

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1134/2014

Reserved on : 09.05.2016.

Pronounced on :11.05.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Hon'ble Mr. Raj Vir Sharma, Member (J)

Mumtaz Parveen,
D/o Mohd. TAQI,
R/o 2812, Gali Garhayya,
Kucha Chalan, Daryan Ganj,
New Delhi-110002.

..... Applicant

(through Sh. S. Farooqui with Sh. Rahberali Zaidi, Advocate)

Versus

1. South Delhi Municipal Corporation through
Its Commissioner,
Office at : Dr. Shyama Prashad Mukahrjee,
Civic Center, Zakir Hussain Marg,
New Delhi-110002.
2. Delhi Subordinate Service Selection Board
(DSSSB) through its Secretary/Chairman
Office at : FC-18, Industrial Area,
Karkardooma, Delhi.
3. Govt. of NCT through
Its Chief Secretary,
New Secretariat, I.P. Estate,
New Delhi.

..... Respondents

(through Sh. R.K. Jain and Sh. Anmol Pandita for Sh. Vijay Pandita, Advocates)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant applied for the post of Teacher (Primary-Urdu) in MCD in response to an advertisement No. 004/2009 (page-29 of the paper-book). Her grievance is that her candidature has been rejected on the ground that she did not possess the necessary educational qualification for the post as per the Recruitment Rules. As far as the Recruitment Rules were concerned, they were

first issued by Notification dated 13.07.2007 (pages 74-78 of the paper-book). For our purpose, it is relevant to note that the essential educational qualification prescribed for this post was Senior Secondary with at least 50% marks (page-77 of the paper-book). These Recruitment Rules were superseded by Notification dated 06.09.2011 (pages 79-81 of the paper-book). Under the new Recruitment Rules, the prescribed educational qualification was as follows:-

“(i) Senior Secondary (10+2) or intermediate or its equivalent from a recognised 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 recognised institution.

(iii) Must have passed hindi as a subject at secondary level.

(iv) Must have passed English as a subject at secondary or senior secondary level.

NOTE: qualification are relaxable at the discretion of the competent authority for reasons to be recorded in writing. In case of candidates otherwise qualified.”

2. After issue of the amended Recruitment Rules, the respondents issued a Corrigendum to the Advertisement No. 004/2009, which is available at page-42 of the paper-book. The grievance of the applicant is that Post Codes-70/2009 and 71/2009 have been covered by this Corrigendum. But the respondents have not covered Post Code-69/2009 i.e. the post of teacher (Primary-Urdu) in MCD by the Corrigendum. Consequently, they have rejected the applicant's candidature based on the Recruitment Rules as they existed prior to the Notification dated 06.09.2011 and have rejected applicant's case finding her not to be having the necessary 50% marks at Senior Secondary or Intermediate level.

3. Learned counsel for the respondents argued that the amendment carried out by them in the Recruitment Rules vide Notification dated 06.09.2011 covered

only Teachers (Primary) of MCD and did not cover teachers (Primary-Urdu). Hence, the post of Teacher (Primary-Urdu) was not included in the corrigendum.

4. We have considered the submissions of both sides and have perused the material on record. It is not disputed that in the Notification dated 13.07.2007 there was only one rule for all the posts of teacher (Primary) for different subjects including teachers of different languages, such as, Urdu, Tamil, Bengali and Punjabi. The Notification dated 06.09.2011 has been issued in supersession of the Notification dated 13.07.2007 as is obvious from the reading of this Notification itself. Under the new Recruitment Rules notified vide this Notification, educational qualification required was only Senior Secondary or Intermediate without any minimum marks prescribed at this level. If the contention of the respondents that these Rules were applicable only for the post of Teacher (Primary) and did not apply to Teacher (Primary-Urdu) was to be accepted, then it would imply that posts of teacher (Urdu) have been left without any Recruitment Rules after issue of Notification dated 06.09.2011 since the earlier Recruitment Rules have been superseded by this Notification. This was obviously unacceptable. Moreover, even in the old rules as far as essential educational qualification was concerned, it was same for all types of primary teachers. Therefore, the contention of the respondents that the qualification has been changed only for primary teachers other than those of the different languages does not appear to be convincing at all.

5. Therefore, in our opinion, the respondents have erred by issuing a corrigendum only for Post Codes-70/2009 and 71/2009 and leaving out Post Code-69/2009 when this post was also covered by the amendment in the Recruitment Rules. We, therefore, find substantial justification in the contention of the applicant that her case has been wrongly rejected by the respondents

on the ground that she did not possess the required 50% marks at intermediate level.

6. Learned counsel for MCD also stated that even if the case of the applicant was to be recommended by DSSSB, respondent No.1 (South Delhi Municipal Corporation) may reject the same on the ground of applicant being over age. In our opinion, upto now the case of the applicant has not been referred to by DSSSB to South Delhi Municipal Corporation for appointment. Hence, the contention raised by the counsel for South Municipal Corporation is based on conjectures and surmises and cannot be given any consideration at this stage. Suffice it would to say that if such a situation were to arise it would give rise to a fresh cause of action as far as the applicant was concerned.

7. We, therefore, allow this O.A. and quash the impugned order dated 01.03.2014 qua the applicant by which her candidature was rejected for not possessing the necessary educational qualification. We further direct the respondent DSSSB to process the case of the applicant as per the Recruitment Rules notified on 06.09.2011 within a period of 60 days from the date of receipt of a certified copy of this order. In case the applicant succeeds, she shall be so appointed and shall also be entitled to consequential benefits of pay fixation and seniority. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/