

Neutral Citation No. - 2025:AHC:19157

AFR

Court No. - 6

Case :- WRIT - A No. - 11798 of 2022

Petitioner :- Atul Kumar And 5 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Satya Prakash Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Neeraj Tiwari,J.

1. Heard Sri Ashutosh Tiwari, Advocate along with Sri Satya Prakash Tripathi, learned counsel for the petitioners and Sri Manish Goyal, learned Senior Counsel/Additional Advocate General, assisted by Sri A.K. Goyal, learned Additional Chief Standing Counsel for the State-respondents.

2. Present petition has been filed with the following prayers:

“ I. A writ, order or direction in nature of certiorari to quash the result dated 19.07.2022 in pursuance to advertisement no. PRPB-One-1(L.S)/2020 dated March 2021 (Male/Female) for recruitment of UP Police Sub-Inspector (Confidential) and Assistant Sub-Inspector (Clerk) and Assistant Sub-Inspector (Accountant) (Male/Female) and Confidential Assistant.

II. A writ order or direction in the nature of mandamus commanding the respondent no. 3 that is Uttar Pradesh (Police Recruitment and Promotion Board), U.P. at Lucknow to declare the fresh and revised list of selected candidates while considering the name of petitioner in the selected list of eligible candidates for typing test.”

3. Brief facts of the case are that an advertisement no. PRPB-One-1(L.S)/2020 dated 23.03.2021 has been issued by respondent No. 2 for recruitment of UP Police Sub-Inspector (Confidential), Assistant Sub-Inspector (Clerk) and Assistant Sub-Inspector (Accountant) (Male/Female) and Confidential Assistant. Petitioners submitted application form for the aforesaid posts and they were allowed to appear in the written examination, which was held on 4th/5th December, 2021. The result of written examination was declared on 01.04.2022 and petitioners successfully qualified in the written examination. Thereafter petitioners appeared in the document verification/physical standard test at the prescribed venue of examination. Respondent No. 3 published list of qualified candidates, who are allowed to appear in the computer typing

test/stenography test in which names of petitioners are missing. Petitioners approached the respondent concerned, where they were informed that as they are not having Physics, Chemistry and Mathematics(PCM) in the intermediate examination, therefore, they are not qualified to appear in the typing test/stenography test. Hence, present petition.

4. Learned counsel for the petitioners submitted that petitioners are having qualification of PGDCA certificate, but not having PCM in the intermediate. He next submitted that as per Govt. Order dated 09.06.2020 the requirement of PCM is only for the post of Computer Operator and not for the other posts advertised, therefore, they are fully eligible to participate in further selection process of aforesaid recruitment. He next submitted that considering the aforesaid facts, this Court vide interim order dated 04.11.2022 directed the respondent to conduct the typing test, which was conducted by the respondents and result of the same is available before this Court in the sealed cover envelope. He lastly submitted that direction in the nature of mandamus may be issued to open the seal cover of the envelope and consider the case of petitioners for appointment on the posts applied for.

5. Per contra, Sri Manish Goyal, learned Senior Counsel appearing for the respondents pointed out that first of all, against the order of this Court dated 04.11.2022, State Government has preferred Special Appeal Defective No. 32 of 2023 and the Court has disposed of the same vide order dated 16.01.2023 with the finding that any observation made in the interim order dated 04.11.2022 shall not be treated binding and shall be subject to the final decision of the writ petition.

6. On merits, he argued that in the advertisement, it is clearly mentioned that candidates having PGDCA certificate without PCM in the intermediate examination shall not be eligible for participating in the examination. He further submitted that at the time of submission of application form, it is required on the part of the petitioners to fulfil the minimum qualification mentioned in the advertisement. In support of his contention, he placed reliance upon the judgments of Hon'ble Apex Court in the matters of *Suman Devi Vs. State of Uttarakhand (2021) 6 SCC* and *Rakesh Kumar Sharma Vs. State of (NCT of Delhi): (2013) 11 SCC*.

7. He further submitted that petitioners are aware with the conditions so mentioned in the advertisement, but they have never challenged the advertisement, therefore, after appearing in the examination, they may not be permitted to challenge the advertisement. In support of his contention, he placed reliance upon the judgments of Hon'ble Apex Court in the matters of *Ashok Kumar Vs. State of Bihar: (2017) 4 SCC*, *Vijendra Kumar Verma Vs. Public Service Commission: (2011) 1 SCC*, *K.H. Siraj Vs. High Court of Kerala: (2006) 6 SCC*, *Madan Lal Vs. State of J & K: (1995) 3 SCC* and *Pradeep Kumar Rai Vs. Dinesh Kumar Pandey: (2015) 11 SCC*.

8. He next pointed out that recruitment for the posts so advertised is governed by Uttar Pradesh Police Ministerial, Accounts and Confidential Assistant Cadre Service Rules, 2015(hereinafter, referred to as, 'Rules, 2015'), in which there is no provision with regard to equivalence of 'O' Level certificate. Later on, Rules, 2015 was amended and Uttar Pradesh Police Ministerial, Accounts and Confidential Assistant Cadre Service(Third Amendmant) Rules, 2020(hereinafter, referred to as, 'Rules, 2020') has been promulgated having the provision of equivalence decided by the State Govt. He next pointed out that earlier, for the post of Computer Operator, a meeting was held for deciding the equivalence of 'O' Level certificate and accordingly, equivalence was framed. Now for the posts, which are governed by Rules, 2015 and Rules, 2020 again a meeting was held to decide the equivalence and the Committee adopted the same equivalence which was decided for the post of Computer Operator with regard to 'O' Level certificate. He further pointed out that in the said Rule, candidates having PGDCA certificate without PCM in intermediate are not eligible for the post of Computer Operator and the PGDCA certificate is not treated equivalent to 'O' Level certificate. He further pointed out that same qualification is very well mentioned in the advertisement itself and further, in light of Govt. Order dated 09.06.2020, PGDCA certificate of petitioners without PCM in intermediate examination is not equivalent to 'O' Level certificate. He lastly concluded that employer is the sole judge to decide the qualification, therefore, relief so prayed may not be granted to petitioners and the writ petition is liable to be dismissed. In support of his contention, he placed reliance upon the judgments of Hon'ble Apex Court in the matters of *Shifana P.S. Vs. State of Kerala and others: (2024) 8 SCC*, *Punjab National Bank Vs. Anit Kumar Das: (2021)*

12 SCC, Zahoor Ahmad Rather and Others Vs. Sheikh Imtiyaz Ahmad and Others: (2019) 2 SCC and judgment of Division Bench of this Court in Special Appeal Defective No. 10 of 2025 (**Saurabh Saxena Vs. Union of India Thru. Secy. Ministry Skill Development Entrepreneurship New Delhi and 5 Others**).

9. I have considered the rival submissions made by learned counsel for the parties and perused the record.

10. Fact of the case are undisputed.

11. In the Appendix-2 of the advertisement, it is clearly mentioned that the a candidate not having PCM in the intermediate examination shall not be eligible for the posts in question. Relevant part of the Appendix-2 of the advertisement is being quoted hereinbelow:

“

21	क्या किसी बिना PCM, के PGDCA किया हुआ व्यक्ति पात्र होगा ?	PGDCA तीन वर्ष के Diploma से नीचे की Degree है अतः बिना PCM, के PGDCA किया हुआ व्यक्ति पात्र नहीं होगा।
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12. From the perusal of advertisement as well as qualification of petitioners, it is undisputed that petitioners were not fulfilling the minimum qualification so required.

13. The very same issue has been decided by the Hon’ble Apex Court in the matter of **Suman Devi(Supra)**, in which the Hon’ble Apex Court has held that up to last date of submission of application form, minimum qualification is required to be completed. In case the candidate is not having the minimum qualification on the last date of submission of application form, he shall not be eligible for the posts in question. Relevant paragraphs of the aforesaid judgment are being quoted hereinbelow:

“29. This court holds to be unmerited, the arguments of the appellant that the state was bound by the criteria specified in the advertisement issued by it in March 2016, even though Clause 7 of that notification clearly specified that the recruitments for ANMs would be in accordance with the statutory rules. The omission to mention the relevant qualifications (i.e. intermediate or equivalent qualification with the science stream) did not relieve the state from its obligation to

follow existing rules. It has not been disputed that the 1997 Rules, after amendment in 1998, mandated that candidates desirous of being recruited as ANM or Health Workers had to possess educational qualifications including Intermediate pass (or its equivalent) with the science stream, apart from the necessary ANM certificate course. That condition remained unchanged even after the creation of the State of Uttarakhand. It was only in 2016, after the advertisement for the concerned recruitment was published, that the rules were changed; the changed new rules relieved the requirement of having to qualify the Intermediate level with science subjects, for the period 2010-2013 and thereafter, after July 2016. For all other periods, the basic educational qualification of intermediate or equivalent pass with a mandatory science stream qualification, remained an essential condition. Therefore, the argument that the state was bound by the standards it specified (in the advertisement which had omitted any mention as to the educational qualification of intermediate with science) did not relieve the state from the obligation of enforcing statutory rules. It is too late in the day to assert that any kind of estoppel can operate against the state to compel it to give effect to a promise contrary to law or prevailing rules that have statutory force. All arguments to this effect on the part of the appellants are therefore rejected. Furthermore, it is useful to recollect that the eligibility of a candidate or applicant for a public post or service, is to be adjudged as on the last date of receipt of applications for such post or service, in terms of the relevant advertisement, and the prevailing service rules. This position is recognized by settled authority; in Ashok Kumar Sharma v. Chander Shekhar¹⁰ a three-judge bench of this court ruled, in this context that:

“6. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it.”

14. Again the very same issue was before the Hon'ble Apex Court in the matter of **Rakesh Kumar Sharma(Supra)**. Relevant paragraphs of the said judgment are being quoted hereinbelow:

“3. A pre-requisite qualification for the post was that of B.Ed. Though he had appeared in the B.Ed examination prior to submission of the application for TGT (Sanskrit), the result however was declared only on 28.1.2008. He participated in the selection process as he made a representation that he had acquired the requisite eligibility. The appointment letter dated 19.6.2009 was issued making it clear that the appointment was temporary and on provisional basis for two years and further subject to verification of character, antecedents and educational qualification etc. by the Deputy Director Education, New Delhi (hereinafter called 'DDE'). The appellant joined the service as TGT (Sanskrit) on 26.6.2009. The DDE issued a show cause notice dated 21.9.2010 to the appellant to show cause why his services should not be terminated as he was awarded the B.Ed degree only on 28.1.2008 which was much after the cut-off date which was 29.10.2007.

11. There can be no dispute to the settled legal proposition that the selection process commences on the date when applications are invited. Any person eligible on the last date of submission of the application has a right to be considered against the said vacancy provided he fulfils the requisite qualification.

20. This Court lately in State of Gujarat v. Arvindkumar T. Tiwari, AIR 2012 SC 3281 held:

“A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See Prit Singh v. S.K. Mangal 1993 Supp (1) SCC 714 and Pramod Kumar v. U.P. Secondary Education Services Commission (2008) 7 SCC 153.)”

21. In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification, i.e., eligibility, character verification etc. Clause 11 of the letter of offer of appointment

dated 23.2.2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court.

23. There is no obligation on the court to protect an illegal appointment. Extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance.”

15. It is also undisputed that petitioners have never challenged the advertisement and once the advertisement is not under challenge before appearing in examination, petitioner cannot be permitted to challenge the same.

16. This issue was before the Hon’ble Apex Court in the matter of **Ashok Kumar(Supra)** and the Court has taken view that once the candidate has participated in the recruitment process, he cannot be permitted to challenge the advertisement on being declared unsuccessful. Relevant paragraphs of the said judgment are being quoted hereinbelow:

“11. The basic issue that was addressed by the Division Bench was that the appellants having participated in the fresh round of selection could not be permitted to assail the process once they were declared unsuccessful. On this aspect, a brief recapitulation of the facts would be in order. In the original process of selection, following the issuance of General order No. 204 of 2003 by the District and Sessions Judge, Muzaffarpur on 2 December 2003, a written examination was held on 20 April 2004 consisting of eighty five marks followed by an interview on 7 July 2004 consisting of fifteen marks. The High Court declined to approve of the selection list and issued through its Registrar (Administration), a communication dated 19 August 2004 requiring the holding of a fresh written examination carrying ninety marks in which the qualifying marks would be regarded as forty five in terms of its General letter No.1 of 1995. Pursuant thereto, a circular was issued in the form of a new General order bearing No. 171 of 2004 on 8 October 2004 which stipulated that in terms

of the directions issued by the High Court on 19 August 2004, a fresh written examination would be held carrying ninety marks (with qualifying marks as forty five) followed by an interview of ten marks. Candidates who had applied earlier were not required to apply afresh.

12. The appellants participated in the fresh process of selection. If the appellants were aggrieved by the decision to hold a fresh process, they did not espouse their remedy. Instead, they participated in the fresh process of selection and it was only upon being unsuccessful that they challenged the result in the writ petition. This was clearly not open to the appellants. The principle of estoppel would operate.

13. The law on the subject has been crystalized in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla⁴, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India v. S. Vinodh Kumar⁵, this Court held that :

“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same... (See also Munindra Kumar v. Rajiv Govil⁶ and Rashmi Mishra v. M.P. Public Service Commission⁷).”

14. The same view was reiterated in Amlan Jyoti Borroah (supra) where it was held to be well settled that candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful.

15. In Manish Kumar Shah v. State of Bihar⁸, the same principle was reiterated in the following observations :

“16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the Petitioner is not entitled to challenge the criteria or process of selection. Surely, if the Petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The Petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the Petitioner

clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the Judgments in MadanLal v. State of J. and K. MANU/SC/0208/1995 : (1995) 3 SCC 486, MarripatiNagaraja v. Government of Andhra Pradesh and Ors. MANU/SC/8040/2007 : (2007) 11 SCC 522, Dhananjay Malik and Ors. v. State of Uttaranchal and Ors. MANU/SC/7287/2008 : (2008) 4 SCC 171, AmlanJyotiBorooah v. State of Assam MANU/SC/0077/2009 : (2009) 3 SCC 227 and K.A. Nagamani v. Indian Airlines and Ors. (supra)”

16. In Vijendra Kumar Verma v. Public Service Commission⁹, candidates who had participated in the selection process were aware that they were required to possess certain specific qualifications in computer operations. The appellants had appeared in the selection process and after participating in the interview sought to challenge the selection process as being without jurisdiction. This was held to be impermissible.

17. In Ramesh Chandra Shah v. Anil Joshi¹⁰, candidates who were competing for the post of Physiotherapist in the State of Uttrakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that :

“18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.”

18. In Chandigarh Administration v. Jasmine Kaur¹¹, it was held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection. In Pradeep Kumar Rai v. Dinesh Kumar Pandey¹², this Court held that :

“Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed.

The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted.”

17. Again this issue engaged the attention of Hon’ble Apex Court in the matter of **Vijendra Kumar(Supra)** and the Court has taken the very same view. Relevant paragraphs of the said judgment are being quoted hereinbelow:

24. When the list of successful candidates in the written examination was published in such notification itself, it was also made clear that the knowledge of the candidates with regard to basic knowledge of computer operation would be tested at the time of interview for which knowledge of Microsoft Operating System and Microsoft Office Operation would be essential. In the call letter also which was sent to the appellant at the time of calling him for interview, the aforesaid criteria was reiterated and spelt out. Therefore, no minimum benchmark or a new procedure was ever introduced during the midstream of the selection process. All the candidates knew the requirements of the selection process and were also fully aware that they must possess the basic knowledge of computer operation meaning thereby Microsoft Operating System and Microsoft Office Operation. Knowing the said criteria, the appellant also appeared in the interview, faced the questions from the expert of computer application and has taken a chance and opportunity therein without any protest at any stage and now cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction.

28. Besides, in K.H. Siraj vs. High Court of Kerala and Others reported in (2006) 6 SCC 395 in paragraph 72 and 74 it was held that candidates who participated in the interview with knowledge that for selection they had to secure prescribed minimum marks on being unsuccessful in interview could not turn around and challenge that the said provision of minimum marks was improper, said challenge is liable to be dismissed on the ground of estoppel.

18. Again this issue was engaging the attention of Hon’ble Apex Court in the matter of **K.H. Siraj(Supra)** and the Court has taken the very same view. Relevant paragraphs of the said judgment are being quoted hereinbelow:

“72. The appellants/petitioners, in any event, are not entitled to any relief under Art. 226 of the Constitution of India for more reasons than one. They had participated in the written test and in the oral test without raising any objection. They knew well from the High Court’s Notification that a

minimum marks had to be secured both at the written test and in the oral test. They were also aware of the High Court decision on the judicial side reported in Remany vs. High Court of Kerala, 1996 (2) KLT 439. This case deals with prescription of minimum qualifying marks of 30% for viva voce test. C.S. Rajan, J., in the above judgment, observed as under:

On the basis of the aggregate marks in both the tests, the selection has to be made. In I.C.A.R's case, AIR 1984 SC 541 also the relevant rules did not enable the selection Board to prescribe minimum qualifying marks to be obtained by the candidate at the viva voce test. In the Delhi Judicial Service's case also (AIR 1985 SC 1351, the rules did not empower the committee to exclude candidates securing less than 600 marks in the aggregate. Therefore, in all these cases, the Supreme Court came to the conclusion that prescription of separate minimum marks for viva voce test is bad in law because under the rules, no minimum qualifying marks were prescribed."

73. The appellants/petitioners having participated in the interview in this background, it is not open to the appellants/petitioners to turn round thereafter when they failed at the interview and contend that the provision of a minimum mark for the interview was not proper. It was so held by this Court in paragraph 9 of Madan Lal & Ors. Vs. State of J & K & Ors. , (1995) 3 SCC 486 as under:

"Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The Petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitions as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla vs. Akhilesh Kumar Shukla, 1986 suppl SCC 283, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the

examination without protect and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

74. Therefore, the writ petition filed by the appellants/petitioners should be dismissed on the ground of estoppel is correct in view of the above ruling of this Court. The decision of the High Court holding to the contrary is in per curiam without reference to the aforesaid decisions. "

19. This issue was again adjudicated by the Hon'ble Apex Court in the matter of **Pradeep Kumar Rai(Supra)** and the Court has taken the very same view. Relevant paragraph of the said judgment is being quoted hereinbelow:

"17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. Thus, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted. (See Vijendra Kumar Verma Vs. Public Service Commission, Uttarakhand and Ors., (2011) 1 SCC 150, and K.H. Siraz Vs. High Court of Kerala and Ors. (2006) 6 SCC 395)"

20. So far as equivalence of 'O' Level certificate is concerned, the facts are undisputed that that in Rules, 2015 there is no provision of equivalence of any certificate and that has also been incorporated in Rules, 2020 which provides that equivalence shall be decided by the State Govt. It is also undisputed that a meeting of equivalence committee was held and equivalence of 'O' Level certificate so decided for the post of Computer Operator has been adopted by the equivalence committee in the matter of Rules, 2015 amended by Rules, 2020. In the equivalence committee report, PGDCA certificate without PCM in the intermediate is not eligible for the post of Computer Operator, therefore, that would also be applicable for the post in question. This issue has also been considered by the Hon'ble

Apex Court and this Court has also taken the has also taken the same view that qualification of post shall only be decided by the employer and petitioners are having no right to claim any parity about the decision so taken by the State Govt.

21. This issue came before the Hon'ble Apex Court in the matter of ***Shifana P.S.(Supra)*** in which the Court has taken view that qualification of post shall only be decided by the employer. Relevant paragraph of the said judgment is being quoted hereinbelow:

“13. This Court in the case of Zahoor Ahmad Rather and Others v. Sheikh Imtiyaz Ahmad and Others² held that judicial review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the prescribed qualifications with any other given qualification. Therefore, the equivalence of a qualification is not a matter that can be determined in the exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine.’

22. Again this issue was engaging the attention of Hon'ble Apex Court in the matter of ***Punjab National Bank(Supra)*** and the Court has taken the very same view. Relevant paragraphs of the said judgment are being quoted hereinbelow:

“3. It appears that while scrutiny of the documents was going on, the appellant Bank came to know about a graduate certificate showing that the respondent – original writ petitioner was a graduate since 2014. Thus, it was noticed and found that he was not eligible as per the advertisement and the Circulars and that the respondent deliberately, wilfully and intentionally suppressed the fact that he was a graduate. Therefore, his candidature was cancelled and he was not allowed to join the bank in subordinate cadre. That, thereafter, the respondent filed the writ petition before the High Court, being Writ Petition (C) No. 19261 of 2016, for an appropriate order to allow him to discharge his duties as Peon as per the appointment order dated 03.10.2016 and to further direct that his appointment may not be cancelled on the ground that he has possessed higher qualification. That the said petition was opposed by the bank by filing a detailed affidavit-in-reply. It was specifically pointed out that the eligibility criteria and the educational qualification was fixed as per the Circular letter No. 25 of 2008 dated 06.11.2008 issued by the HRD Division of the Bank. It was also pointed out that on 04.03.2016 the HRD Division issued another Circular letter No. 6 of 2016 pursuant to the decision of the Bank's Board in their meeting dated 29.02.2016, by which it was decided that the selection of the Peons will be made on the basis of the

percentage of marks obtained by the candidates in 10th standard and 12th standard. It was also submitted that the respondent deliberately, wilfully and intentionally suppressed the material fact that he was a graduate. It was pointed out that had it been known to the bank that he was a graduate, he would not have at all been considered for selection as a peon in the bank.

6. Learned counsel appearing on behalf of the appellant Bank has vehemently submitted that in the facts and circumstances of the case, more particularly, when in the advertisement it was specifically mentioned that a candidate should not be a graduate as on 01.01.2016 and that it specifically provided that a candidate should have passed 12th class or its equivalent with basic reading/writing knowledge of English and the educational qualification/eligibility criteria mentioned in the advertisement was as per Circulars dated 06.11.2008 and 04.03.2016 issued by the HRD Division of the Bank and admittedly the respondent – original writ petitioner was a graduate as on 01.01.2016 and therefore not eligible even to apply, both, the learned single Judge as well as the Division Bench of the High Court have materially erred in directing the appellant Bank to allow the original writ petitioner to perform his duties as a Peon pursuant to the appointment order dated 03.10.2016.

10. We have heard learned counsel appearing on behalf of the respective parties at length. The appellant Bank invited the applications for the post Peon by giving an advertisement in the local newspaper. In the advertisement itself, it was specifically mentioned that a candidate should have passed 12 th class or its equivalent with basic reading/writing knowledge of English and should not be a graduate as on 01.01.2016. Thus, as per the eligibility criteria mentioned in the advertisement, a candidate who was having qualification of graduate was not eligible even to apply. From the counter filed on behalf of the Bank before the High Court, it appears that the educational qualification mentioned in the advertisement was as per Circular letter No. 25 of 2008 dated 06.11.2008 issued by the HRD Division of the bank. The relevant portion of the Circular letter No. 25 of 2008 dated 06.11.2008 reads as under:

“Age Minimum – 18 years

Maximum – 24 years with applicable relaxations.

Education: Pass in 12th Standard or its equivalent with basic reading/writing knowledge of English (Graduates are not eligible)

16. It is required to be noted that the eligibility criteria/educational qualification mentioned in the advertisement inviting the applications was as per Circular letter No. 25 of 2008 dated 06.11.2008, the relevant portion of which is reproduced hereinabove. As stated in the counter to the writ petition, a conscious decision was taken by the bank providing eligibility

criteria/educational qualification that a graduate candidate shall not be eligible for the post of Peon/subordinate staff. The said decision was taken consciously looking to the nature of the post. At this stage, it is required to be noted that the original writ petitioner never challenged the eligibility criteria/educational qualification mentioned in the advertisement. He participated in the recruitment process on the basis of the advertisement, without challenging the eligibility criteria/educational qualification mentioned in the advertisement. Therefore, once having participated in the recruitment process as per the advertisement, thereafter it is not open for him to contend that acquisition of higher qualification cannot be a disqualification and that too when he never challenged the eligibility criteria/educational qualification mentioned in the advertisement.

17.1 In a recent decision of this Court in the case of Zahoor Ahmad Rather (supra), this Court has distinguished another decision of this Court in the case of Jyoti K.K. v. Kerala Public Service Commission (2010) 15 SCC 596 taking the view that in a case where lower qualification is prescribed, if a person has acquired higher qualifications, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In the said decision, this Court also took note of another decision of this Court in the case of State of Punjab v. Anita (2015) 2 SCC 170, in which case, this Court on facts distinguished the decision in the case of Jyoti K.K. (supra). While distinguishing the decision in the case of Jyoti K.K. (supra), it is observed in paras 25 and 26 as under:

“25. The decision in [Jyoti K.K. \[Jyoti K.K. v. Kerala Public Service Commission, \(2010\) 15 SCC 596 : \(2013\) 3 SCC \(L&S\) 664\]](#) has been considered in a judgment of two learned Judges in [State of Punjab v. Anita \[State of Punjab v. Anita, \(2015\) 2 SCC 170 : \(2015\) 1 SCC \(L&S\) 329\]](#). In that case, applications were invited for JBT/ETT qualified teachers. Under the rules, the prescribed qualification for a JBT teacher included a Matric with a two years' course in JBT training and knowledge of Punjabi and Hindi of the Matriculation standard or its equivalent. This Court held that none of the respondents held the prescribed qualification and an MA, MSc or MCom could not be treated as a “higher qualification”.

17.3 Thus, as held by this Court in the aforesaid decisions, it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. In the present case, prescribing the eligibility criteria/educational

qualification that a graduate candidate shall not be eligible and the candidate must have passed 12th standard is justified and as observed hereinabove, it is a conscious decision taken by the Bank which is in force since 2008. Therefore, the High Court has clearly erred in directing the appellant Bank to allow the respondent original writ petitioner to discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement.

19. An employee is expected to give a correct information as to his qualification. The original writ petitioner failed to do so. He was in fact over-qualified and therefore ineligible to apply for the job. In fact, by such conduct on the part of the respondent –original writ petitioner, one another righteous candidate has suffered for his mischievous act. As held by this Court in the case of [Ram Ratan Yadav](#)(supra), suppression of material information and making a false statement has a clear bearing on the character and antecedents of the employee in relation to his continuance in service. A candidate having suppressed the material information and/or giving false information cannot claim right to continuance in service. Thus, on the ground of suppression of material information and the facts and as the respondent – original writ petitioner even otherwise was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement which was as per Circular letter No. 25 of 2008 dated 06.11.2008, the bank rightly cancelled his candidature and rightly did not permit him to resume his duty.

21. In view of the above and for the reasons state above, the impugned order dated 22.11.2019 passed by the Division Bench of the High Court and the judgment and order passed by the learned single Judge of the High Court dated 13.03.2019 in W.P. (C) No. 19261 of 2016 directing the appellant Bank to allow the respondent – original writ petitioner to discharge his duties as a Peon as per appointment order dated 03.11.2016 is unsustainable and deserves to quashed and set aside and are accordingly quashed and set aside. The appeal is allowed. However, considering the fact that the post in question was a subordinate staff post/Peon, and despite the fact that because of the mischievous act on the part of the original writ petitioner, one candidate could not get the job, we refrain from imposing the cost and leave the matter there.”

23. Same controversy was adjudicated by Hon’ble Apex Court in the matter of **Zahoor Ahmad(Supra)** and the Court has taken the very same view. Relevant paragraphs of the said judgment are being quoted hereinbelow:

“26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti KK in the subsequent decision in Anita (supra). The decision in Jyoti KK turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily pre-supposes the acquisition of another,

albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The state as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the state, as the recruiting authority, to determine. The decision in Jyoti KK turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench of the High Court was justified in reversing the judgment of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision of the Division Bench.

27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The state is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision making. The state as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in Jyoti KK must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti KK turned.”

24. This issue was also adjudicated by this Court in the matter of **Saurabh Saxena(Supra)** and the Court has taken the very same view. Relevant paragraphs of the said judgment are being quoted hereinbelow:

“13. In Shifana P.S. (Supra), the Hon’ble Supreme Court relied upon an earlier judgment in the case of Zahoor Ahmad Rather and Others v. Sheikh Imtiyaz Ahmad and Others: (2019) 2 SCC 404, wherein the Hon’ble

Supreme Court considered numerous precedents on the point and held as follows:

“26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti KK [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596] in the subsequent decision in Anita (supra) [State of Punjab v. Anita, (2015) 2 SCC 170]. The decision in Jyoti KK turned on the provisions of Rule 10(a) (ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily pre-supposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The state as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the state, as the recruiting authority, to determine. The decision in Jyoti KK turned on a specific statutory rule under which the holding of a higher qualification could pre-suppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench of the High Court was justified in reversing the judgment of the learned Single Judge and in coming to the 10 id at page 177 conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision of the Division Bench.

27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The state is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision making. The state as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in Jyoti KK must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the

acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti KK turned.”

15. Although, the advertisement mentioned that a candidate should have passed the High School examination conducted by the U.P. Intermediate Education Board or any other examination recognized by the State Government as equivalent thereto, the clause of equivalence is not there in respect of the qualification of Diploma. Therefore, any person claiming to possess any qualification equivalent to a Diploma in Garment Fabrication Technology/Costume Design & Dress Making or NTC/NAC passed in the trade of “Sewing Technology”, would not be eligible to apply against the advertisement.

16. Further, as per the law settled by the Hon’ble Supreme Court, the question of equivalence of qualification in the matter of examining the eligibility for the purpose of employment, is to be decided by the employer and the Courts cannot treat any qualification to be equivalent to the qualifications prescribed in the Rules and mentioned in the advertisement. In case the appellant’s claim of equivalence of qualification is allowed, all other similarly situated persons, who did not apply as they did not possess the qualification prescribed by the Rules and mentioned in the advertisement, would suffer discrimination and injustice.”

25. Therefore, in light of facts and law discussed hereinabove, I find no substance in the petition.

26. Writ petition lacks merit and is hereby **dismissed**.

27. No order as to costs.

Order Date :- 10.2.2025

ADY