

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**O.A.NO.4530 OF 2014**

New Delhi, this the 21<sup>st</sup> day of January, 2016

**CORAM:**

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

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Ms.Anupriya,  
Aged 25 years,  
D/o Sh.Rajender Kumar,  
R/o H.N.A-254/13, Om Nagar,  
Meetapur, Badarpur, New Delhi ..... Applicant

(By Advocate: Mr.Rama Shankar)  
Vs.  
Govt. of NCT of Delhi,  
Delhi Subordinate Services Selection Board,  
FC-18,Institutional Area,  
Karkardooma,  
Delhi 110092  
through its Chairman ..... Respondent

(By Advocate: Ms.Rashmi Chopra)

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**ORDER**

**Raj Vir Sharma, Member(J):**

We have perused the O.A. and Rejoinder Reply filed by the applicant, and the Counter Reply filed by the respondent, and have heard Mr.Rama Shankar, the learned counsel

appearing for the applicant, and Ms.Rashmi Chopra, the learned counsel appearing for the respondent.

2. The applicant was an ST candidate for selection and appointment to the post of Teacher (Primary) in Municipal Corporation of Delhi (MCD) pursuant to the Advertisement No.004/2009 (Post Code 70/09) issued by the Delhi Subordinate Services Selection Board (DSSSB). Though she appeared in the recruitment examination and was declared to have scored 65.25 marks, as against the cut-off marks of 59 marks for ST candidates, she was not selected for appointment on the ground of her not possessing one of the essential qualifications, i.e., 'Must have passed English as a subject at Secondary or Sr.Secondary Level', by the cut-off date, i.e., 15.1.2010. Therefore, she filed the present O.A. on 16.12.2014 seeking the following reliefs:

“a. That the respondent may kindly be directed to declare the result of the applicant as passed and the process for her appointment on the post of Teacher Primary may kindly be directed to be completed and she may kindly be given the appointment on the post of Primary Teacher on the Post Code No.71/2009.”

3. It is contended by the applicant that she possessed the essential qualifications for the post of Teacher (Primary) in

MCD, as stipulated in the Recruitment Rules and the Advertisement No.004/2009. Subsequently, in compliance with the direction issued by the Tribunal in OA Nos.121 and 151 of 2010, decided on 20.7.2010, the Recruitment Rules for the posts of Teacher (Primary) in MCD, and Assistant Teacher in GNCT of Delhi, were amended by the user Departments, and, as a consequence, the DSSSB issued notification dated 16.9.2011 amending/inserting the essential qualification: 'Must have passed English as a subject at Secondary or Sr. Secondary Level' for the said post. As she fulfilled the essential qualifications in terms of the unamended Recruitment Rules and the Advertisement No.004/2009, the respondent ought not to have declared her as ineligible for selection. It is also contended by the applicant that she appeared in the Senior School Certification Examination 2013 conducted by the Central Board of Secondary Education for the subject of 'English Core', and, having scored 43 marks therein, was granted a pass certificate on 27.5.2013 by the said Board. Having passed English subject at the Senior Secondary Level prior to 2.9.2014, i.e., the date of holding of the recruitment examination, she possessed the said essential qualification, and, therefore, the respondent ought to have considered her

candidature for selection and appointment on the basis of marks scored by her in the written examination. It is also contended by the applicant that the amended Recruitment Rules having never been notified are inoperative. It is also contended by the applicant that having fulfilled the essential qualifications prescribed in the Recruitment Rules and the Advertisement No.004/2009, and having submitted her application in response to the Advertisement No.004/2009, she should not have been declared as ineligible on the basis the notification dated 16.9.2011, *ibid*, by which the said essential qualification for the post was added in the wake of the purported amendment to the Recruitment Rules.

3. On the other hand, it is contended by the respondent that the applicant did not pass English as a subject at Secondary or Senior Secondary Level by 15.1.2010, i.e., the cut-off date, which was stipulated not only in the Advertisement No.004/2009, but also in the notification dated 16.9.2011. Admittedly, the applicant passed English subject at the Senior Secondary Level in the year 2013 and the certificate to that effect was issued to her on 27.5.2013. Therefore, she was rightly declared as ineligible for selection and appointment to the post of Teacher (Primary) in MCD. In

support of its contention, the respondent has relied on the decision of the Hon'ble Supreme Court in **Rakesh Kumar Sharma Vs. Govt. of NCT of Delhi and others**, (2013) 11 SCC 58 = 2013(10) SCALE 42=MANU/SC0819/2013, where it has been held as follows:

“In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification, i.e., eligibility, character verification etc. Clause 11 of the letter of offer of appointment dated 23.2.2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court. It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement.

There is no obligation on the court to protect an illegal appointment. Extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance.

The appeal is devoid of any merit and does not present special features warranting any interference by this court. The appeal is accordingly dismissed.”

4. After having given our anxious consideration to the facts and circumstances of the case, and the rival contentions, in the light of the decision of the Hon'ble Supreme Court in **Rakesh Kumar Sharma's case** (supra), we do not find any substance in the contentions of the applicant. There was no infirmity in the decision taken by the respondent declaring the applicant as ineligible for selection and appointment to the post of Teacher (Primary) in MCD, because of her not possessing the essential qualification of passing English as a subject at Secondary or Higher Secondary Level by 15.1.2010, i.e., the cut-off date stipulated in the Advertisement No.004/2009 and notification dated 16.9.2011, *ibid*.

5. It is also pertinent to mention here that in O.A.Nos.3663, 3599, 3719, 3691, 3699, 3708, 3718, 4363,

3721, 3727, 3728, 3729, 3732, 3733, 3734, 3735, 3736, 3737 and 3772 of 2011 (**Preeti Balyan, etc. Vs. NCT of Delhi and others**), decided on 30.3.2012, some of the candidates for the posts of Teacher (Primary) in MCD, and Assistant Teacher in GNCT of Delhi, vide Post Codes 70/09 and 71/09 of Advertisement No.004/2009, had challenged the fixation of cut-off date, i.e., 15.1.2010. The Tribunal struck down the said cut-off date for determination of the eligibility of the candidates with regard to their educational qualifications, age, etc., as being arbitrary, illegal and unconstitutional. The Tribunal's order dated 30.3.2012 was challenged by the DSSSB in W.P. (C) No. 3397 of 2012 (**DSSSB Vs. Preeti Balyan & ors**). The Hon'ble High Court of Delhi, vide its judgment dated 6.2.2013, disposed of the said writ petition and reversed the Tribunal's order dated 30.3.2012, *ibid*.

6. In the light of our above discussions, we find no merit in the O.A. Accordingly, the O.A. is dismissed. No costs.

**(RAJ VIR SHARMA)**  
**JUDICIAL MEMBER**

**(SUDHIR KUMAR)**  
**ADMINISTRATIVE MEMBER**

