



2024:DHC:9523-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 16944/2024, CM APPL. 71768/2024, CM APPL.
71769/2024

KENDRIYA VIDYALAYA SANGATHAN THROUGH ITS
COMMISSIONERPetitioner

Through: Mr. Upendra Nath Singh, Adv.

versus

T. PRITAMRespondent

Through: Mr. S.K. Choudhary and Mr.
Gaurav Arora, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT (ORAL)
09.12.2024

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C. HARI SHANKAR, J.

CAV 598/2024

1. Since learned Counsel for the respondent has entered appearance, the caveat stands discharged.

**WP (C) 16944/2024, CM APPL 71768/2024, CM APPL
71769/2024**

2. The process for recruitment to seven vacancies of Deputy Commissioner¹ in the Kendriya Vidyalaya Sangathan² was initiated by the KVS in 2022. The respondent applied for the said post. He was

¹ "DC" hereinafter

² "KVS" hereinafter



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interviewed on 27 February 2023. His name figured at Serial No. 16 of the list of candidates shortlisted for interview. Thereafter, a panel of six candidates who had been found eligible for appointment to the post of DC in the KVS was released by the petitioner on 22 March 2023, in which the name of the respondent figured at Serial No. 6.

3. It is not in dispute that the panel was for direct recruitment against anticipated vacancies to arise in 2023. The respondent's grievance before the Tribunal was that, though two vacancies of DC had arisen in KVS in September 2023, on the retirement of D.K. Dwivedi and Mrs. Pallavi Sharma, he was not appointed, despite having been empanelled, though five other selected and empanelled candidates were allowed to join and given postings by the end of April 2023.

4. The respondent, therefore, approached the Tribunal by way of OA 718/2024 which stands allowed by the impugned judgment dated 22 July 2024.

5. KVS contested the OA. It is worthwhile to reproduce the averments contained in the counter affidavit filed by KVS by way of response to the OA, thus:

“2. That, in the functioning of the Sangathan, Board of Governors of KVS is the Supreme Authority to approve the policies of the Sangathan. The Commissioner, Kendriya Vidyalaya Sangathan is the Chief Executive of the Sangathan to implement the policies approved by the Board of Governors.

PARAWISE REPLY

1. In reply to para 1 of the OA, it is submitted that the impugned action of the respondents is as per law and no



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rule/guidelines have been violated in passing the same, as such, the instant OA deserves to be dismissed, being devoid of any merit.

2. That the contents of para 2 of the OA need no reply.

3. That the contents of para 3 of the OA need no reply.

4. **REPLY TO FACTS OF THE CASE:**

4.1-4.2 That the contents of paras 4.1-4.2 of the OA need no reply being matter of record.

4.3 That the contents of para 4.3 of the OA need no reply being matter of record. However, it is pertinent to mention here that the applicant's elevation to the post of Education Officer (redesignated as Joint Director) w.e.f. 21.08.2017 is in question and being investigated by the respondent organization.

4.4-4.6 That the contents of paras 4.4-4.6 of the OA need no reply being matter of record.

4.7 In reply to the contents of para 4. 7 of the OA, it is submitted that in any organization, the recruitment is done on the basis of existing vacancies as well as the vacancies arising throughout the year and taken as anticipated. The panel so formed is operated as per the availability of vacancies in order of the merit of the candidates. The anticipated vacancies are also filled in the same manner, as and when arisen. In the Recruitment Advertisement of Kendriya Vidyalaya Sangathan dated 15.12.2022 for the post of Deputy Commissioner, the existing and anticipated vacancies were taken into account. The Panel prepared after the interview was operated strictly on the basis of merit position. The candidates placed at higher position in the panel got the offer against the existing vacancies and the applicant who was at the lower position was supposed to get the offer against the anticipated vacancy as and when it arises.

4.8 That the contents of para 4.8 of the OA need no reply being matter of record.

4.9 In reply to the contents of para 4.9 of the OA, it is submitted that the representations were received but could not be responded subject to the pending decision on the outcome of the inquiry against the applicant, as per direction of Ministry of Education vide letter no. F.No. 16-6112021-Sch. 3 dated 30.01.2023.

4.10 In reply to the contents of para 4.10 of the OA, it is



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submitted that the validity of panel is one year which may however be extended up to another six months.

4.11 That the contents of para 4.11 of the OA need no reply being matter of record.

4.12 That the contents of para 4.12 of the OA need no reply being matter of record.

4.13-4.15 That the contents of paras 4.13-4.15 of the OA are not admitted being incorrect false, wrong and hence denied.

4.16 That the contents of paras 4.16 of the OA are not admitted being incorrect, wrong and hence denied. However, it is most respectfully submitted that the issue of offer of appointment to the post of Deputy Commissioner is subject to the pending decision on the outcome of the inquiry against the applicant.

5. REPLY ON GROUNDS

That the contents of paras of the grounds of OA are not admitted being wrong and hence denied. However, it is most respectfully submitted that the applicant has failed to make out his case on the basis of the facts as well as on law. The applicant has also failed to raise any substantial question of law, as such the present OA deserves to be dismissed being devoid of any merit.

6-7 That the contents of paras 6-7 of the OA need no reply.

8. That the contents of para 8 of the OA are not admitted being wrong and hence denied. However, it is most respectfully submitted that the applicants are not entitled for the reliefs prayed in the corresponding paras of the OA, in view of the submissions made herein above.

9-12 That the contents of paras 9-12 of the OA need no reply.

PRAYER

In view of above made submissions, it is therefore, most respectfully prayed that the Ld. Tribunal may graciously please to dismiss the OA being devoid of any merit in favour of the answering respondents and against the applicant.”

6. Before the Tribunal, the principal contention of the petitioner KVS, as is noted in the impugned judgement, was that the



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empanelment of the respondent as DC was under challenge before the Patna Bench of the Tribunal in OA 661/2023. It is worthwhile to note that, before the Patna Bench, the KVS staunchly defended the appointment of the respondent. The impugned judgment of the Tribunal reproduces, in this context, para 35 of the counter affidavit filed by the petitioner KVS before the Patna Bench, which reads thus:

“12. So far as the respondents' stand about the pending proceeding before the Patna Bench is concerned, the respondent no.2 has filed affidavit in reply. In pending proceedings before Patna Bench namely, OA No.661/2023, in para 35 of the said affidavit in reply, respondent no.2 has made following averments:-

“35. That the submission made in paragraph no.4.23 of the O.A is wrong, hence denied. Shri Pritam Singh, Joint Director (equivalent to Assistant Commissioner of KVS) erstwhile CTSA joined in KVS in Sept, 2022 as Assistant Commissioner after repatriation from NCTE New Delhi. It is worth mentioning that the post of Education Officer in KVS was redesignated as Assistant Commissioner, likewise the post of Education Officer in CTSA was re-designated as Joint Director. Both the posts carry the same pay matrix level-12 as per the 7th CPC. Hence his candidature was considered on the basis of combined experience of CTSA and KVS by the designated scrutiny committee of KVS. *Shri T. Pritam Singh was eligible for the post of Deputy Commissioner when he was in CTSA and was shortlisted for interview for the post of Deputy Commissioner through Direct Recruitment in KVS held in 2021. Smt Soma Ghosh was also shortlisted for interview in the same list and she is very much aware that name of Shri T. Pritam Singh was also there. Smt Soma Ghosh is misleading the Hon'ble CAT with her baseless allegation. She never raised this issue at that time.*”

(Emphasis supplied)

7. The Tribunal has noted that the pendency of the proceedings before the Patna Bench were of no consequence to the resolution of the dispute at hand, as there was no interlocutory injunctive order passed by the Tribunal in the said case.



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8. The further contention of the petitioner KVS before the Tribunal – which has been echoed before this Court by Mr U. N. Singh, learned Counsel for the petitioner – was that the respondent was not eligible for appointment as Education Officer (Trainee)³, and that he had secured appointed as EO by suppression of fact.

9. On this aspect, the Tribunal has noted, in para 15 of the judgment under challenge, that the KVS had itself addressed a reference, regarding the eligibility of the respondent for appointment as EO, to the Department of School Education and Literacy, Ministry of Education, which was answered by the Ministry by the following communication dated 4 January 2024:

“Subject: VIP reference conducting of an inquiry related to the functioning of officers of erstwhile CTSA (now merged with KVS) i.e. Shri AS Rawat. Shri T. Pritam Singh. both EQ/Joint Directors in CTSA and Shri Khushal Singh, Audit officer etc.

Madam.

I am directed to refer to KVSs letter No. E11030/6/30/Comp-CTSA/2022/KVS Estt 1 dated 10.11.2023 on the subject mentioned above and to convey the following:

i. KVS has submitted that Shri T. Pritam Singh. Principal Gr-1 of CTSA had seemingly managed to secure the post of Education Officer (Tr)/Joint Director on absorption basis in CTSA w.e.f. 21.08.2017 through concealment/misrepresentation of the facts to the 83rd Governing Body of CTSA, by suppressing the material information about his ineligibility on account of non-possession of minimum Essential Academic Qualification of 55% in Master's Degree as prescribed in RRs for appointment to the post of EO (Trg) in CTSA, irrespective of facts of mode of recruitment. He was having 50.66% marks in MA(Geography) and 53% marks in MA(Sociology).

³ “EO (Trainee)”



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ii. As such he technically remained Principal Gr-1 only and not the EO (Trg)/JD in CTSA based on which he even secured permanent absorption as Assistant Commissioner in KVS on account of merger of CTSA with KVS w.e.f. 01.04.2022.”

iii. Hence, the absorption of Shri T. Pritam Singh. Principal Gr-1 in the post of Education Officer/Joint Director in CTSA vide Office Order dated 16.07.2018 is void ab-initio and hence necessary corrective measures to review his permanent absorption in KVS on the post of "Assistant Commissioner" but the post of "Principal, as per CCS (Redeployment of Surplus Staff) Rules 1990, with any further review that. may consequently arise with regard to his eligibility and recent selection on the post of Dy Commissioner in KVS on DR basis may be taken by the competent authority as deemed appropriate."

2. In this regard, it is observed that Recruitment Rules prescribe the following:

4A(a) "Master's Degree in one of the subjects taught in CTSA schools with 55% marks from a recognised University."

The subjects have not been mentioned in the Recruitment Rules

“However, it has been specifically mentioned in the Manual that:

4(8) (1) "Masters Degree with minimum 55% marks in Science/Commerce/Social Science/Languages/Education."

Also it is mentioned in the below Note of the Manual on that page that "the incumbents to the posts of Principals and Education Officers are inter changeable.

Thus, "Education" as a subject has also been mentioned in the Recruitment Rules and Shri Pritam Singh possessed the qualification of M.Ed in First Division with 73.19% on 11 August, 2017, i.e. prior to his absorption in CTSA as Education Officer on 21.08.2017. *Thus, the findings of the Das Committee that "the absorption of Sh. T. Pritam Singh, Principal Gr-1 in the post of Education Officer/Joint Director in CTSA vide Office Order dated 16.07.2018 is void ab-initio" does not seem to be in line with the rule position.*

Further, the Governing Body of CTSA and approved by Chairperson. CTSA, the Competent Authority had endorsed/ approved the decision.

3. In light of the above, KVS is requested to review the matter



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and to take appropriate action in the matter at their end, under intimation to Ministry."

(Emphasis supplied)

10. Thus, the Ministry of Education also clarified that the respondent was eligible for being appointed as EO (Trainee) and directed the KVS to take appropriate action in the wake of the said clarification.

11. The Tribunal has itself recorded a finding regarding the eligibility of the respondent for appointment as EO (Trainee) in paras 16 and 17 of the impugned judgment, which may be reproduced thus:

"16. Reading of this letter makes it clear that the Recruitment Rules prescribed the Master's Degree with 55% of marks from recognized University for the post of Deputy Commissioner with one of the subjects taught in CTSA schools. The subjects have not been defined in the Recruitment Rules but they are defined in the Manual. Clause 4(B)(1) reads as under:-

"Master's Degree with minimum 55% marks in Science/Commerce/Social Science/Languages/Education". Also it is mentioned in the below Note of the Manual on that page that "the incumbents to the posts of Principals and Education Officers are inter changeable." (emphasis supplied)

17. The Ministry of Education, referring to the Recruitment Rules, stated that the applicant being M. Ed in First Division with 73.19% marks, was eligible to be appointed as Assistant Commissioner."

12. Following these observations, the Tribunal has held that the challenge to the respondent OA on the ground that he was ineligible for appointment as EO (Trainee) could not sustain. Accordingly, the Tribunal has, by the impugned judgment, allowed the respondent's application and directed that he be considered and appointment to the post of DC on the basis of his position in the select panel notified on



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22 March 2023.

13. Aggrieved thereby, the KVS has approached this Court under Article 226 of the Constitution of India by means of the present writ petition.

14. We have heard Mr. U.N. Singh at length.

15. In the present writ petition, the petitioner has sought to predicate its case on the premise that the Tribunal had, in deciding the respondent's OA, relied on the 1995 Rules, which had been amended in 2004 and were, therefore, not applicable. There is no reference to the 2004 Rules in the counter-affidavit filed before the Tribunal or even in the submissions advanced by the respondent at the Bar, as recorded in the impugned judgement. For the first time, before this Court in the present writ petition, the petitioners seek to contend that, in fact, the 1995 Rules were amended in 2004, that under the amended Rules, the essential qualification for the post of EO (Trainee) had been changed and that, applying the changed qualification, the respondent was not eligible for appointment as EO (Trainee). Further, the specific case that the petitioner has sought to urge in the present writ petition is that the respondent had obtained appointment as EO (Trainee) by suppressing facts.

16. We are not inclined to interfere with the impugned judgment of the Tribunal on the basis of this contention for four reasons.

17. Firstly, there is no material whatsoever forthcoming on the



record to support the contention of the petitioner that the respondent had suppressed any fact while applying and obtaining appointment as EO (Trainee). It is not the petitioner's case, even before us, that the respondent had mis-declared his educational qualification while obtaining the said appointment. The allegation of suppression of facts is, therefore, *ex facie*, unacceptable.

18. Secondly no proceedings have ever been taken against the respondent on the allegation that his appointment as EO (Trainee) was on the basis of ineligible qualifications. Admittedly, no chargesheet, containing any such allegation, was ever issued to the respondent.

19. Mr. Singh's contention here is that there is some inquiry pending against the respondent. This contention was also sought to be urged before the Tribunal, and has been noted in para 22 of the impugned judgment, thus:

“22. Mr. Gyanendra Singh submitted that there is an inquiry pending against the applicant. However, he could not give any details of inquiry, nor are the details referred in the affidavit in reply.”

20. We are no wealthier. As before the Tribunal, there is not an iota of material available in the writ petition, or in any document filed therewith by the petitioners, to sustain the contention that any inquiry was pending against the respondent. No details of any such inquiry are forthcoming. Given the observation in para 22 of the impugned judgement, it is obvious that, if any such inquiry were in fact pending, the petitioner would have disclosed its details in the writ petition. There is no such disclosure. The plea of a “pending inquiry” appears, therefore, to be a plea more vaporous than substantial. We even



queried Mr Singh in this regard; however, he, too, is unable to reveal the details of any alleged inquiry which was pending against the respondent. On this aspect, therefore, this Court is as clueless as the Tribunal. We, therefore, reject this plea outright.

21. That apart, as already noted, it is not the petitioner's case that any disciplinary proceedings were initiated against the respondent.

22. Thirdly, there was no reference, either in the counter affidavit before the Tribunal or even in the oral arguments as noted in the impugned judgment, to the fact that there was an amendment in the applicable Rules in 2004.

23. Fourthly, even the Ministry of Education, in its clarification dated 4 January 2024 *supra*, to the query by the KVS in that regard, opined that the respondent was eligible to be appointed as EO (Trainee). The qualifications for EO (Trainee), cited in the said clarification, are the same as those on which the Tribunal has placed reliance in the impugned judgement.

24. We remind ourselves that we are not sitting in appeal over the decision of the Tribunal. This Court is exercising *certiorari* jurisdiction under Article 226 of the Constitution of India. We are, therefore, only required to examine whether there has been any manifest error in the manner in which the Tribunal has decided the case.

25. We are not, therefore, inclined to allow the petitioner to



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ventilate an entirely new case before this Court, neither pleaded nor argued before the Tribunal.

26. In these circumstances, we find no reason to interfere with the impugned judgment which is accordingly upheld in its entirety.

27. Nonetheless, at request of Mr. Singh, we extend the time granted by the Tribunal for compliance with its direction by a period of six weeks from today.

28. Subject to this limited indulgence, the petition is dismissed.

C. HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

DECEMBER 9, 2024/dsn

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