

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) No.728 of 2017

Pravin Kumar & Ors.Petitioners

versus

State of Uttarakhand & Ors.Respondents

With

Writ Petition (S/S) No.884 of 2018

Anil SinghPetitioner

versus

State of Uttarakhand & Ors.Respondents

Mr. Dinesh Gehtori and Mr. Sanjay Bhatt, Advocates for the petitioners
Mr. P.C. Bisht and Ms. Anjali Bhargava, Addl. C.S.C. along with Mr. Sushil
Vashishtha, Standing Counsel for the State of Uttarakhand/respondent nos.1
and 2
Mr. Pankaj Purohit, Advocate for respondent no.3

JUDGMENT

Hon'ble Lok Pal Singh, J.

Since the controversy involved in these two writ petitions is the same, therefore, for sake of brevity and convenience, these writ petitions are being decided by this common judgment.

2. In Writ Petition No.728 of 2017 (S/S), petitioners have sought a writ of mandamus directing the respondents to consider the petitioners for the appointment on post of Assistant Agricultural Officer Grade III pay scale Rs.5200-20200 grade pay Rs.2400. In Writ Petition No.884 of 2018 (S/S), petitioner has sought quashing of the communication dated 17.04.2018

whereby the candidature of petitioner for the post of Assistant Agriculture Officer Grade-III has been rejected. Further, a writ of mandamus has been sought commanding the respondents to consider the candidature of the petitioner for the post of Assistant Agriculture Officer Grade-III on the basis of equivalent and higher qualification of B.Sc. forestry and M.Sc Agriculture obtained by the petitioner and consequently select and appoint him against the vacant post as per the order of merit of petitioner and give him all the consequential benefit.

3. Factual matrix of the case is that third respondent-Uttarakhand Subordinate Service Selection Commission, issued an advertisement on 20.02.2016, inviting applications for 96 vacant posts of Assistant Agriculture Officer Grade-III in the pay scale of 5200-20200 grade pay Rs.2000/- under Post Code No.04. The minimum qualification and preferential qualification were prescribed as under:-

Educational qualification – Graduate degree in Agriculture from a recognized Institution or University

Preferential qualification – being other facts equal, the candidate will be given preference in direct recruitment who:-

- (i) had served the territorial army for at least 02 years or
- (ii) possess “B” certificate in N.C.C.

4. On 05.04.2016, a corrigendum was issued whereby the number of posts were increased to 169 and pay-scale was changed as 5200-20200 grade pay c# 2400/- Pursuant to the said advertisement, petitioners applied for the post of Assistant Agriculture Officer

Grade-III. Petitioner in WPSS No.884 of 2018 possessed a Graduation degree in Forestry and M.Sc. in Agriculture whereas petitioners in WPSS No.728 of 2017 possessed B. Tech in Agricultural Engineering from G.B. Pant University of Agriculture and Technology. Petitioners were issued admit cards. They appeared in the written examination. The result of the successful candidates was declared and the successful candidates were called for document verification thereafter. Petitioners, being declared successful, were also called for document verification. They presented themselves, along with all relevant documents, before the authority. Thereafter, by letters issued on different dates, petitioners were informed that their candidature has been rejected as they do not possess the minimum qualification as prescribed in the advertisement, which is B.Sc. (Agriculture). It was also stated that selection is made as per the provisions of Service Rules for the said post and the minimum educational qualifications prescribed for the said post is Graduation degree in Agriculture. The contention of the petitioners is that they possess higher qualification than that prescribed in the advertisement. As such, third respondent has got no authority to reject the candidature of the petitioners.

5. Respondents have filed their counter affidavits in both the writ petitions. The sum and substance of the counter affidavits is that as per the provisions of Uttaranchal (Uttar Pradesh Subordinate Agriculture Service Rules, 1993) Adaptation and Modification Order, 2002, the minimum educational qualification prescribed for the post of subordinate Agriculture Service Group-3 is Graduation in Agriculture (B.Sc. Agriculture), consequently in the advertisement issued by the UKSSSC

the minimum educational qualification for the post of Assistant Agriculture Officer Grade-3 has been prescribed as Degree of Graduation in Agriculture from a recognized Institute or University. The petitioners do not possess the requisite educational qualification, however, they claim that they possess higher qualification. Thus, their candidature was rejected. It is stated that the higher qualification can only be considered, when the candidate possesses the minimum qualification for the post as per relevant Service Rules.

6. A rejoinder affidavit has been filed by the petitioner Anil Kumar in WPSS No.884 of 2018 denying the averments of the counter affidavit.

7. Heard Mr. Dinesh Gehtori and Mr. Sanjay Bhatt, learned counsel for the petitioners, Ms. Anjali Bhargava and Mr. P.C. Bisht, Addl. C.S.C. along with Mr. Sushil Vashishtha, Standing Counsel for the State of Uttarakhand as well as Mr. Pankaj Purohit, learned counsel for respondent no.3-Commission. Perused the entire material.

8. Learned counsel for the petitioners submits that the respondent Commission is not justified in rejecting the candidature of the petitioners on the ground that they do not possess the minimum qualification. They contend that the petitioners possess the higher qualification than the qualification prescribed, thus, they are fully entitled to be considered for appointment on the said post. In WPSS No.728 of 2017, it is contended that the technical qualification acquired by the petitioners i.e. B.Tech in Agriculture Engineering is equivalent to the prescribed qualification.

9. In order to buttress their submissions, learned counsel for the petitioners has placed reliance on the following judgments:-

- (i) Jyoti K.K. vs. Kerala Public Service Commission (2002) Supp. 1 JT 85

“9. It is no doubt true, as stated by the High Court that when a qualification has been set out under the relevant rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. If a person has acquired higher qualifications in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far. Under the relevant rules, for the post of assistant engineer, degree in electrical engineering of Kerala University or other equivalent qualification recognized or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is prescribed for the lower post, namely the post of sub-engineer. In that view of the matter the qualification of degree in electrical engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post. In the event the government is of the view that only diploma holders should have applied to post of sub-engineers but not all those who possess higher qualifications, either this rule should have excluded in respect of candidates who possess higher qualifications or the position should have been made clear that degree holder shall not be eligible to apply for such post. When that position is not clear but on the other hand rules do not disqualify per se the holders of higher qualifications in the same faculty, it becomes clear that the rule could be understood in an appropriate manner as stated above. In that view of the matter the order of the High Court cannot be sustained. In this case we are not concerned with the question whether all those who possess such qualifications could

have applied or not. When statutory rules have been published and those rules are applicable, it presupposes that everyone concerned with such appointments will be aware of such rules or make himself aware of the rules before making appropriate applications. The High Court, therefore, is not justified in holding that recruitment of appellants would amount to fraud on the public.”

(ii) Tariq Islam vs. Aligarh Muslim University and others (2001) 8 SCC 546

“8. In the present, the High Court has merely relied upon a book published as Equivalence of Foreign Degrees by the Association of Indian Universities and places its interpretation that the BA (Hons) degree possessed by the appellant is not equivalent to Master’s degree of Aligarh University and, therefore, the appellant lacks essential qualification for appointment as Lecturer. The contents of the publication, apart from the book itself, cannot be ascribed with any official sanctity of binding force or authority. The glaring facts arising in this case have not been taken note of by the High Court. The appellant had already obtained MPhil and PhD degrees from the respondent University. At the time of his admission to MPhil leading to PhD course in the Department of Philosophy, the question of equivalence in qualification was examined in detail and the Academic Council approved his admission to MPhil or PhD course. In the event his qualification of BA (Hons) degree from the Council of National Academic Awards is not equivalent to Master’s degree, he could not have been admitted to MPhil leading to PhD course. But to say that such acceptance of such equivalence is only for the purpose of admission to MPhil leading to PhD course and not for other purposes will lead to anomalous results. Equivalence of qualification has to be determined before a person is allowed to undergo a course. When the appellant as a result of such admission obtained such high qualifications as MPhil/Phd, it is difficult to imagine that the equivalence of qualification obtained by him earlier was not considered by the University. After having obtained such degrees, to nullify the equivalence declared by the Academic Council and the Vice-Chancellor will be to put the clock back causing grave injustice to the appellant. Had he been denied admission on the ground that his qualification is not equivalent to Master’s degree, he might have obtained an equivalent qualification or pursued his studies elsewhere. That opportunity having been deprived to him and his admission to such courses having been ratified based on the recommendations of the

Equivalence Committee, it cannot be nullified in the manner it has been done.”

- (iii) Mohd. Riazul Usman Gani and others v. District & Sessions Judge, Nagpur and others (2000) 2 SCC 606

“13. Laying of criteria when there are a large number of candidates is permissible but that criteria must be reasonable and not arbitrary having regard to the post for which recruitment is made.

20. If an employee does not perform the duties attached to the post disciplinary proceedings can certainly be taken against him. An employer cannot throw up his hands in despair and devise a method denying appointments to a person who otherwise meets the requisite qualifications on the ground that if appointed, he would not perform his duties. Qualification prescribed is minimum. Higher qualification cannot become a disadvantage to the candidate.

21. A criterion which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification than prescribed cannot be rational. We have not been able to appreciate as to why those candidates who possess qualifications equivalent to SCC examination could also not be considered. We are saying this on the facts of the case in hand and should not be understood as laying down a rule of universal application.”

- (iv) Smt. Reena Naulia vs. State of Uttarakhand & Others

“3. In view of this Court, the stand of the respondents for not considering the candidature of the petitioner on the basis of qualification was totally wrong for the reason that according to the Rules the essential qualification is either Intermediate in Agriculture as of the essential subjects or High School with two years Diploma in Agriculture. The petitioner is Intermediate, though she does not have the Diploma in Agriculture, however, she has a Degree in Agriculture Sciences. Moreover, undisputedly the petitioner is a Science Graduate in Agriculture and she has also done her post-graduation and Ph.D. in Agriculture. Therefore, she was fully qualified for the said post.”

10. Per contra, learned counsel appearing for respondent no.3 would submit that the employer is the best judge to decide the question of qualification for the post so advertised. It is argued that the petitioners do not possess the requisite educational qualification as per the advertisement and relevant Rules. Therefore, the candidature of the petitioners have been rightly rejected on account of non-possessing the requisite minimum qualification by the petitioner. In support of his submissions, learned counsel would place reliance on the following judgments:-

i) *Ranajit Kumar Meher vs. State of Orissa and others*, (2017) 4 SCC 568

“2. Having heard the learned counsel appearing on both the sides, we are of the view that there cannot be any appointment in violation of the Rules. Qualification is to be seen with respect to the Rules and not the advertisement inviting applications. The appellant, admittedly, does not possess the qualification as prescribed under the Rules.”

ii) *Prakash Chand Meena and others vs. State of Rajasthan and others* (2015) 8 SCC 484

“8. Having heard the parties, we have also perused the written submissions filed on behalf of some of them and have perused the judgment of the learned Single Judge and the impugned judgment of the Division Bench. In our considered view, the issue noticed at the outset must be decided on the basis of settled law noticed by the learned Single Judge that recruitment process must be completed as per terms and conditions in the advertisement and as per Rules existing when the recruitment process began. In the present case, the Division Bench has gone to great lengths in examining the issue whether BPED and DPED qualifications are equivalent or superior to CPED qualification but such exercise cannot help the cause of the respondents who had the option either to cancel the recruitment process if there existed good reasons for the same or to complete it as per terms of advertisement and as per Rules. They chose to continue with the recruitment process and hence they cannot be permitted to depart from the qualification laid down in the advertisement as well as in the Rules which were suitably amended only

later in 2011. In such a situation, factual justifications cannot change the legal position that the respondents acted against law and against the terms of advertisement in treating such applicants successful for the appointment to the post of PTI Gr. III who held other qualifications but not the qualification of CPED. Such candidates had not even submitted separate OMR application form for appointment to the post of PTI Gr.III which was essential as per the terms of advertisement.”

iii) Deepak Singh and others vs. State of U.P. and others
2020 (1) ALJ 596 Full Bench

“51. Testing the said arguments as raised by Sri. Khare although on record no Rules have been placed, however, in view of the finding recorded by us that Diploma in Engineering is not the same as Bachelor in Engineering and also the finding recorded by us that the State is well equipped to prescribe the requisite required qualification keeping in view the requirement of posts for which the advertisements are issued, we hold that whether Diploma in Engineering is specified as a minimum qualification or a required qualification, Graduates in Engineering would not be entitled to be considered and will be out of zone of consideration unless a candidate possess both the qualifications to explain it further suppose a candidate after acquiring Diploma in Engineering also passes Graduation in Engineering he would be eligible, in view of the fact that he has Diploma in Engineering which is the required qualification for applying to the post and cannot be denied to participate only because he has any qualification additional to the prescribed qualification. However, the State Government is free to provide for equivalence as was done by the Kerala State while incorporating Rule 10(a) (ii). Since there is nothing on record in the present case to show that there was any Rule or Directive of the State Government to provide equivalence, it is only logical to conclude that degree holders are ineligible to participate in the selection process for Junior Engineer in the light of the specific provisions incorporated under the advertisement in question.

52. Reverting the Question No. D whether the exclusion of degree holders from the zone of consideration would meet the tests as propounded by the Supreme Court in the State of Uttarakhand and others vs. Deep Chandra Tewari and another. It is essential that the relevant observations in the case of Deep Chandra Tewari (supra) are reproduced which are as under:

"We are conscious of the principle that when particular qualifications are prescribed for a post, the candidature of a candidate possessing higher qualification cannot be rejected on that basis. No doubt, normal rule would be that candidate with higher qualification is deemed to fulfil the lower qualification prescribed for a post. But that higher qualification has to be in the same channel. Further, this rule will be subject to an exception. Where the prescription of a particular qualification is found to be relevant for discharging the functions of that post and at the same time, the Government is able to demonstrate that for want of the said qualification a candidate may not be suitable for the post, even if he possesses a "better" qualification but that "better" qualification has not relevance with the function attached with the post."

53. Thus, the Supreme Court itself clarified that as a normal Rule, the candidate with higher qualification is deemed to fulfill the lower qualification prescribed for a post but the higher qualification has to be in the same channel, we have already held that Diploma in Engineering and Graduate in Engineering cannot be held to be in the same channel and also that Graduate in Engineering cannot be deemed to fulfil the qualification which are prescribed for grant of Diploma. Thus, we have no hesitation in holding that the exclusion of degree holders from the zone of consideration in respect of advertisement in question meets the test as laid down by the Supreme Court in the case of State of Uttarakhand and others vs. Deep Chandra Tewari and another."

vi) Krishna Chandra Joshi and another vs. Rakesh Negi and others (2017) 1 U.D. 12

23. We will first deal with the appeals arising from Writ Petition No.1091 of 2013 (S/S). Therein, the writ petitioner, admittedly, did not possess Diploma in Allopathic Pharmacy, instead he had Degree in Allopathic Pharmacy. We have already noticed the prayer. We are at a loss as to how a writ of mandamus, which presupposes the plea of a legal right in the writ petition to be considered, could have been ordered by the learned Single Judge. When the employer fixed a qualification as an essential qualification, unless there is a power of relaxation and the power is exercised, the said qualification is indispensable for being considered for public employment. This question is no longer in fact res integra. We would only advert to the following case law that the direction given by the learned Single Judge in this Writ Petition is clearly unsupported. They are:

1. State of Punjab and others v. Anita and others reported in (2015) 2 Supreme Court Cases 170
2. Prakash Chand Meena and others v. State of Rajasthan and others reported in (2015) 8 SCC 484.

v) Navraj vs. State of Uttarakhand and another WPSB No.110 of 2015, decided on 26.03.2015

“3. We have heard the learned counsel for the petitioner and the learned counsel for the Commission. The dispute narrows down to the posts which are mentioned earlier. Learned counsel for the petitioner fairly submits before us, however, that under the Rules and the advertisement the essential qualification is Graduation Degree or Diploma in Mass Communication. The petitioner admittedly has graduated in Science. Thereafter he has done post graduation in Mass Communication.

5. No doubt, learned counsel for the petitioner drew our attention to a judgment of Hon'ble Apex Court, reported in JT 2002 (Suppl.1) SC 85 (Jyoti K.K. and others versus Kerala Public Service Commission and others). That is a case which arose from the judgment of the High Court of Kerala, where the Court had to deal with the case of a rule which provided for power to recognize a higher qualification as equivalent and, in such circumstances, the Court took the view that the possession of the higher qualification would be premised on his being qualified. There is no such rule available to come to the rescue of the writ petitioner. He has graduated in Science which cannot be treated as graduation in the subject which is required both under the rules and advertisement.”

11. I have heard learned counsel for the parties and perused the material available on file.

12. Before deciding the rival contentions, it would be apt to take note of the statutory provisions, as also the advertisement dated 20.02.2016.

13. The State Government, State of U.P., has framed the Uttar Pradesh Subordinate Agriculture Service Rules, 1993, which are the rules governing the field of the present case. Said Rules are also application to the State

14. Admittedly, in the advertisement the educational qualification prescribed for the post of Assistant Agriculture Officer Grade-III is graduation degree in agriculture from a recognized University or Institution. In the Rules of 1993, the educational qualification for the post of Assistant Agriculture Inspector Grade-III (now Assistant Agriculture Officer Grade-III) is also prescribed as graduation degree in agriculture from any recognized University or Institution. Law is well settled that the recruitment process must be completed as per terms and conditions of the advertisement and as per existing rules and in the case of ambiguity in the advertisement and existing rules, the recruitment process shall be carried out as per the rules existing when the recruitment process began. In the present case, there is no ambiguity or anomaly in the advertisement. In the advertisement as well as in the Rules of 1993, the educational qualification prescribed for the post of Assistant Agriculture Officer Grade-III is a graduation degree in Agriculture. Furthermore, neither the advertisement nor the Rules of 1993 is under challenge before this Court. Thus, this Court has to limit itself to the point as to whether the petitioners possess the requisite qualification as per the advertisement or not.

15. In WPSS No.728 of 2017, the petitioner has a graduation degree in Forestry and a master's degree in agriculture whereas in WPSS No.884 of 2014 the petitioners possess Bachelor's degree in Agriculture Engineering. In the first hand, none of the petitioners fulfill the criteria of educational qualification prescribed for the said post. It was the contention of Mr. Sanjay Bhatt, learned counsel for the petitioner that the

petitioner possesses higher qualification which he obtained on the basis of qualification of B.Sc. Forestry. It was submitted that at the time of admission in M.Sc. (Agriculture), B.Sc. (Forestry) qualification possessed by the petitioner was considered as sufficient. In view of decision of **Tariq Islam** (supra), the University is the best judge to consider the equivalence of qualification and the respondents are not justified in saying that the petitioner lacks the essential educational qualification. The ratio of said judgment is not applicable to the peculiar facts of the case, inasmuch as, a bare perusal of M.Sc. degree would suggest that major subject is Vegetable Science and minor subject is Horticulture. It is settled law that the employer is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work and in the present case the respondents have rejected the claim of the petitioner on the ground of non-fulfilling the requisite educational qualification. Higher qualification of the petitioner has not been considered by the respondents.

16. As regards the case of petitioners in WPSS No.884 of 2018, they possess degree of Bachelor of Technology in Agriculture Engineering. Neither this Court has the expertise to compare the equivalence of educational qualifications, to make comparisons for eligibility for the posts in the statutory rules, nor this Court thinks it proper to go into such the controversy, as all are these matters to be considered by the appropriate authority. The respondents in the counter affidavit have specifically stated that for the post of Assistant Agriculture Officer Grade-III, the educational qualification prescribed is B.Sc. Agriculture.

17. In **State of Rajasthan & Ors. v. Lata Arun, AIR 2002 SC 2642**, the Hon'ble Apex Court held as under:-

"12. From the ratio of the decision 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."

18. It is also a settled law that the employer is the best judge to decide the question of qualification. The Court cannot decide eligibility and essential qualifications for employment.

19. Hon'ble Apex Court in **Maharashtra Public Service Commission versus Sandeep Shriram Warade and others, (2019) 6 SCC 362**, has held as under:-

"9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive rewriting of the advertisement. Questions 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. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer

and interpret the conditions of the advertisement contrary to the plain language of the same.”

20. In **Mohd. Sujat Ali v. Union of India AIR 1974 SC 1631**, it was held as under:

“13. It must be noted that the question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standard and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government. It is only where the decision of the Government is shown to be based on extraneous or irrelevant considerations or actuated by mala fides or irrational and perverse or manifestly wrong that the Court would reach out its lethal arm and strike down the decision of the Government.”

21. In **Krishna Chandra Joshi** (supra), Hon'ble Division Bench of this Court has held that when the employer has fixed a qualification as an essential qualification, unless there is a power of relaxation and the power is exercised, the said qualification is indispensable for being considered for public employment.

22. Applying the ratio of the aforesaid judgments to the facts and circumstances of the present case, this Court is of the considered view that none of the petitioners possess the requisite qualification for the post of Assistant Agriculture Officer Grade-III. Thus, this Court has no hesitation in holding that the candidature

of the petitioners have rightly been rejected by the respondents on the ground of non-fulfilling the requisite educational qualifications. Insofar as the judgments cited by learned counsel for the petitioners are concerned, the same are not applicable to the facts and circumstances of the case and are therefore of no help to the petitioners.

23. In view of the foregoing discussion, writ petitions lack merit. Same are hereby dismissed. No order as to costs.

(Lok Pal Singh, J.)
01.10.2020

Rajni