SUPREME COURT OF INDIA **REPORTABLE**

Bench: Justice Hrishikesh Roy, Justice Manoj Misra
Date of Decision: 09 November 2023

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7602 OF 2023
(@ SLP (C) NO. 730/2022)
WITH CIVIL APPEAL NO. 7603 OF 2023

(@ SLP (C) NO. 729/2022)

CIVIL APPEAL NO. 7604 OF 2023
(@ SLP (C) NO. 4321/2022)

CIVIL APPEAL NO. 7605 OF 2023
(@ SLP (C) NO. 9977/2022)

CIVIL APPEAL NO. 7606 OF 2023
(@ SLP (C) NO. 17676/2022)

ANKITA THAKUR & ORS. **……APPELLANTS**

VERSUS

THE H.P. STAFF SELECTION

COMMISSION & ORS. **…RESPONDENTS**

Legislations:

Section 12, 13, 31 of the Himachal Pradesh Takniki Shiksha Board Act, 1986

Himachal Pradesh Private Educational Institutions (Regulatory Commission) Act, 2010

Himachal Pradesh, Department of Personnel, Junior Office Assistant (Information Technology), Class III (Non-Gazetted) Ministerial Services, Common Recruitment and Promotion Rules, 2014 and 2020

Article 14, 16, 309, 320(3) of the Constitution of India

Regulation 6(5), 7 of the Himachal Pradesh Public Service Commission (Exemption from Consultation) Regulations, 1993

Subject: Interpretation of recruitment rules, specifically concerning the relaxation of prescribed essential qualifications post-application deadline. It focuses on the legality and implications of the State Government's relaxation/clarificatory order dated 21.08.2017 for recruitment Post Codes

447 and 556, and the subsequent impact on recruitment processes and existing appointments.

Headnotes:

Recruitment Process – Interpretation of Recruitment Rules – Issue regarding relaxation of prescribed essential qualifications post-application deadline – High Court's decision to allow relaxation for Post Codes 447 and 556 set aside – Relaxation deemed unsustainable post-application deadline without providing opportunity to similarly situated candidates. [Para 45(i)]

High Court Judgment – Direction in High Court judgment for recasting merit list using relaxed criteria – Direction overturned due to its inconsistency with established legal principles and constitutional mandates – Merit list for Post Code 556 not to be redrawn; recruitment for Post Code 817 to follow extant rules. [Para 45(ii)]

State Government's Relaxation Order – Relaxation/clarificatory order dated 21.08.2017 by State Government for certain recruitment post-codes – Held as legally unsustainable when issued after application deadline – Recruitment to adhere to qualifications specified in original advertisements and extant rules. [Para 45(i), (ii)]

Preservation of Existing Appointments – Appointments under Post Code 447 not to be disturbed despite eligibility gained through later relaxation – Considered decision in light of factors like nature of posts, period of appointments, and absence of specific allegations against appointees. [Para 45(iii)]

Constitutional Principles – Upholding of Articles 14 and 16 of the Constitution in public recruitment – Requirement of adherence to stipulated selection criteria and avoidance of mid-process alterations without due notification and opportunity to all potential candidates. [Paras 26, 34]

Administrative Decision-Making – State's discretion in prescribing qualifications and conducting recruitment – Judicial restraint emphasized unless recruitment policy is malafide, arbitrary, or irrational. [Para 39]

Referred Cases:

- Rakesh Kumar Sharma vs. State (NCT of Delhi) & Ors. (2013) 11 SCC 58
- Bedanga Talukdar vs. Saifudaullah Khan (2011) 12 SCC 85
- Sanjay K. Dixit v. State of U.P. (2019) 17 SCC 373
- Mukul Kumar Tyagi vs. State of U.P. (2020) 4 SCC 86
- Krishna Rai v. Banaras Hindu University (2022) 8 SCC 713
- Union of India vs. Somasundaram Viswanath & Ors. (1989) 1 SCC 175
- P.D. Aggarwal & Ors. vs. State of U.P. & Ors. (1987) 3 SCC 622
- Dhananjay Malik vs. State of Uttaranchal (2008) 4 SCC 171
- State of Gujarat vs. Arvindkumar T. Tiwari (2012) 9 SCC 545
- Maharashtra Public Service Commission vs. Sandeep Sudhakarrao Lavhekar (2019) 6 SCC 362
- State of M.P. vs. Raghuveer Singh Yadav (1994) 6 SCC 151
- Shankarsan Dash vs. Union of India (1991) 3 SCC 47

- Mohammad Shujat Ali & Ors. vs. Union of India & Ors. (1975) 3 SCC 76
- Bank of India vs. Aarya K. Babu (2019) 8 SCC 587
- Zahoor Ahmad Rather & Ors. vs. Sheikh Imtiyaz Ahmad & Ors. (2019) 2 SCC 404

J U D G M E N T

MANOJ MISRA, J.

1. Leave granted.

2. All these appeals are directed against a common judgment and order[1] of the High Court[2] disposing of a batch of writ petitions as well as intra-court appeals concerning recruitment on the post of Junior Office Assistant[3][4], a Class III (Non-gazetted) post, under the Government of Himachal Pradesh[4]. There being a commonality of law and facts concerning these appeals, they are being decided by a common judgment.

Factual Matrix

3. As these appeals arise from multiple proceedings, a disclosure of relevant facts in a chronological order would be apposite. These facts are set out below:

(A) On 24.12.2014, Himachal Pradesh, Department of Personnel, Junior Office Assistant (Information Technology), Class-III, (Non-Gazetted), Ministerial Services, Common Recruitment and Promotion Rules, 2014[5], framed under the proviso to Article 309 of the Constitution of India[5], were notified with a view to have common recruitment and promotion rules for the post of JOA in various departments of the Government. Relevant provisions of the 2014 Rules are detailed below:

(1) Rule 7 prescribed qualifications for the post of JOA as follows:

---

[1] Order dated 31.12.2021
[2] High Court of Himachal Pradesh
[3] JOA
[4] Govt.
[4] Rules
[5] Constitution

*"(a) **Essential Qualification**:*

(i) 10 + 2 from a recognized Board of School Education/University,

(ii) One year diploma in Computer Science/ Computer Application/ Information Technology from a recognized University/Institution and

(iii) Computer typing speed of 30 words per minute in English or 25 words per minute in Hindi

OR

(i) 10 + 2 from a recognized Board or School Education/University.

(ii) 'O' or 'A' level Diploma from National Institute of Electronics & Information Technology (NIELIT)

(iii) Computer typing speed of 30 words per minute in English or 25 words per minute in Hindi

OR

(i) 10 + 2 from a recognized Board or School Education/University.

(ii) Diploma in Information Technology (IT) from a recognized ITI/Institution.

(iii) Computer typing speed of 30 words per minute in English or 25 words per minute in Hindi

(b) Desirable Qualification(s):
Knowledge of customs, manners and dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Pradesh."

(2) Rule 15 prescribed the mode of selection for appointment to the post by direct recruitment as follows:

"Rule 15. Selection for appointment to the post by direct recruitment – Selection for appointment to the post in the case of direct recruitment shall be made on the basis of viva-voce test, if Himachal Pradesh Public Service Commission or other recruiting authority, as the case may be, so consider necessary or expedient by a written test or practical test, the standard/ syllabus, etc. of which will be determined by the Commission or other recruiting authority, as the case may be."

(3) Rule 18 conferred power on the State Govt. to relax any of the provisions of the Rules in following terms:

"Rule 18. Power to Relax -- Where the State Govt. is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing and in consultation with the Himachal Pradesh Public Service Commission, relax any of the provision (s) of these rules with respect to any class or category of person (s) or post(s)."

(B) On 13.02.2015, Himachal Pradesh Subordinate Services Selection Board[6] *vide*
Advertisement No. 30 of 2015 invited applications for selection / appointment on 1421 post (s) of JOA (Post Code 447) prescribing same qualifications as in Rule 7 of the 2014 Rules. The last date for submission of application was 18.03.2015. However, for residents of certain districts, it was 02.04.2015. But the date(s) were extended up to 31.10.2015. Clause 4 of the general conditions in the advertisement specifically provided that, "*the candidate must fulfil / possess all the required essential educational and other qualifications mentioned against each code on or before the last date fixed for the receipt of application forms,*

---

otherwise the candidature will be rejected at the time of Personal Interview."

(C) As large number of applicants had done their computer course from Private Institutes, the Principal Secretary (Education) to the Govt. was requested to inform:

(i) whether a candidate could be considered eligible if he has certificate / diploma from any registered Institute, whether operating within or outside the State;

(ii) the name(s) / list of registered / recognized institutes whose diplomas / certificates could be considered valid for determining eligibility for the post.

(D) In response to the above, on December 2, 2015, the Additional Chief Secretary (Personnel) to the Govt. wrote a letter to the Selection Board stating:

"It is informed that the provisions of the Rules regarding essential qualifications are crystal clear which provides that Diploma in Computer Science, Computer Application, Information Technology from a recognized University/Institution/ITI OR "O" Or "A" level diploma from National Institute of Electronics and Information Technology (NIELIT) only are required and the question of registered/unregistered institution

---

[6] Selection Board

does not arise. As regard the information on point-II, the clarification can be obtained by you from the Education Department or IT Department."

(E) The above stand was reiterated in letter dated February 25, 2016. However, as list of registered / recognized institutes, whose diplomas / certificates were valid / recognized for determining eligibility to the post, was not available, the Commission wrote a letter to the Director of Higher Education, Himachal Pradesh, marking its copies to Additional Chief Secretary (Education), Govt., Director IT, Govt. and Secretary, H.P. Board of School Education, Dharamshala, for a list of recognized institutions / institutes.

(F) Pursuant to the correspondences above, the Directorate of Higher Education, Himachal Pradesh, Shimla, *vide* letter dated 27.05.2017, provided a list of institutions recognized by Himachal Pradesh *Takniki Shiksha* Board[7], Dharamshala, District Kangra, Himachal Pradesh.

(G) In between, candidature of several candidates was rejected for not possessing essential qualifications as prescribed by the 2014 Rules. Aggrieved by rejection of their candidature, some of these candidates preferred Original Applications[8] (for short O.A.) before the Tribunal[9], wherein an interim order was passed on 30.06.2017. The operative portion of which is extracted below:

"All the applicants are 10+2. However, the nomenclatures of the one-year diploma held by them in Computer is not in consonance with the nomenclature of the diploma mentioned in the aforesaid education qualifications. However, prima facie, it is made out that they are holding one year diploma in computer. In such circumstances, there shall be a direction in the interim to the Respondent Commission to permit

the applicants, who admittedly have already appeared in the written/Typing Test, to appear in the interview, provisionally. However, their result shall not be declared and instead kept in a sealed cover till the matter with regard to equivalence of the diploma held by them with the diploma required as per the aforesaid educational qualifications is considered and decided by the newly added Respondent No.2- State, which shall be done as expeditiously as possible but within the reasonable time frame."

(H) In deference to the above order, the Commission sought directions / clarifications / guidance from the Govt., *inter alia*, on the following issues:

(1) Whether the diplomas possessed by those applicants equivalent to the diploma required by the Rules.

---

[7] Takniki Board

[8] O.A. Nos.2830, 2989, 2994, 2998, 3009 and 3026 of 2017

[9] Himachal Pradesh State Administrative Tribunal

(2) Whether diploma / certificate obtained from private Institutes, regarding which there was no information about their recognition, could be considered as one from a recognized University / Institute.

(I) Pursuant to that, the Commission was informed about the Govt.'s decision dated 21.08.2017, which was in the following terms:

"(1) All such candidates having one year Diploma in Computer or higher qualification in Computer Science/Application/IT from any private Institution like from Society under Societies Act, *Rashtriya Saksharta* Mission IT programme/Skill Development Programme etc. be considered for final selection subject to having successfully passed their skill test i.e. Typing Test on Computer and after having obtained their undertaking/ declaration certifying that they had attended the classes/ diploma course by attending the classes regularly.

(2) That the Computer Science is not limited to the specific nomenclature of Diploma prescribed in the R&P Rules, as such, the Diploma in Computer and other Higher Qualifications belonging to Computer Science/ application irrespective of their nomenclature be also considered for final selection subject to having successfully passed their skill test i.e. Typing Test on Computer and after having their undertaking/declaration certifying that they had attended the classes/diploma course by attending the classes regularly. There may be instance where certificates are issued instead of diploma, in such cases, the Commission is to ascertain and ensure that subjects studied are at par with one year Diploma course in Computer Science/ Application/IT.

(3) The date of personal interview of the candidate concerned in the instant case be treated as valid date for evaluation/ consideration/ acceptance of his/ her diploma/ essential qualification.

(4) With regard to educational qualification, as informed during the meeting, the Commission has sought clarification of equivalence in some cases from the concerned authorities, therefore, the Commission need to proceed further in accordance with the clarification/ decision obtained from the State Level Board of Equivalence Committee / H.P. Board of School Education by accepting the qualification of such candidate(s) for his job if that is found equivalent to 10+2 and valid for pursuing higher studies."

(J) As a result of the above decision, many candidates who, as per the 2014 Rules, were not eligible, came within the zone of consideration and as such included in the select list, resulting in ouster of such candidates who, though lower on merit, were otherwise eligible as per the 2014 Rules. Therefore, some of those ousted candidates laid a challenge to the merit list before the Tribunal through O.A. No. 5543 of 2017 which, consequent to abolition of the Tribunal, came to be transferred to the High Court and was registered as Writ Petition No. 34 of 2019. Notably, though O.A. No. 5543 of

2017 was filed after declaration of the final select list, only three or four selected candidates were initially impleaded as opposite parties.

(K) While the recruitment / selection exercise under the Advertisement dated 13.02.2015 was ongoing, a fresh Advertisement No. 32-3/2016, dated 18.10.2016, was issued by the Commission inviting applications for another set of 1156 posts of JOA (IT) (Post Code 556) with the same qualifications as prescribed in the 2014 Rules.

(L) At this stage, it would be relevant to point out that, broadly, two sets of cases cropped up from the recruitment exercise for Post Code 447, namely,

(i) O.A. Nos. 2830; 2989; 2994; 2998; 3009; and 3026 of 2017, which came to be renumbered as Writ Petition Nos. 2253; 2289; 2290; 2388; 2394; and 7681 of 2020 before the High Court after abolition of the Tribunal. These cases were at the instance of candidates whose candidature was rejected for not possessing qualifications as prescribed by the 2014 Rules.

(ii) O.A. No. 5543 of 2017, filed on 13.10.2017, which, upon transfer to the High Court, came to be registered as Writ Petition No. 34 of 2019 before the High Court. This was by those candidates who were not placed in the select list. Their claim was that the relaxation order dated 21.08.2017 resulted in inclusion of ineligible candidates and, therefore, they were ousted from the merit list. In this O.A. No. 5543 of 2017), the relief(s) sought were:

(i) That clarification dated 21.08.2017 and Office Order dated 18.09.2017 be quashed and set aside; and

(ii) That Commission be directed to prepare a merit list from amongst those candidates who possess essential and minimum qualification as mentioned in Advertisement No. 30 of 2015, dated 13.02.2015, and make recommendation accordingly.

(M) As in between, another Advertisement (i.e., for Post Code 556) was issued, the State Government *vide* letter dated 19.03.2018 directed the Commission to apply the clarification issued on 21.08.2017 for Post Code 556 as well. The relevant portion of the letter dated 19.03.2018 is extracted below:

"I am directed to refer to your letters No. HPSSCC(2)-970/16 dated 01-01-2018 & 16-02-2018 on the subject cited above and to say that since the posts of Junior Office Assistant (IT), Class-III (NonGazetted) have been advertised under different post codes i.e., Post Code 447 and 556 but are to be filled up under one set of common Recruitment & Promotion Rules for the post and as such carry one or similar cadre, it has been decided that the clarification dated 21-08-2017, issued by this department on the directions of Hon'ble Himachal
Pradesh Administrative Tribunal in respect of Post Code 447, be also implemented in the on-going process under Post Code 556, being recruitment for the same post with similar provisions of rules. However, the clarification/instructions dated 2108-2017 are under challenge before

the Hon'ble Court, as such, its implementation will be subject to final outcome of Hon'ble Court orders so passed in case of post code 447 in the pending matters."

(N) The above decision of the State Government gave rise to another set of litigation (i.e., Writ Petition No. 7585 of 2019) filed by candidates desirous of selection strictly as per the 2014 Rules. Whereas candidates who sought benefit of the relaxation directed *vide* letter dated 19.03.2018 filed another set of petitions. This latter bunch of petitions were allowed by a Single Judge Bench of the High Court. Against which, the Commission preferred an intra-court appeal before a Division Bench of the High Court.

(O) At this stage, it be clarified that despite request to apply the relaxation accorded for Post Code 447 on Post Code 556 as well, the select list for Post Code 556 was prepared strictly in accordance with the 2014 Rules, because in O.A. No. 2644 of 2018, which later came to be registered as Writ Petition No. 7585 of 2019, the Tribunal, *vide* order dated 16.08.2018, had allowed declaration of results in the following terms:

"In the facts and circumstances, materials on record and interest of justice, subject to keeping fifteen posts of Junior Office Assistant vacant for the applicants and final outcome of the original application, respondent no. 3-Commission shall be free to declare the result of the process for recruitment to the post of Junior Office Assistants."

The above order was assailed before the High Court through Writ Petition No. 1964 of 2018, which was disposed of *vide* order dated 28.08.2018 in the following terms:

"In this background we clarify that the appointments to the posts of Junior Office Assistant (Code 556) shall be strictly in accordance with the Common Recruitment & Promotion Rules for the posts of Junior Office Assistant (Information Technology), Class-III (Nongazetted) in various Departments of Himachal Pradesh Government, as also Advertisement No. 32-3/2016 and not in terms of communication, dated 19th March 2018."

A review of the order dated 28.08.2018 was sought, which was decided on 05.11.2018 in the following terms:

"Be that as it may, as the matter is sub judice before the learned Tribunal and the Committee which has submitted its report on 21.08.2017, has been so constituted by the learned Tribunal, its recommendations, can be looked into by the learned Tribunal uninfluenced by any observation made by this Court in the perspective of the Common Recruitment & Promotion Rules, in the backdrop of the controversy involved in the application before it."

(P) In between, another O. A. No. 7397 of 2018 was filed before the Tribunal praying that persons holding qualifications other than the one prescribed be not considered for selection. On this application, an order dated 21.12.2018 was passed requiring the Commission to make selections against Post Code 556 strictly as per 2014 Rules.

(Q) The order of the Tribunal dated 21.12.2018 was challenged before the High Court in Writ Petition No. 161 of 2019. Therein, on 11.01.2019, an interim order was passed in the following terms:

"Meanwhile the operation of the impugned order dated 21.12.2018 (Annexure P-7) passed by Himachal Pradesh Administrative Tribunal in O.A. No. 7397 of 2018 shall remain stayed. However, the Staff Selection Commission shall only allow the eligible candidates to participate in the process."

(R) In the light of various interim orders, after carrying out the selection process, the Commission declared result of Post Code 556 on 23.02.2019 thereby recommending 596 candidates only. While doing so, candidature of several candidates, who were found ineligible under the 2014 Rules, was rejected.

(S) The candidates who were rejected as ineligible approached the Tribunal. On 26.02.2019, the Tribunal, in O.A. No. 677 of 2019 (later registered as Writ Petition No. 20 of 2019), directed status quo with regard to appointments pursuant to the declared result for Post Code 556.

(T) Aggrieved by the order of the Tribunal dated 26.02.2019, a group of selected candidates filed Writ Petition No. 629 of 2019 before the High Court. On

29.08.2019, Writ Petition Nos. 161 of 2019 and 629 of 2019 were finally decided, whereby Writ Petition No. 161 of 2019, filed by candidates claiming to possess qualifications higher than prescribed, was dismissed; and Writ Petition No. 629 of 2019 filed against the interim order dated 26.02.2019 was allowed.

(U) The order dated 29.08.2019 passed in Writ Petition Nos. 161 of 2019 and 629 of 2019 was subjected to a Special Leave Petition (Civil) No. 45 of 2021, which was dismissed by this Court *vide* order dated 15.11.2021. In these circumstances, selection / recruitment for Post Code 556, under the Advertisement dated 18.10.2016, was carried out strictly in accordance with the 2014 Rules. And 531 posts advertised for Post Code 556 remained unfilled.

(V) There was another petition, namely, writ Petition No.2246 of 2019, filed by candidates who were excluded from consideration though they held

equivalent qualifications for Post Code 556. Here, an interim order was passed directing that any appointment against Post Code 556 shall be subject to the orders passed in that petition.

(W) On 06.12.2019, the State Government directed the Commission to treat the recruitment process for Post Code 556 concluded. It also requested the Commission to re-advertise the unfilled posts and carry out recruitment as per new Common Recruitment & Promotion Rules of the year 2020, which prescribed the essential qualifications as follows:

"***(a) ESSENTIAL QUALIFICATION(S):***
(i) Should have passed 10+2 from a recognized Board of School Education
/University.
OR
Matriculation from recognized Board of School Education with one/two year's Diploma/Certificate from an Industrial Training Institute (ITI) in Information Technology Enabled Sectors (ITES) as notified by Director General of Employment & Training (Govt. of India) from time to time or three years Diploma in Computer Engineering /Computer Science/ IT from
Polytechnic as approved by All India Council for Technical Education (AICTE)."

(X) Pursuant thereto, on 21.09.2020, a fresh advertisement No. 36-2/2020 was issued by the Commission inviting applications for the post of Junior Office Assistant-JOA (IT) (Post Code 817).

(Y) On issuance of fresh advertisement, in Writ Petition No. 2246 of 2019, following interim order was passed:

"Pursuant to Advertisement No. 36-2/2020 dated 21.09.2020, issued by respondent-HPSSC for the post of Junior Office Assistant-JOA (IT), the respondent-Himachal Pradesh Staff Selection Commission, Hamirpur is permitted to proceed with the recruitment process, however, the final result shall not be announced without permission of this Court. Applications stand disposed of."

Summary of the Litigation before the High Court

4. A conspectus of the narration above would indicate that litigation emanated from three successive advertisements issued by the Selection Board/ Commission inviting applications for the post of JOA (IT). The first advertisement is dated 13.02.2015 for 1421 posts (i.e., Post Code 447). The second is dated 18.10.2016 for 1156 posts (i.e., Post Code 556); and the third is dated 21.09.2020 for 1869 posts (i.e., Post Code 817).

5. Under the first advertisement for Post Code 447, the advertised posts were filled with the aid of the order dated 21.08.2017, which relaxed the

advertised eligibility conditions. The litigation therein was initiated by two sets of candidates. One set comprised of those whose candidature got rejected because they failed to meet the eligibility criteria prescribed in the advertisement and the 2014 Rules. The other set comprised of those candidates who were aggrieved by relaxation of the eligibility criteria as it expanded the zone of consideration and thereby reduced their chance of selection. They, therefore, questioned the validity of the order of relaxation dated 21.08.2017 as also the selection made thereunder. The challenge laid by them was to the effect that once the 2014 Rules prescribed the essential qualifications, and the advertisement prescribed the same essential qualifications without reserving any power to relax the same at any later stage, how could there be a relaxation of these prescribed essential qualifications. Their prayer, therefore, was that the select list must comprise of only such candidates who hold the prescribed minimum eligibility qualifications by the last date for receipt of the application under the advertisement. Such a challenge was laid through Writ Petition No. 34 of 2019, which was originally filed before the Tribunal as O.A. No. 5543 of 2017.

6. In respect of recruitment against the second advertisement for Post Code 556, challenge was laid by those who either held qualifications at variance from the one prescribed, or had certificate(s) / diploma(s) from such institutes that were not considered recognized. Their challenge was premised on the relaxation granted earlier in connection with the exercise under the first advertisement for Post Code 447. Their case was that once relaxation to the eligibility conditions prescribed in the 2014 Rules was allowed *qua* the first advertisement, the recruitment to the same post, advertised as Post Code 556, under the same set of Rules, must be subject to same relaxation. These candidates, therefore, challenged rejection of their candidature and prayed that the meritlist be re-drawn by treating their candidature as valid.

7. In respect of the third advertisement dated 21.09.2020, the challenge was confined to 531 posts that were carried forward as unfilled vacancies notified under the second advertisement for Post Code 556. In this category of cases, the claim was that vacant posts of JOA, advertised as Post Code 556, should not have been left unfilled as eligible candidates were available had the benefit of the relaxation been provided. They, therefore, claimed that those carry forward posts, now advertised as Post Code 817, be segregated and filled as part of the second advertisement by taking into consideration those candidates who would be eligible by virtue of the relaxation.

Findings / Observations of the High Court in the impugned judgment

8. The High Court found / held / observed:

(i) The essential qualifications prescribed in the 2014 Rules as "one year diploma in Computer Science / Computer Application / Information Technology from a recognized University / Institution" is ambiguous and creates confusion, firstly, because expression "recognized University / Institution" is not defined, and, secondly, diploma qualification may be held under different nomenclatures. The High Court held that though there could be no dispute regarding a recognized University but as regards the authority competent to recognize an institution to award a diploma, there is no clarity. Therefore, the decision to relax the essential qualifications dated 21.08.2017 was within the powers of the State Government conferred by Rule 18 of the 2014 Rules. Hence, it was rightly applied on the recruitment exercise carried out under the first advertisement dated 13.02.2015. (ii) Computer Science / Information Technology are subjects of wide amplitude and are admissible to differing nomenclatures and cannot be restricted to the one found in the 2014 Rules / Advertisement. Thus, in absence of any clarity as to the kind of curricula required to obtain the required diploma / certificate to become eligible, the decision of the State Government dated 21.08.2017 cannot be faulted, particularly, when there is no clarity as to the authority competent to accord recognition. While holding so, the High Court took note of the essential qualifications prescribed in the 2020 Rules for the post of JOA (IT), which were more specific as regards the authority competent to recognize.

(iii) Advent of computerization and wide use of information technology has caused a sense of urgency for appointment(s) on the posts advertised across various departments of the State Government. This is reflected by successive advertisements for the posts. In that scenario, to meet the exigency, if an exercise to constitute an equivalence committee was undertaken pursuant to a judicial order of the Tribunal dated 30.06.2017, which was not assailed by any of the writ petitioners, departure, if any, from the 2014 Rules cannot be faulted. Otherwise also, where rules are ambiguous, and it may take time to amend the rules, relaxation and clarifications are permissible as part of administrative exigency.

(iv) There is nothing on record to infer that action of the State Government / HPSSC was actuated by extraneous consideration(s) or lack of bona fide(s).

(v) The petitioners could not substantiate that anyone or more of the selected persons obtained the requisite qualifications after the cut-off date.

Impugned Decision of the High Court

9. In light of the findings / observations noticed above, the High Court dismissed Writ Petition No. 34 of 2019 which questioned the relaxation order; and upheld the process of selection and appointment against Post Code 447. Consequent to the dismissal of Writ Petition No. 34 of 2019, other writ petitions, namely, numbered 2253, 2289, 2290, 2388, 2394 and 7681 of 2020, which were filed for consideration of candidates who benefited from the relaxation order, were dismissed as infructuous.

10. Writ petitions seeking relaxation in the eligibility conditions for the second advertisement (i.e., for Post Code 556) in terms provided for Post Code 447, were disposed of by directing that same relaxation be accorded for Post Code 556 as accorded for Post Code 447. In consequence, the High Court, in paragraphs 33 and 34 of the impugned judgment, directed:

"*33. Thus, the HPSSC is directed to re-cast the merit list for JOA 556 by including all categories of candidate as was done for JOA 447 on the basis of decision of Government dated 21.8.2017/ 18.9.2017 and further made applicable to JOA 556 vide communication 19.3.2018 except the candidates with higher qualification, who have already been held ineligible vide judgment dated 29.8.2019 of a Division Bench of this Court in CWP 161/2019. These selections for JOA 556 shall be made by taking into account the entire number of vacancies advertised for JOA 556 and the decision of the Government/HPSSC to close the selection procedure for JOA 556 is set aside and quashed.*

34. Since the Common R&P Rules stand amended by 2020 Rules and the cause of persistent confusion for the time being appears to have been removed, as a necessary consequence selection for JOA 817 shall take place in accordance with 2020 Rules, however, the selection process shall not include the selection for posts which were left over from advertised posts of JOA 556 as the said posts have already been directed to be filled
through selection process of JOA 556."

11. The resultant effect of the above directions would be that for recruitment against Post Code 556, candidates who, but for the relaxation dated 21.08.2017, were ineligible under the 2014 Rules, were to be treated eligible and the merit list redrawn accordingly. Not only that, 531 posts of Post Code 556, which remained unfilled, and, therefore, carried forward, and re-advertised on 21.09.2020, were to be segregated and filled in terms of the direction above. In consequence, the number of posts advertised under the

advertisement dated 21.09.2020 were to get reduced to that extent. However, as per the decision of the High Court, the candidates who professed holding qualifications higher than the one prescribed were not to get any benefit as that issue already stood concluded *vide* judgment and order of the High Court dated 29.08.2019, passed in Writ Petition No.161 of 2019, against which SLP (C) No.45 of 2021 was dismissed by this Court.

Appeals Before This Court

12. **(A) Arising out of SLP (C) No. 730 of 2022:**

This appeal questions the direction given in paragraph 33 of the impugned judgment. The appellants herein claim that they hold the requisite eligibility qualifications prescribed by the 2014 Rules as well as the advertisement; they participated in the recruitment exercise for Post Code 556 and were placed in the merit-list; if candidates who were otherwise not eligible, but for the relaxation, are permitted to be considered, as directed in paragraph 33, the merit-list might have to be re-drawn and they may be ousted and replaced by those who, otherwise, were ineligible. These appellants have, therefore, prayed that the direction given by the High Court in paragraph 33 of the impugned judgment be quashed and the earlier meritlist be not disturbed.

In this appeal, intervention / impleadment application(s) (i.e., I.A. Nos. 30862 of 2022; 26627 of 2022; and 73507 of 2022) have been filed by such candidates who were to benefit by the direction given in paragraph 33 of the impugned judgment.

Another I.A. No 14524 of 2022 has been filed for impleading parties who had put in appearance through various intervention applications. Yet another I.A. No. 5062 of 2022 has been filed to bring on record:

(a) a copy of letter issued by the Director of Higher Education, Govt. of Himachal Pradesh;

(b) copy of the order of the High Court dated 29.08.2019 passed in Writ Petition Nos. 629 of 2019 and 161 of 2019; and

(c) copy of the order dated 15.11.2021 passed by this Court in SLP (C) No. 45 of 2021 whereby Special Leave Petition preferred against the order of the High Court dated 29.08.2019 was dismissed.

(B) Arising out of SLP (C) No. 729 of 2022:

This appeal is also at the instance of those candidates who were considered and selected under the second advertisement for Post Code 556.

They are, therefore, similarly aggrieved as the appellants of appeal arising out of SLP (C) No. 730 of 2022.

In this appeal, too, an Impleadment Application No. 15047 of 2022 has been filed to bring on record parties who had put in appearance through various intervention applications.

(C) Arising out of SLP (C) No. 4321 of 2022:

This appeal is by the writ petitioners of Writ Petition No. 34 of 2019 before the High Court. They are aggrieved by dismissal of their writ petition which sought: (a) quashing of the relaxation order dated 21.08.2017; and (b) a direction upon HPSSC to prepare the merit-list by including only those candidates who possess essential minimum qualifications as specified in advertisement No. 30 of 2015 dated 13.02.2015.

Appellants herein are those candidates who failed to find their name in the select list prepared after the recruitment exercise under the first advertisement for Post Code 447.

In this appeal, I.A. No. 56457 of 2022 has been filed for bringing on record copy of the order dated 29th March 2022 passed by the High Court in Writ Petition No. 113 of 2019 whereby the said writ petition was dismissed by a Single Bench of the High Court.

Another I.A. No. 100627 of 2022 has been filed by a bunch of candidates who claim to have possessed qualifications higher than the one specified in the Advertisement for Post Code 447. According to them, they hold Degree instead of Diploma and Degree being higher than Diploma, they were eligible.

Yet another I.A. No. 188852 of 2022 has been filed to bring on record:

(i) An RTI query report dated 02.07.2022. This is to the effect that the relaxation order dated 21.08.2017 was not published in any Newspaper, E-Gazette or Official website; and

(ii) A chart containing reasons as to why some of the selected candidates were not qualified/ eligible for consideration against Post Code 447. *Note: It is not clear whether this chart was ever placed before the High Court.*

(D) Arising out of SLP (C) No. 9977 of 2022:

This appeal is by those candidates who participated under the second advertisement and got selected for appointment against Post Code 556. They are aggrieved by the direction contained in paragraph 33 of the impugned judgment. They apprehend that if the merit-list is redrawn by including those

who were otherwise ineligible under the 2014 Rules, they may go out of the merit-list. Their case is thus identical to the appellants in the appeal arising out of SLP (C) No. 730 of 2022.

In this appeal, I.A. No. 77624 of 2022 has been filed to bring on record an application filed by one of the candidates under the advertisement for Post Code 556 to initiate contempt proceeding against the State for noncompliance of the directions contained in the impugned judgment of the High Court.

(E) Arising out of SLP (C) No. 17676 of 2022:

This appeal is by those who have applied under the third advertisement dated 21.09.2020 *qua* Code 817. Their grievance is that if the direction given in paragraphs 33 and 34 of impugned judgment is implemented, the number of posts advertised would get reduced thereby affecting their chances of selection.

Interim Orders passed during pendency of the proceedings:

13. In Special Leave Petition (C) No. 730 of 2022, on 12.01.2022, an interim order was passed putting in abeyance the direction contained in paragraph 33 of the impugned judgment. Likewise, in SLP (C) No. 17676 of 2022, an interim order was passed on 30.09.2022 putting in abeyance the direction contained in paragraph 34 of the impugned judgment.

14. We have heard learned counsel for the appellants; the learned counsel for the respondents / Intervenors and the Advocate General of the State of Himachal Pradesh, who appeared for the State and the Commission.

Submissions on behalf of Appellants

15. Ms. Kaveeta Wadia, who led the arguments on behalf of the appellants in appeals arising out of SLP (C) Nos. 730 of 2022, 729 of 2022 and 9977 of 2022, *inter alia*, submitted:

(i) The first and second advertisements (i.e., dated 13.02.2015 and 18.10.2016) were issued during currency of the 2014 Rules. The 2014 Rules prescribed eligibility qualifications in unequivocal terms and the advertisements specified the same qualifications with a clear stipulation that candidates applying thereunder must hold the requisite qualifications by the last date for receipt of the application. The last date for receipt of application under the first advertisement was 31.10.2015, and under the second advertisement it was 17.11.2016. Both the advertisements did not reserve the

power to relax the eligibility criteria at any later stage. In these circumstances, the relaxation accorded on

21.08.2017, after the last date for receipt of the applications, was illegal.

(ii) The High Court erred in observing that relaxation was necessitated because, (a) there could be confusion as to the true import of the expression "recognized University / Institution" and (b) there could be institutions conducting the same course under a different nomenclature. These observations of the High Court were in ignorance of the statutory regime in place since 1986 *vide* Himachal Pradesh Takniki Shiksha Board Act, 1986[11] and the

Regulations framed thereunder, set out below:

Section 2 of the 1986 Act provides:

"*In this Act, unless the context otherwise requires,-*
(a) "affiliated institution" means an institution affiliated to the Board in respect of any course or courses of study in accordance with the provisions of the Act or regulations made thereunder;
(b) "Board" means the Himachal Pradesh Takniki Shiksha Board established under section 3……..;
(e) "certificate" means the certificate awarded by the Board to a person for successfully completing in an affiliated institution such courses of study as may from time to time be prescribed by regulations ……;
(g) "diploma" means a diploma awarded by the Board to a person for successfully completing in an affiliated institution such courses of study as may from time to time be prescribed by regulations ……..;
(i) "industrial training" means training imparted to students in Industrial Training Institutions;

---

[11] 1986 Act
(j) "institution" means institution imparting technical education and industrial training ……..;
(s) "technical education" means the education imparted to students in the technical institutions;"

Section 12 of the 1986 Act specifies functions and duties of the Board as follows:

"**12. *Functions* and duties of the Board.-**
Subject to the provisions of this Act and the rules and regulations made thereunder, the functions and duties of the Board shall be-
(i) to affiliate institutions and prescribe courses of study and instructions leading to examinations conducted by it;
(ii) to prescribe standards for buildings and equipment of affiliated institutions;
(iii) to prescribe educational qualifications and other standards for the members of the staff of the affiliated institutions;

(iv) to prescribe educational qualifications for admission of students to affiliated institutions; (v) to prescribe the manner of admission of students to affiliated institutions;

(vi) to admit candidates to examinations conducted by it;

(vii) to conduct examinations for promotion from lower to higher classes and also for awarding certificates and diplomas;

(viii) to publish results of examinations conducted by it;

(ix) to grant certificates and diplomas to students who have completed the prescribed course of study in an affiliated institution and have passed the examinations conducted by it; (x) to co-operate with other authorities and bodies in such manner and for such purposes as may be necessary for giving effect to the provisions of this Act;

(xi) to advise the State Government on coordinated development of technical education and training regarding the same;

(xii) to do all other such acts and things as may be necessary for the proper discharge of its functions under this Act or the rules or regulations made thereunder; and

(xiii) to carry out such other duties as may be imposed upon it under this Act or the rules or regulations made thereunder"

Section 13 of the 1986 Act confers power on the Board in following terms:

"**13. <u>Power of the Board.-</u>**

(1) The Board shall, subject to the provisions of this Act and the rules made thereunder, have all such powers as may be necessary for the discharge of its functions and the performance of its duties under this Act and rules or regulations made thereunder.

(2) In particular and without prejudice to the generality of the foregoing powers, the Board shall have the powers-

(i) *after giving the candidate a reasonable opportunity of being heard, to cancel an examination, or withhold the result of an examination, of a candidate, or to disallow him from appearing at any future examination who is found by it to be guilty of-*

(a) using unfair means in the examination;

(b) making any incorrect statement or suppressing material information or fact in the application form for admission to the institution or to the examination;

(c) fraud or impersonation at the examination;

(d) securing admission to the examination in contravention of the rules governing admission to such examination; or

(e) any act of gross indiscipline in the course of the examination;

(ii) *to deduct marks at any examination of any candidate found by it to be guilty of any act of indiscipline in the course of the examination;*

(iii) *to cancel the result of an examination of any candidate found by it to be guilty of all or any of the acts mentioned in sub-clauses (a) to (d) of clause (i) or for any bona fide error of the Board in the declaration of the result: Provided that the result of an examination shall not be cancelled on the*

ground of a bona fide error of the Board, after the expiry of 90 days from the date of announcement of the result of the examination;

(iv) *to prescribe fees for the examinations conducted by it and provide for the manner of their realisation;*

(v) *to refuse affiliation of an institution- (a) which does not fulfil, or is not in a position to fulfil or does not come up to the standards for staff, instruction, equipment or buildings laid down by the Board in this behalf, or*
(b) which does not or is not willing to abide by the conditions of affiliation laid down by the Board in this behalf;

(vi) *after giving the institution concerned a reasonable opportunity of being heard, to withdraw affiliation of an institution not able to adhere to or make a provision for standards of staff, instruction equipment or buildings laid down by the Board, or on its failure to observe the conditions of affiliation to the satisfaction of the Board;*

(vii) *to call for reports from the heads of affiliated institutions in respect of any act done in contravention of the rules or regulations or decisions, instructions or directions of the Board, and take suitable action for the enforcement of the rules or regulations or decisions, instructions or directions of the Board, in such manner as may be prescribed by the regulations;*

(viii) *to inspect an affiliated institution for the purpose of ensuring due observance of the prescribed courses of study and to ensure that facilities for instructions are duly provided and availed of; and*

(ix) *to fix the maximum number of students that may be admitted to courses of study in an affiliated institution.*

(3) The decision of the Board in all matters mentioned in sub-sections (1) and (2) shall be final."

Section 15 of the 1986 Act confers power on the Board to make regulations in following terms:

"**15. <u>Power to make regulations:-</u>**

(1) The Board may, for carrying out the purposes of this Act, make regulations consistent with the provisions of this Act and the rules framed thereunder and submit the same for approval of the State Government. The State Government may approve, modify or vary the regulations. The regulations, as approved by the State Government, shall be published in the Official Gazette and shall take effect from the date of publication, and where a date has been specified from that date.

(2) Without prejudice to the generality of the foregoing powers, the regulations may provide for-

(a) the appointment, constitution, powers and duties of the committees and sub-committees constituted under this Act;

(b) the manner and conditions of conferment of certificate and diplomas;

(c) the conditions for affiliations of institution;

(d) the courses of study to be prescribed for certificate and diploma examinations;
(e) the conditions under which candidates shall be admitted to the examination of the Board and shall be eligible for certificates and diplomas; (f) the fees for admission to the examinations of the Board and the
manner of their realisation;
(g) the conduct of examinations;
(h) the appointment of examiners, moderators, collators, scrutinizers, tabulators, centre inspectors, superintendents of centres and invigilators, and their duties and powers in relation to the Board's examinations, and the rates of their remuneration;
(i) standards for buildings, including land appurtenant thereto, the equipment and apparatus necessary
for institutions seeking affiliation;
(j) publication of results of
examinations conducted by the Board; (k) the minimum educational and other qualifications for admission of
students to an affiliated institution; (l) admission of students to affiliated institutions;
(m) the inspection of affiliated institutions with a view to ensuring due observance of the prescribed courses of study and that facilities for instruction are duly provided and
availed of;
(n) the conditions under which a candidate may be disallowed admission to the examination of the Board in courses of study in an affiliated institution;
(o) withholding or cancelling results of an examination conducted by the Board and cancelling an examination conducted by it in respect of any candidate;
(p) the circumstances under which affiliation of an institution may be withdrawn or refused;
(q) inspection of a centre; and (r) any other matter which under this Act or rules made thereunder is to be or may be prescribed by regulations."

Section 31 of the Act provides that first Regulations shall be made by the State. It provides:

"**31. First regulations of the Board.-** (1) The First Regulations shall be made by the
State Government and they shall be deemed to
have been made by the Board and continue in force until altered or modified by the Board.

(2) The regulations made under sub-section (1) shall not take effect until these have been published in the Official Gazette"

In exercise of its statutory powers, the *Takniki* Board framed and notified Himachal Takniki Shiksha Board, Regulations 1993[12] under Section 15 read with Section 31 of the 1986 Act. Regulation 6(5) of the 1993 Regulations provided for conferment of Certificates and Diplomas while Regulation 7

prescribed the conditions for affiliation of the Institution. Further, Regulation 6 (5) provided that:

"All diplomas and certificates issued by the Board, NCVT and SCVT will stand automatically recognized by the Government of Himachal Pradesh for the purposes of employment in
Subordinate services."

By placing reliance on the aforesaid statutory provisions and regulations, it was urged that the State was under an obligation to bring the statutory regime to the notice of the High Court so as to remove doubts, if any, about the true import of the phrase "recognized institution" as it occurs in the 2014 Rules. (iii) In addition to the above, the State had notified Himachal Pradesh Private Educational Institutions (Regulatory Commission) Act, 2010[13] which established a Regulatory Commission and

[12] 1993 Regulations
[13] 2010 Act

prescribed a regulatory framework for ensuring appropriate standard of admission, teaching, examination, research and protection of interest of students in Private Educational Institutions and for matters connected therewith or incidental thereto.

(iv) Further, *vide* letter dated 23.05.2017, the Director of Higher Education provided a list of Institutes recognised by the *Takniki* Board. Even RTI noting records that *vide* letter dated 14.06.2017 the Director, Technical Education had provided details of all such institutes. Thus, there was neither any ambiguity in the 2014 Rules nor any doubt about the recognised institutes. Hence, no relaxation / clarification was required.

(v) The relaxation order dated 21.08.2017 was a colourable exercise of powers to push forward a list of unrecognised institutes having support of powerful lobbies.

(vi) Impugned relaxation being after the last date fixed for receipt of the application is in teeth of the law settled by this Court in **Rakesh Kumar Sharma** *vs.* **State (NCT of Delhi) & Ors[10].** That apart, in absence of power reserved in the advertisement to relax the eligibility criteria, and there being no publicity of such relaxation, relaxation of the eligibility criteria falls foul of the law laid down by this Court in **Bedanga Talukdar** *vs.* **Saifudaullah Khan[11]** and **Sanjay K. Dixit v**.

State of U.P.[12]

(vii) Further, a candidate by self-declaration cannot certify his own qualification as equivalent to the one specified. There have to be norms and guidelines for declaring a qualification equivalent to meet the eligibility criteria prescribed by the Rules for the post. However, the Committee approved the candidature / selection of candidates on the basis of self-certification which is impermissible in light of this Court's decision in **Mukul Kumar Tyagi** *vs.* **State**

[10] (2013) 11 SCC 58
[11] (2011) 12 SCC 85
[12] (2019) 17 SCC 373

of U.P.[13] (viii) As relaxation of eligibility criteria was illegal, extension of the same relaxation for Post Code 556 is also illegal. Otherwise also, executive instructions cannot override statutory rules framed under Article 309 of the Constitution of India. In this regard, reliance was placed on decisions of this Court in **Krishna Rai v. Banaras Hindu University**[14]**; Union of India** *vs* **Somasundaram Viswanath & Ors.**[15]**; and P.D. Aggarwal & Ors.** *vs.* **State of U.P. & Ors.**[16].

16. Ms. Vandana Sehgal, who appeared on behalf of appellants in the appeal arising out of SLP (C) No.17676 of 2022, submitted that the third advertisement for Post Code 817 was published on 21.09.2020. By that time Himachal Pradesh, Department of Personnel, Junior Office Assistant (Information Technology), Class III (NonGazetted) Ministerial Services, Common Recruitment and Promotion Rules, 2020[17] were already notified. Thus, recruitment had to be as per the 2020 Rules. The third advertisement also applied the same 2020 Rules; therefore, recruitment could not have been in terms of the 2014 Rules. Thus, relaxation under the 2014 Rules could not have been used to fill up posts advertised under the third advertisement. Therefore, High Court's direction to segregate the posts that were carried forward from the second advertisement and hold recruitment under the old Rules was completely misconceived. More so, when employer cannot be forced to fill all notified vacancies as per old Rules.

Submissions on behalf of respondents

17. Mr. Vivek Narayan Sharma, who appeared for respondent no.7 in SLP (C) No.730, respondent no.5 in SLP (C) No.729 of 2022 and applicants in I.A. No.26627 of 2022 filed in SLP (C) No.730 of 2022 and I.A. No.73507 of 2022 filed in SLP (C) No. 730 of 2022, submitted:

[13] (2020) 4 SCC 86
[14] (2022) 8 SCC 713
[15] (1989) 1 SCC 175
[16] (1987) 3 SCC 622
[17] the 2020 Rules

(i) The High Court justifiably upheld clarifications dated 21.08.2017 and 19.03.2018; (ii) The respondent(s) are eligible in terms of the aforesaid clarifications;

(iii) The argument that to be considered recognised, an institution must have recognition from the *Takniki* Board has been raised for the first time in rejoinder before this Court, therefore, it cannot be entertained at this stage;

(iv) The appointments under Post Code 556 were subject to the outcome of the litigation, therefore the appointees have no right to challenge the decision of the High Court;

(v) The prescribed essential qualification is in fact a non-essential qualification, inasmuch as selection is made after undergoing rigorous selection process such as written test, typing test and interview. Therefore, Diploma is not an essential qualification; (vi) The term recognized institution occurring in the 2014 Rules is ambiguous and, therefore, required clarification. In this regard, reliance was placed on a decision of this Court in **Dhananjay Malik** *vs.* **State of Uttaranchal**[18] ;

(vii) Rule 18 conferred power on the State to relax the Rules. Consultation with Public Service Commission was not required because under the proviso to Article 320 (3) of the Constitution, “The Himachal Pradesh Public Service Commission (Exemption from Consultation) Regulations, 1973” were framed and, as per Regulation 3 thereof, there is exemption from consultation in respect of services and posts specified in the Schedule. Class III posts, other than those specified, are exempt from consultation. Thus, relaxation without consultation with the Commission was legally permissible. In this regard, reliance was placed on a decision of this Court in the case of **State of Gujarat** *vs.* **Arvindkumar T. Tiwari**[19].

[18] (2008) 4 SCC 171
[19] (2012) 9 SCC 545

18. On behalf of the State of Himachal Pradesh, H.P. Staff Selection Commission and the Govt. of Himachal Pradesh, Mr. Anup Kumar Rattan, Advocate General, assisted by Abhinav Mukerji, submitted:

(i) Under the first advertisement for Post Code 447 there were 1421 vacancies. In respect of second advertisement for Post Code 556 there were 1156 vacancies. Both advertisements were, *inter alia,* for the post(s) of JOA, Class-III (Non-Gazetted) Ministerial Service, and were to be filled as per the 2014 Rules. A large number of candidates applied under any one of the following categories:

(a) Those who held qualification higher than the one prescribed;

(b) Those who held qualifications from institute(s) regarding which there was ambiguity as to how they could be treated as recognised;

(c) Those who held qualifications equivalent to the prescribed qualifications; and

(d) Those who held prescribed qualifications from recognized institutes.

Initially, candidature of all those who did not fulfil the eligibility criteria as per 2014 Rules was rejected. However, several of them approached the Tribunal. On 30.06.2017, in O.A. No.2830 of 2017, the Tribunal passed an interim order that candidates holding one year diploma, though with a different nomenclature than the one prescribed, may be considered subject to decision of the State Government on its equivalence with the one prescribed. Pursuant thereto, on 21.08.2017 the State Government issued a clarification that all candidates having one year diploma in computer or higher education in Computer Science / Application / IT from any private institution may also be considered for selection.

(ii) The letter dated 21.08.2017 is clarificatory in nature and within the scope of powers conferred by Rule 18 of the 2014 Rules, and was necessitated on account of ambiguity in the 2014 Rules. The clarification widens the zone of consideration by including those who were successful in the written examination and typing test, therefore, it causes no prejudice to the interest of the State.

(iii) The clarification was approved by the State cabinet in its meeting held on 18.09.2017, which had the power to relax the Rules under Rule 18 of the 2014 Rules. Such relaxation could be without consultation of the Commission in light of Regulation 3 of the 1973 Regulations. Moreover, the clarification was issued in public interest considering the urgency to fill the vacant posts.

(iv) The State Govt. *vide* letter dated 19.03.2018 directed the Commission to implement the clarification dated 21.08.2017 in respect of Post Code 556

also, as both (i.e., Post Code 447 and Post Code 556) required same set of qualifications and were to be filled under the 2014 Rules.

(v) The State has power to prescribe qualifications for the recruitment. Essential qualifications for appointment to a post are for the employer to prescribe and the question of equivalence falls outside the domain of judicial review. In this regard, reliance was placed on a decision of this Court in **Maharashtra Public Service Commission** *vs*. **Sandeep Sudhakarrao Lavhekar**[20].

(vi) The State can even withdraw an advertisement and proceed afresh under new set of Rules. In this regard, reliance was placed on a decision of this Court in **State of M.P.** *vs*. **Raghuveer Singh Yadav**[21]

(vii) Recruitment under Post Code 447 is complete. If the appointments are set aside, it would create administrative chaos. In the recruitment process under Post Code 556, out of 1156 posts that were advertised, 626 posts have been filled and 530 posts remain unfilled.

19. On behalf of Intervenors (I.A. No.100627 of 2022), who claim to possess qualifications higher than prescribed by the Rules, Mr. Tarun Gupta argued that they possess qualifications which can be considered higher than the prescribed qualifications and, therefore, they ought to have been considered as eligible even though *qua* them no specific clarification was issued. Further, if persons having diploma from private / unrecognised institutes were considered eligible, there could be no dispute regarding eligibility of those who possess higher qualification. The learned counsel sought to distinguish the decision of this

Court in **Zahoor Ahmad Rather & Ors.** *vs.* **Sheikh Imtiyaz Ahmad & Ors. (2019) 2 SCC 404** relied by the High Court to reject their claim.

20. Mr. Dinesh Singh, who appeared for one of the selected candidates for Post Code 447, submitted that there exists no authority to recognise a private institute in the State. Considering this, the State Government

[20] (2019) 6 SCC 362
[21] (1994) 6 SCC 151

considered registered institutes as recognised institutes. Moreover, selected candidates were appointed after undergoing tests and they have been working since long and have also been regularised. Therefore, their appointment must not be disturbed.

Discussion and Analysis

21. We have considered the rival submissions and have perused the record.

22. The facts as regards which there exist no dispute are:

(a) that recruitment under the first two advertisements relating to Post Code 447 and 556 were to be made when the 2014 Rules were in vogue and validity of which has not been questioned by any of the parties;

(b) that the first two advertisements prescribed same eligibility qualifications as prescribed by the 2014 Rules;

(c) that the advertisements specifically stipulated that candidates must hold prescribed essential qualifications by the last date for receipt of application or by the date specified therein;

(d) that relaxation / clarification order was issued without consultation with the Himachal Pradesh Public Service Commission; and

(e) that when the relaxation order or clarificatory letter, as the case may be, was issued, the last date for receipt of application under the two advertisements had passed.

Issues:

23. In the aforesaid factual backdrop, the crucial issues that arise for our consideration are:

(i) Whether relaxation in the essential eligibility qualifications could be made post the last date fixed for receipt of application from the candidates? (ii) Whether the essential eligibility qualifications specified in the 2014 Rules were ambiguous as to warrant clarification or relaxation with a view to declare certain other qualifications as equivalent to the one specified in the said Rules?

(iii) Whether there was a statutory regime in place to accord recognition to an Institution? If yes, whether the clarificatory letter / relaxation order is in ignorance of such statutory regime and is, therefore, invalid?

(iv) Whether, in absence of prior consultation with the Commission, the relaxation / clarificatory order could be considered in conformity with the provisions of Rule 18 of the 2014 Rules?

(v) Whether in view of requirement for a written and computer typing test prior to selection, possession of one year diploma in Computer Science / Computer Application / Information Technology from a recognised University / Institution by a candidate was not an essential eligibility qualification?

(vi) Whether candidates holding qualifications other than the one prescribed by the 2014 Rules or the advertisement, though allegedly higher, could be considered eligible?

(vii) Whether the State (i.e., the employer) could be forced to fill all vacancies advertised; and whether it could be restrained from carrying it forward for filling it as per the amended / new Rules.

Issue No.(i)

24. It is well settled that eligibility criteria / conditions, unless provided otherwise in the extant rules or the advertisement, must be fulfilled by the candidate by the last date for receipt of applications specified in the advertisement [**See: Rakesh Kumar Sharma** (supra)].

25. In **Bedanga Talukdar** (supra), this Court observed:

"*29. ..... In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.*

30. A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our opinion, the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be relaxed in the case of Respondent 1. Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India.

32. ……. It is settled law that there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement. ……..”

(Emphasis supplied)

26. The above decision has been followed in **Sanjay K. Dixit** (supra). Thus, the law is settled that if the extant Rules provide for the power to relax the eligibility criteria, the same could be exercised only if such power is reserved in the advertisement. And when this power is exercised, there must be wide publicity of its exercise so that persons who are likely to benefit by exercise of such power may get opportunity to apply and compete.

27. In the instant case, it is not shown that the advertisement reserved the power to relax the essential eligibility qualifications specified in the advertisement at any later stage. Rather, the advertisement is specific that eligibility criteria must be fulfilled by an aspiring candidate by the last date fixed for receipt of the application. It is not demonstrated that after the decision to relax the eligibility criteria was taken, the same was widely publicised, and the last date to apply under the advertisement was extended to enable persons benefited by such relaxation to apply and compete. In these circumstances, in our view, the power to relax the eligibility criteria, even if it existed, was not exercised in consonance with the settled legal principles and it violated the constitutional mandate enshrined in Articles 14 and 16 of the Constitution. Issue No.(i) is decided in the terms above.

Issue Nos.(ii), (iii) and (iv):

28. As issue nos. (ii), (iii) and (iv) are interrelated we propose to deal with them simultaneously. First, we shall consider whether there is any ambiguity in the essential eligibility qualifications specified in the 2014 Rules.

29. As per Rule 7 of the 2014 Rules, “one year diploma in Computer Science / Computer Application / Information Technology from a recognized University / Institution” was one of the essential qualifications which an aspiring candidate was required to possess to be eligible for the post. According to the High Court, it was ambiguous because “recognized Institution” was not defined. Therefore, to provide clarity as to what was a recognized Institution, under orders of the Tribunal, the relaxation / clarification order dated 21.08.2017 was issued. According to the appellants, this exercise was not acceptable because there existed a statutory regime in the 2010 Act and the

Regulations framed thereunder empowering a *Takniki* Board to accord recognition / affiliation to institutes awarding diploma / certificate on successful completion of such courses. It is their case that the State did not place the statutory regime before the High Court and, therefore, the High Court overlooked the same while accepting the plea of ambiguity in the 2014 Rules.

30. On perusal of the record we could not find that the clarificatory / relaxation order providing equivalence to certain courses was founded on empirical data that courses identical, or by and large identical, to the one specified in the extant Rules were being conducted by various recognized institutions or Universities under different nomenclatures. In fact, what the clarificatory or relaxation order does is that it proceeds to impliedly recognize certain courses / diploma obtained from a private Institution, like from a society registered under Societies Registration Act or Rashtriya Saksharta Mission IT program / Skill Development Program, without examining whether under the extant statutory regime they could be considered recognized.

31. In our view, if there existed a statutory procedure for granting recognition, an Institution cannot be considered recognized dehors that procedure. No doubt, as held by a Constitution Bench of this Court in **Mohammad Shujat Ali & Ors.** *vs.* **Union of India & Ors.**[22], issue of equivalence is a technical issue and where the decision of the Government is based on the recommendation of an expert body, the Court should not lightly disturb its decision unless it is based on extraneous or irrelevant considerations or actuated by mala fides or is irrational and perverse or manifestly wrong. But this is not a case of mere treating degrees or certificates obtained from a recognized Institution / University as equivalent to the one specified, rather it is of granting recognition to certain courses conducted by private institutes, whether recognized or not as per the extant statutory regime. This, in our view, amounts to changing the eligibility criteria midway because the extant Rules and the advertisement both stipulated that the diploma / specified course had to be from a recognized Institution / University. Even assuming that there had been no statutory procedure prescribed to accord recognition, such relaxation in the eligibility qualification ought to have been widely publicized, and opportunity should have been afforded to those who were left out, so that they could

[22] (1975) 3 SCC 76

apply and compete, as held by this Court in **Bank of India** *vs.* **Aarya K. Babu**[23].

32. In **Aarya K. Babu** (supra), one of the issues was, whether a particular educational qualification made eligible after issue of recruitment notification could have been considered for the purposes of recruitment.

Answering the question, this Court held that if there is any change in the qualification criteria after the notification is issued but before the completion of the selection process, and the employer/ recruiting agency seeks to adopt the change, it will be incumbent on the employer to issue a corrigendum incorporating the changes to the notification and invite application from those qualified as per the changed criteria and consider the same along with the applications received in response to the initial notification. We respectfully agree with the above view as it is in consonance with the constitutional mandate.

33. In this view of the matter, even if we assume that the State had power to relax the eligibility criteria, the same could not have been done mid-stream without giving wide publicity of such change, and opportunity to similarly situated candidates to apply and compete with others.

34. As there appears nothing on record to indicate that wide publicity of such relaxation in the specified qualifications was made, and opportunity was afforded to similarly situated candidates to apply and compete, in our view, considering the manner in which the relaxation was accorded, the same falls foul of the constitutional mandate enshrined in Articles 14 and 16 of the Constitution. Issue Nos.(ii), (iii) and (iv) are answered in the above terms.

Issue No.(v):

35. A plain reading of the 2014 Rules and the advertisement would indicate that possession of one year diploma in Computer Science/ Computer Application/ Information Technology from a recognised University/ Institution is an essential qualification which must be possessed by a candidate desirous of appointment on the post concerned. The High Court has also not treated the same as a non-essential qualification. In this view of the matter, we reject the argument that requirement to hold one year diploma in the specified courses was not an essential qualification. Issue No.(v) is decided accordingly.

Issue No.(vi):

[23] (2019) 8 SCC 587

36. The 2014 Rules as well as the advertisement in clear terms prescribed the essential qualification as follows:

"(i) 10 +2 from a recognised Board of School Education/ University.
(ii) One year Diploma in Computer Science/ Computer Application/ Information Technology from a recognised University/ Institution. (iii) Computer typing speed of 30 words per minute in English or 25 words per minute in Hindi
OR

(i) 10 +2 from a recognised Board of School Education/ University.
(ii) "O" or "A" level Diploma from National Institute of Electronics & Information Technology (NIELET)
(iii) Computer typing speed of 30 words per minute in English or 25 words per minute in Hindi"

37. Neither the 2014 Rules nor the advertisement recognises any other, or higher qualification, meeting the eligibility criteria specified therein. In a somewhat similar situation, in **Zahoor Ahmad Rather** (supra), this Court held:

"*26. …….. 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. …..*
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."

(Emphasis supplied)

38. In light of the law above, since we find that there exists no provision in the extant Rules or the advertisement to treat any other qualification as higher or equivalent to the one specified therein, the claim of such candidates, who could not demonstrate that they held the prescribed essential qualifications, is liable to be rejected and has rightly been rejected by the High Court as well.

Issue No.(vi) is decided accordingly.

Issue No. (vii):

39. It is well settled that an employer cannot be forced to fill all the existing vacancies under the old Rules. The employer may, in a given situation, withdraw an advertisement and issue a fresh advertisement in conformity with the new or amended Rules [**See: State of M.P.** *vs.* **Raghuveer Singh Yadav** (supra)]. Even a candidate included in the merit list has no indefeasible right to appointment even if the vacancy exists **(See: Shankarsan Dash** *vs.* **Union of India [24])**. Issue No.(vii) is decided accordingly.

Conclusion / Directions:

40. For all the reasons above, the direction(s) contained in paragraphs 33 and 34 of the impugned judgment of the High Court setting aside the closure of the selection process for Post Code 556 and to re-cast the merit list as well as fill up remaining posts of Post Code 556, with the aid of relaxation/ clarification dated

21.08.2017/ 18.09.2017 read with communication dated 19.03.2018, after segregating it from those advertised as Post Code 817, are set aside. Though the directions contained therein were stayed by this Court, yet, as a matter of abundant caution, we direct that appointment(s), if any, made by taking aid of those directions, would stand set aside by this order.

41. As regards those candidates who were appointed under the first advertisement *qua* Post Code 447 not pursuant to the impugned judgment, but by the State itself, based on the relaxation accorded *vide* order dated 21.08.2017, the contention of the appellants in the appeal arising out of SLP

[24] (1991) 3 SCC 47

(C) No.4321 of 2022 is, that out of 1421 posts advertised, 809 candidates appointed did not hold qualifications as per the 2014 Rules; they got selected only because of the illegal relaxation order. Further, by now at least 73 posts under Post Code 447 have fallen vacant,

---

either due to resignation by the appointed candidates or otherwise, while there are only 29 SLP petitioners waiting for their chances. It is thus prayed on behalf of these appellants that they be considered for appointment.

42. Before we proceed to notice the response to the above contentions, it may be noted that, though in SLP (C) No. 4321 of 2022 all such candidates whose qualification has been challenged are impleaded, as per office report dated 23.03.2023, notices were not served on them directly, rather it was served through Respondent no.1 (State of H.P.). Further, from the record it appears that O.A. No.5543 of 2017, out of which SLP (C) No.4321 of 2022 arises, was filed by initially impleading only two selected candidates as would be clear from the date chart submitted by the SLP petitioners. Otherwise also, in O.A. No.5543 of 2017, it has not been specifically disclosed as to how those candidates were ineligible. Therefore, even if we assume that all those selected candidates were impleaded later, it is not clear, firstly, whether they were served with notice of the proceedings before the High Court or the Tribunal, and, secondly, whether any foundation was laid before the High Court or Tribunal to individually question their eligibility qualification.

43. In the above backdrop, on behalf of the State– respondents it is contended that such appointments were made under the first advertisement more than five to six years ago. Such appointees have not only passed the written test but have also cleared computer typing test.

They are Class III (Non-gazetted) employees who, by virtue of long experience, have not only gained adequate proficiency in their job but are now placed in various departments of the State. Therefore, if their appointment is disturbed, it would paralyse the Govt. set up. Moreover, several of such candidates might have crossed maximum age limit for participating in a fresh recruitment exercise. It is, therefore, prayed by the respondents that their appointment(s) should not be disturbed in exercise of discretionary powers of this Court.

44. Upon consideration of the rival submissions and having regard to: (a) that appointments were made after taking written and computer typing test of the candidates; (b) that there is no specific allegation of nepotism or mala fides in making such appointments; (c) that nature of the post does not

require a high degree of technical skill; (d) the length of period during which the appointments have continued; and (e) that there is no clarity whether such appointees were duly served with notice of the proceeding before the High Court, or whether a specific challenge was laid to their eligibility individually, we are of the considered view that even if such appointments were made taking aid of the relaxation order dated 21.08.2017, it would not be in the interest of justice to disturb those appointments made under the first advertisement (Post Code 447). As regards adjustment of the appellants (i.e., petitioners in SLP (C) No. 4321 of 2022) against vacancies that might have arisen subsequent to appointment against the advertised vacancies is concerned, in our view, it would not be appropriate as those vacancies would have to be filled after a fresh advertisement and in accordance with the extant Rules.

45. In light of the aforesaid discussion and conclusion, we direct / order as under:

(i) The relaxation / clarificatory order dated 21.08.2017, as approved by the State cabinet on 18.09.2017, being after the last date fixed by the advertisements dated 13.02.2015 (i.e., for Post Code 447) and dated 18.10.2016 (for Post Code 556) for receipt of applications from candidates, is not legally sustainable *qua* those posts (i.e., Post Codes 447 and 556), particularly, when no opportunity was afforded to similarly placed persons, who might have been left out, to apply and compete with those candidates who, though not eligible as per the terms of the advertisement, had applied thereunder;

(ii) The direction(s) contained in paragraphs 33 and 34 of the impugned judgment of the High Court setting aside the closure of the selection process for Post Code 556 and to re-cast the merit list as well as fill up remaining posts of Post Code 556, with the aid of relaxation/ clarification dated 21.08.2017/ 18.09.2017 read with communication dated 19.03.2018, after segregating it from those advertised as Post Code 817, are set aside. In consequence, (a) the merit list prepared under the second advertisement for Post Code 556 shall not be re-drawn by including such candidates who, though not eligible, became eligible pursuant to relaxation / clarificatory order dated 21.08.2017 / 18.09.2017 read with communication dated 19.03.2018; and (b) there shall be no segregation of seats advertised under the third advertisement dated 21.09.2020 for Post Code 817. Thus,

recruitment for Post Code 817 shall be strictly in accordance with the extant Rules (i.e., 2020 Rules), as notified.

(iii) The appointments already made under the first advertisement (for Post Code 447) shall not be disturbed merely because some of the appointees may have gained eligibility based on the order of relaxation / clarification dated 21.08.2017, which was approved by the State cabinet.

46. All the appeals are disposed of in the aforesaid terms. Pending application(s), if any, are also disposed of.

There is no order as to costs.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.