

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

OA No.4651/2014

Reserved on: 04.02.2016
Pronounced on:03.08.2016

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

Anju Drall D/o T.K.Drall,
W/o Manish Solanki
Aged about 23 years
R/o H.No.118, Near Sultanpuri Road,
V.P.O. Pooth Kalan, Delhi-86.

-Applicant

(By Advocate: Shri Ranjeet Sharma)

Versus

1. Govt. of NCT, Delhi
Through the Principal Secretary,
(Education Department),
Old Secretariat, Delhi-54.
2. Delhi Subordinate Service Selection
Board (DSSSB) through its Chairman,
At :FC-18, Industrial Area,
Karkardooma, Delhi.
3. South Delhi Municipal Corporation,
Through the Commissioner,
At SP Mukherjee Civic Centre,
J.L.N.Marg, New Delhi-2.
4. North Delhi Municipal Corporation,
Through the Commissioner,
At SP Mukherjee Civic Centre,
J.L.N.Marg, New Delhi-2.
5. East Delhi Municipal Corporation,
Through the Commissioner,
At SP Mukherjee Civic Centre,
J.L.N.Marg, New Delhi-2.

...Respondents.

(By Advocates: Ms. Rashmi Chopra & Shri R.N.Singh,
Shri M.S.Reen for R-4 and
Shri Arvind Kumar)

ORDER**Per Sudhir Kumar, Member (A):**

The applicant of this OA has approached this Tribunal as she is aggrieved by the impugned rejection notice dated 05.12.2014 (Annexure A1), through which her candidature for appointment to the post of Assistant Teacher in the Govt. of Delhi/MCD School has been rejected. She had applied for Post Code No.70/09, advertised by the respondents No.2- Delhi Subordinate Services Selection Board (DSSSB, in short) through their Advertisement No.004/2009 (Annexure A2). The essential qualifications, with desirable qualification prescribed for the post were as follows:

"Essential qualifications:

- i) 10+2 or intermediate or its equivalent with 50% marks from a recognized Board.
- ii) Two years diploma/certificate course in ETE/JBT B.Ed.
- iii) Must have passed Hindi as a subject at secondary level."

Desirable qualification:

Computer Knowledge."

2. The applicant had passed her 10th class from the CBSE, and Sanskrit was her subject at the 10th class level, and she had pursued Diploma in Elementary Teacher Education (ETE, in short) from State Council of Educational Research and Training (SCERT, in short), and had applied for the post of Assistant Teacher under the OBC category. Her educational certificates and caste certificate have been annexed as Annexure A3 (colly). However, before issuance of the Advertisement No.004/2009, and its closing date 15.01.2010, the applicant had applied for taking the examination in Hindi at the 10th level from CBSE as a private candidate, and she had later passed that examination, as is evident from the Marks-sheet dated 28.05.2010 (Annexure A4).

3. On 13.09.2011, the respondents issued another Corrigendum-Advertisement whereby English was made mandatory at the 12th level examination, and the applicant was directed to deposit further fee of Rs.50/- by way of postal order. The applicant deposited the amount, and also her certificate of her having passed Hindi at the 10th level in the meanwhile.

4. The scheduled written examination was conducted on 29.12.2013 and a list of eligible candidates was published, which contained the name of the applicant, and she was also issued an Admit Card. However, the examination was re-scheduled to be held on 02.02.2014, (Annexures A8 and A9). When the respondents thereafter declared the results through the impugned result notice dated 05.02.2014, the applicant had been found successful on merit, but her name had been placed in the rejection list, on the ground that she did not have Hindi as a subject at the 10th level. She has submitted that she had obtained the essential qualification much prior to the conduct of the written examination held on 02.02.2014, and had passed the 10th class with Hindi as a private candidate, and the rejection of her candidature was, therefore, illegal and arbitrary. The applicant represented against the rejection notice on 10.12.2014. Not receiving any response to that representation, she filed this OA on 22.12.2014.

5. For filing this OA, the applicant has taken the ground that in pursuance of the Corrigendum-Advertisement dated 13.09.2011, she had submitted her 10th class Hindi certificate, along with the postal order of Rs.50/-, and even her name was kept in the list of the eligible candidates, she was allowed to take the examination, and she was successful on merit also, having obtained 69.25% marks in the "OBC" category, and hence the rejection of her candidature is illegal and arbitrary. She has taken the

further ground that the respondents have no fixed criteria of eligibility, and in this case eligibility criterion has been changed much later than the last date of submission of applications. She has assailed that the respondents introduced English as a mandatory subject on 13.09.2011, whereas the original Advertisement was issued in 2009, and introduction of Hindi as a subject at the 10th level, and English at the 12th level, is a much recent eligibility criteria, which shows that the criteria fixed by the respondents are arbitrary and illegal. It was submitted that besides this, the applicant had studied Hindi at the B.A. and B.Ed level. Therefore, challenging the rejection of her candidature, she had prayed for the following reliefs:

- "i) quash the Rejection Notice dt. 05.12.2014 (Annexure A1 supra) to the extent it rejects the candidature of the applicant for appointment as Primary Teacher on the ground of ineligibility with direction to the respondents to issue her provisional appointment order.

AND/OR

- ii) pass such other order/s as may be deemed fit and proper."

6. Respondent No.R-4-North Delhi Municipal Corporation filed their counter reply on 21.05.2015, submitting that after trifurcation of the MCD, Education Department, South DMC has been entrusted with the work of recruitment of teachers, and even DSSSB selects the candidates and recommends their appointment and forwards the dossiers of the selected candidates to the South DMC, which completes the further formalities required for such appointments. Therefore, it was pleaded that the Respondent No.R-4 is only a proforma party in the present case, and the reliefs claimed by the applicant pertain to the Respondent No.R-2-DSSSB, and the Respondent No.R-3-South DMC. A similar counter reply was filed on behalf of Respondent No.R-5-East DMC also on 28.05.2015.

7. The contesting Respondent No.R-3-South DMC filed their counter reply on 19.08.2015. In this it was submitted that on the basis of the requisition sent for 4500 Teachers (Primary) to DSSSB under Section 92A of the DMC Act on 30.10.2009, the vacancies were notified by the DSSSB on 11.12.2009, and the cut-off date for submission of application forms was 15.01.2010. Thereafter, another letter was sent to the DSSSB for increasing the number of vacancies from 4500-6500, and intimation regarding amended Recruitment Rules (RRs, in short), and the DSSSB issued a Corrigendum, but the crucial date for determining the age and attaining the requisite qualification etc., along with other contents of the initial advertisement remained the same. It was submitted that the applicant is not entitled for appointment to the post of Teacher (Primary) as, on the cut-off date, she did not possess the requisite qualification as required for the post of aforesaid post, as contained in the advertisement brought out by the DSSSB.

8. It was submitted that the applicant had passed her 10th class Examination with Hindi only after the cut-off date, and since she did not fulfil the mandatory condition of having passed Hindi at the 10th level before the cut-off date, she is not entitled to any reliefs. It was further submitted that the Corrigendum Notice dated 13.09.2011 had been issued by the DSSSB in compliance of the orders passed by this Tribunal in OA No.121/2009, but the last date of eligibility was, however, not changed, as per the orders passed by the Tribunal in that OA. It was, therefore, prayed that the present OA may be dismissed, being bereft of any merit.

9. The respondent No.R-2-DSSSB filed their counter reply on 25.08.2015. In this, a preliminary objection was taken that the present case

is no longer *res integra*, as has been decided by the Hon'ble Supreme Court in the case of **Santosh Kumar Meena & Ors. vs. Govt. of N.C.T. of Delhi and Ors.** decided on 29th July, 2013 Civil Appeal Nos. 6115 and 6117 of 2013 along with Civil Appeal Nos. 6119 and 6120 of 2013. Para 16 of that judgment was reproduced in the counter reply as follows:

"16. 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.

17. 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."

(Emphasis supplied)

10. It was further pointed out that while the last date for applying for the said post was 15.01.2010, due to upgradation of the posts of Assistant Teacher (Primary) in MCD from Group "C" to Group "B" on the basis of the recommendations of the 6th CPC, the user Department had to modify the RRs as per the directions of this Tribunal, and in the revised RRs, the subject English was also made compulsory at the Senior Secondary level. This necessitated R-2 DSSSB to issue a Corrigendum Advertisement in this regard, allowing further candidates also to apply, due to enhancement of number of vacancies after 17.10.2011, but the cut-off date remained the

same, i.e. 15.01.2010. It was submitted that after R-2 Board conducted the examination on 02.02.2014, the marks list was declared on 08.07.2014 on the basis of eligibility criteria of user Department and the result of 2676 candidates was declared on 05.12.2014, and the result of further 502 candidates was declared on 16.04.2015, but the applicant did not qualify and she has also failed to make out any ground for interference by this Tribunal. Therefore, it was prayed that the OA be dismissed.

11. It was submitted that even though the applicant had passed the 10th class level from the CBSE as a private candidate subsequent to the cut-off date, but fulfilment of the essential required qualification as Hindi being main subject at the Secondary level was essential as on the cut-off date, which the applicant did not have. It was further submitted that even though English was made mandatory at the 12th level, as per revised RRs, due to upgradation of the posts from Group "C" to Group "B", it did not preclude the condition that the candidate must possess Hindi as a subject at the Secondary Level, which was the essential criteria in the non-modified RRs itself also. It was, therefore, submitted that since the applicant did not fulfil the required essential qualifications as on the cut-off date, as per the terms and conditions of the Advertisement under the relevant RRs, there is no merit in the OA, and the reliefs sought by the applicant cannot be granted in the OA, and it was prayed that O.A. may be dismissed.

12. The applicant filed a rejoinder on 27.08.2015 to the counter reply of Respondent No.R-3. Through this, it was submitted that the applicant has a Diploma in ETE, whereby she has been trained in teaching Hindi as a subject. She has also cleared CTET, in which she had passed the test in Hindi as Language II. Besides, it was submitted that the applicant is a

Graduate from the University of Delhi, and it was submitted that through an RTI query, the applicant has obtained information that the "Diploma in ETE is a higher qualification than the 10th class passed in Hindi". Therefore, it was submitted that the non-selection of the applicant on the ground that she did not have Hindi in class 10th as a subject is absolutely unjustified, illegal, irrational and arbitrary. It was submitted that in similar circumstances, the Hon'ble Delhi High Court had in **Manju Pal vs. Govt. of NCT of Delhi** (2002) (61) DRJ, 58, accorded recognition to study of the relevant subject at the higher level, and, therefore, her case could not have been rejected on the basis of her non-possessing the essential qualification of Hindi subject at the 10th class level, and that the qualification of the higher level should have been deemed to be fulfilment of that criteria. It was submitted that the rejection of the candidature of the applicant falls foul of the law laid down by the Hon'ble High Court in the above-said case, and, therefore, the OA deserves to be allowed.

13. The applicant also filed a separate rejoinder on 02.11.2015 to the counter reply of Respondent Nos.R-1 and R-2. Through this, it was submitted that the applicant has a Diploma in Elementary Education, whereby she has been trained in teaching Hindi as a subject. She has also cleared CTET, where she had passed the test in Hindi as Language II. Besides, it was submitted that the applicant is a Graduate from the University of Delhi, and since "Diploma in ETE is higher qualification than the 10th class passed in Hindi," therefore, her non-selection has no rational nexus with the object sought to be achieved.

14. It was submitted that the above cited judgment in **Manju Pal vs. Govt. of NCT of Delhi** (2002) (61) DRJ, 58 would apply on all fours to the

present case. It was further submitted that her case has not been rejected not because of lack of qualification, but only on the ground of non fulfilment of the criteria that she did not study Hindi as a main subject in class 10th, and it was prayed that the OA deserves to be allowed.

15. Heard. Learned counsel for the applicant pointed out the Annexure A3 (Colly) – the certificate of All India Secondary School Examination, 2005, in which it was shown that she had passed Sanskrit as one of her subjects but not Hindi. It was also pointed out that she had later passed Class X Hindi as a private candidate, through Certificate dated 28.05.2010 (Annexure A4), which was issued after the cut-off date. He also pointed out the applicant's Mark-sheet dated 24.07.2009 in respect of her Diploma Course in ETE, in which teaching of Hindi/Urdu/Punjabi had been one of her subjects, although the Marks-sheet does not show as to for teaching which subject had the applicant passed in that examination. He had also pointed out the certificate of the CTET Test, 2011, in which applicant's second language was Hindi, as well as the University of Delhi, BA, Part-I Marks-sheet, in which it was shown that she had studied Hindi from the School of Open Learning, and the Marks-sheets of Part-II and III of her BA Programme. Learned counsel for the applicant also pointed out her B.Ed. Marks-sheet dated 20.06.2014, which shows that the applicant had qualified with Hindi as one of her subjects at the B.Ed. level Examination. He has also placed reliance on the reply to the RTI Appeal dated 13.08.2015, in which it was stated that the ETE is a higher qualification than the 10th class.

16. Learned counsel for the applicant had, during his arguments, also relied upon the judgment of the Hon'ble Delhi High Court in WP(C) No.1520/2012 in **Govt. of NCT of Delhi & Others vs. Sachin Gupta** and

connected Writ Petitions, including the judgment dated 07.08.2013 in WP(C) No.575/2013 in **Director of Education & Another vs. Neelam Rana.**

Paras 47 to 50 of that judgment had stated as follows:

"47. The controversy pertaining to Neelam Rana is not in the context of what would be an elective subject studied during Graduation. Admittedly Neelam Rana seeks appointment as T.G.T. English, a subject which she never studied in her Graduation course which we find was B.Sc. (Botany) but she fights the battle on the strength of having obtained a Post Graduate Degree in English i.e. M.A.(English).

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 not 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. 9. In the counter affidavit filed by the MCD it has not been stated as to how the study of Hindi as a language at higher secondary or intermediate level by the candidates is more relevant than the study of Hindi as a language in BA pass course for the job requirement. Nothing has been brought to our notice by the learned counsel appearing for the Board and the MCD which could justify the stand of the respondents that the study of Hindi as a language at higher secondary level by a candidate has a nexus with the object sought

to be achieved, which object by the study of Hindi at B.A. level by a candidate cannot be achieved. No study or evaluation or analysis has been placed before us to show that the candidates having Hindi as a subject at the secondary level are better qualified and equipped to teach primary students than the candidates having Hindi at the graduate level. In case the argument of the learned counsel appearing for the MCD and the Board is taken to its logical conclusion it will lead to absurd results. There may be a case where a person did not take up Hindi as a language at higher secondary level and took it up at higher levels, namely, B.A., M.A. and Ph.D. Surely, it cannot be said that the person who had taken Hindi as a subject at the Graduate level, Masters level or Doctorate level is less qualified for the job than the person who had taken up Hindi as a subject at the higher secondary level. The counter affidavit of the MCD is not at all helpful for the purpose of coming to the conclusion that there is any valid justification for the stand of the Board and the M.C.D. in considering higher secondary with Hindi as an essential requirement for the post of Primary Assistant Teachers. The invidious distinction made by the Board and the MCD for ignoring candidates with higher qualification is unwarranted and without any valid basis. It is significant to note that nothing is stated in the counter affidavit as to how Hindi at the Higher Secondary level is helpful for teaching primary level students. What is so special about Hindi at the secondary level, which attribute Hindi at higher level is lacking has not been explained in the counter affidavit or the arguments of the learned counsel for the respondents. Hindi as a language has not been mentioned in the advertisement as a special qualification for imparting education to the students at the primary level. 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. 11. We are supported in our view by a decision of the Allahabad High Court in Laxmi Narayan Yadav Vs. District Inspector of Schools and Ors., 1988 (3) SLR Allahabad 42, in which it was held as follows:-

As regards the eligibility of respondent No. 3 for the post of Lecturer in Hindi, the learned counsel for the respondents drew out attention to N.B. (Note)(2) below the rule prescribing minimum qualifications for 'Hindi Teachers for Intermediate' contained in Appendix A which provides as follows: "

The Hindi Teachers may not be required to have a Degree in Sanskrit in those institutions where qualified Sanskrit teacher is available to teach the Sanskrit portion of the Hindi Course". The above note clarifies the intention why B.A. with Sanskrit was kept as an essential qualification for a Hindi Teacher for Intermediate Classes. The person should be such who can also teach Sanskrit portion of the Hindi Course. The qualification prescribed for Sanskrit Teacher for Intermediate' is 'M.A. with Sanskrit preferably trained'. As respondent no. 3 is M.A. in Sanskrit, he is fully qualified to teach Sanskrit also. Consequently, respondent no. 3 cannot be said to be disqualified for being appointed teacher in Hindi simply because he is not 'B.A. with Sanskrit', especially when he is M.A. in Sanskrit and is qualified to teach Sanskrit portion of

Hindi Court, so that requirement of 'B.A. with Sanskrit' is not applicable in his case. Moreover, respondent no. 3 may not be having Sanskrit as a subject for his Bachelors' degree. He is, however, having Master's Degree in Sanskrit, which is certainly a higher qualification than B.A. with Sanskrit. Consequently, the claim of respondent no. 3 could not be rejected merely on the ground that he is not 'B.A. with Sanskrit', when he is admittedly M.A. Sanskrit'."

(Emphasis Supplied)

49. A similar view was taken by a Single Judge of this Court in the decision reported as 186 (2012) DLT 132 Kalpana Pandey v Director of Education & Ors. The aforesaid decision was affirmed by a Division Bench of Court in LPA No.640/2010 'Director of Education v Kalpana Pandey' decided on September 18, 2012.

50. In view of aforesaid authoritative pronouncements, we hold that respondent Neelam Rana is eligible for being appointed to the post of T.G.T. (English), particularly when the Directorate of Education has placed no material before us to show that the person who has studied English at graduate level would be better equipped to teach English to students vis-à-vis a person who has obtained a Post Graduate degree in English language."

17. Learned counsel for the applicant had also relied upon the judgment of the Hon'ble Delhi High Court in WP(C) No.11470/2009 in **Sh. Yogesh Dutt vs. Director of Education and Others** and had tried to draw sustenance from that judgment.

18. On the other hand, learned counsel for the respondents relied upon the judgment of the Hon'ble Supreme Court in **State of Punjab and Others vs. Anita and Others** (2015) 2 SCC 170. Paras 9 to 19 of the said judgment have laid down the law as follows:

"9. The issue which requires our consideration is, whether the advertisement issued by the Doaba Arya Senior Secondary School, Nawanshahr, had invited applications by truly reflecting the prescribed qualifications, and also whether, the private respondents possess the qualification prescribed for the post of JBT/ETT teachers, which was advertised on 25.2.2002.

10. While examining the advertisement, which has been extracted hereinabove, we are satisfied that applications were not invited from candidates possessing the qualification depicted in the appendix to the 1981 Rules, pertaining to the posts of JBT/ETT teachers. It is also apparent, that

none of the private respondents possess the qualification of JBT/ETT, and as such, none of them can be stated to be possessed of qualifications statutorily prescribed and delineated in the appendix of the 1981 Rules. None of the private respondents was therefore per se eligible for appointment to the posts of JBT/ETT teachers. This was one of the pointed reasons why the State Government did not grant its approval to the selection and appointment of the private respondents. In our considered view, no infirmity can be found in the aforesaid determination at the hands of the State Government.

11. Insofar as the issue in hand is concerned, reference may be made to the decision rendered by this Court in P.M. Latha and another vs. State of Kerala and others (2003) 3 SCC 541, wherein this Court held as under:

“10. We find absolutely no force in the argument advances by the respondents that BEd qualification is a higher qualification than TTC and therefore the BEd candidates should be held to be eligible to compete for the post. On behalf of the appellants, it is pointed out before us that Trained Teacher's Certificate is given to teachers specially trained to teach small children in primary classes whereas for BEd degree, the training imparted is to teach students of classes above primary. **B.Ed degree-holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools.** Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or BEd qualification, is a matter of recruitment policy. **We find sufficient logic and justification in the State prescribing qualification for the post of primary teachers as only TTC and not BEd. Whether BEd qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider BEd candidates, for the present vacancies advertised, as eligible.”**

(Emphasis supplied)

12. Reference may also be made to the decision rendered by this Court in Yogesh Kumar and others vs. Government of NCT of Delhi and others (2003) 3 SCC 548, wherein this Court held as under:

“5. The Division Bench of the Delhi High Court in the impugned judgment has dealt with the above two arguments in great detail. In our considered opinion, it has rightly come to the conclusion that BEd qualification, although a well-recognised qualification in the field of teaching and education being not prescribed in the advertisement, only some of the BEd candidates who took a chance to apply for the post cannot be given entry in the field of selection. We also find that the High Court rightly came to the conclusion that teacher training imparted to teachers for BEd course equips them for teaching higher classes. A specialized training given to teachers for teaching small children at primary level cannot be compared with training given for awarding BEd

degree. Merely because primary teachers can also earn promotion to the post of teachers to teach higher classes and for which BEd is the prescribed qualification, it cannot be held that BEd is a higher qualification than TTC. Looking to the different nature of TTC qualification, the High Court rightly held that it is not comparable with BEd degree qualification and the latter cannot be treated as higher qualification to the former."

(Emphasis supplied)

13. A perusal of the aforesaid judgments leave no room for any doubt, that **it is imperative for candidates to possess the statutory qualification prescribed for appointment to the posts, to which they are seeking appointment. In view of the position declared by this Court, qualifications of B.Ed and other qualifications possessed by the private respondents, namely, M.A., M.Sc, M.Com. Etc. cannot be treated as higher qualifications with reference to the prescribed qualifications (JBT/ETT).** We, therefore, find the reasons recorded by the DEO in the impugned order dated 04.4.2005 were fully justified, and in consonance with the legal position declared by this Court, as has been noticed hereinabove.

14. To be fair to the learned counsel for the private respondents, we may also make a reference to the decision rendered by this Court in Jyoti K.K. and others vs. Kerala Public Service Commission and others (2010) 15 SCC 596. Learned counsel had invited our attention to paragraph 7 thereof, wherein it was observed as under:

"It is no doubt true, as stated by the High Court that when a qualification has been set out under the relevant Rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. **If a person has acquired higher qualifications in the same Faculty, such qualifications can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In the case it may not be necessary to seek far.**"

(Emphasis supplied)

It is no doubt true, that this Court held in the afore-stated judgment, that if a person had acquired higher qualifications in the same faculty, such qualifications can certainly be stated to presuppose the acquisition of the lower qualification. Possession of higher qualification would therefore, according to learned counsel, make a candidate eligible for the post, even though, the candidate does not possess the prescribed qualification. The question however is, whether the above position can be applied to the present case?

15. **It was sought to be asserted on the basis of the aforesaid observations, that since the private respondents possess higher qualifications, then the qualification of JBT/ETT, they should be treated as having fulfilled the qualification stipulated for the posts of JBT/ETT teachers. It is not possible for us to accept the aforesaid submission of the learned counsel for the private respondents, because the statutory rules which were taken into consideration by this Court while recording the aforesaid observations in Jyoti K.K.'s case (supra), permitted the aforesaid course.** The statutory rule, in the decision relied on by the learned counsel for the private respondents, is extracted hereunder:

"6. Rule 10(a)(ii) reads as follows :

"10.(a)(ii) Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications recognised by executive orders or standing orders of Government as equivalent to a qualification specified for a post in the Special Rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post."

(Emphasis supplied)

A perusal of the rule clearly reveals that the possession of higher qualification would presuppose the acquisition of the lower qualification prescribed for the posts. Insofar as the present controversy is concerned, there is no similar statutory provision authorizing the appointment of persons with higher qualifications.

16. Moreover, in view of the decision rendered by this Court in P.M. Latha's case (supra) and in Yogesh Kumar's case (supra) lead to the clear and unambiguous conclusion that none of the private respondents could be considered as eligible for selection or appointment to the advertised posts of JBT/ETT teachers.

17. It is also necessary for us to take into consideration Government Instructions dated 20.12.1995, which were relied upon by learned counsel, so as to contend, that the private respondents who possess higher qualifications including the qualifications depicted as preferential in the advertisement, should be treated as eligible. Relevant extract of the aforesaid Government Instructions dated 20.12.1995 is being reproduced hereunder:

"6. Vide letter No.1/18/95-3Edu-7/20602, dated 14.09.1995 the Government has taken the decision that in future the appointment of J.B.T. Teachers in the Government Schools may be done in two parts. In first part the candidates who are possessing the qualification of J.B.T./E.T.T. or equivalent shall be considered. Thereafter, in case it emerges that, J.B.T./E.T.T. qualified candidates are not available, in that event, appointments may be made by

adopting second part. It should be mentioned in the advertisement, that in case candidates with J.B.T./E.T.T. or equivalent qualification are not available, then candidates who have graduation/post graduation qualifications with B.Ed. will also be considered. But the candidates having qualification of graduation/post graduation/ along with B.Ed. shall be paid the scale of J.B.T. only. In such cases, an affidavit will be furnished by the candidates that after selection, being graduates/post graduates candidates, will not claim any other benefit or higher scale, and in this regard, at the time of sending the requisition of posts, this shall also be incorporated in the advertisement."

18. Having given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the private respondents, based on the government instructions dated 20.12.1995, we are of the view, that the private respondents do not satisfy the pre-condition of valid appointment expressed therein, inasmuch as, it was imperative for the Selection Committee, in the first instance, to consider only those candidates who possessed the qualification of JBT/ETT, and thereupon, posts that remained unfilled could be filled up with persons possessing higher qualifications, i.e., graduate/post graduate qualifications along with B.Ed.. That was not the procedure which came to be adopted in the present controversy. Therefore per se, no benefit can flow to the private respondents, from the government instructions relied upon by the learned counsel. Be that as it may, it needs to be emphasised, that para 6 of the Government Instructions dated 20.12.1995, are in clear violation of the statutory process of selection and appointment postulated under the 1981 Rules. Even if the above Government Instructions would have bestowed validity on the selection process, through which the private respondents came to be appointed, the same could not have been acceded to, since Government Instructions in violation of the statutory rules, are a nullity in law. In view of the foregoing reasons, it is not possible for us to bestow legitimacy/legality to the appointment of the respondents as JBT/ETT teachers.

19. For the reasons recorded hereinabove, we are satisfied that the impugned order passed by the High Court dated 2.7.2007 is liable to be set aside. The same is accordingly hereby set aside."

19. Apart from considering the applicability of the above cited judgments, we have also given our anxious consideration to the entire facts of the case. As has been seen above, the Hon'ble Supreme Court has decided this issue in a number of cases. The issue concerned in this case is the aspect of possession by the applicant of all necessary qualifications and certificates as

on the cut-off date. In this connection, the following cases decided by the Hon'ble Apex Court can be cited:

"i) In the case of **Ashok Kumar Sharma & Ors. vs. Chander Shekhar & Another JT 1997 (4) SC 99**, a three-Judges' Bench of the Hon'ble Apex Court had held in Paragraphs 6 & 7 as follows:-

"6.The review petitions came up for final hearing on 3/3/1997. We heard the learned counsel for the review petitioners, for the State of Jammu & Kashmir and for the 33 respondents. So far as the first issue referred to in our Order dated 1/9/1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. **The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all.** An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in *Rekha Chaturvedi v. University of Rajasthan*. The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the division bench of the High court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.

7. Mr Rakesh Dwivedi, learned counsel for the 33 candidates, submitted that these 33 candidates had appeared for the B.E. Examination prior to their applying for the post and that there was some delay in publishing the results and that these respondents cannot be punished for the delay on the part of the authorities concerned in publishing the results. In our opinion, the said contention is beside the point. In these proceedings, we cannot examine the reasons for delay - assuming that there was delay in publishing the results. That issue is outside the purview of the writ petition. **Whatever may be the reason, the 33 persons were not qualified as on the prescribed date and, therefore, could not have been allowed to appear for the interview.** On the first issue (mentioned in the Order dated 1/9/1995, therefore, we

hold in favour of the review petitioners, affirming the opinion of Sahai, J.

(Emphasis supplied)

ii). In **Dr. M.V. Nair vs. Union of India & Ors. (1993) 2 SCC 429**, again a three-Judges' Bench of the Hon'ble Apex Court had in Paragraph-9 held as follows:-

"9.....It is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date."

(Emphasis supplied)

iii). In **Bhupinderpal Singh and Others vs. State of Punjab & Ors. (2000) 5 SCC 262**, the Hon'ble Apex Court had in Paragraphs 13 & 14 stated as follows:-

"13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma v. Chander Shekhar, (1997) 4 JT (SC) 99; A. P. Public Service Commission v. B. Sarat Chandra, (1990) 4 Serv LR 235 (SC); Dist. Collector and Chairman, Vizianagaram (Social Welfare Residential School Society) Vizianagaram v. M. Tripura Sundari Devi, (1990) 4 Serv LR 237 (SC); Mrs. Rekha Chaturvedi v. University of Rajasthan, (1993) 1 JT (SC) 220 : (1993 AIR SCW 1488 : 1993 Lab IC 1250); Dr. M. V. Nair v. Union of India, (1993) 2 SCC 429 : (1993 AIR SCW 1412 : 1993 Lab IC 1111); and U. P. Public Service Commission, U. P., Allahabad v. Alpana, (1994) 1 JT (SC) 94 : (1994 AIR SCW 2861), **the High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with.** However, there are certain special features of this case which need to be taken care of and justice done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice.

14. In view of several decisions of this Court relied on by the High Court and referred to hereinabove, it was expected of the State Government notifying the vacancies to have clearly laid down and stated the cut-off date by reference to which the applicants were required to satisfy their eligibility. This was not done. It was pointed out on behalf of the several appellants/petitioners before this Court that the practice prevalent in Punjab has been to determine the eligibility by reference to the date of interview and there are innumerable cases wherein such candidates have been seeking employment as were not eligible on the date of making the applications or the last date appointed for receipt of the applications but were in the process of acquiring eligibility qualifications and did acquire the same by the time they were called for and appeared at the interview. Several such persons have been appointed but no one has challenged their appointments and they have continued to be in public employment. Such a loose practice, though prevalent, cannot be allowed to be continued and must be treated to have been put to

an end. The reason is apparent. The applications made by such candidates as were not qualified but were in the process of acquiring eligibility qualifications would be difficult to be scrutinised and subjected to the process of approval or elimination and would only result in creating confusion and uncertainty. Many would be such applicants who would be called to face interview but shall have to be returned blank if they failed to acquire requisite eligibility qualifications by the time of interview. In our opinion **the authorities of the State should be tied down to the principles governing the cut-off date for testing the eligibility qualifications on the principles deducible from decided cases of this Court and stated herein above which have now to be treated as the settled service jurisprudence.**

(Emphasis supplied)

iv) In the case of **Mrs. Rekha Chaturvedi vs. University of Rajasthan & Ors. JT 1993 (1) SC 220**, the Hon'ble Apex Court had held as under:

"12. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. **Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts.** The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. **Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications.**

13.....**It is for this purpose that we lay down the following guidelines for the future selection process:**

A. xxxxxxxxxxxx (Not reproduced here).

B. The candidates selected must be qualified as on the last date for making applications for the posts in question or on the date to be specifically mentioned in the advertisement/notification for the purpose. The qualifications acquired by the candidates after the said date should not be taken into consideration, as that would be arbitrary and result in discrimination. It must be remembered that when the advertisement/notification represents that the candidates must have the qualifications in question,

with reference to the last date for making the applications or with reference to the specific date mentioned for the purpose, those who do not have such qualifications do not apply for the posts even though they are likely to acquire such qualifications and do acquire them after the said date. In the circumstances, many who would otherwise be entitled to be considered and may even be better than those who apply, can have a legitimate grievance since they are left out of consideration.

C to E. xxxxxxxxxxxxxx (Not reproduced here)."

(Emphasis supplied)

v) In the case of **State of Rajasthan vs. Hitendra Kumar Bhatt JT 1997 (7) SC 287**, the Hon'ble Apex Court has laid down the law as follows:-

"6.....A cut-off date by which all the requirements relating to qualifications have to be met, cannot be ignored in an individual case. There may be other persons who would have applied had they known that the date of acquiring qualifications was flexible. They may not have applied because they did not possess the requisite qualification on the prescribed date. Relaxing the prescribed requirements in the case of one individual may, therefore, cause injustice to others."

(Emphasis supplied)

vi) In the case of **Harpal Kaur Chahal (Smt) vs. Director, Punjab Instructions, Punjab and Another, 1995 Supp(4) SCC 706**, the Hon'ble Apex Court has held as under:-

"2.....It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the applications. Such of those candidates who possessed of all the qualifications as on that date alone are eligible to apply for and to be considered for recruitment according to rules....."

(Emphasis supplied)

vii) In the case of **U.P. Public Service Commission Utter Pradesh, Allahabad, Anr. vs. Alpana JT 1994 (1) SC 94**, the Hon'ble Apex Court has laid down the law in Para-6 as follows:-

"6.....We find it difficult to give recognition to such an approach of the High court as that would open up a flood of litigation. Many candidates superior to the respondent in merit may not have applied as the result of the examination was not declared before the last date for receipt of applications. If once such an approach is recognised there would be several applications received from such candidates not eligible to apply and that would not only increase avoidable work of the selecting authorities but would also increase the pressure on such authorities to withhold interviews till the results are declared, thereby causing avoidable administrative difficulties....."

viii) In the case of **District Collector & Chairman Vizianagaram (Social Welfare Residential School Society)**

Vizianagaram and Anr. vs. M. Tripura Sundari Devi 1990 (4) SLR 237, the Hon'ble Apex Court has in Para-6 held as follows:-

"6. It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.

(Emphasis supplied)

ix) Similar is the effect of the case law as laid down by the Hon'ble Apex Court in **Ganga Singh vs. Commissioner of Police and Another, AIR 1987 SC 699=(1987) 1 SCC 377**, and in **Mahavir Singh vs. Staff Selection Committee and Another, AIR 1986 SC 582=(1986) 1 SCC 668**.

x) In the case of **State of Uttar Pradesh vs. Vijay Kumar Mishra, AIR 2003 SC 4411**, the Hon'ble Apex Court had held as follows:-

"8. The position is fairly well settled that when a set of eligibility qualifications are prescribed under the rules and an applicant who does not possess the prescribed qualification for the post at the time of submission of application or by the cut-off date, if any, described under the rules or stated in the advertisement, is not eligible to be considered for such post. It is relevant to note here that in the rules or in the advertisement no power was vested in any authority to make any relaxation relating to the prescribed qualifications for the post. Therefore, the case of a candidate who did not come within the zone of consideration for the post could not be compared with a candidate who possess the prescribed qualifications and was considered and appointed to the post. Therefore, the so-called confession made by the officer in the Court that persons having lower merit than the respondent have been appointed as SDI (Basic), having been based on misconception is wholly irrelevant. The learned single Judge clearly erred in relying on such a statement for issuing the direction for appointment of the respondent. The Division Bench was equally in error in confirming the judgment of the learned single Judge. Thus the judgment of the learned single Judge as confirmed by the Division Bench is unsustainable and has to be set aside. (Emphasis supplied)

xi) Similar is the essence of the law as laid down in **Mills Douglas Michael and Ors. vs. Union of India & Ors. JT 1996 (4) SC 189; Shankar K. Mandal & Ors. vs. State of Bihar & ors. (2003) 9 SCC 519; Ashok Kumar Sonkar vs. Union of India (2007) 4 SCC 54; Govt. of Andhra Pradesh & Ors. vs. N. Subbarayudu & Ors., (2008) 14 SCC 702; National Council for Technical Education and Others vs. Shri Shyam**

Shiksha Parashikshan Sansthan and Others Etc. Etc., (2011) 3 SCC 238; and in Orissa Power Transmission Corporation Ltd. Vs. Khageswar Sundaray and Others (2011) 8 SCC 269".

20. In the instant case, it is clear that the applicant did not possess the requisite qualification, as prescribed in the RRs, as on the cut-off date, and she acquired qualification only as a private candidate, much after the cut-off date. Therefore, in view of the categorical pronouncements of the Hon'ble Apex Court, as reproduced above, we cannot but hold that the respondents were correct in holding that in the absence of possessing the essential qualification as on the cut-off date, the applicant was ineligible for appointment. Any subsequent developments, or acquisition of any other higher qualifications do not matter in view of the weight of the above reproduced pronouncements of the law of the land by the highest court. We are unable to follow the judgment, as pronounced by the Hon'ble Delhi High Court on 07.08.2013 in WP(C) No.575/2013 in **Director of Education & Another** vs. **Neelam Rana** (supra), and in **Govt. of NCT of Delhi & Others** vs. **Sachin Gupta** (supra) in both of which the law of the land laid down by the Hon'ble High Court, as above, has not been noticed at all. We are also unable to follow the Single Bench judgment in **Sh. Yogesh Dutt** vs. **Director of Education and Others** (supra), in which also the law as declared by the Highest Court of the land has not been noticed, but which we are bound to follow.

21. The OA is, therefore, dismissed, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

/kdr/

