

(2010) 10 DEL CK 0071
In the Delhi High Court
Case No : Writ Petition (C) 5835 of 2010

Director of Education and Others

APPELLANT

Vs

Baboo Lal Sharma

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Citation : (2010) 10 DEL CK 0071

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : Latika Chaudhary, for Avnish Ahlawat, for the Appellant; Amarjit Singh Bedi in WP (C) 5835 and 6006/2010, Ramu Shankar in WP (C) 6000/2010 and Neha Kapoor in WP (C) 6067/2010, for the Respondent

Judgement

Pradeep Nandrajog, J.—Pertaining to the educational qualification specified as essential, relevant part of the Recruitment Rule for the post of Trained Graduate Teacher (TGT) as originally framed by the petitioner i.e. The Govt. of NCT Delhi reads as under:

B.A.(Hons) in one of the Modern Indian Languages (MIL) concerned or B.A. with MIL concerned as one of the Elective subject from a recognized university having 45% marks in aggregate with one additional language or one school subject as Degree level

OR

Equivalent oriental degree in MIL concerned from a recognized university having 45% marks in aggregate

OR

(FOR APPOINTMENT AS HINDI TEACHERS ONLY)

Sahitya Rattan of Hindi Sahitya Sammelan Prayag having secured at least 45% marks in aggregate with English in Matriculation provided further that

requirement as to minimum of 45% marks in the aggregate shall be relaxable in the case of (a) candidates who possess a post graduate qualification in MIL concerned from a recognized university. (b) candidates belonging to SC/ST (c) physically handicapped candidates

(ii) Degree/ Diploma in teaching

OR

Senior Anglo Vernacular Certificate.

(III) Knowledge of Hindi is essential.

2. On a bare reading of the afore-noted extract of the relevant Recruitment Rule, it is clear that the minimum essential educational qualification stipulated is B.A (Hons) degree in the concerned subject i.e. the subject for which the candidate applies or a B.A degree with the concerned subject included as an elective subject in the course from a recognized university. Pertaining to the post of TGT (Hindi) an alternative degree of Sahitya Rattan from Hindi Sahitya Sammelan Prayag with aggregate of 45% with English in matriculation is also recognized.

3. A corrigendum was issued on 13.03.2000 clarifying on the issue of a B.A. degree with Modern Indian language (MIL) as one of the elective subject. The corrigendum amends the Recruitment Rules by defining as to what is meant by an elective subject. The corrigendum reads as under:

CORRIGENDUM

In partial modification of this office order No. 2 dt. 1.7.99 issued vide endorsement No. F.DE.3(2)(1)/E.III/99/15508-519 the N.B. column after endorsement S. No. 1, page 50 of the said order be read as under:

B: As per policy the definition of elective in R/Rs has been framed as that the candidate should have studied the subject concerned as mentioned in the R/Rs of at least 100 marks each in all papers/years of graduation. The elective word may also include main subject as practiced in different universities.

The above definition of elective subject shall apply to all the orders of promotion and Direct Recruitment issued by this office from time to time.

(SURESH GUPTA)

DY. DIRECTOR OF EDUCATION (A)

4. The necessity to issue the corrigendum was to give clarity as to what was meant by "elective subject"; for the reason there was no unanimity of opinion as to what would be an elective subject since different universities in India follow different procedures and methodologies of imparting education.

5. The study of various disciplines of education i.e. subjects taught is broadly classified into three categories i.e. (i) core subjects, (ii) elective subjects and (iii)

mandatory subjects. The difference in the three is as under:

(a) Core Subjects: The student shall complete successfully all the core subjects prescribed for the programme to become eligible for the award of the Degree. Such courses together with their grades and the credits earned shall be included in the Grade Card issued by the College at the end of each semester.

(b) Electives Subjects: The student shall further complete successfully the total credit equivalent of the elective subjects offered in the programme to become eligible for the award of the Degree. The Student can choose the subjects of his/her interest from among the available electives.

(c) Mandatory Subjects: The student shall complete successfully all the mandatory courses prescribed from time to time by the college. These subjects however do not carry any credits.

6. Aforesaid is the classification which can be found across the board for all universities in India. We may clarify that in some universities mandatory subjects are referred to as subsidiary subjects. The difference in the three is that the marks awarded for the core and elective subjects are reckoned for the purposes of the grade awarded but not for the mandatory or subsidiary subjects.

7. Pertaining to the corrigendum the questions which arise and need to be answered are: (i) whether the corrigendum was incorporated formally by amendment of the Recruitment Rules? If yes what was the effect thereof? (ii) if the corrigendum remain as an executive instruction, what was the effect thereof? (iii) whether the corrigendum meant that the subject concerned had to be studied in each year of the three years' graduation course with weighted average of 100 marks. The issues arose, as would be noted hereinafter with reference to the stand of the petitioner that elective subject meant that the subject had to be studied each year and that the weightage to the subject had to be 100 marks each year pertaining to the graduation course. To put in pithily, if the candidate applied for the post of TGT (History) and did not have the degree of B.A.(Hons.) History, and had a B.A. degree, History as a subject with 100 marks paper in each of the three years of the graduation course was the sine qua non for eligibility. Likewise would be the position for the subjects Hindi and Sanskrit, if the candidate relied upon a B.A. degree.

8. In the national capital territory of Delhi appointment to the post of Trained Graduate Teachers are effected through a statutory Board called the Delhi Subordinate Staff Selection Board, which conducts the selection process and submits the select panel to the concerned department where further processing is done with reference to the selected candidates producing their original certificates for scrutiny and character verification. In the year 2007, the Govt. of NCT Delhi, through the Director of Education, sent a requisition to the Delhi Subordinate Staff Selection Board to empanel candidates for appointment as Trained Graduate Teachers in various subjects, including Hindi and Sanskrit.

9. Respondents of W.P.(C) No. 5835/2010 i.e. Baboo Lal Sharma and W.P.(C) No. 6067/2010 i.e. Satish Kumar applied for the post of T.G.T. (Sanskrit). The respondents of W.P.(C) No. 6006/2010 i.e. Jawant Singh Yadav and W.P.(C) No. 6000/2010 i.e. Pravesh Meena applied for the post of T.G.T (Hindi). They successfully cleared the examination conducted by the Board and were declared successful. Their names were included in the select panel sent to the Directorate of Education. They were issued letters offering appointments but upon the condition that they would produce original testimonials in support of proof of their educational qualifications making them eligible for appointment. They submitted photocopies of the degrees obtained by them and showed the originals thereof to the concerned officer in the department. They did not receive any communication thereafter requiring them to join for duty and as pleaded by them, enquiries conducted by them resulted in information being given to them that the B.A. degree obtained by them did not satisfy the eligibility conditions.

10. It may be noted that respondent Jaswant Singh Yadav had obtained a B.A. degree from University of Rajasthan and had studied Hindi only in the first year of three years graduation course. In the second and third year thereof he had not studied the subject of Hindi. The University was offering a degree called "B.A. (Additional)" which could be obtained by a person holding a B.A. degree on successful completion of one year course. Jaswant Singh Yadav studied Hindi for one more year and obtained the degree "B.A.(Additional)" pertaining to the subject Hindi in the year 2004.

11. The respondent Satish Kumar had obtained a B.A. degree from University of Rajasthan and had not studied Sanskrit as a subject in any of the three years of the graduation course. He studied Sanskrit for one year and obtained the degree "B.A.(Additional)" pertaining to the subject Sanskrit in the year 1999.

12. The respondent Baboo Lal Sharma had obtained a B.A. degree from Maharishi Dayanand Saraswati University, Ajmer and had not studied Sanskrit as a subject in any of the three years of the graduation course. He studied Sanskrit for one year and obtained the degree "B.A.(Additional)" pertaining to the subject Sanskrit in the year 2005.

13. Pravesh Kumar Meena had studied Hindi as a subsidiary subject in the first and second year of his graduation course.

14. It is apparent that according to the department the requirement was the candidate studying the subject concerned, which qua Jaswant Singh Yadav and Pravesh Meena was Hindi and qua Satish Kumar and Baboo Lal Sharma was Sanskrit, in each of the three years of their graduation course. Thus, the B.A. (Additional) degree obtained by Jaswant Singh Yadav, Satish Kumar and Baboo Lal Sharma was held to be of no use to them. Pravesh Meena was held ineligible as he had not taken Hindi as an elective subject in any of the three years and in any case had studied only in the first two years of his graduation course.

15. Jaswant Singh Yadav filed OA No. 2787/2009 in which he questioned non-

issuance of a joining letter to him. He sought directions to be issued requiring the Directorate of Education to immediately post him as a TGT (Hindi). Since the Department had not issued a reasoned and a speaking order, on 06.10.2009, the Tribunal directed the Directorate of Education to hear Jaswant Singh Yadav and pass a speaking order.

16. The Directorate of Education, before whom representations of Satish Kumar, Baboo Lal Sharma and one Mukesh Kumar were also pending, passed a common order pertaining to the said three persons and Jaswant Singh Yadav. The said order dated 24.09.2009 reads as under:

To

The Dy. Secretary (CC II)

D.S.S.S.B.

FC-18, Institutional Area,

Karkardooma,

Delhi - 110092

Sub: Regarding eligibility for the post of TGT/PGT (MIL)

Sir,

This Directorate is in receipt of the dossiers of the following 04 candidates during nominated by you for the post of TGT/PGT (MIL):

1. Mukesh Kumar, 14513358, 145/07 - candidate to post of TGT (Maths)
2. Jaswant Singh Yadav, 15112364, 151/07 -candidate to the post of TGT (Hindi)
3. Satish Kumar, 15310469, 153/07 - candidate to post of TGT (Skt.)
4. Babu Lal Sharma, 15312536, 153/07 - candidate to the post of TGT (Skt.)

During the course of verification of the documents of the candidates, the following irregularities/discrepancies have been observed which has been reflected below:

S. No

Name Roll No. & Post Code

Subject

Deficiency/irregularities observed.

Remarks

2

Jaswant

Singh

Yadav

15112364

151/07

Hindi

The candidate has not studied Hindi in Part-II and Part-III of his graduation (Three year degree course). However, he has done B.A. Additional in Hindi in the year 2004. (all the three parts in one year).

The candidate has not studied Hindi in Part-II and Part-III of his graduation. However, he has done B.A. Additional in Hindi in the year 2004. (all the three parts in one year).

As per the decision of the Hon'ble CAT in the case of Sh Surender Kumar, the court agreed that from the year 1996-1997 onwards one year degree will not be valid. In view of the above, the candidate Sh. Jaswant Singh Yadav does not seem eligible for the post of TGT (Hindi).

3.

Satish Kumar, 15310469 153/07

Sanskrit

The candidate has not studied Sanskrit in any Part of his three years degree course of his Graduation. However, he has done B.A. Additional in Sanskrit in the year 1999. (All the three parts in one year).

The subject Sanskrit has not been studied by the candidate in any part of his 03 years degree course of his Graduation. However, the candidate has done B.A. additional in Sanskrit in one year i.e. in the year 1999. As per the decision of the Hon'ble CAT in the case of Sh. Surender Kumar, the court agreed that from the year 1996-97 onwards one year degree will not be valid. In view of the above, the candidate does not seem eligible for the post of TGT (Sanskrit).

4

Baboo Lal Sharma 15312536 153/07

Sanskrit

The subject Sanskrit has not been studied by the candidate in any part of his 03 years Degree course of his Graduation. However, the candidate has done B.A. (Sanskrit), Additional in the year 2005 in one year.

The subject Sanskrit has not been studied by the candidate in any part of his 03 years degree course of his Graduation. However, the candidate has done B.A. additional in Sanskrit in one year i.e. in the year 2005. As per the decision of the

Hon?ble CAT in the case of Sh. Surender Kumar, the Court agreed that from the year 1996-97 onwards one year degree will not be valid. In view of the above, the candidate does not seem eligible for the post of TGT (Sanskrit).

17. The representation submitted by Pravesh Meena was rejected vide order dated 03.11.2009 which reads as under:

S. No

Name Roll No. & Post Code

Subject

Deficiency/irregularities observed.

Remarks

2.

Pravesh Meena 15212065 152/07

Hindi

The candidate has studied Hindi as a subsidiary subject in Part-I and Part-II of his Graduation.

On going through the copies of Mark sheets, it has been observed that the candidate has studied Hindi in Part I and II of her graduation and not in Part-III of her Graduation. As the subject Hindi has not been studied in all the parts of his Graduation, the candidate does not seem eligible for the post of TGT (Hindi).

18. Aggrieved by the order dated 24.9.2009 and 3.11.2009 rejecting their candidature, the respondents challenged the said orders. 4 independent Original Applications were filed by the respondents, being OA No. 3628/2009, OA No. 3602/2009, OA No. 2782/2009 and OA No. 3235/2009.

19. The Original Application No. 3602/2009 filed by respondent Jaswant Singh Yadav was decided first by the Central Administrative Tribunal and thereafter following the decision in favour of Jaswant Singh Yadav and without any further discussion on the subject, holding that the decision in favour of Jaswant Singh Yadav required relief to be granted to Satish Kumar and Baboo Lal Sharma, the Original Applications filed by them were allowed. The decision in favour of Pravesh Meena was on a different process of reasoning as per order dated 15.03.2010.

20. The controversy pertaining to Jaswant Singh Yadav, Satish Kumar and Baboo Lal Sharma is the same. As noted hereinabove the stand of the department i.e. the petitioners is that the requirement of the Recruitment Rule as amended by the corrigendum required that the concerned discipline had to be studied by the candidate as an elective subject in each year of graduation with weightage of 100 marks in the paper. Per contra, the said three persons urged that having

obtained a B.A.(Additional) degree after obtaining the B.A. degree and having studied the applicable subject for one year i.e. Hindi by Jaswant Singh Yadav and Sanskrit by Satish Kumar and Baboo Lal Sharma, they had acquired the prescribed qualification.

21. Needless to state the Tribunal had to pose and answer the questions posed by us in para 7 above and at the heart of the questions being whether the stand of the petitioner that an elective subject meant a subject studied in each year of the three years" degree course with weighted average of 100 marks per paper each year and while answering the questions it had to be determined whether a one year extra course leading up to the degree B.A. (Additional) was sufficient compliance with the requirement of the law.

22. Vide order dated 26.3.2010 allowing the original application filed by Jaswant Singh Yadav, the Tribunal has reasoned as under:

12. As regards the qualification possessed by the applicant in Hindi as an elective subject by obtaining an additional degree for one year, though non-collegiate official, the fact remains that he has been awarded a degree in Hindi despite having passed B.A with geography, political Science and Sanskrit. The university of Rajasthan being a recognized university, the aforesaid degree, which is equivalent to the degree awarded in which additional subject has been opted, it cannot be said that the applicant does not have eligibility for the post. Moreover, he has done M.A. in Hindi and thereafter B. Ed. as well.

13. However, the observation in Surender Kumar (supra) that from the year 1996-97 onwards one year Degree will not be valid has been construed that the said degree of additional subject post-1996-97 would not be eligible, is misconceived and on a wrong interpretation. In fact, one, who has done one year"s course cannot be stated to have passed degree. However, in the instant case, applicant from the University of Rajasthan had qualified as a collegiate B.A. course in three years in Geography, Sanskrit and Political Science. The very concept of obtaining B.A. additional examination of 2004 is to add in his curriculum the subject of Hindi, which has been studied in the form of three papers and after awarding the marks, applicant is said to have obtained the B.A. degree in Hindi as well, as per University"s charter, which is in consonance with UGC"s norms, as the University is funded by the UGC.

14. In such view of the matter, in judicial review, as to the arbitrary decision of the respondents whereby on one hand for promotion such a degree has been found apt in case of one Dinesh Kumar but holding as a disqualification in case of the applicant for appointment is approbating and reprobating simultaneously, which cannot be countenanced in law.

15. In the result, for the foregoing reasons, OA is allowed. Impugned order is set aside. Respondents are directed, deeming the eligibility of the applicant, to offer the appointment to the applicant as TGT (Hindi), though prospectively, within a period of two months from the date of receipt of a copy of this order. No costs.

23. As noted hereinabove no independent reasoning is to be found in the orders dated 26.03.2010 allowing the Original Application filed by Satish Kumar and Baboo Lal Sharma.

24. It strikes the reader at the outset that the Tribunal has not focused on the issue. The Tribunal has not even noted the corrigendum dated 13.03.2000 and without considering the effect of the same, has penned the decision by ignoring even the foundation of the stand of the department.

25. The orders dated 26.03.2010 allowing the Original Applications of respondents Satish Kumar and Baboo Lal Sharma are simply noting the fact that the issue stands decided against the petitioners in the Original Application filed by Jaswant Singh Yadav.

26. The controversy pertaining to Pravesh Meena is different from the other 3 respondents as noted herein above, but the stand of the department i.e. the petitioners in his case remains same i.e. that the requirement of the Recruitment Rule as amended by the corrigendum being that the concerned discipline had to be studied by the candidate as an elective subject in each year of graduation with weightage of 100 marks in the paper. Per contra the respondent urged that having studied Hindi as a subsidiary subject in the first two years of the B.A. degree and in case of Satish Chandra Upadhyay v. Govt of NCT of Delhi a coordinate bench of the tribunal has held that a person having Qualification of B.A.(Hons.) with Hindi as a subsidiary subject in parts I & II in the Graduation was in compliance with the law.

27. Needless to state the issue pertaining to Pravesh Meena has to be considered with reference to the dispute as to what is meant by "elective subject" and the effect of the corrigendum dated 13.03.2000. The said issue has not even been broached, much less discussed.

28. Thus, we conclude that while deciding the issues raised before it, the Tribunal has not dealt with the issue; the stand of the petitioner has not even been noted and hence not discussed; the issue which arises for consideration has not even been settled and hence not discussed. Thus, we are constrained to allow all the writ petitions and quash the orders impugned and thereafter remand the matter before the Tribunal for fresh adjudication with a direction that the issues which arise for consideration and have been highlighted by us hereinabove be dealt with and decided. Needless to state with reasons.

29. The writ petitions stand disposed of setting aside the impugned order dated 11.03.2010 allowing OA No. 3602/2009 filed by Jaswant Singh Yadav and OA No. 3602/2009 is restored for fresh adjudication by the Tribunal. Order dated 26.03.2010 allowing OA No. 2782/2009 filed by Satish Kumar is set aside and OA No. 2782/2009 is restored for fresh adjudication by the Tribunal. Order dated 26.03.2010 allowing OA No. 3628/2009 filed by Baboo Lal Sharma is set aside and OA No. 3628/2009 is restored for fresh adjudication by the Tribunal. Order dated 15.03.2010 allowing OA No. 3235/2009 filed by Ms. Pravesh Meena is set

aside and OA No. 3235/2009 is restored for fresh adjudication by the Tribunal.

30. No costs.