

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No-4002/2015

Order Reserved on: 01.03.2016
Order Pronounced on: 12.09.2016

**Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

Ms. Srishti
Aged 28 years
D/o Shri Mukesh Gupta
R/o 784, Saraswati Vihar,
Housing Board Colony, M.G. Road,
Gurgaon-122001. -Applicant

(By Advocate: Shri Anuj Aggarwal)

Versus

1. Government of NCT of Delhi
Through its Chief Secretary
Secretariat, I.P. Estate,
New Delhi-110002
2. Office of the UEE Mission,
Through its State Project Director,
Education Department, First Floor,
Near Estate Branch,
Directorate of Education,
Distt. North, Lucknow Road,
Delhi-110054.
3. Director of Education,
Directorate of Education,
Government of NCT of Delhi
Old Secretariat Building
Civil Lines, Delhi-54.
4. Deputy Director of Education-South/DPO-SSA
Office of the Deputy of Education,
Government of NCT of Delhi, District South,
C-Block, Defence Colony,
New Delhi-110024.
5. The Joint Director (Planning Branch)
Planning Branch, Directorate of Education,
Govt. of NCT of Delhi
Old Patrachar Building,

Timarpur, Delhi-110054.

-Respondents

(By Advocate: Shri Anmol Pandita &
Shri Vijay Pandita)

O R D E R

Per Sudhir Kumar, Member (A):

The applicant has approached this Tribunal because through the impugned order dated 09.09.2015 at Annexure A-1, the respondents have rejected her candidature for the post of Trained Graduate Teacher (TGT, in short) (English), as a contract teacher under Sarva Shiksha Abhiyan (SSA, in short), for the academic year 2015-2016, and her case for employment as TGT (Social Studies) has also been disallowed. The applicant has claimed that it is settled law that a candidate who had studied a given subject in at least two years of graduation, but had studied the same subject at the post graduation level, must be considered as suitable candidate for engagement as Guest Teachers. The Hon'ble Supreme Court judgment dated 29.07.2013 in Civil Appeal No.

6116/2013 Rakesh Kumar Sharma vs. Govt. of NCT of Delhi & Others, has been cited, and the applicant has claimed orders to this effect having been passed in compliance of the orders of the Hon'ble Delhi High Court in WP (C) No. 8040/2015, and the order dated 28.07.2015 of this Tribunal in OA No.2708/2015.

2. The applicant had completed her Class-X from CBSE in the year 2002, and had studied English as a subject, which she did in her Class XII also, in the year 2004. She completed her B.A. (Hons.) in Sociology in the year 2007, during the course of which she studied English only in

the first year, because that was the only option available to her at that time. Since in an Honours Course, which she did in Sociology subject, a student cannot study any subject (other than the subject in which Honours Course is done) for more than one year. Thereafter, in the year 2009, she completed her B. Ed, with English as one of the teaching subjects, and, in parallel, in the year 2010, she obtained her M.A. in English from Indira Gandhi National Open University (IGNOU, in short). Thereafter she appeared at the CTET Examination, which she successfully passed in the year 2011, and completed her M. Ed. from Jamia Millia Islamia University in 2012.

3. In the meanwhile, in July/August 2012, the State Project Director, Office of Universal Elementary Education Mission, Govt. of NCT of Delhi, issued a public notice inviting applications from the eligible candidates for the posts of TGTs on contract basis, under SSA. Since the applicant considered herself to be eligible and qualified to be appointed both as TGT (English), as well as TGT (Social Science), she applied in response to that Advertisement, for both those posts, and was later called for interview, and was also called for verification of her documents, and was ultimately appointed as TGT (English), on contractual basis, for the period from 01.09.2012 to 31.03.2013, on a consolidated remuneration basis. She worked in the concerned School upto 10.05.2013, and was issued a certificate to that effect two months later by the Principal concerned.

4. Another Public Notice was later issued by Respondent No.2 in July/August 2013, seeking applications from the eligible candidates for the posts of TGTs under SSA on contract basis, and again the applicant applied for both the posts of TGT (English) as well as TGT (Social Science), and again qualified, and was called for the interview, and for verification of documents/certificates. Thereafter she was issued an appointment letter/agreement dated 04.09.2013 for her appointment as TGT (English) on contractual basis for the period from 04.09.2013 to 31.03.2014. She worked in that capacity upto 09.05.2014 and was issued an experience certificate to that effect thereafter on 27.06.2014.

5. In the year 2014 also the same process was repeated, in the case of the Public Notice dated 09.06.2014, and the applicant was given an appointment letter for her appointment as TGT (English) on contractual basis from 15.07.2014 to 31.03.2015, though she worked upto 08.05.2015.

6. The next year, in 2015, a Circular dated 15.05.2015 was issued, stating that SSA would re-engage the same set of contract teachers for the next Academic session, after summer vacations, and directions were issued to all contractual teachers previously working in the Directorate of Education during 2014-15 Session to report for verification of documents. The applicant's documents were again verified on 08.07.2015, and when she approached the respondents for collecting her appointment letter on 10.07.2015, she was told to come on 14.07.2015. On that date, there was a Circular pasted on the wall of the office of

DDE, whereby all the Contract Teachers were directed to come on 15.07.2015 for collecting their appointment letters. However, on 15.07.2015, the applicant learnt that in terms of the impugned Circular dated 09.07.2015, issued by the Joint Director (Planning), her candidature for re-engagement for the post of TGT (English) had been rejected, stating this to have been done in implementation of the Delhi High Court judgment dated 07.08.2013 in the case of **Directorate of Education & Anr. Vs. Neelam Rana** in W.P. (C) No.575/2013.

7. Aggrieved by this, she got a Legal Notice dated 21.07.2015 served upon the respondents, and since she did not receive any reply, she approached this Tribunal in OA No.2708/2015. That OA came to be disposed of at the admission stage itself vide order dated 28.07.2015, directing the respondents to consider the legal notice, and to pass appropriate orders.

8. Not being satisfied with this order passed by this Tribunal, the applicant filed W.P. (C) No. 8040/2015 before the Hon'ble Delhi High Court. The Hon'ble Delhi High Court disposed of that Writ Petition on 24.08.2015, with direction to Respondent No.1 to pass a speaking order within 10 days from the date of receipt of a copy of that order. Thereafter, the respondents issued the impugned order dated 09.09.2015, and rejected her claim to be appointed either as TGT (English), or as TGT (Social Studies).

9. It has been submitted by the applicant that the impugned Circular dated 09.07.2015, issued by the Joint Director (Planning), Govt. of NCT of Delhi, purporting to have been based upon the Hon'ble Delhi High Court's judgment in **Directorate of Education & Anr. Vs. Neelam Rana** (supra), had been challenged before the Hon'ble Delhi High Court in **Nisha Vs. Govt. of NCT of Delhi** in W.P. (C) No.8874/2015, but the Hon'ble High Court remanded the matter back to this Tribunal through its order dated 21.09.2015.

10. Yet, the applicant has submitted that her present OA is maintainable, and has taken the ground that the impugned orders of the respondents dated 09.09.2015 & 10.09.2015 were liable to be set aside, for having followed the Circular dated 09.07.2015. She has further taken the ground that rejection of her candidature is arbitrary, discriminatory, punitive, unreasonable, unconstitutional and violative of her rights under the Constitution, as the above mentioned Circular dated 09.07.2015 was inapplicable to the recruitment process pertaining to Contract Teachers.

11. The applicant has taken the further ground that the Hon'ble High Court's judgment in the case of **Directorate of Education & Anr. Vs. Neelam Rana** (supra) squarely applies to her case, and she was entitled to be appointed in 2015-2016 also, as TGT (English), on contract basis, in SSA. It was further submitted that the impugned orders dated 09.09.2015 & 10.09.2015 are contrary to law as declared by the Hon'ble Delhi High Court in **Mrs. Manju Pal vs. Govt. of NCT of Delhi** [2002

(61) DRJ 58], in which it was held that the appellant before the High Court was eligible for appointment to the post of Primary Assistant Teacher in MCD, as she possessed a higher qualification than the qualification required for appointment to the said post. It was submitted that since applicant herself has also done M.A. in English, therefore, she is better qualified to be appointed for the post of TGT (English). Paragraphs 8 to 13 of the judgment in the case of **Mrs. Manju Pal vs. Govt. of NCT of Delhi** (supra) were cited, and it was further submitted that law as laid down in that case has since been followed by the Hon'ble Delhi High Court in the case of **Yogesh Dutt vs. Director of Education and Others Manu/DE/2156/2013**, as well as in the case of **Directorate of Education & Anr. Vs. Neelam Rana** (supra). She had, therefore, taken the ground that even though she had studied English as a subject in the first year only in her graduation, i.e., BA (Hons.) in Sociology, but since then she was completed her post-graduation in English, and, therefore, she was duly qualified for the post of TGT (English). It was further submitted that she had applied for both the posts of TGT (English) as well as TGT (Social Science) in the years 2012, 2013 and 2014. In the result, she had prayed for the following reliefs and interim relief:-

“RELIEF:

- (i) issue an appropriate order or direction setting aside the impugned order 09.09.2015 (Annexure A-1) as well as the impugned order dated 10.09.2015 (Annexure A-2);
- (ii) issue an appropriate order or direction thereby setting aside the impugned circular dated 09.07.2015 (Annexure A-3);

(iii) issue an appropriate order or direction thereby directing the respondents to appoint the applicant to the post of TGT English, or in the alternative to the post of TGT Social Science, w.e.f. the date when her counterparts have been appointed and pay her all consequential benefits thereof;

(iv) allow the present application with cost, in favour of the applicant;

(v) issue any other appropriate order or direction as this Hon'ble Tribunal may deem fit and proper in the interest of justice and in the favour of the applicant."

"INTERIM RELIEF"

During the pendency of the present Original Application, the Respondents may be directed to allow the applicant to work on the post of TGT English as a contract teacher in Sarva Shiksha Abhiyan (SSA), Government of NCT of Delhi, for the academic year 2015-16 or in alternative one post of TGT English may be kept vacant till the disposal of the present OA."

12. On her prayer for Interim Relief no order had ever been passed, but in the order dated 01.02.2016, passed by the Hon'ble Chairman, CAT on her MA No.261/2016 praying for advancement of the date of hearing of the case, it was noted that she had since been provided with contract appointment in 2015-16 also, and her term was to expire on 31.03.2016, because of which an early hearing had been sought, which was allowed.

13. The respondents filed their counter reply on 26.02.2016 and submitted that the applicant's legal notice had been replied to, and since Universal Elementary Education Mission is a project of the Union of India's Ministry of Human Resource Development, and does not fall under the Directorate of Education, technically the SSA does not come under the jurisdiction of this Tribunal, and the OA is not maintainable. It was also submitted that since plural remedies have been sought for in this OA, which is barred by Rule-10 of the CAT (Procedure) Rules, 1987, therefore the OA is liable to be dismissed, as being in the abuse of

process of law, and being barred by Sections 19, 20 & 21 of the Administrative Tribunals Act, 1985.

14. It was further pointed out that the applicant had worked on contract basis under the SSA during 2012-13, and applied for both the posts of TGT (English) as well as TGT (Social Science). She had then appeared for verification of her documents for TGT (English) only, and did not appear for verification of her documents in respect of the post of TGT (Social Science), which she repeated in 2013-14. In 2014-15 also, she made a written request in this regard, as at Annexure R-3, accepting the post of only TGT (English) through Annexure R-2. As a result, in 2015-16, she was to be considered only for the post of TGT (English), for which she had opted for in the previous years, and not for TGT (Social Science), but her case could not be covered, because, as per the Circular dated 09.07.2015, only those candidates could be considered, who had studied a given subject in two years of graduation, but had studied the same at Post Graduation level, but in her case, she had studied English only for one year at graduation level, though she possessed a P.G. degree. The same aspects of the facts of the applicant's case were repeated in para-wise replies also, and reply to grounds also.

15. It was submitted by the respondents that the applicant cannot derive any sustenance from the case of **Directorate of Education & Anr. Vs. Neelam Rana** (supra) because in that case the Hon'ble Delhi High Court has not given any clear cut determination of law in favour of the petitioner therein, but had issued directions only because Directorate of

Education could not place any material before the Hon'ble Delhi High Court to show that those who had studied in English at graduation level would be better equipped to teach English, *vis-à-vis* a person who had obtained a Post Graduate degree in English language. It was submitted that in a similar manner, in the case of **Mrs. Manju Pal vs. Govt. of NCT of Delhi** (supra), who had applied for the post of Assistant Teacher in MCD, and did not study Hindi at Secondary/Sr. Secondary level, which was an essential qualification for the post of Assistant Teacher, but she was a Graduate in Hindi, yet in Para-9 of the Hon'ble High Court's judgment had distinguished the petitioner's case by stating that in the case of **Mrs. Manju Pal vs. Govt. of NCT of Delhi** (supra), the High Court had not given any judgment in her favour on merit, because MCD could not place any material before the Hon'ble Delhi High Court to show that the candidates having Hindi as a subject at secondary level were better qualified and equipped to teach primary students, than the candidates having Hindi at the graduate level.

16. It was further submitted that the impugned Circular dated 09.07.2015 had actually been issued subsequent to the Hon'ble High Court's judgment, and only in pursuance of the Hon'ble High Court's judgment in W.P. (C) No.575/2013 **Directorate of Education & Anr. Vs. Neelam Rana** (supra), the observations of the Hon'ble High Court in which case had been followed verbatim in issuing the impugned Circular dated 09.07.2015.

17. In the case of the applicant in the instant case, it was submitted that since she had studied English as a subject only in first year of graduation, therefore, she did not fulfil the requisite conditions to be appointed as TGT (English), as per the Recruitment Rules (RRs, in short), and it was denied that it was the respondents who had taken any unilateral decision to appoint her as TGT (English), even though her Graduation was B.A. (Hons.) in Sociology. It was, therefore, submitted that none of the grounds support the prayer of the applicant, and she has no cause of action or even a *prima-facie* case to seek any relief from this Tribunal, and it was prayed that the OA may be dismissed.

18. Annexure R-1 to the counter reply showed that the applicant had been selected for the post of TGT (Social Science) also, but Annexure R-2 showed that she had accepted the offer of appointment only for TGT (English), and Annexure R-3 clearly showed that she had wanted her application for the post of TGT (English) to be treated as final, and had requested the respondents to consider the same.

19. Heard. During the course of arguments, learned counsel for the applicant placed reliance upon the Hon'ble Supreme Court's judgment in **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others (2013) 10 SCC 324**, to submit that non-continuation of the applicant's appointment in 2015-16 was hit by the law as laid down by the Hon'ble Apex Court through that judgment. He had, thereafter, in his arguments heavily relied upon the cited judgments in the case of **Mrs. Manju Pal vs. Govt. of NCT of Delhi** (supra),

Directorate of Education & Anr. Vs. Neelam Rana (supra), and the latest judgment of the Hon'ble Apex Court in **Jasmer Singh vs. State of Haryana and Another (2015) 4 SCC 458**, from which, the Paragraphs 21,22 & 23, in particular, were cited, which are as follows:-

"21. The said relief in favour of the appellant-workman, particularly the full back wages is supported by the legal principles laid down by this Court in the case of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. ED.) & Ors. [(2013) 10 SCC 324], wherein the Division Bench of this Court to which one of us was a member, after considering three-Judge Bench decision, has held that if the order of termination is void ab initio, the workman is entitled to full back wages.

22. The relevant para of the decision is extracted hereunder:-

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

23. In the circumstances, the appeal is allowed, the judgment & order passed by the learned Single Judge in C.W.P. No. 9532/2001 which is affirmed by the Division Bench of the High

Court in L.P.A. No. 2245/2011 in its judgment and order are set aside and the Award of the Industrial Tribunal-cum-Labour Court is restored. The respondent-employer is directed to comply with the Award within six weeks from the date of receipt of a copy of this order and send a report to this Court. The appeal is allowed with cost of Rs.25,000/- payable to the appellant-workman by the respondent employer.”

20. We have given our anxious consideration to the facts of the case and the law related to this case. In a recent judgment pronounced on 03.08.2016 in OA No.4651/2014-**Anju Drall vs. Govt. of NCT of Delhi**, the same Bench has followed the law as laid down by the Hon’ble Apex Court in a number of cases, and had also discussed the Hon’ble Delhi High Court’s judgment in the case of **Directorate of Education & Anr. Vs. Neelam Rana** (supra), as well as **Yogesh Dutt vs. Director of Education and Others** (supra). Because we are bound by the law as laid down by the highest Court, the Hon’ble Supreme Court, we are unable to follow either the judgment in the case of **Directorate of Education & Anr. Vs. Neelam Rana** (supra), or in the case of **Mrs. Manju Pal vs. Govt. of NCT of Delhi** (supra), or in the case of **Yogesh Dutt vs. Director of Education and Others** (supra). We may reproduce Paragraphs 18 to 20 of that order in **OA No.4651/2014- Anju Drall** (supra) as below:-

“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 an 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 precondition 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 has 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. xxxxxxxxxxxxxxxx (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 haying 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. Therefore, in the instant case also, it is clear that when the RRs provided that for the post of TGT (English), the applicant ought to have studied the concerned subject at least in two years of her studies, which was not there, and the Hon’ble Supreme Court has held that unless the Graduate qualifications are in the same faculty, the higher qualification in that faculty cannot be stated to presuppose that the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post, as was laid down by the Hon’ble Apex Court in **Jyoti K.K. and others vs. Kerala Public Service Commission and others (2010) 15 SCC 596.**

22. Therefore, in the instant case, when the applicant’s Graduation qualification was B.A. (Hons.) in Sociology, and thereafter she completed an M.A. in English, it certainly cannot be said to be a higher qualification in the same faculty, since the faculty of Social Studies and the faculty of English are not in the same discipline.

23. Therefore, drawing sustenance from the Hon’ble Supreme Court’s judgments in the case of **P.M. Latha and another vs. State of Kerala and others (2003) 3 SCC 541**, and in **Jyoti K.K. and others vs. Kerala Public Service Commission and others** (supra), apart from the other judgments cited above, following the law as laid down by the highest Court of the land, we are unable to follow the law as declared by the Hon’ble Delhi High Court in case of **Directorate of Education & Anr.**

Vs. Neelam Rana (supra), and in the case of **Mrs. Manju Pal vs. Govt. of NCT of Delhi** (supra), both of which were not determinations on the merit of the cases, and also the judgment in the case of **Yogesh Dutt vs. Director of Education and Others** (supra).

24. Moreover, in this case, the cause of action in filing this OA had itself disappeared soon after the filing of the OA, as recorded in the orders of the Hon'ble Chairman, CAT dated 01.02.2016, when a submission had been made before His Lordship's Court that the applicant had already been re-employed for the year 2015-16, and her term was going to expire on 31.03.2016. With that, the prayer at Para-8(iii), itself did not survive at all thereafter.

25. Therefore, since we find no merit in the other remaining prayers as made in the OA, accordingly the OA is dismissed, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.