

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

236-3

Decided on :06.03.2024

1. CWP-3314-2022 (O&M)

AVANEET KUMAR .....Petitioner

Versus

HARYANA STAFF SELECTION COMMISSION AND ANOTHER

... Respondents

2. CWP-3447-2022 (O&M)

AVANEET KUMAR .....Petitioner

Versus

STATE OF HARYANA AND ORS

... Respondents

3. CWP-6446-2022 (O&M)

SUMIT KUMAR .....Petitioner

Versus

STATE OF HARYANA AND ORS

... Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

PRESENT: Mr. Sumit Sangwan, Advocate for the petitioners  
in CWP-3314-2022 and CWP-3447-2022.

Mr. Jasbir Mor, Advocate with  
Ms. Mona Yadav, Advocate  
for the petitioner in CWP-6446-2022. .

Mr. Pankaj Middha, Additional Advocate General, Haryana.

Mr. Ranjit Singh Kalra, Advocate  
for respondents No. 5, 7, 9, 10, 12, 13 & 17.

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**HARSIMRAN SINGH SETHI , J. (Oral)**

1. As all the writ petitions involves the same question of law in  
respect of the same advertisement and qua the same post, hence, are being

disposed of by common order. The facts have been taken from CWP-3314-2022 .

2. In the present bunch of petitions, the question raised by the petitioners is that as to whether the candidate who has obtained a higher qualification in the same line than the one mentioned in the advertisement No. 14/2019 dated 26.08.2019 (Annexure P-1), will be treated as eligible for appointment on the post in question or not.

3. Certain facts needs to be mentioned for correct appreciation of the issue in hand.

4. The respondents has issued advertisement No. 14/2019 dated 26.08.2019, copy of which has been annexed as Annexure P-1 advertising the post of Draftsman (Civil). As per the said advertisement No. 14/2019, 19 posts Draftsman (civil) were advertised and the essential qualification to compete for the said posts was Matric/10+2 from any recognized institution or its equivalent, Hindi/Sanskrit as one of the subject in Matriculation or Higher and Diploma in Draftsman (Civil) from any recognized university.

5. The Criteria for the selection on the post in question was that the selection was to be made on the basis of the written examination comprising of 90 marks and 10 marks were kept for the candidates who are eligible under the Socio Economic Criteria as well as the experience rendered on the post in question for which they competed. The petitioners competed for the post in question, but could not be selected.

6. The grievance of the petitioners is that the candidates who possesses B.E. or B. Tech Degree or have a Polytechnic Diploma in Draftsman (Civil), they have been preferred over and above the petitioners, which is arbitrary and illegal as, only the qualification which has been

mentioned in the advertisement, should have been obtained by the eligible candidate so as to get selected on the post in question.

7. Upon notice of motion, the respondents have filed the reply wherein they have mentioned that as the candidates who were engineering graduate or B. Tech or have done Polytechnic Diploma in Draftsman (Civil), having higher qualification than once prescribed as this qualifications possessed by those candidates are in the same line as of Diploma in Draftsman (Civil) and hence, the grievance being raised by the petitioners that ineligible candidates have been selected on the post in question is incorrect and the writ petitions may kindly be dismissed.

8. I have heard learned counsel for the parties and have gone through the record with their able assistance.

9. The question which arise in the present petitions, is as to whether any candidate, who has higher qualifications in the same line, as being demanded in the conclusion of essential qualification to be eligible for the post in question, whether the said candidate can be treated eligible or not.

10. The said question is no longer res-integra and has already been decided by the Hon'ble Supreme Court of India in **Civil Appeal No. 1318-1322 of 2021, titled as 'Puneet Sharma and others etc. v. Himachal Pradesh State Electricity Board Ltd. and another', decided on 07.04.2021**, wherein it has been held that even where the appointment of Junior Engineer (Electrical) is to be made and the candidates who were degree-holder or were having higher qualification than the one asked for in the same line, the said candidates are to be treated eligible. The decision of the Division Bench of the Himachal High Court, wherein the High Court of Himachal Pradesh had decided that only the candidates with the qualification advertised for the post

in question are eligible and the candidates having higher qualification are to be treated ineligible was set-aside by the Hon'ble Supreme Court in India.

The relevant paragraph No. 33 of the said judgment is as under:-

*“33. The court’s opinion is fortified by the latest amendment brought about on 03.06.2020. This clarifies beyond doubt that even for the post of Junior Engineers, those individuals holding higher qualifications are eligible to compete. In the opinion of this Court, though the amending rules were brought into force prospectively, nevertheless, being clarificatory, they apply to the recruitment that is the subject matter of the present controversy. Such a position (i.e. clarificatory amendments operative retroactively, despite their enforcement prospectively) has been held in several previous judgments of this court. In [Zile Singh v. State of Haryana](#)<sup>15</sup> this Court examined the various authorities on statutory interpretation and concluded:*

*(SCC pp. 8-9, paras 13-14) “13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the Rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only--'nova constitutio futuris formam imponere debet non praeteritis'--a new law ought to regulate what is to follow,*

*not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at page 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., page 440).*

*14. The presumption against retrospective operation is not applicable to declaratory statutes.... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69)."*

11. Learned counsel for the petitioners argues that the Hon'ble Supreme Court of India in **Zuhoor Ahmad Rather v. State of J & K, 2017 SCC OnLine J & K 936** held that the higher qualification cannot be treated as a valid qualification.

12. It may be noticed that in **Puneet Sharma's case (Supra)**, the decision arrived at by the Hon'ble Supreme Court of India granting eligibility

to the candidates who have higher qualification is after considering the judgment in **Zuhoor Ahmad Rather s case (Supra)**, hence, once the said judgment has already been considered by the Hon'ble Supreme Court of India itself and the Hon'ble Supreme Court of India has held that the candidates having higher qualification in the same line are to be treated eligible for the post in question, no grievance can be raised by the petitioners in this regard.

13. Learned counsel for the petitioners submits that even if the judgment of the Hon'ble Supreme Court of India in **Puneet Sharma's case (Supra)**, is accepted then also, the qualification in the same line is to be seen, hence, as in the present petition, the Diploma in Draftsman (Civil) was needed, the private respondents who are having degree in Civil Engineering, cannot be treated eligible.

14. It may be noticed that the State in order to satisfy itself, had referred the matter to the Director General Technical Education to apply appoint as to whether the candidate who is having a degree in Civil Engineering or three year Polytechnic Diploma, the said qualification will be treated as a higher qualification in line qua the diploma required in the advertisement or not.

15. As per the decision of the Government, the opinion which has been rendered by the experts that the degree in Civil Engineering or three year Diploma obtained from the Polytechnic, will be treated as a higher qualification in the same line as Diploma in Draftsman (Civil) has been accepted.

16. That being so, this Court will not sit in appeal over the decision of the experts to hold that the qualification of the private respondents which

has been treated as a higher qualification in the same line should be discarded only on the asking of the petitioners.

17. No other argument is being raised.
18. Keeping in view the facts and circumstances of the present case recorded herein above, no ground is made out for interference in the present case, hence the present petitions stands **dismissed**.
19. A photocopy of this order be placed on the files of connected cases.
20. Pending miscellaneous application, if any, shall also stand disposed of.

(HARSIMRAN SINGH SETHI)  
JUDGE

**06.03.2024**  
*Riya*

*Whether speaking/reasoned:* Yes/No  
*Whether Reportable:* Yes/No