

HIGH COURT OF DELHI: NEW DELHI

+ Writ Petition (Civil) No. 11058/2009

Judgment reserved on: 21ST August, 2009
% Judgment delivered on: 31st August, 2009

RAKESH PANDEY Petitioner
Through: Mr.G.D. Chopra and Mr. S.N.
Tripathi, Advocates
Versus

GOVT. OF NCT DELHI & ORS. Respondents
Through: Mr.Purbali Bora for Ms. Aruna
Tiku, Addl. Standing Counsel

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE A.K. PATHAK

1. Whether the Reporters of local papers may
be allowed to see the judgment? Not Necessary
2. To be referred to Reporter or not? Not Necessary
3. Whether the judgment should be reported
in the Digest? Not Necessary

A.K. PATHAK, J.

1. Petitioner was working as Assistant Teacher in a school of Municipal Corporation of Delhi. Petitioner possessed B.A. (Hons.) degree in Statistics with Mathematics as optional subject in first and second year of degree course. Vide order dated 3rd August, 2007 Respondent promoted large number of Assistant Teachers to the post of TGT/TGT (MIL). However, Petitioner was not promoted.

2. Aggrieved by the action of Respondent in not promoting him to the post of TGT (Maths), Petitioner made a representation dated 6th September, 2007 before the Respondent. Finding no response from the Respondent, Petitioner filed O.A. No. 1436/2008 before the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "Tribunal") praying therein that the Respondent be directed to promote Petitioner as TGT (Maths) retrospectively with all consequential benefits. Tribunal dismissed this O.A. vide order dated 29th May, 2009.

3. Dissatisfied with the order of the Tribunal, Petitioner has filed present writ petition praying therein that the impugned order be quashed and Respondent be directed to promote Petitioner as TGT (Maths) retrospectively i.e. from the date when his junior Shri Ashok Kumar Singh was promoted. Petitioner also claimed all consequential benefits. Petitioner has also prayed that the clarification dated 13th March, 2000 be declared violative of Articles 14 and 16 of the Constitution of India.

4. Petitioner had contended before the Tribunal that he, being a B.A. (Hons.) in Statistics with Mathematics as elective subject, was eligible for promotion to the post of TGT (Maths), in terms of the Recruitment Rules. One Shri Subhash Chand, who had

passed two years B.Sc. (Pass) course with Mathematics as an optional subject, had been promoted. Petitioner was having better qualification than Shri Subhash Chand as Petitioner had done B.A. (Hons.) degree; while Shri Subhash Chand was only B.Sc. (Pass). That apart juniors of the Petitioner had also been promoted. Thus, Petitioner's Right to Equality, as guaranteed under Articles 14 and 16 of the Constitution of India, was infringed. As against this, Respondent contended that the Petitioner was not eligible to be considered for promotion to the post of TGT (Maths) as he had not studied Mathematics as elective subject in all three years of his graduation degree. The Recruitment Rules read with Corrigendum dated 13th March, 2000 clearly prescribed that a person having studied elective subject in all three years of graduation course would only be eligible for consideration to the post of TGT in that particular subject. Shri Subhash Chand had studied Mathematics in all years of his degree course and was eligible for promotion. Petitioner was not eligible for consideration as he had studied Mathematics as an optional subject only in two years i.e. Part I and Part II of his graduation course of three years. He did not study Mathematics in third year.

5. Tribunal held that if the rules do not take care of a particular situation same can be supplemented by clarifications/guidelines/executive instructions. The word “elective” as mentioned in the Recruitment Rules was defined by issuing Corrigendum dated 13th March, 2000 which provide that a candidate should have studied the concerned subject in all parts/years of graduation. Petitioner had not studied Mathematics in third year (Part III) of his B.A. (Hons) degree course, thus, was not eligible to be considered for promotion to the post of TGT (Maths). Petitioner had studied Mathematics only in Part I and Part II examination. He had not studied Mathematics in Part III examination. Since Petitioner had not studied Mathematics in all three years of his graduation course, he was rightly not considered for promotion to the post of TGT (Maths).

6. In the facts of this case, we are of the view that the order passed by the Tribunal is correct and is not liable to be interfered with. We do not find any jurisdictional error in the impugned order.

7. Educational qualification as prescribed under the relevant Recruitment Rules reads as under:-

“A Bachelor’s degree (pass/Hons) from a recognized university or equivalent having secured atleast 45% marks in aggregate in two school subjects of which atleast one out of the following should have been at the elective level:-

(a) English (b) Mathematics (c) Natural/Physical Science (d) Social Science

Note:- Main subject for (i) TGT (Natural Sc/Physical Sc.) shall be physics, Chemistry, Biology, Botany & Zoology.

(ii) TGT (So.Sc): History/Political

Sc./Economics/Business/Studies/Sociology /Geography/Psychology

Provided further that the requirement as to minimum of 45% marks in the aggregate at graduation level shall be relaxable in case of (a) candidates who possesses a post graduate qualification in any of the teaching subjects listed above (b) belonging to SC/ST (C) Physically handicapped category.

(iii) Degree/Diploma in training Education or SAV Certificate

(iv) Working knowledge of Hindi

Provided that Asstt. Trs. (From MCD/Dte. Of Edn.) and Lab. Asstt. Shall not be required to have recd. 45% marks in Bachelor’s degree (Pass/Hons.) or equivalent.”

8. The word “elective”, as used in para 1 of the aforesaid quoted rule, has not been defined in the Recruitment Rules. However, by issuing a Corrigendum on 13th March, 2000,

Respondent defined the meaning of word “elective” and the same reads as under:-

“As per policy the definitions of elective R/Rs has been framed as that the candidates should have studied the subject concerned as mentioned in the R/Rs of at least 100 marks each in all parts/years of graduation. The elective word may also include main subject as practiced in different universities.”

9. Bare perusal of the relevant rule read with the Corrigendum dated 13th March, 2000 clearly shows that the essential qualification to be fulfilled by an Assistant Teacher for promotion to the post of TGT (Maths) is that he should have studied Mathematics in all parts/years of his graduation course. Since word “elective” was not defined in the Recruitment Rules, therefore, Director of Education/branch had come out with the Corrigendum defining the meaning of word “elective”. No fault can be found in this action of the Respondent. Accordingly, we are of the view that Tribunal was right in holding that the Petitioner was not eligible to be considered for promotion to the post of TGT (Maths). So far as Shri Subhash Chand is concerned, he had done B.Sc. (Pass) course and had studied Mathematics in all parts/years of his graduation. So far as

Petitioner is concerned, his main subject was Statistics. He had studied Mathematics as an optional subject only in part I and part II of his graduation course. Accordingly, Shri Subhash Chand fulfilled this eligibility criterion.

10. The other contention of learned counsel that the Corrigendum dated 13th March, 2000 is liable to be declared ultra vires to the Articles 14 and 16 of the Constitution is concerned we are of the view that same cannot be urged for the first time in this writ petition as no such prayer was made before the Tribunal nor any such argument was advanced before it.

11. In the light of the above discussions we find no merit in this writ petition. Dismissed.

A.K. PATHAK, J

MADAN B. LOKUR, J

August 31st, 2009
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