

(2008) 12 DEL CK 0128

In the Delhi High Court

Case No : Writ Petition (Civil) 2949 and 3062 of 2008 and CM 5716 and 5915 of 2008

Arvind Mehra and Others

APPELLANT

Vs

Delhi Subordinate Selection Board (DSSSB) and Others

 Anjli Vs Delhi Subordinate Selection Board (DSSSB)
and Another

RESPONDENT

Date of Decision : 05-12-2008

Acts Referred:

Citation : (2008) 12 DEL CK 0128

Hon'ble Judges : Siddharth Mridul, J

Bench : Single Bench

Advocate : Ashok Agarwal and Mannu Mohan, in Writ Petition Civil 2949, 2961, 2963, 2966, 2968, 2970, 2972, 2974, 2975, 2977, 2979 and 2981 of 2008 and CM 5716, 5729, 5731, 5734, 5736, 5738, 5740, 5741, 5742, 5745, 5747 and 5748/2008, Peeyoosh Kalra, in Writ Petition Civil 3028, 3062, 3063, 3064, 3065, 3066, 3067, 3068, 3069, 3070, 3073, 3074, 3075 and 3078 of 2008 and CM 5829, 5915, 5917, 5918, 5919, 5920, 5921, 5922, 5924, 5925, 5929, 5930, 5931 and 5934/2008, Tarun Dewan, in Writ Petition Civil 3060 of 2008 and CM 5907/2008 AND Ajay Kumar, in Writ Petition Civil 3061 and 3512 of 2008 and CM 5908 and 6732/200 Ruchi Sindhwani, in Writ Petition Civil 2949, 2961, 2963, 2966, 2968, 2970, 2972, 2974, 2975, 2977, 2979, 3028 of 2008 and CM 5716, 5729, 5731, 5734, 5736, 5738, 5740, 5741, 5742, 5745, 5747, 5829/200 Amit K. Paul, in Writ Petition Civil 2949, 2961, 2974, 2975, 2977, 2979, 2981, 3028, 3060, 3061, 3062, 3063, 3064, 3065, 3066, 3067, 3068, 3069, 3070, 3073, 3074, 3075, 3078 and 3512 of 2008 and CM 5716, 5729, 5741, 5742, 5745, 5747, 5748, 5829, 5907, 5908, 5915, 5917, 5918, 5919, 5920, 5921, 5922, 5924, 5925, 5929, 5930, 5931, 5934 and 6732/2008, Mansi Gupta, Addl. Stdg. in Writ Petition Civil 2961, 2963, 2966, 2970 and 2972 of 2008 and CM 5729, 5731, 5734, 5738 and 5740/2008 and Nawal Kishore Jha, Addl. Standing in Writ Petition Civil 2963, 2966, 2968 and 2979 of 2008 and CM 5731, 5734, 5736 and 5747/200, for the Appellant;

Final Decision : Allowed

Judgement

Siddharth Mridul, J.—These 29 petitions raise a common question of law in respect of the eligibility of the petitioners for the posts of Primary Teachers advertised by the respondents and I propose to dispose of them by this common judgment.

2. Briefly stated the facts as are relevant for the disposal of the present petitions are as follows:

(a) The Delhi Subordinate Services Selection Board (in short "Board") published Advertisement No. 08/2007 and 07/2007 on the 19th September, 2007 and 12th September, 2007 respectively in regard of the various vacancies of Primary Teachers and Assistant Teacher(Primary) in MCD and GNCT respectively. For both the said posts only one entrance examination was fixed.

(b) The petitioners are candidates who have already completed their two years Elementary Teacher Education (in short "ETE") course from District Institute of Education & Training (in short "DIET"). The petitioners have submitted their application forms for the said posts as aforementioned to respondent No. 1.

(c) The eligibility criteria, inter alia, prescribed for the said posts was 50% marks (45% marks for the SC candidates) in 10+2 examination and two years ETE Diploma from recognized institutes.

(d) According to the petitioners, they have all taken six subjects in the 10+2 examination and as per the CBSE Rules and Regulations, 40.1(ii), the passing criteria in 10+2 examination is that a candidate shall obtain a grade higher than "E" (i.e. 33% marks), in all five subjects of external examination in the main or at the compartment level.

(e) The petitioners submit that the detailed marks copy provided on the back side of the every mark sheet issued by the CBSE prescribes the modes of calculating the percentage marks obtained by the students in the declared result as "Five subjects of external examination or either two languages and three electives or one language and four electives as per the schemes of the studies".

(f) The petitioners urged that as per the prescribed procedure of the CBSE the petitioners have obtained 50% marks in best five subjects and, therefore, the petitioners have obtained 50% marks in the Senior Secondary as required for the posts.

(g) The petitioners state that the respondent No. 1 has issued rejection letters to the petitioners on two grounds, firstly, that they have not secured 50% in the 10+2 examination and secondly that they have not completed their ETE diploma from recognized institutes.

(h) It is submitted on behalf of the petitioners that the respondent No. 1, contrary to the Rules and Regulations of the CBSE as aforementioned, which require that five subjects are to be considered for passing 10+2 examination, is now counting the percentage of 10+2 examination of the petitioners on the basis

of all six subjects in place of best five subjects. Further, the respondent has in total non-application of mind issued rejection letters to some of the petitioners on the ground that they have not completed their ETE Diploma from recognized institutes. However, the petitioners state that the petitioners have completed their ETE Diplomas from DIETs approved and recognized by various State Governments.

(i) The petitioners submitted that all of them have completed their diplomas from various DIET institutes, where too the criteria for taking admission in the course provided that the candidate should have secured 50% marks in 10+2 examination and the petitioners were given admission to the DIET courses being conducted by the State Council of Educational Research and Training (SCERT) only upon fulfillment of the criteria of 50% marks in best five subjects at 10+2 examination.

(j) The petitioners state that a similarly situated candidate namely one Mr. Raj Kumar has been selected in the Primary Teacher Examination advertised by the Kendriya Vidyalaya Sangathan on the 30th September, 2006. The petitioners also pointed out that the stand taken by the respondent that the petitioners are not eligible for the said posts, as they have not secured 50% marks in 10+2 examination, is liable to be rejected for the reason that the Municipal Corporation of Delhi (MCD) has published vacancies on contract basis for the Assistant Teacher(Primary) in MCD Schools where all the criteria/requirements for selection are the same and further it is specifically mentioned that the applicants are advised to distribute the marks and to mention the best five subjects in case of the 10+2 examination.

(k) On behalf of the respondent it is submitted that there is no provision in the Recruitment Rules of the MCD and the GNCT to calculate the pass percentage required by taking into consideration only the marks of best five subjects. The Board submits that there is no provision in the Recruitment Rules for considering the marks of best five subjects for arriving at the eligibility criteria of 50%. It further submits that as per the Recruitment Rules the marks sheet/certificate of passing of the requisite examination need to be taken into consideration for working out the percentage which is applied at par for all the candidates. Moreover, there is no indication as regards calculation of 50% marks out of the best five subjects. The Board being the recruitment agency has no power to interpret the provisions of gazetted Recruitment Rules.

(l) According to the Board, the petitioners have applied for the said posts knowing the fact that they do not meet the essential qualification and that, therefore, the petitions should be dismissed with costs. The Board has further contended that the stand of the petitioners that the SCERT has granted them admission to its DIET course upon fulfillment of the criteria of 50% marks in best five subjects in 10+2 examination is irrelevant. It is urged that the Recruitment Rules being the statutory documents cannot be compared with the eligibility conditions for admission to a course at all. The Board has further contended that

the Municipal Corporation of Delhi's advertisement where the marks of best five subjects are the criteria for determining eligibility for selection to the post is of no avail to the petitioners since the said advertisement is issued only for the purpose of appointing teachers on contract basis to the MCD without holding any examination. In the present case it is submitted by the Board, the selection is for regular appointment and as such the recruitment need to be processed as per the eligibility criteria indicated in the statutory rules of the post. In relation to the selection of similarly situated candidates in Kendriya Vidyalaya, it is submitted that the Kendriya Vidyalaya is an autonomous organization with its own self contained code for recruitment and that the selection made by Kendriya Vidyalaya cannot be cited as a ground for seeking relief from the answering respondent.

(m) This Court in the present writ petitions vide order dated 11th April, 2008 and subsequent orders had directed that the petitioners will be permitted to take the examination without any special equity being created in their favour by being so permitted to take the examination, and had further directed that the results of the petitioners be not declared without leave of the Court. With regard to petitioners Nos. 3,7,14 respectively in Writ Petition(Civil) No. 2949 of 2008 it was further directed that the said petitioners would produce original certificates of having obtained ETE diploma from recognized institutions of SCERT managed by GNCTD and State of Madhya Pradesh as stated by them respectively, before the Secretary of the Board who would after considering the said original certificates, issue roll numbers to the said petitioners, if found eligible, and permit them to appear in the examination.

3. On behalf of the petitioners it was urged that there is a presumption of criteria of best five subjects as those are the number of subjects based on which a candidate is declared pass at the CBSE examination. Therefore, there are no separate rules, insofar as, the said posts are concerned to calculate best six subjects, instead of the best five subjects as warranted by the CBSE.

4. On behalf of the petitioners it was urged that since CBSE is apex body for conducting examination and laying down rules therefor, the CBSE rules must be mandatorily followed or the whole scheme or procedure of CBSE examination would be rendered nugatory. Next it was urged on behalf of the petitioners that the SCERT regulations for ETE course operated by the DIET followed the pattern of the CBSE rules and permitted the petitioners to enroll for the said course with 50% marks in best of five subjects in the Senior Secondary examination. Therefore, to permit the Board to calculate the eligibility differently was impermissible and improper. It was urged on behalf of the petitioners that best of five subjects is the general rule and that the respondents should adopt the general rule unless the Recruitment Rules specifically provide otherwise, which they do not in the present case. The petitioners, therefore, urged that the Board has misinterpreted Recruitment Rules by reading it as best of six subjects instead of considering only five subjects as required by the CBSE. Lastly, it was urged on

behalf of the petitioners that the only purpose of the DIETs to offer course of ETE is to prepare teachers for primary education/primary teachers and that the SCERT in this behalf also considers eligibility for admission as the best of five subjects of the qualifying examination.

5. Per contra, on behalf of the respondent it was urged that Recruitment Rules are subordinate delegated legislation and, therefore, it is not permissible to read into them. They should be construed to mean what they say. It is, therefore, urged that you cannot read the Recruitment Rules to mean as best of five, since literal meaning has to be seen. Further, the Board has applied the best of six requirement uniformly to all candidates and, therefore, its action cannot be said to be arbitrary. Further, on behalf of the Board it is urged that the Recruitment Rules cannot be interpreted or read in the light of how the CBSE or the SCERT or the Kendriya Vidyalaya read their own rules and it is not practicable to follow the system suggested by the petitioners.

6. The following judgments were cited by the parties in support of their respective contentions.

1. Ms. Asha Rani v. Municipal Corporation of Delhi and Anr. 81 (1999) Dlt 580.

2. Sachin Gupta and Ors. v. Delhi Subordinate Services Selection Board (DSSSB), Decision dated 20th August, 2008 in Writ Petition (Civil) No. 7297 of 2007.

7. Before advertng to the rival submissions of the parties it would be relevant to extract the relevant eligibility criteria prescribed for the said post

1. 50% marks at Senior Secondary level from any recognized board or intermediate or its equivalent.

2. ETE/JBT two years Diploma/Certificate from any recognized board or BI.Ed.

3. Must have studied Hindi at Secondary level.

8. In coming to the present controversy it is noticed that the Supreme Court had occasion to consider the object of the eligibility clause and the requisite qualification for admission in Kusum Lata Vs. State of Haryana and Others, . In that case the appellant had passed 10+2 examination obtaining more than 50% marks in five essential subjects. However, she had also taken a sixth subject, the taking or not taking of which was optional and the marks obtained therein were not taken into consideration under the scheme of the concerned Board. Further, the mark sheet did not show total after five subjects or anywhere else. However, if the marks obtained in all the six subjects were taken into consideration her aggregate marks fell below 50%. The appellants' application for DEd course, which prescribed educational qualification for admission as passing of 10+2 examination with at least 50% aggregate marks, was rejected on the allegation that she was not eligible to appear in the written entrance test as she had not secured 50% aggregate marks in 10+2 examination of CBSE. The Supreme Court held:

8. As per the scheme of examination of CBSE the marks obtained in the additional subjects are not taken into consideration in the passing of the examination. The additional subject is optional. A candidate may take it or not. The requirement is that a candidate should obtain 33% marks or Grade D-2 in each of the five subjects of external examination as per the scheme of the studies. When the eligibility clause stipulates that a candidate should have passed 10+2 examination with at least 50% aggregate marks, it is implicit that the aggregate marks are required to be calculated keeping in view only the subjects which are necessary to pass 10+2 examination and not the marks of the additional subject which is not taken into account for passing the examination. This is the only reasonable interpretation having regard to the spirit of the clause providing for eligibility conditions. The relevant factor is to see what is necessary to pass 10+2 examination conducted by CBSE and on that basis decide whether a candidate fulfils or not the requirement of the eligibility clause. If seen from this respective, the aggregate marks would have to be worked out having regard to the marks obtained in five subjects and not in the additional subject which is not taken into account for passing the examination.

...

...

11. The only difference in the marks-sheet issued by the CBSE is that it does not show total after five subjects and in fact no total is shown. The relevant consideration is not the manner of issue of the marks-sheet or the different proforma which may be adopted by one Board or the other but to go into the real object behind the clause. As already, stated, the object of the clause prescribing the eligibility condition is that the qualifying examination shall be passed by a candidate with at least 50% marks. A candidate on securing requisite marks would pass without taking the sixth subject. There would have been no difficulty if the proforma of CBSE was similar to the one adopted by Haryana. In that eventuality it would not have been possible to decline admission to the appellant on the ground for her not satisfying the minimum prescribed percentage under the eligibility condition. This kind of approach would be arbitrary and discriminatory. Thus, the interpretation placed by the High Court is hyper-technical and erroneous. We are unable to sustain the said interpretation. The appellant satisfies the eligibility stipulation and the respondents committed serious illegality in declining her admission to D.Ed course.

9. In the light of these decisions of the Supreme Court let us now examine the merits of the rival submissions in the instant case. Undoubtedly, the terms and conditions as prescribed by the relevant Recruitment Rules are binding and have to be adhered to. However, as per the scheme of examination of CBSE the marks obtained in the additional subjects are not taken into consideration in the passing of the examination. The additional subject is obviously optional. It is for the candidate to either take it or not. Therefore, when the eligibility clause stipulates that a candidate should have passed 10+2 examination with at least 50%

aggregate marks, it is implicit that the aggregate marks are required to be calculated keeping in view only the subjects which are necessary to pass 10+2 examination and not the marks of the additional subject which is not to be taken into account for passing the examination. This according to the decision of the Supreme Court in *Kusum Lata* (supra) is the only reasonable interpretation having regard to the spirit of the Clause providing for eligibility conditions. The relevant factor to determine the eligibility is to see what is necessary to pass 10+2 examination conducted by CBSE and on that basis one has to decide whether a candidate fulfills or otherwise the requirements of the eligibility Clause.

10. In the present case, the first requirement of educational qualification required to be eligible for the said posts was 50% marks at Senior Secondary level from any recognized Board. In this respect it is seen that the petitioners had secured the requisite percentage in 10+2 examination in the best five subjects. It is also seen that as per CBSE rules as prescribed, and as printed on the rear of every marksheet issued by the CBSE, the mode of calculating the percentage marks obtained by the petitioners in the declared result, was "Five subjects of external examination or either two languages and three electives or one language and four electives as per the scheme of studies". The petitioners had all passed the CBSE examination with 50% marks in best five subjects as postulated by the CBSE rules. Further, it is seen that the petitioners were admitted and had completed their ETE diploma, which was the second eligibility requirement for the said posts, based on the result of the 10+2 examination, and the DIET course which culminated in the ETE diploma, also required that the candidates seeking admission thereto must have secured 50% marks in the 10+2 examination. In other words the DIET course which resulted in the ETE diploma, and was the second eligibility requirement, also prescribed the same eligibility for admission as the said posts, namely 50% marks in 10+2 examination, and therefore the petitioners having successfully being granted admission to the DIET course based on the same eligibility could not now be excluded on the grounds of not fulfilling the educational requirement to the said posts.

11. Furthermore, as admitted by the respondents themselves, the MCD had published vacancies on contract basis for the same posts in schools where the criteria/requirements for being selected were the same and there also it was specifically mentioned that applicants would distribute the marks and mention the best five subjects in case of the 10+2 examination. Therefore, the respondents cannot be permitted to approbate and reprobate at the same time. What is sauce for the goose has to be sauce for the gander. It is also relevant to note that for the Primary Teacher Examination advertised by the Kendriya Vidyalaya Sangathan, the eligibility requirement was understood as 50% marks in best five subjects of the 10+2 examination. Thus the relevant factor is to see what was necessary to pass 10+2 examination conducted by CBSE and to decide on that basis whether the petitioners fulfill the requirement of the eligibility clause. This is so since the sixth subject taken by the petitioners was an

additional subject, which was optional. When the 50% marks are calculated for a petitioner to have passed 10+2 examination, it was to be done keeping in view only the subjects necessary to pass 10+2 examination and not the marks of the additional subject which are not to be taken into account for passing the examination. This is the only reasonable interpretation having regard to the spirit of the clause providing for eligibility conditions.

12. For the aforesaid reasons, I hold that the petitioners satisfy the prescribed condition of securing 50% aggregate marks and are thus eligible for the said posts. It is declared that the rejection of the applications of the petitioners by the respondent Board on the ground that the petitioners had not secured 50% marks in 10+2 examination is bad in law and hereby quashed. Therefore, I direct the respondents to declare the results of the petitioners at the examination conducted by the Board and to appoint those of the petitioners who succeeded in qualifying the said examination. Insofar as petitioners Nos. 3,4,17 respectively in Writ Petition (Civil) No. 2949 of 2008 are concerned, it was not the case of the respondents that upon verification of their original certificates of ETE Diploma from recognized institutions, by the Secretary of the Board, in terms of the directions of this Court on 11th of April, 2008, the said petitioners were found ineligible and therefore not issued roll numbers or precluded from appearing in the examination. Therefore, if the said petitioners have successfully qualified at the said examination, they would also be entitled to be appointed in the said posts by the respondents.

13. The writ petitions are allowed in the aforestated terms and with the above directions, leaving the parties to bear their respective costs.