

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.
ORIGINAL APPLICATION NO. 41 OF 2016**

Date Of Decision:- 07th February, 2019

CORAM: R. VIJAYKUMAR, MEMBER (A).

R. N. SINGH, MEMBER (J).

Ms. Tanvee Harilal Chauhan

Age 29 years, D/o. Harilal J. Chauhan

Working as Contract Assistant Teacher

Vanakbara Government Higher

Secondary School for Girls, Diu,

R/a:- A-104, Mangalmurti

Apartment, Khariwad, Nani Daman.

(By Advocate Shri S.V. Marne)

...Applicant.

Versus

1. Union of India,

Through The Administrator,

Union Territory Administration of Daman & Diu,

Secretariat, Moti Daman 396210.

2. The Director of Education,

Union Territory Administration of Daman & Diu,

Secretariat, Moti Daman 396210.

3. Ms. Solanki Manhar Sarkar.

4. Mr. Makhwana Harshad Lalji.

5. Ms. Dubala Gautamiben Natwarlal

Bhamti Navi Nagari,

Moti Daman 396220

To be served through Respondent No.2.

6. Ms. Parmar Mitaben Kalabhai

To be served through Respondent No.2.

7. Mr. Makwana Rakeshkumar Jasabhai

To be served through Respondent No.2.

8. Mr. Zodape Sanghapal Ramraoji

To be served through Respondent No.2. ... Respondents.

(By Advocate Shri. V.S. Masurkar and Shri. A.S. Hapati)

ORDER (ORAL)

Per:- R. N. Singh, Member (J)

1.

This application was filed on 29.01.2016 by the

applicant under Section 19 of the Administrative Tribunals Act,

1985 seeking the following reliefs:-

"8(a) This Hon'ble Tribunal may graciously be pleased to call for the records of the respondents and after examining the same quash and set aside the Impugned Select List dated 11.05.2016 to the extent of exclusion of the name of the applicant and inclusion of names of Respondents No.3 to 6 therein.

(b) This Hon'ble Tribunal may further be pleased to hold and declare that the applicant is selected against one of the three reserved vacancies of SC of Teacher Grade I in the selection convened vide Advertisement dated 25.09.2014 and the Respondent No.2 be directed to appoint the applicant as Teacher Grade I forthwith from the date of appointment of other candidates along with all consequential benefits of backwages, seniority etc.,

(aa) This Hon'ble Tribunal may graciously be pleased to quash and set aside the Final Select list dated 10.02.2017 to the extent of non inclusion of name of applicant therein.

(bb) This Hon'ble Tribunal may graciously be pleased to quash and set aside the advertisement dated 25.09.2014 to the extent of allotment of only 5 vacancies of Teacher Grade-I for SC category and direct the respondents to allot 8 vacancies of teacher Grade-I for SC category.

(c) Costs of the application be provided for.

(d) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2. Heard Shri. S.V. Marne, learned counsel for applicant and Shri. V.S. Masurkar, learned counsel for official Respondent No. 1 and 2. Shri. A.S. Hapati, learned counsel for private respondents was not present at the time of final hearing. The learned counsel for official respondents states that he had

served notice on the other Respondents Nos. 3 to 8 but there is no representation on their behalf despite of service.

3. This applicant was appointed on contractual basis as Primary Teacher from 2007 and as an Assistant Teacher in Sarva Shiksha Abhiyan in 2013. The respondents had published a newspaper advertisement dated 25.09.2014 (Annexure A-3) and conducted written examination for 35 vacancies advertised out of which five vacancies were reserved for Scheduled Castes, three for Scheduled Tribes, nine for Other Backward Classes and one for Physically Handicapped category. A select list was published on the website adopting the roster system previously got approved by the Social Welfare Department with the concurrence of the administrator, on 16.01.2016 prior to this OA and during the pendency of this OA, this list was modified and amended list was published on 11.05.2016 which was further amended and a final panel with roster was published on the website and Notice Board on 10.02.2017. However in the first list, the applicant whose subject is Hindi and was otherwise eligible for the post Teacher Grade-I (Junior College, Group B post) was selected, she did not find a place in any of the final (amended) select list.

4. In this OA, the applicant has stated that at the time of advertisement, five vacancies were reserved for Scheduled

Caste category to which the applicant belongs but no indication was given as to the subject of reservation. The subject-wise reservation was not considered in any of the three lists published by the respondents. During arguments, the learned counsel for respondents gave a detailed presentation of the final roster that was adopted for third and final panel where all the posts in direct recruitment category were filled adopting a roster system taking the entire set of posts for Teacher Grade-I as one unit to be filled up with appropriate reservation in the roster or as prescribed by the Central Government, Government of India. They assert that the applicant had scored high marks in the Hindi category of 60.65 (60.65 includes 20 marks for domicile) in the first list but this was subsequently revised to 60.46 marks (20 marks for domicile), in the second and third lists which became the final panel. Applicant could not secure a place by virtue of the fact that by following this modified roster system, the post for Hindi was filled up by one unreserved and one physically handicapped candidates.

5. The learned counsel for applicant and respondents has been heard at length on the method adopted for this recruitment process. They were enquired as to how they would consider their applicability of the judgment of the Hon'ble High Court of Allahabad vide order and judgment dated 07.04.2017:-

"In case Writ – A No.43260 of 2016 of Vivekanand Tiwari And Anr. vs Union Of India And 5 Ors. on 7 April, 2017.

10. Writ Petition No.39334 of 2012 "Dr. Narendra Singh & Others Vs. State of UP & Others decided on 18.02.2014.

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 It is clear from the above judgments that the proposition of law laid down consistently with regard to the application of reservation in teaching posts of the University is that reservation is to be applied department-wise or subject-wise treating it as a 'Unit' and not the University as a 'Unit'.

As already recorded above the reservation has been applied by way of Executive Instructions and not by way of any Legislation. The Executive Instructions and guidelines framed by the UGC are in direct conflict and in violation of the law laid down by the Apex Court and different High Courts consistently from 1990 till date. We also find that in all the cases referred to above, the Courts have quashed the advertisements issued and appointments made by the different Universities but in none of the cases the guidelines framed by the University Grants Commission in 2006 providing for reservation treating the University as a 'Unit' had been quashed. All Universities and Institutes of higher education and learning are governed by the policy/ guidelines/ directions/ standards determined by the UGC. They could be State or Central Universities and Institutes. There is no distinction amongst them. The guidelines of UGC of 2006 impugned in this petition also apply to all Universities in the country, be it State or Central without any modification or variance. All the judgments delivered so far on the question as to how reservation is to be applied in Universities and Institutes relate to State Universities. However as the policy and guidelines issued by UGC are the same for the State and Central managed and

funded Universities the judgments referred to above would apply with equal force to Central University and to BHU which is a Central University. The State of UP vide Notification No.6/2015-16/Sattar-1-2015-17(13)/1995

following various judgments has already directed all State Universities to apply reservation on different levels of teaching treating the department/subject as a 'Unit'.

From the guidelines framed by the UGC regarding application of reservation in teaching posts we find that the UGC has applied it in a blanket manner. There is no consideration as to why non-interchangeable posts have been clubbed in for treating them as a cadre/unit. No exercise apparently has been carried out by the UGC. The direction contained in the order of the Ministry of HRD dated 06.12.2005 did not contain any direction to the UGC to make blanket reservation or to treat the University as a 'unit'. UGC being the Apex body to consider the matter relating to Universities and Institutes involved in imparting higher education ought to have considered and taken an overall conspectus.

We may also record here that in the teaching posts, the qualifications of teachers for each department/subject is different.

The qualification of the candidate must be possessing Master's Degree, Ph.D, Research Work and NET (being suitability test) for the subject for which the post is advertised. Thus for Assistant Professor of different subjects the qualification would be in different subjects. Similarly the qualification as per the UGC Guidelines for appointment as Reader/Associate Professor, Professor is also in addition to the educational qualifications the minimum prescribed period of teaching in the lower level be it Assistant Professor, Associate Professor in the relevant subject for which the post is available. An Assistant Professor in subject 'A' cannot be an applicant for

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direct appointment as Associate Professor or Professor in subject 'B', 'C' or 'D'. He can only apply for the post in the subject 'A'. The seniority for becoming Head of the Department would be of the teachers in the same subject. There is no interse competition between the teachers in the same level of different subjects as all posts of higher level from entry level are by way of selection. There is no such provision in the teaching cadre in the Universities of promotion being granted on the basis of seniority irrespective of the department or the subject. Their competition is with candidates of their subject/department and not of different subjects. Merely because Assistant Professor, Reader, Associate Professor and Professor of each subject or the department are placed in the same pay-scale but their services are neither transferable nor they are in competition with each other. It is for this reason also that clubbing of the posts for the same level treating the University as a 'Unit' would be completely unworkable and impractical. It would be violative of Article 14 and 16 of the Constitution.

If the University is taken as a 'Unit' for every level of teaching and applying the roster it could result into some departments/subjects having all reserved candidates and some having only unreserved candidates. Such proposition again would be discriminatory and unreasonable. This again would be violative of Article 14 and 16 of the Constitution."

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Further we direct the respondent University to carry out the exercise of applying the reservation to the posts under advertisement treating the department/subject as a 'Unit' for all levels of teachers and thereafter publish the fresh advertisement and then proceed for selection and appointment."

6. In the present recruitment, the learned counsel for respondents informs that subsequent to the declaration of the panel out of 35 advertised posts, 20 appointment orders were issued and these 20 persons have joined as Teacher Grade-I in their appointed category/location. It is also noted in this context that all these appointees were appointed and posted and reported their duties and this has occurred during the pendency of this OA. It is amply clear that the position in law has been settled by the Hon'ble Apex Court in upholding the judgments of the Hon'ble High Court of Allahabad in the case of Vivekanand Tiwari (Supra) and in the facts and circumstances, the decision in that case is squarely applicable to the present recruitment. In these circumstances, since the respondents are bound to obey the law as laid down, the OA is partly allowed with the following directions:-

(i) *The Respondent No. 1 and 2 shall recommence the selection process from the point at which the roster has been applied for preparation of the final select list by applying the distinct unit principle for each subject as prescribed by the Hon'ble Apex Court and as per law.*

(ii) *In respect of subject of specialization of the applicant namely, Hindi, her selection would rest on the preparation of the select list as in the manner set out as above and she would be entitled to selection and appointment, if she falls within the*

category that emanates for such a redrawal of the panel.

7. In case after the selection exercise, the applicant gets an order for appointment, then the applicant shall be entitled for the benefits of seniority and fixation of pay from the date of appointment and shall not be entitled for any back wages. She shall be entitled for the benefit of seniority and fixation of pay in keeping with the fact that a junior person in the merit list may have joined in the services under the respondents on the basis of instant selection process and the respondents shall verify this specific aspect while passing orders. In the aforesaid terms, the OA is disposed of. No order as to costs.

8. The learned counsel for respondents has produced the record relating to the roster adopted by others in the matter of the present selection process and also referred approval of the Respondent No. 1 and 2 of the roster and have been perused.

(R.N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

srp

Judgment
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