

CWP-9990 of 2017 (O&M)

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

CWP-9990 of 2017 (O&M)

Reserved on: 19.01.2024

Pronounced on: 29.01.2024

Manjeet Singh and others

.....Petitioners

Versus

Punjab State Power Corporation Limited and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: - Mr. Kuldip Singh, Advocate,
for the petitioners.

Mr. Vikas Chatrath, Advocate,
for the respondents.

NAMIT KUMAR, J.

CM-4558-CWP of 2019

1. This application has been filed by the respondents under Section 151 CPC for placing on record the written statement.
2. Allowed as prayed for.

CWP-9990 of 2017

1. The petitioners have filed the present writ petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of *certiorari* for quashing advertisement No.CRA-289/16 (Annexure P-4) for recruitment to the posts of Assistant Lineman, whereby an additional eligibility qualification of two years National Apprenticeship Certificate in Lineman Trade has been prescribed.
2. Brief facts, as have been pleaded in the present petition, are that an advertisement vide CRA No.4/2016 was issued by the Punjab

State Transmission Corporation Limited whereby applications were invited for filling up 100 posts of Assistant Lineman (hereinafter referred to as 'ALM') in October, 2016 and the qualification prescribed was matriculation with full time regular ITI in Electrician/Wiremen Trade from a recognised institution and some of the petitioners, who were duly qualified for the same, applied for the same and were also found eligible and called for document verification also vide Annexure P-3. Thereafter, another advertisement has been issued vide CRA No.289/2016 by respondent No.1-Punjab State Power Corporation Limited (in short 'PSPCL') in December, 2016 whereby 1500 posts of ALM have been advertised and the qualification prescribed in the advertisement is 'matriculation and two years National Apprenticeship Certificate in Lineman Trade'. The petitioners are aggrieved against the prescription of qualification of 'two years National Apprenticeship Certificate in Lineman Trade'. In other words, the claim of the petitioners is that they were eligible under the earlier advertisement i.e. CRA No.04/2016 issued in October, 2016 and have been made ineligible in the second advertisement, which has been issued in December, 2016. It has further been averred that the amendment in the service regulations should have been effected only through a notification as provided under Sections 79 and 79-A of the Electricity Act, 1948 (hereinafter referred to as 'the Act of 1948').

3. Written statement has been filed by the respondents wherein it has been submitted that vide Circular No.9/2016 dated 03.11.2016, the Corporation has amended qualifications for the post of

“PUNJAB STATE POWER CORPORATION LIMITED
Reg: office: The Mall, Patiala
Office order no: 1051 /REG-294 Vol 6 Dated 03.11.16

PSPCL is hereby pleased to amend the Technical services class III Regulation 1996, Regulation no.9, Sr.No.5&6 as under:

X X X X

RECRUITMENT PROCEDURE AFTER AMENDMENT

Reg/Sr . No Page No.	Name of the post	Procedure of the appointment	Basic and Professional Qualification	Special remarks
1	2	3	4	5
9/5/8	Assistant Lineman	Direct Recruitment	1) 10th or equivalent qualification and National Apprenticeship Certificate in Lineman Trade 2) The candidate who have passed higher education qualification like degree/diploma in Electrical Engineering, they will be considered only if they have minimum eligibility qualification of National Apprenticeship Certificate in Lineman Trade	1) The SE/MPT&ED will arrange the training programme of selected candidates and sent them for 4 months training in different institutions. 2) Board reserves the right to determine the suitable percentage of marks obtained in the National Apprenticeship .

			3) Board reserves the right to determine the suitable percentage of marks obtained in the National Apprenticeship Certificate and can conduct the written test of eligible candidates as per vacant posts.	
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4. It has further been submitted that in pursuance to the said amendment, posts of ALM have been advertised with the following prescribed qualifications: -

- “i) *Matriculation.*
- ii) *Two years National Apprenticeship Certificate in Lineman Trade.*
- iii) *The candidates who possess higher education i.e. degree/diploma in Electrical Engineering will be considered only if they have minimum qualifications i.e. 2 years National Apprenticeship Certificate in Lineman Trade.”*

5. With regard to the amendment in the Regulations, it has been submitted that the Board of Directors of PSPCL is competent authority to amend the Regulations. Para 4 of the written statement reads as under : -

“4. That the educational/technical qualifications for the post of Assistant Lineman were circulated vide Regulation Circular 9/2016 O/o No. 1051 dated 3.11.2016 is Matriculation and two years National Apprenticeship Certificate in lineman Trade. But the petitioner sought the already existing service regulations should continue to

operate in terms of Section 185 of the Electricity Act, 2003 and any amendment to the service regulations should be effected only through a notification. In this regard, it is prescribed that the respondent corporation being a Govt. company is a fully autonomous body being registered under the Companies Act, 1956 and the competent authority therefore to take any decision pertaining to any business of the respondent corporation is its Board of Directors. It is submitted that keeping in view the autonomous body of corporation, in case any service regulation/qualification for any post etc. is to be amended, the decision of the Board of Directors of PSPCL is the final. It is further added here that the rules and regulations of Punjab State Transmission Corporation Limited (PSTCL) are applicable on PSTCL being separate entity of the Government of Punjab and the Advertisement No. 4/2016 was issued by the Punjab State Transmission Corporation.”

6. Learned counsel for the petitioners submitted that since the petitioners were eligible under the earlier advertisement bearing CRA No.04/2016, which was issued in October, 2016 and making them ineligible by amending the Regulations, the vested rights of the petitioners have been infringed as they have been made ineligible and the amendment carried out by the respondent-Corporation, is not in conformity with the provisions of Sections 79 and 79-A of the Act of 1948.

7. On the other hand, learned counsel for the respondents has argued that the petitioners have no right to challenge the advertisement which has been issued strictly in conformity with the amended Regulations as the amendment was carried out on 03.11.2016 and the

vested right to claim appointment to the post of ALM once they are not eligible and have not even applied in pursuance to the said advertisement and the petition is also liable to be dismissed on the ground of non-joinder of necessary parties as the selected/appointed candidates, in pursuance to the impugned advertisement have not been impleaded as party-respondents. He further submitted that the service regulations have been amended in terms of provisions of Act of 2003 as the Act of 1948 has been repealed by Act of 2003 and under the new Act, the PSPCL being a Government Company can regulate and amend the existing service regulations through resolutions of their Board of Directors and there is no requirement for issuance of notification under Section 79 of the Act of 1948. He has further relied upon the judgment of this Court in ***Rakesh Kumar Sharma and others v. Punjab State Transmission Corp. Ltd. and ors., 2015(3) S.C.T. 220*** wherein same very issue was considered by this Court. He further submitted that prescription of qualification is to be decided by the employer and petitioners cannot question the same and in the absence of challenge to the regulations, no relief can be sought by the petitioners.

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

9. Admittedly, there is no challenge to the amended regulations whereby the qualification of two years National Apprenticeship Certificate in Lineman Trade has been prescribed and the impugned advertisement has been issued in pursuance to the amended regulations, therefore, they cannot be allowed to challenge the

qualification prescribed for the post of ALM which is strictly in consonance with the amended regulations.

10. The plea of the learned counsel for the petitioners that the amendment has not been carried out in terms of Sections 79 and 79-A of the Act of 1948 as the amendment has not been notified, is totally misplaced. The said issue has already been considered and decided by a Coordinate Bench of this Court in ***Rakesh Kumar's case (supra)*** and the relevant portion from the said judgment is as under: -

“28. As per clause 6 of this Agreement, subject to the Act, 2003 and the Transfer Scheme, on transfer to PSPCL the rules and regulations of the Board governing the conditions of the service such as promotions, transfer, seniority, leave, allowances etc. shall continue to apply mutatis mutandis.

*29. Thus, as per the provisions of the Transfer Scheme, Tripartite Agreement and the Act, 2003, **the respondent-Corporations are government companies and the service regulations of the employees thereof can be framed /amended by the decisions of their Board of Directors.***

30. The Act, 1948 having been repealed by the Act, 2003, the reliance by learned counsel for the petitioners on Section 79 of the 1948 Act is misplaced. So, the contention of the Ld. Counsel that the regulations can be amended only through a notification under Section 79 of the 1948 Act cannot be accepted. It has to be held that the respondents No.1 and 2 are government companies and can regulate and amend the existing service regulations through resolutions of their Board of Directors.

31. Respondent No.2 in its written statement has stated that the relevant service regulations of the Corporation had been duly amended by the Board of Directors of the Corporation vide memo dated 16.11.2011(Annexure P-6).

Further vide office order dated 1.12.2011 (Annexure P-9) the qualifications of various posts advertised in PSPCL were amended.”

11. A Division Bench of this Court in ***Sandip Singh and others v. State of Punjab and others, 2022(3) S.C.T. 343*** after considering various judgments of the Hon’ble Supreme Court, has held that it is for the employer to choose the qualifications which were required for filling up the posts and it is not for the candidates as such to hold out what should be the requirement. Relevant portion from the said judgment reads as under: -

*“7. The Apex Court in **Devender Bhaskar and others vs. State of Haryana and others, 2022 (1) SCT 51** recently on **24.11.2021** which was pertaining to the Art and Craft courses equation which was issued by the Kurukshetra University has held that it is not for the Court to equalize diplomas/degrees. It was held that judicial review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the prescribed qualifications. The relevant portion reads thus:-*

“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.”

8. Keeping in view the settled position of law, the argument which is sought to be raised that vide notification of the NCTE dated 29.07.2011 (Annexure P-3), it had been prescribed that for teachers of Art Education, Craft Education, Home Science, Work Education, etc. the existing eligibility norms prescribed by the State Government and other school management were to be applicable till such time the NCTE lays down the minimum qualifications in respect of such teachers is without any basis. Once statutory Rules as such have been framed under Article 309 of the Constitution of India, this Court is of the opinion that the State Government is justified and had only upgraded the basic eligibility criteria as such by prescribing Graduation for filling up the posts of Art and Craft Teachers. No fault as such can be found in such

action. It is settled principle that it is for the employer to choose the qualifications which are required for filling up the posts and it is not for the candidates as such to hold out what should be the requirement.

9. *The argument that for Elementary Trained Teachers, the State as such had given a concession regarding the candidates who have done or are doing elementary training course with 10+2 qualification would be considered for employment as one time measure cannot be claimed as a matter of right as such. In such circumstances, keeping in view the above observations, no such enforceable right lies with the petitioners to claim such concession in case some concession has been granted to separate set of persons.”*

12. Further, no selected/appointed candidate has been made party to the present *lis* and, therefore, also the present writ petition is liable to be dismissed for non-joinder of necessary parties. Reference may be made to the judgment of the Hon’ble Supreme Court in ***Ranjan Kumar v. State of Bihar and others, 2014(3) S.C.T. 620*** and the judgment of this Court in ***Ashwani Kumar v. Punjab and Haryana High Court and another, 2016(4) S.C.T. 556***.

13. For the foregoing reasons, there is no merit in the present writ petition and the same is accordingly dismissed with no order as to costs.

14. Pending applications, if any, stand disposed of accordingly.

29.01.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No