

Rajbala Vs Govt. Of NCT Of Delhi Through Chief Secretary New Secretariat, I. P. Estate, New Delhi-110001 & Ors.

Court: Central Administrative Tribunal Principal Bench, New Delhi

Date of Decision: Jan. 14, 2025

Acts Referred: Administrative Tribunals Act, 1985 " Section 19
Constitution Of India, 1950 " Article 14

Hon'ble Judges: Harvinder Kaur Oberoi, Member (J); Dr. Sumeet Jerath, Member (A)

Bench: Division Bench

Advocate: Setu Niket, Tanmay Vashisht, Amit Anand, Purnima Maheshwari, D. K. Singh

Final Decision: Disposed Of

Judgement

Dr. Sumeet Jerath, Member (A)

1. The instant OA has been filed by the applicant Ms. Rajbala under section 19 of the Administrative Tribunals Act, 1985 seeking the following

reliefs:-

A. Call for records of the case;

B. Quash and set aside order dated 08.05.2024 issued by Respondent No. 2;

C. Pass an order directing the Respondents to appoint the Applicant to post of TGT (Social Science) Female with all consequential benefits

including arrears of pay, seniority, etc. along with interest at 9% p.a. till realization

D. Award cost of the proceedings; and

E. Pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice in favor of the Applicant.

2. The conspectus of the case as per the counsel of the applicant is that the DSSSB (respondent no. 3) had issued an advertisement No. 02/21 dated

12.05.2021 regarding various vacancies for Trained Graduate Teachers (TGTs) Male and Female in various subjects, Assistant Teacher Primary and

Nursery, Junior Secretariat Assistant, Counsellor, Head Clerk, Assistant Teacher Primary and Patwari. It was also made clear that only online

applications would be accepted and applications received through any other mode shall stand rejected automatically. The closing date for the

submission of the online application was mentioned as

24.06.2021 which was further extended till 04.07.2021. The applicant being duly eligible as per the Recruitment Rules and advertisement applied for

Post Code 40/21, TGT (Social Science) Female under EWS category well before the closing date. She appeared in the Tier-I examination held on

09.10.2021 where she was declared successful vide result dated 24.08.2022 declared by the respondent No. 3. Despite successfully completing

document verification, the appointment letter and joining was not issued to the applicant. To her surprise, the respondent No. 2 issued a deficiency

Memo dated 06.02.2023 stating as follows :

“During the course of Document Scrutiny on 12.10.2022 in respect of Ms. Rajbala (Roll No. 411040105472) for the Post of TGT (Social

Science) - Female (Post code-40/21), the following deficiency was found:-

1. EWS Certificate issued on 01.02.2021. EWS Certificate is required to be issued from 01.04.2021 to 04.07.2021.

You are, therefore, directed to submit the requisite documents/clarification as mentioned above within 10 days from the date of issue of this

memo.

The applicant made a representation in reply to the memo dated 06.02.2023. She got clarification from concerned office of the Tehsil Baghadurgarh,

District Jhajjar Govt. of Haryana dated 08.12.2022 that EWS Certificate No. EWS/2021/669 issued on 01.02.2021 in respect of Rajbala D/o Sh. Ved

Prakash is valid for the financial Year 2021-2022 i.e. 1st April 2021 to 31st March 2022.

The applicant made another representation expressing her concern of delay in appointment to the post of PGT (Social Science) Female on 16.02.2024.

Vide order dated 08.05.2024, respondent no. 2 " Directorate of Education issued the rejection/cancellation order of the candidature of the applicant

for the post of TGT (Social Science) Female. Aggrieved by this action, the applicant has approached CAT.

3. The counsel of the applicant argued on the following grounds :-

A. The impugned order is in violation of Article 14 of the Constitution of India and hence is liable to be quashed and set aside.

B. The impugned order is ex facie arbitrary, illegal and suffers from non-application of mind.

C. EWS certificate issued by the concerned authority on 01.02.2021 for the year 2021-2022 is valid and proper, having been issued in terms of the

DoPT OM on the subject.

D. DOPT OM dated 04.06.2019 does not stipulate that the certificate cannot be issued prior to the 31st of March of the year for which it is valid.

E. The Respondents have acted in wholly arbitrary manner by inventing a new rule whereby the candidature of the Applicant has been illegally,

selectively and arbitrarily cancelled. It is submitted that such a rule has been arbitrarily applied whilst similarly placed candidates have been granted

appointment and are gainfully employed with the Respondents.

F. Applicant has obtained certificates from the concerned Tehsildar certifying her EWS category status. These certificates were uploaded for

document verification; however, Respondents did not consider them and subsequently rejected the applicant's candidature.

G. Applicant has submitted the latest EWS certificate at the time of the document verification duly issued prior to the closing date of application as per

requirement of Advertisement.

H. DOPT OM dated 04.06.2019 doesn't invalidate the certificate issued on 01.02.2021 even if it is issued prior to 31st March 2021.

I. The respondents failed to appreciate that once the name of the applicant was shown against the list of selected candidates, the principle of

legitimate expectation is clearly attracted. As per definition in Black's Law Dictionary 10th Edition 'Legitimate Expectation' is an expectation arising

from the reasonable belief that a private person or public body will adhere to a well established practice or will keep a promise.

J. The impugned order is in violation of the Judgment of the Hon'ble Supreme Court in 'Secretary, A.P. Public Service Commission vs B.

Swapna And Ors [2005(4) SCC 154] held as under:

In Maharashtra State Road Transport Corpn. And Ors. v. Rajendra Bhimrao Mandve and Ors. (2001 (10) SCC 51), it was held as under:

It has been repeatedly held by this Court that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the

authorities concerned in the middle or after the process of selection has commenced. Therefore, the decision of the High Court, to the extent it

pronounced upon the invalidity of the circular orders dated 26.6.1996, does not merit acceptance in our hand and the same are set aside.

K. Respondents did not consider the Applicant's representation and delayed conducting the document verification, despite the Applicant being

provisionally qualified. After more than one year, the Respondents issued the illegal and arbitrary impugned order.

L. The applicant is aggrieved insofar as the Respondents have acted in an arbitrary manner in not following the DOPT OM 04.06.2019 in respect of

EWS certificate.

M. The Impugned Order is passed without due application of mind as even the Crucial date referred to in Question No 21 does not relate to the

certificate issued prior to the cut of date.

N. The EWS certificate issued by the competent authority has not been doubted by the Respondents and hence the Respondents are bound by the

same.

O. The applicant craves leave to urge additional grounds at the time of hearing of the application.

4. The counsel of respondent no. 3 (DSSSB) argued that they are a proforma party and that their role has become *œfunctus officio* and

accordingly they may be exempted from the memo of parties in this OA.

5. Heard the counsel of both the parties ; examined the documents on record and perused the relevant judgments. We have observed that the Income

& Asset (EWS) Certificate issued during financial year 2020-2021 on 01.02.2021 by Tehsildar " Bahadurgarh Tehsil is valid for financial year

2021-2022 (from 01.04.2021 to 31.03.2022) as shown in the heading of the certificate. This position was later clarified by the Tehsildar ,

Bahadurgarh vide his letter dated 08.12.2022. Also the letter from Chief Secretary - Haryana to Chief Secretary " Delhi No. 22/229/2023-HR-III

dated 22.05.2024 has clarified as under :-

"2 Government of Haryana wishes to express its deep concern about the withdrawal of appointment letters in many cases and the

prospects thereof in some cases still under consideration of Directorate of Education of Delhi Government, of meritorious youth of

Haryana, The Government of Haryana after meticulous consideration of the issues clarifies that the candidature of the candidates cannot

be cancelled merely on any one or more of the grounds stated above because of the following reason :-

(i) The EWS certificates in Haryana are issued keeping in view the average fixed income and assets for the complete financial year,

immediately upon an application being made to the competent authority, no matter what the date of application whether or not before

completion of the financial year Therefore, the EWS certificates issued before the completion of the financial year 2020-21, ie during the

period between 1st January and Stat March 2021, submitted by the candidates who are covered under 1(i) above should be treated valid

for the year 2021-22.

(ii) Regarding acceptance of EWS Certificate issued by the Naib Tehsildar instead of Tehsildar submitted by the applicants/candidates of

Haryana it is clarified that-

(a) Haryana Government in the Schedule to Right to Service Act, 2014 has authorized both Tehsildar and Naib-Tehsildar to issue EWS

Certificates to the persons residing in Haryana.

(b) In another case of similar nature, it has already been clarified by Haryana Government vide letter No. 22/227/2023-3HR-III, dated 7th

December 2023 (Copy enclosed) addressed to UPSC/DoPT that State Government has decided to treat the EWS certificates issued by the

Naib-Tehsildar as true and genuine. In fact, such EWS certificates issued by the Naib Tehsildar have also been accepted by UPSC/DOPT.

(c) in CWP 8502 of 2017 (O&M) it has been held by the Hon'ble Punjab and Haryana High Court that "The power and duties of

Tehsildar and Naib Tehsildar are of similar nature. The Tehsildars and Naib Tehsildars have powers of Executive Magistrate to maintain

law and order. Their powers and functions include Maintenance and Updating Revenue Record, Registration of documents and recovery of

Government dues. Therefore, experience/service rendered as Naib Tehsildar and Tehsildars is similar.

Therefore, EWS certificates issued by Naib Tehsildar for candidates of Haryana referred to at 1(ii) above should be treated as valid.

(i) Regarding applicants/candidates who are covered under 1(iii) above, it is informed that Haryana Government launched income

certificates generation via the portal <https://saralharyana.gov.in> during the year 2021-22 to issue online certificates of all kinds including

Caste Certificates/Income Certificates/EWS Certificates etc. which were previously being issued by different relevant Departments of

Haryana Government. It is also clarified here that in the previous system it would have been possible for a candidate to obtain two different

EWS Certificates verifying the income at two different levels by approaching the relevant Department with two different sets of affidavits at

two different dates. With the launch of the said portal this possibility has been completely pre-empted. There is a unique Family ID for every

family and the verified annual income of every family for every year is available in the State level database. The moment a candidate applies

for EWS Certificate on the SARAL portal, it fetches the income and caste data from the said database. There is no scope for the competent

authority (Tehsildar or Naib-Tehsildar etc.) to make any change to the verified income of the previous year. Therefore, in this system, the

candidate may generate his certificate in any of the months. Many candidates who submitted the EWS certificate issued after the last date of

submission of application might not have been aware of the newly launched portal by Haryana Government and consequently, they may not

have been able to generate their own EWS Certificate in time. It is, therefore, requested that the EWS Certificate generated after the last

date for the candidates referred to at 1 (iii) above may also be accepted because they truly capture the actual verified income for the

previous year. It is further added that no cut-off date need be fixed for the purpose of Caste Certificate of candidates of reserved category

because caste stays the same at all times. Similarly, the verified family income of the candidates residing in Haryana is available in the

database on an annual basis at all times and remains unchanged for a particular period in the financial year. Therefore, the mere fact of

submission of EWS Certificate which was issued after the cut off date cannot legally be treated as valid ground for cancellation of

candidature.

In view of the above, you are requested to consider the EWS Income and Asset Certificates issued by the Competent Authority during the

period between 1st January and 31 March 2021, before or after the last date as valid and allow the respective candidates to continue/join

back their duties. It is also requested that a similar decision may also be taken for all other selected candidates of Haryana having similar

EWS Certificates, where cases for cancellation of candidature/withdrawal of appointment letter are in pipeline in Directorate of Education

or any other department of Delhi Government on any of the grounds mentioned in para 1 above.

If required, Government of Haryana can depute the Director General, Human Resources, Haryana to meet with the Director of Education

or any other authority to work out the details of all the candidates of Haryana whose appointment may be in process of cancellation and

provide any further detailed justification for each case wherever felt necessary by him. A

In view of the above an empathetic view has to be taken as the certificates were to be collected by the candidates (including the applicant) from the

Revenue Authorities during the trying and testing times of Covid 19. Also the respondents have given appointment to similarly placed candidates in

November, 2024. The applicant has mentioned that earlier a similarly situated candidate namely Ms. Neelu Rani who had submitted EWS Certificate

(No. EWS/2021/73 dated 08.01.2023) issued prior to 31st March of the respective year was duly appointed by the respondents and was subsequently

posted at Govt. Girls Senior School, Baprole.

6. This Tribunal has also gone through the judgment of the Coordinate Bench in OA No. 2486/2022 dated 14.12.2023 which was upheld by the

Hon^{ble} High Court of Delhi in W.P. No. 10057/2024 and CM Appl.- dated 23.07.2024 and have come to the conclusion that this Judgment gives

force and momentum to the case of the applicant.

7. In the light of the above, we are of the considered opinion that this OA has merit and deserves to be allowed. We accordingly quash and set aside

the impugned order No.DE-3 (34)DRC(E-III)/TGT(Social Science)/Female/2023/4192-4195 dated 08.05.2024 and direct the respondents to verify the

admissibility of the Income & Asset Certificate issued by Tehsildar, Bahadurgarh within a period of 30 days and thereafter if the Certificate is found

admissible as per rules and regulations on the subject, consider issuing offer of appointment to the applicant within 45 days from the date of receipt of

the certified copy of this order. The applicant would be entitled to all consequential benefits like seniority and promotion on notional basis. However,

there will be no payment of arrears of pay and allowances on the principle of "No work no pay".

8. With the above directions, this OA is disposed of with no order as to costs.