

STATE OF PUNJAB AND OTHERS

v.

ANITA AND ORS.

(Civil Appeal Nos. 7983-7986 of 2009)

SEPTEMBER 24, 2014

[JAGDISH SINGH KHEHAR AND ARUN MISHRA, JJ.]

Service Law – Selection/Appointment – Selection and appointment to the post of JBT/ETT teachers – State Government did not accord approval on the ground that the appointment was in violation of statutory rules as the candidate did not possess the qualification prescribed under the rules – Propriety of the order passed by State Government – Held: Determination by the State Government was correct – It is imperative for the candidates to possess the statutorily prescribed qualification – Punjab Privately Managed Recognized Schools Employees (Security of Service) Rules, 1981 – rr. 6 & 7 and Appendix.

Allowing the appeals, the Court

HELD: 1. It is imperative for candidates to possess the statutory qualification prescribed for appointment to the posts, to which they are seeking appointment. Applications were not invited from candidates possessing the qualification depicted in the appendix to the 1981 Rules, pertaining to the posts of JBT/ETT teachers. None of the private respondents possess the qualification of JBT/ETT, and as such, none of them can be stated to be possessed of qualifications statutorily prescribed and delineated in the appendix of the 1981 Rules. None of the private respondents was therefore *per se* eligible for appointment. Therefore, no infirmity can be found in the determination at the hands of the State Government. [Paras 8 and 9][825-F-G; 826-B-D]

A *P. M. Latha and another v. State of Kerala and others* (2003) 3 SCC 541 : [2003] 2 SCR 653 ;
Yogesh Kumar and others v. Government of NCT of Delhi 6 and others (2003) 3 SCC 548 : [2003] 2 SCR 662 – relied on.

B 2. The private respondents do not satisfy the pre-condition of valid appointment expressed therein, inasmuch as, it was imperative for the Selection Committee, in the first instance, to consider only those candidates who possessed the qualification of JBT/ETT, and thereupon, posts that remained unfilled could be
C filled up with persons possessing higher qualifications, i.e., graduate/post graduate qualifications along with B.Ed.. That was not the procedure which came to be adopted in the present controversy. Therefore per se,
D no benefit can flow to the private respondents, from the government instruction. Moreover, para 6 of the Government Instructions are in clear violation of the statutory process of selection and appointment postulated under the 1981 Rules. Government
E Instructions in violation of the statutory rules, are a nullity in law. [Para 19][831-A-E]

F 3. The private respondents came to be appointed by the Management of the School in violation of the 1981 Rules. No fault whatsoever lies with the private respondents. The Management had required the private respondents to discharge their duties, without the prior approval of the State Government. The Management should therefore bear the responsibility of shouldering the emoluments payable to the private respondents.
G [Para 21][832-B-D]

Jyoti K.K. and others v. Kerala Public Service Commission and others (2010) 15 SCC 596 – distinguished.

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CASE LAW REFERENCE

[2003] 2 SCR 653	relied on	Para 9
[2003] 2 SCR 662	relied on	Para 9
(2010) 15 SCC 596	distinguished	Para 10

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7983-7986 of 2009.

From the Judgment and Order dated 02-07-2007 of the High Court of Punjab and Haryana at Chandigarh in CWP Nos. 15599 of 2006 (O & M), 2344, 9791 and 16235 of 2006.

With

Civil Appeal No. 7970-7971 of 2009.

Sanchar Anand, AAG, Piyush Hans (For Kuldip Singh and Ajay Pal), Advs. for the Appellants.

A.V. Palli, Anupam, Raina (For Mrs. Rekha Palli), Ms. S. Janani, Deepak Goel, Advs. for the Respondents.

The Judgment of the Court was delivered by

J. S. KHEHAR, J.

1. The Management of the Doaba Arya Senior Secondary School, Nawanshahr, issued an advertisement in the Indian Express dated 25.05.2002, inviting applications for six vacant posts of JBT/ETT teachers. Since the controversy, being adjudicated upon, is substantially to be determined on the basis of the contents of the advertisement, the above advertisement dated 25.05.2002 is being extracted hereunder:

"Doaba Arya Senior Secondary School, Nawanshahr
Wanted following dedicated, talented, trained and experienced teachers against six vacant JBT/ETT aided posts preferably one M.A. English, one M.Sc. Chem., One M.Sc. Bio, M.Com., one M.Sc. Maths, one M.A. Eco

A and one Watchman. Apply Principal afresh within ten days alongwith testimonials. Reservation exists as per Govt. rules.

Sd/-

B Principal, Doaba Arya Sr. Sec. School,
Nawanshahr.

2. The private respondents were selected against the six advertised posts, by the Managing Committee of the above school. Despite their selection and consequential appointment, the State Government did not accord its approval. It is in the aforesaid circumstances, that the private respondents, i.e., the selected JBT/ETT teachers issue a notice dated 1.2.2004, wherein they sought approval of the State Government, as also, wages for the period they had been discharging their duties. Since, they did not receive any response to the legal notice dated 1.2.2004, the private respondents approached the High Court of Punjab and Haryana at Chandigarh (hereinafter referred to as the 'High Court') by filing Civil Writ Petition No.6789 of 2004. Rather than examining the merits of the controversy, the High Court by its order dated 27.04.2004, required the State Government to take a decision on the legal notice, issued by the private respondents. It is therefore, that the District Education Officer, Nawanshahr (hereinafter referred to as the 'DEO') passed an order dated 04.4.2005, declining the claim of the private respondents. A perusal of the speaking order passed by the DEO, inter alia, reveals, that the private respondents had been appointed in violation of the statutory rules regulating appointments to privately managed recognised schools. It was also indicated in the order dated 04.4.2005, that the selection process was not in consonance with the statutory rules.

3. The order passed by the DEO dated 04.4.2005 was assailed by the private respondents before the High Court by filing Civil Writ Petition No. 15599 of 2006. The same came to be allowed by the impugned order dated 2.7.2007. A perusal

of the impugned order reveals, that the High Court emphatically placed reliance on an earlier litigation in respect of the same selection process, wherein a Division Bench of the High Court, while disposing of civil writ petition No. 13979 of 2002 (by order dated 16.2.2004), had found the petitioner therein not possessing superior qualifications to the private respondent no.4, whose selection was sought to be assailed. The High Court had also, while disposing of civil writ petition no. 13979 of 2002, rejected the contention advanced at the hands of the petitioner therein, that the process of selection was vitiated on account of bias.

4. Since the order passed in civil writ petition no. 13979 of 2002 was affirmed by this Court, the special leave petition filed against the said order before this Court was dismissed. The High Court inferred from the above dismissal, that the selection process had been approved by this Court.

5. We will first endeavour to deal with the basis adopted by the High Court in affirming the selection process of the private respondents, consequent whereof they came to be appointed as JBT/ETT teachers. It would be relevant to mention, that the qualifications prescribed for the advertised JBT/ETT posts were not at all the subject matter of consideration in writ petition no. 13979 of 2002, nor was the selection process a matter for consideration. In the above view, it was not proper for the High Court to approve the selection process, by which the six private respondents came to be appointed as JBT/ETT teachers. Moreover, the issues which are now raised were not examined by the High Court, or by this Court, during the previous litigation. We are, therefore, of the considered view, that the High Court should have addressed the pointed questions raised before it, while examining the legality of the order passed by the DEO dated 04.4.2005. Unfortunately, the High Court did not deal with any of the reasons recorded by the DEO (while rejecting the claim raised by the private respondents).

A 6. We shall now deal with the pointed issues recorded
by the DEO in his order dated 04.4.2005. It is not a matter of
dispute, that insofar as the selection and appointments to
privately managed recognised schools in the State of Punjab
is concerned, the same are regulated by the Punjab Privately
B Managed Recognised Schools Employees (Security of
Service) Rules, 1981 (hereinafter referred to as the '1981
Rules'). Rule 6 of the aforesaid Rules lays down the
qualifications for different posts, and Rule 7 the manner/method
of appointment. Rules 6 and 7 of the 1981 Rules are
C reproduced hereunder:

"6. Qualification – (1) No person shall be appointed to
an aided post, unless he possess the qualifications and
experience as specified against that post in the Appendix
to these rules.

D (2) Unless otherwise specified in the Appendix to these
rules, an employee who has not attained the knowledge
of Hindi and Punjabi language of matriculation standard
or its equivalent, shall have to acquire the same within a
E period of two years from the date of his appointment of
the commencement of these rules, whichever is earlier,
failing which he shall not earn his first grade increments
till he acquires such knowledge when the increments shall
be released retrospectively :

F Provided that he shall not be entitled to get arrears of the
released grade increments for the period during which
he could not acquire the aforesaid knowledge.

G 7. Appointing authority and method of appointment – All
appointments to the aided posts shall be made by the
managing committee in the following manner:

(i) Appointing authority shall advertise in both English
and vernacular daily newspapers in the State, vacancy
or vacancies to be filled in by giving full particulars thereof
including the requisite qualifications, number of vacancies
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to be filled in and the last date by which the applications may be submitted; A

(ii) The recommendations for appointment of the candidates shall be made by a sub-committee consisting five members of the managing committee. B

(2) The members of the sub-committee shall be appointed by the managing committee." B

7. A perusal of Rule 6 reveals, that qualifications for posts under the purview of the 1981 Rules have been expressed in the appendix to the 1981 Rules. Insofar as the post of JBT teacher is concerned, the same figures at serial no. 10 of the appendix, wherein the prescribed qualifications are as under: C

APPENDIX
 (See Rule 6) D

Serial No.	Designation of Post	Qualifications and experiences
1	2	3
10.	J.B.T. Teacher	(i) Matric with two years course in J.B.T. Training; and (ii) Knowledge of Punjabi and Hindi Language of Matriculation Standard or its equivalent.

8. Under the 1981 Rules, for the post of JBT teachers, the prescribed qualification is, matriculation with two years course in JBT training. In addition thereto, a candidate should have knowledge of Punjabi and Hindi language of matriculation standard, or its equivalent. E

9. The issue which requires our consideration is, whether the advertisement issued by the Doaba Arya Senior Secondary School, Nawanshahr, had invited applications by truly reflecting the prescribed qualifications, and also whether, the private respondents possess the qualification prescribed F

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A for the post of JBT/ETT teachers, which was advertised on
25.2.2002.

B 10. While examining the advertisement, which has been
extracted hereinabove, we are satisfied that applications were
not invited from candidates possessing the qualification
depicted in the appendix to the 1981 Rules, pertaining to the
posts of JBT/ETT teachers. It is also apparent, that none of
the private respondents possess the qualification of JBT/ETT,
and as such, none of them can be stated to be possessed of
qualifications statutorily prescribed and delineated in the
appendix of the 1981 Rules. None of the private respondents
was therefore per se eligible for appointment to the posts of
JBT/ETT teachers. This was one of the pointed reasons why
the State Government did not grant its approval to the selection
and appointment of the private respondents. In our considered
view, no infirmity can be found in the aforesaid determination
at the hands of the State Government.

E 11. Insofar as the issue in hand is concerned, reference
may be made to the decision rendered by this Court in P.M.
Latha and another vs. State of Kerala and others (2003) 3 SCC
541, wherein this Court held as under:

We find absolutely no force in the argument advances
by the respondents that BEd qualification is a higher
qualification than TTC and therefore the BEd candidates
should be held to be eligible to compete for the post. On
behalf of the appellants, it is pointed out before us that
Trained Teacher's Certificate is given to teachers
specially trained to teach small children in primary
classes whereas for BEd degree, the training imparted
is to teach students of classes above primary. BEd
degree-holders, therefore, cannot necessarily be held to
be holding qualification suitable for appointment as
teachers in primary schools. Whether for a particular post,
the source of recruitment should be from the candidates
with TTC qualification or BEd qualification, is a matter of

[J. S. KHEHAR, J.]

recruitment policy. We find sufficient logic and justification in the State prescribing qualification for the post of primary teachers as only TTC and not BEd. Whether BEd qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider BEd candidates, for the present vacancies advertised, as eligible.”

(emphasis is ours)

12. Reference may also be made to the decision rendered by this Court in *Yogesh Kumar and others vs. Government of NCT of Delhi and others* (2003) 3 SCC 548, wherein this Court held as under:

“The Division Bench of the Delhi High Court in the impugned judgment has dealt with the above two arguments in great detail. In our considered opinion, it has rightly come to the conclusion that BEd qualification, although a well-recognised qualification in the field of teaching and education being not prescribed in the advertisement, only some of the BEd candidates who took a chance to apply for the post cannot be given entry in the field of selection. We also find that the High Court rightly came to the conclusion that teacher training imparted to teachers for BEd course equips them for teaching higher classes. A specialized training given to teachers for teaching small children at primary level cannot be compared with training given for awarding BEd degree. Merely because primary teachers can also earn promotion to the post of teachers to teach higher classes and for which BEd is the prescribed qualification, it cannot be held that BEd is a higher qualification than TTC. Looking to the different nature of TTC qualification, the High Court rightly held that it is not comparable with BEd degree qualification and the latter cannot be treated as higher qualification to the former.”

(emphasis is ours) H

A 13. A perusal of the aforesaid judgments leave no room
for any doubt, that it is imperative for candidates to possess
the statutory qualification prescribed for appointment to the
posts, to which they are seeking appointment. In view of the
position declared by this Court, qualifications of B.Ed and other
B qualifications possessed by the private respondents, namely,
M.A., M.Sc, M.Com. Etc. cannot be treated as higher
qualifications with reference to the prescribed
qualifications(JBT/ETT). We, therefore, find the reasons
recorded by the DEO in the impugned order dated 04.4.2005
C were fully justified, and in consonance with the legal position
declared by this Court, as has been noticed hereinabove.

14. To be fair to the learned counsel for the private
respondents, we may also make a reference to the decision
rendered by this Court in Jyoti K.K. and others vs. Kerala Public
D Service Commission and others (2010) 15 SCC 596. Learned
counsel had invited our attention to paragraph 7 thereof,
wherein it was observed as under:

E “It is no doubt true, as stated by the High Court that when
a qualification has been set out under the relevant Rules,
the same cannot be in any manner whittled down and a
different qualification cannot be adopted. The High Court
is also justified in stating that the higher qualification must
clearly indicate or presuppose the acquisition of the lower
F qualifications prescribed for the post shall also be
sufficient for the post. If a person has acquired higher
qualifications in the same Faculty, such qualifications can
certainly be stated to presuppose the acquisition of the
lower qualifications prescribed for the post. In the case it
G may not be necessary to seek far.”

(emphasis is ours)

15. It is no doubt true, that this Court held in the afore-
stated judgment, that if a person had acquired higher
qualifications in the same faculty, such qualifications can
H certainly be stated to presuppose the acquisition of the lower

qualification. Possession of higher qualification would therefore, according to learned counsel, make a candidate eligible for the post, even though, the candidate does not possess the prescribed qualification. The question however is, whether the above position can be applied to the present case? A
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16. It was sought to be asserted on the basis of the aforesaid observations, that since the private respondents possess higher qualifications, then the qualification of JBT/ETT, they should be treated as having fulfilled the qualification stipulated for the posts of JBT/ETT teachers. It is not possible for us to accept the aforesaid submission of the learned counsel for the private respondents, because the statutory rules which were taken into consideration by this Court while recording the aforesaid observations in Jyoti K.K.'s case (supra), permitted the aforesaid course. The statutory rule, in the decision relied on by the learned counsel for the private respondents, is extracted hereunder: C
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6. Rule 10(a)(ii) reads as follows :

"10.(a)(ii) Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications recognised by executive orders or standing orders of Government as equivalent to a qualification specified for a post in the Special Rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post." E
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(emphasis is ours)

17. A perusal of the rule clearly reveals, that the possession of higher qualification would presuppose the acquisition of the lower qualification prescribed for the posts. Insofar as the present controversy is concerned, there is no similar statutory provision authorizing the appointment of persons with higher qualifications. Moreover, in view of the G
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A decision rendered by this Court in P.M. Latha's case (supra) and in Yogesh Kumar's case (supra) lead to the clear and unambiguous conclusion that none of the private respondents could be considered as eligible for selection or appointment to the advertised posts of JBT/ETT teachers.

B 18. It is also necessary for us to take into consideration Government Instructions dated 20.12.1995, which were relied upon by learned counsel, so as to contend, that the private respondents who possess higher qualifications including the qualifications depicted as preferential in the advertisement, should be treated as eligible. Relevant extract of the aforesaid Government Instructions dated 20.12.1995 is being reproduced hereunder:

D "6. Vide letter No.1/18/95-3Edu-7/20602, dated 14.09.1995 the Government has taken the decision that in future the appointment of J.B.T. Teachers in the Government Schools may be done in two parts. In first part the candidates who are possessing the qualification of J.B.T./E.T.T. or equivalent shall be considered. Thereafter, in case it emerges that, J.B.T./E.T.T. qualified candidates are not available, in that event, appointments may be made by adopting second part. It should be mentioned in the advertisement, that in case candidates with J.B.T./E.T.T. or equivalent qualification are not available, then candidates who have graduation/post graduation qualifications with B.Ed. will also be considered. But the candidates having qualification of graduation/post graduation/ along with B.Ed. shall be paid the scale of J.B.T. only. In such cases, an affidavit will be furnished by the candidates that after selection, being graduates/post graduates candidates, will not claim any other benefit or higher scale, and in this regard, at the time of sending the requisition of posts, this shall also be incorporated in the advertisement."

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19. Having given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the private respondents, based on the government instructions dated 20.12.1995, we are of the view, that the private respondents do not satisfy the pre-condition of valid appointment expressed therein, inasmuch as, it was imperative for the Selection Committee, in the first instance, to consider only those candidates who possessed the qualification of JBT/ETT, and thereupon, posts that remained unfilled could be filled up with persons possessing higher qualifications, i.e., graduate/post graduate qualifications along with B.Ed.. That was not the procedure which came to be adopted in the present controversy. Therefore per se, no benefit can flow to the private respondents, from the government instructions relied upon by the learned counsel. Be that as it may, it needs to be emphasised, that para 6 of the Government Instructions dated 20.12.1995, are in clear violation of the statutory process of selection and appointment postulated under the 1981 Rules. Even if the above Government Instructions would have bestowed validity on the selection process, through which the private respondents came to be appointed, the same could not have been acceded to, since Government Instructions in violation of the statutory rules, are a nullity in law. In view of the foregoing reasons, it is not possible for us to bestow legitimacy/legality to the appointment of the respondents as JBT/ETT teachers.

20. For the reasons recorded hereinabove, we are satisfied that the impugned order passed by the High Court dated 2.7.2007 is liable to be set aside. The same is accordingly hereby set aside.

21. We were informed, that the private respondents came to be appointed by the Management of the Doaba Arya Senior Secondary School, Nawanshahr, in the year 2002. We were also informed, that the private respondents have continued to be in the employment of the Doaba Arya Senior Secondary

- A School, Nawanshahr, till date. No fault whatsoever lies with the private respondents. The fault, if at all, lies with the Management of the Doaba Arya Senior Secondary School, Nawanshahr. Unfortunately, the Management of the Doaba Arya Senior Secondary School, Nawanshahr, issued an advertisement in violation of the 1981 Rules. The procedure depicted in the 1981 Rules was also not followed while making appointments, to the six vacant posts of JBT/ETT teachers. The Management had required the private respondents to discharge their duties, without the prior approval of the State Government. The Management should therefore bear the responsibility of shouldering the emoluments payable to the private respondents. We therefore, hereby direct the Management of the Doaba Arya Senior Secondary School, Nawanshahr to pay all emoluments (if the same are still unpaid) to the private respondents, within two months from the date of receipt of a certified copy of this order.

21. The instant civil appeals are accordingly allowed in the above terms. As a sequel to the above, all pending interlocutory applications are disposed of.

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Civil Appeal Nos. 7970-7971 of 2009

22. It is not a matter of dispute that the controversy in the present civil appeals is identical to the one adjudicated upon by us in the case of State of Punjab and others vs. Anita and others (Civil Appeal Nos. 7983-7986 of 2009) decided on 24.09.2014.

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23. In view of the above, the instant civil appeals are also allowed in the same terms.

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Kalpna K. Tripathy

Appeals allowed.