

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

CWP No. 13578 of 2022 (O&M)

Date of Decision: 23.08.2022

Amanjot Singh and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Bhavpreet Singh Dhatt, Advocate
for the petitioners.

MAHABIR SINGH SINDHU, J.

1. Present writ petition has been filed under Article 226 of the Constitution by 17 petitioners and prayer clause of the same reads as under:-

- “ (i) *Issue a writ in the nature of mandamus summoning the records of the case.*
- (ii) *Issue a writ in the nature of certiorari quashing the advertisement No. 11 of 2022 dated 15.05.2022 (Annexure P-1) issued by respondent No. 2 / Subordinate Services Selection Board, Punjab to the extent of infringement upon the right of the petitioners to apply and be considered for selection and appointment to the post of Surveyor.*
- (iii) *Issue a writ of mandamus directing the respondents to permit the petitioners and similarly situated degree-holders and diploma-holders in Civil Engineering to apply and be considered for selection and appointment to the post of Surveyor.*
- (iv) *Any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case be issued. ”*

2. Facts are not in dispute.

3. Respondent No. 2 – Subordinate Service Selection Board, Punjab (for short “Board”) issued an advertisement dated 15.05.2022 for filling up 39 posts of Surveyors in the Department of Water Resources, Govt. of Punjab (for short “the Department”). Last date for receipt of online application was fixed as 17.06.2022; whereas closing date for deposit of fee was 26.06.2022.

4. As per Clause No. 6 of the aforesaid advertisement, qualification specified for the post in question was as under:-

(i) Should have passed the Matriculation examination from recognized university or institution and

(ii) Should possess a diploma in the trade of surveyor from a recognized university or institution.”

All the petitioners are either B.Tech. or Diploma Holder in Civil Engineering.

5. Post(s) in question is/are governed under the statutory rules, namely, The Punjab Water Resources Department Junior Draftsmen & Surveyors (Group C) Service Rules, 2021, for short “Rules of 2021”. It is not in dispute that qualification specified under Clause No. 6 of the advertisement (*ibid*) is in consonance with the Rules of 2021.

6. When confronted with the above factual position, learned counsel for the petitioners, on instructions, withdrew their challenge to the advertisement dated 15.05.2022. However, learned counsel raised a plea that petitioners are having higher qualification in the same line; therefore they be allowed to participate in the ongoing selection process being “fully eligible” for the post(s) in question. In support of above contention, learned counsel relied upon a Division Bench judgment of this Court reported as ***Hemant***

Jasuja Versus State of Punjab and another, 2016(4) S.C.T. 584.

7. Heard learned counsel for the petitioners and perused paper-book.
8. Before proceeding further, it is necessary to re-capitulate the relevant provisions of Rules of 2021, and which read as under:-

“ Rule 5. Method of appointment, qualification and experience :-

(1) Appointment to the Service shall be made in the manner specified in the Appendix B:

(2) No person shall be appointed to a post in the Service, unless he possesses the qualifications and experience, as specified against that post in Appendix B.

(3)

Appendix B

Sr. No.	Designation of the Post	Percentage appointment by		Qualification and experience for recruitment by	
		Direct appointment	Promotion	Direct appointment	Promotion
1.	Xxxx	Xxxx	Xxxx	Xxxx	Xxxx
2.	Surveyor	Hundred per cent	--	(i) Passed matriculation examination; and (ii) possesses diploma in the trade of Surveyor from a recognized University or institution	

.....”

9. A perusal of Rule 5 (*ibid*), *inter alia*, reveals that *no person shall be appointed to a post in the service unless he possesses the qualifications and experience as specified in Appendix B*. Still further, as per Sr. No. 2 of Appendix 'B', recruitment to the post of Surveyor is to be made 100% by way of direct appointment. It is also envisaged under

Appendix 'B' that apart from passing matriculation, a candidate should possess “diploma in the trade of Surveyor from a recognized University or institution”. Concededly, none of the petitioners is having Diploma in the trade of Surveyor from any recognized University or Institution.

10. It is also not in dispute that last date for receipt of application form is already over. Learned counsel for the petitioners was not able to point out that present petitioners applied in response to the advertisement dated 15.05.2022 and / or that their application(s) were rejected declaring them ineligible for the post(s) in question. Thus, the contention raised on behalf of the petitioners that they are having higher qualification “in the same line” being Degree(s) / Diploma-holder(s) in Civil Engineering, has become purely academic in nature and as such, the same cannot be examined at this stage, especially when there is neither challenge to the legality of Rules (*ibid*) nor Clause No. 6 of the advertisement noticed hereinabove.

11. Even the judgment of ***Hemant Jasuja's case (supra)*** relied upon by learned counsel for the petitioners is also not helpful in any manner, as in that case, the petitioner was appointed as Soil Water Conservation Officer (SCO) on 24.05.2004. The post of SCO was governed by the Punjab Soil and Water Conservation and Water Land Development Rules, 2001 (for short “2001 Rules”); according to which, 80% of these posts were to be filled up by way of direct recruitment and educational qualification for that post was “*Degree in Civil Engg. / Agricultural Engg. / B.Sc. (Agriculture)*”.

11.1 The next higher post i.e. Sub Divisional Soil Conservation Officer (SDSCO) was governed under the Punjab Soil Conservation and Engineering Service, (Class-II) Rules, 1974 (for Short “Rules of 1974”). As per Appendix 'B' of these Rules, educational qualification and experience required for the post was as under :-

- “(a) A degree of B.Sc. in Civil or Agricultural Engineering of a recognized Indian or Foreign University; or*
- (b) A degree of Master of Science in Agronomy or Sopil Sciences of a recognized university with an experience of field, teaching or research in Soil Conservation for a minimum period of three years.”*

11.2 Still further, the next higher post, i.e. Divisional Soil Conservation Officer (DSCO) was governed by The Punjab Soil Conservation and Engineering Service (Class-I) Rules, 1978 (for short Rules, 1978). As per these Rules, 50% posts of DSCO were to be filled by way of direct recruitment and according to Appendix 'B' thereof, the educational qualification was as under :-

- “ A degree of B.Sc. in Civil or Agricultural or Mechanical Engineering of a recognized Indian or Foreign University:*
- Provided** that preference will be given to the candidates who possess higher academic qualification with brilliant record.”*

11.3 The State of Punjab notified Punjab Soil and Water Conservation (Group-A) Service Rules, 2014, for short “Rules of 2014”, replacing Rules 1974 & 1978 for regulating the aforesaid posts. As per these new Rules, 25% posts of SDSCO were to be filled up by way of direct recruitment and educational qualification & experience prescribed for the same was prescribed as under:-

M.Sc. (Agriculture) with Soil Science or Conservation agriculture as major subject or B.Tech., Agriculture Engineering in first Division with an experience of five years in an organization (Public or Private) directly dealing in Soil Conservation or Water Management or Natural Resource Management.

Provided *that at least 40% posts shall be filled up from amongst the candidates, who possess degree in Agricultural Engineering.”*

11.4 At the time of appointment of petitioner to the post of SCO, he was having qualification of B.Tech. (Agriculture Engg.) in Second Division) and M.Tech. (Soil & Water Conservation) in First Division. As already noticed, according to the Rules of 2014, a person with qualification of B.Tech. (Agriculture Engg.) in First Division with five years experience was made eligible for direct recruitment to the post of SDSCO. Since petitioner therein was having B.Tech. (Agriculture Engg.) in Second Division and M.Tech. (Soil & Water Conservation) in First Division, therefore, he was not considered eligible.

11.5 Aggrieved against the above action, he challenged the Rules of 2014 fixing the educational qualification for the post of SDSCO being vague, arbitrary and unreasonable on the premise that petitioner was having higher qualification, than specified under the Rules.

11.6. The Division Bench in paras 7 & 8 of the judgment (supra) observed as under:-

*“ 7. This position was explained by Hon'ble the Supreme Court in **Official Liquidator v. Dayanand, (2008) 10 SCC 1**, as under:*

“59. The creation and abolition of posts, formation and structuring/restructuring of

cadres, prescribing the source and mode of recruitment and qualifications and criteria of selection, etc. are matters which fall within the exclusive domain of the employer. Although the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and laying down the qualification, etc. is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by mala fides.

Though, on the face of it, Ld. Counsel could not point out any substantive arbitrariness in the Rule, he however stressed that in its application and operation the Rule would be iniquitous and arbitrary in as much as a candidate with B.Tech., Agriculture Engineering in first Division with an experience of five years has been made eligible but a person, like the petitioner, possessing higher qualification of M.Tech is not so eligible.

In our view, this grievance of the petitioner cannot be a ground to challenge the vires of the Rule, though it may be a ground to challenge the action of the respondents in treating a person with higher qualifications in the same line to be ineligible.

*8. It has been held by a Full Bench of this Court in **Manjeet Singh v. State of Punjab & Others 2011 (1) SLR 583** that candidates possessing higher qualification in the*

same subject and line than those prescribed cannot be ignored and denied consideration for selection.

Accordingly, we find no merit in this petition in so far as a challenge to the vires of the 2014 Rules is concerned.

However, should the petitioner be treated as ineligible for the post on the ground of not possessing the prescribed qualifications, it would be open to him to challenge such action on the plea that a person with higher qualification in the same line is to be treated eligible.

Disposed of. ”

12. As discussed, in the present case, challenge to the advertisement dated 15.05.2022 has already been withdrawn by the petitioners for the reasons best known to them and vires of Rules of 2021 are not in question. There is no decision or order shown by learned counsel for petitioners declaring them ineligible for the post(s) in question at the end of respondents. Above all, the last date for receipt of application form is already over. In such a scenario, the prayer of the petitioners to allow them for participation in the ongoing selection process cannot be accepted, while exercising the jurisdiction under Article 226 of the Constitution.

13. As a result thereof, there is no option except to dismiss the petition.

14. Ordered accordingly.

August 23, 2022
'dk kamra'

(MAHABIR SINGH SINDHU)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes