

**CWP-11921-2020 (O&M)
and other connected cases**

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

**CWP-11921-2020 (O&M)
and other connected cases**
Date of decision: 13.02.2023
Reserved on: 08.02.2023

Sarabjit Kaur and another

....Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S. Bal, Senior Advocate
with Mr. J.S.Randhawa, Advocate, for the petitioner(s)
(In CWP-14328-2020, CWP-32879-2019, CWP- 35392-
2019 and CWP-16725-2021).

Mr. Parvesh K. Saini, Advocate for the petitioner(s)
(In CWP-26046-2019, CWP-27009-2019
and CWP-3613-2020).

Mr. Sukhdev Raj Kamboj, Advocate
for the petitioner(s) (In CWP-27494-2019).

Mr. Abhinav Jain, Advocate
for the petitioner(s) (In CWP-27563-2019).

Ms. Hema Kakkar, Advocate
for Mr. Kapil Kakkar, Advocate for the petitioner(s)
(IN CWP-31787-2019).

Mr. Bhupinder Singh Gill, Advocate
for Mr. Manjit Singh, Advocate
for the petitioner(s) (In CWP-33393-2019).

Mr. Anupam Bhardwaj, Advocate
for the petitioners (In CWP-36006-2019).

Ms. Alka Chatrath, Advocate for the petitioner(s)
(In CWP-37367-2019, CWP-22440-2020,
and CWP-365-2020).

Mr. G.S.Nahel and Mr. Ranjeet Singh Sidhu, Advocates

for the petitioner(s) (In CWP-29474-2019).

Mr. Pardeep Singh Mirpur, Advocate
for the petitioner(s) (In CWP-35955-2019, CWP-359-2020
and CWP-11921-2020).

Mr. Vishal Gaur, Advocate
for Mr. P.S.Khurana, Advocate
for the petitioner(s) (In CWP-11870-2020).

Mr. Brijesh, Advocate
for Mr. Sandeep Bansal, Advocate
for the petitioner(s) (In CWP-4538-2020).

Mr. R.S.Pandher, Senior Deputy Advocate General,
Punjab.

Mr. A.S.Khinda, Advocate
for the respondent No.5 and 9 (In CWP-27009-2019).

ANIL KSHETARPAL, J

1. This judgment shall dispose of a batch of connected writ petitions (details whereof are given at the foot of the judgment).
2. Learned counsel representing the parties are ad idem that this batch of writ petitions can conveniently be decided by a common judgment. The facts are being taken from the lead case i.e. CWP 11921 of 2020. The petitioners while filing the writ petition have prayed for the following substantive reliefs:-

“An appropriate writ especially for the issuance of a writ in the nature of certiorari for quashing the condition of 50% marks in Bachelors degree in the advertisement (Annexure P-3) qua the petitioner, being not applicable to the petitioner while considering them eligible for the posts in question because the aforesaid condition of 50% marks in bachelors degree has been laid down in the year 2018 Rules which are prospective in nature and are not applicable to the petitioners who have acquired their

qualifications as laid down in the 1997 Rules before notification of the 2018 Rules;

AND

For issuance of a writ in the nature of Mandamus directing the respondent-department to include the name of the petitioners in the final merit list (Annexure P-8) as per their merit and to exempt the petitioners from the condition of 50% marks in Bachelors degree as prescribed in the advertisement (Annexure P-3) which is to be applied prospectively to those candidates who have acquired the aforesaid qualification after the notification of 2018 Rules as per the settled law and further consider the petitioners eligible for the post in question on the basis of their qualification of 'Graduate of the recognized University' as prescribed under the year 1997 Rules, as per the settled law, because the aforesaid qualification was acquired by the petitioners when the 1997 rules were in existence;

AND

Further to direct the respondent-department to reserve posts of Head Teacher/ Central Head Teacher equal to the number of petitioners during the pendency of the present writ petition subject to final decision of this Hon'ble High Court."

3. These writ petitions pertain to the recruitment notice dated 8th March, 2019 inviting applications for the recruitment to 375 posts of the Central Head Teachers and 1058 posts of Head Teachers. Previously, the services and recruitment of such Teachers was regulated by the State Education (Class III Primary School Cadre) Service Rules, 1997 (hereinafter referred to as the '1997 Rules'). On 21st May, 2018 in exercise of the powers conferred by Article 309 of the Constitution of India, the Governor of Punjab, notified the Punjab State Elementary Education Teacher Cadre Group C Service Rules, 2018 (hereinafter referred to as the '2018 Rules'). As per Appendix B attached to 2018

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Rules, the required qualifications and experience of Head Teacher is extracted as under:-

Sr. No.	Name of the post	Percentage of appointment by Direct appointment	Percentage of appointment by Promotion	Qualifications and experience appointed by Direct appointment	Qualifications and experience appointed by Promotion
2.	Head Teacher	25%	75%	(1) Should possess Bachelor's Degree from a recognized university or institution with atleast 50% marks as per guidelines of the University Grants Commission; 2) should possess two years Elementary Teachers Training course from a recognized university or institution or two years Diploma in Elementary Education (D.El.Ed.) as per guidelines of the National Council for Teachers Education or Bachelor Degree in Education (B.Ed) from a recognized university or institution as per guidelines of the University Grant Commission; and 3) Should possess teacher experience of working as Primary School Teacher for a minimum period of three years in a Central/State Government School. However, a prospective candidate must have acquired such experience after acquiring the minimum educational and professional qualifications specified for the posts under these rules.	From amongst the Elementary Trained Teachers working in the same district in which the promotions are to be made and having an experience of seven years as such on seniority-cum-merit basis.

4. A recruitment notice was issued by the office of the Director Education Department, Recruitment Directorate-cum-Director General School Education, Punjab, on 8th March, 2019. As per the recruitment notice, the educational qualifications required for the said post are exactly the same as provided in Appendix B of the 2018 Rules. The candidature of the petitioners has been rejected as they were found to be lacking in the minimum required qualification, which has led to filing of these writ petitions.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paper books of the various writ petitions.

6. Learned counsel representing the petitioners have submitted as under:-

a) Sh.Bal, learned senior counsel submits that the Bachelor of Education (B.Ed.) is also a Bachelors degree. Hence, the respondents are not correct in insiting upon 50% marks in Bachelor degrees namely B.A., B.Com or B.Sc.

b) No relaxation in the minimum percentage of the marks obtained in the degree has been provided for candidates belonging to the Scheduled Caste category although in various other similar Rules, such a provision exists. To buttress their arguments, learned counsel representing the petitioners submit that the State of Punjab, upon realising it's mistake, has amended the 2018 Rules on 26th February, 2010 while relaxing the requirement for such candidates. Hence, they

claim that such amendment proves that the 2018 Rules, as originally notified, suffer from errors.

c) In CWP-22440-2020 Ms. Alka Chatrath, the learned counsel representing the petitioners contends that the petitioners, in the aforesaid writ petition, have passed higher qualification in the first division i.e with more than 60 % marks and hence, they have been wrongly excluded. While relying upon the judgment passed by a Full Bench in '**Manjit Singh vs State of Punjab and other**' 2010 (4) RSJ 86 and Jyoti K.K. vs. '**Kerala Public Service Commission**' 2010 (15) SCC 596, she submits that higher qualification is required to be given due credit and the respondents have erred in holding the petitioners as ineligible. She further contends that the National Teacher Education Council itself provides for relaxation in the minimum qualifying marks required by a candidate of the reserved categories namely the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes when compared with the General category candidates. Therefore, some relaxation is required to be given.

d) She further contends that vide the amendment of the 2018 Rules, the earlier expression has been '*substituted*'. Consequently, the amendment operates retrospectively from 21st May, 2018 i.e the date on which the 2018 Rules were notified. She relies upon judgment passed in '**Government of India and others versus Indian Tobacco Association**' 2005 (7) SCC 396.

7. On the other hand, learned State counsel while contesting the writ petitions, contends that as per the Rules, it is incumbent upon a candidate to fulfill all the three qualifications and experience required under Appendix B of the 2018 Rules. It is submitted that the required qualifications and experience have been divided into three separate parts and since while separating the aforesaid three parts, the word '*or*' has not been used, therefore, the requirement mentioned in all the three parts shall be considered mandatory. The Rules amended in the year 2020 shall not be applicable to the recruitment of this batch as recruitment notice was issued on 8th March, 2019. It is further contended that B.Ed degree in education is not substitution of Bachelor degree as provided in Appendix B.

8. This Court has analyzed the arguments of the learned counsel representing the parties and examined the paper books. Sh. Bal and Sh. Pandher have also filed a written note of their submissions. As regards the first argument of the learned counsel representing the petitioners, it is evident from the reading of Appendix B of the 2018 Rules that all the three parts mentioning the qualifications and experience are mandatorily required to be possessed by the candidate for him to become eligible for recruitment to the post of Head Teacher. In the first part, it is provided that a candidate should possess a Bachelor's degree from a recognized university or institution with at least 50% marks as per the guidelines of the University Grants Commission. Before the second portion starts, the first part ends with a semicolon. In the

second part, it is provided that the candidate should possess a certificate in 2 year Elementary Teacher Training course or a two year diploma in Elementary Education or a Bachelor's degree in Education (B.Ed). In part 3, the minimum experience, which a candidate should possess has been specified. Thus, it is evident that apart from Bachelor's degree, as is understood in the common parlance, the requirement of the candidate possessing a certificate in 2 year Elementary Teacher Training course or a two year diploma in Elementary Education or a Bachelor's degree in Education (B.Ed) is mandatory. In other words, the three qualifications noticed in clause 2(2) of Appendix B clearly make a distinction between the Bachelor's degree and B.Ed course in context of the normal perception.

9. On a careful reading of the qualifications as prescribed in the Rules and the recruitment notice, it is evident that the expression '*Graduation degree*' has been used in the context of a Bachelor's degree in Humanities, Commerce or Science whereas Bachelor of Education (B.Ed) is a professional qualification in a specialized field. Hence, the B.Ed qualification is not a substitute for a Bachelor's degree but is in addition thereto because Part 2 of the qualifications explicitly requires that a Teacher should possess either a certificate in two year Elementary Teacher Training course or a two years diploma in Elementary Education or a Bachelor's degree in Education (B.Ed). Moreover, part 1 and part 2 are separated by a semicolon and not '*or*'. Hence, both the requirements are co-existing and a candidate is compulsorily required to possess the qualifications prescribed in part 1 and 2 of the Rules. This interpretation

is corroborated by the use of the conjunction ‘*and*’ after the use of semicolon between Part 2 and Part 3. Furthermore, wherever the rules have provided for alternative qualifications, it has used the word ‘*or*’ like in part 2 where the word ‘*or*’ has been used multiple times.

10. Now, the Court proceeds to examine the correctness of the argument of Ms. Alka Chatrath to the effect that the candidates have scored first division in a higher qualification. It is well settled that the court ordinarily should not interfere with the qualifications required under a statute, rules/recruitment notice or the like unless there is lack of clarity or arbitrariness in the qualifications prescribed in the relevant document. In the present case, the 2018 Rules clearly require that a candidate must possess a Bachelor's degree with at least 50% marks. In these circumstances, if a candidate does not possess 50% marks in his graduation degree, the marks obtained in the post graduation degree will not be a sufficient substitute of the requirement of the minimum marks in the Bachelor's degree. This Court while exercising the power of judicial review has a limited jurisdiction. It does not sit in appeal over the decision of the Government.

11. At this stage itself, the next argument of Ms. Alka Chatrath with reference to the minimum qualifications laid down by the National Council for Teacher Education can be examined. Though, the National Council for Teacher Education first came to be established in 1973, however, by a Parliamentary Act i.e the National Council for Teacher Education Act, 1993, the present National Council for Teacher Education

came into existence. Section 12 and Section 12A of the said Act are extracted as under:-

“12. Functions of the Council-*It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and coordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act, the Council may—*

- (a) undertake surveys and studies relating to various aspects of teacher education and publish the result thereof;*
- (b) make recommendations to the Central and State Governments, Universities, University Grants Commission and recognised institutions in the matter of preparation of suitable plans and programmes in the field of teacher education;*
- (c) coordinate and monitor teacher education and its development in the country;*
- (d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher [* * *] in recognised institutions;*
- (e) lay down norms for any specified category of courses or training in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum;*
- (f) lay down guidelines for compliance by recognised institutions, for starting new courses or training and for providing physical and instructional facilities, staffing pattern and staff qualifications;*
- (g) lay down standards in respect of examinations leading to teacher education qualifications,*

criteria for admission to such examinations and schemes of courses or training;

(h) lay down guidelines regarding tuition fee and other fee chargeable by recognised institutions;

(i) promote and conduct innovation and research in various areas of teacher education and disseminate the results thereof;

(j) examine and review periodically the implementation of the norms, guidelines and standards laid down by the Council and to suitably advise the recognised institutions;

(k) evolve suitable performance appraisal systems, norms and mechanisms for enforcing accountability on recognised institutions;

(l) formulate schemes for various levels of teacher education and identify recognised institutions and set up new institutions for teacher development programmes;

(m) take all necessary steps to prevent commercialisation of teacher education; and

(n) perform such other functions as may be entrusted to it by the Central Government.

9[12-A. Power of Council to determine minimum standards of education of school teachers.—*For the purpose of maintaining standards of education in schools, the Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognised by the Central Government or a State Government or a local or other authority:*

Provided that nothing in this section shall adversely affect the continuance of any person recruited in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate schools

or colleges, under any rule, regulation or order made by the Central Government, a State Government, a local or other authority, immediately before the commencement of the National Council for Teacher Education (Amendment) Act, 2011 solely on the ground of non-fulfilment of such qualifications as may be specified by the Council:

Provided further that the minimum qualifications of a teacher referred to in the first proviso shall be acquired within the period specified in this Act or under the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009).”

12. On a careful reading of Section 12(d), it is evident that the Council lays down the guidelines in respect of the minimum qualifications which are required by a person to be employed as a Teacher in a recognized institution. In other words, the Council is empowered to lay down the guidelines in respect of the minimum qualifications required for the posts in the concerned field. However, the State or an authority, which has been so authorized, is not debarred from laying down any higher qualification required for the said post. Similarly, on reading of Section 12A, it is evident that the Council can lay down the minimum standard of education of school Teachers. The attention of the Court has not been drawn to any provision which debars the State/competent authority to lay down any higher standard.

13. The next argument of the learned counsel representing the petitioners is to the effect that no provision of relaxation in the marks obtained in the degree has been provided for the Scheduled Castes, the Scheduled Tribes and the Other Backward Class candidates. The rule

making authority, in its wisdom, has not made any such provision. It is well established that Article 16 (4) and (4A) of the Constitution of India are only enabling provisions which empowers the State to make provision for reservation in appointments for Backward Classes, Scheduled Castes and Scheduled Tribes. Article 16 (4A) does not mandate that there must be relaxation in favour of the aforesaid categories in the minimum qualifying marks secured by them under a degree or diploma or certificate course.

14. The next argument of Ms. Alka Chatrath is that the rule making authority realized its mistake and amended the rules in the year 2020. It substituted the original provision to the effect that the minimum qualifying marks in case of Scheduled Castes, Scheduled Tribes, Other Backward Classes and physically handicapped candidates shall be 45%. Her argument is that since the expression '*substituted*' has been used, therefore, it would be deemed to have been substituted retrospectively from 21.05.2018 i.e. the date of enforcement of the unamended 2018 Rules. At this stage, it would be appropriate to extract the amendment brought in serial No. 2 under column No. 2 by the Punjab State Elementary Education Teacher Cadre Group C Service (First Amendment Rules) 2020, which reads as under:-

4. In the said rules, in Appendix 'B',

(A) in Serial No. 1, under column 5,-

(a) in item (1), for the words, figures and sign "at least 50% marks", the words "minimum fifty percent marks in the case of General Category candidate and forty-five marks in the case of

Scheduled Castes, Scheduled Tribes, Other Backward Classes, Backward Classes and Physically Handicapped Candidates" shall be substituted;

(b) for item (3), the following item shall be substituted, namely:-

"(3) Should possess teaching experience, as a Primary School Teacher, for a minimum period of three years, in any Government School, under the control of the Director."

(B) in Serial No. 2, under column 5,-

(a) in item (1), for the words, figures and sign "at least 50% marks", the words "minimum fifty percent marks in the case of general category candidates and forty-five percent marks in the case of Scheduled Castes, Scheduled Tribes, Other Backward Classes, Backward Classes and Physically Handicapped Candidates Category" shall be substituted;

(b) for item (3), the following item shall be substituted, namely:-

"(3) Should possess teaching experience, as a Primary School Teacher, for a minimum period of three years, in any Government School, under the control of the Director."

(C) in Serial No. 3, under column 5 for item (1), the following item shall be substituted, namely:-

"(1) Should have passed Graduation with minimum with minimum fifty-five percent marks in the case of General Category candidates, and fifty percent marks in the case of Scheduled Castes, Scheduled Tribes, Other Backward Classed, Backward Classed and Physically Handicapped candidates, from a recognized university or institution:

Provided that the candidates, who have done or doing the ETT course (or have done this course with other nomenclature), with 10+2 qualification, shall be considered for appointment into the Service under these rules, as a one-time

measure till the 1st day of April, 2022, in order to remove the hardship of those candidates, who have acquired the said qualification under the previous rules."

15. It is considered appropriate to take note of Rule 1 of the 2020 Amendment, which reads as under:-

*“(1) These rules may be called the Punjab State Elementary Education (Teaching Cadre) Group 'C' Service (First Amendment) Rules, 2020.
(2) **They shall come into force on and with effect from the date of their publication in the Official Gazette.**”*

16. It is evident from the reading of sub rule 2 of rule 1 of the 2020 Rules that the rule making authority has explicitly and purposely made a provision clarifying that the amended provisions shall be applicable prospectively. It has, unequivocally, been provided that these amended rules shall come into force on and with effect from the date of their publication in the official Gazette, which is 26th February, 2020. Hence, the argument the learned counsel that it will be deemed to have been substituted from the date of enforcement of the Act has no substance. In **Indian Tobacco Association's case supra** the Supreme Court interpreted the expression '*substituted*' in the context of a notification issued by the Union of India with respect to an incentive scheme introduced by Government of India in 1997 with respect to export and import in terms of duty, entitlement, passbook scheme whereby and whereunder, 2% incentive was provided out of the export carried out from notified container depots but certain depots were wrongly omitted from the first notification. The aforesaid mistake was

corrected by a subsequent notification. In that context, the Supreme Court, after examining the intention of the Government held that in view of the word '*substitution*' the amended notification shall come into effect from the date of the original notification for all such depots. In the present case, as already noticed, Rule 1(2) specifically provides for its prospective operation.

17. In **Manjit Singh's case (supra)**, a Full Bench of this High Court held that the candidates possessing higher qualification in the same line cannot be excluded from consideration for selection. However, the aforesaid judgment does not lay down as a ratio decidendi that the minimum marks which a candidate should possess in the required qualification can be substituted with the percentage of marks obtained in the higher qualification in the same field. The higher qualification is an additional qualification. In that case, the question was, "Whether a candidate possessing higher qualification in the same field can be excluded from the selection process?" In that context, a Full Bench was constituted and the question was answered. Similarly in **Jyoti K.K's case (supra)**, the Supreme Court, by a short order, upheld the judgment of the High Court by making observations on the same lines. However, the aforesaid order also does not provide that the marks in a higher qualification are a good substitute for the minimum marks required in the basic qualification. Moreover, the ratio of the judgment in **Jyoti K.K's case** has been explained in para 17.2 and 17.3 of the **Chief Manager, Punjab National Bank and another vs. Anit Kumar Das (2021) 12 SCC 80**, which reads as under:-

“17.2. In a recent decision of this Court in Zahoor Ahmad Rather [Zahoor Ahmad Rather v. Imtiyaz Ahmad, (2019) 2 SCC 404 : (2019) 1 SCC (L&S) 353] , this Court has distinguished another decision of this Court in Jyoti K.K. v. Kerala Public Service Commission [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] taking the view that in a case where lower qualification is prescribed, if a person has acquired higher qualifications, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In the said decision, this Court also took note of another decision of this Court in State of Punjab v. Anita [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329] , in which case, this Court on facts distinguished the decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] While distinguishing the decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] , it is observed in paras 25 and 26 as under : (Zahoor Ahmad Rather case [Zahoor Ahmad Rather v. Imtiyaz Ahmad, (2019) 2 SCC 404 : (2019) 1 SCC (L&S) 353] , SCC pp. 413-14)

“25. The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] has been considered in a judgment of two learned Judges in State of Punjab v. Anita [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329] . In that case, applications were invited for JBT/ETT qualified teachers. Under the rules, the prescribed qualification for a JBT teacher included a Matric with a two years' course in JBT training and knowledge of Punjabi and Hindi of the Matriculation standard or its equivalent. This Court held that none of the respondents held the prescribed qualification and an MA, MSc or MCom could not be treated as a “higher qualification”. Adverting to the decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service

Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] , this Court noted that Rule 10(a)(ii) in that case clearly stipulated that the possession of a higher qualification can presuppose the acquisition of a lower qualification prescribed for the post. In the absence of such a stipulation, it was held that such a hypothesis could not be deduced : (Anita case [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329] , SCC p. 177, para 15)

‘15. It was sought to be asserted on the basis of the aforesaid observations, that since the private respondents possess higher qualifications, then the qualification of JBT/ETT, they should be treated as having fulfilled the qualification stipulated for the posts of JBT/ETT Teachers. It is not possible for us to accept the aforesaid submission of the learned counsel for the private respondents, because the statutory rules which were taken into consideration by this Court while recording the aforesaid observations in Jyoti K.K. case [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] , permitted the aforesaid course. The statutory rule, in the decision relied on by the learned counsel for the private respondents, is extracted hereunder : (SCC p. 598, para 6)

“6. Rule 10(a)(ii) reads as follows:

10. (a)(ii) *Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications recognised by executive orders or Standing Orders of Government as equivalent to a qualification specified for a post in the Special Rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post.”*

A perusal of the Rule clearly reveals that the possession of higher qualification would presuppose the acquisition of the lower qualification prescribed for the posts. Insofar as the present controversy is concerned, there is no similar statutory provision

authorising the appointment of persons with higher qualifications.'

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 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. [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 [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 [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 [Imtiyaz Ahmad v. Zahoor Ahmad Rather LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)]] of the Division Bench.”

(emphasis in original)

*That thereafter it is observed in para 27 as under :
(SCC p. 415)*

“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.”

17.3. Thus, as held by this Court in the aforesaid decisions, it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the courts to consider and assess. A greater latitude is permitted by the courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an institution or an industry or an establishment as the case may be. The courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. In the present case, prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed 12th standard is justified and as observed hereinabove, it is a conscious decision taken by the Bank which is in force since 2008. Therefore, the High Court has clearly erred in directing the appellant Bank to allow the respondent-original writ petitioner to discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement.”

18. It may be noted here that as per the stand of the State, the process of the selection of candidates has been completed and the appointment letters have been issued on 1st August, 2021. The State has also taken a decision to close the selection of candidates under the concerned recruitment notice in the present case. Thus, in view of the aforesaid discussion, the result is inevitable. In the considered view of the Court, there is no incoherence or arbitrariness in the decision of the State warranting the exercise of judicial review by this Court.

19. Hence, dismissed.
20. All the pending miscellaneous applications, if any, are also
disposed of.

13.02.2023
rekha

(ANIL KSHETARPAL)
JUDGE

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

Sr.No.	CWP No.	Parties name
1.	CWP-11921	Sarabjit Kaur and another vs. State of Punjab and others
2.	CWP-4538-2020	Renu Bala and another vs. State of Punjab and others
3.	CWP-35955-2019	Roop Singh and another vs. State of Punjab and others
4.	CWP-31787-2019	Jaswant Singh and another vs. State of Punjab and others
5.	CWP-26046-2019	Parvinder Singh and others vs. State of Punjab and others
6.	CWP-11870-2020	Mamta Rani vs. State of Punjab and others
7.	CWP-27009-2019	Balvinder Kaur and others vs. State of Punjab and others
8.	CWP-27563-2019	Rupinder Singh vs. State of Punjab and others
9.	CWP-32879-2019	Gurpreet Singh and others vs. State of Punjab and others
10.	CWP-33393-2019	Ripudaman Gill vs. State of Punjab and others
11.	CWP-35392-2019	Lakhwinder Singh and others vs. State of Punjab and others
12.	CWP-359-2020	Jaspreet Kaur vs. State of Punjab and others
13.	CWP-294742019	Kulbir Kaur and others vs. State of Punjab and others
14.	CWP-16725-2021	Manjit Kaur vs. State of Punjab and others
15.	CWP-36006-2019	Palwinder Kaur vs. State of Punjab and others

CWP-11921-2020 (O&M)
and other connected cases

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16.	CWP-27494-2019	Harjit Singh and another vs. State of Punjab and others
17.	CWP-3613-2020	Onkar Chand and others vs. State of Punjab and others
18.	CWP-14328-2020	Rajinder Singh vs. State of Punjab and others
19.	CWP-365-2020	Pawandeep Kaur vs. State of Punjab and others
20.	CWP-37367-2019	Chhinderpal Kaur and another vs. State of Punjab and others
21.	CWP-22440-2020	Varinderjit Kaur vs. State of Punjab and others

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(ANIL KSHETARPAL)
JUDGE