

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

TA 463/2009

Reserved on: 13.07.2016
Pronounced on: 20.07.2016

**HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE MR. RAJ VIR SHARMA, MEMBER (J)**

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...Applicants

(By Advocate: Shri Vinay Sabharwal)

VERSUS

Municipal Corporation of Delhi
Through its Commissioner,
Town Hall, Delhi ...Respondents

(By Advocate: Shri Manjeet Singh Reen)

ORDER

MR. P.K. BASU, MEMBER (A) :

This matter was heard in TA 463/2009 by this Tribunal and vide order dated 21.02.2013, the TA had been dismissed. The matter came up before the Hon'ble High Court in W.P. (C) No.4166/2013 and the Hon'ble High Court passed the following order:

"2. A perusal of the impugned decision by the Tribunal would reveal that the Tribunal has proceeded on the basis that the Recruitment Rules pertaining to Assistant Teacher (Primary) were statutory in character and thus resolutions passed by the Corporation having an effect to amend the Recruitment Rules were meaningless unless they found a reflection in the amended Recruitment Rules.

3. Drawing our attention to certain additional pleadings learned counsel for the petitioner would argue that it squarely fell for consideration before the Tribunal whether the so-called Recruitment Rules relied upon by the Corporation were statutory in character or were they akin to executive instructions.

4. Since the point in question does not find a reflection in the impugned order and learned counsel insists that he argued the same before the Tribunal in our opinion the correct remedy for the petitioner would be to draw attention of the Tribunal to the pleadings and assert before the Tribunal that arrangements were premised with reference to the pleadings in question.

5. Granting liberty to the petitioners to move an appropriate application before the Tribunal we dismiss the writ petition as not pressed; making it clear that we have not expressed any opinion on the merits of the controversy and all issues of law and fact remain open."

The matter has, therefore, come up on review as a consequence of the directions of the Hon'ble High Court.

2. The facts of the case are that in the year 1998-99, the Municipal Corporation of Delhi (MCD) decided to reserve 1% quota for promotion of Group 'D' employees through limited departmental competitive test to the post of Primary Teacher. A notification dated 3.06.1999 was issued inviting applications for the posts of Primary Teacher. The applicants applied for the said posts and were issued roll numbers. However, the examination was not conducted and the matter was kept pending.

3. In 2003, the Hon'ble Supreme Court delivered a judgment in **Yogesh Kumar & others Vs. Government of NCT of Delhi**, (2003) 3 SCC 548 which stated that the candidates possessing higher qualifications for the post of Primary Teacher will not be eligible in view of the fact that a lower qualification is prescribed under the Recruitment Rules (RRs). Initially the minimum eligibility criteria was B.Ed. but after the judgment in Yogesh Kumar (supra), vide notification dated 13.07.2007, the qualification of B.Ed. in the RRs for Primary Teacher was deleted and replaced by B.Ed. In fact, the RRs as notified now vide notification dated 13.07.2007 do not provide for any recruitment of Primary Teachers through promotion.

4. The contention of the applicants in the OA is that they should be governed by the recruitment process which has been set in motion on 3.06.1999 and the amended RRs should not cover the case of the applicants. The learned counsel cited the following judgments in support of his case:

- (i) **Arjun Singh Rathore and others Vs. B.N. Chaturvedi and others**, (2007) 11 SCC 605
- (ii) **B.L. Gupta and another Vs. M.C.D.**, JT 1998 (7) SC 225
- (iii) **Marripati Nagaraja & ors. Vs. The Government of Andhra Pradesh & ors.**, 2007 (12) SCALE 397

The learned counsel further cited the judgment in **Rekha & ors. Vs. UOI & ors.**, 140 (2007) Delhi Law Times 232 (DB). In this case, the post of Primary Teacher was advertized prescribing the eligibility as follows:

- "(i) Senior Secondary (Class XII) with 50% marks
- (ii) JBT after Senior Secondary (Class XII or B.Ed. or equivalent or B.El.Ed.
- (iii) Proficiency in teaching through Hindi and English Media (will be judged by way of descriptive type written examination of 10th Standard)."

The Tribunal held that candidates who possessed B.Ed. without JBT are liable to be excluded. The Hon'ble High Court, however,

set aside the order of the Tribunal holding that the petitioners in that case were eligible for appointment on the minimum qualification of B.Ed.

5. The applicants also relied on the judgment of the Hon'ble High Court in **Shri D.K. Gupta and others Vs. Municipal Corporation of Delhi and others**, 1979 (3) SLR 416 where the Hon'ble Court held that rules cannot be modified by executive instructions but one set of administrative instructions can be modified by another set of administrative instructions. It was held specifically in this case that:

“20.....The draft recruitment rules are not statutory in the absence of the approval of the Central Government and its publications in the official gazette, but that does not take away the power of the Committee to make appointments. The power is conferred under section 92 of the Act on the Committee to make appointments whether temporary or permanent. The power may be exercised in accordance with the statutory recruitment regulations when framed, but the absence of recruitment regulations does not impinge upon the power of the Committee, to make the appointments.....”

6. The respondents stated that after the judgment of the Hon'ble Supreme Court in Yogesh Kumar (supra), they have issued a circular dated 2.02.2001 by which circular dated 3.06.1999 has been withdrawn. Therefore, any appointment to the post of Primary Teacher has to be made as per 13.07.2007 RRs, which are duly notified.

7. We have heard the learned counsel for the parties and gone through the pleadings available on record.

8. The issue that has been raised by the Hon'ble High Court for consideration is whether the so-called RRs relied upon by the Corporation were statutory in character or were they akin to executive instructions. On this issue, from perusal of the recruitment regulation dated 9.07.1980 (Annexure R-1 of counter affidavit dated 13.05.2009 of MCD), it would appear that they were not notified by the government unlike 13.07.2007 RRs, which were notified in the Delhi Gazette. Similarly, the RRs circulated on 3.06.1999, which provided B.Ed. or equivalent as the qualification, also does not seem to have been notified in the official gazette, as appears from Annexure R-1 of reply on behalf of applicants to the additional affidavit on behalf of respondent MCD dated 15.09.2010. Therefore, clearly this issue is resolved and we are of the opinion that both the recruitment regulations dated 9.07.1980 and 3.06.1999, since they were not gazetted, are not statutory in nature. Therefore, before the withdrawal by the respondents of the notification dated 3.06.1999 vide circular dated 2.02.2001, these RRs should be treated to be in vogue and any appointment to the post of Primary Teacher would be in accordance with these and the minimum qualification has to be treated as B.Ed. and 1% quota for Group 'D' through limited departmental competitive test will also be applicable. Therefore, had the department gone ahead with the examination for recruitment, the applicants could have got an opportunity to be recruited if they qualified the examination. Clearly, the judgment of the Hon'ble Supreme Court in Yogesh Kumar (supra) will not come in the way as the old RRs of 1999 provided for B.Ed. as the

educational qualification, which the applicants possessed. But, unfortunately for the applicants the department took a policy decision not to pursue the limited departmental competitive test process. Instead they reexamined the whole issue and even before the judgment of the Hon'ble Supreme Court in Yogesh Kumar (supra), in 2001 itself, they decided to withdraw 1999 RRs, which meant that the RRs of 9.07.1980 were in effect till the RRs were further amended vide notification dated 13.07.2007. The RRs of 9.07.1980 prescribe for educational qualification either of higher secondary or intermediate. In that case, Yogesh Kumar judgment will come into effect and the applicants will not be eligible having higher qualification of B.Ed.

9. In any case, the respondents had every right to review their policy regarding recruitment at the level of Primary Teacher and the Tribunal will not interfere in that unless the policy is *prima facie* malafide or arbitrary. This is not the case. The respondents took a conscious decision in 2001 to withdraw the RRs as circulated vide order dated 3.06.1999 and thereafter decided to lower the minimum qualification from B.Ed. to B.El.Ed. The process initiated in 1999 in accordance with the RRs of 3.06.1999 was not pursued. Just because roll numbers were issued, does not bestow any right on the applicants to ask for recruitment via the route of 1% limited departmental competitive test based on 3.06.1999 RRs.

10. In view of above discussion, we find no merit in this

application and it is, therefore, dismissed. No costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

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