, 1961, it was held that the Rule confers power on the Government to prescribe for any other test, in addition to the departmental examination for promotion or appointment to any rank in the service, which rule at the same time, confers powers on the Government to relax any of the rules, as it may consider necessary, which proposition had been upheld as follows:-

“4. The Rule confers power on the Government to prescribe for any other test in addition to the departmental examination for promotion or appointment to any rank in the service. Rule 22 confers power on the Government to relax any of the Rules as it may consider necessary.”

51. Reliance had further been placed upon the judgment in the case of **State of Gujarat and Others Vs. Arvindkumar T.Tiwari and Anr** (supra). It was a case related to eligibility for compassionate appointments. Hon’ble Apex Court had held that fixing eligibility for a particular post, or even for admission to a course, falls within the exclusive domain of the Legislature/Executive, and cannot be the subject matter of judicial review, unless such exercise is found to be arbitrary, unreasonable, or such eligibility having been fixed without keeping in mind the nature of service for which appointments are to be made, or had no rational nexus with the object sought to be achieved. It was further held that eligibility can be changed unilaterally for the purposes of granting promotions, and a person seeking promotion cannot raise the grievance that he should be governed only by the rules as were earlier existing, when he had initially joined service. In regard to the matter of appointments, it was held that the authorities concerned had unfettered

powers, in so far as the procedural aspects are concerned, so long as they meet the requirement of eligibility etc., and the rejection of the candidature of a candidate is not found to have been done at the cost of fair play, good conscience, and equity, by holding as follows:-

"12. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of 'fair play', 'good conscious' and equity.(Vide: State of J &K v. Shiv Ram Sharma & Ors., AIR 1999 S 2012; and Praveen Singh v. State of Punjab & Ors., (2008) 8 SCC 436).

13. In State of Orissa & Anr. V. Mamta Mohanty, (2011) 3 SCC 436, this Court has held that any appointment made in contravention of the statutory requirement i.e. eligibility, cannot be approved and once an appointment is bad at its inception, the same cannot be preserved, or protected, merely because a person has been employed for a long time.

14. A person who does not posses the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegibility and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court.(See. Prit Singh v.S.K.Mangal & Ors., (1993 (1) SCC (Supp.) 714; and Pramod Kumar v. U.P.Secondary Education Services Commission & Ors., AIR 2008 SC 1817)."

52. Following the law as laid down in the above cited judgments, we find that the prescription of 2 years' actual teaching experience in schools had a reasonable nexus with the object of the respondent organization's basic task of framing of syllabi for the school teaching, and, therefore, the respondents were fully within their powers to prescribe the additional requirement of minimum two years' teaching experience in school also as a qualification.

53. Finally, reliance had been placed on the judgment of Hon'ble Apex Court in **Rajendra Kumar Agrawal Vs. State of UP & Ors** (supra). In that case, since it was found that there was no material to show that the respondents had resorted to exercise of their powers of relaxation for some unauthorized or oblique purposes, it was held that the power of making such relaxations was always available under the regulations, and had been exercised in a manner which does not call for any judicial interference. Applying the law as laid down in this judgment, we find that the powers exercised by the respondent-NCERT to prescribe an additional qualification of two years' teaching experience for all the three categories of posts of Professors, Associate Professors and Assistant Professors were not for any unauthorized/oblique purposes, but that such power was exercised to find out the most suitable candidates to help the organization achieve and perform the task of framing of syllabi for actual teaching in schools, and, therefore, the respondents were fully justified in prescribing the additional teaching qualifications as per this judgment of Hon'ble Supreme Court also.

54. It is seen that the applicant before us had taken a chance before the Hon'ble Delhi High Court, and the High Court had, without noticing the aspects of jurisdiction held on 27.05.2014 in the Writ Petition that given the fact that the writ petitioner was well aware of the advertisement published, and that it was open to him to apply pursuant thereto and to participate in selection process, after his having avoided to do so, he cannot have a grievance that he was not granted any opportunity to file his application, as no separate orders thereto were required in this regard, and it was always open to any eligible candidate to apply for the posts in question as per the terms laid down in the advertisement. Though the writ petition was later on allowed to be withdrawn, and the order passed on 27.05.2014 was recalled, but the observation of the Hon'ble High Court was very pertinent, and we also reiterate that the applicant having served with the respondents' organization on contract basis etc. for so many years, and being fully aware of the advertisement, and knowing the law that as an ST candidate, he could have competed on his own merit even against a UR vacancy, and get selected, nothing prevented him from applying to the respondents for being appointed against the said posts, which were advertised, which he failed to do.

55. Though the law as laid down by the Hon'ble Apex Court in **Dr. Suresh Chandra Verma and Others** (supra) and **State of U.P. Vs. Dinanath Shukla and Anr** (supra) is applicable, but here the respondent organization NCERT is not a teaching

organization and does not have a large cadre, and has only a very limited number of posts at the level of Professors, Associate Professors and Assistant Professors. Therefore, in the instant case, the latest law as last laid down in the 1997 judgment in **State of UP Vs. Dinanath Shukla and Anr** (supra) would be applicable, rather than the 1990 judgment in the case of **Dr. Suresh Chander Verma and Ors** (supra), and it is held that the respondents were fully justified in having clubbed the vacancies for the purposes of providing reservations so that they could get the best possible candidates against all the posts advertised.

56. Lastly, but not the least, the respondent no.R-3 has been selected as a ST candidate herself, and has been selected against the same advertisement, after applying for the same post, for which the applicant had failed to apply. Therefore, we find no merit in the submissions of the applicant that he has any right to challenge the appointment of respondent no.R-3 in any manner whatsoever, who has been appointed against the ST post available, and since the applicant is not an OBC, but is a ST category candidate, which slot already stands occupied, the applicant cannot now lay a claim to assail the process of selection, and to impugn the advertisement against which he had even failed to apply.

57. It has been held by the Hon'ble Apex Court in **V.K.Sood Vs. Secretary, Civil Aviation and Others** (1993) SCC (L&S) 907) that laying down, and prescribing through rules, the

qualifications in the matter of appointments, is a prerogative of the administrative authorities, and this cannot be impeached on the ground that it has to be tailor-made to suit certain individuals.

58. In view of the above position of law and facts, both the OAs are dismissed, but there shall be no order as to costs.

(RAJ VIR SHARMA)
MEMBER (J)

(SUDHIR KUMAR)
MEMBER (A)

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