



2025:DHC:275-DB



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

+ W.P.(C) 3722/2024

SUVIDHA YADAV

.....Petitioner

Through: Mr. Pradeep Kumar and Ms.
Sanskriti, Advocates

versus

GOVERNMENT OF NCT OF DELHI & ORS.Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mr. Nitesh Kumar Singh,
Advocate

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

17.01.2025

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C.HARI SHANKAR, J.

1. The petitioner is the unsuccessful applicant before the Central Administrative Tribunal¹ in OA 1736/2017².

2. Skipping superfluties, the petitioner participated in an examination for recruitment to the post of Trained Graduate Teacher³ [Social Science (Female)]. Two advertisements Nos. 01/2010 with post code 10/10 and 02/2010 with post code 60/10 were issued by the respondent inviting applications for the said post. The petitioner is a

¹ "the Tribunal", hereinafter

² **Suvidha Yadav v GNCTD**

³ "TGT", hereinafter



candidate belonging to the Other Backward Classes⁴.

3. The examination was in two tiers. Tier I was the preliminary examination and Tier II was the main examination. The petitioner cleared Tier I under both the Post Codes and was shortlisted for appearing in the Tier II examination but was not selected for the post of TGT. The reason adduced by the respondent Delhi Subordinate Services Selection Board⁵ was that it had fixed cut off marks of 82 in respect of Post Code 10/10 and 80 in respect of Post Code 60/10, whereas the petitioner's marks in the Tier II examination was admittedly 78.

4. Aggrieved thereby, the petitioner approached the Tribunal by way of the aforesaid OA, from which this petition emanates. The Tribunal has, by the judgment under challenge, dismissed the OA observing that as the petitioner did not attain the cut off marks fixed by the DSSSB in respect of either of the two post codes, the DSSSB was justified in not selecting her.

5. Aggrieved by the said judgment of the Tribunal, the petitioner has approached this Court by means of the present writ petition.

6. We have heard Mr. Pradeep Kumar, learned counsel for the petitioner and Mr. Nitesh Kumar Singh, learned counsel for the respondents, at length.

⁴ "OBC", hereinafter

⁵ "the DSSSB", hereinafter



7. Mr. Pradeep Kumar sought to place reliance on the following note in the advertisement pursuant to which the petitioner had undertaken the examination:

“(4) The minimum qualifying marks for Preliminary Examination is 40% for General Category candidates and 30% for Reserved Category candidates subject to maximum of 10 (Ten) times the number of vacancies. The minimum qualifying marks for main Examination/One Tier Main Examination is 45% for General Category candidates & 35% for Reserved Category candidates.”

8. Mr. Pradeep Kumar’s contention is that as the main examination was of 200 marks and Note (4), extracted *supra*, fixed 35% (working out to 70 marks) as the qualifying marks for reserved category candidates, and his client had scored 78 marks, she was entitled to be selected.

9. Mr. Singh, learned counsel for the respondents, on the other hand, relies on Clause 9(iii), also in the Advertisement, under the head “Mode of Selection”, which read thus:

“9(iii) The Board has full discretion to fix minimum qualifying marks for selection of posts for different categories i.e. UR/SC/ST/OBC/PH/EXSM in order to achieve qualitative selection and to recruit the best talent available.”

10. In this context, he places reliance on the judgment of the Supreme Court in *MCD v Surender Singh*⁶.

11. Having heard learned counsel for both sides and having perused the material on record, we are of the view that the present dispute is

⁶ (2019) 8 SCC 67



squarely covered by the decision in *Surender Singh*. The dispute in that case was identical. Clause 25 of the advertisement, which was subject matter of controversy in that case, read thus:

“25. The Board has full discretion to fix minimum qualifying marks for selection for each category i.e. SC/ST, etc. of post in order to achieve qualitative selection and to pick up the best talent available.

12. It is clear that Clause 25 of the Advertisement which was before the Supreme Court, and Clause 9(iii) of the Advertisement with which we are concerned, are identical.

13. The Supreme Court held that, in view of the aforesaid clause, the DSSSB was well within its rights to fix cut off marks and to obtain the best talent and that, if they did so and did not select candidates who failed to attain the said cut off marks, no legitimate cause for grievance existed. In the said case, too, one of the contentions advanced before the Supreme Court was that, by fixing of the said cut off marks, vacancies went unfilled. The Supreme Court did not accept this contention as constituting a legitimate ground to interfere.

14. We may reproduce, for ready reference, paras 3 to 6 and 17 and 18 of *Surender Singh* thus:

“3. In the mode of selection indicated in Advertisement No. 1/2006, a discretion was provided to DSSSB to fix the minimum qualifying marks for selection for each category in order to achieve qualitative selection and to pick up the best talent available. The same was contained in Clause 25, while Clause 26 provided that the marks obtained by the candidates in a written examination will not be disclosed in any case. The written examination was accordingly conducted on 2-7-2006. *The advertisement no doubt did not specify any cut-off qualifying marks in the said*



examination.

4. On completion of the process of the written examination, the merit list was published but neither the private respondents herein nor the other petitioners/appellants before the High Court had qualified. It is in that light the private respondents herein filed the writ petitions bearing Nos. 16126-130 of 2006. Certain other candidates who did not qualify had also filed similar writ petitions. Hence all these writ petitions were clubbed and considered together.

5. The prayer in the writ petition was to quash Clauses 25 and 26 contained in the mode of selection in Advertisement No. 1/2006 which provided for fixing the minimum qualifying marks for selection. The contention in the writ petition was that the same was violative of the directions contained in the judgment dated 18-2-2005 passed in **Kuldeep Singh v. DSSSB**⁷. In that light a direction was sought to DSSSB, both to consider the case of the writ petitioners against the remaining vacancies without fixing minimum qualifying marks for selection and to publish the results of all the vacancies and to fill up the same. *In view of the cut-off mark being introduced, the result of 1638 posts was declared out of the total posts advertised. The writ petitioners contended that at such stage when they contacted DSSSB and the appellant herein regarding non-publishing of the select list for all the posts advertised they were informed that they had fixed certain minimum marks as per their discretion contained in the advertisement and that they had found only 1638 candidates achieving the said minimum marks and therefore the results of only 1638 candidates were declared.*

6. The writ petitioners, therefore, contended that the process adopted by DSSSB is contrary to the directions issued in **Kuldeep Singh**. The writ petitioners had also assailed the action of DSSSB in refusing to give any details about the minimum qualifying marks which had been fixed unilaterally, by contending that the same is arbitrary and discriminatory. *It was contended on behalf of the writ petitioners that the action of DSSSB to limit the number of candidates by introducing the cut-off marks has affected their right and, therefore, sought for direction to be issued in exercise of the writ jurisdiction to fill up all the posts and provide employment to the writ petitioners.* It was contended therein that DSSSB has to follow the requisition given by MCD for undertaking selection process and as such DSSSB being merely an agency to conduct the interviews/tests and prepare the panel cannot lay down its own criteria for scrutinising the eligible candidates by

⁷ 2005 SCC OnLine Del 198



fixing minimum qualifying marks. The decisions in support of the contentions put forth on behalf of the writ petitioners were also relied.

17. The position noticed above would indicate that the entire grievance with which the petitioners had approached the High Court was on claiming to be aggrieved by Clauses 25 and 26 contained in Advertisement No. 1/2006 issued for recruitment of Assistant Teacher (Primary) for the benefit of the appellant MCD. In order to appreciate the same in its correct perspective, it would be appropriate to take note of the impugned Clauses 25 and 26 which read as hereunder:

“25. The Board has full discretion to fix minimum qualifying marks for selection for each category i.e. SC/ST, etc. of post in order to achieve qualitative selection and to pick up the best talent available.

26. The marks obtained by the candidate in written examination will not be disclosed in any case.”

18. *From a perusal of the said clause it is noticed that though under the very clause there are no cut-off marks specified, Clause 25 would, however, provide the full discretion to DSSSB to fix the minimum qualifying marks for selection. In the instant case, keeping in view that the recruitment was for the post of Assistant Teacher (Primary) and also taking note of the orders passed by the High Court in an earlier petition requiring the maintenance of minimum standards, DSSSB while preparing the select list had stopped the selection at a point which was indicated as the cut-off percentage. In a circumstance where Clause 25 was depicted in Advertisement No. 1/2006, when the private respondents herein and the other petitioners before the High Court were responding to the said advertisement, if at all they had a grievance that the clause is arbitrary and might affect their right ultimately since no minimum marks that is to be obtained have been indicated therein, they were required to assail the same at that stage. On the other hand, despite being aware of the clause providing discretion to DSSSB to fix the minimum qualifying marks, they have participated in the selection process by appearing for the qualifying examination without raising any protest. In that circumstance, the principle of approbate and reprobate would apply and the private respondents herein or any other candidate who participated in the process cannot be heard to complain in that regard.”*

(Emphasis supplied)



15. The *ratio decidendi* of ***Surender Singh***, as contained in the emphasized sentences from the afore-extracted paragraph, clearly applies to the present case.

16. We are unable to distinguish the decision in ***Surender Singh*** from the facts of this case on the basis of Note (4) on which Mr. Pradeep Kumar placed reliance. Note (4) only fixes the minimum qualifying marks for the main examination. It does not, in any way, detract from the latitude granted to the DSSSB under clause 9(iii) under the head, 'Mode of Selection' to fix qualifying marks to attain the best talent. The Supreme Court has, in ***Surinder Singh***, held that the said Clause entirely empowers the DSSSB to fix a cut off mark, and not select candidates who did not make the cut.

17. In that view of the matter, we do not find any cause for interference with the impugned judgment passed by the Tribunal.

18. The writ petition is, accordingly, dismissed with no orders as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 17, 2025/yg

Click here to check corrigendum, if any