

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4409 of 2016

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Ajay Kumar son of Sri Ram Lakan Sah resident of village - Bathnaha Bazar,
P.S. - Bathnaha, District - Sitamarhi.

... .. Petitioner/s

Versus

1. The Allahabad Bank
2. The Assistant General Manager cum Appellate Authority, Allahabad Bank,
Zonar Office, Muzaffarpur.
3. The Chief Manager cum Disciplinary Authority, Allahabad Bank, Zonal
Office, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bipin Kishore Singh, Advocate Mr. Kundan Kumar Sinha, Advocate Mr. Varun Krishna Singh, Advocate
For the Respondent/s	:	Mr. Dhananjay Kashyap, Advocate Mr. Nag Deo Chaubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

11 04-03-2025 Heard learned counsel for the petitioner and learned
counsel for the respondent -Bank.

2. The present writ petition has been filed with the
following relief :-

*“That the present application is being
filed for quashing the order dated 11.06.2015
passed by Chief Engineer-cum-Disciplinary
Authority whereby and whereunder the punishment
of "Dismissal without notice" was imposed on
petitioner for the charges of suppression of
qualification as contained in charge sheet bearing
no. ZO/MUZ/VIG/2014-15/556 dated 24/10/2014
and further for quashing of order dated 30/7/2015
by which the order of the disciplinary authority
has been affirmed by the Assistant General
Manager- cum- Appellate Authority since the*



charges mentioned in the said charge sheet comes under gross misconduct (clause 5 of Memorandum of Settlement Dated 10/4/2002) and the same has been accepted by the petitioner but neither the disciplinary authority nor the appellate authority have considered the work efficiency and honesty of the petitioner as well as the issue that the petitioner being the sole bread earner of his family has been imposed the aforesaid punishment which will cause severe hardships to his family as well as it will act as disqualification to future employment despite the fact that for the charges of gross misconduct there are other punishments as given in clause 6 (e) to clause 6 (i) apart from "Dismissal without notice" as mentioned in clause 6 of Memorandum of Settlement (MOS) dated 10/4/2002 as such the punishment imposed is disproportionate.

The petitioner also prays for grant of all other consequential benefits and/or also prays for grant of any other relief(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case as enumerated hereinbelow."

3. Learned counsel for the petitioner submits that pursuant to an advertisement published in the *Hindustan News Paper* dated 01.02.2008 for the post of sweeper, the petitioner applied and was appointed as a part-time sweeper vide a letter dated 30.06.2008 at the Allahabad Bank, Sitamarhi Branch, for a probationary period of six months. The advertisement specified that there was no minimum educational qualification required for the post, but applicants should not have passed the matriculation examination. Learned counsel further submits that



the petitioner performed his duties efficiently and honestly, with no complaints regarding his work. However, on the grounds of certain acts of omission and commission, a disciplinary proceeding was initiated against the petitioner, and a charge sheet dated 24.10.2014 was served upon him under the "Memorandum of Settlement" dated 10.04.2002, which outlines the disciplinary action procedure for workmen. The charges levelled against him in the charge sheet relate to gross misconduct under Clause 5(m) of the Memorandum of Settlement dated 10.04.2002. Clause 5 of the Memorandum of Settlement deals with the definition of gross misconduct, and Clause 5(m) specifically refers to "knowingly making a false statement in any document pertaining to or in connection with his employment in the bank."

4. Learned counsel further submits that the petitioner filed his reply to the aforesaid charge sheet and accepted all the charges levelled against him. As a result, the further enquiry was stopped, and the Enquiry Officer submitted his report dated 30.04.2015 to the Chief Manager-cum-Disciplinary Authority. Thereafter, vide letter No. 268 dated 18.05.2015, a second show cause notice was issued to the petitioner by the Disciplinary Authority. Learned counsel further submits that the petitioner



submitted his reply to the second show cause notice on 02.06.2015, but the Disciplinary Authority, after considering the reply, rejected the plea of the petitioner and imposed the punishment of "dismissal without notice" on the petitioner, as per Clause 6(a) of the Memorandum of Settlement (MOS) dated 10.04.2002.

5. Learned counsel further submits that against the decision of the Disciplinary Authority, the petitioner filed an appeal before the Assistant General Manager-cum-Appellate Authority, who, vide order dated 30.07.2015, rejected the appeal and affirmed the order of the Disciplinary Authority. Learned counsel further submits that the stipulations and concessions/benefits of the MOS dated 13.03.1993 shall not be available to those persons who joined the Bank's services after 31.03.1993. Learned counsel also submits that the petitioner is the sole bread earner of his family, and the punishment of dismissal will cause severe hardship to his family. Dismissal from service will also amount to disqualification for future employment under the authority or the bank. As such, the punishment imposed on the petitioner is disproportionate.

6. Learned counsel for the respondent-Bank submits that, admittedly, the petitioner has committed gross misconduct



and has accepted all the charges levelled against him. The petitioner was punished for gross misconduct under Clause 5 of the Memorandum of Settlement dated 10.04.2002 for suppression of qualification, and this allegation has also been accepted by the petitioner. In support of his argument, learned counsel for the Bank relies upon the judgment rendered in the case of *Chief Manager, Punjab National Bank and Anr. v. Anit Kumar Das* reported in (2021) 12 SCC 80 :: 2020 SCC Online SC 897, and submits that paragraphs 15 to 19 of the said judgment are highly relevant to this case.

7. Learned counsel for the respondent-Bank further submits that no illegality has been committed by the respondent-Bank, as it has followed all the prescribed procedures and acted in accordance with the Memorandum of Settlement that was applicable to both the petitioner and the respondent-Bank. Therefore, the present writ petition is fit to be dismissed.

8. For better appreciation of this case, this Court feels it necessary to quote the relevant paragraph 15 to 19 of the judgement cited by learned counsel for the respondent -Bank rendered in the case of *Chief Manager, Punjab National Bank and Anr. Vs. Anit Kumar Das* reported in (2021) 12 SCC 80 :: 2020 SCC Online SC 897, as under :-



“15. Therefore, the short question which is posed for consideration of this Court is whether in the facts and circumstances of the case and despite the fact that there was suppression of the material fact by the respondent-original writ petitioner in not disclosing in the application/biodata that he was a graduate, the High Court is justified in directing the appellant Bank to allow the respondent-original writ petitioner to discharge his duties as a Peon as per appointment order dated 3-10-2016 which, as such, was cancelled?

16. It is required to be noted that the eligibility criteria/educational qualification mentioned in the advertisement inviting the applications was as per Circular Letter No. 25 of 2008 dated 6-11-2008, the relevant portion of which is reproduced hereinabove. As stated in the counter to the writ petition, a conscious decision was taken by the Bank providing eligibility criteria/educational qualification that a graduate candidate shall not be eligible for the post of Peon/subordinate staff. The said decision was taken consciously looking to the nature of the post. At this stage, it is required to be noted that the original writ petitioner never challenged the eligibility criteria/educational qualification mentioned in the advertisement. He participated in the recruitment process on the basis of the advertisement, without challenging the eligibility criteria/educational qualification mentioned in the advertisement. Therefore, once having participated in the recruitment process as per the advertisement, thereafter it is not open for him to contend that acquisition of higher qualification cannot be a disqualification and that too when he never



challenged the eligibility criteria/educational qualification mentioned in the advertisement.

17. Even otherwise, prescribing the eligibility criteria/educational qualification that a graduate shall not be eligible to apply was a conscious decision taken by the Bank and the same was as per Circular Letter No. 25 of 2008 dated 6-11-2008. In J. Ranga Swamy [J. Ranga Swamy v. State of A.P., (1990) 1 SCC 288 : 1990 SCC (L&S) 76] , it is observed and held by this Court that it is not for the court to consider the relevance of qualifications prescribed for various posts.

17.1. In Yogesh Kumar [Yogesh Kumar v. State (NCT of Delhi), (2003) 3 SCC 548 : 2003 SCC (L&S) 346] , it is observed and held by this Court that recruitment to public service should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the rules allows entry to ineligible persons and deprives many others who could have competed for the post.

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. Even on the ground that the respondent-



original writ petitioner deliberately, wilfully and intentionally suppressed the fact that he was a graduate, the High Court has erred in directing the appellant Bank to allow the respondent-original writ petitioner to discharge his duties as a Peon. In the application/biodata, the respondent-original writ petitioner did not mention that he was a graduate. Very cleverly he suppressed the material fact and declared his qualification as HSC, whereas as a matter of fact, he was holding a degree in the Bachelor of Arts. Had it been known to the Bank that he was a graduate, he would not have at all been considered for selection as a Peon in the Bank. That thereafter when scrutiny of the documents was going on and when the respondent-original writ petitioner produced a graduation certificate, at that time, the Bank came to know that he was a graduate and therefore not eligible and therefore the Bank rightly cancelled his candidature and he was not allowed to join the Bank in the subordinate cadre. Therefore, on the aforesaid ground alone, the High Court ought not to have allowed the writ petition when it was a clear case of suppression of material fact by the original writ petitioner.

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.”

9. Upon going through the pleadings made by the learned counsel for the parties and the documents available on record, it appears to this Court that it is the admitted position that the petitioner has committed the gross misconduct. In view of this Court and as observed by Hon'ble the Supreme Court in the judgement rendered in the case of **Chief Manager, Punjab National Bank (supra)** 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 writ petitioner even



otherwise was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement, the respondent - Bank rightly dismissed him from service vide order dated 11.06.2015.

10. In view of the aforesaid background, this writ petition does not warrant any interference. Accordingly, it is dismissed.

(Dr. Anshuman, J)

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