

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

OA No.1135/2015

Reserved on :22.02.2016
Pronounced on:02.09.2016

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

Hem Nath Mishra
S/o Shri Shiv Nath Mishra
R/o I/32/414, Ordnance Factory Estate,
Muradnagar, Ghaziabad (UP). ...Applicant.

(By Advocate: Shri U. Srivastava)

Versus

Union of India through

1. The Secretary,
Ministry of Defence,
New Delhi.
2. The Directorate General,
Ordnance Factories 10-A,
S.K. Bose Road, Kolkata-01.
3. The General Manager,
Ordnance Factory, Muradnagar,
Distt. Ghaziabad (UP).
4. Smt. Satyawati Devi W/o Bhopal Singh
R/o 2/466, Near New Baldeep Public School,
Santpura, Govindpuri,
Modi Nagar. ...Respondents.

(By Advocate: Shri Hanu Bhaskar)

ORDER

Per Sudhir Kumar, Member (A):

The applicant of this OA has approached this Tribunal challenging the validity and propriety of the Advertisement dated

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14/20.02.2015, through which the Respondent No.3 had notified an old vacancy in respect of the year 1994, for the post of a Trained Graduate Teacher (TGT, in short) (Hindi), which was purported to have been issued as per the directions issued by the Hon'ble Supreme Court on 08.10.2013 in CA No.9135-9136/2013, but, in issuing which, he has alleged that the Supreme Court's Order had been wrongly followed. He has alleged that the vacancy has now been notified as an OBC category vacancy, but the records reveal that the vacancy belonged to the General category, against which he had been appointed in the year 1994, after going through a proper selection process, and had been working continuously as a regular employee of R-3, and had even earned his promotion.

2. The respondents had quashed his selection because at the time of the original selection in the year 1994, he was at Sl. No.2 in the merit list, while Private Respondent No.R-4 was at Sl.No.1 of the merit list, and she had obtained favourable orders which had been confirmed upto the Hon'ble Supreme Court, but still, thereafter, she had failed to join in the post concerned, in the absence of genuine original certificates. The applicant has further submitted that on the basis of his earlier satisfactory services, liberty had been granted for him to be provided with age

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relaxation under the rules, but even that liberty also would now be frustrated, as the vacancy itself has now been wrongly notified as an OBC category vacancy, and, therefore, the Advertisement now brought out is biased, perverse, illegal, unjust malafide, arbitrary, against the principles of natural justice, against the provisions of law and even contrary to the directions issued by the Hon'ble Supreme Court. He further submitted that the matter falls within the jurisdiction of this Tribunal, as his petition for transfer (PT) has already been allowed for this case to be heard at this Principal Bench of the Tribunal.

3. We have to first record the history of the case. In the year 1994, applications had been invited by Respondent No.R-3 for filling up the posts of Teachers, including one post of Non Language Teacher (NLT, in short)-Hindi-Sanskrit subject, for the Inter College, Ordnance Factory, run by the Respondent No.R-3 at Muradnagar, Ghaziabad District, Uttar Pradesh. The applicant's name was sponsored by the Employment Exchange for the aforesaid post, which was in the pay scale of Rs.1400-2600, and the maximum age limit had been stated to be 40 years. Thereafter, the applicant was issued a letter for interview to be held on 02.09.1994 through Annexure A-3. He has produced Minutes of the Interview Board at Annexure A-4, without

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disclosing the source from which he obtained it. In view of the long history of the litigation of the case, this document may perhaps have been filed by the respondents at some stage of the prolonged litigation. While Private Respondent No.R-4 was found to be suitable by the Interview Board, subject to clarification for accepting of the claimed experience after completing Shiksha Visharad, and the applicant was found as the second suitable candidate for appointment, and out of the five people called, one was absent, and two others had not been found to be suitable. Private Respondent No.R-4 did not perhaps verify at that point of time her experience, after completing Shiksha Visharad, because of which the applicant was appointed as Non Language Teacher (Hindi/Sanskrit) (NLT-HS, in short) through appointment letter dated 11.10.1994 (Annexure A-5).

4. It seems that the Private Respondent No.R-4 then challenged his appointment before the Hon'ble High Court of Judicature at Allahabad in Civil Misc. Writ Petition No.34262/1994. As per the Single Bench judgment dated 04.07.1997, the Hon'ble Allahabad High Court allowed the Writ Petition, and a Writ of Certiorari was issued quashing his appointment, and a Writ of Mandamus was issued for the Private Respondent No.R-4, and the petitioner of the Writ Petition, to be

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given appointment in terms of her selection. It was further directed by the Hon'ble Allahabad High Court that the Private Respondent No.R-4, petitioner therein, shall be entitled to the salary from the date she assumes her duties, and her salary shall be fixed normally at the appropriate stage, giving her benefits of seniority, and continuity of service, from the date when the other candidates, who were selected in the same selection, had joined, without any right to recover the arrears of salary etc. for the period during which she had not worked.

5. However, the official respondents filed a Special Appeal No.774/1999 against the Single Bench judgment dated 04.07.1997, and the applicant herein also filed another Special Appeal No.630/1997 against that very judgment. Both the Special Appeals were dismissed together, through order dated 13.07.2009, when the Division Bench found no justification to entertain the grounds which had been taken in those appeals for the first time, and which objections were neither taken in the pleadings before the Single Bench, nor were argued. A Review Application No.289583/2009 in Special Appeal No.774/1999 was also filed, but the Divisional Bench rejected that Review Application also. The official respondents thereafter approached the Hon'ble Supreme Court in Petition(s) for Special Leave to

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Appeal (Civil) CC No.6018-6019/2011 (Annexure A-8), but the SLP was dismissed, both on the ground of delay, as well as on merits.

6. Thereafter, in compliance of the orders of the Supreme Court, on 15.06.2011 (Annexure A-9) an order was issued by the Official respondents, cancelling the present applicant's appointment, and striking off his name from the strength of the respondent-organization. Soon thereafter, on the very next date on 16.06.2011, the respondents issued an offer of appointment (Annexure A-10) to the Private Respondent No.R-4 for her appointment to the post of NLT (HS), which post had by now been re-designated as TGT, and she was directed to report to the Respondent-Organization, along with Educational Professional & Experience Certificates, in original, and she submitted her documents on 20.06.2011, through Annexure A-11, along with the experience certificate in respect of the teaching experience claimed by her. The respondents sought clarification regarding her experience certificate from the Organization where she had claimed that she was teaching, vide letter dated 27.06.2011 (Annexure A-12). However, a reply dated 07.07.2011 was received from the said Inter College, Sadarpur, Ghaziabad, stating that her claim to have performed teaching from

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15.09.1992 to 31.01.1994, and prior to that from 10.07.1989 to 20.07.1992, was not correct, and during that period she had never worked in that College at all.

7. The official respondents thereafter through their letter dated 08.08.2011 (Annexure A-14) sought from the Private Respondent No.R-4 the original experience certificate, a copy of which had been filed by her earlier on 20.06.2011. Further, after some more time, a reminder dated 26.08.2011 was also issued to her, asking her to produce the original teaching experience certificate by 06.09.2011. However, through her reply dated 28.09.2011 (Annexure A-16), the Private Respondent No.4 replied that the original teaching experience certificate could not be traced or located by her, and, therefore, she would not be able to produce the same.

8. Therefore, the Official respondents then once again notified that vacancy through (Annexure A-17), inviting applications by 15.06.2013. At the same time, the applicant of this OA filed before the Hon'ble Supreme Court in Civil Appeal No.9135-9136 of 2013 arising out of SLP Nos.34392-34393 of 2011, in which an order dated 08.10.2013 was passed by the Hon'ble Apex Court, stating as follows:-

"1 to 4 - *Not reproduced here*

5. Aggrieved by the judgment and order passed by the learned Single Judge, preferred Special Appeal No.630 of 1997 and respondent Nos.2 to 4 preferred Special Appeal No.774 of 1999 before the Division Bench of the High Court. The Division Bench by a common judgment and order dated 13.07.2009 dismissed both the Special Appeals. Thereafter, respondent nos.2 to 4 preferred Civil Misc. (Review) Application No.289583 of 2009 which was also dismissed by the High Court vide its order dated 30.04.2010.

6. Aggrieved by the judgment(s) and order(s) passed by the High Court respondent Nos.2 to 4 preferred appeal before this Court. **This Court vide its judgment and order dated 11.04.2011 had dismissed the special leave petition preferred by respondent Nos.2 to 4.**

7. Thereafter, the appellant-herein had moved an application for recalling the order dated 13.07.2009 before the High Court. The High Court vide its order dated 26.08.2011 rejected the applicant for restoration/recall filed by the appellant. Aggrieved by the judgment and order passed by the High Court the appellant is before us in this appeal.

8. We are informed by the learned counsel appearing for respondent Nos.2 and 3 that pursuant to the order and directions dated 04.07.1997 issued by the Writ Court, they had directed respondent No.1 to report for duty as a teacher in the Ordinance Factory School. In spite of the communication, it appears that respondent no.1 has not reported for duty.

9. Since respondent no.1 has not reported for duty, in our opinion, at this stage, it may not be proper for us to direct respondent Nos.2 and 3 to appoint the appellant, who was placed at Serial No.2 in the select list.

10. In view of the above, while disposing of these appeals, **we direct respondent Nos.2 and 3 to issue a fresh advertisement for appointment of**

teachers in the school run by the Ordnance Factory.

11. Respondent No. 2 and 3 are at liberty to give the age relaxation to the appellant if permissible under the Rule.” (Emphasis supplied).

9. A Review Petition (C) Nos.1285-1286/ of 2014 thereafter filed by the present applicant for a review of the above Orders passed in his Civil Appeal Nos.9135-9136 of 2013 also came to be dismissed on 03.09.2014, with the following orders:

“Application for oral hearing is rejected.

There is delay of 167 days in filing the review petitions, which has not been satisfactorily explained. Even otherwise, we have gone through the Review Petitions and the connected papers. We see no reason to interfere with the order impugned. The Review Petitions are, therefore, dismissed both on the ground of delay as well as on merits.”

10. Thereafter, the applicant approached this Tribunal in OA No.607/2015, but on 16.02.2015, at the request of the learned counsel for the applicant, that OA was allowed to be withdrawn, with liberty to file a fresh OA, availing of which liberty, the present OA has been filed.

11. The applicant has submitted that he has been a victim of adverse circumstances due to quashing of his appointment after 17 years of satisfactory and unblemished service, followed by

promotion also, and now he is on the verge of starvation, and has been approaching the Official respondents seeking restoration of his appointment.

12. The Official respondents had, in the meanwhile, invited fresh applications against the said post, for appointment on contract basis, and the applicant himself was appointed once again, this time on contract basis, on the same post on which he had been working earlier, till his dismissal in obedience of the orders of the Hon'ble Allahabad High Court, and which order had even been confirmed by the Hon'ble Supreme Court. As a result, within six months of his dismissal from substantive appointment on that post, the applicant was once again appointed and started working on the same post on contract basis, with effect from 15.11.2011, and his contract has been renewed thereafter on year to year basis, and, at time of filing of the OA, his contractual tenure was fixed for the period upto 20.05.2015, for two more months after the date this OA was filed.

13. In fact the second order passed by the Hon'ble Supreme Court in the case of applicant on 08.10.2013, in CA No.9135-9136/2013, as reproduced above, became available to him when he had already once again started working on contract basis. The Hon'ble Supreme Court had granted liberty to the

Respondents to provide age relaxation to the present applicant, if permissible under the rules.

14. The official respondents published the impugned Advertisement thereafter, through Annexure A-1 dated 14-20.02.2015 inviting applications for the re-designated post of Group "B" TGT (Hindi). The applicant is now aggrieved by the Advertisement as now brought out, and has alleged that it is contrary to the directions passed by the Hon'ble Supreme Court to provide him age relaxation, as the vacancy has now been notified as having been reserved for OBC candidates, while it is revealed from the records that the said vacancy pertains to the year 1994, when it was for General category candidates, and liberty granted by the Hon'ble Supreme Court for extending age relaxation to the applicant would not become eligible to him, since he is not an OBC candidate.

15. The applicant has, therefore, taken the ground that his initial appointment itself was proper, granted to him after completion of all the formalities in accordance with the relevant rules and instructions on the subject, and though the Private Respondent No.R-4 had been found to be suitable at Sl.No.1, but that recommendation for appointment was subject to completion of verification of professional & teaching experience certificates in

original, which formalities could not be completed by her, and, therefore, the applicant, who had also been found suitable but placed at Sl.No.2 had been rightly appointed, and he had served for 17 years, with even financial upgradation to the Senior Scale also having been provided to him. He has taken the further ground that though Private Respondent No.R-4 had succeeded in the Writ Petition before the Hon'ble Allahabad High Court decided on 04.07.1997 (supra), which had been finally upheld by the Hon'ble Supreme Court also on 11.04.2011, leading to the Official respondents to issue the order dated 15.06.2011, quashing his appointment, but the Private Respondent No.R-4 had herself failed to complete the formalities regarding verification of her educational, professional & experience certificates in original, and she never reported for joining her duties, even after she had been issued an appointment letter.

16. He has further taken the ground that since the Hon'ble Supreme Court had while allowing the SLP Nos.34392-34393 of 2011, through order dated 08.10.2013 (supra) directed that once the respondents had been earlier directed to ask the Private Respondent No.R-4 for joining duty, it may not be proper to direct the respondents to appoint the applicant, who was at Sl. No.2, for the vacancy of 1994, and therefore, they had directed

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the Official respondents to issue a fresh advertisement, but with liberty to the Official respondents to give age relaxation to the applicant, if permissible under the rules, the vacancy as now notified by the Official respondents as an OBC category vacancy is illegal, unjust, arbitrary, unconstitutional, and against the principles of natural justice, and violative of his rights under Articles 14, 16 & 21 of the Constitution, as it ousts his candidature altogether, and, therefore, it is contrary to the directions issued by the Hon'ble Supreme Court on 08.10.2013 (supra). In the result, he has prayed for the following reliefs:

"(a) Directing the respondents to place the relevant records pertaining to the present O.A. before their Lordships for the proper adjudication in the matter in the interest of justice.

(b) Quash and setting aside the advertisement dt.14-20.02.2015 published by the respondents to the extent of inviting the applications for recruitment to 01 post of TGT (Hindi) Group B (Non Gazetted) notified as OBC vacancy which pertains to the year 1994 of UR category, after declaring the same as contrary to the directions issued by the Hon'ble Supreme Court dt.08.10.2013 in CA Nos.9135-9136/2013 as though the vacancy has been notified but marked as OBC vacancy and therefore the age relaxation to the applicant as per the directions of the Hon'ble Supreme Court being an UR candidate cannot be extended and would be infructuous and thereafter;

(c) Directing the respondents to notify 01 post of TGT(Hindi) Group B (Non Gazetted), under UR category a fresh and consider the case of the applicant too after granting age relaxation as per

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the directions issued by the Hon'ble Supreme Court dt.08.10.13 in CA Nos.9135-9136/2013 as well as in accordance with the relevant rules and instructions on the subject accordingly.

(d) Allowing the O.A. of the applicants with all other consequential benefits and costs.

(e) Any other fit and proper relief may also be granted to the applicant."

17. He had prayed for interim relief also. It is seen from the order-sheet dated 07.04.2015 that though the Coordinate Bench that day did not find any sufficient ground to grant the interim relief, however, the Official respondents were directed that if any selection is made by them (pursuant to the advertisement as presently brought out), that would be subject to the outcome of this OA.

18. The official respondents filed their counter reply on 01.07.2015. They admitted the facts as we have already discussed in great detail above, and opposed the pleadings in the O.A. It was submitted that the impugned Advertisement for the post of TGT (Hindi) had been issued strictly in accordance with law, and as per the directions of the Hon'ble Supreme Court, and not contrary to such directions, since, as per the roster position, the vacancy of the said post falls under the OBC category, and not under the Unreserved category, to which the applicant

belongs. It was further submitted that presuming that the applicant was in any way to be considered for the said post, still the same is not possible, for the reason that the applicant is unqualified, as he has not completed his Teachers' Eligibility Test (TET, short) qualification, and, further, he is over-age, which age relaxation cannot be granted to him, as there is no power or authority vested in the official respondents for that purpose. It was further submitted that the order as passed by the Hon'ble Supreme Court on 08.10.2013 (supra) clearly indicates that despite the Respondent No.R-4 not joining on the post, the Hon'ble Supreme Court was not inclined to allow the applicant herein to straightway join against the said post, and therefore, only directions were to issue a fresh advertisement.

19. The Official respondents had contended that the applicant's initial appointment had been held to be illegal both by the Hon'ble Allahabad High Court, as well as by the Hon'ble Supreme Court earlier, and his appointment having been cancelled by the respondents in obedience of those orders, the applicant cannot now be allowed to challenge the impugned advertisement issued for selection of an OBC candidate. It was, therefore, prayed that the OA may be rejected with costs.

20. The applicant filed a rejoinder on 02.12.2015, repeating the same facts of the case once again, and pointing out that in fact the Private Respondent No.R-4 had taken the whole judicial system for a ride, inasmuch as she had claimed to possess experience certificate of teaching, but the school concerned had since denied that she had ever worked with them on the post of teacher, as claimed by her. He further submitted that the very offer of appointment issued to the Private Respondent No.R-4 has to be termed to be wrong, because, in spite of her being asked to join duty, after verification of original certificates, she had not reported for duty. It was further submitted that the entire issue related to the initial appointment made in the year 1994, and the concerned vacancy, even in terms of the Hon'ble Supreme Court's order, had to be filled only as an Unreserved category vacancy, because of which only the Hon'ble Supreme Court had on the one hand granted liberty to the official respondents to issue a fresh advertisement, and had on the other hand granted the Official respondents further liberty to give age relaxation to the present applicant.

21. He has taken the further ground that the directions of the Hon'ble Supreme Court to issue a fresh advertisement pertained only to the General category vacancy of the year 1994, and there

cannot now be a change of the category of that vacancy to OBC category, by invoking the roster position under the present rules, as the concerned vacancy had to be filled only under the un-amended rules, and shelter had been sought behind the judgment of the Hon'ble Supreme Court in **Y.V.Rangaiah vs. J.Sreenivasa Rao** (1993) 3 SCC 284.

22. It was further submitted that passing the CTET test conducted by the NCTE is not essential for primary school teachers, for teaching Class I to Class V, and applies only for teachers who have to teach higher from Class VI to VIII, and, further, from Classes IXth and Xth onwards.

23. It was further submitted by the applicant that when the Hon'ble Supreme Court itself had granted liberty to the respondents to provide age relaxation to the applicant, if permissible under the rules, it does not lie for the Official respondents not to provide him age relaxation, and to consider that he is over age. It was further submitted that he had performed satisfactory duties from 08.10.1994 to 15.06.2011 on regular basis, and from 05.11.2011 to 20.05.2015 on year to year contract basis, and, therefore, he cannot now be denied opportunity to even apply against the vacancy, by wrongly resorting to a roster which came into being much later after

1994, and therefore, changing the category of the vacancy from Unreserved to OBC category is against the rules. It was, therefore, once again prayed that the OA be allowed.

24. Heard. The case was very hotly argued by the learned counsel for both the sides. While learned counsel for the applicant reiterated again and again that the impugned advertisement had been issued contrary to the Hon'ble Supreme Court's directions, learned counsel for the Official respondents reiterated their position that the Hon'ble Supreme Court's directions were only for issuing a fresh advertisement, and for granting liberty to the official respondents to provide age relaxation to the applicant, if it was permissible under the rules.

25. Learned counsel for the applicant relied upon the judgements of the Hon'ble Supreme Court in **Y.V.Rangaiah vs. J.Sreenivasa Rao** (supra) as well as **Deepak Agarwal & Another vs. State of Uttar Pradesh & Others** 2011 (4) SCALE 177 in which it was clearly reiterated that the law as laid down by the Hon'ble Supreme Court in **Y.V.Rangaiah vs. J.Sreenivasa Rao** (supra) by stating that the old vacancy had to be filled under the old service rules, had to be applied as a mantra.

26. In regard to the Officer respondents' power to relax age, learned counsel for the applicant produced the Ministry of Defence's Notification dated 20.03.1995, Gazette Notification SRO 91 dated 08.04.1995, in which under Clause 6, the power to relax age criteria had also been provided for as follows:

"Power to relax-

Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of person."

27. We have given our anxious consideration to the facts of this case. The applicant's counsel is correct in stating that the applicant has been a victim of adverse circumstances. Private Respondent No.R-4 had filed Civil Misc. Writ Petition No.34262/1994 before the Hon'ble Allahabad High Court, which was disposed off by the Single Judge Bench only on the ground that the rules did not prescribe two years' teaching experience after obtaining B.Ed. degree, believing the Private Respondent No.R-4's submission that she had acquired teaching qualification of two years, after the acquisition of B.Ed degree, and therefore, in view of the said clarification, she was held to be entitled for appointment pursuant to her selection at Sl. No.1, and to all other benefits, and her Writ Petition had been allowed. But the

conclusion arrived at by the Single Judge Bench of Allahabad High Court, as produced by the applicant at Annexure A/6, now appears or seems to be a false and misplaced claim, in view of Annexure A-13 letter dated 07.07.2011.

28. While disposing off the Special Appeal No.774 of 1999 and the Special Appeal No.630 of 1997 filed by the official respondents, as well as the present applicant, on 13.07.2009, the Division Bench of the Allahabad High Court had, in Para-4, noted that it was being denied that the Private Respondent No.R-4 did not have the requisite experience as prescribed under the advertisement, but still it went ahead to uphold the Single Bench's judgment that Private Respondent No.R-4 had the requisite experience, and hold that nothing had been pointed out to show that the finding of the Single Bench was incorrect, and because this objection was neither taken in the pleadings, nor was argued, and had been taken for the first time in that Special Appeal. The Division Bench of the Allahabad High Court, while considering those two Special Appeals on 13.07.2009, also recorded its own further conclusion that it was not disputed that the Private Respondent No.R-4 had been teaching in the college for more than 12 years, but it is now apparent that this claim of hers was false, and is not supported by Annexure A-13 of the

present OA. Even the Review Application in the said Special Appeals had been dismissed by the same Division Bench on 30.04.2010, and, somehow, the Hon'ble Supreme Court also on 11.04.2011 dismissed the SLP filed by the official respondents, both on the ground of delay as well as on merits, meaning thereby that as on that date, the order of the Single Bench of the Allahabad High Court, passed, on 04.07.1997, stood affirmed even on merits by the Hon'ble Supreme Court, and the applicant was relieved from his post through Annexure A/9 dated 15.06.2011.

29. However, the present applicant had also challenged the same order & judgment of the Allahabad High Court in Civil Appeal Nos.3135-3136 of 2013 in his SLP Nos.34392-34393 of 2011, which appears to have been filed after the disposal of the SLP filed by the Official respondents in CC No.6018-6019/2011 on 11.04.2011. As a result, by its 2nd order dated 08.10.2013, the Hon'ble Supreme Court allowed the SLPs and leave was granted, and even delay was condoned, and a fresh order was passed (portions of which have been reproduced by us above).

30. In this regard, as per the law of precedent the rule is that on any point of law, the latest ruling of the Hon'ble Supreme Court, or the ruling of a higher coram Bench of the Hon'ble Supreme

Court prevails over earlier ruling of the Supreme Court, or a ruling of a Bench of lower coram of the Hon'ble Supreme Court. However, where no substantial point of law is involved, and the matter relates to the facts only, there is no law so far laid down by the Hon'ble Supreme Court as to how to read its contradictory orders together.

31. In the first order of the Hon'ble Supreme Court, the SLP against the order of the Hon'ble High Court of Allahabad had been dismissed on the ground of delay as well as on merits, and in the second order both the delay was condoned as well as merits were considered by the Hon'ble Supreme Court, even after noticing its earlier order passed on 11.04.2011.

32. Therefore, we cannot derive any guidance from the normal law of precedent. However, since the earlier order of the Hon'ble Supreme Court was a single line non speaking order, and the second order passed on 08.10.2013 is a detailed and speaking order, it appears to us that all the parties to this prolonged litigation, as well this Tribunal, would be bound by the second detailed & speaking order, and that the earlier order of the Hon'ble Supreme Court, passed on the SLP filed by the official respondents, had been indirectly overruled, and the later order passed by a Bench of same coram, but being a detailed and

speaking order, will prevail especially since in Paras 6 and 7 the earlier order dated 11.04.2011 has been noticed.

33. These Civil Appeal No.9135-9136 of 2013, arising out of SLP Nos.34392-34393 of 2011, were not only directed against the judgment & order of the Hon'ble Allahabad High Court's D.B. Order dated 13.07.2009 in Special Appeal No.774/1999 and Special Appeal No.630/1997, but also against the Order in Review Application No. No.289583/2009 of the Hon'ble Allahabad High Court (supra), and was also against the High Court's order dated 26.08.2011, rejecting the application for restoration/recall of the order filed by the applicant before the Hon'ble Supreme Court, which was a subsequent event, and had given rise to a fresh cause of action in the hands of the applicant.

34. Therefore, it appears that the Hon'ble Supreme Court has itself partially overruled its earlier order dated 11.04.2016 in CC No.6018-6019/2011, and perhaps the removal of the applicant from service itself was not warranted, as the law laid down by the Hon'ble Supreme Court now stands. However, since in its latest order dated 08.10.2013, the Hon'ble Supreme Court has ultimately only directed the Official respondents to issue a fresh advertisement for appointment of teachers, and also to consider to grant age relaxation to the appellant/applicant herein, if it was

permissible under the rules, it is clear that as per the law as laid down now by the Hon'ble Supreme Court, the vacancy of 1994 itself has got regenerated through the Hon'ble Supreme Court's order, and the Official respondents cannot be allowed to re-advertise that post as has been done presently, as per the presently existing RRs. The vacancy against the post concerned has to be re-advertised only as a 1994 vacancy, and has to be filled up as per the then prevailing Recruitment Rules only.

35. Therefore, going by the Hon'ble Supreme Court's judgement in **Y.V.Rangaiah vs. J.Sreenivasa Rao** (supra) reiterated in **Deepak Agarwal & Another vs. State of Uttar Pradesh & Others** (supra), and accepting the contention of the applicant that as per Clause 6 of the Gazette Notification vide SRO No.91 dated 08.04.1995, there is a provision for the respondents to relax any of the provisions, for reasons to be recorded in writing, with respect to any class or category of persons, which would include relaxation of age criteria also, the OA is allowed to the extent that the impugned Advertisement is set aside, and the official respondents are directed to re-advertise the post once again, as per the Recruitment Rules, as they had prevailed in the year 1994, and pass an order in terms of Clause 6 of the SRO 91 dated 08.04.1995, regarding the applicant's prayer for age

relaxation, after considering the applicant's case on merit, so that the liberty granted to them by the Hon'ble Supreme Court to consider to provide age relaxation to the appellant/applicant gets utilized. For further clarity, it may be stated that the concerned post, when it is re-advertised, would have the same rules and requisite qualifications as had been advertised in the year 1994, and any of the qualifications for the equivalent or re-designated post, which have been subsequently prescribed, including roster etc., under which prescriptions the impugned advertisement had been issued, shall not at all be made applicable at the time of fresh re-advertisement now.

36. Since the Hon'ble Supreme Court itself has restrained from punishing the Private Respondent No.R-4 for the perjury committed by her at every stage of the prolonged litigation, we also restrain ourselves from passing any orders for punishing her for perjury, and uttering falsehoods regarding her possessing teaching experience, which has led to such prolonged litigation.

37. The OA is allowed in the above terms, but there shall be no order as costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

/kdr/

