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

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Date of Decision: 09.05.2022

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W.P.(C) 2810/2022 & CM APPLs. 8114/2022 & 8115/2022

TANYA SHARMA Petitioner

Through: Mr Anuj Aggarwal, Advocate

versus

DELHI SUBORDINATE SERVICES SELECTION BOARD &
ORS. Respondents

Through: Mrs Avnish Ahlawat, Standing
Counsel, GNCTD (Services)
with Mr Nitesh Kumar Singh
and Mrs Palak Rohmetra,
Advocates

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

NAJMI WAZIRI, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. The petitioner is an aspirant for the post of Assistant Teacher (Nursery) (Post Code 16/19). She appeared in the relevant recruitment examination on 19.11.2019 and was declared as a successful candidate after having secured 106 marks, the cut-off marks were 102.

2. She was permitted to upload the requisite supporting documents *apropos* her candidature, on the website of the respondent. She was

unable to do so within the specified time because while travelling she had lost her bag in which the relevant documents were kept.

3. She lodged an FIR on 08.07.2020 reporting the loss of her bag and the documents. She applied for issuance of duplicate documents, which, upon receipt she promptly uploaded on the respondent's website. However, her candidature was rejected by DSSSB because the documents were "posted after the cut-off date". Some error was also pointed out by the DSSSB *apropos* the date of declaration of her result as 09.07.2020, by State Council of Educational Research and Training ("SCERT"), whereas the correct date of declaration of result was 31.05.2019. Evidently, the error was because of inadvertence of SCERT, for which the petitioner suffered but cannot be blamed.

4. A representation was made by her to remove the ambiguity in the said letter date of declaration of result by SCERT, which went unanswered. Her request to the DSSSB to permit her to update the requisite documents on e-dossier portal was not acceded to. The petitioner contends that the said silence results in injustice to her.

5. Before the learned Central Administrative Tribunal ("CAT"), the respondent had contended that the petitioner, like other candidates, was granted two opportunities to upload the relevant documents but she defaulted. The impugned order has opined that sufficient opportunity having been afforded to her, the rejection of her candidature on account of non-furnishing of requisite documents, would be interpreted as her not possessing the requisite eligibility. Her O.A. was therefore dismissed in *limine*.

6. While issuing notice, this Court had noted on 15.02.2022 as

under:-

“4.1. Admittedly, the petitioner qualified the written exam, and had secured marks above the cut-off marks stipulated by the respondents. The cut-off marks stipulated by the respondents were 102, whereas the petitioner had secured 106 marks.

4.2. The relevant part of the impugned rejection notice no.806 dated 16.08.2021, issued by respondent no. 1, reads as :

60	12321501908	<i>The candidate has uploaded Diploma in Pre-School Education which is after cutoff date whereas B.Ed. (Nursery) or 2 years certificate / Diploma in Nursery Teacher Education Program as on cutoff date required as per RRs. He/She was given two opportunities to upload the deficient/requisite documents in the e-dossier but he/she failed to upload the same. Hence, rejected for not having degree/diploma in Nursery Teacher Training.</i>
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5. Mr Aggarwal says that unlike other candidates, the petitioner, contrary to what has been stated in the impugned rejection notice, was not given two opportunities to upload the deficient/requisite documents in the e-dossier.”

7. The learned counsel for the DSSSB states, upon instructions, that the petitioner’s case has been reviewed and happily petitioner has been declared a successful candidate. Her e-dossier has been uploaded and she has been provisionally selected; her e-dossier has

been sent to the Directorate of Education to for appropriate corollary action.

8. The learned counsel for the petitioner seeks three reliefs – (i) her appointment should relate back to the date when her batchmates were appointed as per the merit and seniority list; (ii) she should be given the back wages because of an admitted error having been committed by the DSSSB in not processing her case earlier, for no fault of the petitioner and (iii) exemplary costs be imposed upon the respondents for troubling the petitioner and constraining her to expend monies for the past two years in pursuing her cases before the learned CAT as well as this Court. He refers to a communication issued by the DSSSB on 01.04.2022 which records, *inter alia*, as under:-

“On scrutiny of the record & OARS module, it has been found that she could not be given any opportunity to upload the deficient documents in the e-dossier and accordingly, he/she is being given 1st opportunity w.e.f. 05.04.2022 to 14.04.2022 to upload the documents as per details given below:-

<i>Sl. No.</i>	<i>Roll number</i>	<i>Remarks</i>
<i>1</i>	<i>12321501908</i>	<i>The candidate has uploaded Diploma in Pre-School Education after cutoff date i.e. 09.07.2020 whereas B.Ed. (Nursery) or 2 years certificate / Diploma in Nursery Teacher Education Program as on cutoff date required as per RRs. He / She is being given 1st opportunity w.e.f. 05.04.2022</i>

		<i>to 14.04.2022 to upload the deficient / requisite documents in the e-dossier.</i>
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3. The above candidate is directed to upload his/her deficient documents, through the e-dossier module w.e.f. 05.04.2022 to 14.04.2022.”

9. From the said communication there is clear admission of error in the rejection of the petitioner's candidature on the assumption, indeed insistence, of DSSSB that the petitioner had already been given two opportunities to upload the requisite documents in the e-dossier and that she had failed to do so. In the afore-quoted letter of 01.04.2022 DSSSB admits that the petitioner was not given any such opportunity earlier and the first time that she was given the opportunity was by virtue of the said letter.

10. That being the position, the delay in the processing of the petitioner's case on DSSSB's own erroneous assumption, cannot be to the petitioner's disadvantage. Therefore, her not being paid remuneration for the period for which she would otherwise have been employed and earned salaries should be compensated appropriately. There can be no dispute that the petitioner should be accorded seniority in service as per the merit position.

11. The learned counsel for the respondent submits that the petitioner's appointment will be from the date she is formally appointed after clearance of her medical examination and verification of other documents, her seniority will be as per the merit position in the list of successful candidates, as per procedure. Be that as it may.

The petitioner's batchmates were given two opportunities to complete the formalities but she was not accorded any such opportunity. There has been a delay in processing of her documents for no fault of hers. The fault lies in the erroneous, indeed, casual assumption that two opportunities had been granted to her too. The relevant records were not examined by DSSSB. There was lack of diligence to the petitioner's detriment. DSSSB's assumption is negated by its aforesaid admission in the letter dated 01.04.2022. The financial loss having been caused to the petitioner should be compensated in some measure.

12. The petitioner has been constrained to approach the learned CAT as well as this Court. In the circumstances, instead of directing payment of back wages, especially because the petitioner has not joined the services till date, the Court imposes a costs of Rs.50,000/- to be paid to the petitioner by DSSSB, within a period of one month. The petitioner's appointment letter too be issued within the same period.

13. The writ petition is disposed-off in the above terms. The pending applications are also disposed-off.

NAJMI WAZIRI, J

SWARANA KANTA SHARMA, J

MAY 9, 2022/kks