

**2026 LiveLaw (SC) 400**

**IN THE SUPREME COURT OF INDIA**  
**CIVIL APPELLATE JURISDICTION**  
**J.K. MAHESHWARI; J., ATUL S. CHANDURKAR; J.**  
April 20, 2026.

**CIVIL APPEAL NO. 5942 OF 2023**  
**HIMAKSHI versus RAHUL VERMA & ORS.**

**CIVIL APPEAL NO. 5943 OF 2023**  
**RAHUL VERMA versus HIMACHAL PRADESH BOARD OF SCHOOL EDUCATION & ORS.**

**Essential vs. Preferential Qualification - Power to Relax & Exercise of discretion - A candidate who does not possess the prescribed minimum essential qualification cannot be treated as eligible merely on the strength of holding a higher academic degree or achieving a higher merit position - Preferential qualifications operate only within the zone of eligible candidates and cannot supplant, override, or dilute the primary requirement of essential eligibility - The existence of a statutory power of relaxation under Recruitment and Promotion (R&P) Rules does not imply it can be presumed or automatically applied - Any departure from prescribed eligibility criteria requires a structured, conscious, and reasoned exercise of discretion, which must be demonstrably recorded in writing by the recruiting agency - In a public selection process, transparency and adherence to declared criteria are paramount.**

**Equitable Consideration - Right to Appointment - Relief based on equitable considerations cannot be claimed as a matter of right to protect an inherently illegal selection that breaches essential threshold qualifications - Where a required minimum qualification (such as a specialized work experience external to the post) remains unfulfilled at the threshold, subsequent continuation in service or regularization under interim protections cannot substitute or cure the initial defect in eligibility - Participation in a selection process or fulfilment of eligibility conditions does not confer an indefeasible right to appointment - Where the selection process itself stands vitiated due to non-scrutiny of essential qualifications at the threshold, the appropriate course for the Court is to set aside the selection rather than substituting one illegality with another by directing the positive appointment of an unsuccessful or waitlisted candidate. [Relied on On substitution of qualifications: *Zahoor Ahmad Rather and Ors. v. Sheikh Imtiyaz Ahmad and Ors.*, (2019) 2 SCC 404; *Rekha Chaturvedi (Smt.) v. University of Rajasthan and Ors.*, 1993 Supp (3) SCC 168; *am Sarup v. State of Haryana and Ors.*, (1979) 1 SCC 168; *Buddhi Nath Chaudhary and Ors. v. Abahi Kumar and Ors.*, (2001) 3 SCC 328; Paras 23-54]**

*For Appellant(s): Mr. P.S. Patwalia, Sr. Adv. Ms. Natasha Dalmia, AOR Ms. Anisha Jain, Adv. Ms. Shambhavi, Adv. Ms. Prerna Cheema, Adv. Mr. M.C. Dhingra, Sr. Adv. Mr. Gaurav Dhingra, AOR Mr. Kunal Verma, Adv.*

*For Respondent(s): Mr. M.C. Dhingra, Sr. Adv. Mr. Kunal Verma, Adv. Mr. Gaurav Dhingra, AOR Mr. P.S. Patwalia, Sr. Adv. Ms. Natasha Dalmia, AOR Ms. Anisha Jain, Adv. Ms. Shambhavi, Adv. Ms. Prerna Cheema, Adv. 2 Mr. Varinder Kumar Sharma, AOR*

**J U D G M E N T**

**J.K. MAHESHWARI, J.**

1. The present appeals relate to recruitment to the post of Computer Hardware Engineer by respondent no. 2 – Himachal Pradesh Board of School Education (hereinafter “the Board”). The controversy centres around the prescribed qualifications for appointment

to the said post, particularly the requirement of prior work experience and the preference, if any, to a higher qualification, such as a Master's degree.

2. These appeals emanate from the common impugned judgement dated 23.04.2021 (hereinafter "Impugned Judgement") passed by the Division Bench of the High Court of Himachal Pradesh at Shimla (hereinafter "High Court"), whereby the judgement of the Single Judge of the High Court was set aside. The Division Bench held that neither the appellant Himakshi (hereinafter "selected candidate") nor the respondent no. 1 – Rahul (hereinafter "unsuccessful candidate") satisfied the essential qualifications at the time of recruitment and appointment.

3. At its core, the question involved is whether a candidate who did not possess the required work experience at the time of recruitment could still be selected and appointed, either on the basis of having a preferred higher qualification or by exercising supposed relaxation of the eligibility conditions.

4. Civil Appeal No. 5942 of 2023 has been preferred by the selected candidate Himakshi, assailing the impugned judgement to the extent it sets aside her appointment, challenge to which was rejected by the Single Judge of the High Court. Civil Appeal No. 5943 of 2023 has been preferred by the unsuccessful candidate, Rahul, challenging the same judgement insofar as it rejects his prayer for appointment and consequential relief, despite invalidating the selection process to the post in question. Since there is a commonality of facts and legal issues, both appeals are being dealt with by this common judgement. For the sake of convenience, the parties are being referred to as per their status in Civil Appeal No. 5942 of 2023.

### **Factual Matrix**

5. The Board initiated a recruitment process vide Advertisement No. 3001-3010 dated 21.07.2016 inviting applications for various categories of posts on contract basis, including one unreserved post of Computer Hardware Engineer on contract basis. The qualification for selection was prescribed as follows: –

#### **“Essential Qualification**

- (1) Should have passed 10+2 examination or its equivalent from a recognised Board/University.
- (2) B.E/B.Tech in Electronic telecommunication/I.T. from a recognised University with at least 5 years' experience in computer manufacturing/ maintenance from a company of repute.
- (3) Preference will be given to candidate with M.Tech in Electronic Degree.

#### **Desirable Qualification**

- (4) Knowledge of customs, manner and dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Pradesh.”

6. Pursuant to the advertisement, various candidates, including the parties herein, applied for the said post. The written test was conducted on 28.08.2016, followed by a personal interview on 03.10.2016. Insofar as the qualifications of the candidates are concerned, it is not in dispute that all three candidates – appellant Himakshi, respondent no. 1 Rahul and respondent no. 3 Gaurav – possessed a B.Tech degree from a recognised University in the relevant field. Himakshi also held an M.Tech degree; however, at the time of participating in the recruitment process, she had work experience of only about one year. Gaurav possessed a Diploma in Computer Engineering and had accumulated a combined work experience of approximately two and a half years across different

organizations. Rahul possessed a Post Graduate Diploma in Computer Applications and had work experience of approximately six years across multiple organizations.

7. As per the result, respondent no. 1 – Rahul, having Roll No. 40032, obtained 118 marks in the written test and 25 marks in the personal interview; being a total of 143 marks. Respondent no. 3 – Gaurav, having Roll No. 40013, obtained 123 marks in the written test and 28 marks in the personal interview; being a total of 151 marks. The appellant Himakshi, having Roll No. 40016, scored 124 marks in the written test and 28 marks in the personal interview; obtaining a total of 152 marks; thus being the highest scoring candidate. For better clarity, the position of each candidate is referred in the table below:–

Candidate	Qualifications and Work Experience	Written Test	Personal Interview	Total Marks
Himakshi [Roll No. 40016]	B.Tech in Electronics & Communication Engineering with M.Tech in Electronics & Communication Engineering and approx. 1 years' work experience	124	28	152
Rahul [Roll No. 40032]	B.Tech in Electronics & Communication Engineering with Post Graduate Diploma in Computer Application and approx. 6 years' work experience	118	25	143
Gaurav [Roll No. 40013]	B.Tech in Computer Science Engineering with Diploma in Computer Engineering and approx. 2.5 years' work experience	123	28	151

8. After completion of the selection process, vide notification dated 03.10.2016, the appellant Himakshi was declared as selected candidate for the post of Computer Hardware Engineer. Respondent no. 3 – Gaurav, having the second-highest marks, was placed in the wait list (hereinafter “waitlisted candidate”) for the post. It is not in dispute that at the time of selection, Himakshi had been serving as a VT (Vocational Trainer) Telecom in Government Senior Secondary School, Kapahi, Sundernagar since August 2015. She obtained No Objection Certificate from her earlier employer to join service as a Computer Hardware Engineer with the Board.

9. This selection and appointment of the appellant was challenged by the unsuccessful candidate Rahul by way of Original Application No. 1561 of 2017 before the erstwhile Himachal Pradesh State Administrative Tribunal at Shimla (hereinafter “Tribunal”). In the said application, he prayed for setting aside of the appellant’s selection as well as putting respondent no. 3 in the wait-list, along with direction for his own appointment on the post in question, and for grant of all consequential benefits since he possessed the prescribed essential qualifications.

10. During pendency of the proceedings, the Tribunal came to be abolished and the matter was transferred to the High Court, where it was renumbered as CWPOA No. 136 of 2019. The learned Single Judge vide judgement dated 24.08.2020, allowed the writ petition ex-parte qua appellant Himakshi and set-aside her selection and appointment. It was held that in absence of the essential qualification of 5 years’ experience, no preference could have been extended to her only on account of possessing an M.Tech

degree. It was further directed that the Board shall offer appointment to Rahul, having regard to his claim of possessing the requisite experience as on the relevant date. Pertinently, this order was passed without any representation on behalf of the appellant, and as such, she preferred Review Petition No. 33 of 2020 before the High Court. The Single Judge allowed the said review petition, thereby recalling the previous order dated 24.08.2020 and restored the writ petition to its original number.

11. In her reply before the High Court, the appellant claimed that she was more meritorious in the selection process and that the Board had the power to relax the criteria if a candidate was found to be otherwise well-qualified. It was further contended that none of the candidates who were called for interview fulfilled the requisite experience. It was also not clear whether the experience of the unsuccessful candidate Rahul was in a 'company of repute' dealing with 'manufacturing/maintenance of computers', as stipulated in the advertisement.

12. It may be noted that during pendency of the writ petition before the High Court, the selected candidate Himakshi continued to render her services on the post in question and was ultimately regularised on 07.11.2019 in terms of the regularisation policy framed by the State of Himachal Pradesh.

13. Upon rehearing the matter, learned Single Judge of the High Court, by order dated 23.09.2020, dismissed the writ petition filed by respondent no. 1 Rahul, and upheld the selection and appointment of the appellant Himakshi. The Court took note of the applicable service rules for the post, being the Recruitment and Promotion Rules for the Post of Computer Hardware Engineer in the Himachal Pradesh Board of School Education, Dharamshala (hereinafter "R&P Rules"), particularly Rule 18 which conferred a discretion to relax the conditions relating to eligibility, including the requirement of age and work experience, in appropriate cases. In this context, it was considered that the appellant Himakshi possessed a higher qualification in the form of M.Tech degree, which could be taken into account for evaluating her suitability for the post. Her selection, having been conducted by a duly competent Selection Committee (hereinafter "Committee") and in absence of any mala fides or procedural irregularity in the selection process, the outcome of the process was not required to be interfered with. In such backdrop, learned Single Judge was of the view that mere absence of the prescribed length of experience would, by itself, not vitiate the selection, particularly when the selected candidate secured the highest marks, possessed a higher academic qualification and the R&P Rules provided the power of relaxation.

14. Aggrieved by the said decision, the unsuccessful candidate Rahul preferred Letters Patent Appeal No. 49 of 2020 before the High Court. The Division Bench, by way of the impugned judgement, set aside the selection and appointment of Himakshi on the ground that the essential qualification relating to work experience had not been satisfied on the relevant date and there was no material on record to show that her selection was by exercising the power of relaxation and using the discretion available under the R&P Rules. However, at the same time, no direction was issued for appointment in favour of the unsuccessful candidate Rahul, or any other candidate, on the consideration that none of them fulfilled the requirement of the requisite experience as prescribed in the R&P Rules read with the advertisement. It is in this backdrop, the present appeals came to be preferred. This Court, vide order dated 06.05.2021, granted a stay on the operation of the impugned judgement of the High Court. The said interim relief was further extended by order dated 06.05.2021. As a consequence of such relief, the appellant has been continuing to work on the post.

### **Arguments advanced on behalf of the parties**

15. Learned Senior Counsel, Mr. P.S. Patwalia, appearing on behalf of the selected candidate submitted that the challenge to her selection is misconceived inasmuch as the respondent Rahul does not stand in the zone of consideration for appointment. It was urged that the merit position of the candidates would show that even if the appellant were to be excluded, Rahul would not automatically be entitled to appointment. It was further contended that the R&P Rules, confer a power of relaxation upon the competent authority, when a candidate is otherwise found suitable. In this context, reliance was placed on Rule 18 to submit that the requirement of experience is flexible and could be relaxed in an appropriate case. It was further his case that the appellant, having secured the highest marks in the selection process, was found meritorious by the Board. Based on the overall evaluation process, including the written test and the personal interview, the appellant was rightly selected on account of securing the highest marks. The power of relaxation, being discretionary, was not necessary to be recorded giving detailed reasons for the selection of a particular candidate. Once the recommendation of the Committee had been accepted by the Board and appointment was also directed, the same ought not to be interfered with.

16. Per contra, Mr. M.C. Dhingra, learned Senior Counsel appearing for the respondent Rahul submitted that the very foundation of the appellant's selection was flawed as she did not possess the relevant essential qualification at the time of selection. The requirement of five years' work experience was a mandatory condition, and in absence of the same, any preference on account of having a Masters' degree could not have been exercised in favour of the appellant. It was further submitted that even if the R&P Rules contemplate the power of relaxation, no material was placed to indicate that the same was mentioned in the advertisement pursuant to which selection was made, or that the Board had exercised the same in favour of the appellant; hence the appellant's selection couldn't be sustained. It was further his case that once the appellant had herself contended before the High Court that none of the candidates fulfilled the required essential qualifications, the selection was effectively done without strict adherence to the eligibility conditions, which was impermissible in law.

17. In response, Mr. Varinder Kumar Sharma, learned counsel appearing for the respondent Board submitted that the selection process had been carried out through a duly constituted Committee and that the appellant was selected on the basis of securing the highest marks in the written test as well as the personal interview. However, when queried as to whether the issue of eligibility, particularly the requirement of work experience as envisaged under the R&P Rules had been specifically examined or if any relaxation was formally granted; after taking instructions, it was fairly informed that there was no express decision to such effect.

18. At this point in time, it was reiterated by Mr. P.S. Patwalia, learned Senior Counsel for the appellant that even assuming certain deficiencies in eligibility, no candidate, including the unsuccessful and waitlisted candidates herein, could claim an indefeasible right of appointment. Additionally, pursuant to her selection and appointment, the appellant has been serving on the post for a considerable period of time and was also regularised in service in the year 2019. In view of her long continuance in service, the Court may take into account considerations of equity and decline to interfere with her appointment at this stage. In this regard, reliance was placed on the judgement in If at all any interference was warranted, on account of it being an admitted position that no candidate had the required essential qualification, the proper course would not be to grant appointment to

any particular candidate but to uphold the selection process or direct a fresh exercise, as the case may be.

19. In the said factual backdrop, the following issues arise for our consideration:– (i) Whether a candidate not possessing the essential qualification of five years' work experience as on the relevant date could nonetheless be considered for selection on the strength of having a higher academic qualification, on account of the same being indicated as a preference under the R&P Rules; (ii) Whether the power of relaxation could be exercised in favour of a candidate not possessing the essential qualification as prescribed in the R&P Rules, and if so, whether such relaxation was in fact exercised in favour of the appellant in accordance with law; and (iii) Whether the selection and appointment of the appellant can be sustained in law, and if not, whether any direction for appointment of any other candidate is warranted.

### **Appreciation of the issues in seriatim**

20. We have heard the learned counsels for the parties at length on the conspectus of this case and perused the material on record. In that context, the issues are being appreciated in the succeeding paragraphs.

### **Re: Issue (i) and (ii)**

21. At the outset, it must be noted that the advertisement dated 21.07.2016 issued by the respondent Board clearly stipulates that a candidate must possess, apart from the academic requirement of passing the 10+2 examination from a recognised Board or its equivalent and a B.E./B.Tech in Electronic telecommunication/I.T. from a recognised University, inter alia, a minimum of five years' work experience in a reputed organization engaged in computer manufacturing or maintenance. This requirement was not couched as being discretionary or flexible, but in fact, was prescribed as part of the minimum eligibility criteria for appointment. The said stipulation finds its source in Rule 7 of the R&P Rules governing the post in question, which also prescribe experience as a component of eligibility for direct recruitment. The said Rule is relevant and reproduced below for ready reference: –

“7. Minimum educational and other qualification required for direct recruit(s)

(a) Essential

(i) B.E./B/Tech. Degree in Electronics & Telecommunication/IT from a recognised University with at least 5 years experience in computer manufacturing / maintenance company of repute.

(ii) Preference will be given to candidates with M.Tech. in Electronic Degree.

(b) DESIRABLE QUALIFICATION

Knowledge of customs, manners and dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Pradesh.”

22. Clause 2 preceding the said Rule 7 provides the manner in which relaxation may be exercised by the Recruitment Agency and is reproduced below: –

“2. Age and experience in case of direct recruitment, relaxable at the discretion of the Recruitment Agency as the case may be, in case the candidate is otherwise well qualified.”

23. The use of the expression “minimum” in the R&P Rules assumes significance. It indicates that the requirement of experience is a threshold condition which must be fulfilled by all candidates seeking consideration. Such a condition cannot be diluted or substituted merely on the basis of comparative merit or superior academic qualifications. A close perusal of the governing service rules, i.e., the R&P Rules reveals that there is a clear

distinction in the essential and desirable qualifications. While a higher educational qualification may confer an additional advantage of preference in the matter of selection, it does not supplant or override the primary requirement of essential eligibility. To hold otherwise would amount to rewriting the terms of the selection and altering the criteria after the process had commenced.

24. The indication in Rule 7 of the R&P Rules that preference shall be given to candidates possessing an 'M.Tech in Electronics' degree must be understood in its proper context. A preference operates only within the zone of eligible and merit candidates; it does not enlarge or modify the field of eligibility itself. In other words, the stage of applying preference arises only after a candidate is found to fulfil the essential qualifications prescribed for the post. Where a candidate does not meet the threshold requirement of eligibility, the question of extending preference, being in merit, on account of higher qualification does not arise. Preference may, at best, be exercised in a situation where two or more candidates, otherwise eligible and similarly placed in terms of merit, stand at par. In such event, the candidate possessing M.Tech degree may be accorded preference. However, the same cannot be extended to a candidate who is otherwise ineligible for selection merely on account of possessing desirable qualification prescribed for preference.

25. To accept the contention of the appellant that possession of a higher degree can compensate for the absence of an essential qualification would be to invert the scheme of the R&P Rules. It would effectively permit the preferred qualification to override the minimum essential qualification, thereby rendering the latter nugatory. Such an interpretation would not only defeat the plain language of the R&P Rules, but would also introduce uncertainty and subjectivity into the selection process, which is impermissible in matters of public employment.

26. The legal position regarding the impermissibility of substituting prescribed qualifications with higher degrees, in the absence of an express enabling provision, stands fortified in the judgement of this Court in *Zahoor Ahmad Rather and Ors. v. Sheikh Imtiyaz Ahmad and Ors.*<sup>1</sup>, where it was held that in absence of a specific statutory rule or a provision in the advertisement, the recruiting agency cannot broaden the eligibility criteria by treating a higher qualification as a replacement for the mandatory 'essential' qualification'. The relevant portion of the judgement is reproduced for ready reference: –

“26. ...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.”

27. It is trite law that the terms of the recruitment rules and the advertisement form the basis of the selection process and are binding on both, the candidates as well as the recruiting agencies. Any departure therefrom, unless expressly permitted and properly exercised, would be arbitrary and violative of the principles of selection.

28. The contention of the appellant that the R&P Rules confer a power of relaxation also requires consideration. In this regard, Rule 18 of the said rules states as thus: –

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<sup>1</sup> (2019) 2 SCC 404.

“18. Power to Relax

Where the Board is of the opinion that it is necessary or expedient to do so, it may be order for reasons to be recorded in writing relax any of the provisions of these rules with respect to any class of category of persons of posts(s).”

29. At this juncture, it becomes necessary to examine the scope and effect of the power of relaxation under the R&P Rules. Clause 2 preceding Rule 7 permits relaxation of two kinds when a candidate is otherwise well qualified; one, in case of age, and second, in case of experience. Rule 18, on the other hand, confers a much broader power upon the Board to relax any of the provisions of the R&P Rules, where it is of the opinion that is necessary or expedient to do so, for reasons to be recorded in writing.

30. The width of the power under Rule 18, however, cannot be construed as dispensing with the requirement of a structured and conscious exercise of such discretion. Even if it were to be assumed that the said power extends to relaxing the essential qualification, including the requirement of a minimum of five years’ experience; the same can be effected only upon due consideration of the nature of the requirement and the suitability of the candidate, accompanied by reasons recorded in writing. The mere existence of the power of relaxation does not obviate the manner of its exercise.

31. This position is further borne out from the material placed on record. This Court vide order dated 27.11.2025 called for records of the Board to ascertain whether any relaxation was extended by the recruiting agency. The said order is important, and as such, the relevant portion is quoted below: –

“3) It is contended that under the Rules, age and experience in case of direct recruits is relaxable at the discretion of the Recruiting Agency/Board. It also gives power of relaxation if it is necessary and expedient.

4) During arguments, Mr. P. S. Patwalia, learned senior counsel representing petitioner-Himakshi submits that relaxation in experience has been granted by the Recruiting Agency while Mr. M. C. Dhingra, learned senior counsel representing petitioner Rahul Verma, submits that as per the result declared, it is not clear that the relaxation in experience has been granted by recruiting agency. It is also contended that as per the chart, his client possesses the requisite experience. The said argument of having requisite qualification and experience has been controverted by Mr. P. S. Patwalia, inter alia, contending that experience which is required in computer manufacturing/maintenance company of repute. In absence of such experience, the reference of experience as indicated in the selection chart have no relevance.

5) Having considered the submissions as made, we deem it appropriate to call for the records of selection from the Board. The Board shall produce the relevant documents extending relaxation if any by the recruiting agency or in exercise of the power if any exercised by the Board along with the relevant record...”

32. In response thereto, the material placed on record by the respondent Board does not disclose any specific instance or decision evidencing the exercise of the power of relaxation in favour of any candidate, much less the appellant herein. In the Proforma for the Interviews to be held for the post, the relevant details of the concerned candidates were mentioned as thus: –

“HIMACHAL PRADESH BOARD OF SCHOOL EDUCATION DHARAMSHALA (KANGRA-176213)

PROFORMA FOR COMPUTER H/W ENGINEER INTERVIEW TO BE HELD ON 03/10/2016

NAME	Computer Degree or Diploma	Other Qualification	Remarks, if any
Gaurav Upadhaya	<u>B.Tech</u> 2157 S.No. 000306	1. Diploma in Computer Engg.	1. Experience 1 ½ years 1 years
Himakshi	<u>B.Tech</u> 10332 S.No. 0004246	<u>M.Tech</u> MT-1229 S.No. 0001500502	Experience 1. 1 years
Rahul Verma	<u>B.Tech</u> 40204039 S.No. 183421	<u>PGDCA</u> in 2015	1. Experience 1.7 years 5 months 3.3 years 1 years

33. A conjoint reading of the above material leaves no iota of doubt that the requirement of experience was a substantive qualification intended to ensure that the candidate possessed adequate practical exposure in the relevant field. In such a backdrop, the selection of the appellant, who admittedly possessed only about one year of such experience, without any recorded decision to relax the qualification, clearly indicates that the essential eligibility criteria was neither adhered to nor consciously dispensed with.

34. It is thus clear that no material has been placed on record to indicate that any relaxation of experience was in fact exercised in favour of the appellant, by way of recording in writing or otherwise. The record of the Committee is silent to that effect, except to state that the appellant secured the highest combined marks in the written test and personal interview. However, there is nothing to show that the recruitment agency applied its mind to the deficiency in eligibility, particularly regarding the essential qualification, or by recording any reason to relax the qualification of experience in order to treat the appellant as eligible. The absence of any deliberation or reasoning in this regard, when viewed in the light of the above material, reinforces the position that the selection was effected without due application of mind or after granting relaxation.

35. In *Rekha Chaturvedi (Smt.) v. University of Rajasthan and Ors.*<sup>2</sup>, this Court had the occasion to look into the power of relaxation and the manner in which the same shall be exercised by the recruiting agency, especially in case of public employment. While the selections of persons in whose favour the relaxation was exercised, albeit without recording any reasons, was sustained on account of their period of service and lapse of time due to the litigation, this Court laid down certain guidelines which may be referred at this point: –

“11. ... We, however, feel it necessary to emphasise and bring to the notice of the University that the illegal practices in the selection of candidates which have come to light and which seem to be followed usually at its end must stop forthwith. It is for this purpose that we lay down the following guidelines for the future selection process:

A. The University must note that the qualifications it advertises for the posts should not be at variance with those prescribed by its Ordinance/Statutes.

B. The candidates selected must be qualified as on the last date for making applications for the posts in question or on the date to be specifically mentioned in the advertisement/notification for the purpose. The qualifications acquired by the candidates after the said date should not be taken into consideration, as that would be arbitrary and result in discrimination. It must be

<sup>2</sup> 1993 Supp (3) SCC 168.

remembered that when the advertisement/notification represents that the candidates must have the qualifications in question, with reference to the last date for making the applications or with reference to the specific date mentioned for the purpose, those who do not have such qualifications do not apply for the posts even though they are likely to acquire such qualifications and do acquire them after the said date. In the circumstances, many who would otherwise be entitled to be considered and may even be better than those who apply, can have a legitimate grievance since they are left out of consideration.

C. When the University or its Selection Committee relaxes the minimum required qualifications, unless it is specifically stated in the advertisement/notification both that the qualifications will be relaxed and also the conditions on which they will be relaxed, the relaxation will be illegal.

D. The University/Selection Committee must mention in its proceedings of selection the reasons for making relaxations, if any, in respect of each of the candidates in whose favour relaxation is made.

E. The minutes of the meetings of the Selection Committee should be preserved for a sufficiently long time, and if the selection process is challenged until the challenge is finally disposed of. An adverse inference is liable to be drawn if the minutes are destroyed or a plea is taken that they are not available.”

36. In light of the above, absence of any decision exercising power of relaxation in favour of the selected candidate, i.e., the appellant herein assumes greater significance, especially in the context of a public selection process, where transparency and adherence to declared criteria are of paramount importance. If such relaxation were to be granted, it ought to have been reflected in the record in clear terms, indicating that the recruitment agency was conscious of the lack of essential qualification of five years’ experience and had, for valid reasons, chosen to relax the same.

37. The argument that the Committee is not required to record reasons for its selection does not advance the case of the appellant. While it may be correct that detailed reasons are not required for awarding marks or selecting a candidate, the same principle cannot be extended to the exercise of a statutory power of relaxation. The latter involves a departure from the prescribed eligibility conditions and, therefore, necessarily requires a conscious, reasoned and demonstrable exercise of discretion. In the absence of any material evidencing such exercise of, it cannot be presumed that the requirement of minimum five years’ experience stood waived. Acceptance of such a contention would effectively render the eligibility criteria nugatory and confer an unguided discretion upon the recruiting agency, which is impermissible in law.

38. In view of the above, this Court is of the considered view that the requirement of “at least five years’ experience in computer manufacturing/ maintenance company of repute”, being an essential qualification, was required to be fulfilled as on the relevant date. A candidate not fulfilling such requirement could not have been treated as eligible merely on the basis of possessing a higher degree or securing a higher rank in merit. The record clearly indicates that the selected candidate, at the time of submission of her application for the purpose of selection, possessed work experience of only about one year, as is evident from the application status and supporting documents furnished by her during the selection process. In such circumstances, the possession of ‘M.Tech degree in Electronics and Communication’, which is a preferential qualification under the R&P Rules, could not have been relied upon to either confer eligibility or to justify any relaxation of the essential requirement. The mere possession of such a higher academic degree does not, by itself, render a candidate “otherwise eligible or well qualified” without meeting the requirement of experience within the meaning of the R&P Rules, particularly when the basic eligibility

criteria itself remains unfulfilled. Any such approach would amount to substituting the minimum qualification with a preferential one, which is impermissible. The selection of the appellant on such basis, therefore, reflects a clear non-application of mind to the distinction between essential and preferential qualifications and renders any purported relaxation fundamentally flawed.

39. Further, although the R&P Rules do contemplate the power of relaxation, such power is not capable of being presumed. It is required to be exercised consciously by the recruiting agency, for reasons to be recorded in writing such that it is in accordance with the R&P Rules. In the case at hand, despite an order asking the material granting relaxation in the eligibility criteria by applying the mind by the recruiting agency, nothing has been brought on record. In absence, guidance can be taken from the judgment of Rekha Chaturvedi (Supra), whereby it is clear that the selection committee were required to mention in its proceedings and to assign reasons to grant relaxation, if any.

40. Issue nos. (i) and (ii) are answered in the above terms.

**Re: Issue (iii)**

41. Having answered issue nos. (i) and (ii) against the appellant, the question that now arises is whether, notwithstanding the absence of eligibility and lawful exercise of relaxation, the selection and appointment of the appellant can be sustained in law.

42. The position as it exists today is that on appointment and on dismissal of the writ petition of the unsuccessful candidate Rahul by the learned Single Judge of the High Court, the selected candidate i.e., Himakshi has continued to serve on the post. When her selection and appointment was set aside by the Division Bench of the High Court in the impugned judgement, on being challenged, stay was granted by this Court vide order dated 06.05.2021 which is still in operation and the appellant has been in service. There is no doubt that she was also regularised on the post in the year 2019.

43. In light of the same, it was strenuously urged on behalf of the appellant that these factors, coupled with the absence of any allegation of mala fides in appointment or any deficiency in performance, ought to weigh with this Court in order to exercise equity. In this regard, reference was made to the decision of a three-Judge Bench of this Court in Ram Sarup v. State of Haryana and Ors.<sup>3</sup>, wherein the initial appointment was treated to be deemed as regular, on account of the experience acquired from the date of appointment to the post. The relevant portion of the judgement reads as thus: –

“2. ...The appellant was undoubtedly a graduate of a recognised university in Economics and he also held diploma in Social Welfare of a recognised university but admittedly he did not have five years' experience in the field of Labour Laws as Labour Inspector or Deputy Chief Inspector of Shops or Wage Inspector. He was a Statistical Officer for about six years and thereafter for a period of about ten months he held the post of Chief Inspector of Shops. His experience of the working of Labour Laws as Chief Inspector of Shops which is a post higher than the Deputy Chief Inspector of Shops was, therefore, limited only to a period of about ten months and he did not satisfy the requirement of five years' experience. He was, in the circumstances, ineligible to be appointed as Labour-cum-Conciliation Officer under Rule 4, clause (1).

...

The appellant could not, therefore, be legitimately appointed to the post of Labour-cum-Conciliation Officer unless, amongst other things he possessed five years' experience in the

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<sup>3</sup> (1979) 1 SCC 168.

working of Labour Laws as Labour Inspector, Deputy Chief Inspector for Shops or Wage Inspector, which he admittedly did not...

3. The question then arises as to what was the effect of breach of clause (1) of Rule 4 of the Rules. Did it have the effect of rendering the appointment wholly void so as to be completely ineffective or merely irregular, so that it could be regularised as and when the appellant acquired the necessary qualifications to hold the post of Labour-cum Conciliation Officer. We are of the view that the appointment of the appellant was irregular since he did not possess one of the three requisite qualifications but as soon as he acquired the necessary qualification of five years' experience of the working of Labour Laws in any one of the three capacities mentioned in clause (1) of Rule 4 or in any higher capacity, his appointment must be regarded as having been regularised..."

44. Reliance was further placed on the decision of this Court in *Buddhi Nath Chaudhary and Ors. v. Abahi Kumar and Ors.*<sup>4</sup> where the selection, and subsequent appointment, of candidates as Motor Vehicle Inspector in the State of Bihar was under challenge on account of not possessing the experience in an appropriate automobile institution registered under the Factories Act, 1948 or not possessing a driving license. It was held that by virtue of having served on the post for a long time, by extending equitable consideration, the appointments made pursuant to a selection were not liable to be disturbed. The relevant portion is reproduced below for ready reference: –

"6. The selected candidates, who have been appointed, are now in employment as Motor Vehicle Inspectors for over a decade. Now that they have worked in such posts for a long time, necessarily they would have acquired the requisite experience. Lack of experience, if any, at the time of recruitment is made good now. Therefore, the new exercise ordered by the High Court will only lead to anomalous results. Since we are disposing of these matters on equitable consideration, the learned counsel for the contesting respondents submitted that their cases for appointment should also be considered. It is not clear whether there is any vacancy for the post of Motor Vehicle Inspectors. If that is so, unless any one or more of the selected candidates are displaced, the cases of the contesting respondents cannot be considered. We think that such adjustment is not feasible for practical reasons. We have extended equitable considerations to such selected candidates who have worked in the post for a long period, but the contesting respondents do not come in that class. The effect of our conclusion is that appointments made long back pursuant to a selection need not be disturbed. Such a view can be derived from several decisions of this Court including the decisions in *Ram Sarup v. State of Haryana*; *District Collector Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi and H.C. Puttaswamy v. Hon'ble Chief Justice of Karnataka High Court, Bangalore*. Therefore, we must let the matters lie where they are."

45. It was further urged by the learned Senior Counsel for the appellant that such equitable consideration was extended by this Court in a catena of cases, being *Bholanath Mukherjee and Ors. v. Ramakrishna Mission Vivekananda Centenary College and Ors.*<sup>5</sup>, *Rajesh Kumar and Ors. v. State of Bihar and Ors.*<sup>6</sup> and *Vikas Pratap Singh and Ors. v. State of Chhattisgarh and Ors.*<sup>7</sup> to contend that where a candidate has continued in service for a considerable period, this Court may, in appropriate cases, mould the relief on equitable considerations so as to avoid unsettling appointments.

46. The principle emerging from the aforesaid decisions is that this Court may, in appropriate cases, having regard to the long period of service, in absence of any fault on

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<sup>4</sup> (2001) 3 SCC 328.

<sup>5</sup> (2011) 5 SCC 464.

<sup>6</sup> (2013) 4 SCC 690.

<sup>7</sup> (2013) 14 SCC 494.

the part of the incumbent, and on equities that may have crystallised over time; mould the relief so as to do complete justice. However, such exercise of discretion is necessarily conditioned by the facts of each case and cannot be invoked to dilute or override the essential eligibility requirements forming the basis of the selection process.

47. At this point, we must emphasise that the grant of relief on equitable considerations is not a matter of right. The exercise of such jurisdiction is discretionary and is invoked only in exceptional circumstances when the facts so warrant. Where the basic eligibility criteria itself remains unfulfilled, no claim of equity can arise in favour of one candidate, in particular, when some other candidate allegedly possessing the qualification and also claiming appointment to the said post succeeded in the writ Appellate Court. To extend such consideration in the face of a clear breach of essential qualifications would amount to placing equity above the R&P Rules, which is impermissible. The decisions relied upon by the appellant, wherein this Court extended equitable consideration to protect appointments, were rendered in distinct factual contexts. In those cases, the deficiency in qualification was either marginal or was capable of being cured by the incumbents upon their continuation in service, inasmuch as the experience or requirement in question could be acquired in the course of discharging duties on the post itself. It was in such circumstances that this Court, having regard to long years of service, declined to unsettle the appointments.

48. In the present case, the defect is not merely procedural or incidental, but goes to the root of eligibility itself. The selected candidate, i.e., the appellant did not fulfil the essential qualification of “at least five years’ work experience in computer manufacturing/maintenance” as on the relevant date. Such experience is of a specialised nature and external to the post in question, which couldn’t have been acquired by a candidate after serving as a Computer Hardware Engineer. At the same time, the plea taken by the unsuccessful candidate has been accepted in the Letters Patent Appeal, though consideration for his appointment was not allowed. Thus, we can presume from the chart referred above in paragraph 32 of this judgment, wherein the Committee has not specified the nature of experience possessed by the candidates even though it was deficient. Therefore, in such a scenario, the qualification of five years’ experience which is within the minimum qualification, must be understood in its true sense to mean that the candidates ought to possess prior hands-on exposure in the field of computer manufacturing/maintenance in a company of repute. The experience in service on the said post could not be substituted by the experience required at the threshold.

49. In view of the discussions made hereinabove, it is further observed that the recruiting agency or the Board had not exercised their power under Clause 2 preceding Rule 7 or as per Rule 18 of the R&P Rules by application of mind and assigning any reason in writing. Therefore, the selection made, if any, in contravention to the R&P Rules prevalent on the date, would cause inherent illegality which cannot be dispensed with by way of equitable consideration or by exercising discretion of the Court.

50. The next aspect which arises for consideration is whether, on the selection of the appellant being held unsustainable, any direction for selection/appointment of the unsuccessful candidate, i.e., respondent no. 1 – Rahul or any other candidate is warranted.

51. It was contended on behalf of the learned Senior Counsel for the unsuccessful candidate that he, having possessed the requisite experience as on the relevant date, and the selection of the selected candidate having been set aside, ought to be considered for appointment to the post in question. This submission, however, cannot be accepted in a

mechanical manner. It is well settled that mere participation in a selection process or even fulfilment of eligibility conditions does not confer an indefeasible right to appointment. The right, if any, is only to be considered in accordance with the applicable rules and the outcome of a valid selection process.

52. The material on record indicates that the selection process itself was not conducted strictly in accordance with the prescribed eligibility criteria. As noticed hereinabove, candidates who did not fulfil the essential qualification of experience were permitted to participate, and there is nothing to show that the eligibility of candidates was scrutinised with due rigour at the threshold. In such circumstances, the recruitment process stands vitiated to that extent, as also observed in the impugned judgement. A perusal of the supporting documents submitted by the candidates during the selection process, which are on record, indicates that none of the parties herein appear to have possessed the requisite experience in a “computer manufacturing/maintenance company of repute” as specifically prescribed under the R&P Rules. The selected candidate’s experience was in the capacity of a Vocational Trainer (Telecom) in a Government school, whereas the unsuccessful candidate had experience as a Senior Technical Assistant, Project Associate and Additional Programme Officer in various autonomous public institutions. The waitlisted candidate was working as a System Administrator in a private company. Such engagements, on the face of the record, do not satisfy the specific nature of experience contemplated under the R&P Rules. This further reinforces the observation that the essential eligibility criteria was neither scrutinised nor adhered to at the stage of selection, thereby vitiating the selection process.

53. Further, even on perusal of the facts and material on record, it is not the case that respondent no. 1 – Rahul stood next in merit, in a valid and properly conducted selection, upon exclusion of the appellant Himakshi. The record does not support any such automatic or consequential right of appointment. To direct appointment in his favour would amount to substituting one illegality with another without the benefit of a fair and rule compliant selection process.

54. In matters of public employment, the Court must be circumspect in issuing positive directions for appointment unless the entitlement is clear, unambiguous, and flows directly from the applicable rules. Where the selection process itself is found to be flawed, the appropriate course would ordinarily be to set aside the selection rather than to direct appointment of a particular candidate.

55. Before concluding, it may be noted that the controversy in the present appeals has, at its core, arisen from the selection of a candidate who did not fulfil the essential eligibility criteria as on the relevant date, and the subsequent continuance of such appointment over a period of time. The issues that have engaged the attention of this Court, therefore, lie at the intersection of adherence to the R&P Rules and the equities sought to be invoked on account of subsequent developments. As discussed hereinabove, the former must prevail.

56. In view of the above, the selection and appointment of the appellant cannot be sustained in law. At the same time, no direction for appointment of the unsuccessful candidate or any other candidate is warranted, in the facts and circumstances of the case.

57. Issue no. (iii) is answered accordingly.

58. Having regard to the above discussion, this Court finds no infirmity in the impugned judgement of the Division Bench of the High Court, and accordingly, the same is upheld. On considering the nature of the defect in eligibility, the passage of time, and the fact that the appellant has continued in service for a considerable period, no useful purpose would

be served in directing a fresh process of selection at this stage with the same candidate. However, the respondent no. 2 – Board is at liberty to issue a fresh advertisement for selection to the post in question and do the needful strictly in accordance with the R&P Rules. As such, for the reasons recorded hereinabove, no direction for appointment in favour of respondent no. 1 – Rahul or any other candidate can be issued. Accordingly, these appeals stand dismissed.

59. Pending applications, if any, shall stand disposed of.

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