

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 1187/2015

This the 14th day of November, 2018

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

Gourav Dhull Age – 29, Primary Teacher
S/o Sh. Ashok Kumar Dhull
R/o H. No. G-237, Punjabi Colony
Narela, Delhi – 110040.

....Applicant

(By Advocate : Shri Ashok Kumar Dhull for Shri Prashant
Sharma)

VERSUS

1. Government of NCT of Delhi
Through its Chief Secretary
GNCT of Delhi, Delhi Secretariat
5th Floor, Players Building
IP Estate, New Delhi – 110002.
2. Delhi Subordinate Services Selection Board
Through its Secretary
Delhi Secretariat Players Building
IP Estate, New Delhi – 110002.
3. North Delhi Municipal Corporation
Through its Commissioner
Dr. S.P.M. Civic Centre, Minto Road
New Delhi -110002.
4. South Delhi Municipal Corporation
Through its Commissioner
Dr. S.P.M. Civic Centre, Minto Road
New Delhi -110002.
5. East Delhi Municipal Corporation
Through its Commissioner
419, Udyog Sadan, Patparganj Industrial Area
New Delhi -110096.

.....Respondents

(By Advocate : Shri Amit Anand and Shri R.K. Jain)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

Heard learned counsel for the parties.

2. By filing this OA, the applicant is seeking the following reliefs:-

- “(a) Set aside rejection notice dated 05.12.2014 passed by the Respondent no. 2 and direct the respondents to hold the applicant for the post of Teacher (Primary) for Post Code 70/09 with the respondents no. 3-5.
- (b) Pass any other/further orders in favour of the applicant.
- (c) Award cost of the proceedings.”

3. In this case grievance of the applicant is against the rejection notice dated 5.12.2014 (Annexure A-1) whereby the candidature of the applicant for the post of Teacher (Primary) for Post Code 70/09 has been rejected by the respondents on the ground that on or before cut-off date, i.e., 15.01.2010, the applicant was not having the requisite educational qualification i.e., Diploma in Education.

4. We have perused the said Diploma in Education Certificate annexed with the OA as Annexure A-4. We find that the said diploma was awarded to the applicant on **4.2.2010**, i.e., after the cut off date, i.e., **15.1.2010**.

5. Counsel for the applicant contended that while filling the form for the said post, the applicant had already furnished the details of his Diploma in Education course and had informed the respondent no.2 about the status of his course and after considering the said facts, the applicant was allowed to attend the written examination and he was also

given a score in the said examination. As such the rejection of the applicant's candidature on the aforesaid ground is not sustainable in the eyes of law.

5.1 Counsel further contended that the impugned rejection order is liable to be set aside as the applicant had become eligible for the post as he had cleared and completed the eligibility course, i.e., Diploma in Education much prior to the cut off date of the present examination, however, it was only that the certificate was issued later.

5.2 Counsel also contended that the impugned rejection order caused grave prejudice to the applicant who has waited for five years from the date of application of the present job and had already declared the complete facts in his application form and as such the impugned rejection order is liable to be set aside.

5.3 Another contention of the applicant's counsel is that no fair opportunity has been given to the applicant to explain his case and the present notice has been issued in haste.

6. This Court does not find any merit in the aforesaid grounds taken by the applicant in support of his claim as it is admitted fact that Diploma in Education was awarded to him on **4.2.2010** (Annexure A-4) and cut off date for having requisite education qualification for the post in question as per the advertisement was **15.1.2010**. Further it is not the case of the applicant that subsequently cut-off date for the

said purpose was extended. Rather is the categorical stand of the respondents that the DSSSB advertised 4500 vacancies of Teacher (Primary) with Post Code 70/09 in MCD. The last date for applying was 15.1.2010 thereafter due to upgrading of the said post from Group 'C' to Group 'B' in 6th CPC, the user department modified the RRs and send the revised RRs in which English subject is compulsorily passed in Secondary or Sr. Secondary level and the vacancies position also revised from 4500 to 6500. The Board issued addendums in this regard and allowed the candidate to apply upto 17.10.2011 but the cut off date was same, i.e., 15.1.2010.

7. This Court also seen the impugned rejection notice dated 5.12.2014 and from the perusal of the same, it reveals that not only the candidature of the applicant was rejected on the said ground but also near about or more than 1000 candidates' candidatures were rejected on the same very ground. If the plea of the applicant that he has apprised the respondents about the status of his said educational qualification and despite that fact, the respondents allowed him to appear in the examination, the same will also give a ground to other similarly situated candidates whose candidates were also rejected on this ground, which cannot be permitted by the Court of law. Further in the advertisement itself, it has been provided that the candidate must have requisite qualifications as on closing date.

8. Merely clearing the said Diploma of Education qualification subsequently would not make the applicant eligible. As the Hon'ble Supreme Court in the case of ***Rekha Chaturvedi vs. University of Rajasthan and others***, 1993 Supp (3) SCC 168, (wherein similar contention with regard to cut off date to determine eligibility criteria, with reference to the date of selection, date of making of application etc., was examined) held as follows:-

“10. 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. We have, therefore, no hesitation in holding that when the Selection Committee in the present case, as argued by Shri Manoj Swarup, took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent illegality, and on this ground itself the selections in question

are liable to be quashed. Reference in this connection may also be made to two recent decisions of this Court in A.P. Public Service Commission, Hyderabad v. B. Sarat Chandra [(1990) 2 SCC 669 : 1990 SCC (L&S) 377 : (1990) 4 SLR 235 : (1990) 13 ATC 708] and District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram v. M. Tripura Sundari Devi [(1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 4 SLR 237 : (1990) 14 ATC 766].”

Further the Hon’ble Supreme Court in the case of **Rakesh Kumar Sharma vs. Govt. of NCT of Delhi and others**, 2013

(10) SCALE 42, has observed as under:-

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

The similar issue had also come for adjudication before the Hon’ble Delhi High Court in Writ Petition (Civil) No.1869/2014 (**Preetesh Raman Singh vs. Delhi High Court through Registrar General**) decided on 21.3.2014

and the Hon'ble Delhi High Court by placing reliance on the aforesaid judgments of the Apex Court dismissed the said petition.

9. For the aforesaid reasoning, this Court does not intent to delve into the other grounds raised by the applicant in this OA as the same are also not sustainable in the eyes of law.

10. The similar issue had also came up for adjudication before this very Bench in OA No.3892/2018 (***Ritika Mamgai and others vs. Govt. of NCT of Delhi and others***) decided on 13.11.2018 and this very Bench dismissed the same very contentions as raised in this OA by the applicant.

11. In the result, for the foregoing reasons, the present OA being devoid of merit is dismissed. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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