

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.17862 of 2022

GOBINDA BISWAS

-VERSUS-

THE HON'BLE CALCUTTA HIGH COURT AND OTHERS

For the petitioner : Mr. Mukunda Lal Sarkar, Adv.

For respondent nos.1 to 6 : Mr. Debashis Banerjee, Adv.,
Mr. Rakesh Jana, Adv.

For respondent nos.7 and 8 : Mr. Soumya Majumder, Adv.,
Ms. Sanjukta Dutta, Adv.

Hearing concluded on : 16.05.2024

Judgment on : 09.08.2024

Kausik Chanda, J.:-

The petitioner unsuccessfully participated in a selection process for recruitment of Group-D staff conducted by this Court in terms of a notification dated September 28, 2018. By filing this writ petition, he challenges the appointment of respondent nos.7 and 8 to Group-D posts of this Court.

2. The petitioner argues that clause 7 of the said notification debarred the Graduate candidates from applying for the posts. Respondent nos.7 and 8 both are Graduates, and they participated in the selection process by way of suppression of their Graduate degree.

3. The petitioner has prayed for the cancellation of the appointment of respondent nos.7 and 8 and his appointment to a Group-D post.

4. A Coordinate Bench of this Court by an interim order dated August 22, 2022, observed, *inter alia*, that since the allegations against respondent nos.7 and 8 are very serious in nature, the services of the said respondents shall not be approved and/or confirmed until disposal of this writ petition or until further orders, whichever is earlier. It was clarified that in the event the writ petition fails and respondent nos.7 and 8 are exonerated from the charges levelled against them, they shall get all service benefits from the date they have been given appointment.

5. Mr. Mukunda Lal Sarkar, learned advocate appearing for the petitioner has strenuously argued that respondent nos.7 and 8 appeared in

the selection process and secured their appointments by suppressing their Graduate qualification. Therefore, their service is liable to be terminated.

6. In support of his argument, Mr. Sarkar has relied upon a judgment reported at **(2023) 7 SCC 536 (*Satish Chandra Yadav v. Union of India*)**, where the Supreme Court upheld the termination of service of some CRPF employees for suppression of relevant information pertaining to the pendency of criminal cases filed against them in antecedent and verification form at the time of recruitment.

7. Mr. Soumya Majumder, learned advocate appearing for respondent nos.7 and 8, on the other hand, does not dispute the fact that respondent nos.7 and 8 are Graduates. He, however, submits that the writ petitioner was unsuccessful in the selection process. He did not even qualify in the written examination to participate in the interview. Therefore, the writ petitioner had no chance of being appointed to the post in question. He prays that this writ petition should not be entertained since a legal right that can be enforced under the writ jurisdiction must ordinarily be the right of the petitioner who complains of infraction of such right and approaches the Court for relief. An existing right is the foundation of the exercise of writ jurisdiction. In support of such submission, Mr. Majumder has relied upon the following judgments reported at **AIR 1962 SC 1044 (*Calcutta Gas Company (Proprietary) Ltd. V. State of West Bengal*)** and **(1998) 6 SCC 741 (*Union of India v. N. Y. Apte*)**.

8. Mr. Majumder has further argued that a criterion denying the right to be considered for a post, for having higher qualification than prescribed cannot be rational. He has relied upon the judgment reported at **(2000) 2 SCC 606 (Mohd. Riazul Usman Gani v. District & Sessions Judge, Nagpur)**.

9. By placing reliance upon the judgment reported at **(2010) 2 Cal LJ 321 (Rina Dutta v. Anjali Mahato)**, Mr. Majumder submits that it is open to the employer to make a rule providing for disqualification of a candidate with higher qualification than prescribed but burden lies on the employer to justify such rule.

10. Mr. Majumder further relied upon a judgment reported at **(2015) 5 CHN 138 (The State of West Bengal v. Chaitali Das)** to argue that a higher qualification than the prescribed is not a bar to apply for a post.

11. Mr. Debashis Banerjee, learned advocate appearing for the High Court Administration, has submitted that a candidate possessing a qualification higher than that advertised can ordinarily not be debarred or disqualified but it is open to the employer to make a rule providing for disqualification of candidates possessing higher qualification. He places reliance on a judgment reported at **(2010) 3 CHN 168 (Cal) (FB) (Rina Dutta v. Anjali Mahato)**.

12. It has been further submitted by Mr. Banerjee that challenging the validity of clause 7 in the advertisement dated September 28, 2018, a writ petition was filed before this Court and a Division Bench of this Court has

upheld clause 7 of the said advertisement by a judgment dated March 12, 2019, passed in **M.A.T. 301 of 2019 (Riya Das v. The State of West Bengal)**. It has further been submitted that though a special leave petition has been preferred against the judgment, no final decision has yet been rendered by the Supreme Court. Mr. Banerjee has further cited the decisions of the Supreme Court reported at **(2021) 12 SCC 80 (Chief Manager, Punjab National Bank v. Anit Kumar Das)** and **(2015) 1 Cal LT 384 (Smt. Kaberi (Dutta) Santra v. The State of West Bengal)** to argue that it is for an employer to determine the qualification for any post and an employee is expected to give correct information as to his qualification.

13. Before delving into the merit of the case it is necessary to quote the relevant part of the advertisement which debarred a Graduate candidate from applying for the posts in question. The said clause reads:

“7. Educational Qualification:

1. Must have passed Class-VIII. **Graduate candidates are not be eligible to apply.** (emphasis is original)
2. Must have knowledge of reading and writing Bengali and English.”

14. A Division Bench of this Court in dealing with the aforesaid clause, in **Riya Das** case, *inter alia*, observed as follows:

“We are of the considered view that the respondents 2 and 3, i.e., the Hon’ble the Chief Justice and the High Court at Calcutta, respectively, have sufficiently explained why the need arose to keep away graduates from the zone of consideration for appointment on Group ‘D’ posts. After all, it is axiomatic that a level playing field has to be given to all candidates

to apply for and compete for appointment on a particular post. If indeed the minimum qualification for a Group 'D' post has been stipulated as a VIIIth standard pass certificate, any under-graduate candidate would most certainly be deficient in intellectual capability to match the graduates and the graduates stealing a march over the under-graduates would be a distinct possibility, thereby bringing out inequality in the matter of competition. We are sure, Articles 14 and 16 of the Constitution would not stand in the way of excluding graduates, who form a class, distinct from under-graduates, and there is absolutely no illegality in the action of the High Court administration warranting interference.

We are not oblivious of the problem arising out of scarcity of employment opportunities in the State. We are also conscious that a graduate, hailing from a poor family, would stand excluded because of the stipulation in clause 7 of the advertisement. But, at the same time, we cannot be unmindful that if all posts that are available to be filled up by way of direct recruitment are filled up by graduates, there would be absolutely no vacant post left for which undergraduates may compete amongst themselves and get selected for public employment. A line has to be drawn somewhere based on fair, rational and objective criteria and the High Court administration having proceeded in that direction by leaving Group 'D' posts to be filled up from amongst candidates who are under-graduates, we see no reason to take a view contrary to the one taken by the learned Judge while dismissing the writ petition."

15. The law is also settled that it is for the employer to determine the relevancy and suitability of the qualification for any post and it is not for the Court to consider and assess the same.

16. In ***Punjab National Bank (supra)***, the Supreme Court dealt with a case where the relevant advertisement stipulated that a candidate should

have passed Class-XII or its equivalent with basic reading/writing knowledge of English and should not be a Graduate as of January 2016. A candidate participated in the recruitment process suppressing the factum of being a Graduate since 2014 without challenging the stipulated eligibility criterion. It was held by the Supreme Court that having participated in the recruitment process as per the advertisement, it was not open to the candidate to contend that acquisition of higher qualification cannot be a disqualification, and that too without challenging the stipulated eligibility criteria or educational qualification. The Supreme Court upheld the termination order observing, *inter alia*, as follows:

“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.

...

19. An employee is expected to give a correct information as to his qualification. The original writ petitioner failed to do so. He was in fact overqualified and therefore ineligible to apply for the job. In fact, by such conduct on the part of the respondent-original writ petitioner, one another righteous candidate has suffered for his mischievous act. As held by this Court in *Ram Ratan Yadav [Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav, (2003) 3 SCC 437 : 2003 SCC (Cri) 306 : 2003 SCC (L&S) 306]*, suppression of material information and making a false statement has a clear bearing on the character and antecedents of the employee in relation to his continuance in service. A candidate having suppressed the material information and/or giving false information cannot claim right to continuance in service. Thus, on the ground of suppression of material information and the facts and as the respondent-original writ petitioner even otherwise was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement which was as per Circular Letter No. 25 of 2008 dated 6-11-2008, the Bank rightly cancelled his candidature and rightly did not permit him to resume his duty."

17. I cannot also accept the argument advanced on behalf of respondent nos.7 and 8 that this petition cannot be entertained at the behest of the petitioner. I am of the view that the petitioner has been denied his right to participate in a fair and transparent selection process.

18. The procedure for short-listing of the candidate was decided as follows:

".....(iii) Fixation of the "cut off marks" for qualification in the written test by Your Lordship; 50% or, if thrice the number of vacancies do not meet such marks, the cut off marks will be brought down to such level to ensure that thrice the number of vacancies are called for the interview."

19. The documents provided by the High Court reveal that the cutoff marks for the written test were fixed at 50% for the relevant selection process, as the number of candidates who achieved this score was more than three times the number of available vacancies. The petitioner was not selected because his score was below the 50% threshold.

20. It is evident that, since graduate candidates participated in the written test, the cutoff marks for selection were not lowered below 50%. Had only undergraduate candidates been involved in the selection process, the petitioner might have been selected with a score below 50%.

21. The judgment delivered in **Smt. Kaberi (Dutta) Santra** case has succinctly explained the position as follows:

“46. The answer cannot but be in the negative. It is alleged that on the one hand the private respondents misrepresented to the authorities that they were not graduates and on the other hand created a situation which led to the official respondents to appoint them. If the private respondents have indeed suppressed their actual educational qualifications, does the selection process not suffer from a gross illegality leading to likely commission of a fraud on the public? The answer has to be in the affirmative. There is another way of looking at the problem. The appointments were to be made from amongst undergraduates. The petitioners are all undergraduates, whereas the private respondents are graduates. None can dispute that in the present system, a graduate is considered to be more knowledgeable than a candidate who is “Higher Secondary” passed. It would not be unreasonable to presume that questions might have been set for testing the relative merits of the aspirants keeping in mind that the same are to be answered by “Higher Secondary” passed candidates, and that such questions could be answered better by graduates. At the onset of the process of selection, there was no level playing field inasmuch as the private

respondents by misrepresentation of their educational qualifications (if at all) might have been able to secure entry in the selection process to compete with “Higher Secondary” passed candidates and derived undue benefit by not having to compete with fellow graduates. To my mind, this is such a type of conduct that does not deserve kindness, generosity or empathy.”

22. Having stated the above, it is important to observe that the factual circumstances of this case differ significantly from those in the **Chief Manager, Punjab National Bank** case and the **Smt. Kaberi (Dutta) Santra** case.

23. From the relevant note-sheets, as produced by the High Court, it does not appear that the aforesaid eligibility criteria as stipulated in clause 7 of the advertisement was incorporated in terms of any recruitment rules.

24. From the documents submitted by the High Court in the course of the hearing, it appears that the Hon’ble Chief Justice appointed a learned Judge of this Court as a one-member committee for the purpose of monitoring the selection process.

25. The Recruitment Cell, High Court, Calcutta, placed a draft advertisement before the one-member committee containing the eligibility criteria in question.

26. The draft was approved by the learned Judge and accordingly, the advertisement was published with the relevant eligibility clause.

27. In **Rina Dutta** case, a Full Bench of this Court has held that when a particular qualification is laid down in an advertisement relating to a distinct class of candidates, the candidates possessing a qualification

higher than that advertised can ordinarily not be debarred or disqualified, but it is open to the employer to make a rule providing for disqualification. The High Court admittedly, in this case, has debarred the Graduates from participating in the selection process without framing any rules.

28. Public employment should be undertaken after framing rules, regarding, *inter alia*, the eligibility criteria for participation in the selection process. The advertisement inviting applications for such recruitment should reflect the eligibility criteria. The relevant clause in the advertisement was not incorporated by framing a rule prescribing the eligibility criteria.

29. Since there was no rule debarring a Graduate from participating in the selection process, I am not inclined to interfere with the selection of respondent nos.7 and 8 for their selection in violation of the advertised eligibility criteria. I am of the view that clause 7 has been incorporated in the advertisement in a deviation from the ratio laid down in **Rina Dutta** case.

30. In fact, the Division Bench in **Riya Das** case expressed the desire for framing a recruitment rule to regulate the appointment of Group-D posts.

The relevant part of the said judgment is quoted below:

“The time is now ripe to make certain parting observations. Since the High Court administration has reserved certain vacancies for the members of the Scheduled Caste/Scheduled Tribe communities in terms of the enabling provision in Article 16(4), we request the administration to consider whether one benefit like the one contemplated by section 4(1)(b) of the Reservation

Act only can be extended to them, without even adopting the other provisions of such Act. This would indeed be a small step forward to assist the members of the economically backward classes, without hindering the interest of the administration. Also, with the increasing dissatisfaction of candidates who do not get selected because of their own fault but find pleasure in blaming the recruiting authority, it is high time that recruitment rules are framed to regulate appointment on Group 'D' posts.

We hope and trust that this judgment of ours would be brought to the notice of the Hon'ble the Acting Chief Justice for taking such steps on the administrative side as His Lordship deems fit and proper for framing of rules to regulate recruitment of Group 'D' staff as well other staff, if at all such recruitment rules have not yet been put in place. This observation is buoyed by the decision in Renu (supra), notwithstanding our interpretation of Article 229 as above."

31. In the aforesaid facts, I am not inclined to interfere with the appointment of respondent nos.7 and 8. It is, however, expected that the High Court shall take immediate steps to frame the recruitment rules prescribing eligibility criteria for the appointment of Group-D staff and complete the exercise within a period of six months from date.

32. Accordingly, W.P.A. No.17862 of 2022 is disposed of.

33. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)