
(2019) 02 CAT CK 0001

In the Central Administrative Tribunal

Case No : Original Application No. 2788 Of 2017

Kavita Prakash

APPELLANT

Vs

Delhi Subordinate Services Selection Board

RESPONDENT

Date of Decision : 26-02-2019

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2019) 02 CAT CK 0001

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : K.M. Singh

Final Decision : Dismissed

Judgement

Nita Chowdhury, J

1. By filing this OA under Section 19 of the Administrative Tribunals Act, 1985, the applicant is seeking the following reliefs:-

"i) declare that the verbal objection raised by the Respondents regarding passing of Degree and Diploma Courses simultaneously are most illegal, arbitrary and full of malafides, under the application of law laid down by the Hon'ble Principal Bench of C.A.T. in O.A. 2248/2008, Nisha Rani Vs. GNCT;

ii) declare and hold that the applicant is entitled to be appointed as Domestic Science Teacher Gr. Rs.9,300 - 34,800 + G.P. Rs.4,600/-, on the basis of SC merit list of T.G.T. (Domestic Science), Post Code 67/10 dated 24.06.2016, Annexure - A-12.

iii) direct/command the Respondents to issue the appointment letter to the applicant in view of the policy guidelines given by UGC, that two courses can be pursued simultaneously, one regular and the other correspondence, vide their letter dated February 2006;

iv) any other relief deemed fit and proper in the facts and circumstances of the

case, may also be granted in favour of the applicant alongwith heavy costs against the Respondents, in the interest of justice."

2. The grievance of the applicant in this case is against non-issuance of appointment letter for the post of Domestic Science Teacher to her by the respondents on the ground that she passed Degree and Diploma Courses simultaneously.

3. The contention of the counsel for the applicant is that similar issue has already been adjudicated by this Tribunal in OA No.2248/2008 and this Tribunal passed the following orders:-

"Before advertng to the justifiability of the claim urged in this application, we may give the background, in which the application came to be filed. Nisha Rani, the applicant belongs to OBC as recognized by the Government of Delhi. She had passed her Secondary School Examination in March, 1997. She had also come out successful in the Senior School Certificate Examination conducted by the Central Board of Secondary Education, Delhi in March, 1999.

2. In the year 2001, she had enrolled herself for a three year Degree Correspondence Course with the University of Delhi. They had a system of Distant Mode Education and she had completed her course leading to the Degree in Bachelor of Arts by 2004 and had been declared as passed. The Degree obtained by her has been annexed to the application as Annexure A-6.

3. It is her case that while studying for the Degree Course, she had joined a two year diploma course in the year 2003, with the Board of Secondary Education M.P. as a regular student. She had secured first Division. Annexure A-10 shows that she had passed the Annual Promotion Examination leading to the diploma D.Ed. As she was qualified to apply for the post of Assistant Teacher (Primary), she had responded to the advertisement issued by the Delhi Subordinate Services Selection Board as Annexure 'A. The essential qualifications required were Senior Secondary pass, and two years Diploma Certificate Course on the subject of education and optional Hindi at secondary level. She had appeared for the written test as also objective type examination and she was named among the successful candidates coming under the OBC. She had been thereafter offered the post of Assistant Teacher (Primary).

4. A Medical examination and verification of original testimonials were pre-requirement for appointment. She had been directed to appear before the competent authority on 31.10.2007 and verification had also been carried out. However, no call had come thereafter. As no appointment letters came, the applicant had sought for further information but at that time she had been told that since she pursued and passed two different courses simultaneously, final decision about her eligibility and claims were being processed. When application under the RTI Act had been made seeking information, she had been told that the matter was under consideration.

5. In the meanwhile, the applicant had been seeking information from the UGC and by Annexure A-13, she came across proceedings when a view with regard to the validity of similar claim has been recorded. The letter from the UGC dated 20.02.2006 addressed to Ms. Mandakini Thakur, Director of Education states that two courses could be pursued simultaneously, one from regular and other from distance mode and UGC has not issued any circular or guidelines in that regard.

6. Applicant submits that in spite of bringing the above to the notice of the respondents, the matter was hanging fire. In fact, the Deputy Director of Education had addressed the Board of Secondary Education, Bhopal on 17.12.2007, requiring information whether as per their norms, a candidate can pursue two courses simultaneously, since the applicant had undergone a course at Bhopal as well as at Delhi. It is averred that to her knowledge, there was no reply to it. Again by her letter dated 14.07.2008, she had represented that appointment to her may not to be delayed any further. Since no favourable response had come, Original Application has been filed.

7. Mr. Bhandari, counsel appearing for the applicant, submits that the imaginary objections against appointing her has caused considerable prejudice to the applicant. The rightful claims have been denied; her right for salary and position of seniority has been adversely affected. When the highest body, namely, the UGC had pointed out that there could not have been any objectionable feature for a candidate undergoing correspondence course and simultaneously attending a different course under another authority, the matter could not have been delayed indefinitely and the fundamental rights of the applicant for equality could not have been violated.

8. Mr. Gangwani, counsel appearing on behalf of the respondents with reference to the counter statement points out that the matter had been duly looked into but sufficient guidelines were not coming to the respondents in spite of the matter being taken up with the concerned institutions. It is submitted that the certificate issued by the UGC about the validity of courses attended and completed simultaneously, does not refer at all to a situation where a person had undergone a Degree course and a Diploma course.

9. Paras 4.13 to 4.16 of the counter statement are to the following effect:

"The contents of these paragraphs are not admitted save and except what appears from records. It is submitted that those candidates who had passed the diploma course and graduation/post graduation degree course simultaneously were referred to concerned Board/University for obtaining clarification, as to whether as per their rules they allow their students to pursue two courses simultaneously or not. Such candidates were not issued the letter for getting themselves medically examined.

The contents of these paragraphs are not admitted save and except what appears from records. It is submitted that the UGC has stated that the degree courses can be pursued simultaneously one from regular and other from distance

mode. Whereas in the instant case the applicant has pursued one degree and one diploma simultaneously. Therefore, the said letter of UGC is not applicable in the instant case."

It is, therefore, stated that the letter of the UGC is not applicable.

10. However, there is no specific contention that there has been a rejection of her cause.

11. From a perusal of the available facts, we think it will be appropriate to conclude that the objections of the respondents are technical if not fanciful. The validity of the Degree possessed by the applicant is not under dispute. Likewise, diploma obtained by her in the subject of education, is also found as acceptable. She comes within the age group eligible for appointment and also possesses the other qualifications, postulated by the advertisement. There has been no proceedings whereby any competent authorities have issued any orders whereby any of the certificates possessed by the applicant are declared as invalid or inoperative. The stand of the respondents that a person could have undergone courses for getting two different Degrees but not a Degree and diploma, is difficult to accept. Therefore, we are of the view that the reluctance of the respondents in conferring appointment to the applicant, is without justification.

12. As a consequence and as arising out of the discussions, as above, we hereby direct the respondents concerned to issue a formal order of appointment to the applicant as a primary teacher pursuant to her application with reference to Annexure-A Notification. This should be done within two weeks from today. After getting accommodated, we make it clear that the applicant will have the right to agitate over issues such as seniority, as the law might permit since we have not gone into any of such aspects. O.A. stands allowed. We also direct that the applicant is to be paid Rs.2000/- as costs."

4. Counsel for the respondents submitted that on scrutiny of dossier of the applicant, it is found that she had done her graduation from Delhi University in the year 2004 and pursued two year diploma Course in Home Science from Seth Jaiprakash Mukund Lal Polytechnic, Ghaziabad under Board of Technical Education, Lucknow in 2004 & 2005. Accordingly, he submitted that the applicant pursued two courses simultaneously. He also submitted that a clarification is sought from the University Grants Commission as to whether a candidate can pursue two courses simultaneously and one vacancy has been kept pending till the receipt of clarification from the UGC.

4. 1 Counsel for the respondents has not produced any clarification with regard to issue as raised in this OA from the UGC. However, he placed reliance on the judgment of Allahabad Bench of this Tribunal in OA No.1315/2013 (Sandeep Kumar Thakur vs. UOI and others) decided on

20. 11.2017 in support of the stand of the respondents.

5. On the other hand, learned counsel for the applicant besides relying upon the

earlier Order of this Tribunal also placed reliance on clarification issued by the UGC vide its letter dated 20th February 2006, contents of which read as under:-

"University Grants Commission

Bahadurshah Zaffar Marg,

New Delhi-110002

No. F. 1-17/2005 (C))-II) Pt. IV 20 February, 2006

Ms. Mandakini Thakur

Govt. of National Capital Territory of Delhi

Directorate of Education

Establishment-III Branch,

Room No.222-B

Old Secretariat,

Delhi-110054.

Sub: - Validity of two degrees pursued simultaneously.

Madam,

With reference to your letter No. DE (33/ E-III)/2005/43919 dated 16th December, 2005 on the above subject, I am directed to inform you that two courses can be pursued simultaneously, one from regular and other from distance mode. UGC has not issued any circular/ guidelines in this regard.

Yours faithfully,

Sd/-

(Mrs. Rohini Dharmapalan)

Under Secretary."

5.1 Counsel for the applicant also placed on record a notification issued by the Distance Education Council, Indira Gandhi National Open University dated 1.12.2012, which permits a student to pursue two programmes simultaneously through distance or combination of distance and regular modes from the same or different Univeristy(ies)/Institution(s)

in various combination, viz, :-

"1. One Degree and one Diploma/Post Graduate Diploma/Certificate.

....."

5.2 By placing reliance on the aforesaid Order of this Tribunal as well as aforesaid letter/notification, counsel for the applicant submitted that applicant has pursued

her Degree of Bachelor of Arts from distance mode through University of Delhi and Diploma Course in Home Science from Seth Jai Parkash Mukand Lal Polytechnic Ghaziabad in regular mode simultaneously, which Institute is affiliated to Board of Technical Education, U.P. Lucknow and as such non-issuance of the appointment letter to the applicant on the basis of the aforesaid ground of simultaneously pursued two courses is not legally sustainable and the present OA is liable to be allowed by this Tribunal.

6. Counsel for the respondents submitted that notification of IGNOU relied upon by the applicant has no relevance as the same was issued on 1.11.2012 and the said qualifications simultaneously acquired by the applicant in the year 2004-05. He further submitted that reliance on letter of

20. 2.2006 is also not relevant as in the said letter, it has also been mentioned that UGC has not issued any circular/guidelines in this regard. Counsel for the respondents further submitted that vide said letter dated

20. 2.2006, the UGC clarified about validity of two degrees pursued simultaneously whereas in this case the applicant acquired degree as well as diploma simultaneously and as such the said letter of UGC is not helpful in the case of the applicant.

7. From the factual matrix of the case it appears that applicant was enrolled for a Bachelor of Arts degree from Delhi University and simultaneously for diploma in Home Science from a Technical Institute affiliated to Board of Technical Education, Lucknow and no clarification has been obtained from the said Board of Technical Education, Lucknow, to show that the applicant can pursue a diploma at the same time from the Board of Technical Education, Lucknow when he had already enrolled for Bachelor of Arts degree through correspondence from Delhi University. We do not find that neither of the two courses are regular courses. The said clarification of UGC only allows pursuing of the correspondence course in case where one course is regular course, which is not the case in hand. Therefore, we found prima facie both the aforesaid courses are correspondence courses and hence the case cited by the applicant is based on different footing and accordingly, plea of the applicant is not permissible as both the aforesaid courses pursued by the applicant are correspondence courses and do not come within the aforesaid clarification given by the UGC.

8. In view of the above, and for the foregoing reasons, the present OA is dismissed being devoid of merit. There shall be no order as to costs.