

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WA.No. 1914 of 2014 (C)

(AGAINST THE JUDGMENT IN WP(C).NO. 8429/2014 DATED 29-08-2014)

APPELLANT(S)/RESPONDENT 1 TO 4:

1. STATE BANK OF TRAVANCORE,
REPRESENTED BY ITS GENERAL MANAGER (HR),
HEAD OFFICE, POOJAPPURA, P.O, BOX NO.34,
THGIRUVANANTHAPURAM,PIN-695 012.
2. DEPUTY GENERAL MANAGER (P & HR),
STATE BANK OF TRAVANCORE, HEAD OFFICE,
THIRUVANANTHAPURAM- 695 012
3. THE MANAGER,
STATE BANK OF TRAVANCORE, ZONAL OFFICE,
PANAMPILLY NAGAR, ERNAKULAM -682 086
4. THE MANAGER,
STATE BANK OF TRAVANCORE,
ZONAL OFFICE, GEETHANJALI,4TH FLOOR,
PARAMEKKAVU DEVASWOM BUILDING,
ROUND EAST P.O., THRISSUR 680 001

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENT(S)/PETITIONERS 1 TO 5:

1. ROSEMARY AUGUSTINE,
KALATHIL HOUSE, KADALVATHURUTHU,
GOTHURUTH P.O.,PIN- 682 516
2. SARITHA V.G,
VENNICKAL PADINJAREPURACKAL HOUSE,
VALAPPAD BEACH P.O., ANCHANGADI -680 667
3. SANIL SALIBHA,
PUNCHAYIL HOUSE, VELIYANNAD P.O,
ERNAKULAM -682 319

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4. SUJI. P.S,
ELUPARAMBIL HOUSE,
NEELESWARAM P.O, KALADY- 683 584
5. SAJIL K.U,
KUNATHUPARAMBIL HOUSE, PULLUT P.O,
PANTHEERAMPALAM, THRISSUR -680 663

R1 TO R5 BY ADV. SMT.T.B.REMANI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 14-01-2015, ALONG WITH W.A.NO.1880 OF 2014 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

ASHOK BHUSHAN, Ag.C.J.
&
A.M. SHAFFIQUE, J.
=====

W.A. Nos. 1914, 1867, 1870,
1880, 1883, 1908, 1930 & 1938 of 2014
and
W.P.(C). No. 35000 of 2014
=====

Dated this the 14th day of January, 2015

JUDGMENT

Ashok Bhushan, Ag.C.J.

In these writ appeals as well as in the writ petition No.35000 of 2014, the challenge is against the common decision rendered by the learned Single Judge of this Court.

2. Heard together.

3. Writ Appeal No.1914 of 2014 is treated to be leading case. It shall be sufficient to refer to the pleadings and facts giving rise to Writ Appeal No.1914 of 2014 for deciding these batch of cases. The brief facts giving rise to the writ appeal are as follows:

4. The appellants, State Bank of Travancore and others who were respondents in the writ petition had

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issued a notification for recruitment of Peons, permitting online registration of application from 14.09.2013 and the last date of registration was mentioned as 03.10.2013. clause 3 of the notification mentions about educational qualification and clause 4 provided for other qualification. The writ petitioners submitted online applications and underwent a written examination, in which all of them were declared as passed. Interview letters were issued to the writ petitioners calling them to appear for the interview. All the petitioners actually presented themselves for interview and at the time of interview, they were informed that since they had qualifications of ITI, ITC and Diploma they are over qualified as per the recruitment notice. They have higher qualification to Class X. The writ petitioners were informed that due to the above disqualification, they cannot be interviewed. Aggrieved by the said action, the petitioners filed the writ

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petitions before this Court. In Writ Petition No.8429 of 2014 the following prayers were made.

- a) to issue a writ of mandamus or other appropriate writ order or direction directing the respondents to conduct a fresh interview for the petitioners 1 to 4 and consider them for appointment to the post of peon and consider the fifth respondent for selection and appointment to the post of peon based on the interview already attended by him on 13.3.2014 itself;
- b) to declare that the action of the respondents in rejecting the candidature of the petitioners saying that the Diploma/ITC secured by them is equivalent to XII pass is absolutely illegal;
- c) to issue a writ of mandamus or other appropriate writ order or direction directing the respondents not to prepare and publish the select list for appointment to the post of peon without considering the petitioners, until further orders from this Hon'ble Court;
- d) to issue a writ of mandamus or other appropriate writ order or direction directing the respondents to pass final orders on the request made by the petitioners before finalizing the select list for the post of peon."

In other writ petitions, similar reliefs were sought.

5. Counter affidavit was filed by the Bank. In the counter affidavit it was treated that the petitioners have

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qualification in excess of that, which was prescribed in Ext.P1 and they were rightly informed that they cannot be interviewed. It was treated that, the stipulation in Ext.P1 was fixed and was held that qualification for the post should be minimal as lower qualified candidate may take up positions temporarily in order to obtain experience for another position or for taking position temporarily until they get a better employment.

6. Learned Single Judge after hearing the parties allowed the writ petition and issued a direction to the Bank to interview those candidates who were not permitted to participate in the interview. Learned Single Judge also directed that those candidates who were similarly situated, who were not before the Court and were not permitted to interview, may also be interviewed by the Bank. The Bank aggrieved by the said judgment has come up in these writ appeals.

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7. Learned counsel for the bank in support of the appeal contended that what was intended by the recruitment notice was that only persons, who passed the 10th standard should be allowed. The next public examination being class XII, it was stipulated that the candidates should not have passed Class XII. It is submitted that the recruitment notice stipulated that the candidates should not have any other qualification and since the petitioners had ITI, ITC and Diploma, they were over qualified and rightly not interviewed.

8. It is submitted that the employer has liberty to fix the qualification looking to the nature of the employment and the Court cannot interfere with the qualifications fixed by the employer.

9. It is further submitted that the learned Single Judge committed a further error in directing all those candidates, who were rejected on the above ground and

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who were not before the Court, should also be interviewed whereas the relief ought to have been confined to only the petitioners who had come before Court.

10. Learned counsel appearing for the writ petitioners, opposing the submissions of the learned counsel for the bank, submitted that the petitioners were in no manner disqualified in accordance with the recruitment notice. It is submitted that the petitioners had only passed 10th standard and they had not passed 12th standard, with regard to which fact, they have already filed notarised affidavit as per the proforma of the affidavit available in the website of the Bank. It is submitted that the qualifications, ITI, ITC and Diploma, are not academic qualifications nor these can be treated to be a higher qualification to Class X. It is submitted that even ITI and ITC can be acquired by a person who

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has passed the class of 8th standard. It is submitted that for ITI, ITC and Diploma, the petitioners, who had passed Class X, were fully eligible and had taken the said training qualification. It is further submitted that learned Single Judge has rightly interpreted the recruitment notice and held that petitioners were fully eligible. It is further submitted that the apprehension expressed in the counter affidavit by the Bank that, the persons who have higher qualification may leave the bank is also misplaced. It is submitted that even a person who has only passed Class X during course of service may obtain a higher qualification and leave the bank, thus the said reason cannot be a valid reason for holding the petitioner disqualified.

11. We have considered submissions of the learned counsel for the parties and perused the records. The learned counsel for the parties have relied on certain

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decision of the Apex Court which shall be referred to while considering the facts.

12. Before we proceed to consider the respective submissions, it is useful to note the recruitment notice issued by the bank which is filed as Ext.P1. Paragraph 3 and 4 are with regard to educational qualifications and other qualification which are quoted below.

“3. **Educational Qualification** (as on 01.01.2013)

(i) 10th Standard Pass. But should not have passed Class XII or equivalent.

(ii) Ex-serviceman, who have passed/obtained the Indian Army matriculation Certificate or corresponding certificate equivalent to 10th Standard in the Navy or Air Force, after having completed not less than 15 years of service in Armed Forces as on 01.01.2013 of the Indian Union are also eligible for the post. Such candidates should pass the language test from the concerned states. Certificates should be dated on or before 01.01.2013.

4. **Other Qualification:**

(i) Knowledge of read and write in local language is essential.”

13. There is no dispute between the parties that the petitioners had passed Class X and have not passed Class

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XII. Paragraph 3(I) mentioned “But should not have passed Class XII or equivalent”. That is, qualification exceeds only when a candidate has passed Class XII or equivalent. Admittedly, none of the petitioners has passed Class XII and the basis for rejection of their candidature is having ITI, ITC and Diploma. The ITI, ITC and Diploma are training courses/vocational courses to be acquired by a candidate who seeks employment in technical side. It is further clear that any candidate who have passed only Class X can be admitted in Diploma Course, ITI or ITC. The bank has placed reliance on a letter dated 11th March, 2014 issued from the Office of the Director of Technical Education to the Bank. It is useful to quote the said letter, which is filed as Ext.R1(a), which is as follows;

“I wish to inform you that Class XII cannot be considered equivalent to ITI, ITC or Diploma because ITI, ITC or Diploma are technical qualifications one

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acquires after X or XII. But ITI, ITC or Diploma is higher qualification to XIIth standard.”

14. The Director of Technical Education has also clearly stated that ITI, ITC or Diploma cannot be said to be equivalent to Class XII. Class XII is an education qualification whereas ITI, ITC or Diploma are technical qualification. When the Bank has relied on the said letter, it is also to accept the said position that there is no equivalence with ITI, ITC or Diploma and as noted above, what is higher qualification is Class XII or equivalent.

15. Now we come to the stand taken by the Bank that the petitioners had higher qualification or they had excess qualification. A qualification can be higher to as compared to another qualification when both are in the same stream. Normally higher qualification is defined in the context of academic qualification. But when the qualifications are in two different streams, one academic

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and one technical qualification, rather training qualification, one cannot be said to be higher to other. It would have been different case if the minimum qualification for taking admission in any Diploma or any course is Class XII. In that event it could have been possible to accept the contention that the said course is a higher qualification. But it is not the case of any of the parties that any person who has only Class X qualification could not have obtained ITI, ITC and Diploma.

16. The submissions of learned counsel for the bank that the petitioners had excess qualification have also to be considered. From clauses 3 and 4, there is no indication that the employer contemplated that a person, who do not have any other qualification apart from Class X, can be accommodated. Qualification can be acquired by a person in different fields and streams. Even if a person who has passed from Class X can acquire

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qualifications in music, motor mechanic or any other technical stream. Unless there is a clear intend in the employer's notice that persons should not have any qualification other than Class X, we cannot read in the employment notice any prohibition to a candidate, who had any other technical qualification after Class X. Thus the submission of learned counsel on behalf of the Bank that the petitioners had excess qualification cannot be accepted.

17. Learned counsel for the bank has placed reliance on a judgment of the Apex Court, **(2011) 9 SCC 645, (Chandigarh Administration (through the director public instructions (colleges), Chandigarh) v. Usha Kheterpal Waie and Others)**. Learned counsel placed reliance on paragraph 21 and 22 of the judgment which is to the following effect:

“21. The Tribunal and the High Court also committed an

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error in holding that the appellant could not prescribe the qualifications of PhD for the post of Principal merely because earlier the said educational qualification was not prescribed or insisted. The Recruitment Rules were made in consultation with the UPSC, to give effect to the UGC guidelines which prescribed PhD degree as the eligibility qualification for direct recruitment of Principals. In fact, even the 1976 Punjab Rules prescribed PhD degree as a qualification. In several States, PhD is a requirement for direct recruitment to the post of a college Principal. When the said qualification is not unrelated to the duties and functions of the post of Principal and is reasonably relevant to maintain the high standards of education, there is absolutely no reason to interfere with the provision of the said requirement as an eligibility requirement.

22. It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. The courts and tribunals can neither prescribe the qualifications nor entrench upon the power of authority concerned so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of the Constitution, statute and rules. (See. J. Ranga Swamy v. Govt. of A.P. and P.U. Joshi v. Accountant General.) In the absence of any rules, under Article 309 r statute, the appellant had the power to appoint under its general power of administration and prescribe such eligibility criteria as it is considered to be necessary and reasonable. Therefore, it cannot be said that the prescription of PhD is unreasonable.”

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18. There cannot be any dispute to the proposition as laid down by the Apex Court in the aforesaid paragraph. It is true that rule making authority or the appointing authority is free to prescribe the mode of selection and the minimum qualification. The Courts and Tribunal normally do not interfere with the qualifications so long as the qualifications prescribed has a rational nexus with the functions and duties attached to the post. Here, it is not the case of the petitioners that the qualifications prescribed had any error nor there is any challenge to any of the qualifications prescribed in the recruitment notice on behalf of the petitioners. We have proceeded on the basis of the qualifications as prescribed in the employment notice, and the judgment thus in no manner help the bank.

19. We had an occasion to consider the same employment notice in context of recruitment of ex-

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servicemen who had applied for the post of peon in Writ Appeal No.1211 of 2014 (State Bank of Travancore & others v. Ajayakumar). The bank in the said case has also taken a stand that the writ petitioners had higher qualification and they had higher qualification than 10th standard and hence they were not qualified.

20. In paragraph 10, 11 and 12 following was laid down:

“10. The only question is whether the petitioners have passed class XII or equivalent. Apparently the answer will be in the negative. The higher qualification according to the appellants is the equivalency certificate for graduation which the petitioners have obtained, which will make them qualified for Group C post where graduation is the minimum qualification. The learned Single Judge held that when the alternate qualification which is permitted in the case of Ex-servicemen is not treated as an equivalent qualification of a pass in the 10th standard, but is viewed as a relaxation to the mandatory qualification of passing 10th standard, it reflects the policy of the second respondent bank. If the intention was to exclude persons having graduation equivalency, the intention should have been expressly provided.

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11. Having regard to the nature of contentions urged, we are unable to agree with the learned counsel for the appellants. Though the petitioners are also eligible for applying for Group C posts where minimum qualification is graduation based on the equivalency certificate issued by Armed forces, that does not mean that they are graduates or having higher qualification more than matriculation. Of course, they can be considered as having graduation for certain purposes namely for applying for a job but that does not apparently mean that they are graduates in the strict sense. As far as clause 3(i) is concerned, the minimum qualification prescribed is pass in 10th standard which apparently the petitioners have. They have not passed class XII or any examination equivalent to class XII.

12. Then the next question is whether clause 3(ii) would exclude any Ex-servicemen coming under clause 3 (i). No such meaning can be assumed from the notification. As rightly held by the learned Single Judge, clause 3(ii) applies in respect of Ex-servicemen who have not passed matriculation. The notification was not meant for Ex-servicemen only but it applies to all categories of persons. Clause 3(ii) only gives a benefit to Ex-servicemen who have obtained equivalency certificate to 10th standard. Therefore, even in respect of Ex-servicemen who had passed 10th standard and have not passed class XII or equivalent are eligible to apply. For those who have not passed 10th standard, certificate equivalent to 10th standard is required. A different meaning cannot be attributed to the aforesaid clauses, as contended by the learned counsel for appellants. Hence, we are of the view that no grounds are made out to

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interfere with the judgment of the learned Single Judge
and accordingly the writ appeal is dismissed.”

21. The said judgment fully support the case taken by the writ petitioners before us. The last submission of the learned counsel for the bank that learned Single Judge ought not to have issued a direction to interview those candidates who had not come before the Court. From the facts brought on record, it is clear that the bank had taken a common decision to reject candidature of all candidates who have ITI, ITC and Diploma after Class X. The direction of learned Single Judge is with an object to avoid multiplicity of proceedings. Those who have not come to the Court, if they are similarly situated, should have also been extended the benefit and the bank has been directed to call interview afresh of those candidates who were rejected on the same ground. The directions issued by the learned Single Judge are just and proper

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and need no interference by us in these writ appeals.

In view of the foregoing discussions, we do not find any merit in any of the submissions made by the learned counsel for the appellants. All the writ appeals are dismissed and the Writ Petition No.35000 of 2014 is allowed. The writ petitioner shall have the same benefit as per the judgment of the learned Single Judge dated 29.08.2014 in W.P.(C) No. 8429 of 2014 and connected cases.

Sd/-
**ASHOK BHUSHAN,
ACTING CHIEF JUSTICE**

Sd/-
**A.M. SHAFFIQUE
JUDGE**

das