

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.24537 of 2017(O&M)
Date of Decision: 30.10.2017

Diwanshu Sharma

--Petitioner

Versus

State of Punjab and others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Aman Dhir, Advocate for the petitioner.

TEJINDER SINGH DHINDSA.J (ORAL)

Petitioner, who possesses a Two Years Diploma in Mechanical Engineering from Sant Longowal Institute of Engineering & Technology, District Sangrur, is aggrieved of the action of the respondent-Irrigation Department, State of Punjab in having considered him ineligible for appointment to the post of Junior Engineer (Mechanical).

It has been averred that the respondent-Irrigation Department invited applications online for recruitment to various posts including 61 posts of Junior Engineers (Mechanical) vide advertisement dated 25.11.2016. 28 posts were to be filled up from amongst the General Category candidates. Petitioner belongs to the General Category and had submitted his application for the post in question. Counsel submits that as per scheme of selection, a written test was to be held and the final merit was to be drawn as per performance in the written test. Petitioner having participated in the written test has secured 52.25 marks. It is submitted that even though, no specific order has been passed rejecting the claim of the petitioner for the post of Junior Engineer (Mechanical) but after having conducted a process of counselling a list of selected candidates at Annexure

P-6 has been put in public domain and in which two candidates belonging to the General Category namely Sandeep Dhaka and Manish Arora and who secured a lower merit position in the written test, have been issued letters of appointment. Having represented, the petitioner is stated to have been orally informed that he has not been considered for appointment on the ground that he possesses a Two Years Diploma and which is not as per the essential qualification prescribed in the advertisement i.e. a Three Years Diploma of Junior Engineer in Mechanical Engineering.

Counsel would vehemently argue that the Two Years Diploma possessed by the petitioner in Mechanical Engineering from Sant Longowal Institute of Engineering & Technology, Sangrur is a higher qualification if not equivalent in comparison to the Three Years Diploma stipulated in the advertisement. In support of such contention the Diploma awarded to the petitioner and placed on record at Annexure P-3 (Colly) has been adverted to and in which the following note is recited:-

“Note:-

- 1. Diploma Courses of SLIET are equivalent to the Diploma awarded by the various State Boards of Technical Education in the appropriate fields for the purposes of recruitment to the posts and services under Central Government (notification 42 No.F-18-8/93 T.D.V/T.S.IV dated March 8, 1995).*
- 2. Diplomas awarded by SLIET are duly recognized by the All India Council for Technical Education (A.I.C.T.E), New Delhi (Letter No.F-765-65-031 (E)-ET-97 Dated April 15, 1997 and Letter No.F-765-65-031 (E)-ET-97 dated July 4, 1997).*
- 3. Diplomas awarded by SLIET (except Diploma in Computer Science & Engineering) are exempted from Section-A of AMIE by the Institution of Engineers (India) vide letter*

No.EFA/AKG/R-22A dated Feb, 20, 1995:EEA/AD/R-22A dated July 23, 1996 and EEA/AKG/R-22A dated November 1, 1999.

4. Panjab University, Chandigarh vide its Letter No.ST/8374 dated September 21, 1999 has recognized the Diploma courses of SLIET for the purpose of admission to B.Sc/B.C.A 1st year courses.

5. The institute has been granted deemed to be university status under section 3 of UGC/Act, 1956 vide notification No.F.9-42/2001-U.3 of Govt. of India, April 10, 2007.”

Even a notification dated 13.3.1995 (Annexure P-10) by the Govt. of India, Ministry of Human Resource Development (Department of Education) has been relied upon and in terms of which the Diploma Course of Industrial & Production Engineering done by the petitioner from S.L.I.E.T, Sangrur is taken to be recognized as equivalent to the 10+2 qualification as also the Diploma Course awarded by various State Boards of Technical Education. That apart, counsel has also referred to letters dated 31.10.2011 and 18.7.2013 issued by the S.L.I.E.T, Sangrur at Annexure P-9 (colly) to assert that the Two Years Diploma awarded by S.L.I.E.T., Sangrur is equivalent to the Three Years Diploma awarded by other State Boards of Technical Education. It is argued that under such circumstances the respondent-Irrigation Department could not have considered the petitioner ineligible for the post of Junior Engineer (Mechanical). Counsel appearing for the petitioner would also argue that the expert in the subject i.e. the All India Council for Technical Education (A.I.C.T.E) has also issued a communication dated 1.3.2017 (Annexure P-11 colly) and addressed to the P.S.P.C.L which was in the nature of a clarification that a candidate namely Sh. Shubham Garg and who was seeking appointment to the post of Junior Engineer (Mechanical) and

possessed the same very qualification i.e. a Two Years Diploma from S.L.I.E.T., Sangrur was to be treated as eligible by stating that such qualification was equivalent to the Three Years Diploma in Engineering awarded by various State Boards of Technical Education. State action is also termed as arbitrary and violative of Articles 14 and 16 of the Constitution of India by submitting that the petitioner on the basis of the Two Years Diploma possessed, is only claiming eligibility and not any weightage towards possessing such qualification. Another limb of the argument raised is that the merit was to be determined as per written test conducted and in such test the petitioner has secured a higher merit position as opposed to candidates who have been issued offers of appointment. Reliance has been placed upon the judgement of the Hon'ble Apex Court in ***Mohd. Riazul Usman Gani Vs. District & Sessions Judge, Nagpur, 2000 (2) S.C.T, 10*** as also a Full Bench judgement of this Court in ***Manjit Singh Vs. State of Punjab & others, 2010(3) S.C.T., 703*** to buttress the contention that a candidate possessing a higher/better qualification than the minimum prescribed qualification for a post cannot be ousted from the zone of consideration.

Counsel for the petitioner has been heard at length and the pleadings on record have been perused.

It is by now well settled that it is for the employer to prescribe qualifications for appointment to a particular post. In the facts of the present case as per advertisement dated 25.11.2016 (Annexure P-1) the essential qualifications prescribed for the post of Junior Engineer (Mechanical) were to the following effect:-

“should possess Three Years Diploma of Junior Engineer in Mechanical Engineering from a State Technical Education Board or from a recognized university or institution.”

The documents relied upon by the counsel and issued by the S.L.I.E.T, Sangrur (Annexure P-9 colly) as also by Govt. of India, Ministry of Human Resource Development (Department of Education) dated 13.3.1995 (Annexure P-10) and the communication dated 1.3.2017 issued by the A.I.C.T.E, Ministry of Human Resource Development, Govt. of India (Annexure P-11 colly) do not conclusively conclude that the Two Years Diploma held by the petitioner from S.L.I.E.T, Sangrur is a higher/better qualification than the Three Years Diploma in Engineering awarded by the State Boards of Technical Education. Apart from the documents referred to herein above, counsel has not adverted to any other material on the basis of which this Court could record a finding as regards petitioner possessing a higher qualification in the same line as opposed to the educational qualification prescribed under the advertisement for the post of Junior Engineer (Mechanical). Under such circumstances no benefit can enure to the petitioner on the strength of Full Bench judgement rendered by this Court in *Manjit Singh's* case (supra).

Even otherwise, this Court lacks the competence to go into and examine different technical education qualifications and to form an opinion as regards one qualification to be rated better or higher than the other. Rather courts would normally refrain from embarking upon such an exercise and leave it to the experts in the field.

For the benefit of the petitioner a collective reading of the documents placed reliance upon by the counsel at Annexures P-9 (colly), P-10 and P-11 (colly) would at best indicate that the Two Years Diploma

possessed by the petitioner issued by S.L.I.E.T, Sangrur is equivalent to the Three Years Diploma from a State Technical Education Board and as stipulated in the advertisement. Even proceeding on such premise, this Court cannot take a view in favour of the petitioner and to hold him eligible for the post of Junior Engineer (Mechanical).

Whenever specific qualifications are prescribed for a post, the incumbent for such post would not be vested with an inherent right to seek the benefit of equivalent or matching qualification in the absence of a clear stipulation inserted in the advertisement indicating the power that the State or the Recruitment Agency as the case may be, to consider and appoint such incumbents possessing such qualifications. In the advertisement in question, the prescribed qualification was Three Years Diploma of Junior Engineer in Mechanical Engineering from a State Technical Education Board or from a recognized university or institution. There was no indication in the advertisement that candidates possessing an equivalent qualification would also be treated eligible. The petitioner cannot compel the respondents to treat him as eligible for the post in question on the basis of qualification being equivalent to the one prescribed in the advertisement even if that be so. In taking such view this Court would draw support from a Division Bench judgement of this Court in ***Ajay Kumar Vs. State of Haryana, 2004 (1) S.C.T., 888*** and the 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."

The reliance placed by counsel upon the judgement of the Hon'ble Apex Court in **Mohd. Riazul Usman Gani's** case (supra) is misplaced. The issue therein was as regards recruitment to Class-III and Class-IV service in the Subordinate Judicial Service in the State of Maharashtra. Under the relevant recruitment rules the procedure for recruitment to posts of various categories had been prescribed. Under Rule 2 a constitution of an Advisory Committee was envisaged and which in turn had laid down a four point criteria for shortlisting of all the applicants. The offending portion of the criteria was to the effect that the applications of such candidates possessing minimum educational qualification of passing

4th vernacular standard and/or educated up to passing of 7th standard only would be considered for the interview and those who had studied above 7th vernacular standard were not to be considered for appointment. The Hon'ble Supreme Court under those peculiar circumstances and while considering the question of appointment to Class-III/Class-IV posts had taken a view that there could be no justification for candidates who possess qualifications equivalent to S.S.C Examination for not to be considered. In the judgement itself a note of caution was inserted that such view was being taken on the facts of the case and was not to be understood as laying down a rule of universal application.

For the reasons recorded above, this Court does not find any infirmity in the action of the respondent department in having treated the petitioner as ineligible for the post of Junior Engineer (Mechanical) as he concededly does not possess the Three Years Diploma of Junior Engineer in Mechanical Engineering from a State Technical Education Board and which was the prescribed essential qualification in the advertisement dated 25.11.2016 (Annexure P-1).

Petition, accordingly, is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

30.10.2017

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No