

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

CWP-6193-2022

Date of decision: March 29, 2022

Rupender and others

....Petitioners

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sunil K. Nehra, Advocate for the petitioners.

Ms. Kirti Singh, DAG Haryana.

ARUN MONGA, J. (ORAL)

Under challenge herein is the final result dated 17.03.2022 (Annexure P-3) declared by respondent No.3-Haryana Staff Selection Commission (for short 'Commission') *qua* the post of Laboratory Technician in the Health Department, selection process for which was carried out pursuant to the advertisement No.5/2019 (Annexure P-1).

2. In the advertisement, the eligibility condition *qua* the qualification of the candidates against category No.2 is prescribed as below: -

"Essential Qualification:-

1. *10+2 with Physics and Chemistry and one year Laboratory Technician Diploma from institution recognized by Haryana State.*

OR

Matric with Laboratory Technical diploma from institution recognized by State Technical Education Board.

OR

10th with Physics with Chemistry + one year Diploma from State Bacteriologist public health lab, Karnal for the candidates, who have passed before 1998.

2. *Hindi/Sanskrit as one of the subject in Matriculation or Higher."*

3. Petitioners having the requisite eligibility are before this Court after unsuccessfully participating in the selection process *inter alia* assailing the selection of successful candidates having higher qualification than the ones prescribed in the advertisement.

4. Learned counsel for the petitioners strenuously argues that the respondents cannot reprobate and approbate and reprobate. In earlier round of litigation instituted *qua* the same very post vide CWP-6369-2012 decided vide judgment dated 09.02.2017 (Annexure P-4), they had taken a completely contradictory stand that once an essential qualification has been prescribed, the same is *sine qua non* and therefore, those who are having the higher qualification cannot stake their claim on the ground that they are from the same stream and/or having equivalent or higher qualification. Learned counsel argues that in case, the stand taken by the respondents before this Court in the earlier CWP-6369-2012 is to be applied in the instant case, a number of candidates who have been selected having higher education will be since rendered ineligible and the petitioners would therefore, stand to come in the merit list even though currently concededly they have secured lesser marks than the last selected candidate in the category in which the petitioners had applied.

5. Per contra, learned State counsel relies on the administrative instructions dated 25.03.2016 issued by the office of the Chief Secretary to Government of Haryana, addressed to all the Administrative Secretaries of the various Departments across board in the State of Haryana including the Haryana Staff Selection Commission/ Haryana Public Service Commission, relevant part whereof is reproduced herein below:-

“I am directed to invite your attention to the Haryana Government instructions issued vide letter No.34/93/78-5GS-I, dated 16.06.1979 in which it was decided that if a candidate

possesses higher qualifications in the same line as prescribed in the minimum qualifications applicable to a particular post, then he should be considered as eligible for that post. It has come to the notice of the Government that the provisions of these instructions are not being followed in an appropriate manner while sending the requisition to HSSC/HPSC for the posts in question.

2. After due consideration, it has again been decided that if a candidate possesses higher qualifications in the same line as prescribed in the minimum qualifications applicable to a particular post, then he should be considered as eligible for that post. It is therefore, directed that the provision, that if a candidate possesses higher qualifications in the same line as prescribed in the minimum qualifications applicable to a particular post then he should be considered as eligible for that post, be inserted in the Service Rules and if not inserted in the Service Rules, then it should be clarified in the requisitions being sent to HSSC/HPSC. These instructions should be followed meticulously.

3. This may also be brought to the notice of all concerned.”

6. Apart from above, learned State counsel also relies on the Apex Court judgment titled as **Puneet Sharma and others versus Himachal Pradesh State Electricity Board Ltd. and another**, reported as **2021 AIR (Supreme Court) 2221**, in support of the above circular/ instructions to canvass that as long as the higher qualification is in the same line as prescribed in the minimum qualifications applicable to particular post, than the candidates possessing the same, the same is very much eligible to be considered for the said post. Relevant paras thereof read as under:-

“2. Whether a degree in Electrical Engineering/Electrical and Electronics Engineering is technically a higher qualification than a diploma in that discipline and, whether degree holders are eligible for appointment to the post of Junior Engineer (Electrical) under the relevant recruitment rules, is the issue that falls for decision in these appeals arising out of a common judgment of the Himachal Pradesh High Court¹¹. As is evident, this issue is not novel and has an almost endemic tendency requiring judicial attention, albeit in myriad and diverse contexts.

3. The Himachal Pradesh Staff Selection commission ("HPSSC" hereafter), acting on the requisition sent by the Himachal Pradesh State Electricity Board Ltd., ("HPSEB" hereafter) advertised 222 posts of Junior Engineer (Electrical hereafter referred to as "JE") on 27.06.2018, Degree-holders in the concerned discipline applied for the post; after qualifying the written examination, they were called for verification of documents but the final result was not

declared. They approached the High Court in writ proceedings, claiming that since they possessed educational qualifications that were higher than the prescribed minimum (and advertised) qualifications, they could not be denied consideration. The diploma holders. opposed this claim, and argued that that the qualifications possessed by degree holders was neither higher nor can be considered in teeth of the recruitment rules as also on the basis of the advertisement issued by the Himachal Pradesh Staff Selection Commission. The HPSEB adopted a neutral position; however, it highlighted that per the applicable regulations, the minimum essential qualification provided for recruitment to the post of Junior Engineer (Elect.) was "matriculation with Diploma in Electrical/Electronics/Electronics and Communication/Computer Science from the recognized Institution/Board/University duly recognized by the Central or State Government". HPSEB further stated that the HPSSC could not traverse beyond the regulations, and was bound to make recruitment's in accordance with them. The HPSSC, which issued the advertisement and conducted the selection, opposed the petitions and asserted that degree holders could not be considered for recruitment.

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5. Ms. Kavita Wadia, appearing for the degree holder appellants, contended that the expression "minimum was deliberately used without any bar under the rules and did not prevent appointment of degree holders to the post of JE (Elect.) in HPSEB, and that diploma was only a minimum requirement. This, she argued is established beyond doubt from Clause 11 of the Rules for appointment to higher promotional post of Assistant Engineers (Elect.) where under 5% quota is provided for those who possessing degree at the time of their appointment as JE (Elect.) and 5% separately for those who acquired degree during their service as JE (Elect.) after their confirmation. She relies on the decision of this court in Govt of A.P. v. P. Dalip Kumar, 1993(2) SCC 310 (Ref. Para 13 and 15) which held that the expression 'minimum' entitles the employer to choose a person with higher qualification. A minimum acts as a cut-off filter for the same, and does not debar recruitment of higher qualified candidates.

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27. Thereafter, the Court discussed the previous rulings in P.M. Latha, Jyoti K.K. and Anita supra), then concluded that the candidature of the diploma holders was correctly rejected and held as follows:

“26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti K.K. (Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596: (2013) 3 SCC (L&S) 664] in the subsequent decision in Anita [State of Punjab v. Anita, (2015) 2 SCC 170: (2015) 1 SCC (L&S) 329). The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 (2013) 3 SCC (L&S) 664] 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, entitled to prescribe the qualifications as 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. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] 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 [Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the High Court was justified in reversing the judgment [Zahoor Ahmad Rather v. State of J&K, 2017 SCC OnLine J&K 936] 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 (Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] 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. Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596: (2013) 3 SCC (L&S) 664) 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. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596: (2013) 3 SCC (L&S) 664] turned."

28. It would be also useful to notice a later judgment of this court, in Chief Manager, Punjab National Bank and Another v. Anit Kumar Das 2020 SCC Online SC 897 where the issue was, whether for the post of peon in the appellant Bank, a degree holder (graduate) could be appointed, given the conscious decision of the employer, that only those who held 10+2 pass qualifications would be considered and those with graduation qualification could not be considered. This court held that the appointment of the respondent, who was a graduate, after he suppressed the fact that he held a degree, and did not disclose it, was unsupportable. In this context, it was observed that as to what qualifications are applicable to what class of posts, is a matter of discretion to be exercised by the employer, which the courts would be slow to Interdict. This decision too supports the conclusions in the present case, since the employer, HPSEB asserts that it considers degree holders eligible for appointment to the post of JE.

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39. For the foregoing reasons, these batches of appeals by the degree holders have to succeed. The respondent HPSEB is directed to process the candidature of all applicants, including the degree holders who participated, and depending on the relative merits, proceed to issue the final selection list of all successful candidates, after holding interviews, etc. The impugned judgment is accordingly set aside; the appeals are allowed and writ petition is allowed partly, in the above terms, without order on costs.”

7. What emerges thus, before this Court now for adjudication, is the conflict of the stand of the Department as well as the judgment rendered by the Single Bench wherein concededly Department had taken a stand that higher than the prescribed qualification cannot be considered and the said stand was upheld and the writ petition was dismissed and the judgment rendered therein has since attained finality as no intra-court appeal and/ or SLP was filed against the same. Having heard the arguments, I am of the view that what is being canvassed by the learned counsel for the petitioners on the first flush may sound appealing but his contention is barred on mere technicalities. What holds the field as of now is the ratio rendered by the Apex Court in the judgment cited by the learned counsel for the petitioners. It is though debatable question if the word ‘essential’ is to be equated with the same meaning as of the word ‘minimum’ qualification but the same is left open to be decided in appropriate

proceedings in future. In present case, the intent from the reading of the advertisement appears to be that it is the minimum qualification that has been prescribed, even though the word ‘essential’ has been used. The respondents would do better in future to be more specific when necessary while laying down the requirements *qua* the eligibility as to whether the same are to be the *sine qua non* for arguing that persons with higher qualification and/ or the equivalent qualification cannot be considered. It is not so in the instant case, as has been rightly argued by the learned State counsel. On that ground writ petition is liable to be dismissed.

8. Even otherwise, petitioners have secured lesser marks than the last selected candidate. The result of the petitioners is not under challenge before this Court. Being so, no grounds to interfere are made out. Writ petition is dismissed.

(ARUN MONGA)
JUDGE

March 29, 2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No