

(2002) 07 DEL CK 0037

In the Delhi High Court

Case No : Letters Patent Appeal No. 131 of 2000

Shankar Kumar Mishra

APPELLANT

Vs

National Capital Territory of Delhi, Delhi Subordinate Services
Selection Board, Municipal Corporation of Delhi and New
Delhi Municipal Committee

RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Citation : (2002) 07 DEL CK 0037

Hon'ble Judges : Madan B. Lokur, J;A.D. Singh, J

Bench : Division Bench

Advocate : Vikas Singh, for the Appellant; Avnish Ahlawat and Sanjay Bansal,
for the Respondent

Judgement

Anil Dev Singh, J.—This Letters Patent Appeal is directed against the judgment of the learned single Judge dated 24th January, 2000 in CWP 5928/99. By that decision, the learned single Judge dismissed the writ petition of the appellant whereby he was inter alias claiming appointment to the post of Assistant Teacher in MCD. The facts giving rise to the appeal are as follows:-

2. The Delhi Subordinate Services Selection Board (DSSSB) received a requisition for recruitment to the following posts numbering 3603:-

Primary Teacher, MCD (Post Code 08/98); Nursery Teacher, MCD (Post Code 09/98); Assistant Teacher, NDMC (Post Code 10/98); Assistant Teacher (Urdu), NDMC (Post Code 11/98 and Assistant Teacher in the Directorate of Education, Government of NCT of Delhi (Post Code 13/88).

3. On receipt of the requisition, the DSSSB, on 11th June, 1998 issued an advertisement (No.02/98) inviting applications from Indian nationals for appointment to the aforesaid posts. Pursuant to the advertisement, the DSSSB received several thousand applications including that of the appellant. On assessing the academic merit of the applications coming from diverse universities

and institutions, the DSSSB prepared a list of candidate for being considered for the posts in question. On September 21/22, 1998, the DSSSB issued a notice to the candidates indicating to them that shortlisted candidates placed in the zone of consideration were being called for checking of their original documents. It also specified the criteria on the basis of which academic scores of the candidates were weighed. The notice, to the extent is relevant reads as follows:-

The shortlisted candidates who are placed in the zone of consideration, are being called for checking of original documents, on the weighted score awarded to each candidate on his/her marks provided to the Board as part of the Application Form. Maximum marks for each candidate is 80.00. The criteria for the weighted score awarded to each candidate is as given below:-

----- Criteria Max. Marks -----

----- A(I) metriculation/
Secondary or 40 marks Equivalent + Intermediate/Senior 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. 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 year course) from a recognised Board 0.40 of the
percentage of Marks obtained. -----

----- B. Professional Qualification: 40
marks

I. JBT/ETE/NIT and there Equivalents from the recognised Board/ Institution 0.40
of the percentage of marks obtained.

OR

II Graduation and B.Ed or Equivalents from recognised University. 0.40 of the
average of the percentage of marks obtained in both the examinations. OR III
B.Ed. of University of Delhi or Equivalent from a recognised University. 0.40 of
the percentage of Marks obtained. -----

----- Total: 80 marks -----

----- The formula for weighted score hence works out to be:

(a) In the case of (A-1) above: $(x+y/2) \times 0.40$.

(b) In the case of (A-II) above: $zx \times 0.40$

(c) In the case of (B-1) or B-III) above: $cx \times 0.40$

(d) In the case of (B-II) above: $(a+b/2) \times 0.40$

Whereas

1.x= the percentage of best five subjects marks obtained in metriculation/ Secondary or Equivalents.

2.y= the percentage of best five subjects marks in Intermediate/Sen.Secondary or Equivalent.

3.z= the percentage of best five subjects marks in three years Higher Secondary Certificate or Equivalent.

3.c= the percentage of marks in either JBT/ETE/NTT or B.Ed or their equivalents.

4.a= the percentage of aggregate marks in graduation or equivalent.

5.b= the percentage of aggregate marks in B.Ed or equivalents. -----

- Please Note:

1. Marks out of 80 are obtained by a simple additions of the weighted score so rounded off unto two decimal places of the above two sets (A&B).

2. Candidates covered under Clause B-1 to B-II above shall be given marks only under one clause, which is more beneficial to him/her.

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.

4. Graduation is only considered in the case of candidates who have provided B.Ed as the educational qualification, as it is necessary. It has not been considered for other educational qualifications, as they are basic qualification in themselves. 5. Marks of each candidate have been taken from the attested photocopy of their Marks Statement provided as part of their Application Form.
xx xx xx"

4. It needs to be highlighted that the weighted score of a candidate in the metriculation/Secondary or equivalent/intermediate examination was inter-alia assessed on the basis of best score of a candidate in five subjects.

5. On February 26, 1999, the DSSSB published a notice indicating the cut off marks based on the weighted score of last candidates selected against each category of posts. In respect of Primary Teacher, MCD, the cut off marks for the post was indicated as 53.61 under unreserved category. However, subsequently the Board further lowered the cut off weighted score as 53.21 under unreserved category for the post code 08/98. According to the appellant, the weighted score obtained by him in the unreserved category, by application of the aforesaid criteria came to 54.28 and Therefore, deserved to be appointed as Primary Teacher in a MCD School.

6. On 16th June, 1999 the final list of selected candidates was issued by the DSSSB. The list did not contain the name of the appellants. On July 2, 1999 the

DSSSB issued a notice calling upon all the candidates whose weighted score worked out on the basis of the above criteria were higher than the cut off marks, to appear before the Board for verification of their papers. It is the case of the appellant that he appeared before he officers of the DSSSB and submitted his testimonials for verification. However, the appellant was not given the appointment on the ground that his weighted score was lower than the cut off score. Aggrieved by the action of the Board, the appellant Along with another applicant filed a writ petition, being writ petition No. 5928/98 claiming amongst others the following reliefs:-

"xx xx xx ii) direct the respondent to pay to the petitioners the salary for the period they have been deprived from joining their posts because clearly such salary is payable from the dates on which other similarly situated candidates were allowed to join the service.

iii) direct the respondents to grant to the petitioners, the seniority in the cadre of teacher from the date on which similarly situated candidates were allowed to join the service and the petitioners should not be made to suffer in the matter of seniority and other consequential benefits for the delayed joining of the petitioners which delay have been caused solely due to the default of the respondents."

7. It was the common case of the parties before the learned single Judge that the appellant had scored the following marks in the various examinations:-

(A) MADHYA (CLASS 10) ----- 1. Sanskrit (Grammar) -70/100 2. Sanskrit (Literature) -69/100 3. Sanskrit (General) -75/100 4. Hindi (Literature) -75/100 5. Modern Indian Language (Hindi) - 75/100 6. History - 70/100 7. Social Studies - 70/100 8. English - 57/100 9. Optional subject (Science) - 55/100

xx xx xx

A Marks of Intermediate ----- Paper I = 84/100 Paper II = 62/100 Paper III = 62/100 Paper IV = 66/100 Paper IV to VII = 207/300 Paper VIII = 72/100

B. Marks of B.A. Examination = $655/1100 = 59.54\%$

Marks of B.Ed Examination = $651/1000 = 65.10\%$ "

8. As per the case of the appellant set up before the learned Single Judge, the DSSSB did not consider three papers of Sanskrit and two papers of Hindu as separate subjects and thus overlooked the marks secured by him in his best of five papers of Class X Examination for calculating the weighed score. According to the appellant, the DSSSB ought to have separately considered marks of the appellant in Sanskrit (Grammar), Sanskrit (General), Hindi (Literature), Modern Indian Language (Hindi) and History of his Class X Examination as his best five papers. In other words, the argument of the appellant was that in case the

respondent-DSSSB would have considered the marks obtained by the appellant in the aforesaid five papers as separate subjects he would have been selected as his weighted score calculated on the basis of the aforesaid criteria would have been 53.55 which figure is higher than the cut off score. On the other hand, the stand of the Board was that though there were three papers of Sanskrit and two papers of Hindi for Class X Examination, they could not be considered as five different subjects, and Sanskrit and Hindi will be taken as one subject each. According to the Board, Sanskrit (Grammar), Sanskrit (Literature) and Sanskrit (General) constituted one subject of Sanskrit, while Hindi (Literature) and Modern Indian Language (Hindi) also constituted one subject of Hindi. On the basis of the Board considered best of five subjects of the appellant in Class X Examination as Sanskrit, Hindi, History, Social Studies and English. Applying the aforesaid formula specified in the notice dated September 21/22, 1998, the weighted score came to 52.98 as per the following details:-

"As per the above said formula five best subjects of the candidates in respect of each of the posts were to be considered for calculating the score of the candidates. On the basis of above said formula the score of the appellant, Shankar Kumar Mishra, was calculated as under:

A. I) Marks of Madhyama (Matric) examination:

Paper I to III (Sanskrit) = 214/300 Paper IV to V (Hindi & MIL) = 150/200 Paper VI (History & Geo.) = 70/100 Paper VII (S.S.) = 70/100 Paper VIII (Eng.) = 57/100 Optional subject = 55/100 Additional subject = 62/32 ----- 100

Best five subjects: $214/300 + 150/200 + 70/100 + 70/100 + 57/100 = 561/800 = 70.12\%$ (Additional subjects are not to be taken into account) iii) Marks of Intermediate

Paper I = 84/100 Paper II = 62/100 Paper III = 62/100 Paper IV = 62/100 Paper V to VII = 207/300 Paper VIII = 72/100

Best five subjects = $84/100 + 72/100 + 62/100 + 66/100 + 207/300 = 491/700 = 70.14\%$

Score A = $70.12\% + 70.14\% = 140.26/2 = 70.13\% = 70.13 \times 0.4 = 28.05$

B. Marks of B.A. Examination = $655/1100 = 59.54\%$ Marks of B.Ed. Examination = $651/1000 = 65.10\%$

Score B = $59.54\% + 65.10\% = 124.64/2 = 62.32 = 62.32 \times 0.40 = 24.93$

Total score (A + B) = $28.05 + 24.93 = 52.98$ "

Since the minimum cut off score was 53.21, the stand of the DSSSB was that the appellant having scored less than the cut off score could not be appointed to the post of Primary Teacher. The learned Single judge while accepting the stand of the Board rejected the writ petition of the appellant and observed as follows:-

"Petitioner No. 2 has done his 10th standard (Madhyama) from Bihar. The system

of education at that level may be different in different states whereas for one subject there can be more than one papers in a particular state/Education Boards. It may be only one paper for one subject in other states. Those candidates belonging to different states who have passed their examination from different Education Boards of their respective states applied for appointment in Delhi in response to advertisement issued by DSSSB. It is the right of the DSSSB to lay down uniform criteria for the purpose of considering the candidatures of such candidates. If in the process policy decision is taken by the DSSSB to treat Sanskrit or Hindi or for that matter any other subject as one subject even if a student had taken more than one papers in that subject, it would be perfectly in order. Therefore, the decision of the DSSSB in adding the total of 3 papers of Sanskrit and treating it as one subject and likewise adding the marks obtained in two papers of Hindi treating as one subject, cannot be faulted with. In fact this is more rational and would avoid unnecessary discrimination. Evolving of such a system achieves twin objectives. First, the standards are applied uniformly and secondly, the evaluation is based on five "subjects" rather than "papers" which is more broad based as merit of the candidate is adjudged after considering more disciplines. If the contention of petitioner is accepted and 3 papers of Sanskrit are treated as 3 "subjects" and 2 papers of Hindi are treated as 2 "subjects", it is possible that in a given case a candidate may scored more marks in these five papers than other papers/subjects. His 5 best subjects would be 3 papers of Sanskrit and 2 papers of Hindi. If such a candidate gets selected it would be selection on the basis of marks obtained in 2 subjects ignoring other subjects like History, Geography, Social Studies, Science etc. This would result in unfair advantage to him and such a system would also be imperfect. Moreover the very purpose of getting better candidates by taking into consideration marks obtained in 5 subjects would be defeated. Therefore, the procedure adopted by the board appears to be rational and fair as well. Further as pointed out above, this was uniform procedure adopted in respect of the candidates who applied for the post(s) in question.

As the manner in which the marks are calculated by the Board is neither arbitrary nor bad in law and as per calculation done in this matter. The score of the petitioner No. 2 is 52.98 which is below minimum cut off score of 53.21 in the unreserved category for the post of Primary Teacher (Code 08/98), the petitioner is not entitled to any relief.

The writ petition qua petitioner No. 2 is accordingly dismissed."

9. Aggrieved by the order of the learned Single Judge the appellant has filed the instant Letter Patent Appeal. We have heard the learned counsel for the parties.

10. The learned counsel appearing for the appellant submitted that the Madhyama Examination has eight compulsory subjects as per below:-

Sanskrit (Grammar) 100 marks Sanskrit (Literature) 100 marks Special Paper (Astrology, 100 marks Ayurved, etc.) 100 marks Hindi (Literature) 100 marks

Modern Indian Language (Hindi, 100 marks or Maithili or Bhojpuri or Bengali or Oriya or Nepali) History-Geography 100 marks Social Studies 100 marks English 100 marks

According to the appellant, three papers of Sanskrit are all separate subjects and have been considered so by the Government of Bihar. Education Department. Likewise, two papers of Hindi are also considered as separate subjects by the Government of Bihar, Education Department. The learned counsel, to sustain the argument, has relied upon Notification No. E/P 23-01/75-Ed.-1560 dated 19, 1976, issued by the Government of Bihar, Education Department. The notification reads as follows:-

"Madhyama Examination (Senior Secondary Examination)- for the Madhyama examination the following subjects have been made compulsory. Each papers is of 100 marks.

1. Sanskrit [Grammar] - 100 marks 2. Sanskrit [Literature] - 100 marks 3. Special Paper [Astrology, Ayurved, etc.] - 100 marks 4. Hindi [Literature] - 100 marks 5. Modern Indian Language - 100 marks [Hindi, or Maithili or Bhojpuri or Bengali or Oriya or Nepali] - 100 marks 6. History-Geography - 100 marks 7. Social Studies - 100 marks

For reasons for which the Govt. has taken a decision to make English a compulsory subject at the Primary level [Prathama], for the same reasons English has been made a compulsory 8th paper at the Secondary level [Madhyama]. In this manner there are eight compulsory subjects for the Madhyama Examination, which includes English. It has also been decided that in the compulsory fifth paper, in Bhojpuri a poetry course will be added to.

2. The Govt. has decided that an optional paper can be taken in the Secondary Level [Madhyama] examination from the following subjects:-

I. Arthashastra II. Mathematics III. General Science IV. Music V. Home Science (for girls) VI."

11. The learned counsel also invited our attention to the copy of the letter of the Controller of Examinations, Kameshwarsingh Darbhanga Sanskrit Vishwavidyala, Darbhanga, addressed to the counsel for the appellant (placed at pages 29-30 of the paper book). The learned counsel emphasised that according to the letter there are eight separate subjects in Madhyama Examination including Sanskrit-Grammar, Sanskrit-Literature and Sanskrit-General, and they are not three papers in the subject of Sanskrit but they are three separate subjects. The learned counsel vehemently contended that the respondent-DSSSB has adopted a discriminatory treatment inasmuch as while in the case of a candidate Shri Shambhu Nath Jha the DSSSB has treated Sanskrit (Grammar), Sanskrit (Literature) and Sanskrit (General) as separate subjects, while in the case of the appellant they have been treated as Constituting a single subject. The learned counsel submitted that the DSSSB cannot adopt different yardsticks for persons

similarly situated. According to him, the case of the appellant is at par with the case of Shri Shambhu Nath Jha who was given appointment to the post of Primary Teacher (Post Code 08/98). On the other hand, the learned Single Judge was entirely right in rejecting the writ petition of the appellant as on the basis of the criteria listed above, the appellant secured a weighted score of 52.98 which was below the minimum cut of score of 53.21. The learned counsel submitted that the subject of Sanskrit consists of Sanskrit (Grammar), Sanskrit (Literature) and Sanskrit (General), and the subject of Hindi consists of Hindi (Literature) and Modern Indian Language (Hindi). According to him, Sanskrit and Hindi are two subjects and cannot be considered by any stretch of imagination as five subjects for the purposes of calculating the weighted score of the appellant in best of five subjects taken up by him in Class X. The learned counsel also submitted that case of Shri Shambhu Nath Jha stands on a different footing than the case of the appellant, and the appellant cannot claim any parity with the case of Shri Shambhu Nath Jha.

12. We have given serious thought and considering to the submissions of the learned counsel for the parties. In our order dated October 5, 2001 we have noted the allegation of the appellant that the DSSSB had committed an error in assuming that Sanskrit (Grammar), Sanskrit (Literature) and Sanskrit (General) taken up by the appellant in Madhyama Examination constituted a single subject. We also noted the further allegation of the appellant that there were cases of other candidates where this assumption was not made by the DSSSB. In order to determine the question raised by the learned counsel for the appellant, we directed the respondent-DSSSB to produce the relevant record before us. On December 7, 2001, the Secretary, DSSSB, made a statement that the case of the appellant will be reconsidered for appointment to the post in question. On December 18, 2001, Shri Amar Singh, Deputy Secretary, DSSSB, filed an affidavit stating that the respondent-Board had duly reconsidered the case of the appellant whereupon it was found that his score was less than the score of the last selected candidate in respect of Post Code Nos. 08/98, 10/98 and 13/98. It was also stated that the Board had carefully examined the case of Shri Shambhu Nath Jha and in its view the case of Shri Shambhu Nath Jha stood on a different footing than the case of the appellant. On January 7, 2002 we directed the Deputy Secretary, DSSSB, to file a detailed affidavit as we were not satisfied with the aforesaid affidavit. Pursuant to our direction, the respondent-DSSSB filed an affidavit on January 24, 2002. In this affidavit it was reiterated that the case of the appellant was reconsidered but it was found that his score was less than the score of the last selected candidate in respect of Post Code No. 08/98, 10/98 and 13/98 for Primary Teacher in the MCD, Assistant Teacher in the NDMC and Directorate of Education, respectively, and Therefore the appellant has failed to figure in the select list. In this regard the Deputy Secretary in the affidavit stated as follows:-

"Based on the above said calculation the final score of the appellant was worked out as 52.98. The appellant could not be selected, as his score was lower than

the score of last selected candidate for the postcode No. 08/98, 10/98 and 13/98 for Primary Teacher in MCD, Asst. Teacher in NDMC and Dte. of Education respectively."

It was also averred that Shri Shambhu Nath Jha had submitted a marks sheet for Madhyama, the format of which was misleading. In this regard, it was averred as follows:-

"In the case of Sh. Shambhu Nath Jha, the candidate had submitted a marksheet for Madhyama, the format of which was quite misleading. In the quad format the score had been shown paper wise instead of subject wise. It appears that the officials who dealt with the exercise of calculating the score at that stage got misled by the erroneous format of the marksheet. The above said mistake does not seem to be a deliberate one."

13. From a perusal of the aforesaid averments contained in the affidavit dated January 24, 2002, it is clear that the earlier affidavit dated December 18, 2001 of Shri Amar Singh, Deputy Secretary, DSSSB, was not correct to the extent of the stand of the Board that the case of Shri Shambhu Nath Jha stood on a different footing than the case of the appellant. It appears that the affidavit dated December 18, 2001 was meant to mislead us. Since the DSSSB was not able to make good its assertion contained in its affidavit dated December 18, 2001 that the case of Shri Shambhu Nath Jha stood on a different footing than the case of the appellant and there was nothing to support the same, we expressed our dissatisfaction with the affidavit dated December 18, 2001 filed by Shri Amar Singh, Deputy Secretary. We may note that in the additional affidavit of the appellant filed on July 12, 2000, the appellant had annexed copies of the marks sheet of Shri Shambhu Nath Jha in respect of Madhyama Examination conducted by Kameshwarsingh Darbhanga Sanskrit Vishwavidyala, Kameshwar Nagaram, Darbhanga, and his own marks sheet of Bihar Sanskrit Shiksha Board, Patna, in respect of Madhyama Examination undertaken by him. The marks sheet of Shri Shambhu Nath Jha revealed that he had appeared in the following papers:-

1. Sanskrit (Grammar) 2. Sanskrit (Literature) 3. Sanskrit (General) 4. Hindi (Literature) 5. Modern Indian Language 6. History/Geography 7. Social Studies. 8. English 9. Optional Subject.

Thus, it is clear that like the appellant, Shri Shambhu Nath Jha also appeared in three papers of Sanskrit and two papers of Hindi in Class X Examination, but in case of the latter they were considered as separate subjects by the Board. It may be mentioned that initially the name of Shri Shambhu Nath Jha did not appear in the select list. He along with others filed a writ petition No. 4283/99. In writ petition, the respondent-DSSSB filed an affidavit. In that affidavit it was stated that except petitioner Nos. 9 and 13 of that writ petition, who were rejected, the remaining petitioners were cleared for appointment. This included the name of Shri Shambhu Nath Jha. In the said affidavit, the DSSSB stated as

follows:-

"The petitioner with number 9 & 13 have failed to satisfy the Board about the genuineness of the documents, Therefore, their cases have been rejected, whereas the remaining Petitioners who have submitted clarification about the documents, their names have been cleared."

It is not disputed that Shri Shambhu Nath Jha was given the requisite appointment after treating three papers of Sanskrit and two papers of Hindi as separate subjects. The DSSSB clearly made a differentiation between the case of the appellant and Shri Shambhu Nath Jha even though there was no distinction between the two cases. The departure from the parity which the DSSSB failed to maintain between the case of the appellant and that of Shri Shambhu Nath Jha has been assailed as arbitrary and discriminatory by the appellant. The DSSSB failed to show that there was any reasonable basis for treating the case of the appellant differently than the case of Shri Shambhu Nath Jha except a bald statement in the affidavit of Shri Amar Singh, Deputy Secretary, dated December 18, 2001 that the case of Shri Shambhu Nath Jha stood on a different footing than that of the appellant. It was only after cat was out of the bag that the DSSSB became wiser and filed a fresh affidavit dated January 24, 2002 in which it was admitted that there was a mistake in selecting Shri Shambhu Nath Jha. It appears to us that the earlier affidavit of Shri Amar Singh, Deputy Secretary, DSSSB, was filed with a view to vanquish the appellant in litigation which was initiated by the latter for the purpose of securing for himself the appointment as Primary Teacher. We can understand if this was an attitude of private parties who are pitted against each other in litigation. But we cannot appreciate, understand and approve such an attitude of the DSSSB which has nothing to lose or achieve in case the litigation is decided either way. It ought to have been candid and fair and should have assisted us to unravel the truth by placing the facts before us truthfully. Even in its affidavit dated January 21, 2002 it had tried to justify its mistake by attributing the same to the alleged faulty format of Class X marksheet of Shri Shambhu Nath Jha. We do not find any substantial difference in the format of Class X marksheet of the appellant and that of Shri Shambhu Nath Jha. The tendency exhibited by the DSSSB to distort truth needs to be curbed.

14. Having said that we wish to clarify that we do not subscribe to the view propounded by the appellant that the three papers of Sanskrit and two papers of Hindi are to be treated as five separate subjects. In case such an interpretation is placed on the notification dated July 19, 1976, it will lead to undesirable effects. One of the undesirable effect would be that a candidate even though he may not have done well in subjects other than Sanskrit and Hindi, still may be selected for the post of Primary Teacher on the strength of his marks in Hindi and Sanskrit papers, and a candidate who may be ignorant in so far as papers other than Hindi and Sanskrit are concerned, would find himself teaching students subjects in which he has no proficiency. The notice dated September 21/22, 1998 laying down the method for calculating the weighted score clearly

uses the word "subjects" and not papers. To recapitulate it may be apposite to again extract the relevant portion of the notice:-

xx xx xx "A (I)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.

xx xx xx

3. In the case of A above, the 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.

xx xx xx"

15. We are conscious of the fact that in the letter Controller of Examinations, Kameshwarsingh Darbhanga Sanskrit Vishwavidyalaya, Darbhanga, dated March 3, 200, addressed to the counsel for the appellant, three papers of Sanskrit and two papers of Hindi have been treated as separate and independent subjects. The view of the Education Department of the Government of Bihar expressed in the aforesaid letter, which was in reply to the letter of the counsel for the appellant, are of no avail. The DSSSB is required to judge the academic merit of the candidates coming from different universities and having different standards of education and syllabus. It, Therefore, evolved a formula specified in the notice dated September 21/22, 1998 for judging the academic merit of the candidates. We do not find fault with the policy of the DSSSB to treat three papers of Sanskrit as Constituting one subject and likewise two papers of Hindi being treated as one subject.

16. In the circumstances, Therefore, we are of the opinion that the learned Single Judge was right in his view that the three papers of Sanskrit and two papers of Hindi must be considered as separate subjects. The fact that the DSSSB took a wrong view of the matter in the case of Shri Shambhu Nath Jha cannot be a ground for directing the DSSSB to commit a wrong second time. Two wrongs cannot make a right. Even otherwise, as the saying goes, one swallow does not make summer. We, Therefore, regret our inability to issue a direction to the DSSSB to appoint the appellant as Primary Teacher (Post Code 08/98).

17. At the same time, since the DSSSB had filed a wrong affidavit before us, we direct the DSSSB to pay costs in the sum of Rs. 25,000/- for their aforesaid culpability. The payment of costs shall be made to the State Legal Services Authority, Patiala House, New Delhi, within a period of three weeks from today. The registry shall place the matter before us on 23rd August, 2002 only for the purpose of overseeing and effectuating the compliance of the aforesaid order by the DSSSB.