

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

1. CWP-5631-2017 (O&M)
Date of decision : 02.02.2021

Dimpal Bhardwarja and another

...Petitioners

Versus

Haryana Staff Selection Commission

...Respondent

2. CWP-7101-2017 (O&M)
Date of decision : 02.02.2021

Swati Sharma

...Petitioner

Versus

Haryana Staff Selection Commission

...Respondent

3. CWP-9487-2017 (O&M)
Date of decision : 02.02.2021

Soni Lakra

...Petitioner

Versus

State of Haryana and others

...Respondents

4. CWP-14758-2017 (O&M)
Date of decision : 02.02.2021

Priyanka Sharma

...Petitioner

CWP-5631-2017 (O&M)
and other connected cases

-2-

Versus

State of Haryana and another

...Respondents

5.

CWP-16408-2017 (O&M)
Date of decision : 02.02.2021

Banita

...Petitioner

Versus

State of Haryana and others

...Respondents

6.

CWP-19671-2017 (O&M)
Date of decision : 02.02.2021

Suman Lata

...Petitioner

Versus

State of Haryana and others

...Respondents

7.

CWP-19969-2017 (O&M)
Date of decision : 02.02.2021

Manju Kumari and others

...Petitioners

Versus

State of Haryana and others

...Respondents

8.

CM-13561-CII-2018 in
COCP-1170-2018 (O&M)
Date of decision : 02.02.2021

Dimpal Bhardwarja and another

...Petitioners

Versus

Mahavir Kaushik

...Respondent

9.

COCP-304-2019 (O&M)
Date of decision : 02.02.2021

Banita

...Petitioner

Versus

Parth Gupta and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Sardavinder Goyal, Advocate for the petitioners
(In CWP-5631-2017, CWP-14758-2017, CWP-16408-2017,
COCP-1170-2018 and COCP-304-2019, CWP-19671-2017)

Mr. R.K.Malik, Sr. Advocate with
Mr. Sunil Hooda, Advocate, and
Mr. Samrat Malik, Advocate for the petitioner(s)
(In CWP-19969-2017)

Mr. Chetan Mittal, Sr. Advocate with
Mr. Tanvir Singh Attariwala, Advocate and
Mr. Mohinder Singh Nain, Advocate for the petitioner(s)
(In CWP-7101-2017)

Ms. Anita Balyan, Advocate for the petitioner(s).
(In CWP-9487-2017)

Mr. Samarth Sagar, Addl. A.G. Haryana.

Mr. Raghubir Tejpal, Advocate for respondent-IGNOU.

Mr. Salil Sabhlok, Advocate for respondent No.4
(In CWP-19671-2017)
for respondent No.3 (In CWP-16408-2017)

Mr. Anurag Goyal, Advocate
for respondents Nos.6, 20, 21, 23, 24, 28 and 31
(In CWP-19969-2017).

Mr. J.L. Goyal, Advocate for respondent No.9
(In CWP-19969-2017).

Mr. Ravinder Malik, Advocate for respondent No.17
(In CWP-19969-2017)

Mr. Sanchit Punia, Advocate for respondent No. 23
(In CWP-19969-2017)

ANIL KSHETARPAL, J.

By this order, 7 writ petitions bearing CWP No.5631, 7101, 9487, 14758, 16408, 19671 and 19969 of 2017, and two contempt petitions bearing CM-13561-CII-2018 in COCP-1170-2018, COCP-304-2019, shall stand disposed of. Learned counsel for the parties are ad idem that these writ as well as contempt petitions can conveniently be disposed of by a common order.

Once again, the question of equivalence of qualifications for the purpose of appointment is before the Court. These 7 writ petitions have been filed claiming that their qualifications are equivalent to M.Sc. Home Science and therefore, they are entitled to be considered for appointment to the post of Post Graduate Teachers (Home Science) in the State of Haryana.

On 28.06.2015, the Haryana Staff Selection Commission issued a recruitment notice inviting the applications for filling up 193 posts of Post Graduate Teachers (Home Science) (Group-B Service) in the State of Haryana and 5 posts in District Mewat. The essential qualifications as per recruitment notice are as under:-

*“Cat. No.9 193 posts (included 16 post of Backlog of SC)
of PGT Home*

*E.Q. M.Sc. Home Science with at least 50% marks
and B.Ed. from recognized University.”*

For the 5 posts in a separate Cadre for District Mewat, the minimum qualifications required, were the same. The result of the recruitment examination was declared on 03.03.2017.

None of the petitioners possess the degree of M.Sc. Home Science. Most of the petitioners possess degrees in M.Sc. Food and Nutrition whereas Sonia Lakhra possess a degree in M.Sc. (Extension Education), Suman Lata and Banita possess a degree in M.Sc. (Dietetics and Food Service Management), Manju Kumari and Pushta Rani possess a degree in M.Sc. in Food Science and Technology whereas Tanuja possess a degree in M.Sc. Food Technology.

The petitioners have called upon this Court to declare that their qualifications are equivalent to M.Sc. Home Science.

The services of Post Graduate Teachers in the State of Haryana are governed by the Haryana School Education (Group-C) State Cadre Service Rules, 2012. As per the Rules, the minimum qualification for the post of Post Graduate Teachers (Home Science) were advertized.

All the writ petitions are being contested by the respondents. It has been pleaded that the qualifications of the petitioners are not equivalent. Further, it has been pleaded that the advertisement does not recognize any other equivalent qualification and therefore, the Court should not carry out that exercise.

Heard learned counsels for the parties and with their able assistance perused the paper books.

Learned counsel for the petitioners contend that in the year 2012, the posts with the same qualification were advertised and M.Sc. Food and Nutrition was considered as an equivalent qualification and certain candidates were selected and appointed. It is further contended, while drawing the attention of the Court to Annexure P-14 in CWP No.19969 of 2017, that Chaudhary Devi Lal University, Sirsa, has opined that the qualifications are equivalent. It is further contended that one Smt. Pushpa Rani with a similar qualification, has been appointed in the Mewat Cadre.

Sh. Chetan Mittal, Sr. Advocate representing Miss Swati Sharma, contends that the Expert Committee constituted by the respondents have given a report in her favour. He further contends that various institution like Kurukshetra University, University Grant Commission etc. do recognize that both the qualifications are equivalent. The remaining counsels have adopted the arguments of Mr. R.K. Malik, and Mr. Chetan Mittal, Sr. Advocates.

On the other hand, Sh. Samarth Sagar, Addl. A.G. Haryana, has contended that in the exercise of its power of judicial review, the high court is not expected to go into the question of equivalence of qualifications. He submits that the question of equivalence of qualification for recruitment is a matter which should be left to the employer, recruitment agency and the experts. He relies upon two recent judgments passed by the Hon'ble Supreme Court in **Anand Yadav and others Vs. State of Uttar Pradesh and**

**others, 2020 SCC Online SC 823 and Zahoor Ahmed Rather and others
Vs. Sheikh Imtiyaz Ahmad and others, (2019) 2 SCC 404.**

Sh. Anurag Goyal, Advocate, has submitted that the petitioners do not possess the qualification required. He submitted that as per the Service Rules, the requirement is a degree in M.Sc. Home Science and there is no provision for recognizing any equivalent qualification. He also contended that since the petitioners do not possess the degrees of M.Sc. Home Science, therefore, they have been correctly ignored. He further submitted that even if in the Mewat Cadre, one candidate has been wrongly appointed, that itself would not clothe the petitioners with a right to claim appointment, particularly when the advertisement specifically provides otherwise. He submitted that a wrong committed by the Recruitment Agency may result in removal of the ineligible candidate, however, that would not confer any right in favour of the petitioners to seek appointment.

After having heard learned counsel for the parties at length, this Court is of the considered view that a 3 Judges Bench of the Hon'ble Supreme Court after considering all aspects of the matter held that the equivalence in the qualification in the matter of appointment should be left to the Employer or subject experts. In the aforesaid case, Hon'ble the Supreme Court was considering the recruitment to the post of Assistant Professor (Education). The requirement was that the candidate should be M.A. (Education). The question arose whether M.Ed. is equivalent to M.A. (Education) or not. The Recruiting Agency after taking an opinion of the experts, held that M.A. (Education) and M.Ed. are equivalent for the

purpose of recruitment of the posts of Assistant Professor. This decision was successfully challenged before the High Court. However, the Supreme Court reversed the decision of the High Court. In para 5, the Court framed two questions which required answer, but thereafter held as under:-

“34. We may also notice another important aspect, i.e., the employer ultimately being the best judge of who should be appointed. The choice was of respondent No.2 who sought the assistance of an expert committee in view of the representation of some of the appellants. The eminence of the expert committee is apparent from its composition. That committee, after examination, opined in favour of the stand taken by the appellants, and respondent No. 2 as employer decided to concur with the same and accepted the committee’s opinion. It is really not for the appellants or the contesting respondent to contend how and in what manner a degree should be obtained, which would make them eligible for appointment by respondent No. 2.

35. We hasten to add that it is not our view that an employer like respondent No. 2 can do as they please - they are guided and bound by the terms of the UGC Act and the regulations thereunder, but then here, there is no doubt about the M.Ed. degree being a post graduate degree, in view of not only what the UGC stated before us, but having promulgated the relevant Regulations as far back as 2010 as amended from time to time. The issue of equivalence has been rightly considered by the NCTE and while recognising some distinct aspects of two the degrees, it has clearly stated that for the job of Assistant Professors (Education), both are eligible.

37. We say so in view of the fact that matters of education must be left to educationists, of course subject to being

governed by the relevant statutes and regulations. It is not the function of this Court to sit as an expert body over the decision of the experts, especially when the experts are all eminent people as apparent from the names as set out. This aspect has received judicial imprimatur even earlier and it is not that we are saying something new. We may refer to the pronouncement in Zahoor Ahmad Rather in this behalf which has dealt with the dual aspects: (a) it is for the employer to consider what functionality of qualification and content of course of studies would lead to the acquisition of an eligible qualification; and (b) such matters must be left to educationists.”

In fact, the Hon’ble Supreme Court ultimately held that the High Court committed an error in interfering with the decision of the employer and the recruiting agency.

Still further, in Zahoor Ahmed Rathar’s case (Supra), the Supreme Court held as under:-

“26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti K.K. in the subsequent decision in Anita. The decision in Jyoti K.K. 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 pre-supposes 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. 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 conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision of the Division Bench.”

Keeping in view the aforesaid facts, this Court is of the considered view that the entire dispute is required to be remitted to the employer-the State Government and the Recruiting Agency, with a direction to take a final decision on this aspect. No doubt, a Committee of experts was nominated by the State and a report dated 15.07.2019 has been produced. The Expert Committee found that the qualifications of Manju Kumari, Pushta Rani and Tanuja are not equivalent qualifications. However, down below, it has been opined that a degree in M.Sc. Home Science (Food and Nutrition), M.Sc. Home Science (Food, Nutrition and Dietetics), M.Sc. Home Science (Human Development and Family Relations) etc. are equivalent to a degree in M.Sc. Home Science as per the UGC Norms. In this case, this Court attempted to get an opinion from University Grant Commission in this aspect but failed, as it is has been brought to notice that the commission has taken a policy decision not to give such opinions.

Keeping in view the aforesaid facts, the respondents are

directed to treat these writ petitions as representations and decide the same by passing speaking and reasoned orders after granting an opportunity of hearing to the petitioners physically or virtually. It is expected that the State would depute a senior official, at the level of Secretary Education alongwith a subject Expert to decide the matter within a period of 2 months.

There are two contempt petitions. In fact, COCP Nos.1170 of 2018 was withdrawn on 30.04.2018. However, thereafter, an application for revival is still pending. In both the contempt petitions, the petitioner complains that certain interim directions which were issued have not been complied with.

Since, the writ petitions itself are being disposed of, therefore, the interim orders now stand merged with the final judgment. Hence, this Court does not find it appropriate to proceed further in the contempt petitions. Accordingly, all the petitions are disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid judgment.

02.02.2021

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**