IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

212 (08 cases) **(1) CWP-2510-2017**

Surender Singh and others **...Petitioners**

Versus

State of Haryana and others **...Respondents**

(2) CWP-5951-2017

Rinu Yadav **...Petitioner**

Versus

State of Haryana and others **...Respondents**

(3) CWP-5543-2017

Vivek Kumar and another **...Petitioners**

Versus

State of Haryana and others **...Respondents**

(4) CWP-8814-2017

Amit Sehgal **...Petitioner**

Versus

State of Haryana and others **...Respondents**

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(5) CWP-18708-2017

Parveen Saroha **...Petitioner**

Versus

State of Haryana and others **...Respondents**

(6) CWP-27508-2017

Parmodh Kumar and another **...Petitioners**

Versus

State of Haryana and others **...Respondents**

(7) CWP-10467-2019

Dr. Puja Yadav **...Petitioner**

Versus

Haryan Service Commission and others **...Respondents**

(8) CWP-24661-2019

Madhu Bala **...Petitioner**

Versus

State of Haryana and others **...Respondents**

Date of Decision :07.11.2022

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CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Naveen Kumar Advocate for Mr. Vivek Khatri, Advocate for the petitioners in CWP-5543-2017.

Mr. Vinay Kumar Arya, Advocate for
Mr. Sandeep Goyat, Advocate for the petitioners
in CWP-24661-2019.

Mr. Rajeev Sharma, (Raju), Advocate for the petitioners
in CWP-10467-2019.

Mr. S.K. Nehra, Advocate
for the petitioners in CWP-8814-2017.

Mr. Rajesh Hooda, Advocate for the petitioners
in CWP-2510-2017 & CWP-18708-2017.

Mr. Rajesh Gaur, Addl. A.G. Haryana.

Mr. Vijay Pal, Advocate for respondents No.4 to 7 in
CWP-2510-2017.

Mr. Salil Sabhlok, Advocate for respondents
in CWP-2510, 5543 & 5951-2017.

Mr. Vivek Salathia, Advocate for respondent No.4
in CWP-2510-2017.

Mr. Kanwal Goyal, Advocate for respondent-HPSC.

Mr. Anurag Goyal, Advocate and Mr. Amit Rao, Advocate
for respondent No.4-MDU in CWP-2510-2017,
CWP-5543-2017, CWP-18708-2017.

Mr. Ramesh Malik, Advocate for respondent No.10
in CWP-2510-2017.

* * *

Harsimran Singh Sethi, J. (Oral)

By this common order, the above mentioned writ petitions are being disposed off as all the writ petitions involve the same question of law bases on similar facts relating to the same advertisement and selection process qua the same posts.

For the purpose of this order, the facts are being taken from

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2022.11.07 14:42
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CWP-2510-2017 tilted as **Surender Singh and others vs. State of Haryana and others.**

The grievance which is being raised in these writ petitions is that while conducing the selection process in pursuance to the advertisement dated 16.02.2016 (Annexure P/4), by which various posts of Assistant Professor were advertised in the subjects of Botany as well as Zoology, the candidates, who do not have minimum required qualification as prescribed in the advertisement, have been selected, which is not only contrary to the rules governing the service, settled principle of law but the said decision has been taken by the authorities concerned by initially holding that the private respondents are not eligible and, thereafter, selecting them by declaring them eligible and that too without any valid justification or change of circumstances.

The facts leading to the filing of the present writ petitions are that the respondent No.3-Commission issued an advertisement dated 16.02.2016 (Annexure P/4), by which posts of Assistant Professor in the College Cadre were advertised. As per the advertisement, the selection was to be made in respect of the posts of Assistant Professor in 29 subjects. The last date for submission of application was 15.03.2016. As per the Clause-5(1) of the advertisement essential qualifications required for the post of Assistant Professor was good academic record with atleast 55% of the marks or an equivalent grade of B in the 7 point scale with letter grades O,A,B,C,D,E and F at the Master's Degree level in the relevant subject from an Indian University or an equivalent degree from a Foreign University was required. Apart from this, candidate should have cleared National Eligibility Test (NET) conducted by the University Grant Commission or similar test

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2022.11.07 14:42
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accredited by the University Grant Commission like SLET/SET was also one of the requirement. Petitioners, who considered themselves eligible, applied against the post of Assistant Professor in the subject of Botany or Zoology as the case may be. The petitioners do possess Post Graduate degree in the subject of Botany/Zoology, which according to the petitioners was one of the requirement for competing for selection/appointment to the post of Assistant Professor in the respective subjects. Keeping in view the terms and conditions of the advertisement, a screening test was conducted which was separate with respect to the subjects of Zoology/Botany. Screening test for the post of Assistant Professor in the subject of Zoology was conducted on 27.08.2016 whereas, in the subject of Botany screening test was conducted on 03.09.2016. Results of the screening tests were declared on 16.11.2016.

After the result was declared, when the documents of the candidates, who had cleared the screening test were scrutinized by the respondent No.3-Commission, it transpired that in the various applications received for appointment to the post of Assistant Professor in the subject of Botany/ Zoology, the candidates who did not have post graduate degree either in the subject of Botany/Zoology but had the post graduate degree in the subject of Genetics or Human Genetics had also applied against the posts of Assistant Professor Zoology and Botany by considering themselves to be eligible on the ground that minimum qualification required is degree in “relevant subject” and their Masters degree in Genetic/Human Genetic is a relevant subject like Zoology or Botany for the said post.

After the said fact emerged, in order to clarify the position, respondent No.3-Commission enquired and sought clarification from the

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2022.11.07 14:42
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respondent No.2 vide letter dated 16.09.2016 (Annexure R-1). After receiving the said query from the respondent No-3-Commission, the Administrative Department considered this aspect and thereafter, it was conveyed by the Administrative Department to the respondent No.3-Commission vide letter dated 23.11.2016 that candidates who have post graduate degree in Genetics or Human Genetics are not eligible for competing against the post of Assistant Professor in the subject of Botany/ Zoology as only the post graduate degree in the subject of Botany/Zoology is required to be eligible for the said posts. The said decision as conveyed by the Administrative Department on 23.11.2016 was after ascertaining the facts from the Expert Committee, which comprised of Members from the Kurukshetra University, Kurukshetra, Maharishi Dayanand University, Rohtak as well as Chaudhary Devi Lal University, Sirsa. Decision of the Expert Committee, and the Administrative department's communication in this regard to the respondent-Commission No.3 has been attached as Annexure (R-II) wherein, the Expert Committee recommended the candidates, who were claiming eligibility for competing for the post of Assistant Professor in the subject of Botany/Zoology on the basis of post graduate degree in the subject of Genetics or Human Genetics as ineligible.

As per the petitioners, without receiving any further request from the Commission, the Administrative Department, on the basis of earlier communication dated 16.09.2016 of the respondent No.3-Commission, which had already been replied by the Administrative Department in a particular manner on 23.11.2016, took a U-turn and wrote to the respondent No.3-Commission vide letter dated 06.01.2017 (Annexure P/9) that the Expert Committee from the Kurukshetra University,

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2022.11.07 14:42
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Kurukshetra, Maharishi Dayanand, University, Rohtak and Chaudhary Devi Lal University, Sirsa in their meeting held on 20.12.2016 decided equivalency of the post graduate courses in different subjects and according to the subject experts, M.Sc. Genetics is equivalent to M.Sc. Botany as well as M.Sc. Zoology and the candidates having the said qualification to be treated eligible on the basis of the said letter.

The said action of the Commission as well as Administrative Department' in making the candidates who were having post graduate degree in the subject of Genetics or Human Genetics as eligible for appointment to the post of Assistant Professor in the subject of Botany and Zoology is under challenge in these writ petitions.

After notice of motion, the respondent have filed reply. In the reply, the Administrative Department has stated that a communication was received from the respondent No.3-Commission on 16.09.2016 seeking clarification whether the candidates, who are having post graduate degree in the subject of Genetics or Human Genetics are to be treated as eligible for competing for the post of Assistant Professor in the subject of Botany as well as Zoology or not. As per the reply, to sort out the said issue, subject experts of the Universities were requested to make recommendations. Meeting of the subject experts was held and keeping in view the meeting of the Expert Committee, respondent No.3-Commission was informed on 23.11.2016 (Annexure R-II) by the respondent No.2 that M.Sc. Genetics is not to be considered as equivalent for appointment to the post of Assistant Professor in the subject of Botany or Zoology. The respondent-State has further submitted that after the said decision was conveyed to respondent No.3-Commission, Administrative Department received the representations

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2022.11.07 14:42
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from certain candidates, who were having the qualification of post graduation in the subject of Genetics/Human Genetics and were competing for the post of Assistant Professor in the subject of Botany as well as Zoology that keeping in view the judgment of the Hon'ble Supreme Court of India, in which qualification of post graduate in M. Sc. Genetics is to be treated as equivalent to M. Sc. Botany as well as M. Sc. Zoology they should be treated eligible for appointment to the post of Assistant Professor in the subject of Botany as well as Zoology as advertised by respondent No.3-Commission. As per the State, said representations were considered by the Administrative Department, keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India and in order to sort out the said question, once again meeting of the subject experts was held on 20/12/2016 and in the said meeting, subject experts once again came to the conclusion that M.Sc. Genetics cannot be treated as equivalent for appointment to the post of Assistant Professor in the subject of Botany as well as Zoology and respondent No.3-Commission was once again informed that the candidates having degree in M.Sc. Genetics were not eligible for appointment to the post of Assistant Professor in the subject of Botany or Zoology vide letter dated 29.12.2016 (Annexure R-VI).

It has further been mentioned in the reply that though, the Administrative Department had taken a particular decision and informed the respondent No.3-Commission twice by taking into consideration the recommendations of the subject experts that the qualification of M.Sc. Genetics and M.Sc. Human Genetics cannot be treated as valid qualification to treat the holders of the same as eligible for appointment to the post of Assistant Professor in the subject of Botany as well as Zoology however, in

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2022.11.07 14:42
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respect of Administrative Department's communication to the respondent-Commission vide letter 29.12.2016 (Annexure-VI) so as to treat the candidates with the post graduation qualification in Genetics/Human Genetics as not eligible, clarification was again sought by respondent No.3-Commission so as to seek clear stand of the Administrative Department on the ground that the communication dated 29.12.2016 (Annexure-VI) only stated the stand of the Expert Committee.

Thereafter, Administrative Department considered the said aspect from the angle of equivalence of the qualification and thereafter keeping in view the guidelines of the University Grant Commission and the clarification received from Maharishi Dayanand University, Rohtak revised its earlier stand, Administrative department again considered the matter and informed the respondent No-3-Commission vide letter dated 06.01.2017 that the candidates with M. Sc. Genetics be treated as eligible for appointment to the post of Assistant Professor in the subject of Botany as well as Zoology, being equivalent.

Separate replies have already been filed by the private respondents/selected candidates and as per the stand taken by them, the candidates having M.Sc. Genetics are to be treated eligible for appointment to the post of Assistant Professor in the subject of Botany as well as Zoology as advertised by the respondent No-3-Commission on the ground that they are holding equivalent qualification to that of post graduate degree in Botany or Zoology as the case may be and once the respondent-State being competent authority to decide the equivalency and Administrative Department has already held that the post graduate degree in Genetics or Human Genetics is equivalent to that of M.Sc. Botany or M.Sc. Zoology, as

AARTI SHARMA
2022.11.07 14:42
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the case may be, this Court should refrain from interfering in the decision of the Administrative Department as the same is on the advise of the expert from Maharishi Dayananad University, Rohtak.

Further argument which has been raised by the private respondents is that for being eligible to compete for the post of Assistant Professor in the subjects of Botany as well as Zoology, a candidate must have passed State Eligibility Test (SET), which is a common test under the umbrella of "Life Sciences" which is a common test for candidates of Botany and Zoology as well as Genetics hence, the candidates having post graduate degree in Genetics are also required to pass the said State Eligibility Test under the heading of "Life Sciences" which is the same as obtained by the candidates, who are having post graduate degree in the subjects of Botany/ Zoology, the decision of the respondent-State to treat the qualification of post graduate degree in the subject of Genetics equivalent to that of post graduate degree in the subjects of Botany/Zoology needs not to be interfered with by this Court as the same has been done on the recommendations of the Expert Committee from Maharishi Dayanand University, Rohtak and the same is also inconsonance with the guidelines of the University Grant Commission and, therefore, once the petitioners have competed along with the private respondents and had failed to make the cut, they cannot approach this Court by challenging the decision of the respondent-department dated 06.01.2017 so as to treat the candidates having post graduate degree in M.Sc. Genetics as ineligible for competing for appointment to the post of Assistant Professor in the subjects of Botany/ Zoology.

I have heard learned counsel for the parties and have gone

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2022.11.07 14:42
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through the record with their able assistance.

The first question which needs to be answered by this Court before commenting on the merits of the case keeping in view the objections taken by the respondent-State as well as the private respondents in view of the recommendations of the subject experts who have opined that qualification of M.Sc. Genetics is equivalent to that of M.Sc. Botany as well as Zoology, which resulted in issuance of letter dated 06.01.2017, is whether this Court has the jurisdiction to interfere in the matter so as to find out whether private respondents, who are having post graduate degree in the subjects of Genetics or Human Genetics are eligible to compete for the post in question as advertised vide advertisement dated 16.02.2016 (Annexure P/4).

From the pleadings, it is clear that after receiving communication from the respondent No.3-Commission dated 16.09.2016, Administrative Department considered the said aspect after inviting comments from the experts of the three Universities i.e. Kurukshetra University, Kurukshetra, Maharishi Dayanand, University, Rohtak and Chaudhary Devi Lal University, Sirsa. After receiving the comments from the experts, vide letter dated 23.11.2016 (Annxure R-II), the Administrative Department informed the respondent No.3-Commission that candidates having M. Sc. in Genetics are not to be treated eligible for appointment to the post of Assistant Professor in the subjects of Botany or Zoology, as the case may be. Thereafter, the Administrative Department keeping in view the representations received from the candidates, who were being declared ineligible, again considered the said aspect and it has been conceded by the respondent-Administrative Department in their reply that in the meeting

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2022.11.07 14:42
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held on 20.12.2016, a decision was taken on the basis of the comments of the Expert Committee that M.Sc. Genetics is not a relevant subject for considering the candidates eligible for appointment to the post of Assistant Professor in the subjects of Botany as well as Zoology. Relevant paragraph of the reply is as under:-

> "That to sort out the issue, again, a meeting of the subject experts of three Universities of the State i.e. M.D.U., Rohtak, K.U. Kurukshetra and C.D.L.U. Sirsa was called by the answering respondent 20.12.2016. And, the decision taken in the meeting dated 20.12.2016 was informed to the recruiting agency i.e. respondent No.3 on 29.12.2016, mentioning therein that M.Sc. Genetics is not to be considered as equivalent for the post of Assistant Professor Botany and Zoology. A Copy of letter dated 29.12.2016 is attached herewith as Annexure R/VI. It seems that the Petitioners are not aware about the letter dated 29.12.2016."

Despite the comments of the subject Experts on the said issue, respondent-Administrative Department wrote a letter dated 06.01.2017 holding the candidates having degree of M.Sc. Genetics as eligible. Nothing has been produced before this Court to show that another Expert Committee was constituted by the respondents, which met after the earlier meeting of the experts on 20.12.2016 so as to take a u-turn to hold that the qualification of M.Sc. Genetics/HUman Genetics is relevant qualification for appointment to the post of Assistant professor in the subject of Botany/Zoology.

The only explanation which has been given for writing letter dated 06.01.2017 by the respondent-department is that the matter was considered by the Administrative Department, keeping in view the

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2022.11.07 14:42
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guidelines of the University Grant Commission, according to which, the Administrative Department was competent to ascertain the equivalent qualification and on the basis of the said guidelines, the Administrative Department had written letter dated 06.01.2017 directing the respondent No-3-Commission to consider the candidates having qualification of M.Sc. Genetics as eligible for appointment to the post of Assistant professor in the subject of Botany or Zoology being equivalent. These facts make it clear that the decision to make the candidates eligible having qualification of M.Sc. Genetics is that of the Administrative Department only and that too by overruling the expert committee which never allowed the said benefit in any of their recommendations, which fact was conveyed by respondent No.2 to respondent No.3 on two occasions i.e. on 23.11.2016 and again on 29.12.2016. Therefore, it is clear that decision taken by the Administrative Department dated 06.01.2017 in the absence of any meeting of the expert committee convened by the Administrative Department after 20.12.2016, the decision of the Administrative Department as recorded in the letter dated 06.01.2017 cannot be treated to be based upon the recommendations or advice of the experts on the issue but is based upon the interpretation of the guidelines issued by the University Grant Commission by the Administrative Department hence, the decision, as recorded in letter dated 06.01.2017 is to be treated as an Administrative decision and cannot be treated as decision of the Expert Committee conveyed by respondent No.2 to respondent No.3 so as to oust the jurisdiction of this Court for interference, keeping in view the prayer of the petitioners.

Even otherwise, bare perusal of the letter dated 06.01.2017 (Annexure P/9) would show that the respondent-department has not decided

AARTI SHARMA
2022.11.07 14:42
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the eligibility required for appointment to the post of Assistant Professor Botany or Zoology in the said communication. Respondent-department is still of the view that the required qualification as per the advertisement is relevant qualification in the concerned subject i.e. Botany as well as Zoology, which would be post graduate degree in those subjects but the candidates with M.Sc. Genetics or M.Sc. Human Genetics have been made eligible by treating the same qualification as equivalent by deriving powers from the guidelines issued by the University Grant Commission as per which, equivalency of degree is to be decided by the State concerned.

In the present case, merely that the post graduate degree in the subject of Genetics is equivalent, the same cannot be made applicable unless and until the rules governing the service or the advertisement makes the candidate with the 'equivalent qualification' also eligible. Therefore, even while writing letter dated 06.01.2017, the Administrative Department has not stated that the qualification obtained by the private respondents is 'relevant qualification' as asked for in the advertisement or prescribed under the rules governing the service. Even during the course of arguments, learned State counsel submitted that the candidates possess equivalent qualification which was within the jurisdiction of the respondent-State hence, on the basis of the equivalency, letter dated 06.01.2017 was written so as to make the candidates having qualification of M.Sc. Genetics or M.Sc Human Genetics eligible. Keeping in view of the said aspect once even as per the respondent-Administrative Department the private respondents do not have required qualification in the relevant subject but only have qualification which is equivalent, in the absence of such prescription of equivalent qualification in the eligibility clause of the advertisement or the

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2022.11.07 14:42
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rules governing the service, the private respondents cannot be treated as eligible for competing for the post of Assistant Professor in Botany/ Zoology, as the case may be.

The question which now arises is whether the relevant qualification will include equivalent qualification or not. By the advertisement, the respondent-State advertised the posts of Assistant Professor in 29 subjects. The requirement in the criteria is post graduate degree in the relevant subject and the relevant subject will only be the basic subject in which the appointment is to be made such as candidate seeking appointment as Assistant Professor in Botany will have the post graduate degree in Botany and candidate seeking appointment as Assistant Professor in Zoology will have the post graduate degree in Zoology only. Further, in the advertisement in the subject of Fine Arts and Mass Communication eligibility has been defined separately, wherein, holder of equivalent degree has been made eligible. The relevant clause of the advertisement relating to the post of Assistant Professor in Mass Communication is as under :-

> **Assistant Professor in Mass Communication:-**
> (a) Good academic record with at least 55% of the marks or an equivalent grade at Master's Degree level or an equivalent qualification from an Indian or Foreign University/recognized institution in Communication/ Mass Communication/Journalism."

Once for the recruitment to the post of Assistant Professor in the subject of Mass Communication only the degree at Master's level is the requirement but even equivalent qualification has been made eligible, it can be safely held that wherever the intention of the Administrative Department

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2022.11.07 14:42
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was to make a holder of an equivalent degree as eligible, the same was prescribed in the advertisement itself. In the present case, it is conceded position that for the post of Assistant Professor in the subjects of Botany and Zoology equivalent degree has not been made eligible for competing hence, even if it is assumed for the sake of arguments that post graduate degree in Genetics/Human Genetics is an equivalent degree to that of post graduate degree in the subject of Botany or Zoology, in the absence of any clause in the advertisement, as it exists for appointment to the post of Assistant Professor in the subject of Mass Communication, no benefit of equivalency can be given to the candidates, who are possessing the 'equivalent' qualification of M.Sc. Genetics or M.Sc. Human Genetics so as to become eligible for appointment to the post of Assistant Professor in the subject of Botany or Zoology as the case may be.

Further arguments of the private respondents is that the degree in M.Sc Genetics is to be treated in the relevant subject for the reason that the State Eligibility Test, which is conducted by the State, which is also a mandatory qualification for appointment to the post of Assistant Professor, there is a common test for the candidates who have passed their post graduate degree in the subjects of Zoology, Botany as well as Human Genetics under the Umbrella of “Life Sciences”. Said argument cannot be accepted for two reasons. Firstly, it is conceded position that separate entrance test was taken for the subjects of Zoology and Botany. It is also conceded position that Botany as well as Zoology form different cadres. Further, it is also conceded position that the posts are not inter transferable. In the facts and circumstances mentioned hereinbefore, even if, a joint State Eligibility Test is conducted by the State of Haryana, the same will not

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2022.11.07 14:42
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imply that post graduate degree in Zoology, Botany, Human Genetics are same.

Further, in case the said prayer of the private respondents is accepted that the candidates with post graduate in Genetics should be made eligible for the post of Zoology and Botany on the said ground, then the necessary corollary will be, that the candidates with the post graduate degree in Botany would stand eligible for the post of Zoology also and vice versa, which is impermissible and cannot be done as the Zoology and Botany are two different subjects and recruitment process for these two subjects is also separate as separate written test was undertaken to adjudge the suitability of the candidates. Therefore, mere holding of the State Eligibility Test with respect to Botany, Zoology, Human Genetics under one umbrella will not grant the private respondents right to claim the qualification of M.Sc. Genetics as relevant subject with respect to Zoology or Botany so as to make them eligible for the post of Assistant professor in the said subjects.

Further, it is conceded position that a candidate who was having qualification of M.Sc. Bio Technology and competed for the post of Assistant professor Zoology was declared ineligible by the respondents, which action was challenged before this Court in CWP-2440-2017 wherein, a Coordinate Bench of this Court held that the candidate with the said degree is not eligible and the said writ petition was dismissed on 08.02.2017 and it was clearly held that for recruitment to the post of Assistant Professor in the subject of Zoology, as per rules of recruitment and prescription of qualification Masters' degree in Zoology was required and the said judgment has already attained finality. This fact shows that two

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2022.11.07 14:42
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contradictory stands are being taken by the respondents in the same selection. On one hand, a candidate claiming to have an equivalent qualification was not treated eligible by the respondent-Commission on the ground that he did not possess the relevant qualification of Master's degree in Zoology, which action of the respondent-Commission was upheld by this Court, on the other hand, the aspect of equivalent qualification is being brought in the present case with respect to the private respondents so as to treat them eligible. Two different stands are being taken by the respondents on the similar question of law, which is not permissible. Hence, once the Coordinate Bench of this Court held that for the appointment to the post of Assistant Professor in the subject of Zoology, the post graduate degree in Zoology is must, no benefit of equivalency can be given to the private respondents in the absence of any such clause in the advertisement.

Further, the same question of law came up for consideration before the Hon'ble Supreme Court of India in **Civil Appeal No.9866-2013** decided on 01.11.2013 titled as **Ganapath Singh Gangaram Sing Rajput vs. Gulbarga University Rep. By its Registrar and others.** In the said case also the recruitment was to be made to the post of Lecturer in Masters' in Computer Application and the requirement as per the advertisement and the rules governing the service was degree in the relevant subject or equivalent degree from the Foreign University as prescribed in the advertisement. The appellant before the Hon'ble Supreme Court of India namely, Ganapath Singh, who was having post graduate degree in Mathematics claimed the Eligibility on the ground that the Mathematics is also part of the degree in Masters' in Computer Application as Mathematics is also taught while undergoing Masters' in Computer application Course.

AARTI SHARMA
2022.11.07 14:42
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Learned Single Bench of the Karnataka High Court allowed the claim holding that once the Mathematics is also taught while undergoing degree in Masters' in Computer Application hence, the post Graduate degree in Mathematics is to be treated as relevant qualification, which judgment was challenged before the Division Bench of the Karnataka High Court. The Division Bench of the Karnataka High Court set aside the said order of the Single Bench holding that it would be unreasonable to hold that degree in Mathematics is to be treated as relevant subject for appointment as Lecturer in Masters' in Computer Application as only Masters' degree in Computer Application is required. The said decision of the Division Bench of the Karnataka High Court was impugned before the Hon'ble Supreme Court of India. Before the Hon'ble Supreme Court of India plea was taken that once the subject experts, who were making the selection keeping in view the qualification of post graduate degree in Mathematics held the appellant eligible, the Courts could not have interfered with the decision of the Expert Committee and hence, the judgment of the Division Bench is liable to be set aside.

Hon'ble Supreme Court of India considered the said arguments of the appellant and held that though, in the normal circumstances, the Court will refrain from interfering in the decision of the experts but, the same cannot be accepted as a matter of principle and judicial review is permissible keeping in view the facts and circumstances of each case. In the said case, despite Expert opinion, the Hon'ble Supreme Court of India allowed the judicial review. Not only this, Hon'ble Supreme Court of India held that the post graduate degree in Mathematics cannot be treated as relevant subject for recruiting Lecturer in Masters' of Computer

AARTI SHARMA
2022.11.07 14:42
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Application even if, Mathematics is also taught as one of the subject while undergoing the Master's degree in Computer Application. The Hon'ble Supreme Court of India distinguished that the degree in relevant subject and appropriate subject are two different things. Requirement of relevant subject would mean degree in subject in which the recruitment is being made and the degree in appropriate subject cannot be treated degree in relevant subject. Relevant paragraph of the judgment is as under:-

> "12. Main thrust in the appellant's contention is that when an expert body i.e. Board of appointment consisting of high academicians, has found Ganpat eligible and qualified and which has been approved by the Syndicate, another expert body, the High Court ought not to have acted as a Court of appeal, examined the pros and cons and come to the conclusion that Ganpat did not possess the requisite qualification. There is no difficulty in accepting the broad submission that academic issues must be left to be decided by the expert body and the court cannot act as an appellate authority in such matters. It deserves great respect. When two views are possible and the expert body has taken a view, the same deserves acceptance. However, to say that expert body's opinion deserves acceptance in all circumstances and is not subject to judicial review does not appeal to us. In our constitutional scheme the decision of the Board of appointment cannot be said to be final and absolute. Any other view will have a very dangerous consequence and one must remind itself of the famous words of Lord Acton "power corrupts and absolute power corrupts absolutely".
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> 18. Having set the legal position in the right perspective, we now proceed to consider the facts of the present case.

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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 post-graduate 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 '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. 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 post-graduate 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. The language of the advertisement is clear and explicit and does not admit any ambiguity and, hence, it has to be given effect to. Since the appellant Ganpat did not have a Masters' degree in Computer Application, in our opinion, he was not entitled to be considered for appointment as Lecturer in MCA. We

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> are aghast to see that when a candidate possessing Masters' degree in MCA is available, the Board of appointment had chosen an unqualified and ineligible person for appointment in that subject. Its recommendations are, therefore, illegal and invalid. Natural corollary thereof is that the University acting on such recommendation and appointing Ganpat as Lecturer cannot be allowed to do so and that the Division Bench of the High Court was right in setting aside his appointment. In our opinion, an unqualified person cannot be appointed, whoever may be the recommendee. We are of the opinion that the Division Bench of the High Court was right in holding that Ganpat was not eligible for appointment of Lecturer in Masters' of Computer Application.'

Keeping in view the above, it can be safely held that in respect of appointment to the post of Assistant Professor Zoology and Botany, the degree in the relevant subject would mean post graduate degree in Zoology and Botany respectively and appropriate qualification or an equivalent qualification of post graduate degree in Genetics or Human Genetics cannot be treated as eligible qualification. Once, the rules governing the service and the advertisement provides for only relevant qualification, the candidates with the equivalent qualification or appropriate qualification cannot be allowed to be treated eligible.

The decision of the respondent-State taken on 06.01.2017 to consider the candidates having equivalent qualification by placing reliance upon guidelines of the University Grant Commission cannot come to the rescue of the private respondents as even if qualification of the private respondents is treated equivalent to the relevant subject, in the absence of any statutory provision granting them eligibility, keeping in view the rules governing the service and the terms and conditions of the advertisement, no

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benefit of equivalency for consideration for appointment can be given to the private respondents having post graduate degree in Genetics or Human Genetics. Even otherwise, also the said letter is contrary to the decision of the expert committee, which was convened by the Administrative Department. Decision of the experts of Maharishi Dayanand University, Rohtak as recorded on 30.11.2016 cannot be given importance as the said opinion is contrary to their earlier view and nothing has been mentioned as to why U-turn has been taken while recording the opinion on 02.12.2016, which has been appended as Annexure R/IV.

Keeping in view the above, decision of the respondent-State dated 06.01.2017, whereby the candidates having post graduate degree in Genetics or Human Genetics were treated eligible for appointment to the post of Assistant Professor in the subject of Zoology/Botany by treating the said qualification as equivalent, is set aside and the consequential selection of the private respondents having qualification of M.Sc. Genetics or M.Sc. Human Genetics is also set aside being contrary to the rules governing the service as well as the terms and conditions of the Advertisement dated 16.02.2016 (Annexure P/4).

Respondents are directed to reframe the merit list for appointment to the post of Assistant Professor Zoology and Botany, keeping in view the relevant qualification by treating only candidates, who have post graduate degree in the subject of Zoology/Botany as the case may be, as eligible candidates and thereafter make fresh recommendations to the Government.

Let this Order be complied with within a period of one month from the date of receipt of copy of this order.

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A photocopy of this order be placed on the files of connected cases.

CMs-19033-19034-CWP-2018;
CMs-3193,3344,10593,13381,13431,
14507,6656,6676-CWP-2017

All the applications stand disposed off.

November 07, 2022 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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