

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 3367 of 2018

Rajesh Bhawal S/o Shri Kalachand Bhawal, aged about 25 years, R/o House No. PV-55/4, Post Pakhanjur, P.S.Kanker, District Kanker (C.G.).

---Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Agriculture Department, Mantralaya, New Raipur, P.S. Abhanpur, District Raipur Chhattisgarh.
2. The Director, Agriculture Department, Office At Directorate Agriculture Department, Raipur Chhattisgarh.
3. Shri Raju Ratan Diwan S/o Shri Phool Singh Diwan, Occupation Appointed and post as Surveyour, Office of Assistant Soil conservation officer, Gariyaband, District Gariyaband (C.G.).

---Respondents

For petitioner	:	Shri Atul Pandey, Advocate.
For State	:	Shri Shashank Thakur, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26/04/2018

1. The defaults pointed out by the registry is ignored for a moment.
2. The challenge in the present Writ Petition is to the action on part of the respondents whereby they have found the petitioner ineligible for the post he had applied for.
3. The facts of the case in brief is that, the respondents had issued an advertisement on 02/03/2017 for filling up the post of 'Surveyor'. The selection process was to be conducted by the Chhattisgarh Professional Examination Board. The minimum qualification prescribed as per the advertisement (Annexure-P/2) is as under:-

“ १. मान्यता प्राप्त मंडल से हायर सेकेण्डरी (१०+२) परीक्षा उत्तीर्ण एवं मान्यता प्राप्त आई.टी.आई. संस्थान से सर्वेयर प्रमाण पत्र.”

4. The aforesaid clause in the advertisement would clearly reflect that the mandatory requirement for the post was the candidate having clear Higher Secondary Examination (10+2) and also had a surveyor certificate from the recognized I.T.I.

5. The service rules governing the field also lays down the requisite qualification as has been reflected in the advertisement. There is no change of the minimum eligibility criteria that has been prescribed in the advertisement from the qualification prescribed under the service rules applicable.

6. The petitioner in the instant case had applied for the examination and he was also permitted to participate in the examination and it is said that the petitioner has also scored better in the written examination than the candidates having the I.T.I. Surveyor certificate. The petitioner has the qualification of B.E. in Civil Engineering in which one of the subject is that of 'Surveyor'. The respondents however did not consider the petitioners for grant of appointment.

7. The petitioner had earlier filed the Writ Petition before this High Court which was registered as WPS No.1730/2018. The said Writ Petition got disposed off on 27/02/2018. The operative portion of the said order is reproduced herein under:-

“Be that as it may, the respondent No.2 - The Director, Agriculture Department, Raipur is directed to consider and decide the objections raised by the petitioners expeditiously preferably

within a period of three weeks from the date of receipt of certified copy of this order.”

8. Subsequently, the respondents have issued an order dated 28/03/2018 – Annexure-P/1 granting appointment to the respondent No. 3 as a 'Surveyor'.

9. The counsel for the petitioner submits that one day before the impugned order – Annexure-P/1 was passed, the respondents had also decided the representation of the petitioner i.e. on 27/03/2018 wherein his objections have been rejected on the ground that he is not found eligible as he do not have the requisite qualification as is mentioned in the advertisement.

10. The said order dated 27/03/2018 has not been challenged in the present Writ Petition. The order which is under challenge in the present Writ Petition is the order of appointment issued to the respondent No.3.

11. What is paramount to be taken note of is that there is no difference in the prescribed qualification as mentioned under the service rules and in the advertisement under which the respondent No.3 has been appointed.

12. Once when the advertisement has been issued in accordance with the service rules and the service rules not under challenge wherein a particular qualification has been prescribed, this Court in exercise of its power under Article 226 would find it difficult to hold that the appointment given to the respondent No.3 being in any manner wrong or the selection made by the respondents in accordance with the advertisement to be illegal.

13. The counsel for the petitioner relied upon the judgment of Hon'ble Supreme Court in the case of **Jyoti K.K. & Ors. v. Kerala Public Service Commission** [JT 2002 Suppl 1 SC 85].

14. However on perusal of the aforesaid judgment what reflects is that the facts and the legal consideration taken note of by the Supreme Court were entirely different from the facts of the present case.

15. Further, the counsel for the petitioner also relied upon the decision of Supreme Court in the case of **Domendra Kumar Sahu v. State of Chhattisgarh & Ors.** (decided on 18/06/2012 in WPS No. 2117/2012).

16. The factual matrix in the aforesaid judgment again were entirely different where one of the ground of challenge was that the qualification for the post advertised was subsequently changed after the advertisement was published.

17. In the instant case if we look into the factual scenario, the post for which the advertisement was issued is the post of 'Surveyor'. The minimum qualification prescribed under the rules was that of Higher Secondary (10+2) pass with a certificate of Surveyor from a recognized I.T.I.

18. The qualification prescribed under the service rules itself would reveal that the said qualification so prescribed was to get the candidates who have I.T.I. Surveyor certificate. If people with higher qualifications like B.E., B.Tech, M.E., M.Tech are taken into consideration for filling up the post of 'Surveyor', it would amount to a situation where the people with I.T.I. Surveyor certificate being left with no opportunity of being considered for

recruitment. The people with higher qualifications always have other avenues open, but people with lesser qualifications have lesser avenues for their employment and this aspect also cannot be lost sight of.

19. The petitioner in the present Writ Petition is a person having degree in Engineering in Civil Engineering Branch. If candidates with B.E. Civil Engineering are to be considered, then it would have been fair if all those persons who were having B.E. Civil Engineering degree were granted an opportunity to participate in the selection process with whom the petitioner should have also competed. In the instant case though the advertisement or the service rules do not prescribe people with B.E. degree eligible to apply for the post, yet the petitioner applied and inadvertently he was also allowed to participate in the written examination. This by itself cannot be a ground for permitting him to compete with the candidates, who have the minimum eligibility criteria of having the I.T.I. Surveyor certificate. That if the petitioner is considered for appointment then it would be a case where people who have B.E. Civil Engineering degree and who have not applied, being denied a chance to participate and it would amount to discrimination and the same would be hit by Article 14 of the Constitution of India. There would have been many candidates with B.E. Civil Engineering degree, who have otherwise not applied as the advertisement prescribed the minimum qualification of I.T.I. Surveyor certificate and if the petitioners are declared eligible then all similarly placed persons having similar qualification would also become entitled for participating in the said recruitment process.

20. The stand of this Court stands fortified from the decision of the Hon'ble Supreme Court in the case of **"P.M. Latha & Anr. Vs. State of Kerla & Ors."** reported in (2003) 3 SCC 541. In the said judgment in paragraphs No. 9, 10, 12 & 13, the Hon'ble Supreme Court has held as under:

"9. It is not disputed before us by the parties that Kerala Education Act of 1958 and the Kerala Education Rules framed thereunder regulate recruitment to the posts of teachers in private schools aided by the Government. It is not brought to our notice that correspondingly the Government Memorandum or Order which regulated recruitment to Government Primary Schools has also been amended to prescribe B.Ed. and equivalent degree qualification as eligibility qualification for the post.

10. We find absolutely no force in the argument advanced by the respondents that B.Ed. qualification is a higher qualification than TTC and therefore, the B.Ed. candidates should be held to be eligible to compete for the post. On behalf of appellants, it is pointed out before us that Trained Teachers Certificate is given to teachers specially trained to teach small children in primary classes whereas for B.Ed. degree, the training imparted is to teach students of classes above primary. B.Ed. degree holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or B.Ed. qualification, is a

matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for post of primary teachers as only TTC and not B.Ed. Whether 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.

12. On behalf of respondents, it is submitted that since large number of B.Ed. candidates were allowed to compete and actual appointment orders were also issued in their favour, the division bench has tried to adjust the equities between the parties.

13. Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot over-ride written or settled law. The division bench forgot that in extending relief on equity to B.Ed. candidates who were unqualified and yet allowed to compete and seek appointments contrary to the terms of the advertisement, it is not redressing the injustice caused to the appellants who were TTC candidates and would have secured a better position in the Rank List to get appointment against the available vacancies, had B.Ed. candidates been excluded from the selections. The impugned judgment of the division bench is both illegal, inequitable and patently unjust. The TTC candidates before us as appellants have been wrongly deprived of due chance of selection and appointment. The impugned judgment of the division bench, therefore,

deserves to be set aside and of the learned single judge restored.”

21. A similar view was also taken by the Hon’ble Supreme Court in the case of **“Yogesh Kumar & Ors. Vs. Government of NCT, Delhi & Ors.”** reported in (2003) 3 SCC 548, dealing with the issue whether for appointment as Primary Teachers in the Government schools where the prescribed qualification was TTC and whether candidates with B.Ed. degree could be considered for appointment treating B.Ed. to be a higher qualification than TTC.

22. Dealing with this issue, the Hon’ble Supreme Court in paragraph No.8 has held as under:-

“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 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.”

23. Another aspect, which cannot be lost sight, is that the petitioner does not have the I.T.I. Surveyor certificate and technically he is not qualified for participating in the selection process.

24. Given the aforesaid facts and circumstances of the case this Court has no hesitation in holding that the recruitment of the respondent No.3 cannot

be found fault with as it has been done purely in accordance with the rules prescribed and as per the advertisement issued.

25. The Writ Petition thus deserve to be and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit