

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.S.T. 128 of 2024

Avijit Saha

Vs.

The State of West Bengal and Others

For the Petitioner	: Mr. Achintya Kr. Banerjee, Ms. Indumouli Banerjee.
For the State	: Mr. Tapan Kr. Mukherjee, Id. AGP, Ms. Sangeeta Roy.
For the PSC	: Ms. Shraboni Sarkar (through VC), Ms. Umme Habiba Khatun.
Judgment on	: November 10, 2025.

Madhuresh Prasad, J.:

1. The writ petitioner was the applicant before the West Bengal Administrative Tribunal (Tribunal for short), in OA No. 468 of 2018. The same was disposed of by the Tribunal by an order dated 02/05/2024, which is the subject matter of the present writ proceeding.
2. An advertisement was published in the newspapers in August 2016, inviting applications in response to the recruitment notification No. 15/2016 issued by the West Bengal Public Service Commission (Commission for short). The same was for recruitment on 51 posts of sub-officers, under the Department of Fire

and emergency services, Government of West Bengal.

3. The petitioner was an applicant and appeared in the written test. He qualified for the same and thereafter was called for an endurance test. He emerged successful in the endurance tests and thereafter was called to face the interview on 28/03/2018. The petitioner alleges that he was not allowed to appear for the interview. On the same date he wrote a letter to the Secretary of the commission requesting him to allow the petitioner to face the interview. In his letter dated 28/03/2018, the petitioner has stated that authorities did not allow him to appear at the interview since he could not show that he had studied chemistry as a subject in his two-year B. Tech Degree course. According to the authorities, since the petitioner did not study Chemistry as a subject in a graduate course, he did not possess the requisite qualification for appointment.

4. We, therefore, consider it apposite to take note of the requisite essential qualification in the advertisement No. 15/2016, in response to which the petitioner applied for participating in the recruitment process. Relevant extract of the advertisement reads :

"QUALIFICATIONS: Essential:

a) (i) Degree in Science with Physics, Chemistry & Mathematics of a recognized University or its equivalent.

(ii) Swimming Certificate from any recognized Club or Institute.

b) Physical Measurement:

(i) Height- 5'6" (for Gorkha and other hill tribe condidates-5'3").

(ii) Chest 32" after full expiration with a minimum expansion of 2"

AGE: Not less than 20 years and not more than 27 years as on 01.01.2016."

5. The Learned advocate for the writ petitioner submits that after passing Higher Secondary Examination, the petitioner completed a Diploma Engineering course

under the West Bengal State Council of Education with Physics, Chemistry and Mathematics. Having completed the diploma course in engineering the petitioner was allowed lateral entry in the B-Tech course on the basis of his merit in the JELET. The petitioner having secured lateral entry based on merit was exempted from first year of B-Tech since the self-same course was covered in the diploma course in engineering completed by the petitioner, prior to his admission in the second year of B-Tech. Since the petitioner had studied Physics, Chemistry and Mathematics in the Diploma course and based on such course completion he was allowed lateral entry to the B-Tech Degree course, therefore, it cannot be said that the petitioner was in any way ineligible. In the instant case, the petitioner's Graduation Degree (B-Tech) comprises of two parts, namely the three-year Diploma in Engineering course and the B-Tech Degree. Both qualifications have to be considered together as a composite qualification. Viewed thus it cannot be said that the petitioner has not studied Chemistry in his graduation course, as required by the advertisement. Since, the advertisement specifies an essential qualification of "degree" or its "equivalent". The Diploma and B-Tech are required to be considered as a composite.

6. The learned Advocate for the writ petitioner has vehemently urged that the petitioner was allowed to appear at the written test, and the endurance test, and had cleared the same on the basis of his merit. Thus equity accrued in favour of the writ petitioner and, the authorities cannot be permitted to hold the petitioner disqualified at a later stage. Reliance is placed on the judgment of the Apex Court in the case of ***Shri Krishnan vs. Kurukshetra University***, reported in ***(1976) 1 SCC 311***. The learned Advocate submitted that the petitioner did not resort to any misrepresentation or suppression in the recruitment process. His

lateral entry in the B-Tech course based on his diploma in engineering course was well known to the respondent authorities. Despite having knowledge of the same they took no care to undertake a scrutiny at that stage. The authorities have acquiesced to the position and allowed the petitioner to participate in two stages, namely the written test and the endurance test. Therefore, the impugned action of the authorities in denying the petitioner participation in the interview is clearly unsustainable.

7. Further submission of the learned Advocate for the petitioner is founded on the *2003 Rules Relating to The Recruitment of Sub-Officer, Leader and Fire Operator* (hereinafter referred as the 2003 Rules for short) issued by the Government in exercise of powers under sub-Section (1) of Section 40, read with Section 4 of the *West Bengal Fire Service Act 1950*. The learned Advocate draws attention of the Court towards the requisite qualifications under the Rules, which according to him must prevail. He submits that the petitioner fulfilled the requisite qualification specified in Rule 3(i) of the 2003 Rules.
8. The learned Counsel for the respondent commission on the other hand, submits that requisite qualifications have clearly been specified in the recruitment notice. The petitioner participated in the recruitment process being conscious of the requisite qualification. Thus, he participated with open eyes, and without any objection regarding the same, knowing well that he did not fulfil the requisite qualifications. The learned Advocate has submitted that there is no incoherence between the essential qualifications specified in Clause 1(a) of the advertisement, with the qualification specified in the extant Rules. Mere participation in the endurance test after clearing the written examination cannot lay the premise for the petitioner to claim an indefeasible right to his

participation in the recruitment process, even though he does not fulfil the requisite essential qualification. A bare reading of the recruitment notice reveals that the candidates are required to fulfil the essential qualifications by the closing date for making applications. Clause 8 of the advertisement clearly stipulates as follows:

“8. If at any stage even after issue of a letter of recommendation for appointment a candidate is found ineligible in terms of the advertisement his/her candidature will be cancelled without further reference to him/her.”

9. The submission of the learned Advocate for the petitioner, that the petitioner can claim a right for consideration despite not possessing the essential qualification as per advertisement, merely because he was allowed to appear for the endurance test, after the written examination is unsustainable. The judgment of the Apex Court in the case of **Shri Krishnan** (supra) being delivered in a distinguishable set of facts and circumstances is of no avail to the writ petitioner. The judgment of the Apex Court is inapplicable to the facts and circumstances of the present case. The petitioner himself, in his application submitted to the Secretary of the Commission when he was prevented from appearing/participating in the interview, stated that he is unable to show Chemistry as a subject in his degree course. The fact that Chemistry was not a subject in his degree course is, therefore, not denied or disputed by the writ petitioner. Since the petitioner did not possess the requisite essential qualification as per advertisement, he cannot claim any right whatsoever to participate in the recruitment process. The decision of the Tribunal, therefore, disposing of the petitioner's original application without granting any relief to the petitioner requires no interference.

Analysis

10. We have heard the learned Advocate representing the petitioner and the respondent commission. We find that the advertisement specifies the essential qualifications in unambiguous terms. The requirement is a Graduate Degree in science with Physics, Chemistry and Mathematics of a recognized University or its equivalent.
11. However, the learned Advocate for the petitioner, for the first time in this proceeding referred to the 2003 Rules. Before the Tribunal, no submission was advanced relying upon the 2003 Rules, either in the original application, or during arguments. In fact, the writ petitioner has admitted in specific terms in his letter dated 22.04.2018 addressed to the Secretary Public Service Commission that Chemistry was not his subject in the Bachelor Degree. This admission has been considered by the Tribunal in the impugned order of the Tribunal.
12. No objection was raised by the writ petitioner regarding essential qualification in the advertisement being at variance with the extant Rules either at the time of participating in the recruitment process, or before the Tribunal. He is therefore estopped from raising such an issue now in this proceeding, after unsuccessfully participating in the recruitment process. However, we examined the 2003 Rules placed by the writ petitioner and from perusal of the same, we find that the essential qualification specified therein was *"B.Sc. from a recognized university with Physics, Chemistry, Mathematics or Diploma in Civil, Mechanical, Electrical Automobile or Hydroponic Engineering. from the State Council of Engineering and Technical Education, Government of West Bengal or an equivalent qualification."*

13. Even if for the sake of argument we accept the essential qualification specified in the 2003 Rules, the petitioner still would not be qualified. He does not possess, the essential qualification of B.Sc. from recognized university with Physics, Chemistry and Mathematics. He also does not possess the Diploma in Engineering from *"State Council of Engineering and Technical Education, Government of West Bengal."* The diploma annexed by the writ petitioner is issued by *"West Bengal State Council of Technical Education"*. There is no pleading/ averment, or material to show that the Diploma issued by the *"West Bengal State Council of Technical Education"* is equivalent to Diploma issued by the *"State Council of Engineering and Technical Education, Government of West Bengal."* This Court, is therefore not in a position, nor inclined to consider the same for want of any pleading in this regard. In absence of any such material the provision contained in the 2003 Rule even if assumed applicable in the year 2016, does not enure to the petitioner's benefit.

14. The petitioner's Counsel however is not in a position even to show that the 2003 Rules relied upon was still applicable in the year 2016, when the advertisement in question was issued. It is also relevant here to take notice of Clause 1 of the information forming part of the advertisement which states:

"1. The qualifications prescribed in the advertisement are as per the notified recruitment rules issued by Government."

15. Had the issue been disputed by the petitioner before the Tribunal the same could have been considered, however, as noted above, no such issue was raised by the writ petitioner. In fact, petitioner also participated in the recruitment process on the basis of essential qualifications specified in the advertisement without any demurer. He, therefore, in our opinion, is now estopped from raising such issue, much after the completion of the recruitment process.

16. We find that it is not the petitioner's case that he has a degree in science. It is his case that he passed his Higher Secondary and thereafter acquired a Diploma Engineering Course. There is a specific admission by the petitioner, in the communication dated 22.04.2018 that he does not possess a degree in science with Physics, Chemistry and Mathematics of any recognized University or its equivalent. Therefore, it cannot be said that the petitioner possesses the requisite essential qualification as per advertisement No. 15/2016.
17. The petitioner's diploma in Engineering was recognized by the State Government for the limited purpose of his lateral entry in the B.Tech through JELET. By virtue of his Diploma he was allowed an exemption from 1 (first) year; and was directly admitted in second year of B.Tech Degree. The petitioner thus availed the benefit of lateral entry.
18. Petitioner's B.Tech Degree acquired in 3, instead of normal 4 years does not in any way make him inferior to the others who have completed the same Degree in 4 years. For all purposes the petitioner has to be treated *at par* with all other B.Tech Degree holders. However, it is equally true that petitioner does not have a Graduate Degree in Science, or any Degree in Science with Physics, Chemistry and Mathematics. The fact that he has studied Chemistry in his Diploma in Engineering course, prior to his admission in B.Tech cannot be made the basis to claim that he has the essential qualification equivalent to a Graduate Degree with Chemistry as a subject, as per the advertisement.
19. Learned Counsel for the petitioner has not brought to our notice any provision in the lateral entry scheme of JELET, or any other provision contained in any Rule/ Scheme/ notification etc. based on which he can claim any other benefit of his Diploma in Engineering, in addition to the benefits admissible otherwise to a

Diploma holder. In absence of any such declaration by the recruiting authority/ any academic, or technical authority, the petitioner cannot be permitted to claim that because this Diploma has been recognized for lateral admission to second year of the B.Tech Degree, the diploma was elevated to or became at par with the Graduate Degree in science with Physics, Chemistry and Mathematics.

20. In this regard the law is well settled by decisions of the Apex Court. We consider it profitable to refer to recent decision of the Apex Court in the case of ***Unnikrishnan CV & Ors. v. Union of India & Ors.***, reported in **(2023) 18 SCC 546**. The appellants before the apex Court contended that their Diploma in Draftsman Estimating and Design (DED) is equivalent to a degree and as such they were entitled for promotion considering them to be possessing the requisite qualification for promotion. Considering the decisions in the case of ***Guru Nanak Dev University v. Sanjay Kumar Katwal & Anr.*** reported in **(2009) 1 SCC 610** and decision in the case of ***Zahoor Ahmad Rather & Ors. v. Sheikh Imtiyaz Ahmad & Ors*** reported in **(2019) 2 SCC 404**, the Apex Court took note of the settled position that equivalence of qualification is a technical academic matter which cannot be implied or assumed. The employer is entitled to prescribe qualification as a condition of eligibility having regard to the nature of job and the aptitude required for efficiency, functionality. It was stated by the apex Court that judicial review can neither expand the ambit of the prescribed qualification nor decide equivalence of the prescribed qualifications with any other given qualification. The apex Court held that the court would not prescribe the qualification and/or declare equivalency of a course.

21. Similar view was taken by the apex Court in the case of ***Maharashtra Public Service Commission v. Sandeep Shriram Warade & Ors.*** reported in **(2019) 6**

SCC 362, wherein the apex Court stated the legal position that *“Question of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same.”*

22. The next issue that arises is whether the respondent authorities were justified from disqualifying the petitioner's candidature for want of essential qualification, even though he was allowed to participate in the written examination including the endurance test. We do not find any force in such submission of the learned Advocate for the writ petitioner. In the present case, the recruitment process contemplated allowing the candidates to appear for the written test and endurance test based on the qualifications claimed by them. The claimed qualifications were subject to verification by the authorities prior to interview, which intention is clear from the N.B. at the top of the advertisement which states in clear and unambiguous terms that claimed ability to read, write and speak in Bengali, being an essential qualification and exemption in this regard *“N.B.: ... This will be tested at the time of interview.”*

23. It is at the stage of verification, i.e. prior to interview that the petitioner's disqualification was discovered and therefore, he was declared ineligible to appear at the interview. The petitioner's disqualification was considered and based on such disqualification he was prevented from participating in the recruitment process in the midst of the selection process. The recruitment process did not attain finality and no right whatsoever had accrued in favour of the petitioner. Since he did not possess the essential requisite qualification and the same was detected during the selection process, claim based on equity in our view is misconceived and unsustainable.

24. It would be relevant to mention here that in the present case, in view of clause 8 of the advertisement the authorities retained their discretion to cancel a candidature on ground of not possessing an essential qualification even after issuance of letter of recommendation for appointment. In the above circumstances, we are of the considered view that reliance placed by the learned Advocate for the petitioner on decision of the Apex Court in the case of ***Shri Krishnan*** (supra) is misplaced.

25. In the case of ***Shri Krishnan*** (supra), the Apex Court took note of the fact that admission form had been submitted in December preceding the year when the examination was held. The forms were forwarded in the month of December for examination to take place in April/ May 1972. In the meantime, it was the duty of the University authorities to scrutinize the form and to see that it complied with all the requirements. The authorities in that case were found to be negligent to scrutinize the admission form. Though there was no misrepresentation made on part of the writ petitioner therein, the petitioners therein had already been allowed to write the part II examination. The Apex Court, in the case of ***Shri Krishnan*** (Supra) held that once the appellant, a law student was allowed to appear at the part II examination in 1973, the respondent did not have the jurisdiction to cancel his candidature for that examination. The authorities, in the present case were not in any manner negligent. On the contrary, we find that the authorities exercised due diligence and before the interview they disqualified the writ petitioner for want of an essential qualification.

26. Another aspect considered by the Apex Court was that objection regarding the appellant taking part in the LLB course without permission from his superior officers to appear at the examination was not sustainable. The Apex Court found

that the petitioner therein was coerced to write a letter in “*terrorem*” containing an undertaking that he will submit permission from his employer to appear in the examination. The authorities, therefore, were found not justified in refusing admission to Part III of law course, or to refuse permission to appear at the examination on a ground which was not mentioned in the impugned order. In the present case the infirmity in the petitioner’s candidature is that he does not possess the essential requisite qualification. The same has been diligently detected and acted upon by the respondent authorities during the selection process, and prior to the petitioner’s participation in the interview. The infirmity is specifically admitted by the writ petitioner in his letter dated 22.04.2018 addressed to the Secretary. Therefore, the petitioner was rightly considered by the respondents to be disqualified for want of the essential qualification prescribed in the advertisement. Finding in the Tribunal’s order dated 02.05.2024 that as per advertisement, “*not diploma but a bachelors degree was the essential qualification.*”, and refusing to grant any relief to the writ petitioner, in our view does not require any interference under Article 226 of the Constitution of India.

27. We, therefore, have no hesitation in concluding that the requirement of essential qualification must be complied with by all candidates including the present writ petitioner. The requirement in the advertisement is unambiguous that candidate should have a Degree in science with Physics, Chemistry and Mathematics from a recognized University or its equivalent which the petitioner does not possess.

28. Based on decisions of the Apex Court noted above we find that it is not open to a candidate to invoke writ jurisdiction for exercising judicial review to assess the entire course curriculum completed by a candidate and based on such course

curriculum to declare equivalence of the petitioner's qualification with the qualification specified in the advertisement. The law is well settled that declaration of equivalence is required to be found either in the advertisement, rules or by the competent authority. In the present case there is no such declaration of equivalence by any competent/ academic authority; nor is such equivalence specified in the advertisement. We find no infirmity in the decision of the authority as well as the Tribunal regarding disqualification of the petitioner's candidature for want of essential qualification. The writ petition is devoid of merit and the same is dismissed.

29. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)