

CWP-15338 of 2019

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

CWP-15338 of 2019
Reserved on: 28.02.2024
Pronounced on: 12.03.2024

Karamdeep Singh

.....Petitioner

Versus

The Punjab State Co-operative Milk Producer's Federation Limited and
others

.....Respondents

CWP-25561 of 2016

Vikas Jindal

.....Petitioner

Versus

The Punjab State Co-operative Milk Producer's Federation Limited and
others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Sunny Singla, Advocate,
for the petitioner(s).

Mr. Rajesh Sehgal, Addl. A.G., Punjab.

Mr. Akshit Pathania, Advocate,
for respondents No.1 to 3 in CWP No.15338 of 2019.

Mr. Rishu Bajaj, Advocate for
Mr. Adityajit Singh Chadha, Advocate,
for respondents No.1 to 3 in CWP No.25561 of 2016.

Mr. Bikramjit Singh Patwalia, Advocate,
for respondents No.4 and 5 in CWP No.25561 of 2016.

None for Respondent No.4 in CWP No.15338 of 2019.

Respondent Nos.6 and 7 already proceeded *ex parte*
Vide order dated 08.01.2020 in CWP No.25561 of 2016.

NAMIT KUMAR, J.

1. By this common order, afore-mentioned two writ petitions are being disposed of as common question of facts and law are involved. For the sake of brevity, facts are being taken from CWP-15338 of 2019.

2. Petitioner has approached this Court by filing instant petition under Articles 226/227 of the Constitution of India seeking a writ of *mandamus* for directing respondents No.2 and 3 to appoint the petitioner as Laboratory Assistant/Laboratory Technician under the general category in pursuance to advertisement No.02/2016 (Annexure P-1) as the petitioner has been left out and persons lower in merit have been selected.

3. Brief facts, as have been pleaded in the petition, are that respondent No.2-Managing Director, Punjab State Co-operative Milk Producers' Federation Limited (Milkfed), issued advertisement No.02/2016, whereby 100 posts of clerk-cum-typist and 40 posts of Laboratory Assistant/Laboratory Technician were advertised on 27.05.2016, inviting online applications from the eligible candidates. Petitioner being duly qualified, applied for the post of Laboratory Assistant/Laboratory Technician under the general category vide his application form (Annexures P-2 and P-3) and he was issued admit card and examination for recruitment for the said post was held on 11.09.2016 at DAV Senior Secondary School, Sector 8-C, Chandigarh. Thereafter, on 04.10.2016, respondent No.3, Manager (HR), Milkfed, issued and circulated list of candidates being called for counselling for

the recruitment of management trainees against the posts of Laboratory Assistant/Laboratory Technician. As the petitioner got 24th rank in the merit list as he obtained 54.75% marks in the examination, he was called for counselling on 13.10.2016 (Annexure P-4). Petitioner appeared in the counselling on 13.10.2016 along with all certificates/documents and on 02.12.2016, respondent No.3 issued notice for appointment of management trainees against the posts of Laboratory Assistant/Laboratory Technician and the list of selected candidates was annexed along with notice and name of the petitioner was not there in the list of selected candidates and persons lower in merit have been selected for appointment and stations were allocated to all the selected/appointed candidates. Thereafter, petitioner made various representations, including e-mails (Annexure P-6) and since no action has been taken on the said representations, therefore, present petition has been preferred by the petitioner.

4. Learned counsel for the petitioner in CWP No.15338 of 2019 submits that as per Advertisement No.2/2016, the petitioner applied for the post of Laboratory Assistant / Laboratory Technician vide application (Annexure P-3) and secured 54.75 % marks in the examination and was called for counselling on 13.10.2016, however, the persons lower in merit have been selected and appointed and despite the representation dated 3/5.12.2016 (Annexure P-6), no action has been taken by the respondents.

5. Written statement on behalf of respondents No.1 to 3 has been filed, wherein it has been stated as under: -

*“1. That the writ petition filed by the petitioner is not maintainable as the final list of the selected candidates was displayed on the official website of the answering respondent on 02.12.2016, whereby the selected candidates were directed to report for joining at their respective places of posting before as on 14.12.2016. All the advertised 40 posts of Laboratory Assistant/Laboratory Technician were filled. It was notified in the advertisement that the candidates have to verify that they possess all the eligibility conditions before applying for the said posts. It was also notified that mere online application or placement higher in merit of written examination shall not entitle a candidate for appointment to the said posts. The selection will be subject to his fulfilling eligibility criteria. **Since the present petitioner did not meet the required educational qualification, he does not have any right of appointment and he cannot possibly seek mandamus from this Hon'ble court for his appointment.***

2. That it is further submitted that the present petitioner possesses the educational qualification of B.Sc. in Biotechnology, whereas the advertisement (P-1) released by the answering respondents for filling up the said posts clearly specifies that for the post of Laboratory Assistant/Laboratory Technician, the candidate must possess the educational qualification of B.Sc. with Chemistry. In this regard, it is submitted that the degree possessed by the petitioner is materially and substantially at variance from the degree sought by the answering respondent as essential qualification for the said posts, keeping in view the nature of duties and responsibilities attached to the said posts. It is no more res integra that the conditions stipulated in the advertisement are binding on all prospective candidates and whether any relaxation in

educational qualification should be granted or not is purely within the discretionary domain of the recruiter/employer. In the present case, on account of there being a material variance between the degree sought as per the advertisement and the degree possessed by the petitioner, the claim of the petitioner for appointment to the said posts is wholly unsustainable.”

6. Petitioner in CWP-25561 of 2016 also applied for the post of Laboratory Assistant/Laboratory Technician vide application Annexure P-3 and secured 55.25% marks in the examination and got 21st rank in the merit list and respondents No.4 to 7, who secured less marks than the marks secured by the petitioner, have been selected and appointed and despite representations (Annexure P-8), no action has been taken by the respondents.

7. In CWP No.25561 of 2016, learned counsel for the petitioner(s) submitted that as per advertisement (Annexure P-1), the eligibility prescribed for selection to the post of Laboratory Assistant/Laboratory Technician is B.Sc. with Chemistry. He further submitted that the petitioner was awarded B.Sc. degree by Punjabi University wherein in all the three years one of the subjects was Chemistry. He further contended that petitioner had secured 55.25% marks in the merit list prepared by respondent No.2-Milkfed, in CWP-25561 of 2016 and persons lower in merit than the petitioner have been selected and appointed who were ranked 22 to 25 as against 21st rank of the petitioner.

8. *Per contra*, learned counsel for respondents No.1 to 4

of Laboratory Assistant/Laboratory Technician is B.Sc. with Chemistry and whereas the qualification of the petitioner is B.Sc. in Biotechnology and merely that there was one subject of Chemistry in all the three years of Bachelor degree, does not make petitioner(s) eligible for the post in question. He further submitted that degree acquired by the petitioner(s) is materially and substantially at variance from the degree sought in the advertisement. He further submitted that this Court cannot go into the equivalence of the qualifications acquired by the petitioner(s) and which was required as per advertisement. It has been submitted by the learned counsel that respondents No.6 and 7 (in CWP-25561 of 2016) have not joined the post of Laboratory Assistant/Laboratory Technician.

9. I have heard learned counsel for the parties and perused the record.

10. Admittedly, as per advertisement dated 27.05.2016, essential qualification required for the post in question is B.Sc. with Chemistry and whereas the qualification acquired by the petitioner is B.Sc. (Biotechnology). It is the case of the petitioner(s) that Chemistry was one of the subjects in all the three years for acquiring said degree and, therefore, petitioner is fully eligible.

11. To my mind the said contention cannot be accepted as it is not for the Court to equalise the degrees as the judicial review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the prescribed qualifications. The question regarding equivalence of the educational qualifications is a technical question

based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications. The employer is the best judge and it is entitled to prescribe qualifications as a condition of eligibility, after taking into consideration the nature of the job, aptitude required for efficient discharge of duties. The Hon'ble Supreme Court in ***Devender Bhaskar and others v. State of Haryana and others, 2022(1) SCT 51*** has held as under: -

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“20. We have already noticed that one of the eligibility criteria for appointment to the post of Arts and Crafts teacher as per the advertisement dated 20.07.2006 is a "two-year Diploma in Art and Craft examination conducted by the Haryana Industrial Training Department or an equivalent qualification recognized by the Haryana Education Department." It was made clear by the Industrial Training and Vocational Educational Department, Haryana, that diploma in Art and Craft Course by the Kurukshetra University is conducted through distance education and that this course cannot be equated with two-year diploma in Art and Craft Course awarded by the Haryana Industrial Training Department. Recognition of the said Course by the State of Haryana, as held by the High Court, is entirely different from its equivalence. When the experts in the Education Department have held the diploma in Art and Craft by the Kurukshetra University is not equivalent to the two-year diploma in Art and Craft awarded by the Haryana Industrial Training Department, we are of the view that the High Court was not justified in equalizing them.

*21. In **Mohammad Shujat Ali & Ors. v. Union of India & Ors (1975) 3 SCC 76**, it was held that the question*

regarding equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications. It was further held that where the decision of the Government is based on the recommendation of an expert body, then the Court, uninformed of relevant data and unaided by technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government unless it is based on extraneous or irrelevant considerations or actuated mala fides or is irrational and perverse or manifestly wrong.

22. In *J. Ranga Swamy v. Government of Andhra Pradesh and Others*, (1990) 1 SCC 288 this Court held that it is not for the court to consider the relevance of qualification prescribed for various posts.

23. In *State of Rajasthan & Ors. v. Lata Arun*, (2002) 6 SCC 252 this Court held that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It was held thus:

"13. From the ratio of the decisions noted above, it is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It is not for courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority."

24. In *Guru Nanak Dev University v. Sanjay Kumar Katwal & Anr.*, (2009) 1 SCC 610 this Court has reiterated that equivalence is a technical academic matter. It cannot be implied or assumed. Any decision of the

academic body of the university relating to equivalence should be by a specific order or resolution, duly published. Dealing specifically with whether a distance education course was equivalent to the degree of MA (English) of the appellant university therein, the Court held that no material had been produced before it to show that the distance education course had been recognized as such.

*25. In **Zahoor Ahmad Rather & Ors. v. Sheikh Imtiyaz Ahmad & Ors. (2019) 2 SCC 404**, it was held that the State, as an employer, is entitled to prescribe qualifications as a condition of eligibility, after taking into consideration the nature of the job, the aptitude required for efficient discharge of duties, functionality of various qualifications, course content leading up to the acquisition of various qualifications, etc. Judicial review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the prescribed qualifications with any other given qualification. Equivalence of qualification is a matter for the State, as recruiting authority, to determine.*

26. Having regard to the above, in our view, the High Court has erred in holding that the diploma/degree in Art and Craft given by the Kurukshetra University is equivalent to two-year Diploma in Art and Craft examination conducted by the Haryana Industrial Training Department or diploma in Art and Craft conducted by Director, Industrial Training and Vocational Education, Haryana.”

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12. To the same effect is the judgment of the Hon’ble Supreme Court in **Indresh Kumar Mishra and others v. State of Jharkhand and others, 2022(2) S.C.T. 587**. The said judgments have

been followed by a Division Bench of this Court in *Sandip Singh and others v. State of Punjab and others, 2022(3) S.C.T. 343.*

13. In view of the above, no case for interference by this Court is made out.

14. Dismissed.

12.03.2024
R.S.

(NAMIT KUMAR)
JUDGE

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