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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 17.08.2023

Judgment delivered on:25.09.2023

+ **W.P.(C) 4984/2019**

NAVEEN SHARMA

..... Petitioner

Through: Mr.Basab Sengupta, Advocate for
Mr.R.S. Kaushik, Advocate.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr.Virender Pratap Singh Charak,
Ms.Pinky Yadav, Mr.Deepesh
Chaudhary, Mr.Sachin, Mr.Deepak
Mahajan and Mr.Pushpender Singh
Charak, Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. The challenge in this writ petition is to an order dated April 25, 2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal') whereby Original Application No.1292/2019 (hereinafter referred to as 'O.A.')

preferred on behalf of the petitioner to declare him eligible for appointment to the post of TGT (Hindi) in terms of Recruitment Rules, was dismissed.

2. It is pertinent to notice at this stage itself that vide order dated May 09, 2019, directions were issued by this Court permitting the petitioner to



approach the Tribunal with a review petition and further directing the Tribunal to deal with the same on merits. The present petition was kept pending, and in the meantime, result for the post of TGT (Hindi) under the category “unreserved” was directed to be subject to the orders in the present petition. Order dated May 09, 2019 passed in present writ petition may be reproduced for reference:

“W.P.(C) 4984/2019 & C.M. No. 22138/2019

*The submission of the learned counsel for the petitioner is that the Tribunal has rejected the original application on a completely misplaced assumption of what the petitioner's grievance is. He submits that whereas the petitioner's grievance is that even though he is a post graduate in Hindi, he was not called for the interview on the ground that he had not studied Hindi as a subject in all three years at graduation level, the Tribunal has proceeded on the assumption that the petitioner is aggrieved by the non-declaration of the results of the selection process. On the first aspect, learned counsel has drawn our attention to the decision of this Court in **Govt. of NCT of Delhi & Ors. vs. Sachin Gupta**, (W.P.(C) 1520/2012) decided on 07.08.2013, which has been followed by another Division Bench of this Court in W.P.(C) No.4606/2016. He has also drawn our attention to the order passed by the Tribunal in OA No.743/2017 on 19.08.2017 and states that as a matter of fact that the Government of NCT of Delhi has accordingly modified the eligibility requirements for the post.*

Since the first grievance of the petitioner is that the Tribunal has proceeded on a completely wrong premise, while keeping the present petition pending, we permit the petitioner to approach the Tribunal with a review petition. In case such a review is filed, the Tribunal shall deal with the same on merits.

Adjourned to 21.05.2019.

In the meantime, we direct that declaration of the results for the post of TGT (Hindi) in the category of unreserved category shall be subject to further orders in the present petition.

DASTI ”



3. Review Application (RA) No.118/2019 was accordingly preferred by the petitioner in O.A. No.1292/2019, which was allowed vide order dated August 19, 2019 by the Tribunal, thereby recalling order dated April 25, 2019 and admitting the O.A. for consideration on merits. Further, vide order dated November 01, 2019, O.A. No.1292/2019 has been dismissed by the Tribunal.

4. Thereafter, CM No. 5197/2020 was filed by the petitioner for taking on record judgment/order dated August 19, 2019 and November 01, 2019 passed by the Tribunal. Further, petitioner sought substitution of prayer 7(a) in the original writ petition for quashing and setting aside order dated November 01, 2019 passed by the Tribunal in O.A. No.1292/2019.

5. The factual matrix falls within a narrow encompass and may be briefly noticed. Respondent No.2 Kendriya Vidyalaya Sanghathan (hereinafter referred to as 'KVS') issued Advertisement No.14 dated August 14, 2018 for the recruitment of Principals, Vice-Principals, PGTs, TGTs, Librarian and PRTs in KVS. The candidates were to be selected on the basis of written examination and interview.

Petitioner applied for the post of TGT (Hindi) and cleared the written examination and was shortlisted for interview. **However, he was not allowed to appear before the Interview Board on the ground that he had not studied the concerned subject i.e. Hindi in all the three**



years at graduation level and, as such, did not fulfill the requirements of Recruitment Rules.

Further, vide representation dated February 16, 2019, petitioner informed respondent No.2 that he had acquired degree in graduation (B.A. Programme) from Delhi University wherein Hindi as a subject is available only for two years and he had also acquired post graduation degree in Hindi i.e. M.A. (Hindi). Petitioner further relied upon judgment passed by High Court of Delhi in *Govt. of NCT of Delhi & Ors. v. Sachin Gupta & Ors.*, W.P.(C) No.1520/2012 and order passed by the Central Administrative Tribunal in *Naveen Sharma & Another v. Govt. of NCT of Delhi & Anr*, O.A. No.3492/2015.

However, since the petitioner did not receive any response to his representation, he preferred O.A. No.1292/2019 before the Tribunal to direct the respondents to declare the petitioner eligible for TGT (Hindi) in terms of the Recruitment Rules and permit him to appear before the Interview Board. The said O.A. was summarily dismissed vide order dated April 25, 2019 at the admission stage itself as already noticed above.

Aggrieved against order dated April 25, 2019 passed by the Tribunal, petitioner preferred present writ petition before this Court and vide order dated May 09, 2019, petitioner was permitted to file Review Application before the Tribunal and the writ petition was kept pending.



Thereafter, O.A. No.1292/2019 has been finally dismissed on merits by the Tribunal vide order dated November 01, 2019.

6. In the aforesaid background, the issue for consideration is, whether the petitioner having studied Hindi for two years in B.A. (Programme) at graduation level and also obtained postgraduate degree in Hindi meets out the essential qualifications in terms of Recruitment Rules, which prescribes Hindi to be studied as a subject in all the three years of graduation for appointment to the post of TGT (Hindi).

7. Learned counsel for the petitioner assailing the order passed by the Tribunal, submits that despite clearing the written exam, petitioner has been wrongly denied to appear for interview for the post of TGT (Hindi) by the respondents on the ground that he had not studied Hindi in all the three years of graduation. It is urged that petitioner obtained his degree in B.A. (Programme) course from Delhi University which came into effect from academic year beginning July, 2004 and subject Hindi is only available for two years. Further with the implementation of new course, earlier B.A. (Pass) course providing Hindi as a subject in all the three years stood discontinued from July, 2004. It is urged that B.A. (Pass) course which was in operation prior to July, 2004 and B.A. (Programme) which came into effect *w.e.f.* July, 2004 are equivalent as the syllabus for both the courses is similar.

It is contended that treating the petitioner ineligible is unjustified, arbitrary and violative of Article 14 & 16 of the Constitution of India.



Petitioner having acquired post graduation in Hindi (M.A. Hindi) is claimed to be better qualified than the candidates who had studied Hindi for three years at graduation level. Reliance is further placed upon *Srishti v. Govt. of NCT of Delhi & Ors.*, W.P.(C) No.10392/2016 decided on May 23, 2017 by this Court wherein the petitioner, who had obtained degree of post graduation in English but had studied English as one of the subjects for one year in B.A. (Hons.) in Sociology, was held eligible for the post of TGT (English). Reference is also made to judgment passed by the Kerala High Court in the matter of *Dharun K v. Shino M Gopal & Ors.*, 2020 SCC OnLine Ker 4244, to contend that acquisition of qualification of PG in Hindi presupposes acquisition of qualification for the lower post. Reliance in support of the same is also placed upon judgment passed by Hon'ble Supreme Court in *Puneet Sharma v. Himachal Pradesh State*, Civil Appeal No(s) 1318-1322 of 2021 decided on April 07, 2021.

8. On the other hand, learned counsel for the respondents reiterated the contentions made before the Tribunal and urged that the qualifications stipulated in the advertisement are not at variance with the Recruitment Rules and since the petitioner did not study Hindi subject in all the three years at graduation level, he is ineligible for appointment to the post of TGT (Hindi). It is urged that in absence of equivalence of degrees, B.A. (Programme) with two years of Hindi as a subject cannot be treated equivalent to graduation degree obtained by other candidates with Hindi



as a subject in all the three years of graduation. It is contended that even acquisition of higher qualification of post graduation in Hindi cannot come to the rescue of the petitioner, since he did not fulfill the essential qualification of having studied Hindi as a subject in all the three years of graduation. It is urged that judgment passed by this Court in *Srishti v. Govt. of NCT of Delhi* (supra), cannot be treated as binding precedent and authorities filed by the petitioner are distinguishable.

9. We have given considered thought to the contentions raised.

10. Judgments passed in *Govt. of NCT of Delhi & Ors. v. Sachin Gupta & Ors.*, W.P.(C) No.1520/2012, *Naveen Sharma & Another v. Govt. of NCT of Delhi*, O.A. No.3492/2015 and *Sangeeta v. GNCTD & Ors.*, OA No.743/2017 as relied upon by the respondents were duly considered by the Tribunal and held to be inapplicable. Observations of the Tribunal in para 8 to 14 in this regard may be noticed:

“8. The applicant studied the Graduation with Hindi as a subject. However, it was not taught as a subject, in all the three years. It is stated to be only for two years. Though the applicant was permitted to appear in the written examination and was also called for interview, the actual verification of the qualification was conducted at that stage. On finding that the applicant did not study Hindi, as a subject in all the three years at graduation level, he was not permitted to participate in the interview.

9. It is not the case of the applicant that qualifications stipulated in the advertisement are at variance with those in the RRs. The 2nd respondent made it clear that only such of the candidates who have studied the concerned languages in all the three years at graduation level, are eligible for appointment. If some of the Universities framed the courses in a different way, and not provided the study of Hindi or other languages in all the three years, that is not the concern of the 2nd respondent. The record



also discloses that there are many Universities that are offering courses with the language, as a subject, for 3 years.

10. Reliance is placed upon the judgement of the Hon'ble High Court of Delhi in Sachin Gupta's case (supra). In that case, the issue was about the appointment to the post of Teachers in GNCTD. The qualifications stipulated for TGT, even in languages are at total variance from those stipulated by the 2nd respondent. For the post of TGT in Hindi, the stipulation was as under:

1	8
Trained Graduate Teachers	1. A bachelor's Degree (Pass/Hons) from a recognized University or equivalent having secured at least 45% marks in aggregate of having studied to a level not lower than ancillary/subsidiary subjects indicated in any of the following groups:-
English	1. English as main subject at graduation level with one of the following subjects :- (i) History, (ii) Pol. Science, (iii) Economics, (iv) Commerce, (v) Geography, (vi) Agriculture, (vii) Horticulture
Mathematics

11. There was no requirement that English as a subject should have been studied in all the three years at graduation level. Despite that, the GNCTD and DSSSB insisted that it is only those candidates who have studied English in all the three years at graduation level are eligible. That contention was repelled by the Tribunal as well as the Hon'ble High Court. It was held that once the requirement is about bachelor's degree from a recognized



University with at least 45% marks in aggregate in the concerned subject, much would depend upon the nature of the contents of the course stipulated in the University and the languages taught as a subject. The qualification, therefore, needs to be treated as adequate. In contrast, in the RRs, stipulated by the 2nd respondent, the requirement is that the language should have been studied in all the three years. Therefore, the judgment of the Hon'ble High Court in Sachin Gupta's case (supra) cannot be treated as a binding precedent on the facts of the present case.

12. Reliance is also placed upon the judgment of the Hon'ble High Court in Govt. of NCTD Vs. Naveen Sharma. Here again, the facts of the case are identical to those of the Sachin Gupta's case and following the judgment in that case, the Writ Petition was allowed.

13. The applicant contends that he studied MA in Hindi, and if that is taken into account, he can be treated as satisfying the requirement under the Rules. In support of this contention, he placed reliance upon the judgment of this Tribunal in OA No.743/2017 (Sangeeta Vs. GNCTD & Ors.). That was a case pertaining to the post of Guest Teacher and the candidature was rejected on the ground that she did not hold the requisite qualifications. The qualifications prescribed for the post of TGT (Pol Science) were graduation in History/Political Science/Economics/Sociology/ Geography/Phychology/Commerce/Agriculture/Horticulture. The applicant therein studied the main subject 'Public Administration' at graduation level. In one of the judgments, the Hon'ble High Court accepted the contention that the 'Public Administration' and 'Political Science' are interchangeable subjects. Applying that ratio, the OA was allowed. That is not the case here.

14. Therefore, we do not find any merits in the OA and the same is accordingly, dismissed.....”

11(i). In order to correctly appreciate the ratio laid down in ***Govt. of NCT of Delhi and Others v. Sachin Gupta*** (supra), the factual position in the aforesaid case may be briefly noticed. The Division Bench dealt with separate writ petitions preferred by Sachin Gupta, Vikram Singh,



Snehlata, Nainika and Neelam Rana, who had applied in response to the advertisement issued by DSSSB in 2010 & 2011 for the post of TGT (English), TGT (Hindi), TGT (Sanskrit) and TGT (Social Science) [i.e. respondent Nainika and Neelam Rana applied for the post of TGT (English); Sachin Gupta for TGT (Social Science); Vikram Singh for TGT (Hindi) and Snehlata for TGT (Sanskrit)]. The respondents successfully cleared the written examination but the stand of the petitioner therein was that their graduation degree did not satisfy the eligibility conditions prescribed in the Recruitment Rules, since the respondents did not study the concerned subject for three years at graduation level.

(ii) It was noticed by the Division Bench that Govt. of NCT of Delhi initially issued Recruitment Rules for TGT (Modern Indian Language-MIL) which prescribed the following qualifications:

<i>"Name of the post</i>	<i>Educational and other qualifications required for direct recruits</i>
1	8
<i>T.G.T. (MIL)</i>	<i>(i) B.A. (Honours) in one of the Modern Indian Languages (MIL) concerned or B.A. with MIL concerned as one of the elective subjects from a recognized University having 45% marks in aggregate with one additional language or one school subject at Degree level. OR Equivalent Original Degree in MIL concerned from a recognized University having 45% marks in aggregate." (Emphasis Supplied)</i>



Further, in 1997 amendments were made for the post of TGT English, Mathematics, Social Science and Physical Science/Natural Science as under:

<i>Educational and other qualifications required for direct recruits</i>
<p><i>A Bachelor's degree (Honours/Pass) or equivalent from a recognized University having secured 45% marks in aggregate, in two school subjects of which at least one out of following should have been at elective level:-</i></p> <ol style="list-style-type: none"> <i>1. English</i> <i>2. Mathematics</i> <i>3. Natural/Physical Science</i> <i>4. Social Science</i> <p><i>Note: Main subjects for T.G.T. (Natural Science/Phy. Science) shall be Physics, Chemistry, Biology, Botany and Zoology.</i></p> <p><i>Social Science: - History/Political Science/Economics/Business Studies/Sociology/Geography/Psychology." (Emphasis Supplied)</i></p>

Thereafter, corrigendum dated March 30, 2010, defining the expression 'elective subject; occurring in the aforesaid Recruitment Rules was finally issued as under:

"In supersession to this office corrigendum no.F.DE.3(44)/EIII/99/2209 dated 14/03/2000, the term 'Elective' as specified in the Recruitment Rules may be read as under:

"The candidate should have studied the subject concerned as mentioned in the RRs in all parts/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 orders of promotion and Direct Recruitment issued by this office from time to time.

This issues with the prior approval of the Competent Authority.”

(iii) The degrees possessed by the respondents therein and the posts against which they applied may be tabulated as under:

Name of the candidate	Post applied for	Qualification
Sachin Gupta	TGT (Social Science)	B.Com (Hons.) (Studied Economics only in second and third year of graduation).
Vikram Singh	TGT (Hindi)	B.A. Programme (Studied Hindi in second and third year of graduation)
Nainika	TGT (English)	B.A. Programme (Studied English in first and second year of graduation)
Neelam Rana	TGT (English)	B.Sc. (Did not study English in any of the three years of graduation) M.A. (English)
Snehlata	TGT (Sanskrit)	B.A. (Did not study Sanskrit in any of the three years of graduation) Thereafter, cleared three papers in Sanskrit



		and obtained B.A. (Additional) degree, having studied Sanskrit for one year.
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(iv). The Division Bench was of the considered view that Sachin Gupta, who had applied for TGT (Social Science), Vikram Singh, who had applied for TGT (Hindi) and Nainika, who had applied for TGT (English) had studied one of the main subjects prescribed for TGT for two years, in which the subject was taught during the graduation course undertaken by them and, as such, are eligible to be appointed to the respective post of TGT (English/Hindi/Social Science).

As regards Snehlata, who had applied for TGT (Sanskrit), it was observed that there was a material difference between the position of Sachin Gupta, Vikram Singh and Nainika who had applied for TGT (Social Science), TGT (Hindi) and TGT (English) respectively. Further, since Snehlata had not studied Sanskrit subject in any year of graduation but had subsequently studied the same for one year and cleared three papers pertaining to Sanskrit, it was held that Snehlata was not entitled for appointment to the post of TGT (Sanskrit).

As regards, Neelam Rana, who had applied for TGT (English), it was observed that the controversy is not in the context of what would be an elective subject studied during graduation as she had graduated in B.Sc. (Botany) but sought the appointment on the strength of having obtained post graduation degree in MA (English), wherein she studied



‘English’ as a subject for two years. Neelam Rana was held eligible for appointment to the post of TGT (English) considering the fact that no material had been placed to show that the person who had studied English at graduation level would be better equipped to teach ‘English’ to students *vis-à-vis* the person who has obtained a post graduation degree in English language. Reliance in this regard was placed upon ***Manju Pal v. Government of National Capital Territory of Delhi, 2002 (61) DRJ 58.*** Neelam Rana was accordingly found entitled for appointment as she possessed a higher qualification than the qualification required for the appointment to the post. Reliance was also placed upon ***Directorate of Education and Others v. Kalpana Pandey***, a judgment passed by the Division Bench of this Court, decided on September 18, 2012 in LPA No.640/2010.

12. Factual position in ***Srishti v. Govt. of NCT of Delhi, 2017 SCC OnLine Del 8620*** (a Division Bench judgment of this Court) relied by learned counsel for the petitioner may next be considered. The petitioner Srishti therein worked as TGT (English) on contractual basis with Directorate of Education, Govt. of NCT of Delhi and had studied English in Class 10th, 12th, graduated in B.A. (Hons.) in Sociology and studied English in the first year of graduation. Further, she completed B.Ed. with English as one of the teaching subjects and also obtained degree in M.A. (English). She also appeared for CTET examination and further completed her M.Ed. in 2012. Re-engagement of petitioner was rejected



in terms of circular dated July 09, 2015 as she did not possess requisite qualification as prescribed in Recruitment Rules, which provided that the applicant ought to have studied the concerned subject at least for two years. Placing reliance upon the case of *Directorate of Education v. Neelam Rana*, WP(C) No.575/2013 (already referred above in the case of Sachin Gupta), petitioner claimed that she was eligible having obtained a degree in post graduation in the concerned subject. The petition was dismissed by the Tribunal relying upon *Jyoti K.K. v. Kerala Public Service Commission*, (2010) 5 SCC 596 holding that unless the graduate qualifications are in the same faculty, the higher qualification in that faculty cannot be stated to presuppose the acquisition of lower qualification prescribed for the post. The Division Bench of this Court, after discussing *Sachin Gupta and Others* (supra), *Directorate of Education v. Neelam Rana* (supra), *State of Punjab v. Anita*, Civil Appeal No.7983-7986 and 7970-7971 of 2009 decided on September 24, 2014 and *Jyoti K.K. v. Kerala Public Service Commission* (supra) held that petitioner was eligible for being re-engaged for the post of TGT (English) since she had studied 'English' at post graduation level and has also studied 'English' as a subject for one year in B.A. (Hons) in Sociology.

Also, observations in *P.M. Latha v. State of Kerala*, (2003) 3 SCC 541 were found to be distinguishable since it related to case of teachers in primary classes, in relation to whom it had been held in other judgments



that eligibility condition for primary teachers who have to teach small children are much different from those who have to teach the higher classes or graduates.

13. Before considering the precedents in *Sachin Gupta* (supra) and *Srishti* (supra), it is pertinent to observe the decision of this court in *Govt. of NCT of Delhi and Ors. v. Seema Kumari, W.P.(C) 8945/2023 decided on August 08, 2023*, wherein the case of respondent Seema Kumari for appointment to the post of TGT (SST) was considered. The Recruitment Rules therein stipulated for possessing a Bachelor's Degree (Hons/Pass) from a recognized University or equivalent having secured at least 45% marks in aggregate and studied the following ancillary/subsidiary subject at a level not lower than prescribed as under:

- “1. Social Science – At least 2 of the following main subjects at graduation level: History/Political Science/Economics/Commerce/Geography/Agriculture/Horticulture.
2. Degree/Diploma in Training Education or SAV Certificate..
3. Working knowledge of Hindi at least up to a secondary level or equivalent on March 30, 2010.”

A corrigendum was also issued as per which, the candidate should have studied the subject concerned as mentioned in Recruitment Rules in all parts/years of graduation.

The respondent therein had done her Bachelor of Arts (Hons) degree in Hindi, in which the subsidiary paper of Political Science I & II was only studied in second year which she cleared in the third year. She



also relied upon Post Graduate degree in M.A. (Political Science) for meeting out the prescribed educational qualifications.

The stand of the petitioner was that graduation in Hindi is nowhere connected with SST and the respondent did not fulfill the prescribed essential qualifications since she had not studied Political Science as a subject for three years. It was also contended that Post Graduation degree would not be relevant for appointment as TGT (SST) and would be relevant only for the purpose of relaxation if the candidate had not secured 45% marks in graduation. Further, the respondent was ineligible for being appointed as TGT (SST) as per Recruitment Rules since she did not study the concerned subject in all parts/years of graduation.

This court agreeing with the contentions raised on behalf of petitioner (Govt. of NCT of Delhi) held that the respondent (Seema Kumari) was ineligible for appointment to post of TGT (SST) as per Recruitment Rules since she did not possess the required essential qualification in Social Science at graduation level. It was further held that Post Graduation degree of the respondent cannot be considered as meeting the eligibility criteria overlooking the Rules and the advertisement since pursuing Post Graduation was not a requirement in terms of Rules and advertisement to the post of TGT (SST). The order passed by the Tribunal in O.A. 3212/2017 was accordingly set aside. The observations in paragraphs 9 to 20 in this regard distinguishing *Puneet Sharma & Ors v. Himachal Pradesh State* (supra) and placing reliance



upon *North Delhi Municipal Corporation v. Kavinder and Ors.* (supra) are pertinent to be noticed and may be beneficially reproduced:

“9. Having heard the learned counsel for the parties, the issue which arises for determination is whether the Tribunal is justified in allowing the OA. The answer to the same has to be in the negative. We have perused the recruitment rules / advertisement issued for the post in question, from which it is clear that the essential qualification is Bachelors Degree from a recognized University in the subject concerned. The requirement of Post Graduation is only to the extent of relaxing the requirement of 45% in Bachelors Degree. So, the plea of Mr. Bhardwaj in that regard, that the respondent possesses Post Graduation in Political Science which is a social science and hence meets the eligibility condition, does not appeal to us.

10. Even the plea that a higher qualification must necessarily pre-suppose possession of a lower qualification of graduation in Political Science is also without any merit.

11. Mr. Bhardwaj has placed reliance on paragraph 37 of the judgment of the Supreme Court in the case of *Puneet Sharma & Ors. Etc.* (supra), which reads as under:

“37. The considerations which weighed with this court in the previous decisions i.e. *P.M. Latha, Yogesh Kumar, Anita (Supra)* were quite different from the facts of this case. This court's conclusions that the prescription of a specific qualification, excluding what is generally regarded as a higher qualification can apply to certain categories of posts. **Thus, in *Latha and Yogesh Kumar as well as Anita (supra)* those possessing degrees or postgraduation or B.Ed. degrees, were not considered eligible for the post of primary or junior teacher. In a similar manner, for “Technician-III” or lower post, the equivalent qualification for the post of Junior Engineer i.e. diploma holders were deemed to have been excluded, in *Zahoor Ahmed Rather (supra)*. This court is cognizant of the fact that in *Anita as well as Zahoor (supra)* the stipulation in *Jyoti (supra)* which enabled consideration of candidates with higher qualifications was deemed to be a**



distinguishing ground. No such stipulation exists in the HPSEB Rules. Yet, of material significance is the fact that the higher post of Assistant Engineer (next in hierarchy to Junior Engineer) has nearly 2/3rds (64%) promotional quota. Amongst these individuals, those who held degrees before appointment as a Junior Engineers are entitled for consideration in a separate and distinct sub-quota, provided they function as a Junior Engineer continuously for a prescribed period. This salient aspect cannot be overlooked; it only shows the intent of the rule makers not to exclude degree holders from consideration for the lower post of Junior Engineers.”

12. *The Supreme Court has held that if the intent of the rule makers is not to exclude degree holders (person with higher qualification) from consideration for the lower post of Junior Engineers, then such person cannot be said to be ineligible. Suffice to state, the said judgment has no applicability to the facts of this case inasmuch as, the rule / advertisement clearly stipulates the purpose of a person possessing Post Graduation in Political Science is only for relaxing the 45% marks required at the graduation level and not for any other purpose.*

13. *So, in that sense the respondent not having the required essential qualification in Social Science at graduation level, would not meet the eligibility criteria.*

14. *The plea of Mr. Bhardwaj that the respondent having studied in Political Science in graduation with two papers would also meet the eligibility is also not appealing. This we say so, because the candidate is required to have studied the subject as elective. In other words, the elective subject is that subject which is counted and included in the marks or the grading awarded to the students. Concedingly, the marks of Political Science as a subsidiary subject are not included in the marks or the grading awarded to the respondent.*

15. *So in that sense, having studied Political Science as a subsidiary subject would not help the case of the respondent.*



16. Mr. Singh is justified in relying upon the judgment of the Supreme Court in the case of **North Delhi Municipal Corporation v. Kavinder and Ors.**, (2021) 11 SCC 353, wherein the facts of the case are that an advertisement was issued for inviting applications for various posts in the Municipal Corporation of Delhi on a competitive basis. Among the posts that were advertised included the post of Labour Welfare Superintendent in the Municipal Corporation. The qualification and experience required for the post were prescribed as follows:

“2. An advertisement was issued for inviting applications for various posts in the Municipal Corporation of Delhi on a competitive basis. Among the posts that were advertised was that of a Labour Welfare Superintendent in the Municipal Corporation. The qualifications and experience required for the post were prescribed as follows:

“Essential Qualifications:

- (1) Degree of a recognised University or equivalent.
- (2) Postgraduate Degree/Diploma in Social Work or Labour Welfare or Industrial Relations or Personnel Management or in any other allied subject of recognised University/institution or equivalent.

Desirable:

- (1) Degree in Law of a recognised University or equivalent.
- (2) Experience in the field in responsible capacity of Labour Welfare/Industrial Relations/Personnel Management and/or in allied fields.”

17. The Delhi Subordinate Services Selection Board (DSSSB) held written examination. Even after the candidate had appeared for the examination, the Board retained the authority to cancel her / his candidature during the recruitment process, if she / he failed to meet the said eligibility criteria. The first respondent therein applied for the post and appeared in the examination conducted by the Board. He was provisionally shortlisted for the Part II examination upon the declaration of the result of the Part I objective examination. He was, however, declared not to be eligible for selection.

18. He approached the Central Administrative Tribunal. The Tribunal by its judgment and order dated May 20, 2016 came to the conclusion that the first respondent fulfilled the conditions of eligibility. The first respondent holds a B.Sc. degree from



Maharshi Dayanand University, Rohtak and thus, satisfied the first condition of eligibility. With regard to the second condition, the Tribunal noted that the first respondent did not claim to have a degree or diploma in Social Work or Labour Welfare, but that as a student of the MBA degree programme of Maharshi Dayanand University, Rohtak, he had studied certain subjects which had a bearing on the eligibility requirements. The Tribunal held, he had studied Human Resource Management and Industrial Relations in the course of the MBA degree programme. It was on this basis that the first respondent was held to be eligible and having passed the competitive examination, a direction was issued for his appointment to the post. This order of the Tribunal had been affirmed by this Court. The Supreme Court while allowing the appeal and dismissing the OA filed by the respondent before the Tribunal has in paragraph 9 stated as under:

“9. The first respondent completed the MBA degree programme from Maharshi Dayanand University, Rohtak. The mark-sheets which have been relied upon by the first respondent indicate that during the course of the second semester, he studied Human Resource Management as a subject. In the fourth semester, the first respondent had a course in Industrial Relations and Labour Legislation. Studying these two subjects would not lead to the conclusion that the first respondent holds a postgraduate degree or diploma in the disciplines which have been specifically spelt out in the advertisement or in any allied subject. The MBA degree cannot be regarded as allied to a postgraduate degree or diploma in Social Work, Labour Welfare, Industrial Relations or Personnel Management. The recruitment was being made to the service of the appellant. The advertisement did not specifically provide how equivalence was to be established between a postgraduate degree/diploma in the subjects specified in the advertisement and a postgraduate degree/diploma in an allied subject. The appellant as an employer was best suited to judge whether the degree of the first respondent was in an allied subject. Unless this assessment was perverse or contrary to the requirements prescribed, the Tribunal had no reason to interfere. We are of the view that the Tribunal was manifestly in error in holding that the first respondent was qualified merely because he studied two subjects as a part of his MBA degree programme, namely, Human Resource Management and Industrial Relations and Labour Legislation. The High Court has simply affirmed the view of the Tribunal.”



19. The judgment of the Supreme Court is clearly applicable to the fact of this case. The Tribunal could not have directed that the Post Graduation degree of the respondent be considered as meeting the eligibility criteria overlooking the rules and the advertisement itself. The only benefit a candidate could have accrued having studied Post Graduation (Political Science in the case of the respondent herein) is to the extent of relaxation of the requirement of 45% marks at graduation level and nothing more. In other words, possessing Post Graduation was not a requirement in terms of the rules and advertisement for making appointment to the post of TGT (SST). In fact, we find that the observations of the Tribunal in paragraph 17 which we have reproduced above, could not have been given by the Tribunal, contrary to the intent of the rule/advertisement.

20. Accordingly, the appeal is allowed and the order of the Tribunal dated November 24, 2022 is set aside.”

14. In the aforesaid background, it may be observed that in *Govt. of NCT of Delhi v. Seema Kumari* (supra), this Court has already taken a view after referring to *Puneet Sharma & Ors. v. Himachal Pradesh State* (supra) and relying upon *North Delhi Municipal Corporation v. Kavinder & Ors.* (supra), that attaining a Post Graduation degree cannot be considered as meeting the eligibility criteria overlooking the Rules and advertisement unless the candidate has studied the concerned subject at relevant level.

In view of above, the proposition in *Neelam Rana* (supra) which was decided along with *Sachin Gupta* (supra), relied upon by learned counsel for the respondent, cannot be treated as a binding precedent, wherein the petitioner Neelam Rana had been granted relief though she



had not studied the concerned subject during graduation but had thereafter obtained a Post Graduation degree in English.

15. It may further be observed that *Srishti v. Govt. of NCT of Delhi* (supra) was not referred while considering *Seema Kumari* (supra) decided by this Court but in view of ratio laid down in *North Delhi Municipal Corporation v. Kavinder & Ors.* (supra), the same also cannot be considered as a binding precedent, as the petitioner Srishti therein had studied the relevant subject of English only in first year of graduation in B.A. (Hons) in Sociology and had thereafter obtained a degree in M.A. (English).

16. Apart from above, *Dharun K. v. Shino M. Gopal & Ors.* (supra) relied by learned counsel for the petitioner is distinguishable and does not further the case of the petitioner. The High Court therein after considering the ratio in various judgments, took note of the fact that Rule 10(a)(ii) of Part II of KS & SSR issued by Kerala Public Service Commission after commencing with non obstante clause provided that the qualifications recognized by executive orders or standing orders of Government, as being equivalent to a qualification specified for a post in the Special Rules or higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post, would be treated as sufficient for the post. Further, the said rule would apply to every selection even if its applicability is not declared specifically in the notification. As such, it was held that holding a Bachelor's Degree in



Mechanical Engineering which was qualification for the post of Workshop Supervisor/Manager, can be held to presuppose holding of the lower prescribed qualification for the post of Tradesman (Welding), in view of Rule 10(a)(ii) of Part II of KS & SSR issued by Kerala Public Service Commission.

17. It is pertinent to observe that in *Unnikrishnan CV and Others v. Union of India and Others*, 2023 SCC OnLine SC 343, the Hon'ble Apex Court reiterated the observations in *Zahoor Ahmad Rather v. Sheikh Imtiyaz Ahmad*, (2019) 2 SCC 404, wherein it was held that the State as an employer is entitled to prescribe qualifications as a condition of eligibility, after taking into consideration the nature of job, aptitude required for efficient discharge of duties, functionality of various qualifications, course content leading to the acquisition of various qualifications etc. Further, judicial review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the prescribed qualification over any other qualification. Equivalence of qualification is a matter for the State as Recruiting Authority to determine. In the aforesaid case, the Hon'ble Apex Court observed that appellants preferred the writ petition on the premise that they had been denied promotion on the ground that they possess two years' diploma and not three years' diploma by ignoring the fact that denial of promotion is on the ground that candidates did not possess the prescribed requisite qualification, namely, Diploma in Civil Engineering; and Diploma in



Draughtsman Estimating and Design (DED) possessed by them is not as prescribed under the Rules. It was further observed that no further material had been placed on record by the appellants to demonstrate that Diploma in DED is equivalent to Diploma in Civil Engineering.

In the light of aforesaid legal position, we are of the considered view that in absence of any rule prescribing that acquisition of higher qualification presupposes holding of lower qualification, the petitioner cannot be held to meet requirement of essential qualification by mere possession of Post Graduate degree in Hindi.

18. Reverting back to the facts of the present case, it may be observed that the issue for consideration in one of the aspects is similar to the case of *Govt. of NCT of Delhi & Ors. v. Sachin Gupta, W.P.(C) 1520/2012*, *GNCT of Delhi & Ors. v. Vikram Singh, W.P.(C) 4483/2012* and *Govt. of NCT of Delhi & Ors. v. Nainika, W.P.(C) 4301/2012*, wherein the question for consideration was **if the petitioners were eligible for appointment to the post of TGT in respective subjects having studied the concerned subject for ‘two years at graduation level’ instead of three years since the subject is taught in some Universities only for two years at graduation level.** The Division Bench reasoned that the ethos of the prescription contained in corrigendum dated March 30, 2010 that the candidates should have studied the subject in all years of graduation is that the candidate should have a deep understanding of the subject in which he is desirous of imparting education to the children. It



was also observed that if a literal interpretation in terms of corrigendum is given, all candidates who had studied the concerned subject i.e. the subject for which they had applied from the Universities which are not teaching the subject in all three years of graduation course offered by them would be rendered ineligible for appointment to the post of TGT despite the fact that they had studied the concerned subject in all parts/years in which the subject is taught by the University and have a good understanding thereof. Further, it was emphasized that if a literal meaning of a statute or rule leads to absurdity, the principle of literal interpretation need not be followed and recourse should be taken to the purposive and meaningful interpretation to avoid injustice, absurdity and contradiction so that the intent of the purpose of legislature is given effect to. Accordingly, the corrigendum dated March 30, 2010 was directed to be interpreted as the candidate should have studied the subject concerned as mentioned in the Recruitment Rules in all parts/years in which the subject was taught during the graduation course.

19. We are of the considered view that it cannot be treated as an absolute proposition of law that even if the concerned subject has been studied in a particular course in a University only for one year, the same has to be considered to meet the eligibility condition of having studied the subject for all the three years on the ground that the same is taught by the University only for one year in the concerned course. However, the same is subject to the caveat that if



it is demonstrated that the curriculum for a period of three years of study is covered in a period of two years, the question for equivalence can still be considered.

20. In *Sachin Gupta* (supra), it has been observed in para 11 & 12 that so far as study of Hindi (Modern Indian Language) as a subject in new B.A. (Programme) course is concerned, it was introduced by Delhi University *w.e.f.* July 2004, which was earlier taught for a period of three years of graduation course. Also, the perspective and objectives of the new B.A. (Programme) course were noticed which provided for the students to enter the wider world of work or go for higher studies after three years of college. As such, the respondent Vikram Singh in W.P.(C) 4483/2012 taken up along with *Sachin Gupta* (supra) was held to be eligible for appointment to the post of TGT (Hindi). The aforesaid equivalence having been considered, the petitioner in the present case in that sense, satisfies the eligibility criteria for the purpose of appointment to the post of TGT (Hindi) which is a Modern Indian Language.

21. Before concluding, we may observe that with advent of technology, the educational curriculum has been changing and new courses have evolved, making them vocation oriented, upkeeping with global education standards. However, at times, the curriculum varies from University to University and also the duration of study of the same subject for the number of years may vary. This has resulted in a situation wherein the students undertaking the similar courses stand ineligible for applying to



various jobs in the government as the Recruitment Rules remain antiquated, inflexible and have not been changed with the changing curriculums. It may be in consonance with the objective of National Education Policy to streamline and provide uniform/consistent eligibility conditions for the recruitment to the posts of Primary Teachers, TGTs and PGTs since the curriculum to be taught is generally similar across different educational boards including CBSE. The different eligibility conditions prescribed by different Institutions under the same Board are not comprehensible as it keeps out large number of eligible candidates ineligible. A copy of this order be forwarded to the Ministry of Higher Education, Govt. of India to look into the aforesaid aspect of prescribing of appropriate guidelines for inclusion/amendment of Recruitment Rules for the purpose of recruitment to the posts of Primary Teachers, TGTs and PGTs in view of introduction of new curriculum and degrees by the Universities and repeated litigations cropping up before the Courts, in this regard.

22. For the foregoing reasons, we are unable to concur with the reasoning given by the Tribunal. The order passed by the Tribunal is accordingly set aside. Respondents are directed to consider the petitioner eligible for interview to the post of TGT (Hindi), if he meets out the other conditions of eligibility. Needful shall be done within a period of four weeks, from the receipt of copy of this order. Further, petitioner shall be appointed within four weeks thereafter, if he qualifies the interview and



falls within merit list. If appointed, petitioner shall be notionally granted the seniority along with fixation of pay and consequential benefits *w.e.f.* the date, the other candidates in the said selection stand appointed. However, petitioner shall not be entitled to any arrears of salary. Writ petition is accordingly allowed. In the facts and circumstances, no orders as to costs. Pending applications, if any, also stand disposed of.

**(ANOOP KUMAR MENDIRATTA)
JUDGE**

**(V. KAMESWAR RAO)
JUDGE**

SEPTEMBER 25, 2023/sd

