

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.4370 OF 2013

New Delhi, this the 8th day of January, 2016

CORAM:

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER
&
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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Sh.Nitish Kumar,
s/o Sh.Akhilesh Kumar,
R/o E-158, Sector-27,
Noida, District: Gautam Budh Nagar,
Uttar Pradesh-201301

(By Advocate: Mr.Bir Singh)

Vs.

1. Ministry of Education,
Through the Director of Education,
Govt. of NCT of Delhi, Delhi.
2. The Chairman,
Delhi Subordinate Services Selection Board(DSSSB).
FC-18, Institutional Area, Karkardoma,
Delhi 92
3. The Dy. Secretary(CC-I),
Delhi Subordinate Services Selection Board(DSSSB).
FC-18, Institutional Area, Karkardoma,
Delhi 92

(By Advocate: Ms.Alka Sharma)

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ORDER**RAJ VIR SHARMA, MEMBER(J):**

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- ð(a) The Office order No.318 Dated 13.09.2013 passed by Dy.Secretary (CC-I), DSSSB, FC-18, Institutional Area, Karkardooma Courts, Delhi-92, be quashed;
- (b) The further process of the Advertisement No.1/13 may kindly be stayed till the pendency of this O.A.

OR

- One post may kindly be reserved or kept vacant;
- (c) Appropriate directions may kindly be issued to the respondents for the appointment of the applicant for the post of Special Education Teacher;
- (c) Any other relief as the Hon'ble Tribunal deems fit.ö

2. We have perused the records, and have heard Mr. Bir Singh, the learned counsel appearing for the applicant, and Ms. Alka Sharma, the learned counsel appearing for the respondents.

3. It is the undisputed case of both sides that Delhi Subordinate Services Selection Board (for short, -DSSSB-) issued Advertisement No.01/13 inviting applications from eligible persons desirous of participating in the selection process for filling up 927 [UR-468, OBX-251, SC-139, ST-69 (including PH (OH-27)] vacancies in the post of Special Education Teacher in the Directorate of Education, Government of NCT of Delhi (vide Post Code 01/13). The Advertisement stipulated the essential

qualification for the post as follows:

oEssential Qualification:

- (i) Graduate with B.Ed.(Special Education) or B.Ed. with a two years Diploma in Special Education or Post Graduate Professional Diploma in Special Education or any other equivalent qualification approved by Rehabilitation Council of India;
- (ii) Central Teacher Eligibility Test (CTET) conducted by CBSE.ö

The Advertisement, vide paragraph 5, stipulated that the educational qualification, age, experience, etc., shall be determined as on the closing date for submission of applications, which was 20.03.2013. The applicant, who passed Central Teacher Eligibility Test (Part I) conducted by CBSE in July 2011, applied for the post in response to the Advertisement. On the basis of the Admit Card issued by DSSSB, the applicant appeared in the written examination and scored 83.50 marks therein. DSSSB, vide rejection notice dated 13.9.2013 (Annexure A/1), published a list of candidates who were considered as Not Eligible for the post in question due to various reasons which were mentioned against their names. The applicant's name appeared at sl.no.169 of the list of candidates contained in the rejection notice, and he was shown as NOT ELIGIBLE ö CTET NOT QUALIFIEDö

4. Mr.Bir Singh, the learned counsel appearing for the applicant submitted that in the Advertisement it has nowhere been mentioned that the post of Special Education Teacher is only for Classes VI to VIII. It was also submitted by Mr.Bir Singh that since in the Advertisement Central Teacher

Eligibility Test (CTET) conducted by the CBSE has been prescribed as one of the essential qualifications, the applicant, who has passed Paper I of the CTET conducted by CBSE, ought not to have been found ineligible and as not CTET qualified, and, therefore, the rejection of his candidature is illegal and liable to be interfered with.

5. *Per contra*, Ms. Alka Sharma, the learned counsel appearing for the respondents, submitted that in the letter dated 11.9.2013 addressed by the Assistant Director, Directorate of Education, Government of NCT of Delhi, to the Dy. Secretary (CC-I), DSSSB, it has been clarified that the post of Special Education Teacher, being a Group B post with Grade Pay Rs.4600/-, is equivalent to the post of TGT, and that the candidates who passed Paper II of CTET are eligible for appointment to the post of Special Education Teacher. Ms. Alka Sharma submitted that the applicant having not passed both Papers I and II of the CTET conducted by CBSE, and having passed only Paper I of CTET conducted by the CBSE, cannot be said to have possessed the CTET qualification, which is one of the essential qualifications for appointment to the post of Special Education Teacher, as prescribed in the Advertisement, and, therefore, he was rightly considered as ineligible for the post. There is, thus, no infirmity in the decision of the DSSSB rejecting his candidature for the post.

6. After having carefully considered the materials available on record and the rival contentions of the parties, we find no substance in the contention of Mr. Bir Singh, the learned counsel appearing for the applicant.

As the applicant did not pass both Papers I and II of CTET conducted by the CBSE, he cannot be said to have acquired the CTET qualification, which is one of the essential qualifications prescribed for the post of Special Education Teacher. Therefore, there is no infirmity in the decision taken by DSSSB declaring the applicant as ineligible for the post.

7. **In State of Orissa & anr. v. Mamata Mohanty, (2011) 3 SCC 436**, the Hon'ble Supreme Court, in paragraph 34 of the judgment, held as follows:

ð34. Article 21A has been added by amending our Constitution with a view to facilitate the children to get proper and good quality education. However, the quality of education would depend on various factors but the most relevant of them is excellence of teaching staff. In view thereof, quality of teaching staff cannot be compromised. The selection of the most suitable persons is essential in order to maintain excellence and the standard of teaching in the institutioní í ö

The Hon'ble Supreme Court, in paragraph 40 and 41 of the judgment, also observed thus:

ð40. **In Pramod Kumar v. U.P. Secondary Education Services Commission & Ors.**, AIR 2008 SC 1817, this Court examined the issue as to whether a person lacking eligibility can be appointed and if so, whether such irregularity/illegality can be cured/condoned. After considering the provisions of the U.P. Secondary Education Services Commission Rules, 1983 and U.P. Intermediate Education Act, 1921, this Court came to a conclusion that lacking eligibility as per the rules/advertisement cannot be cured at any stage and making appointment of such a person tantamounts to an illegality and not an irregularity, thus cannot be cured. A person lacking the eligibility cannot approach the court for the reason that he does not have a right which can be enforced through court.

41. This Court in **Pramod Kumar** further held as under: (SCC p.160, para 18):

ð18. If the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularised, particularly, when the statute in no unmistakable term says so. Only an irregularity can be.(See **Secy., State of Karnataka v. Umadevi** (3), (2006) 4 SCC 1; **National Fertilizers Ltd. v. Somvir Singh**, (2006) 5 SCC 493; and **Post Master General, Kolkata v. Tutu Das (Dutta)**, (2007) 5 SCC 317)".

8. In the light of our above discussions, we hold that the O.A. is devoid of merit and liable to be dismissed.

9. Resultantly, the O.A. is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

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