

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (CIVIL) No.1743/2016**

% **Reserved on:** 6th January, 2017
Date of Decision: 15th March, 2017

MAHESH KUMARPetitioner
Through Mr. O.P. Gehlaut, Advocate.

Versus

DIRECTORATE (MEDICAL), DELHI E.S.I. CORPORATION NEW
DELHI & ORSRespondents
Through Mr. Yakesh Anand and Ms.
Sonam Anand, Advocates for the ESIC.
Mr. Vivek Goyal, CGSC with Ms. Vanya
Khanna, Advocate for the UOI.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. CHANDER SHEKHAR

SANJIV KHANNA, J.

The Employees State Insurance Corporation (ESI Corporation, for short), had issued an advertisement dated 2nd June, 2010, pursuant to which the petitioner-Mahesh Kumar had applied for selection to the post of Librarian Grade-II.

2. The petitioner was called for an interview and had appeared before the Selection Board on 21st September, 2010.

3. As per the selection list dated 5th October, 2010, four candidates were selected and shortlisted. The petitioner's name did not figure in the said list,

for as per the respondents, he did not fulfil the minimum eligibility qualification stipulated in the Recruitment Rules.

4. Aggrieved, the petitioner in OA No. 1058/2013 had challenged the selection list dated 5th October, 2010 and rejection of his candidature before the Principal Bench of the Central Administrative Tribunal (Tribunal, for short). OA No. 1058/2013 has been dismissed by the impugned order dated 2nd September, 2014.

5. The short and the precise issue, which arises for consideration, is whether the petitioner meets and satisfies the eligibility qualification prescribed for the post of Librarian Grade-II as enumerated in the Employees State Insurance Corporation (Library Staff) Recruitment Rules, 1978 (Rules, for short). As per the Rules, there are two categories of Librarian staff i.e. Librarian Grade-II and Librarian Grade-I. The essential educational qualifications for Librarian Grade-I and Librarian Grade-II are as under:-

“Grade-I (Direct Recruitment)”

1. Graduate with degree or diploma for Library Science (one years course after Graduation) of a recognized.
2. Two years experience in a public college, University or Departmental Library.

Promotion

Librarian Grade-II with five years' service in the Grade rendered after appointment thereto on a regular basis.

Librarian Grade-II (Direct)

Matric with a Diploma in Library Science (2 years course after matric).

Promotion

Library Assistant with 8 years experience in the Grade.”

6. The petitioner, who is a Scheduled Caste category candidate, has passed Secondary and Senior Secondary from the Central Board of Secondary Education (CBSE). The petitioner has a Bachelor's degree from the University of Delhi and a degree in Library Information Science from the Indira Gandhi Open University. In addition, the petitioner has a one year certificate course from National Open School, where he had studied subjects: (1) Libraries; Functions and Services, (2) Organisation of Library Material; (3) Records of Library. He had worked as a Library Assistant in the National Institute of Open Schooling from 10th February, 2001 to 30th June, 2002. The petitioner has also undergone practical training at Delhi Public Library. He has also undertaken and completed one year's course in Computer Software Development sponsored by the Delhi State Industrial Development Corporation.

7. The petitioner was appointed as a Library Attendant in Kamla Nehru College on 26th September, 2006 and has been working at the said post.

8. The contention of the ESI Corporation, which has been accepted by the Tribunal, is that the petitioner is not eligible and is not qualified for the post of Librarian Grade-II, for he did not have a two years' diploma after matriculation in Library Science and has a degree in Library Science, which he had obtained after graduation. It is submitted that the four candidates who have been appointed are diploma holders in Library Science (two years' course) after matriculation. The names of the persons selected and the marks obtained by them in the interview are as under:-

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S.No.	Roll No.	Name of Candidates	Father/husb and Name	Marks
(1)	(2)	(3)	(4)	(5)
1.	184007	Akanksha Varshney	Yogesh Varsheny	74
2.	184012	Naney Thakur	Rajender Thakur	73
3.	184021	Meenakshi Pal	Sunchir Lal	66
4.	184001	Geetanjali	Ved Praksh	54

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The petitioner had secured 69 marks out of 100 marks in the interview. The petitioner along with four other candidates was not considered as qualified, for they did not have two years' diploma in the Library Science after matriculation. The names of the said four candidates and the marks obtained by them including the petitioner are as under:-

- “(i) Ramesh S. [75 marks]
(ii) Mahesh Kumar [69 marks]
(iii) Satinder Kumar [68 marks]
(iv) Archana [62 marks]
(v) Vandana Singla [60 marks]”

Sonam, who had secured 62 marks, was also not considered as she was under age.

9. Accordingly, Geetanjali and Meenakshi Pal, who had secured 54 and 66 marks, respectively, were selected. Geetanjali and Meenakshi Pal were co-respondents before the Tribunal and have been impleaded as respondent

Nos.3 and 4 to the present writ petition. They have not entered appearance and contested these proceedings.

10. The aforesaid Rules were enacted 39 years back and hence make reference to matriculation or the equivalent. The school education system/pattern since then has changed, for the matriculation system was first replaced by Higher Secondary which in turn stands replaced by the Secondary and Senior Secondary system. When we read the Rules for the post of Librarian Grade-I and Librarian Grade-II, it is apparent and can be appreciated that a candidate with a one year degree or diploma in Library Science after graduation, is considered to be superior and higher qualified than matric with a two year diploma in Library Science. It is an accepted and admitted position that Librarian Grade-I is the immediate higher post in the hierarchy.

11. It is in these circumstances, we have to examine and consider the stand of the ESI Corporation that the petitioner does not meet and fulfil the essential eligibility qualification prescribed for Librarian Grade-II. If we accept the stand of the respondent ESI Corporation, the petitioner would fulfil and meet the eligibility qualifications for appointment as Librarian Grade-I, but would fall short and would not be eligible for appointment to the lower post of Librarian Grade-II.

12. In ***Commissioner of Income Tax , Bombay and Ors. Vs. Podar Cement Pvt. Ltd. and Ors*** (1997) 5 SCC 482, after referring to ***State Vs, S.J. Choudhary*** (1996) 2 SCC 428, and *Statutory Interpretation by Francis Bennion*, the Supreme Court elucidated upon the need to update the constructions of the words of a statute. The Court in ***S.J. Choudhary*** (supra)

had observed that the interpreter should presume that the Parliament intended the Statute to be applied at any future time in such a way as to give effect to its true original intention.

13. In the present factual matrix, noticing that the Rules are archaic, we would adopt a pragmatic and realistic interpretation for the words "essential qualification", rather than follow and apply a pedantic and literal interpretation which would result in absurdities. We would hesitate and not re-write the Rules, but can interpret the essential qualification with a certain degree of flexibility to adapt the pre-dated rules in the contemporary context. A stricter approach would not only be counterproductive, but would be distinctly unjust and unfair. The fact that the authorities had not amended the rules over 37 years would indicate that, they perceived that the Rules were broad enough in their application to account for changes and modifications in the educational pattern. We must therefore interpret the Rule with such modification of the meaning of the language of a statute as is necessary to give effect to the legislative intent behind its enactment. The Recruitment Rules should be read as laying down minimum educational qualification and not as postulating or stating that a candidate, who has higher qualifications, would be ineligible for he is overqualified. Over qualification may be contra indicative for some posts/ Recruitment Rules, but not in this case.

14. As we are taking a different view from the one expressed by the Tribunal, we would like to refer to the reasoning and the judgments in the impugned order. The Tribunal posed the question; whether an applicant who possess higher qualification than the required qualification or equivalent

qualification prescribed, would be eligible and has answered the said question in negative i.e. if the applicant possesses higher qualification, he would be disqualified. It has been held that possessing higher qualification does not mean that the candidate possesses the minimum prescribed qualification. One year's degree course in Library Information Science obtained by the petitioner cannot be treated as equivalent to a diploma in Library Science of two years after matriculation.

15. We would begin by referring to the decision in ***Yogesh Kumar and Ors. Vs. Government of NCT of Delhi & Ors.*** (2003) 3 SCC 548, wherein it has been held that:-

“5. The division bench of the Delhi High Court in the impugned judgment has dealt with the above two arguments in great detail. In our considered opinion it has rightly come to the conclusion that B.Ed. qualification, although a well recognised qualification in the field of teaching and education- being not prescribed in the advertisement, only some of the B.Ed. candidates who took a chance to apply for the post cannot be given entry in the field of selection. We also find that the High Court rightly came to the conclusion that teacher training imparted to teachers for B.Ed. course equips them for teaching higher classes. A specialized training given to teachers for teaching small children at primary level cannot be compared with training given for awarding B.Ed. degree. Merely because primary teachers can also earn promotion to the post of teachers to teach higher classes and for which B.Ed. is the prescribed qualification, it cannot be held that B.Ed. is a higher qualification than TTC. Looking to the different nature of TTC qualification the High Court rightly held that it is not comparable with B.Ed. degree qualification and latter cannot be treated as higher qualification to the former.

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8. This last argument advanced also does not impress us at all. Recruitment to Public Services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the Rules allows entry to ineligible persons and deprives many others who could have competed (*sic* competed) for the post. Merely because in the past some deviation and departure was made in considering the B.Ed, candidates and we are told that was so done because of the paucity of TTC candidates, we cannot allow a patent illegality to continue. The recruitment authorities were well aware that candidates with qualification of TTC and B. Ed. are available yet they chose to restrict entry for appointment only to TTC pass candidates. It is open to the recruiting authorities to evolve a policy of recruitment and to decide the source from which the recruitment is to be made. So far as B.Ed. qualification is concerned, in the connected appeals [CA No. 1726-28 of 2001] arising from Kerala which are heard with this appeal, we have already taken the view that B. Ed. qualification cannot be treated as a qualification higher than TTC because the natures of training imparted for grant of certificate and degree are totally different and between them there is no parity whatsoever. It is projected before us that presently more candidates available for recruitment to primary school are from B.Ed. category and very few from TTC category. Whether for the aforesaid reasons, B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B. Ed. candidates for the present vacancies advertised as eligible. In our view, the division bench of the Delhi High Court was fully justified in coming to the conclusion that B. Ed. candidates were rightly excluded by the authorities from selection and appointment as primary teachers. We make it clear that we are not called upon to express any opinion on any B. Ed. Candidates appointed as primary teachers pursuant to advertisements in the past and our decision is confined only to the advertisement which

was under challenge before the High Court and in this appeal.”

The issue, which had arisen in the aforesaid case, was whether candidates who had a B. Ed. Degree were eligible as per the Recruitment Rules, which had stipulated TTC qualification. What is important and relevant is the finding of the Supreme Court in paragraph 5 quoted above. It was held that the TTC qualification was not comparable with the B. Ed. Degree qualification. Consequently, the B. Ed Degree cannot be treated as a higher qualification. The said finding has been reiterated in paragraph 8 with reference to the connected appeals arising from the State of Kerala wherein it was held that B. Ed. Qualification cannot be held to be a higher qualification than TTC because the nature of training imparted in the two courses was totally different and there is no parity between the two. (We have subsequently referred to the decision in *P.M. Latha and Anr. Vs. State of Kerala and Anr.* (2003) 3 SCC 541)

16. Similarly, in *Dilip Kumar Ghosh and Ors. Vs. Chairman & Ors.* (2005) 7 SCC 567, the appellants before the Supreme Court were holders of B. Ed. Degree, but were declared ineligible for the post of Primary School Teacher, for the Recruitment Rules/advertisement had specifically prescribed JBT/PTTC certificate as the mandatory qualification. In paragraph 10, the Supreme Court observed that the B. Ed. curriculum did not have subjects like Child Psychology and the former course was generic in nature. The JBT/PTTC certificate was specifically for training candidates to teach in primary schools. The Supreme Court drew a distinction between teaching students at a primary level up to class IV and those in the higher classes, emphasising that for teaching at the primary level, knowledge of Child

Psychology and development at a tender age was an essential pre-requisite. This judgment also refers to *Yogesh Kumar* (supra) and an earlier decision in *P.M. Latha* (supra). The latter decision dealt with candidates with B. Ed. Degree, who had been held to be eligible as lower primary and upper primary teachers in Government schools on the ground that they had B. Ed., a higher qualification than the TTC. The Supreme Court has held that B. Ed. Degree holders cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Further, whether the recruitment should be from the candidates with TTC certificate or B.Ed. qualification was a matter of recruitment policy and in the said case there was sufficient logic for the authorities to prescribe qualification for appointment as TTC only.

17. The aforesaid decisions, in our opinion, would not be applicable. In the said decisions, it was held that the B.Ed. Degree cannot be treated and equated with TTC or TBT or PTTC as their curriculum and course material was entirely different. The latter were specific certificate courses for teaching at the primary level, whereas the B.Ed. is a general teaching course for teaching at higher levels.

18. We have, in paragraph 13 above, observed that over qualification may be contraindicative for some posts but not in the present case. Lest there be any confusion and incertitude, we would elaborate on the said aspect. Recruitment Rules and Executive Instructions are framed to prescribe minimum eligibility qualifications and requisite experience. This ensures transparency and uniformity, and curtails the scope of discretion and nepotism in the selection process. There may be certain posts where over qualification may amount to disqualification or ineligibility, for such

candidates would be unsuitable for the nature of work involved as they would not require the skill and qualifications the over qualified possess. This is not the position in the present case.

19. Educational curriculum and subjects are constantly evolving with changes and modifications to suit the present day needs. Therefore, the eligibility requirements should also be updated as and when required to fit the present day needs and context. Courts cannot prescribe the eligibility or experience qualifications as these are matters of policy best left to the Executive. However, when the recruitment rules are not modified and updated to keep up with the times, the Courts may intervene to interpret the antiquated provisions with a degree of flexibility to prevent injustice and ensure that a more qualified and better suited candidate is not denied selection on account of senescent rules.

20. A Division Bench of this Court in ***Manju Pal Vs. Government of National Capital Territory of Delhi and Anr.*** (2002) 61 DRJ 58, had dealt with a case of appointment to the post of Assistant Primary Teacher. The essential qualifications prescribed for the said post were that the candidate should have studied Hindi at the Secondary or Senior Secondary level. The petitioner therein had a Bachelor of Arts Degree in Hindi but was declared ineligible for the post by the authorities on the ground that it was a higher qualification. The Court rejected the stand of the authorities observing that a candidate having higher qualification like a B.A. or M.A. Degree in Hindi could not be declared as less qualified or lacking competence, for it had not been shown that the study of Hindi at the Secondary or Senior Secondary level was more helpful for teaching primary level students.

21. Reference must also be made to the decision of dated 26th May, 2016 of a Division Bench of this Court in W.P. (C) 8089/2015 titled ***Government of National Capital Territory of Delhi Vs. Monika Sharma***. The respondent therein had been denied appointment as a Post-Graduate Teacher (Sociology) despite having a B.El.Ed and M.Ed Degree in Sociology, for the reason that B.El.Ed degree could not be equated with a B.Ed degree which was the essential qualification. Dealing with the question of over qualification, the Division Bench observed as under:-

"18. In ***Jyoti K.K. and Ors. vs. Kerala Public Service Commission & Ors.*** (supra), the Supreme Court observed that if a person had acquired higher qualifications, such qualifications would pre-suppose acquisition of lower qualification. A degree holder would be eligible to apply for a post, where the minimum qualification prescribed was a diploma holder. when the position was not clear and the rules did not per se disqualify holders of the higher qualifications, it would be appropriate to hold that those with the higher qualifications would be eligible. In ***Chandrakala Trivedi vs. State of Rajasthan and Ors.*** (2012) 13 SCC 129, the Supreme Court reversed the decision of the High Court observing that the expression „equivalent“ must be given a reasonable meaning. Usage of the expression „equivalent“ means that there are some degrees of flexibility or adjustment which do not lower the stated requirement. Equivalent does not mean exact. In this case, the candidate was declared ineligible for appointment as a teacher for primary and upper primary schools because she had not passed the Higher Secondary/Senior Secondary Examination, the basic qualification for the post in question. She was considered eligible as she had cleared higher examinations. Recently, the Supreme Court in CWP No.13368/2015, ***Parvaiz Ahmad Parry vs. State of Jammu & Kashmir & Ors.*** decided on 6th November, 2015 has held that while the minimum qualification prescribed for the post

of J&K Forest Service Range Officers Grade-I (Forest) was a B.Sc (Forestry) or an equivalent degree from any University recognized by the ICAR, a candidate with a higher qualification was equally eligible. Thus a B.Sc candidate with Forestry as a major subject and M.Sc. in Forestry was eligible. It was observed:-

“25. In our view, if a candidate has done B.Sc. in Forestry as one of the major subjects and has also done Masters in the Forestry, i.e., M.Sc. (Forestry) then in the absence of any clarification on such issue, the candidate possessing such higher qualification has to be held to possess the required qualification to apply for the post. In fact, acquiring higher qualification in the prescribed subject i.e. Forestry was sufficient to hold that the appellant had possessed the prescribed qualification. It was coupled with the fact that Forestry was one of the appellant’s major subjects in graduation, due to which he was able to do his Masters in Forestry.”

21. A Full Bench of the Punjab and Haryana High Court in CWP No.451/2008 ***Manjit Singh vs. State of Punjab & Ors.*** after extensively referring to case law, has held that a candidate possessing a higher degree in the same line cannot be denied consideration for selection, though he does not hold the lower qualification."

22. In view of the aforesaid discussion, the impugned order of the Tribunal dated 2nd September, 2014 dismissing OA No. 1058/2013 is set aside. The respondent-ESI Corporation would accordingly process the case of the petitioner for appointment to the post of Librarian Grade-II, as per the marks and merit position secured by him. If qualified as per marks, a letter of appointment will be issued in favour of the petitioner within two months from the date of receipt of a copy of this order by the ESI Corporation. The petitioner would not be entitled to payment of back wages. However, his pay

will be fixed notionally as if he was appointed on the date on which his immediate junior had joined. The seniority of the petitioner will also be determined on the basis of the merit list and he would be entitled to all consequential benefits including length of service for promotion.

23. There will be no order as to costs.

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(SANJIV KHANNA)
JUDGE

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(CHANDER SHEKHAR)
JUDGE

MARCH 15, 2017
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