

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

CWP No. 14236 of 2012 (O&M)

Date of decision : 27.01.2016

Seema

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.S. Khuranna, Advocate
for the petitioner.

Mr. Keshav Gupta, A.A.G. Haryana

Mr. Sandeep Moudgill, Advocate
for respondent No. 2

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest? Yes

RITU BAHRI , J.

The present petition is for issuance of writ in the nature of certiorari quashing qualification No. (vi) i.e Consistent Good Academic Record' as explained by note (e) for the post of Post Graduate Teacher (Category No. 2) in the advertisement dated 10.07.2012 issued by respondent No. 2.

The petitioner who is M.A., M.Ed, had qualified Haryana Teacher Eligibility Test as well as School Teachers Eligibility Test and the mark sheets/certificates to that effect are Annexure P-1 to P-8.

Ministry of Human Resources Development is setting up 3600 Model Schools in the country under the Management and supervision of State Government. Further the Government of India Ministry of Human Development Department of School Education and Literacy has sanctioned 36 (AAROH Educational Backward Block) Model Schools in Haryana at Block Headquarters under the Centrally sponsored scheme on sharing pattern.

Respondent No. 2 had issued Advertisement dated 10.07.2012 for the post of PGT for various subjects and the closing date for submission of Online Application was 31.07.2012 (P-9). In this advertisement, qualification No. (vi) i.e Consistent Good Academic Record' as explained by note (e) for the post of Post Graduate Teacher (Category No. 2) means that out of the lower qualifications i.e Graduation/10+2/Matric etc, then the requisite minimum qualification, one must secure at least 55% marks in the lower examination and 50% in another. In case of PGT Computer Science, 3 years diploma from State Board of Technical Education will be considered as one lower examination in this regard.

On notice, a written statement has been filed by respondent No. 1 and stated that the Government of India Ministry of Human Development Department of School Education and Literacy had decided to set up Model Schools in Education Backward Blocks in

the country to provide high quality education to talented rural children who may not be in a position to access quality schools in Urban areas and these Model Schools will have infrastructure and facilities of the same standard as in a Kendriya Vidyalaya and with the stipulation on pupil-teacher ratio, ICT usage, Holistic Education Environment, appropriate curriculum and emphasis on output and outcome. Under this project, 75% of the capital cost will be borne by the Central Government and 25% fund will be provided by the State Government. For these schools, 2268 posts of various categories have been proposed to be sanctioned and the sanctioned is awaited any time. The respondents has framed by-laws for the employees of these Aarohi Model schools and got approved from the competent authority, vide Annexure R-1.

The reply filed by respondent No. 3 and the affidavit filed by M.P. Verma, State Project Director, Haryana Shiksha Pariyojna Parishad, Shiksha Sadan, Sector 5, Panchkula are same to that of reply filed by respondent No. 1.

The petitioner is seeking quashing of the above said condition on the grounds (i) similar condition was prescribed for selection to the post of PGT's in Advertisement No 1/2012 dated 06.07.2012 (P-10) by Haryana School Teachers Selection Board which has been ommitted vide corrigendum dated 03.07.2012 (P-11); (ii) the

petitioner has otherwise qualified Haryana Teacher Eligibility Test as well as School Teachers Eligibility Test with more than 60% marks and 63.25% marks in M.A. Hindi which is essential qualification for the post.

On the other hand, learned counsel for respondent No. 2 submits that the bye-laws have been framed by the competent authority and the schools are high quality model schools and will be having infrastructure and other facilities just like in a Kendriya Vidyalaya, therefore, broadly they are different from other Government Schools and different qualifications have been prescribed for teaching as well as non-teaching posts by the State Government.

Heard learned counsel for the parties.

The writ petition filed by the petitioner is liable to be dismissed as this Court in plethora of judgments held that it is for the employer to prescribe essential qualifications for appointment to a particular post and it is not for the Court to undertake an exercise of equating one qualification with the other. There was no indication as regards considering candidates possessing equivalent qualifications.

In the present case, the petitioner lost right to participate and considered in the process of selection for appointment to the post, as she had not secured 50% marks in the matric exam which was essential as per qualification No. (vi) i.e Consistent Good Academic Record' as explained by note (e) for the post of Post Graduate Teacher

(Category No. 2) in the advertisement dated 10.07.2012 issued by respondent No. 2.

Reference at this stage can be made to a Division Bench judgment of this Court in a case of ***Daroha Institute of Management and Technology vs. State of Punjab through Principal Secy to Government of Punjab, 2002 (6) SLR 61*** wherein one of the condition in the advertisement was that a person should have qualified 10+2 examination with Mathematics as one of the Subject for admission to the Masters of Computer Application programme. The Management has challenged the condition of eligibility. This Court dismissed the writ petition and held that the Writ Court has no expertise in knowledge of different subjects. Further the State Government has prescribed a qualification, which is in conformity with the guidelines issued by the Council and thus, Court should not interfere unless a clear case of interference is made out. Reference was made to judgment of Hon'ble the Supreme Court in caes of ***Dr. Preeti Srivastava and anr. v. State of Madhya Pradesh and others, 1999 (4) SCT 133 (SC) and Bharathidasan Universitya nd anr. v. All India Council for Technical Education and others, 2001(4) S.C.T 704 (S.C).***

This Court in a case of ***Mrs. Achla Dogra and others vs. Central Administrative Tribunal, Chandigarh Bench, Chandigarh***

and others, 2012(2) PLR 298 was considering a case of petitioners who were seeking quashing of 'the Chandigarh Educational Service (Group "A" Gazetted) Government Arts and Science College Rules, 2010 to the extent that they provide for qualification of PH.D for promotion to the post of Principal and further were seeking directions to the respondents to get the above said Rules relaxed with regard to qualification of PH.D for the purpose of promotion to the post of Principal before making any regular promotion under the directions given by CAT, Chandigarh Bench, Chandigarh. This Court dismissed the writ petition and held that in order to maintain high standard of education in Art and Science Colleges, requirement of PH.D qualification for the post of Principal cannot be said to be unreasonable. The Court held no illegality or arbitrariness in prescribing the PH.D Degree as essential qualification for the post of Principal. In para 12 and 16 of the judgment, it has been observed as under:-

12. With regard to the first contention, learned counsel for the Chandigarh Administration argued that all the posts, on which the petitioners were given the Officiating charge of Principal, accrued in the year 2009, i.e. much after the notification of the Draft Service Rules. While referring to the judgment of the Hon'ble Supreme Court in the case, titled

as 'Chandigarh Administration Vs. Usha Kheterpal Waie and others' (Civil Appeal No. 7570 of 2011, decided on 2.9.2011) (Annexure R-2), wherein the very same Rules of 2010 were challenged, though pertaining to the direct appointment, it has been argued that the recruitment is to be made according to the qualifications prescribed in 2010 Rules and not under the old Rules. In this regard, learned counsel referred to the following observations of the Hon'ble Supreme Court in the said judgment :

“10. The first question for our consideration is whether the appellant could have prescribed in the advertisement, the educational qualifications for the post of Principal in terms of its 2000 Recruitment Rules. The Administrator of the Chandigarh Administration made the Chandigarh Educational Service (Group A) Gazetted Government Arts & Science College Rules, 2000 vide notification dated 29.3.2000 and published it in the Gazette dated 1.4.2000. The said Rules were made in consultation with the UPSC, taking note of the UGC guidelines prescribing

Ph.D degree as an eligibility criteria for the post of Principals to be filled by direct recruitment.

*The Rules were sent to the Central Government for being notified in the name of the President of India and were pending consideration. It is in these circumstances the appellant advertised the post in terms of the said Rules, by prescribing the educational qualification of Ph.D for direct recruitment to the post of Principal. In Abraham Jacob Vs. Union of India [1998 (4) SCC 65], this Court held that where draft rules have been made, an administrative decision taken to make promotions in accordance with the draft rules which were to be finalized later on, was valid. In **Vimal Kumari Vs. State of Haryana [1998 (4) SCC 114]**, this Court held that it is open to the Government to regulate the service conditions of the employees for whom the rules were made, even if they were in their draft stage, provided there is a clear intention on the part of the Government to enforce those rules in the*

near future. In this case, the High Court however rejected the advertisement on the ground that regular rules were not notified by the President of India even after five years, when the High Court decided the matter. But what is relevant to test the validity of the advertisement, was the intention of the appellant when the advertisement was issued. At that time, the appellant had the clear intention to enforce the Recruitment Rules in future as they had been made in consultation with UPSC, in accordance with the UGC guidelines and the Rules had been sent to the Central Government for being notified by the President and the matter was pending consideration for a few months when the advertisement was issued. The appellant at that time had no inkling that there would be inordinate delay or the Rules may not be notified by the President. Therefore, the advertisement in terms of the 2000 Recruitment Rules was valid.

11. Even in the absence of valid rules, it cannot be said that the advertisement was invalid. In exercise of its executive power, the appellant could issue administrative instructions from time to time in regard to all matters which were not governed by any statute or rules made under the Constitution or a Statute. In fact it is the case of the respondents that the appellant had issued such instructions on 20.8.1987 directing that the lecturers from UT cadre should be promoted as Principals. In fact, the Administrator of appellant had issued a notification on 13.1.1992 adopting the corresponding Punjab Rules to govern the service conditions of its employees. If so, the Administrator of appellant could issue fresh directions in regard to qualifications for recruitment. The Recruitment Rules made by the Administrator were duly notified. Though they were not rules under Article 309, they were nevertheless valid as administrative instructions issued in exercise of executive power, in the

absence of any other Rules governing the matter. Once the Recruitment Rules, made by the Administrator, were notified, they became binding executive instructions which would hold good till the Rules were made under Article 309. Therefore, the advertisement issued in terms of the said Recruitment Rules was valid.”

16. After considering the submissions made by learned counsel for the parties, we do not find any force in the contention of learned counsel for the petitioners that prescribing Ph.D qualification as essential qualification for promotion to the post of Principal is arbitrary, illegal and discriminatory, being violative of Articles 14 and 16 of the Constitution of India. We are of the view that the Ph.D qualification for the post of Principal, either for direct recruitment or by promotion, cannot be said to unrelated to the duties and functions of the post of Principal. In order to maintain high standard of education in the Art and Science Colleges in Chandigarh, the requirement of Ph.D qualification for the post of Principal cannot be said to be unreasonable. It is 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. Courts and the Tribunals can neither prescribe the qualifications nor encroach upon the power of the concerned authority so long as the qualification prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post. This principle has been laid down by the Hon'ble Supreme Court in **J. Rangaswamy Vs. Government of Andhra Pradesh and others, (1990) 1 SCC 288** and **P.U. Joshi and others Vs. Accountant General, Ahmedabad and others, (2003) 2 SCC 632**. In **Usha Khetarpal's case (supra)**, the Hon'ble Supreme Court, while upholding the qualification of Ph.D for the post of Principal by direct recruitment, has held that the Chandigarh Administration has power to prescribe such essential criteria/qualification as it considers to be necessary and reasonable. It has also been observed that the requirement of Ph.D qualification for the post of Principal is essential to maintain the high standard of education. Once the Ph.D qualification has been held to be essential to maintain the high standard, then it makes no difference whether the recruitment to the*

said post is made by direct recruitment or by promotion. In both the methods of recruitment, in our opinion, requirement of Ph.D qualification for holding the post of Principal is essential. Prescribing of different qualifications for both the methods of recruitment, in our view, will result into anomalous situation. A Lecturer/Assistant Professor who does not possess Ph.D qualification, cannot be said to be in better situation to perform the duties and functions of the post of Principal and to maintain the high standard of education in the Colleges. Now, after the revision of pay scales and with the introduction of Career Advance Scheme, on the recommendation of the UGC the time bound scales have been given to the Lecturers of the Colleges/University. The UGC has also prescribed the essential qualifications for various posts, including the post of Principal. Keeping in view the same, the rule-making authority has prescribed Ph.D as the essential qualification in the cases of promotion to the post of Principal. In this situation, it cannot be said that there is stagnation in the cadre of Lecturers. Thus, we do not find any illegality or arbitrariness in prescribing Ph.D degree as the essential qualification for promotion to the post of Principal.”

This Court recently in a case of ***Roop Chand vs. State of Haryana and others, 2013 (4) S.C.T 667*** was considering a case whereby the claim of the petitioner for selection and appointment as conductor under the Haryana State Transport Department was rejected. This Court dismissed the writ petition and in para 9 of the judgment, it has been observed as under:-

“9. There is yet another aspect to the matter. It is well settled that it is for the employer to prescribe the essential qualification for appointment to a particular post. Whenever, specific qualifications are prescribed for the post, the incumbent for such a post would not be vested with an inherent right to seek the benefit of equivalent qualification in the absence of a clear stipulation inserted in the advertisement indicating the power with the State or the Commission as the case may be to consider and appoint the incumbents possessing such qualifications. In the advertisement in question, the prescribed essential qualification indicated Matric. There was no indication as regards considering candidates possessing equivalent qualifications. Accordingly, the petitioner cannot compel the respondents to treat the qualification of secondary level examination qualified from the National Open School, New Delhi to be equivalent to be Matric in Haryana. In taking

*such a view, I would draw support from a Division Bench judgment of this Court in **Ajay Kumar Vs. State of Haryana, 2004 (1) SCT 888**, relevant portion of which reads in the following terms:*

“Learned counsel for the petitioner has contended that the qualifications/degree in Bachelor of Journalism and Mass Communication from Maharshi Dayanand University, Rohtak, is being treated equivalent to the Post Graduate Diploma of the Kurukshetra University. In this regard, he relied upon a letter issued by the Assistant Registrar of Maharshi Dayanad University dated 4.8.2003. This letter is of no help to the petitioner. It is for the employer to prescribe essential qualifications for appointment to a particular post. The Government in its wisdom provided the essential qualifications specifically excluding the expression “or any other course equivalent to the prescribed qualifications.” Absence of this clause clearly indicates that the State and the Commission did not desire to appoint people possessing equivalent qualifications. A clause of equivalence as treated for academic purpose may not essentially be true or universally applicable

for employment purposes as well. In the field of employment a specific stipulation should be provided in the rules/instructions and/or the equivalent to the specified qualifications. Nothing has been brought to our notice which vests the respondents with such power in relation to the present advertisement. On the other hand, by very absence of such clause, exclusion of such power is clear. We are of the considered view that the petitioner cannot compel the respondents to treat his degree of Bachelor of Journalism and Mass Communication from Maharshi Dayanand University, Rohtak as a Post Graduate Diploma for the purposed of satisfying the prescribed essential qualifications.”

In the present case, an affidavit has been filed by Harinder Saini, Deputy Director o/o Director Secondary Education Haryana on behalf of respondents and stated that on the basis of applications received, written examination of eligible candidates as per prescribed qualification was conducted for various posts of PGTs including Hindi subject from 31.08.2012 to 19.09.2012 for which the petitioner did not apply being not eligible due to the above said condition, which has been challenged in the present writ petition. The written test was conducted on 02.09.2012 and 04.09.2012 (A-1) and as

per record, a total of 77 eligible candidates appeared for the written examination for the post of PGT Hindi and out them 61 candidates were considered for selection. Only 34 candidates were selected for the post of PGT Hindi in the month of January, 2013 (A-2).

Further also, under this project, 75% of the capital cost will be borne by the Central Government and 25% fund will be provided by the State Government and the bye-laws have also been framed by the competent authority and the schools are high quality model schools and will be having infrastructure and other facilities just like in a Kendriya Vidyalaya, therefore, broadly they are different from other Government Schools and different qualifications have been prescribed for teaching as well as non-teaching posts by the State Government.

Applying the ratio of the above mentioned judgments and keeping in view the fact that it is for the employer to prescribe essential qualifications for appointment to a particular post and it is not for the Court to undertake an exercise of equating one qualification with the other, the writ petition is dismissed.

(RITU BAHRI)
JUDGE

27.01.2016

G Arora