

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (SERVICE) NO. 1204 OF 2021**

Vivek Kumar Soni, S/o Shri Shantilal Soni, aged about 33 years, R/o Ward No.25, House No.117, Shankar Nagar Champa, District Janjgir-Champa (CG)

... Petitioner**versus**

1. State of Chhattisgarh, through Secretary, Department of Higher Education, Mantralaya, Mahanadi Bhawan, Nawa Raipur, District Raipur (CG)
2. Chhattisgarh Public Service Commission, through its Secretary, Shankar Nagar Road, Raipur, District Raipur (CG)
3. Controller of Examination, Chhattisgarh Public Service Commission, Shankar Nagar Road, Raipur (CG)
4. Dharmendra Kumar Yadav, Roll No.190220100060, through Secretary, Chhattisgarh Public Service Commission, Shankar Nagar Road, Raipur, District Raipur (CG)
5. Satyam Kumbhkar, Roll No.190220100078, through Secretary, Chhattisgarh Public Service Commission, Shankar Nagar Road, Raipur, District Raipur (CG)
6. Ravindra Rathore, Roll No.190220100022, through Secretary, Chhattisgarh Public Service Commission, Shankar Nagar Road, Raipur, District Raipur (CG)
7. Ritambhara Chauhan, Roll No. 1990220100018, through Secretary, Chhattisgarh Public Service Commission, Shankar Nagar Road, Raipur, District Raipur (CG)
8. Seema Mandavi, Roll No. 190220100051, through Secretary, Chhattisgarh Public Service Commission, Shankar Nagar Road, Raipur, District Raipur (CG)
9. Neelima Bhoi, Roll No.190220100301, through Secretary, Chhattisgarh Public Service Commission, Shankar Nagar Road, Raipur, District Raipur (CG)
10. Shweta Nistala, Roll No.190220100236, through Secretary, Chhattisgarh Public Service Commission, Shankar Nagar Road, Raipur, District Raipur (CG)
11. Priya Rani Dhiwar, Roll No.1990220100037, through Secretary, Chhattisgarh Public Service Commission, Shankar Nagar Road, Raipur, District Raipur (CG)
12. Himanshu Vankhede, Roll No.190220100037, through Secretary, Chhattisgarh Public Service Commission, Shankar Nagar Road, Raipur, District Raipur (CG)
13. Namita Kujur, Roll No.190220100334, through Secretary, Chhattisgarh Public Service Commission, Shankar Nagar Road, Raipur, District Raipur (CG)

... Respondents**And****WRIT PETITION (SERVICE) NO. 1270 OF 2021**

Ms. Aditi Singh, D/o L.B.P.S. Thakur, aged about 33 years, Old R/o Qr. No. 8/B, Street-2, Sector-2, Bhilai, District Durg (CG) PIN-490001

... Petitioner**versus**

1. State of Chhattisgarh, through the Chief Secretary, DKS Bhawan, Shankar Nagar, Raipur, District Raipur (CG)
2. The Chhattisgarh Public Service Commission, through its Secretary, Shankar Nagar, Raipur, Chhattisgarh, District Raipur (CG)
3. The Chairman, Chhattisgarh Public Service Commission, Shankar Nagar, Raipur, Chhattisgarh, District Raipur (CG)
4. The Director, Controller, Chhattisgarh Public Service Commission, Shankar Nagar, Raipur Chhattisgarh, District Raipur (CG)

... Respondents

In WPS No. 1204/2021

For Petitioner	:	Mr. Rohit Sharma, Advocate.
For Respondents/State	:	Mr. Rahul Jha, Dy. G.A.
For Respondent/CGPSC	:	Mr. Ashish Shrivastava, Advocate.

In WPS No. 1270/2021

For Petitioner	:	Mr. Sourabh Dangi and Mr. Swajeet Singh Ubweja, Advocates.
For Respondents/State	:	Mr. Rahul Jha, Dy. G.A.
For Respondent/CGPSC	:	Mr. Ashish Shrivastava, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****08/03/2021**

1. Since the issue involved in both the present Writ Petitions are identical in nature and the arguments advanced on behalf of Petitioners in either side also being the same, this Court proceeds to decide the present two Writ Petitions by this common order.

2. The whole issue involved in the present Writ Petitions arises out of an Advertisement dated 23.1.2019 published for filling up of the post of Assistant Professor (Bio Technology). Both the Petitioners, Vivek Kumar Soni and Ms. Aditi Singh, had applied for the said post and they also were called upon to participate in the Written Examination held on 6.11.2020. Both the Petitioners successfully cleared the Written Examination and were shortlisted for documents verification and Interview. In the course of scrutiny of the documents, the Respondent authorities held the Petitioners are not eligible for the said post and therefore the Petitioners were not subjected to Interview and verbally their candidature was rejected.

3. For better understanding of the case, it would be relevant at this juncture to reproduced the Essential Educational Qualifications required as per the said Advertisement, the relevant portion of which is reproduced herein under:-

“(iv) आवश्यक शैक्षणिक अर्हताएं :-

(क) अच्छे शैक्षणिक रिकार्ड के साथ किसी भारतीय विश्वविद्यालय से स्नातकोत्तर उपाधि स्तर में संबंधित विषय में कम से कम 55% अंक (अथवा/एवं 7 बिंदु ग्रेडिंग पद्धति में ग्रेड “बी”) अथवा किसी मान्यता प्राप्त विदेशी विश्वविद्यालय के समकक्ष उपाधि।

(ख)	XXX	XXX	XXX
(ग)	XXX	XXX	XXX
(घ)	XXX	XXX	XXX”

4. Both the Petitioners before this Court have done their Master's Degree in Medical Bio Technology. Their candidature has been rejected on the ground of they not having the Master's Degree in the relevant subject which, according to Respondent authorities, is Bio Technology.

5. Contention of learned Counsels appearing for the Petitioners is that the Master's Degree which the Petitioners have, that is in Medical Bio Technology, is in fact a subject of Bio Technology itself and therefore they are equivalent and treating them to be equivalent, the Respondent authorities ought not have rejected the candidature of Petitioners and should have subjected them to Interview. According to learned Counsels for Petitioners, there is no specific bar under the Rules or under the Advertisement which prohibits the candidates with Master's Degree in Medical Bio Technology to participate in the recruitment process for the post of Assistant Professor (Bio Technology). Further contention is that the Master's Degree which the Petitioners possess, that is M.Sc. in Medical Bio Technology, is the same as M.Sc. in Bio Technology, for the reason that the syllabus for both these courses is the same and therefore both these Master's Degrees also are equivalent as there is no difference except for the terminology used for the two Degrees.

6. Next contention of learned Counsels for Petitioners is that for the purpose of appointment to the post of Assistant Professor, a mandatory clause is that of clearing the SET (State Eligibility Test). In the said examination of SET, there is no such requirement of the candidates requiring to clear the SET with classification like Medical Bio Technology. According to learned Counsels for Petitioners, having once permitted the Petitioners to participate in the recruitment process finding them eligible and the Petitioners having cleared the Written Examination and their documents also having scrutinized, the Respondent authorities on their own could not have debar the Petitioners from further participation in the recruitment process. According to learned Counsels for Petitioners, in the past, the Respondents permitted the candidates with Medical Bio Technology to participate in the selection to the post of Assistant Professor and there is no reason why the

Petitioners should have been held back this year. As per learned Counsels for Petitioners, the decision of Respondents in debarring the candidates of Post Graduation in Medical Bio Technology to participate in the said selection process is thus violative of Articles 14 & 16 of the Constitution of India. According to learned Counsels for Petitioners, Medical Bio Technology is the subject within Bio Technology and Bio Technology being the main subject and Medical Bio Technology being ancillary subject, it has to be considered as equivalent.

7. Further contention of learned Counsel for Petitioners also is that the two subjects - Medical Bio Technology and Bio Technology, are two corollaries which run shoulder to shoulder and the persons having the two qualifications are to be treated as equally placed and treated on equal footing, therefore, the Petitioners' claim cannot be discarded only on the ground that Petitioners having Master's Degree in Medical Bio Technology.

8. Per contra, learned Counsel for Respondent-CGPSC opposing the Writ Petition submits that there is absolutely no infirmity or malafide on the part of Respondents while rejecting the candidature of Petitioners only on the ground that Petitioners have their Master's Degree in Medical Bio Technology. According to him, from the Advertisement itself it is evidently clear that the requirements in Master's Degree in concerned subject with no mentioning of any equivalent Degree being acceptable, for all practical purposes the same has to be construed as Master's Degree in Bio Technology alone and not any aggregate or ancillary subject or an allied subject. He submits that, unless the Advertisement or the Rules provide for equivalence, the CGPSC, or, for that matter, the authorities under the State on their own cannot relax the conditions. Contention of learned Counsel is that permitting the two Petitioners to participate treating Medical Bio Technology also to be equivalent to that of Bio Technology, there would have been a large number of candidates who might have been deprived from participating and the said depriving of such candidates can lead to the opening of a Pandora Box of large number of candidates to participate in the recruitment process keeping their educational qualification as equivalent.

9. The question of equivalence came up for consideration before a Division Bench of this High Court in W.P.(S) No. 2992/2015 in the case of Sudhir Dewangan Vs. State of Chhattisgarh & Others, decided on 14.9.2015, where the Division Bench in paragraphs 4 to 6 has held as under:-

“4. We have considered the submissions on behalf of the parties and find substance in the submission of the Respondents that the discipline advertised for the post was only Electrical Engineering. The Petitioner holds degree in Electrical and Electronics Engineering. We are in agreement with the submission on behalf of the State Counsel that the nomenclature of the two courses being different there has to be difference in the nature of study and knowledge imparted in the two disciplines, course content, qualifications acquired etc. It is not open for the Court in academic matters to declare equivalence of courses as may have been advertised by the employer. In that view of the matter, we are not satisfied to entertain this writ petition on the admitted facts. The subsequent question with regard to equivalence that CGPA marks of the Petitioner is First Division under the Rules therefore becomes an academic exercise at this stage.

5. At this stage, learned Counsel for the Petitioner submits that he proposes to represent before the State authorities both on the issue of equivalence of the educational qualification and parity for marks.

6. These being matters within the domain of the executive powers of the Respondents, we make no observations with regard to the same and leave it open for the Petitioner to represent if he so desires.”

10. Relying upon the aforesaid judgment of Division Bench, a Single Bench of this High Court in W.P.(S) No. 3169/2015 in the case of Reshamlal Pradhan Vs. State of Chhattisgarh & Others, vide its order dated 8.12.2015, dealing with the issue held as follows in paragraphs 15 to 21 and consequently dismissed the Writ Petition:-

“15. Meaning of “relevant subject” for appointment on a post with reference to eligibility condition for recruitment came to be considered by Their Lordships of the Supreme Court in the matter of Ganapath Singh Gangaram Singh Rajput v. Gulbarga University represented by its Registrar and others [(2014) 3 SCC 767] in which Their Lordships have answered the question holding that post-graduate degree in “relevant subject” in the context would mean post-graduate degree in which the candidate has applied for recruitment to teach a particular subject and observed in paragraphs 21 and 22 as under: -

“21. As is evident from the advertisement, applications were invited for filling up various posts in different subjects including the post of Lecturer in MCA. The advertisement requires post-graduate degree in the ‘relevant subject’. The relevant subject would, therefore, in the context of appointment to the post of Lecturer, mean postgraduate degree in MCA.

In our opinion, for appointment to the post of Lecturer, Masters degree in the Mathematics is not the relevant subject. The advertisement requires Masters degree in the 'relevant subject' and not 'appropriate subject'. In the present case, the Board of appointment has not stated that post-graduate degree in Mathematics is the relevant subject for MCA but in sum and substance it is equivalent to a post-graduate degree in MCA for the reason that Mathematics is one of the subjects taught in MCA. This, in our opinion, was beyond the power of the Board of appointment.

22. It shall not make any difference even if Mathematics is taught in the Masters of Computer Application course. The learned Single Judge, in our opinion, gravely erred in upholding the contention of Ganpat and the University that 'relevant subject' would mean 'such of those subjects as are offered in the MCA course'. If Mathematics is taught in a post-graduate course in Commerce, a Masters degree in Commerce would not be relevant for appointment in Mathematics or for that matter in MCA. There may be a situation in which Masters degree in MCA is differently christened and such a degree may be considered relevant but it would be too much to say that a candidate having postgraduate degree in any of the subjects taught in MCA would make the holders of a Masters degree in those subjects as holder of Masters degree in Computer Application and, therefore, eligible for appointment."

16. In a very recent decision in the matter of Prakash Chand Meena and others v. State of Rajasthan and others [(2015) 8 SCC 484], a question of equivalence of two qualifications which may be treated as equivalent came up before the Supreme Court in which Their Lordships of the Supreme Court have held that in the matter of eligibility qualification, equivalent qualification must be recognized as such in existing recruitment rules or government order existing on or before the initiation of recruitment process and observed as under: -

"... In the matter of eligibility qualification, the equivalent qualification must be recognised as such in the recruitment rules or government order existing on or before the initiation of recruitment process..."

17. Similarly, in the matter of Guru Nanak Dev University v. Sanjay Kumar Katwal and another, [(2009) 1 SCC 610], their Lordships of the Supreme Court have held in no uncertain terms that equivalence is a technical academic matter and decision on question of equivalence must be by specific order or resolution duly published, by holding as under: -

"15. ...Equivalence is a technical academic matter. It cannot be implied or assumed. Any decision of the academic body of the university relating to equivalence should be by a specific order or resolution, duly published. The first respondent has not been able to produce any document to show that the appellant University has recognised MA (English) (OUS) of Annamalai University through distance education as equivalent to MA of appellant University. Thus, it has to be held that the first respondent does not fulfill the eligibility criterion of the appellant University for admission to the three year law course."

18. Further, it is well settled law that the question of equivalence of educational qualification is not the domain and jurisdiction of the Court under Article 226 or 227 of the Constitution of India, it has to be done by a body of academicians or an expert body qualified for that job, as such, this Court cannot consider and hold one educational qualification to be equivalent to other qualifications. In this respect, in umpteen number of cases the Supreme Court has observed that it is not within the scope of judicial review to draw equivalence of qualification. Drawing of equivalence of qualification is essentially the job of experts of the field and it is not for the Court to enter into the arena of comparing two qualifications on certain parameters and then to declare equivalence.

19. Way back in the year 1965, in the matter of University of Mysore v. C.D. Govinda Rao and another [A.I.R. 1965 SC 491] in Constitution Bench judgment Their Lordships of the Supreme Court have held that in the academic matters regarding equivalence of university degree the Courts will not express a definite opinion. Paragraph 12 of the report states as under:-

“12. Where one of the qualifications for the appointment to the post of a Reader in the University was that the applicant should possess a First or High Second Class Master’s Degree of an Indian University or an equivalent qualification of a foreign University, the candidate should possess a First Class Master’s Degree of an Indian University or High Second Class Master’s degree of an Indian University or qualification of a foreign university which is equivalent to a First Class or a High Second Class Master’s degree of an Indian University. Whether the foreign degree is equivalent to a High Second Class Master’s degree of an Indian University is a question relating purely to an academic matter and courts would naturally hesitate to express a definite opinion, specially when the selection Board of experts considers a particular foreign university degree as so equivalent.”

20. Similar is the proposition of law rendered by the Constitution Bench of the Supreme Court in the matter of Mohammad Shujat Ali and others v. Union of India and others [(1975) 3 SCC 76] in which Their Lordships of the Supreme Court have held that question in regard to equivalence of educational qualification is a technical question based on proper assessment by holding as under:-

“13. ... It must be noted that the question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government. It is only where the decision of the Government is shown to be based on extraneous or irrelevant considerations or actuated by

mala fides or irrational and perverse or manifestly wrong that the Court would reach out its lethal arm and strike down the decision of the Government. ...”

21. Similarly in the matter of State of Rajasthan and others v. Lata Arun [(2002) 6 SCC 252], Their Lordships of the Supreme Court have held that question of equivalence of qualification are the matters which falls within the realm of the policy decision to be taken by the state by holding as under:-

“13. From the ratio of the decisions noted above, it is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It is not for courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority.”

11. In Zahoor Ahmad Rather & Others Vs. Sheikh Imtiyaz Ahmad & Others, [2019 (2) SCC 404], the Hon'ble Supreme Court in paragraph 26 & 27 has held as under:-

“26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti K.K. v. Kerala Public Service Commission, 2010 15 SCC 596, in the subsequent decision in State of Punjab v. Anita, (2015) 2 SCC 170 : 2015 (1) SCC (L&S) 329. The decision in Jyoti K.K. (supra) turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The state as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the state, as the recruiting authority, to determine. The decision in Jyoti K.K. (supra) turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench of the High Court was justified in reversing the judgment of the learned Single Judge and in coming to the 10 id at page 177 conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision of the Division Bench.

27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The state is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision making. The state as a public employer may well take into account social

perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in Jyoti K.K. (supra) must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti K.K. (supra) turned.

12. From the aforesaid judgments, it is quite clear that the question of equivalence is not within the powers conferred upon the High Court under Article 226/227 of the Constitution of India. The power rests exclusively with the State Government. In the instant case, the Rules referred to only to relevant subject and there being a specific Post Graduation course for the relevant subject of Bio Technology, any other Post Graduation degree ancillary to Bio Technology subject or any other allied subjects, the Courts, or, for that matter, the Respondents cannot accepted to be a valid Degree unless the Rules are amended as such. In the absence of amendment in the Rules and Advertisement, the Petitioners do not have a case and both the Writ Petitions thus deserve to be and are accordingly dismissed.

13. However, in order to avoid future complications arising out of similar qualification of Bio Technology and Medical Bio Technology, this Court would like to direct the State Government to take necessary steps to ensure obtaining appropriate finding from the concerned body or by way of constituting an Expert Committee to ascertain whether the Master's Degree in Bio Technology and Master's Degree in Medical Bio Technology can be construed as equivalence course or not. Let necessary steps be taken in this regard at the earliest.

14. Writ Petition stands dismissed accordingly.

Sd/-
(P. Sam Koshy)
JUDGE