

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.13639 of 2016.

Date of Decision: July 14, 2016

Vijender Kumar

.....Petitioner

versus

The State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE DARSHAN SINGH.**

Present: Mr.Jagbir Malik, Advocate, for the petitioner.

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

Surya Kant, J. (Oral)

The petitioner has laid challenge to the *vires* of Appendix-B of Haryana School Education (Group C) State Cadre Service Rules, 2012, to the extent it prescribes the qualification comprising combination of three subjects out of five in B.Sc. as an eligibility condition for promotion to the post of PGT Science. The petitioner, who joined as J.B.T on 04.01.2011 and does not possess the combination of three subjects in B.Sc. as incorporated in Appendix-B referred to above, has laid challenge to the Rules on the premise that by virtue of prescription of this qualification, he has been left with no chance of promotion as PGT Science.

To say it differently, the question that arises for consideration is whether the denial of chance of promotion due to non-fulfillment of requisite academic qualification would render the Statutory Rule violative

of Articles 14 & 16 of the Constitution of India?.

The aforementioned question, in our considered view, has been consistently answered by the Hon'ble Supreme Court against the petitioner in a catena of decisions. In Mohammad Shujat Ali and others versus Union of India and others, (1975) 3 SCC 76, it was held as follows:-

“..... It is true that a rule which confers a right of actual promotion or a right to be considered for promotion is a rule prescribing a condition of service. This proposition can not longer be disputed in view of several pronouncements of this Court on the point of particularly the decision in Mohammad Bhakar versus Y.Krishna Reddy (1970) SLR 768, where this Court, speaking through Mitter, J., said “Any rule which affects the promotion of a person relates to his condition of service”. But when we speak of a right to be considered for promotion, we must not confuse it with mere chance of promotion – the latter would certainly not be a condition of service. This Court pointed out in State of Mysore vs. G.B. Purohit (CA No.2281 of 1965) that though a right to be considered for promotion is a condition of service, mere chances of promotion are not. A rule which merely affects chances of promotion cannot be regarded as varying a condition of service....”

The aforesaid principle has also been reiterated and followed in a series of later decisions which need not be cited.

The prescription of qualification for a post is primarily the responsibility of subject-experts. The Rule Making Authority, namely, the

State of Haryana has, in the instant case, prescribed that a candidate should have qualified the B.Sc. examination with the combination of three subjects out of five subjects, namely, Physics, Chemistry, Botany, Zoology and Mathematics. Such qualification has been prescribed uniformly for all the candidates, whether to be promoted or directly recruited. The fact that the petitioner is left with no chance of promotion as PGT Science as he does not possess the combination of above-stated three subjects, would not render the rule unconstitutional as mere “chance of promotion” is neither a condition of service nor principle like estoppel applies against the State in such a case.

No case to interfere with the Rule is made out.

Dismissed.

[SURYA KANT]
JUDGE

July 14, 2016
mohinder

[DARSHAN SINGH]
JUDGE