

Sr. No. 207

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

CWP No. 11331 of 2016(O&M)

Date of decision: 04.05.2018

Union of India and others

.....Petitioners

versus

Manish and another

.....Respondents

CWP No. 11866 of 2018(O&M)

Department of Posts, India(Recruitment Division) and others

.....Petitioners

versus

Bijender and others

.....Respondents

**Coram: Hon'ble Mr. Justice Mahesh Grover
Hon'ble Mr. Justice Rajbir Sehrawat**

**Present: Mr. Namit Kumar, Advocate
for the petitioners.**

**Mr. Animesh Sharma, Advocate
for the respondents.**

Mahesh Grover, J.(Oral)

By this Order we shall dispose of two writ petitions i.e. CWP
No. 11331 of 2016 and 11866 of 2016.

The petitioners are aggrieved of the Orders of the Central
Administrative Tribunal holding the respondents eligible for the posts of
Postal Assistants/Sorting Assistants in the department of Post and Telegram.

Pursuant to an advertisement dated 21.02.2014, respondents
applied for the aforestated post and were selected provisionally on the
strength of the information supplied as a response to the on-line

applications. But subsequently on verification of the documents they were discarded from the selection process which led to the filing of the application before the Tribunal resulting in its acceptance and cause of grievance to the petitioner. It contends that the respondents were not qualified in terms of the advertisement in particular clause 9 extracted hereinbelow:-

“Educational Qualification:-(a) 10+2 standard or 12th class pass from a recognized university or Board of School Education or Board of Secondary Education with English as a compulsory subject(excluding vocational streams).

(b) The applicants should have studied in local language of the State or Union Territory of the concerned Postal Circle or in Hindi as a subject at least in Matriculation level or equivalent.”

It is a specific case of the petitioners in CWP NO.11331 of 2016 that respondent was having 10+2 qualification in a vocational stream which was specifically excluded from consideration. In CWP No. 11866 of 2016 respondent is a graduate under the Ex-serviceman(re-employment in Central Service& Posts) Rules, 1979 and therefore, it is pleaded that the aforesaid condition could not have been insisted upon qua him and merely because he did not have 10+2 as a basic qualification would not imply that he was ineligible considering this higher qualification of being a graduate.

Learned counsel for the petitioners contends that it is now a settled proposition of law that it is the prerogative of the employer to prescribe the essential qualifications and merely because an aspirant to the post has a higher qualification would not entitle him to consideration and

employment. He has placed reliance on the Full Bench judgment of this Court rendered in ***Manjit Singh vs. State of Punjab and others; 2011(1) SLR 583.***

Learned counsel for the respondent on the other hand, contends that he has degree of graduation to his credit which would certainly imply a better claim to the post.

After hearing learned counsel for the petitioners we are of the opinion that the petitions are without any merit. The educational qualification prescribed an affirmative clause of an incumbent having 10+2 standard or 12th class pass certificate from a recognised university or a board of secondary education with English as a compulsory subject. The exclusion clause talks of 10+2 from a vocational stream.

What is therefore to be seen is the essential qualification prescribed? Had it been a case of an incumbent with the minimum prescribed qualification i.e. 10+2 standard or 12th class pass, the petitioners would certainly be in a position to oust a candidate from selection process in the event of his being a vocational student. But if a person has the basic qualification of 10+2 and also possess a higher qualification of being a graduate besides satisfying the other requisites then simply because he did his 10+2 from a vocational stream would be inconsequential. Similarly in CWP No. 11866 of 2016 he is a graduate under the Ex-serviceman(Re-employment in Central Service & Posts), Rules, 1979. He is an ex-serviceman and probably would have been deprived of acquiring 10+2 standard or 12th class pass certificate. Under the said rules he is a deemed graduate. Hon'ble Supreme Court in case titled as ***Prakash Chand Meena and others vs. State of Rajasthan and others; 2015(8) SCC 484*** has

observed as follows:-

“9. Having heard the parties, we have also perused the written submissions filed on behalf of some of them and have perused the judgment of the learned Single Judge and the impugned judgment of the Division Bench. In our considered view, the issue noticed at the outset must be decided on the basis of settled law noticed by learned Single Bench that recruitment process must be completed as per terms and conditions in the advertisement and as per rules existing when the recruitment process began. In the present case, the Division Bench has gone to great lengths in examining the issue whether B.P.Ed and D.P.Ed. qualifications are equivalent or superiors to C.P.Ed. qualification but such exercise cannot help the cause of the respondents who had the option either to cancel the recruitment process if there existed good reasons for the same or to complete it as per terms of advertisement and as per rules. They chose to continue with the recruitment process and hence they cannot be permitted to depart from the qualification laid down in the advertisement as well as in the rules which were suitably amended only later in 2011. In such a situation, factual justifications cannot change the legal position that respondents acted against law and against the terms of advertisement in treating such applicants successful for appointment to the post of PTI Gr.III who held other qualifications but not the qualification of C.P.Ed. Such candidates had not even submitted separate OMR application form for appointment to the post of PTI Gr.III which was essential as per the terms of advertisement.

10. The candidates who were aware of the advertisement and did not have the qualification of C.P.Ed also had two options, either to apply only for

PTI Gr.II if they had the necessary qualification for that post or to challenge the advertisement that it omitted to mention equivalent or higher qualification along with qualification of C.P.Ed. for the post of PTI Gr.III. Having not challenged the advertisement and having applied for the other post, they could not have subsequently claimed or be granted eligibility on the basis of equivalence clarified or declared subsequently by the State Government. In the matter of eligibility qualification, the equivalent qualification must be recognized as such in the recruitment rules or Government order existing on or before the initiation of recruitment process. In the present case, this process was initiated through advertisement inviting application which did not indicate that equivalent or higher qualification holders were eligible to apply nor the equivalent qualifications were reflected in the recruitment rules or Government Orders of the relevant time.”

The issue now no-longer is res-integra having been conclusively answered by the Full Bench of this Court in **Manjit Singh's case(supra)** wherein it has been observed as under:-

*“26. The distinction sought to be created to deny eligibility is arbitrary and illusory. It goes without saying that the higher qualification provides better knowledge, better sense and in sight and equip the person with better understanding of the issues and problems. It cannot be a “bane” but has to be a “boon”. The Hon'ble Supreme Court in the case of **Mohd. Riazul Usman Gani and others v. District & Sessions Judge, Nagpur 2000(2) S.C.T.10 : (2000) 2 Supreme Court Cases 606** had the occasion to consider whether the higher qualification than 8th standard prescribed for the*

post of Peon renders a candidate ineligible.

Examining the issue, it is observed as under:-

“21. A criterion which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification than prescribed cannot be rational. We have not been able to appreciate as to why those candidates who possessed qualifications equivalent to SSC Examination could also not be considered. We are saying this on the facts of the case in hand and should not be understood as laying down a rule of universal application.”

27. From the facts on record and dictum of above noticed judgments, it emerges that the candidate possessing higher qualification in the same line cannot be excluded from consideration from selection. It is a different matter that he/she may not be entitled to any additional weightage for higher qualification, but cannot be denied consideration at par with a candidate possession minimum prescribed qualification. Denying consideration to a candidate having better and higher qualification in the same line and discipline would definitely result in breach of Articles 14 and 16 of the Constitution of India.”

We also cannot lose sight of the fact that posts advertised were of Postal Assistants/Sorting Assistants where the duties required can certainly be better performed by person with a higher qualification of graduation as compared to the one with a minimum basic qualification of 10+2. But in any eventuality keeping in view the observation of the Full

Bench extracted above, the judgment relied upon by learned counsel for the petitioners in the case of *Prakash Chand Meena and others(supra)* can be distinguished as it pertained to post of physical education prescribing a qualification of degree or a diploma which has its relevance. A Generic qualification of 10+2 with English as one of the subject was sufficient to induct a person into service. Therefore, we do not find any merit in the writ petitions and the same are therefore dismissed.

[MAHESH GROVER]
JUDGE

4th May, 2018
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*