

\$~30.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WRIT PETITION(C) No. 6342/2015**

Date of decision: 18th October, 2016

KENDRIYA VIDYALAYA SANGATHAN Petitioner

Through Mr. U.N. Singh, Advocate.

versus

ROHIT AND ANR. Respondents

Through Mr. Anuj Aggarwal & Mr. Tenzing
Thinlay Lecha, Advocates for respondent No. 1.

Mr. Amit Bansal & Ms. Surbhi Mehta, Advocates
for respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J. (ORAL):

The petitioner-Kendriya Vidyalaya Sangathan in this writ petition impugns the order dated 11th February, 2015 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) in OA No. 1380/2013 holding that the first respondent-Rohit was eligible and should be appointed as a Primary Teacher with consequential benefits of fixation of pay and seniority commensurate with his position in the merit list. In case no vacancy is immediately available, the first respondent shall be appointed against the next available vacancy. Cost of Rs.5,000/- stands awarded.

2. The first respondent had appeared in the written examination and on the basis of the marks obtained, was called for interview for appointment to the post of Primary Teacher. His name was included in the Reserve List at merit position 76. However, no letter of appointment was issued, for the first respondent had not secured 50% marks in his Class 12 examination, and candidates who were lower in the order of merit were appointed.

3. In the first round, while partly allowing OA No. 414/2012 vide order dated 30th October, 2012, the Tribunal had found merit in the first respondent's contention that he had secured 52% marks in the Class 12 examination in the best of five subjects. Further, as the petitioner had opted for English language as a core subject and Hindi language as an elective subject, the marks obtained in the elective subject, i.e. Hindi, were to be counted in the best of 5 subjects, and the marks in the core subject of English were to be excluded. On the basis of the performance or marks obtained in Hindi elective, Political Science, Geography and Physical Education, the first respondent had obtained more than 50% marks. Nevertheless, as the Tribunal felt that they were not experts and the authorities had failed to deal with and examine the contention regarding calculation of the marks in the Senior School Certificate Examination on the basis of the best five subjects, an order of remit for re-assessing the first respondent's eligibility was passed.

4. By the order dated 5th March, 2013 the representation of the first

respondent was again rejected on the ground that he was ineligible having secured less than 50% marks in the Class 12 examination in the year 2001 and also in the year 2002 when the first respondent has appeared for improvement. The contention of the first respondent that English core was an additional subject and should not be counted towards the best of five total was rejected.

5. The second round of litigation ensued with the first respondent filing OA No. 1380/2013 which has been allowed vide order dated 11th February, 2015.

6. In the mark-sheet for the Class 12 examination held in 2001 placed on record, the first respondent had scored marks as under:-

SUB. CODE	SUBJECT	TH.	PR.	TOTAL	TOTAL IN WORDS
002	HINDI ELECTIVE	036	XXX	036	THIRTY SIX
028	POLITICAL SCIENCE	045	XXX	045	FORTY FIVE
029	GEOGRAPHY	032	024	056	FIFTY SIX
030	ECONOMICS	036	XXX	036	THIRTY SIX
048	PHYSICAL EDUCATION	013	041	054	FIFTY FOUR
301	ENGLISH CORE	033	XXX	033	THIRTY THREE

The first respondent had not secured an overall grade of 50% marks in the best of five subjects. He had, however, obtained a score of 33% in

English, which are the passing marks in the subject.

7. The first respondent had thereafter appeared for improvement examinations in the next year, i.e. 2002. In the said year, he had secured the following marks:-

Subject Code	Subject	Theory	Practical	Total	Total in words
301	English Core	22	-----	22	Twenty two
002	Hindi Elective	53	----	53	Fifty Three
028	Political Science	50	----	50	Fifty
029	Geography	31	24	55	Fifty Five
030	Economics	41	----	41	Forty One
048	Physical Education	20	41	61	Sixty One

In the 2002 examinations, the first respondent had obtained 22 marks in English (Core) and, therefore, had failed in the said subject. However, he had obtained 50% marks in the best of five subjects, namely, Hindi (Elective), Political Science, Geography, Economics and Physical Education.

8. The CBSE in their letter dated 17th December, 2012 has referred to the pass criteria in bye-laws 40.1 applicable to Senior School Certificate Examination. The relevant clause reads as under:-

“40.1 Pass Criteria (Senior School Certificate Examination)

- (i) A candidate will be eligible to get the Pass Certificate of the Board, if he/she gets a grade higher than E in all subjects of internal assessment unless he/she is exempted. Failing this, result of the external examination will be withheld but not for a period of more than one year.
- (ii) In order to be declared as having passed the examination, a candidate shall obtain a grade higher than E (i.e. at least 33% marks) in all the five subjects of external examination in the main or at the compartmental examinations. The pass marks in each subject of external examination shall be 33%. In case of a subject involving practical work a candidate must obtain 33% marks in theory and 33% marks in practical separately in addition to 33% marks in aggregate in order to qualify in that subject.
- (iii) No overall division/distinction/aggregate shall be awarded.
- (iv) In respect of a candidate offering an additional subject, the following norms shall be applied:
 - (a) A language offered as an additional subject may replace a language in the event of a candidate failing in the same provided after replacement the candidate has English/Hindi as one of the languages.
 - (b) An elective subject offered as an additional subject may replace one of the elective subjects offered by the candidate. It may also replace a language provided after replacement the candidate has English/Hindi as one of the languages.
 - (c) Additional language offered at elective level may replace an elective subject provided after replacement, the number of languages offered shall not exceed two.....”

A reading of clause/paragraph (iv) to bye-laws 40.1 indicates that a candidate offering a language as an additional subject, the norm applied is that the language offered as an additional subject may replace the core language paper in the event that the candidate has either English or Hindi as one of the languages. This criterion has been adopted and accepted by

the Tribunal in the present case. Counsel appearing for the CBSE before us has stated that this principle is applied and adopted in all cases where a candidate has appeared and not passed the core language paper. Marks obtained in the elective paper are counted when Hindi or English is one the languages. The counsel for the CBSE accepts that in the present case, the Tribunal was right in holding that the marks obtained in English (Core) need not be counted in the best of five papers. This being the position, the principle having been sanctioned and affirmed under the Rules of the CBSE which conducts and holds the said examinations, we would agree with the Tribunal that the first respondent had obtained more than 50% marks in the Class-12 examination conducted in the year 2002.

9. The Supreme Court in the case of ***Kusum Lata versus State of Haryana and Others***, (2002) 6 SCC 343 had dealt with and examined a similar situation. Reference was made to clause 3.(a) printed on the back side of the mark sheet to hold that marks obtained in additional subjects would not be taken into consideration as the additional subject was optional. It was implicit that the aggregate marks were to be calculated keeping in view only those subjects which were necessary to pass the 10+2 examinations and not the marks obtained in optional or additional subjects. Thus, the relevant factor to be seen was what was necessary to pass 10+2 examination conducted by the CBSE and on that basis decide whether the

candidate fulfilled all the requirements of the eligibility clause. Accordingly and seen in this perspective and applying the same test, aggregate marks would have to be calculated having regard to the marks obtained in the best of five subjects and not in the additional subjects, which were not taken into account.

10. Counsel for the petitioner-Kendriya Vidyalaya Sangathan submits that this ratio no doubt supports the case of the first respondent, but the decision in *Kusum Lata (supra)* would not be applicable as the said case was one wherein a candidate was seeking admission to a diploma course in education and not employment qualification. The aforesaid distinction is unacceptable and must be rejected. The question raised and answered by the Supreme Court was whether the candidate in question had secured 50% marks in aggregate in the Class-12 examination. The decision was with reference to the applicable rules/bye-laws framed by the CBSE and on interpreting the scheme of the examination, it was held that marks obtained in compulsory subjects would be taken into account and marks obtained in the additional or optional subjects need not be counted. The same principle will be applicable to the present case.

11. Learned counsel for the petitioner submits that even if the first respondent had obtained 50% marks in Class-12, he would still not meet the minimum eligibility criteria. Drawing our attention to the essential qualifications mentioned in the advertisement, he urges that the marks

obtained in English (Core) must be counted.

12. The relevant portion of the advertisement reads as under:-

“ESSENTIAL QUALIFICATIONS.

S. No.	Short Name of Post	Post Code	Qualification(s)	Qualification Code
1.	PRT	41	i)Senior Secondary School Certificate with 50% marks or Intermediate with 50% marks or its equivalent; and ii) Diploma or certificate in basic teachers' training of duration of not less than two years. OR Bachelor of Elementary Education (B.El.Ed.) or B.Ed. or equivalent.	01

ii) Competence to teach through Hindi and English media.”

The mandatory eligibility qualification consists of two different clauses. Clause (i) requires the candidate should have Senior Secondary School Certificate with 50% marks or he/she should have completed Intermediate with 50% marks or equivalent. The second requirement is diploma or certificate in Basic Teachers' Training of duration of not less than two years or Bachelor of Elementary Education, B.Ed. or equivalent. Keeping in mind the aforesaid discussion, the first respondent fulfils the first criteria having cleared Class-12 examination with 50% marks.

Regarding the second criteria, there is no dispute or debate. The first respondent has undertaken and successfully cleared diploma course in Elementary Teacher Education. The advertisement also speaks of a requirement of “competence to teach” through Hindi and English media. Under the heading “desirable” it is indicated that the candidate should have knowledge of computer applications. Learned counsel for the petitioner submits that the first respondent having obtained 22 marks in English (Core) paper does not have the competence to teach through English medium. We cannot accept the said contention for the reason that competence is different from the marks obtained in the Class-12 examination in English (Core) paper. It is not stipulated or stated that the candidate should have cleared both English and Hindi papers in Class-12 examination. There is a difference between clearing a paper in Class 12 and being competent to teach in the said language after several years. Competence cannot be judged on the basis of the performance in one examination. Language skills can be improved and the ability to teach in English cannot be judged solely on the basis of the marks secured in English in Class 12 examination when the candidate has thereafter studied and completed a diploma or a degree course. Competence is to be tested on the date when the candidate seeks appointment. The first respondent had appeared in the written examination conducted for selection of a teacher. The papers, it cannot be doubted, had questions in English which would

have tested the candidate's ability to be able to teach in English. The first respondent has filed on record a copy of his mark sheet in the diploma course in Elementary Teacher Education. In English language skills, he has secured grade A, which is a high grade.

13. The first respondent had secured 109 marks out of 120 marks in the written examination, which placed him in a fairly high position in the merit list. The first respondent had secured 4 marks out of 40 marks in interview. He was initially not called for the interview and had approached the Tribunal in the Original Application. Pursuant to the interim order passed, he was called for the interview.

14. The overall marks secured by the first respondent, on the basis of the said grading in the written examination and the interview, was 74.67. Persons/candidates, who had secured lesser marks than the first respondent had been appointed. We are of the opinion that the Tribunal had rightly held that the first respondent-Rohit meets all the requirements and is eligible to be appointed as a Primary Teacher.

15. In view of the aforesaid position, we do not find any merit in the present writ petition and the same is dismissed. Compliance with the directions of the Tribunal would be made.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

OCTOBER 18, 2016/VKR