

**Central Administrative Tribunal
Principal Bench: New Delhi**

OA No.823/2016
With
MA No.803/2016

Reserved on :15.07.2016
Pronounced on:10.11.2016

Hon'ble Shri Sudhir Kumar, Member (A)
Hon'ble Shri Raj Vir Sharma, Member (J)

Rohitash Kumar Verma (Aged about 31 years)
Appointment , Teacher (Primary)
S/o Sh. Kailash Chand Bairwa,
Presently Residing at:
E-342, 3rd Floor, Gali No.19,
Sadh Nagar, New Delhi-110045.

...Applicant.

(By Advocate: Shri M.K.Bhardwaj)

Versus

1. South Delhi Municipal Corporation
Through its Commissioner,
Dr.Shyama Prasad Mukherjee Marg,
Civic Centre, New Delhi.
 2. Director of Education
South Delhi Municipal Corporation
Through its Commissioner,
Dr.Shyama Prasad Mukherjee Marg,
Civic Centre, JLN Marg, New Delhi.
 3. Delhi Subordinate Service Selection Board,
Through its Chairman
FC-18, Institutional Area,
Karkardooma, Delhi.
- ...Respondents.

(By Advocates: Shri R.K.Jain)

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ORDER

Per Sudhir Kumar, Member (A):

MA No.803/2016 had been filed under Rule 24 of the CAT (Procedure), Rules, 1987, seeking exemption from filing of legible copies of dim annexures, which MA is allowed.

2. The applicant of this OA has approached this Tribunal since he is aggrieved by the respondents not having issued to him an appointment letter for the post of Teacher (Primary), even though he had been found eligible for participating in the above selection process as per the relevant rules, and the eligibility criteria, as prescribed, after which he had been issued Admit Card, and on being declared selected by the Respondent No.3 - Delhi Subordinate Services Selection Board (DSSSB, in short), even his dossier was sent by the Respondent No.3 - DSSSB to the Respondent Nos.1 and 2, along with the dossiers of all other selected candidates. After receipt of such dossiers, the Respondent Nos.1 and 2 called all the selected candidates, including the applicant, for verification of their original documents, i.e. educational certificates, caste certificate etc., and the applicant appeared before them, as per letter dated 10.07.2015, for verification of the original documents. His original documents, including educational certificates, were found

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to be in order, and the respondents even issued to him an offer of appointment on 26.10.2015. The applicant sent his acceptance to the said offer of appointment, requesting for issuance of posting order accordingly. However, the respondents, instead of issuing posting order to the applicant, as they had done in the case of other similarly placed persons, raised some objection regarding the qualification possessed by the applicant. The objection raised related to his B.Ed. Bal Vikas Integrated Course Degree. Since, according to him, the said objection was without any basis, he requested to the respondents to ignore the same. However, the respondents did not agree with the applicant, and sought a clarification from the National Council for Teacher Education (NCTE, in short).

3. The applicant then approached the NCTE for ascertaining as to whether the B.Ed. Bal Vikas Integrated Course is an appropriate qualification for appointment to the post of Teacher (Primary) in the South Delhi Municipal Corporation (SDMC, in short). The NCTE had, in fact, already, in the past itself, issued a clarification that the qualification possessed by the applicant, i.e. B.Ed. Bal Vikas Integrated Course, is an appropriate qualification, being equivalent/similar to JBT etc. Armed with a copy of such a clarification, the applicant submitted his representation dated

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30.10.2015, along with letter of NCTE dated 30.03.2007, and the judgment of the Hon'ble Supreme Court dated 29.07.2006 on the same subject, through Annexure A-4. The applicant has not explained as to what had transpired when he had approached the NCTE after acceptance of the offer of appointment dated 26.10.2015.

4. The applicant has alleged that since the concerned officer of the respondents had a different motive, therefore, they kept on harassing him, and sent a letter dated 20.11.2015 to the NCTE, to get a further confirmation about the applicant's qualification. The NCTE again sent a letter dated 04.12.2015, clearly stating therein that the applicant's qualification, i.e., B.Ed. Bal Vikas Integrated Course, is an appropriate qualification for appointment to the post of Teacher (Primary) in the SDMC, but it is not clear from that letter that NCTE had taken into account the applicable Recruitment Rules (RRs, in short) of the SDMC.

5. The Respondent Nos. 1 and 2 did not issue appointment and posting order to the applicant, and again approached the NCTE. NCTE again reaffirmed their opinion through letter dated December 2015 as at Annexure A-6, but once again without any reference to the applicable RR's. The applicant, thereafter, again approached the respondents and requested them to issue his

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posting order, but the respondents did not issue any such order. Since the applicant felt that he had been deprived of his fundamental right to get appointment on being selected on the basis of the competitive examination, and thus deprived of the salary attached to the post of Teacher (Primary), he approached this Tribunal by filing the present OA.

6. In filing this OA, he has taken the ground that the respondents have acted in violation of Articles 14 & 16 of the Constitution, as they have denied him appointment to the said post in spite of his having been declared selected, and even after issuing offer of appointment, which offer he had accepted. He has taken the further ground that earlier he had been declared eligible for the post of Teacher (Primary) under Post Code 70/09 in the year 2013 itself, which eligibility of his was re-confirmed when the offer of appointment dated 26.10.2015 was issued to him.

7. He has alleged that the respondents' action in not appointing him in spite of declaration of equivalence of qualifications by the NCTE, being Competent Authority in this regard, which had repeatedly declared that his qualification, i.e. B.Ed. Bal Vikas Integrated Course, **along with 3 months' Bridge Course** run by JRN Vidyapeeth University, is an appropriate qualification for

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appointment to the post of Teacher (Primary) in the SDMC, is unjustified, and, therefore, the respondents are not justified in depriving him of his appointment. He has taken the further ground that even though the Hon'ble Supreme Court had also declared that the B.Ed. Bal Vikas Integrated Course is an appropriate qualification for appointment at the level of primary and secondary teachers, therefore, the objection raised by the respondents is without any justification, and since they have been raising frivolous objections, he is entitled to get appointment from retrospective effect, i.e., from October 2015, with all consequential benefits, including arrears of pay.

8. The applicant has submitted that the public employment should be given only in a fair and equitable manner, and the entire action of the respondents in not appointing him to the post of Teacher (Primary) in spite of his selection by the Respondent No.3 – DSSSB, and his meeting the eligibility criteria, as prescribed under the Rules, is highly illegal, arbitrary and unjustified. He had produced a copy of his Marks-Sheet through Annexure A-7.

9. He had taken the further ground that the respondents cannot be permitted to take advantage of their own wrong, and that they have raised frivolous objections regarding his eligibility,

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and there was deliberate delay on their part, by referring the said frivolous objection to the NCTE, which has found such objection as misconceived. He had, therefore, sought shelter behind the Hon'ble Supreme Court's judgment in **Kusheshwar Prasad Singh vs. State of Bihar & Ors.:** (2007) 11 SCC 447, in which it was held that nobody can be permitted to take undue and unfair advantage of his own wrong, to gain favourable interpretation of law. The same point of law had been emphasized by citing the Hon'ble Supreme Court's judgments in **Mrutunjay Pani & Anr. vs. Narmada Bala Sasmal & Anr. :** [1962]) 1 SCR 290, and **Union of India & Ors. Vs. Major General Madan Lal Yadav (Retd.) :** [1996] 3 SCR 785. The applicant had also sought shelter behind the Hon'ble Supreme Court's judgment in **Baij Nath Sharma vs. Hon'ble Rajasthan High Court at Jodhpur :** 1998 SCC (L&S) 1754, to try to buttress his arguments that he has been deprived of his appointment without any fault of his. In the result, he had prayed for the following reliefs:

"(i) to declare the action of the respondents in appointing the applicant to the post of Teacher (Primary) against post code 70/09 as illegal and arbitrary and direct the respondents to appoint the applicant as Teacher (Primary) in South DMC with all consequential benefits including arrears of pay from October 2015.

(ii) to direct the respondents to appoint the applicant to the post of Teacher (Primary) as per

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offer of appointment dated 26.10.2015 with all consequential benefits including arrears of pay.

(iii) To allow the OA with cost.

(iv) Any other orders may also be passed as this Hon'ble Tribunal may deem fit and proper in the existing facts and circumstances of the case."

10. Even though notice had been issued for a short reply on the point of interim relief, ultimately grant of interim relief was not considered, and the case was finally heard, and reserved for orders on 15.07.2016.

11. A short counter reply was filed on behalf of the Respondent No.1 on 01.06.2016. It was pointed out that the Education Department of the erstwhile unified MCD had forwarded a requisition for 6500 vacancies of the posts of Teachers (Primary) to the Respondent No.3- DSSSB. The DSSSB notified the vacancies in the newspapers on 11.12.2009 under Post Code 70/2009, and the last date for submission of the Application Forms was 15.01.2010. They had admitted all the facts upto the date of issuance of letter dated 10.07.2015 to the applicant for verification of the documents, and that the applicant was directed to report to the Office of Assistant Director of Education (TRC) on 29.07.2015, and that he had appeared for verification of the documents. It was thereafter submitted that during the

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verification of the documents, it was found that the applicant had passed B.Ed Bal Vikas Integrated Course from the JRN, Rajasthan Vidyapeeth. It was submitted that as per the RRs for the posts of Teacher (Primary), the prescribed qualifications are as under:

“(i) Senior Secondary (10+2) or Intermediate or its equivalent from a recognized Board/Institution.

(ii) Two year’s Diploma Certificate Course in Elementary Teacher Education Course/Junior Basic Training or equivalent or bachelor of elementary education from a recognized Institution.

(iii) Must have passed Hindi as a subject at Secondary level.

(iv) Must have passed English as a subject at Secondary level or Senior Secondary level.”

12. The RRs had been produced as Annexure R-1. It was submitted that the applicant did not possess the necessary qualification, as per the RRs prescribed and notified.

13. Heard. During the course of arguments, learned counsel for the applicant submitted that in the light of the two clarifications issued by the NCTE, which were available at Annexures A-5 and A-6 of the OA, and as per the Marks-Sheet produced by the applicant at Annexure A-7, it was clear that no distinction could be drawn in between the different names of the B.Ed degree, as had been tried to be drawn by the respondents in the case of applicant. On the other hand, learned counsel for the Respondent

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No.1 submitted that since the RRs specifically prescribed the qualifications for recruitment of a Teacher (Primary), the candidates should be (i) Senior Secondary (10+2) or Intermediate or its equivalent from a recognized Board/Institution, with (ii) Two year's Diploma Certificate Course in Elementary Teacher Education Course/Junior Basic Training or equivalent or bachelor of elementary education from a recognized Institution, and must have passed Hindi at the Secondary level, and English at the Secondary or Senior Secondary level.

14. His contention was that the applicant's qualification, i.e. B.Ed Bal Vikas Integrated Course Part-I & II 2008, did not cover all the aspects of the Course curriculum which are covered in a two years' Diploma /Certificate course in Elementary Teacher Education Course/Junior Basic Training or equivalent, or a Bachelor of Elementary Education Course from a recognized Institution. It was submitted that it was clear from Annexure A-7, the Marks-Sheet produced by the applicant, that the Bal Vikas Integrated Course Part-I & II 2008 was only one year course, and, therefore, it did not satisfy either the requirement of two years' Diploma /Certificate course in Elementary Teacher Education Course/Junior Basic Training or equivalent, or the requirement of a Bachelor of Elementary Education Course from a

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recognized Institution, which Bachelor's degree cannot be in the form of a one year integrated course, and has to be a three years' degree course.

15. In his reply, learned counsel for the applicant read out the letter dated 04.12.2015 (Annexure A-5) issued by the NCTE, in which it has been stated as follows:

"To

Shri R.P.Rana,
Assistant Director (Education),
South Delhi Municipal Corporation
Education Department :HQ
Dr.Shyama Prasad Mukherjee Civic Centre,
E-Block, 23rd Floor, JLN Marg, N.Delhi-02.

Sub: Regarding validity of B.Ed Bal Vikas Integrated Course, Janardan Rai Nagar, Rajasthan Vidyapeeth-reg.

Ref:(1)YourletterNo.D/ADE/Admn./Edu./HQ/2015/4789
dated 20.11.2015.
(2)This office letter No.7-12/NRC/2000/14814-
14816 dt.30.03.2007.

Sir,

This is with reference to you letter dt. 20.11.2015 addressed to NCTE, New Delhi with a copy to this office on the subject cited above.

In this regard, it is to state that the matter has already been decided by the Hon'ble Supreme Court as per the order dt. 19.07.2007 in the Civil Appeal 8610-8659/2003. The same is reproduced below:-

"The question which arises for consideration in these appeals, arising out of the

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judgment dated 23.08.2001 passed by the High Court of Rajasthan, is whether the degrees of the Rajasthan Vidya Peeth in B.Ed (Bal Vikas) followed by three months Bridge course conducted by it would be equivalent to B.Ed Course (General) for the purpose of appointment to the posts of Senior Teacher (Teacher Grade-II).

Our attention has been drawn to the Minutes of the Meeting dated 4.6.1998 held in the office of Northern Regional Committee wherein it was *inter alia* resolved.

"Looking at the course all members were unanimous that this course fulfils the requirement of both Primary and Secondary level teachers training. Therefore, the students trained in B.Ed. (Bal Vikas) can work with full competence as that of B.Ed (General).

Keeping in view the aforementioned decision taken by the statutory authority, we are of the opinion that no case has been made out for our interference with the impugned judgment. The appeals are dismissed accordingly."

The same has been informed to Govt. of Rajasthan vide letter No.7-12/NRC/2000/14814-14816 dt. 30.03.2007 with the request to take necessary action as per the order of Hon'ble Supreme Court.

Therefore, in view of the above, B.Ed. Bal Vikas integrated course along with three months bridge course run by Janardan Rai Nagar Vidyapeeth is an appropriate qualification for appointment to the post of Teacher (Primary) in SDMC.

(Emphasis supplied)

15. We have given our anxious consideration to the facts of the present case, and the law relating to it.

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16. It is clear from the contents of the above letter dated 04.12.2015 issued by the NCTE that the judgment of the Hon'ble Supreme Court dated 19.07.2007 in Civil Appeal Nos.8653-8659/2003 was only in the context of the appeals arising out of the judgment dated 23.08.2001 passed by the Hon'ble High Court of Rajasthan, in which the issue was as to whether the degree of the Rajasthan Vidya Peeth in B.Ed (Bal Vikas), **followed by a three months' Bridge Course conducted by it**, would be equivalent to B.Ed. Course (General) for the purpose of appointments to the posts of Senior Teacher (Teacher Grade-II) in the State of Rajasthan. It is clear that it was not a judgment *in rem*, and, therefore, it cannot be *ipso facto* directly applied to the case of recruitment rules of the Respondent No.1- SDMC also, which aspect was never before the Supreme Court for its consideration.

17. Further, during the course of arguments, learned counsel for the applicant was repeatedly asked by the Bench to prove regarding the applicant having attended and acquired the **three months' Bridge Course conducted by the Rajasthan Vidya Peeth** after its consolidated Bal Vikas Integrated Course, but neither the learned counsel for the applicant, nor the applicant himself, who was also present in the Court during the course of

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the hearing of the case, could produce before us or point out to us any proof from the Marks-Sheet of the applicant (Annexure A-7) that the applicant had indeed attended **such Bridge Course of three months**, as mentioned by the Hon'ble Supreme Court in its order dated 19.07.2007, nor did the applicant or his counsel file any such proof even later on, showing that the applicant had attended in such a Bridge Course. Learned counsel for the applicant also failed to produce any parallel Orders of either a Coordinate Bench of this Tribunal, or of the Hon'ble Delhi High Court, or of the Hon'ble Supreme Court on this point, flowing from the RRs of SDMC issued on 06.09.2011 as Annexure A-1.

18. Therefore, it is clear that in the absence of any proof of the applicant having so attended and acquired the qualifications of a three months' Bridge Course after the B.Ed Bal Vikas Integrated degree of Rajasthan Vidya Peeth, the applicant cannot even claim eligibility for appointment even within the State of Rajasthan, by taking shelter behind the judgment of the Hon'ble Supreme Court in the above Civil Appeals Nos.8653-8659/2003.

19. We are also not convinced that the NCTE had in its letter dated 04.12.2015, produced as Annexure A-5, been able to appreciate the legal implications of the letter they had issued. In any case, in that letter, as reproduced above, it was indicated

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that they have issued necessary instructions to the Govt. of Rajasthan to take appropriate necessary action, as per the orders of the Hon'ble Supreme Court. Therefore, the conclusion in the last part of that letter issued by NCTE, that the B.Ed. Bal Vikas Integrated Course, along with 3 months' Bridge Course run by the JRN Vidya Peeth, would be an appropriate qualification for the post of Teacher (Primary) in SDMC also, can only be a conjecture, and does not flow from the law as laid down by the Hon'ble Supreme Court.

20. In any case, without any proof of the applicant having attended any such three months' Bridge Course, the applicant cannot seek even parity with the cited case of Rajasthan State, where different RRs were involved. On the other hand, the RRs of Respondent No.1 are quite clear, and their Gazette Notification dated 06.09.2011, as produced at Annexure R-1, clearly prescribes the qualification of two years' Diploma, or two years' Certificate course in Elementary Teacher Education Course/Junior Basic Training or equivalent, or a three years' Bachelors of Elementary Education from a recognized Institution. Each of these prescriptions clearly shuts out the possibility of recognizing the candidature of a person, who had attended only a one year B.Ed. Bal Vikas Integrated Course Part-I & II, 2008, and even

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Marks-Sheet (at Annexure A-7) in respect of which was issued on 20.11.2008, even before the completion of that one year of such education, only after less than 11 months.

21. Therefore, we are clear in our minds that the SDMC was not at all bound down by the opinion of the NCTE, as conveyed to them through Annexure A-5, which was based upon a judgment concerning Rajasthan State, when we do not even have the Recruitment Rules of Senior Teachers Grade-I of Rajasthan before us for the purposes of a comparison, in accordance with the judgment & order of the Hon'ble Supreme Court cited at Annexure A-5, a copy of which has been produced by the applicant at pages 30-31 of the Paper Book. That judgment and order was not an order *in rem*, and was *in personem*, applicable only to the cases in the State of Rajasthan, which had approached the Hon'ble Supreme Court in the Civil Appeal jurisdiction by filing those Civil Appeals.

22. Therefore, the Respondent No.1-SDMC was fully justified in treating the applicant not having attended any two years' Diploma/Certificate Course in Elementary Teacher Education Course/Junior Basic Training or equivalent, or Bachelors of Elementary Education from a recognized Institution, and he could not be considered to be qualifying under the RRs, as notified on

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06.09.2011, merely on the basis of a one year Integrated B.Ed Course, which appears to have been completed by him in less than one year, as per the Marks-Sheet dated 20.11.2008.

23. Therefore, we find no merit in the OA, and the same is dismissed, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

/kdr/