

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

**CWP No.24848 of 2012 (O&M)
Date of Decision:04.10.2017**

Ram Niwas

... Petitioner

Vs.

Union of India and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. R.K. Bagga, Advocate for the petitioner.

Mr. Vivek Singla, Advocate for the respondent-UOI.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has sought for the following relief:

“(a) To further issue a writ in the nature of mandamus by directing the respondent No.2 to decide the representation submitted and sent by the petitioner to the respondent No.2 (Annexure P-8 & P-9) which are still pending in his office and further by directing the respondent No.2 to give the joining letter to the petitioner as the petitioner has already fulfilled all the requisite qualifications and conditions advertised by the respondents and he has been declared as a successful candidate and has been served with a job offer letter by appointing the petitioner (Annexure P-6).”

The respondents advertised for the post of Boiler Attendant on 10.3.2012. Petitioner is a candidate pursuant to the advertisement dated 10.3.2012 (Annexure P-4) for the post of Boiler Attendant. The petitioner had the certificate issued by the Construction Industry Development Council dated 20.12.2007 (Annexure P-1). The respondent-selecting and appointing authority declined to consider the petitioner's application for selection and appointment to the post of Boiler Attendant on the score that

petitioner do not fulfill the requisite qualification prescribed for the post. Thus, the present petition.

Method of recruitment to the post of Boiler Attendant reads as under:

“Essential Qualification

(a) NCTVT Certificate in their relevant trades i.e. Fitter Electric, Fitter General, Examiner (Having NCTVT Certificate in Machinist/Welder/Electrician trade), Chemical Process worker, Boiler Attendant.

(b) When applicants with NCTVT Certificate as mentioned above are not available then only applicants with ITI or equivalent Diploma/Certificate holders will be considered.

(c) Candidate should have the 1st class competency certificate for the post of Boiler Attendant.”

Undisputedly, petitioner do not fulfill the requisite certificate mentioned in the Essential Qualification. However, with reference to the petitioner's certificate (Annexure P-1) would fall under “equivalent diploma/certificate holders will be considered”. Undisputedly, respondents have not identified which are diploma and certificate are equivalent to NCTVT certificate with ITI. Petitioner is not holder of the certificate of NCTVT or ITI so as to consider his candidature. The respondent-department have not identified which are the equivalent certificate in respect of NCTVT and ITI certificate. They are relying on communication with the author of the certificate of the petitioner (Annexure P-1). Vide communication of the author of Annexure P-1 dated 19.10.2016 (Annexure R-6), it is evident that certificate issued by the Construction Industry Development Council is not an equivalent certificate to an ITI certificate.

Therefore, respondents are of the view that Annexure P-1 is not equivalent to ITI certificate or NCTVT. Thus, petitioner has not made out a case.

Boiler Attendant post is manned by respondent-department. As per rules of recruitment read with advertisement, it is crystal clear that the respondents have insisted for certain essential qualification. At the same time, an alternative qualification has been stated to the extent that “equivalent diploma/certificate holders will be considered”. Respondent-department have not identified which are the equivalent diploma or certificate which are stated to be equivalent to NCTVT and ITI. In the absence of identifying equivalent diploma or certificate by the respondent-selecting and appointing authority and merely relying on a communication of the Construction Industry Development Council who have stated that certificate (Annexure P-1) is not an equivalent certificate to ITI, petitioner's candidature cannot be rejected. It is for the selecting and appointing authority to identify which are the qualification of diploma/certificate is equivalent to NCTVT/ITI before prescribing in the rules of recruitment as “equivalent diploma/certificate holder will be considered” which has been prescribed as essential qualification for Boiler Attendant. Even as on this day, respondent-selecting and appointing authority have not identified which are the equivalent diploma or certificate which are stated to be equivalent to NCTVT/ITI. In the absence of identifying equivalent diploma or certificate to that of NCTVT/ITI, respondents are hereby directed to consider the petitioner's name for selection and appointment to the post of Boiler Attendant within a period of three months from today.

With the above observation, petition stands allowed.

At this stage, learned counsel for the respondents relied on statement made in para-3 and 5 of the affidavit dated 9.1.2016 to substantiate that NCTVT or ITI certificate read with Annexure P-1 are not

equivalent. Therefore, petitioner had not made out a case.

By means of an affidavit and statement, respondent-department cannot equate qualification of NCTVT or ITI so as to sustain the argument that Annexure P-1 is not equivalent to NCTVT and ITI. Therefore, affidavit and statement cannot be taken into consideration unless there is a statutory or executive order to that effect is issued by a competent authority or authorized person.

04.10.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No