

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4757 of 2016

Date of decision: 31.03.2016

Hemant Jasuja

----Petitioner

Versus

State of Punjab and another

----Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

**Present: Mr. Arvinder Singh, Advocate
for the Petitioner**

HARINDER SINGH SIDHU, J.

The petitioner has filed this petition praying for quashing the educational qualifications prescribed for direct recruitment for the post of Sub-Divisional Soil Conservation Officer (SDSCO) in the Punjab Soil and Water Conservation (Group-A) Service Rules, 2014.

The petitioner was appointed as Soil and Water Conservation Officer (SCO) in the department of Soil Conservation on 24.05.2004. At the time of his appointment, the post of SCO was governed by 'Punjab Soil and Water Conservation and Water Land Development Rules, 2001'. As per these Rules, 80% of the posts of SCO were to be filled by direct recruitment. Educational qualification specified for this post was 'Degree in Civil Engineering/ Agricultural Engineering/ B.Sc. (Agriculture)'. The next higher post of Sub-Divisional Soil Conservation Officer (SDSCO) was governed by the 'Punjab Soil Conservation and Engineering Service (Class-II) Rules, 1974' (for short '1974 Rules'). As per Appendix B of these Rules, the educational

qualification for the post were as under:

*“(a) A degree of B.Sc. in Civil or Agricultural Engineering of a recognized Indian or Foreign University; or
(b) A degree of Master of Science in Agronomy or Soil Sciences of a recognized university with an experience of filed, teaching or research in Soil Conservation for a minimum period of three years.”*

The next higher post of Divisional Soil Conservation Officer (DSCO) was governed by 'Punjab Soil Conservation and Engineering Service (Class-I) Rules, 1978' (for short '1978 Rules'). As per these Rules 50% of these posts, were to be filled by direct recruitment. As per Appendix B of these Rules , educational qualification of this post was:

*“A degree of B.Sc. in Civil or Agricultural or Mechanical Engineering of a recognized Indian or Foreign University:
Provided that preference will be given to the candidates who possess higher academic qualification with brilliant record.”*

The State of Punjab has now notified 'Punjab Soil and Water Conservation (Group-A) Service Rules, 2014' (for short '2014 Rules”) in place of the aforementioned 1974 and 1978 Rules which have been repealed. The 2014 Rules govern the 'Punjab Soil and Water Conservation (Group A) Service' which comprises the posts of Chief Conservator of Soils, Conservator of Soils, Divisional Soil Conservation Officer, Sub-Divisional Soil Conservation Officer, Soil Conservation Officer etc. As per these Rules, 25% of posts of SDSCO are to be filled by direct recruitment. The educational qualification prescribed for SDSCO is as under:

“M.Sc. (Agriculture) with Soil Science or Conservation agriculture as major subject or B.Tech., Agriculture Engineering in first Division with an experience of five years in an organization (Public or Private) directly dealing in Soil Conservation or Water Management or Natural Resource Management.

Provided that at least 40% posts shall be filled up from amongst the candidates, who possess degree in Agricultural Engineering.”

At the time of his appointment as SCO the petitioner possessed the qualifications of B.Tech Agriculture Engineering in the 2nd Division and M.Tech Soil and Water Conservation in the 1st Division. He is aggrieved of the aforesaid provision of the 2014 Rules because as per this provision, a person with qualification of B.Tech, Agriculture Engineering in 1st Division with five years experience has been made eligible for direct recruitment for the post of SDSCO. Thereby the petitioner with the qualification of B.Tech Agriculture Engineering in 2nd Division and M.Tech., Soil and Water Conservation in 1st Division with five years experience (which is much higher qualification than the B.Tech., Agriculture Engineering in 1st Division) is not being considered eligible.

He, accordingly, has assailed the provision fixing the educational qualification for the post of SDSCO as being vague, arbitrary and unreasonable on the ground that a person having a higher qualification than that specified therein has not been made eligible.

This argument of the Ld. Counsel for the petitioner cannot be accepted.

It is well settled that prescribing the source and mode of recruitment and qualifications and criteria of selection for various posts are matters which fall within the exclusive domain of the employer. Judicial review in such matters can be exercised only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by mala fides.

This position was explained by Hon'ble the Supreme Court in

Official Liquidator v. Dayanand, (2008) 10 SCC 1, as under:

“59. The creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source and mode of recruitment and qualifications and criteria of selection, etc. are matters which fall within the exclusive domain of the employer. Although the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and laying down the qualification, etc. is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by mala fides.”

Though, on the face of it, Ld. Counsel could not point out any substantive arbitrariness in the Rule, he however stressed that in its application and operation the Rule would be iniquitous and arbitrary in as much as a candidate with B.Tech., Agriculture Engineering in first Division with an experience of five years has been made eligible but a person, like the petitioner, possessing higher qualification of M.Tech is not so eligible.

In our view, this grievance of the petitioner cannot be a ground to challenge the vires of the Rule, though it may be a ground to challenge the action of the respondents in treating a person with higher qualifications in the same line to be ineligible.

It has been held by a Full Bench of this Court in **Manjeet Singh v. State of Punjab & Others 2011 (1) SLR 583** that candidates possessing higher qualification in the same subject and line than those prescribed cannot be ignored and denied consideration for selection.

Accordingly, we find no merit in this petition in so far as a challenge to the vires of the 2014 Rules is concerned.

However, should the petitioner be treated as ineligible for the post on the ground of not possessing the prescribed qualifications, it would be open to him to challenge such action on the plea that a person with higher qualification in the same line is to be treated eligible.

Disposed of.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

March 31, 2016
Atul

(Refer to Reporter)