

**Central Administrative Tribunal
Principal Bench**

**OA No.3387/2015
MA No.1236/2017**

Order reserved on : 08.11.2017
Order pronounced on : 15.11.2017

**Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

1. Sunita Kumari, PRT,
Roll No.351020153,
Aged about 38 years,
W/o Dr. Arvind Kr.
R/o E-643, DDA Flats, Binda Pur,
Pkt-3, Dwarka, New Delhi.
2. Rajni Gupta, PRT,
Roll No.354020301,
Aged about 45 years
W/o Sh. Rakesh Gupta,
R/o 113, Pink City,
Sch No.94, Ring Road
Near Piplihana Chauraha
Indore, M.P.

... Applicants

(By Advocate: Shri M.K. Bhardwaj)

Versus

KVS & Ors. through:

1. Kendriya Vidyalaya Sangathan
Through its Commissioner,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
2. The Dy. Commissioner, KVS (Admn.),
Gurgaon Region,
AFS Gurgaon,

KV No.1 Sec 14,
Old Delhi Gurgaon Road,
Gurgaon (Haryana).

3. The Dy. Commissioner, KVS (Admn),
Bhopal Region,
Bhopal, M.P.

... Respondents

(By Advocate: Shri S. Rajappa)

ORDER

Ms. Nita Chowdhury, Member (A) :-

MA No.1236/2017

The MA filed without the signatures of the applicant cannot be entertained and the same is dismissed as such.

OA No.3387/2015

2. The instant OA has been filed by the applicants seeking the following reliefs :-

- “i) To quash and set aside the impugned letter dated 23.06.2015 and direct the respondents to appoint the applicants to the post of TGT (Maths) in terms of offer of select panel dated 12.03.2015 from the date of appointment of similarly placed persons with all consequential benefits including arrears of pay.
- ii) To allow the OA with cost.
- iii) 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.”

3. It is submitted that in July, 2014, the respondents issued circular dated 15.07.2014, for filling up teaching and non teaching post by Limited Departmental Examination (LDE) for the year 2012-13 and 2013-14. A perusal of said circular makes it clear that total 225 posts of TGT (Maths) (99 for 2012-13) and (126 for 2013-14) were advertised. As per requirement, the applicants, who were already serving as PRT in Kendriya Vidyalaya Sangathan (KVS) also applied. It is also relevant to notice that as per the Recruitment Rules notified and followed by the respondents time to time, a candidate possessing Bachelor Degree in Science/ Maths with two subjects i.e. Physics, Chemistry, Electronics, Computer Science & Statistics were treated as eligible for consideration for appointment to the post of TGT (Maths). In the Limited Departmental Examination of preceding years 2010-11 & 2011-12, the similarly placed persons having Degree in B.Sc.(Hons.) with Maths & Chemistry Or Chemistry (Hons.) with Maths were treated as eligible for appointment to the post of TGT (Maths). As the applicants had also done B.Sc. (Hons.) with Chemistry & Maths and B.Sc. (Hons.) with Physics & Maths respectively and M.Sc. (Maths), therefore they were also treated eligible for consideration to the post of TGT (Maths) and called to appear in the departmental examination held pursuant to circular dated 15.07.2014. The applicants appeared in

the said examination with other candidates on 14.09.2014. After holding the departmental examination, the respondents issued letter dated 11.12.2014, to applicant No.1, whereby, all the candidates were directed to give additional information about qualifications such as Bachelor Degree and subject offered in B.Ed. etc. The information sought for by the respondents was provided by the applicants. The respondents examined the eligibility as per the service record available inasmuch as, only the KVS employees were eligible to appear in the departmental examination. Thereafter, they declared the final result and issued the select panel for the year 2012-13 and 2013-14, in which the applicants were declared as selected for appointment to the post of TGT (Maths).

4. Thereafter, the Principal, KVS, Dwarka, sent a letter to Headquarter asking as to whether the applicants who had done B.Sc (Hons.) with Maths could be given this appointment as Maths was not the subject in all the three years of Graduation. Thereafter, impugned orders dated 23.06.2015 & 22.04.2015, were passed in which the applicants have not been treated as eligible as they did not study Maths in all the years at Graduation Level as per RRs of KVS for the post of TGT (Maths.)

5. The action of the respondents in denying appointment to the applicants to the post of TGT (Maths) in spite of being declared selected vide select panel dated 12.03.2015, on the basis of LDE for the year 2012-13 & 2013-14, by raising frivolous objection regarding not studying Maths in all three years at Graduation level, is highly illegal, arbitrary and unjustified. As per the Recruitment Rules notified by the KVS for appointment to the post of TGT (Maths), the applicants were required to have Bachelor Degree with the further condition of studying the concerned subject with two other subjects i.e. Physics, Chemistry, Electronics, Computer Science, Statistics. The applicants did have the Bachelors Degree and they had also studied the concerned subject of Maths with Physics & Chemistry, as evident from their educational certificates.

6. As there were number of similarly placed persons who had also studied concerned subject only in two years, as per University pattern, therefore they also filed OA No.77/2009 with connected cases before this Tribunal. The aforesaid OAs were allowed by this Tribunal with directions to the respondents to give them appointment by treating them as eligible. The aforesaid orders of this Tribunal were challenged by the respondents by filing different Writ Petitions before the Hon'ble High Court of Delhi. The dismissal of said Writ Petitions No.1520/2012, 4483/2012, 4301/2012 & 575/2013 by the Hon'ble High Court makes it clear that the Hon'ble

High Court has ruled that the candidate, who has not have studied the concerned subject in Graduation, but possessing PG Degree, is eligible for appointment to the posts concerned.

7. It is further submitted that while rejecting the claim of the applicants, the respondents have failed to consider that the applicants possessed the qualification i.e. Graduation with two other relevant subjects and M.Sc (Maths), therefore they were eligible to be appointed as TGT (Maths) in terms of RRs.

8. In their reply, respondents have stated that they have acted fully in accordance with the service rules of KVS. They accept all the factual contentions raised by the applicants but informed that both the applicants, who have studied B.Sc. (Hons.) with Physics and Maths/ B.Sc. (Hons) with Chemistry and Maths, were declared in-eligible, as they have not acquired the subject combination required for the post of TGT (Maths) in the respondents organisation. The applicants have also not studied Maths in all the three years of Graduation. In the notification dated 15.07.2015, it was clearly mentioned that candidature of the applicants may be cancelled at any stage even after conduct of examination and placement of posting order if found that the particulars filled by the candidates are incorrect or he/she is not eligible for the post as per

Recruitment Rules of KVS. The respondents submit that they have rightly rejected the candidature of the applicants for the post of TGT (Maths) through LDE as both have not studied Maths in all the years of Graduation which does not fulfil the eligibility for appointment to the post of TGT (Maths) through LDE in the respondents organization for the years 2012-13 & 2013-14. The respondents further submit that memo dated 12.3.2015, is offer of promotion through LDE for the post of PGTs (subject wise) for those who have qualified the written examination and are within the cut off marks decided by the competent authority along with the place of posting.

9. Heard both sides and perused the record.

10. The short point in this OA is the contention of the applicants that they are teachers in KVS and entitled to promotion from PRT to TGT (Maths) through LDE for the years 2012-13 & 2013-14 and they have wrongly been excluded for appointment as TGT (Maths), as per their selection communicated vide Memorandum dated 12.03.2015. The single line of arguments taken by respondents is that the applicants could not be considered eligible for promotion through LDE to the post of TGT (Maths), as they had not studied Maths as a subject in all three years at Graduation level in terms of the essential qualification, as per Recruitment Rules for the post of

TGT (Maths) for the year 2012-13 as combination of subject offered by the teacher not matching with Recruitment Rules for the post of TGT (Maths) in terms of essential qualification as per Recruitment Rules of KVS.

11. This matter has been agitated in a number of cases and it is clear from the judgment produced by the applicants and not denied by the respondents in ***Government of NCT of Delhi & Ors. Vs. Sachin Gupta*** in Writ Petition (C) No.1520/2012 and batch. Relevant para 48 of the said judgment of Hon'ble High Court of Delhi is reproduced below :-

“48. This issue is no longer res integra and stands decided by a decision of a Division Bench of this Court reported as 2002 (61) DRJ 58 Manju Pal v Government of National Capital Territory of Delhi. In said case, the appellant who had studied Hindi at Graduate level applied for being appointed to the post of Primary Assistant Teacher in the MCD. Despite being successful in the selection process conducted for said purpose, the appellant was not appointed to the post of Assistant Primary Teacher on the ground that she had not studied Hindi at the Higher Secondary Level and is thus not eligible for being appointed to said post. Aggrieved by the aforesaid, the appellant had filed a writ petition before a Single Judge of this Court which got dismissed. Aggrieved thereof, the appellant filed a Letters Patent Appeal before a Division Bench of this Court. The Division Bench allowed the appeal filed by the appellant and held that the appellant is eligible for being appointed to the post of Primary Assistant Teacher in MCD as she

possessed a higher qualification than the qualification required for appointment to the post of Primary Assistant Teacher. It would be relevant to note following portion of the said judgment:-

"8. The learned counsel appearing for the appellant argued that the appellant was wrongly rejected on the spurious ground of her nt having a qualification prescribed by the advertisement read with the corrigendum. Learned counsel appearing for the Board and the MCD submit that as per the qualification prescribed in the advertisement and the corrigendum for appointment to the post of Primary Assistant Teacher, the requirement of Hindi at the Secondary level or Senior Secondary level is the essential qualification which a candidate must possess. According to them, in case a candidate having a Bachelor of Arts degree with Hindi, he/she would not be eligible for the post of Primary Assistant Teacher. We fail to see the logic and the rationale of the argument of the learned counsel for the MCD and the Board. Undoubtedly, Bachelor of Arts degree with Hindi, is a higher qualification than the higher secondary with Hindi.

10..... *It cannot be assumed by any stretch of imagination that a candidate possessing higher qualification like B.A. with Hindi or M.A. with Hindi will be less efficient in teaching primary classes than a person possessing lesser qualification such as higher secondary with Hindi.*

12. In view of the aforesaid decisions, we find that both the applicants were eligible for being appointed to the post of TGT (Maths) and accordingly, the OA is disposed of by upholding the claim of the applicants to the said appointment. It is, however, made clear that they shall not be entitled to back wages but would

be entitled to all consequential benefits such as seniority, as per their merit position in the select panel and notional pay fixation with reference to the date of their joining being treated as the one on which the person immediately junior to him joined duty.

13. The Hon'ble High Court of Delhi in **Sachin Gupta's** case (supra) had also held that while deciding the aforesaid matter Directorate of Education should formally suitably amend their Recruitment Rules by specifying the eligibility norms in relation to the substance and not the form. Otherwise, Students from University of Delhi would be in perpetual litigation with the Directorate of Education as and when they seek employment as Teachers in Delhi.

14. In this matter, we direct that this judgment be brought to the notice of Ministry of HRD also so that RRs be modified specifically indicating the qualification in KVS so that unnecessary litigation can be avoided. No costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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