

(2001) 05 DEL CK 0149

In the Delhi High Court

Case No : Civil Writ Petition No. 7720 of 1999

Babu Lal Yadav

APPELLANT

Vs

State of Delhi and Others

RESPONDENT

Date of Decision : 01-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 92 DLT 491

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Vikas Singh, for the Appellant; Alakh Kumar, for the Respondent

Judgement

A.K. Sikri, J.

Rule.

1. With the consent of parties, the matter is finally heard at this stage.
2. The petitioner had applied for recruitment to the post of Primary Teacher, MCD, Post Code No. 08/98 of the Directorate of Education, Govt. of NCT of Delhi pursuant to Advertisement No. 02/98 issued by the respondents. The respondents have prescribed the criteria for calculating the score/marks for the purpose of giving appointment to the candidates. As per this criteria, all those who scored 43.33 marks have been given appointment to the posts of Primary Teacher against the aforesaid category. Petitioner has filed this writ petition on the ground that although his score comes to 43.43 but his name is not found in the list of selected candidates. In response to show cause notice issued, respondents appeared and filed counter affidavits. As per the stand taken by the respondents, the score of the petitioner is 43.23 and not 43.43. The difference in calculation of the marks is because of different subjects being taken for calculations while calculating the marks obtained by the petitioner in his Secondary Examination. As per the advertisement, five best subjects are to be taken into consideration. While in the calculation made by the petitioner these

subjects are Hindi, Science, Social Science, Maths and Sanskrit, respondents have taken into consideration Hindi, Science, Social Science, Maths and English. The following chart would depict the difference:

-----					Subject	Marks	Subject	Marks	-----					
-----									-----					
Hindi	53/100	Hindi	53/100	Science	42/100	Science	42/100	Social	Science	63/100	Social	Science	63/100	
63/100					Math	60/100		Math					60/100	
-----					Subject	Marks	Subject	Marks	-----					
-----					Sanskrit	17/50	English	38/100	Total	-----				
235/450		Total		256/500		=52.22%				=51.2%				
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3. From the aforesaid, it is clear that as the petitioner's case marks obtained in Sanskrit are to be taken into consideration, on the other hand the respondents have taken marks of examination in English language into consideration.

4. It is the submission of learned Counsel for petitioner that as per the advertisement, the petitioner was entitled to take into consideration the best five subjects according to his choice to enable him to get maximum benefit. For this purpose, petitioner has relied upon the following criteria laid down in the advertisement itself:

-----				Criteria	Max.	Marks	-----			
-----				A(I) metriculation/Secondary or 40 Marks. Equivalent + Intermediate/Sr. Secondary and their Equivalents from the recognised Board/University.			-----			

0.40 of the average of the percentage of Marks obtained in both above cited examination ----- Criteria Max. Marks

----- Benefit is given to the candidate in terms of considering his/her best five subject marks, and their aggregate for the calculation of percentage in each examination. OR (II) Higher Secondary (three years course) from a recognised Board. 0.40 of the percentage of Marks obtained. ----- x= the percentage of best five subjects marks obtained in metriculation/Secondary or Equivalents.

y= the percentage of best five subjects marks in Intermediate/Sr. Secondary or Equivalents.

z= the percentage of best five subjects marks in three year Higher Secondary Certificate or Equivalents. ----- Please Note :

1. xx xx xx. 2. xx xx xx. 3. In the case of (A) above, to derive the percentage of marks the aggregate of all the best five subjects have been taken into account as selected by the candidate in the relevant qualification. Even optional and elective subjects have been taken into account to give the candidate the maximum benefit.

5. A cumulative reading of the aforesaid provisions contained in the advertisement leaves no doubt in mind that the intention in laying down these provisions was to give candidate the maximum benefit. For this purpose the candidate is entitled to get included, while calculating the score, best five subjects marks and their aggregate for calculation for percentage in each examination. The provision cannot be worked in a manner which acts to his prejudice and deprives the candidate of this benefit. If by including Sanskrit in the five best subjects the percentage of marks obtained by the petitioner is more than by including English in place of Sanskrit then going by the spirit behind the provisions, the petitioner would be entitled to get the marks of Sanskrit for the purpose of computing the percentage. If the marks are calculated in this manner, it is not disputed that the score of the petitioner would be 43.43.

6. Since the minimum cut off score as per the list published by the respondents is 43.33 marks and the petitioner's score comes to 43.43, the petitioner would be entitled to appointment to the post of Primary Teacher, MCD, Post Code No. 08/98.

7. If the post is available with the Appointing Authority i.e., the Department to which the name is sent, and it has already given appointment to the persons with lesser marks, appointments to the petitioner should be given immediately subject to fulfilling all necessary requirements/formalities by the petitioner for such appointment and his notional seniority be also fixed from the date from which the person with lesser marks is already given appointment. However, the petitioner shall not be entitled to any salary or allowances for the past period and would be entitled to salary only from the date of his appointment.

8. This writ petition is disposed of with the aforesaid directions.

9. Copy of the order be given dusty to Counsel for the parties.

10. Writ Petition disposed of.