

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 165/2021
CM No. 7797/2021

Reserved on : 04.07.2022
Pronounced on: 08.07.2022

Qazi Gousia Jeelani

.....appellant(s)

Through :- Mr. R.A.Jan Sr. Advocate with
Mr. Aswad Attar Advocate

V/s

Mehraj Ud Din Najar and ors

.....Respondent(s)

Through :- Mr. T.H.Khawaja Advocate
Mr. Furqaan Yaqoob Advocate.

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE M.A.CHOWDHARY, JUDGE

JUDGMENT

Sanjeev Kumar, J

1. This intra-Court appeal is directed against judgment dated 21.10.2021 ['the impugned judgment'] passed by the learned Single Judge ['Writ Court'] in SWP No. 1405/2011 titled 'Mehraj Ud Din Najar vs. SK University of Agriculture and others'. The impugned judgment is assailed by the appellant on numerous grounds. However, before we advert to these grounds of challenge, we deem it appropriate to notice few facts relevant to the disposal of this appeal.

Vide Advertisement Notice No. 06/2008 dated 04.06.2008, respondent No.2 invited applications from the eligible persons for different posts including four posts of Workshop Assistant. Three posts of Workshop Assistant were earmarked for open merit category and the remaining one for RBA Category. Subsequently, respondent No.2 came up with fresh Advertisement Notice bearing No. 03/2009 dated 22.08.2009 in which, amongst other posts, four posts of Workshop Assistant were re-notified with a stipulation that the candidates, who had already applied

for the posts in response to the earlier Advertisement Notification, need not apply again. The qualification prescribed for the posts of Workshop Assistant as indicated against item No.11 of the Advertisement Notice dated 22.08.2009 (supra) reads thus:

S.No.	No. of Posts	Pay Scale (Rs)	Category	Location of the post	Qualifications prescribed
11.Workshop Assistant	04	5200-20200 with GP of Rs.1900	Open merit (03) Backward Area (1)	Division of Agri. Engineering, Shalimar	Essential ITI in following trades: Carpenter/Fitter/Turner/Lathe operator and Machinist.

2. In response to the Advertisement Notification(s) issued, the appellant, respondent No.1 and few others submitted their application forms. The appellant as well as respondent No.1 (the writ petitioner) participated in the selection process. Upon completion of the selection process, the respondent-University vide its order No. 322 (Est.) of 2010 dated 19.04.2010 appointed four candidates including the appellant (03 under open merit category and 01 under RBA) as Workshop Assistants. This order of appointment was purportedly issued by the respondent-University on the recommendations of the Selection Committee and the approval accorded by the Vice-Chancellor of the University. The writ petitioner, who did not figure in the select list, filed SWP No. 1405/2011 praying, *inter alia*, for a writ in the nature of certiorari to quash the impugned selection and the appointment order dated 19.04.2010 (supra) insofar as it related to the appellant (respondent No.3 in the writ petition). A writ of mandamus was also sought to direct the officials respondents to select and appoint the writ petitioner against the post of Workshop Assistant on the basis of his overall merit in the selection process. There was obviously a delay of almost one year in approaching the Court. However, the writ petitioner explained the delay in approaching the

Court by contending that in the month of April 2011, when the then incumbent Registrar of the University/Chairman of the Selection Committee was shifted from the post, a vital information leaked out that one of the appointed Workshop Assistants had not even applied pursuant to the Advertisement notification(s), but got selected for extraneous considerations. This made the writ petitioner to move an application under Right to Information Act ['RTI Act'] to seek copy of application forms submitted by the appointed candidates as also the interview call letters issued to them. The requisite information sought for by the writ petitioner was supplied which, as per him, revealed that the appellant (respondent No.3 in the writ petitioner) had submitted her application form much after the cut off date and even after the call letters for interview had been dispatched to other candidates including the writ petitioner. It was specifically pleaded by the writ petitioner that the call letters ,as is evident from the endorsement made thereon, were issued to all the candidates on 10.03.2010. However, in the case of the appellant, it was dispatched on 17.03.2010 i.e after she was permitted to submit her application form on 13.03.2010. It was pointed out that as per the advertisement notification of 2009, the cut off date to submit the application form was 19.09.2009.

3. In the aforesaid backdrop, the writ petitioner challenged the selection and appointment of the appellant primarily on two grounds;

(i). That the appellant had not submitted her application form on or before the cut off date i.e 19.09.2009 the last date fixed for submission of application forms in the Advertisement notification of 2009;

(ii). That the appellant, possessing the qualification of Diploma in Agricultural Engineering, was not competent to be appointed as Workshop Assistant as she was not possessing the prescribed qualification.

4. The Writ Court found merit and substance in both the grounds of challenge and, accordingly, vide judgment impugned quashed the selection and appointment of the appellant made in terms of the order impugned in the writ petition. The respondent-University was also directed to appoint the writ petitioner against the post of Workshop Assistant advertised vide Notification No.06 of 2008 read with Notification No. 03/2009. A cost of Rs.10000/- was also imposed upon the respondent-University, to be paid to the writ petitioner within two weeks from the date of passing of the judgment. It is this judgment of the writ Court which is called in question before us in this appeal.

5. Mr. R.A.Jan learned Senior Counsel appearing for the appellant assails the judgment impugned essentially on the following grounds:

(i). That the appellant has been condemned unheard by the Writ Court, in that, on the date the writ petition was taken up for final consideration, neither the appellant nor her counsel was present;

(ii). That the writ Court has failed to appreciate that the qualification of Diploma in Agricultural Engineering possessed by the appellant presupposes the acquisition of prescribed qualification i.e ITI certificate in the trades of carpenter/Fitter/Turner/Latheoperator/Machinist; and,

(iii).That the writ Court has erroneously held that the appellant had submitted her application form much after the cut off date fixed in the advertisement notification No. 03/2009 and to come to this conclusion, the writ Court erroneously relied upon an information gathered by the writ petitioner by having resort to RTI Act. It is submitted that this information secured by the writ petitioner could not have been relied upon by the writ Court against the appellant without affording her an opportunity of rebutting the same.

6. To substantiate his argument that the appellant is possessed of qualification in the same line which is higher than the prescribed, Mr.

Jan, learned Senior Counsel has put strong reliance on the stipulation in the Advertisement notification indicating location of the post. It is argued that since the post of Workshop Assistant is located in the Division of Agricultural Engineering, as such, the appellant with the qualification in Agricultural Engineering is competent to hold the post. Learned Senior Counsel next contended that that the qualification of Diploma in Agricultural Engineering is higher qualification in the same line and, therefore, presupposes the acquisition of lower qualification of ITI in the trades indicated in the Advertisement notification. Strong reliance is placed by Mr. Jan, learned Senior Counsel on the recent judgment of the Supreme Court rendered in the case of **Puneet Sharma and ors vs. Himachal Pradesh State Electricity Board Ltd and another, 2021 SCC Online SC 291.**

7. Insofar as the allegation of the writ petitioner that the appellant had submitted her application form much after the cut off date, it is contended that the allegation of the writ petitioner is not supported by any documentary evidence and that the information gathered by him under RITI Act cannot be relied upon unless the appellant has the opportunity to rebut the same. Mr. R.A. Jan, learned Senior Counsel draws our attention to the only annexure appended with the counter affidavit filed by the appellant before the writ court and submits that the application form was submitted on 07.09.2009 as is borne out by the receipt issued by the Receipt clerk of the respondent-university.

8. *Per contra*, Mr. T.H.Khawaja, learned counsel appearing for the writ petitioner (respondent No.1 herein) submits that judgment of the writ Court is perfectly legal and does not call for any interference. It is argued that the appellant possessing the qualification of Diploma in

Agricultural Engineering is not eligible to hold the post of Workshop Assistant, nor can it be said that the qualification possessed by her is higher qualification in the same line and presupposes the acquisition of lower qualification of ITI in the trades indicated in the Advertisement notification. He argues that the writ Court has correctly come to the conclusion that the appellant had not applied for the post within the prescribed time, but was permitted to submit the application form much after the cut off date. He submits that the writ court has, thus, correctly held the selection and appointment of appellant bad in the eye of law.

9. Learned counsel for the respondent-University could not come up with any argument which would persuade us to take a view contrary to the one taken by the writ Court. Being a counsel for the respondent-University, he did perform his duty to support the action of respondent-University.

10. Having heard learned counsel for the parties and having carefully gone through the impugned judgment, we are of the considered opinion that the view taken by the Writ Court is absolutely correct and unexceptionable. The selection and appointment of the appellant is liable to be quashed both on the ground that she had failed to apply for the post in question on or before the cut off date mentioned in the Advertisement notice and also that she was not possessing the essential educational qualification prescribed for the post.

11. We are not impressed with the argument of Mr. Jan, learned Senior Counsel that the qualification of Diploma in Agricultural Engineering possessed by the appellant is higher qualification in the same line and presupposes the acquisition of qualification of ITI in the trades of carpenter/Fitter/Turner/Latheoperator/Machinist. To

substantiate his augment, Mr. Jan learned Senior Counsel, has drawn support from the opinion of the Experts' Committee appointed by the University. We have gone through the opinion of the Experts and find that the same defies logic and is apparently an outcome of extraneous considerations. It seems as if the entire University had ganged up to support the candidature of the appellant.

12. The issue raised by Mr. Jan is no longer *res integra and* was set at rest by the Supreme Court in the case of **Zahoor Ahmad Rather and ors vs Sheikh Imtiyaz Ahmad, (2019) 2 SCC 404**. The State of Jammu and Kashmir had invited applications to recruit Technician-III with the prescribed qualification 'Matric with ITI'. Some of the candidates, who were holding the qualification of Degree and Diploma in Electrical /Electronic/Communication Engineering also submitted their application forms. The J&K Service Selection Board ['the Board'], which was making the selection, allowed such candidates also to participate in the selection. While the candidates with the qualification of Degree and Diploma in Electrical/Electronic/Communication Engineering were allowed to participate in the selection process, however, before issuance of the select list, the Board took a decision that only the ITI qualification in the relevant trade i.e Electrician alone shall be considered as prescribed in the Advertisement notification. The candidates with the higher qualification of Degree/Diploma in Electrical/Electronic/ Communication Engineering were not included in the select list on the ground that none of them possessed the prescribed qualification i.e ITI in the trade of Electrician. Aggrieved by their exclusion, the candidates filed various writ petitions which were allowed by the learned Single Judge of this Court. The Letters Patent

Appeals filed against the judgment of the Single Bench were, however, allowed and the judgment of the Single Bench was reversed. It was held by the Division Bench that the Notification mandated an ITI in relevant trade as a condition of eligibility and, therefore, the candidates with the qualifications like Degree/Diploma Electrical/Electronic/Comm. Engineering were not eligible for the post and were, thus, erroneously allowed to participate in the selection process by the Board. The Division Bench relied upon the judgment of Supreme Court rendered in the case of **P.M.Latha vs. State of Kerala, (2003) 3 SCC 541**.

13. Feeling aggrieved and dissatisfied with the judgement of the Division Bench, the candidates led by Zahoor Ahmed Rather approached the Supreme Court by way of Civil Appeal Nos. Civil Appeal Nos. 11853-54 of 2018. A bench of the Supreme Court consisting of Hon'ble Mr. Justice U.U.Lalit and Hon'ble Mr. Justice D.Y. Chandrachud surveyed the entire case law on the subject and concurred with the view taken by the Division Bench of this Court. Strong reliance placed by the appellants on the judgment of **Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596** was held by the Supreme Court entirely misplaced. The Supreme Court found the judgment of **Jyoti K.K's** case (supra) rendered in the context of different facts and the rules position and, therefore, distinguishable. The observations made by the Supreme Court dealing with the case of **Jyoti K.K's** case (supra) which was decided somewhat under similar circumstances as are obtaining in the case of **Puneet Sharma** (supra) are contained in para (26) and are reproduced hereunder.

“26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti KK in the subsequent decision in Anita (supra). The decision in Jyoti

KK 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 pre-supposes 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 KK turned on a specific statutory rule under which the holding of a higher qualification could pre-suppose 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 of the High Court was justified in reversing the judgment 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 of the Division Bench”.

14. No less important are the observations made by the Supreme Court in para (27), which reads, thus:

“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 KK 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 KK turned”.

15. In the same year, the Supreme Court came to be confronted with the same issue in the case of **Zonal Manager, Bank of India vs Aarya K. Babu, 2019 8 SCC 587**. The Supreme Court was dealing with the selection of Agricultural Field Officers (Scale-I) for which the prescribed qualification was Degree in Agro Forestry and some of the candidates were possessing four years Degree in Forestry. What was observed by the Supreme Court in para (12) of the judgment is pertinent and is reproduced hereunder:

“12. Though we have taken note of the said contention we are unable to accept the same. We are of such opinion in view of the well established position that it is not for the Court to read into or assume and thereby include certain qualifications which have not been included in the Notification by the employer. Further the rules as referred to by the learned counsel for the respondents is pointed out to be a rule for promotion of officers. That apart, even if the qualification prescribed in the advertisement was contrary to the qualification provided under the recruitment rules, it would have been open for the candidate concerned to challenge the Notification alleging denial of opportunity. On the other hand, having taken note of the specific qualification prescribed in the Notification it would not be open for a candidate to assume that the qualification possessed by such candidate is equivalent and thereby seek consideration for appointment nor will it even be open for the employer to change the requirements midstream during the ongoing selection process or accept any qualification other than the one notified since it would amount to denial of opportunity to those who possess the qualification but had not applied as it was not notified”.

16. Close on the heels is the judgment of the Division Bench of this Court in the case of **Aijaz Ahmad Ahanger and ors. Vs. UT of Jammu and Kashmir and ors, 2021 SCC Online J&K 904**. The issue before the Division Bench was whether the candidates with the qualification of Degree in the relevant field were eligible to apply for the post for which the prescribed qualification as per the advertisement

was different in the relevant field. Having regard to the nature of controversy involved, the Division Bench formulated the following question for determination:

“Whether it is within the ambit of powers of a Court to expand the scope of qualification prescribed in an advertisement notice by reading into the same the higher qualification as well”

17. After threadbare discussion of the law starting from the judgment of **P.M. Latha’s** case (supra) ending with the judgment of **Puneet Sharma’s** case (supra), the Division Bench opined that it was well settled that it was for the employer to determine the relevancy and suitability of the qualification for the post keeping in view the interest of the Institution and the Courts are not equipped to assess the expediency and advisability of prescription of these qualifications. The Division Bench, thus, held that it is not in the province of the Courts to expand the scope of qualification prescribed in the notice by reading into the same a higher qualification. Para (15) of the judgment which deals with the question reads thus:

“15.In the face of the ratio laid down by the Supreme Court and this Court in the judgments referred to hereinbefore, it is clear that it is for the employer to determine the relevancy and suitability of the qualification for the post keeping in view the interest of the institution and the Courts are not equipped to assess the expediency and the advisability of prescription of these qualifications. Thus, the Court cannot expand the scope of qualification prescribed in the advertisement notice by reading into the same a higher qualification”.

18. Similar argument based on the judgment of **Puneet Sharma’s** case (supra) as is raised before us by Mr. Jan, learned Senior Counsel was also dealt with in para (19) of the judgment (supra) which reads thus:

“19. A careful analysis of the facts in Puneet Sharma's case (supra) reveals that though as per original rules, the prescribed qualification was diploma in the relevant discipline, yet a clarification was issued later on declaring that the candidates with higher qualification are also entitled to apply or be considered for appointment. Besides this, as per the rules relevant to the said case, 5% of sub-quota was earmarked for those who held degrees before joining as Junior Engineers. It was in these circumstances that the Supreme Court held that rule making authority had in mind that degree holders too could compete for the posts of Junior Engineers. In the instant case neither there is any specific rule which makes the degree holders eligible nor is there any clarification issued by the Government in this regard. Further there is no such material on record from which it can be inferred that degree holders are eligible for the advertised posts. Therefore, the ratio laid down by the Supreme Court in Puneet Sharma's case (supra) does not apply to the facts of the instant case”.

19. We entirely agree with the view taken by the Division Bench in **Aijaz Ahmad Ahanger's** case (supra). It needs to be noticed that in the said case, Jammu and Kashmir Para-Medical Council had issued clarification to the extent that the Degree in the relevant discipline could be considered for the post for which prescribed qualification was Diploma on the ground that Degree was a higher qualification in the relevant discipline. The Board had not agreed with the said clarification and went ahead with the selection process ignoring the candidates possessing Degree in the relevant field. The Division Bench, as noted above, approved the decision of the Board.

20. Without dilating much on the issue, suffice it to say that it is trite law that, a person, to be eligible for a post, must possess the qualification prescribed for the post and it is not within the province of the Courts of law to read the higher qualification into the qualification prescribed in the rules or the advertisement as essential qualification.

21 In the instant case, the qualification prescribed in the Advertisement Notice for the post of Workshop Assistant is not the minimum qualification, but is essential qualification. That means a person, seeking to be appointed as Workshop Assistant must essentially possess the qualification prescribed. Indisputably, the appellant does not possess that qualification. The writ Court was, thus, absolutely correct in holding the appellant ineligible for the post in question and consequently, quashing his selection and appointment. The view taken by the Writ Court is, thus, unexceptionable and cannot be interfered with.

22. The plea of Mr. Jan, learned Senior Counsel that the appellant has been condemned unheard is also without any substance. The counter affidavit filed by the appellant before the writ court was on record and has been given due consideration by the writ Court. It is not the case of the appellant that she was not served in the writ petition, rather it is matter of fact that on the date the case was taken up for final consideration, neither she, nor her counsel caused appearance. The omission to appear in the Court on the day the matter was taken up for final consideration is attributable to the appellant and the appellant alone and, therefore, the aforesaid plea is not available to the appellant. Otherwise also, having regard to the settled legal position adumbrated above, the quashment of selection and appointment of the appellant was inevitable and necessary fall out of her ineligibility.

23. In view of the aforesaid, we need not go much into the second ground on the basis of which the selection and appointment of the appellant is quashed. Suffice it to say that the material on record clearly demonstrates that the selection process culminating into the

appointment of the appellant was conceived in deceit and delivered in fraud. The receipt issued by some receipt clerk to indicate that, the appellant had submitted the application form in time, does not bear the seal or the receipt number which is usually seen in the receipts issued by the statutory institutions, like the Universities. The information, supplied by none other than the University itself in response to the application filed by the writ petitioner under RTI Act, is quite revealing and cannot be thrown out on a technical plea of the appellant that she had no opportunity to rebut the same. We could not find any material placed on record by the appellant in this appeal which would belie the information supplied by the University to the writ petitioner.

24. For the foregoing reasons and the discussion made hereinabove, we find no merit in this appeal. It is, accordingly, dismissed. Consequently, the judgment of the Writ Court is upheld.

(M.A.CHOWDHARY) (SANJEEV KUMAR)
JUDGE JUDGE

Srinagar
08.07.2022
Sanjeev

Whether the order is speaking : **Yes**
Whether the order is reportable : **Yes**