

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 1.10.2015

1. CWP No.19126 of 2015

Sunil Sharma and othersPetitioners

VERSUS

State of Haryana and othersRespondents

Present: Mr. Ram Kumar Malik, Senior Advocate with
Mr. Vijay Dahiya, Advocate for the petitioners.

Ms. Palika Monga, DAG, Haryana for the respondents.

2. CWP No.19909 of 2015

Sakshi AnejaPetitioner

VERSUS

State of Haryana and anotherRespondents

Present: Mr. Naveen Singh Panwar, Advocate for the petitioner.

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

HEMANT GUPTA, J.

By this order, we shall dispose of CWP No.19126 of 2015 and
CWP No.19909 of 2015 raising identical question of laws and facts.

The challenge in the writ petitions is to the essential qualifications prescribed for Post Graduate Teacher (for short 'PGT') Computer Science wherein only M.Sc. Computer Science/Master in Computer Applications (for short 'MCA') through regular course are made eligible for consideration for appointment as prescribed in Appendix B of Haryana State Education School Cadre (Group-B) Service Rules, 2012 (for short 'the Rules').

The petitioners have obtained MCA or M.Sc. Computer Science through Distance Education Mode from Punjab Technical University, Jalandhar; Kurukshetra University; Guru Jambheshwar University of Sciences and Technology, Hisar; Maharshi Dayanand University, Rohtak or Chaudhary Devi Lal University, Sirsa. Haryana Staff Selection Commission vide advertisement on 05.07.2015 invited applications for 446 posts of PGT Computer Science. Such post is governed by statutory Rules called 'The Haryana State Education School Cadre (Group-B) Service Rules, 2012'. Rule 9 of the Rules contemplates that PGT Computer Science are to be appointed by direct recruitment on contract basis or by transfer or deputation of an official already in service of any State Government or Government of India. The relevant extract from the Rules, reads as under:-

“2. In these rules, unless the context otherwise requires,-

(a) xx xx xx

(f) "PGT" means Post Graduate Teacher in the relevant subject appointed after notification of these rules and shall include Lecturers appointed before notification of these rules;

xx xx xx

7. No person shall be appointed to any post in the Service, unless he is in possession of qualifications and experience specified in column 3 of Appendix B to these rules in the case of direct recruitment on contract basis and those specified in Column 4 of the aforesaid Appendix in the case of persons appointed other than by direct recruitment on contractual basis:

Provided that in case of on contractual basis direct recruitment, if the required number of candidates of Scheduled Caste, Backward Class, other backward classes, Ex-Servicemen and Physically Handicapped having not the required the experience are not available against the vacancies reserved for them, then relaxation in experience up to the limit of fifty percent may by order, for reason to be recorded in writing, given at the discretion of the recruiting agency.

XX XX XX

APPENDIX B
(see rule-7)

Serial Number	Designation of Posts	Academic qualifications and experience, if any, for direct recruitment on contract basis	Academic qualification and experience, if any, for appointment other than by direct recruitment on contract basis
(1)	(2)	(3)	(4)
1	xx	xx	xx
23.	PGT Computer Science	(i) M.Sc. Computer Science (Regular two year course) / MCA (Regular three year course) / BE/B.Tech. Computer Science / Computer Engg. / IT (Regular course) with 55% aggregate marks from a recognized university; (ii) Matric with Hindi / Sanskrit or 10+2 / B.A./ M.A. with Hindi as oneof the subject. (iii) Certificate of having qualified Haryana teachers Eligibility Test (HTET) / School Teachers Eligibility Test (STET). (iv) Consistent good academic record.	By Transfer or deputation:- (i) M.Sc. Computer Science (Regular two year course) / MCA (Regular three year course) / BE/ B.Tech. Computer Science / Computer Engg. / IT (Regular course) with 55% aggregate marks from a recognized university; (ii) 5 years teaching experience as PGT computer science (iii) Matric with Hindi / Sanskrit or10+2/ B.A./ M.A. with Hindi as one of the subject. (iv) Certificate of having qualified Haryana Teacher Eligibility Test (HTET) / School Teachers

			Eligibility Test (STET)
xx	xx	xx	xx

The grievance of the petitioners is that the petitioners are qualified degree holders in M.Sc. Computer Science or MCA but they have obtained the degree from distance education mode. A degree obtained from distance education mode is at par with the degree obtained through regular mode i.e. by attending classes and cannot be differentiated only on the basis of medium of instructions i.e. by attending class-rooms or by distance education.

It is contended that duration of course; mode of examination and syllabus for obtaining degree in M.Sc. Computer Science or MCA is same. Therefore, the mode of acquiring such degree cannot be made basis of the process of appointment. It is pointed out that in respect of PGT Physics; Chemistry; Biology or other Science faculties, no distinction has been made between regular student or a student through distance education mode. Therefore, the distinction in the case of PGT Computer Science between regular course and through distance education mode is arbitrary and unreasonable.

Hon’ble Supreme Court in J. Ranga Swamy v. Government of Andhra Pradesh (1990) 1 SCC 288, held that it is not for the Court to consider the relevance of qualifications prescribed for various posts. The Court is not to decide or direct what should be the qualifications to be prescribed for the post in question.

Hon'ble Supreme Court in V.K. Sood v. Secretary, Civil Aviation, and others, 1993 Supp (3) SCC 9, held that Article 16 does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office or post. Any provision as to the qualifications for the employment or appointment to an office or post reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity. The Government is competent to lay-out qualifications for the post in question which need not be technical but also can be of general qualification relating to the suitability of the candidate for service as such.

A Division Bench of this Court in a judgment reported as Inderjit Singh and another v. State of Punjab and others, 2013(2) ILR (Punjab & Haryana) 799, was considering an argument raised that the posts of Operation Room Technician in the Department of Animal Husbandry is equivalent to the post of Operation Theatre Assistant in the Department of Health and Family Welfare, Punjab. The argument raised was that different qualifications have been prescribed for the two posts which is unreasonable and is on account of clerical mistake. The Court held that if the Animal Husbandry Department has created the post of Operation Room Technician, it is the best judge of its own technical needs and in the exercise of that power if it has deemed it fit to prescribe a Diploma or Certificate course in Radiography, it is beyond the period of judicial review. The Court held to the following effect:-

“(7).....However, that fact remains that the two posts have not been equated by the Punjab Government to be filled up on the strength of the same minimum qualifications. The post of Operation Theatre Assistant in the Health Department is to be filled up from amongst competitors holding the Diploma in Operation Theatre Technique. If the respondent - Animal Husbandry Department requires Operation Room Technicians capable of performing duties of a Radiographer, it cannot be said that the minimum qualification of Diploma or Certificate in Radiography would be arbitrary, unreasonable or perverse. It is settled that statutory rules made in exercise of delegated legislative power cannot be attacked on the ground of mala fides, bias etc. It is long settled that classification of posts and prescription of eligibility conditions and minimum qualifications required for a particular post are purely executive functions which the Court is chary to involve itself in since it is no time and tested expert in the field of cadre control. Nothing was ever put better in such a context than that fools rush in where angels fear to tread. We do not think that prescription of minimum qualification under Entry 6 Appendix 'B' read with Rule 5 of the Rules infringes any fundamental right of the petitioners under Articles 14 & 16 of the Constitution. They have earned a degree and are free to search a rule to fit it with in some other department when an employment demand is published. (Emphasis supplied)”

Another Division Bench of this Court in judgment reported as Shivani Gupta and others v. State of Haryana and others, ILR (2014) 1 P&H 738, held that the Rules framed under the proviso to Article 309 of the Constitution are equivalent to a statute. The Bench referring to judgment of Hon’ble Supreme Court in B.S. Vadera v. Union of India, AIR 1969 SC 118 and B.S. Yadav and others v. State of Haryana and others, AIR 1981 SC 561. The Court held to the following effect:-

“30.....It is clear from the above that the rules framed under proviso to Article 309 are not only having statutory character, such rules are given the character of legislation itself. Once this position is

accepted, the plea that the introduction of the aforesaid Note is mala fide, cannot be entertained, as a statute cannot be questioned on the ground of mala fides.”

We find that the qualification of MCA or M.Sc. Computer Science through regular mode cannot be said to be unreasonable or arbitrary. We also find that the posts have been advertised for engaging Post Graduate Teachers in the relevant subjects in the school cadre. A candidate who has not acquired knowledge by attending regular classes cannot be said to be at par with the candidate who has attended classes through regular mode. The degree may be same but the process of acquisition of degree is different. The purpose of appointment is teaching of subject of Computer Science in schools. As per the requirement of the State, a candidate should be a degree holder through regular mode. It cannot be said to be arbitrary or unreasonable keeping in view the object in view.

Another aspect can also be examined since mode of obtaining post-graduation degree in M.Sc. Computer Science or MCA is claimed to be similar, the employer can always fix higher qualifications for the purpose of appointment. The mode of obtaining degree through regular course is a facet of higher qualification and thus would fall within the executive domain. Such condition is a class classification which has reasonable nexus with the object of imparting education to the school going children.

A Division Bench of this Court in Sant Lal and others v. The State of Haryana and others, 1978(1) SLR 133 held as under:-

“7. To our mind, the touchstone for determining an issue of the present kind is again inevitably to examine the real intent of the legislature in prescribing qualification for a class of posts. Where this is obviously a prescription of minimum qualifications or the barest requirement for eligibility, then plainly there can be no bar for the respondent-State to seek persons with higher qualifications than the lowest level laid down by the rule makers. Ordinarily, the rationale underlying the prescription of qualifications in most statutes or rules is to prevent poor or unqualified persons to be appointed to a post in the public service which require the performance of responsible duties. It could hardly be the intent of the legislature to either debar persons of higher qualifications or to deny them the preference which they by their industry or merit signified by superior qualifications may entail. Nor can one read into the prescription of minimum qualification requirement that every person having such qualification must be considered against that post despite the fact that other superior in merit to him are available and (sic) for the same. Of course, we are not saying that the maximum qualifications cannot be fixed by statute because the legislature may well have plenary powers to do so. All that is being indicated is that unless expressly otherwise provided the prescription of qualifications is ordinarily the minima for eligibility to the particular post and not the maxima therefor.”

Such view was reiterated by two Division Bench judgments in Panjab University and another v. Ashwinder Kaur, (1991) 2 ILR 150 and Satish Kumar v. State of Punjab and others, 1996 (4) SLR 216.

A Full Bench of this Court in a judgment reported as Som Dutt v. State of Haryana and another, 1983(3) SLR 141 held as under:-

“9. I am inclined to take the view that broadly the stand taken on behalf of the respondent-State is not devoid of merit and is indeed plausible. There appears to be wide variety of reasons for holding that the employer-State, should in law, be entitled to prescribe the qualifications

which it may think necessary as tailored to the peculiar needs of the particular post or service. Generally, it seems somewhat elementary that the employer alone would know what are the specialities and conditions of service or post for which the incumbent is required. Therefore, it would follow that its discretion in seeking the right man for the right job should be left relatively unfettered. Consequently, no doctrinaire rule can be laid down that a technically higher educational qualification is necessarily better or more advantageous for the peculiar needs of a post for which the employer-State has prescribed lower qualifications.....

10. *Now what has been said above would apply equally and indeed with greater force where the qualifications are prescribed by an Act itself or by statutory rules framed thereunder. In such a situation, the respondent-State would have the added ground of claiming that a literal or strict compliance with the statute be adhered to. It is an ordinary and indeed a sound canon of construction that one should not normally add or subtract from a statutory prescription. The wisdom or the policy of both the legislature and their delegates in the framing of rules thereunder (which on the authority of State of Uttar Pradesh v. Babu Ram Upadhyaya, A.I.R. 1961 S.C. 751 become part and parcel of the Act) is not to be easily questioned and overridden and therefore, it is not for the court to intrude into this somewhat sensitive field. Way back in Banarsi Dass v. State of Uttar Pradesh, 1956 S.C.R. 357, it was held as axiomatic that it is clear that the government is within its rights to lay down certain qualifications for the new recruits, and again in University of Mysore v. G.D. Govinda Rao, A.I.R. 1965 S.C. 491 their Lordships even in the absence of statutory rules had observed that on the aspect of academic qualifications, the courts would naturally hesitate to intervene particularly when the matter has been duly considered by the persons authorized to do so. Therefore, once qualifications have been laid down by binding statutory provisions, then the concept of strict compliance therewith would entitle the State to insist that these be meticulously satisfied and extraneous considerations like qualifications other than those prescribed being either the exact equivalents, or technically higher than those would be irrelevant to the issue and indeed may well be contrary to the statutory prescription. (Emphasis supplied)*

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15. To conclude, the answer to the question posed at the outset is rendered in the affirmative and it is held that where the qualifications for

a post are spelt out by a statute, or precisely prescribed by the employer-State, it can insist on a literal adherence thereto irrespective of either an unprescribed equivalent or a higher academic qualification therefrom possessed by applicants seeking appointments to those posts.”

Hon’ble Supreme Court in Arun Tewari and others v. Zila Mansavi Shikshak Sangh and others, (1998) 2 SCC 332, held that prescribing higher qualification cannot be considered as violative of Article 14. When candidates with higher qualifications are available, choosing them instead of candidates with inferior qualifications is not violation of Article 14 or 16. The Court held to the following effect:

“19. Looking to the above reasons set out by the State Government for recognising a B.T. qualification as superior to Diploma T and other qualifications the exclusion of other qualifications cannot be held to be discriminatory or unreasonable. A higher qualification which is prescribed for a particular scheme cannot be considered as violative of Article 14. When candidates with higher qualifications are available, choosing them instead of candidates with inferior qualifications is not violation of Article 14 or 16.”

In view of the above, we find that once the State Government has framed statutory Rules in exercise of the powers conferred under proviso to Article 309 of the Constitution, such Rules being legislative cannot be challenged except on account of violation of any other statute or the Constitution. The prescribing of the qualifications required for a post is a matter of experts to decide. Once the experts have fixed a particular qualification, the same cannot be made subject matter of judicial review. Thus, we find that prescribing a post-graduate in MCA or M.Sc. in Computer Science after undergoing regular course cannot be said to be

illegal or arbitrary which may warrant interference in the writ jurisdiction
of this Court.

Dismissed.

(HEMANT GUPTA)
JUDGE

OCTOBER 1, 2015
‘D. Gulati’

(RAJ RAHUL GARG)
JUDGE