

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 16694 of 2017****With****R/SPECIAL CIVIL APPLICATION NO. 17639 of 2017****With****R/SPECIAL CIVIL APPLICATION NO. 17739 of 2017****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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**BRIJESHKUMAR DASHARATHLAL PATEL**  
Versus  
**CHAIRMAN & 31 other(s)**

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Appearance:

MR MANISH S SHAH(5859), MR HARSH GAJJAR AND MR SATYAM CHHAYA for the Petitioner(s) No. 1

ATULKUMAR P KAMDAR(8164) for the Respondent(s) No. 14

MR HEMANG M SHAH(5399) for the Respondent(s) No. 1

MR UMANG R VYAS(5595) for the Respondent(s) No. 14

MR DHAWAN JAYSWAL, AGP FOR THE STATE

NOTICE SERVED for the Respondent(s) No.

10,11,12,13,15,16,17,18,19,21,22,23,24,25,26,27,28,29,3,30,32,4,5,6,7,9

NOTICE UNSERVED for the Respondent(s) No. 31,8

SERVED BY AFFIX(N) for the Respondent(s) No. 20

**CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

**Date : 26/08/2022**

**CAV JUDGMENT**

1. Heard learned advocate Mr. Manish Shah, learned advocate Mr. Harsh Gajjar, and learned advocate Mr. Satyam Chhaya for the respective petitioners and learned advocate Mr. Hemang Shah with learned advocate Mr. Umang Vyas for the respondents and learned Assistant Government Pleader Mr. Dhawan Jayswal for the respondent-State.
2. By these petitions, the petitioners have challenged the order dated 08.09.2017 passed by respondent no.2 disqualifying the petitioners from consideration for appointment to various posts such as Assistant Security Inspector, Divisional Security Inspector, Traffic Inspector and Store Keeper pursuant to the advertisement issued by respondent no.2 - Gujarat State Road Transport Corporation published in the year 2016 inviting applications for the said posts.
3. Special Civil Application No.16994/2017

pertains to rejection of candidature of the petitioner for the post of Assistant Security Inspector, Divisional Security Inspector and Junior Assistant, Special Civil Application No.17639/2017 pertains to rejection of the candidature of the petitioner for the post of Traffic Inspector whereas Special Civil Application No.17739/2017 pertains to rejection of candidature of the petitioner for the post of Store Keeper.

4. Since the issue involved in these petitions pertains to rejection of candidature of the petitioners pursuant to the same advertisement issued by respondent no.2 and on the same ground of violation of condition nos. 19 and 20 of the advertisement, they have been heard together and would be disposed of by this common order.

5. The petitioners of Special Civil Application No.16994/2017 and Special Civil Application No.17639/2017 are having qualification of Bachelor of Education (B.Ed.) which was not considered as minimum educational qualification and therefore, their candidature was rejected. The candidature of petitioner of Special Civil Application

No.16994/2017 is also rejected on the ground of wrong calculation of percentage as per CGPA method. The candidature of petitioner of Special Civil Application No.17739/2017 is also rejected on the ground that the petitioner is having higher qualification than the minimum qualification required for the post of appointment of Store Keeper.

6. Learned advocates for the petitioners submitted that Degree of B.Ed. is equivalent to the Graduate Degree and it cannot be termed as Post Graduate Degree. It was therefore submitted that rejection of the candidature of the petitioners on that ground is arbitrary.

7. Learned advocate for the petitioner in Special Civil Application No. 17739/2017 submitted that the petitioner is having higher qualification than the minimum qualification required for the post of appointment of Store Keeper and therefore, his candidature could not have been rejected on the ground of having higher qualification.

8. Learned advocate for the petitioner of Special Civil Application No.16694/2017

referred to and relied upon the various dictionary meanings for the word "Graduate" for its correct interpretation so as to mean scholar who has taken a degree in a University and the word "Bachelor" so as to mean person with a University first degree. It was therefore, submitted that reason given for the rejection by the respondent no.2 that Bachelor of Education (B.Ed.) cannot be considered as Graduation Degree is misconceived. Learned advocate referred to the following dictionary meanings for the words "Graduate" and "Bachelor" :

1) Black's Law Dictionary (Ninth Edition), wherein word "bachelor" is defined as under :

"bachelor - The usual title of the first degree that is conferred on a university graduate."

2) Oxford Dictionary & Thesaurus III wherein word "bachelor" is defined as under :

"bachelor - person with a university first degree"

3) Oxford Illustrated Dictionary, wherein words "Bachelor" and "Graduate" are defined

as under :

"bachelor - University degree below master"

"graduate - One who holds an academic degree; one who has graduated"

4) Wharton's Law Lexicon, wherein words "Bachelor" and "Graduate" are defined as under :

"bachelor - one who takes the degree of apprentice or student of arts (B.A.), preliminary to that of master (M.A.) at the Universities."

"graduates - scholars who have taken a degree in a university"

5) K.J. Aiyar Judicial Dictionary, 16<sup>th</sup> Edition, wherein words "Bachelor" and "Graduate" have been defined as under :

"Bachelor - In the universities there are bachelors of arts, of law, in divinity, in medicine & c. which is the first degree taken by students before they come to greater dignity."

"Graduates - To confer a degree or diploma upon at the close of a course of study, as in a University, College or School."

9. Reliance was also placed on the decision of Hon'ble Supreme Court in case of **Parvaiz Ahmad Parry and State of Jammu and Kashmir**



**and others** reported in (2015) 17 Supreme Court Cases 709 to submit that minimum qualification prescribed for applying to the post is Graduation and therefore, when the petitioners are having Bachelor of Education Degree, the petitioners ought to have been considered as eligible candidates and in view of dictionary meaning of words "Bachelor" and "Graduate", the petitioners should have been considered having in possession the prescribed qualification to apply for the respective posts in the advertisement and there is no breach of requirement of educational qualification.

10. On the other hand, learned advocate Mr. Hemang Shah for the respondent no.2 Corporation submitted that Bachelor of Education (B.Ed.) is a Post Graduate course offered for those interested in pursuing a career in teaching. It was submitted that to get admission in B.Ed. course, minimum qualification required is Bachelor of Arts or Bachelor of Science.

11. Learned advocate for respondent no.2 referred to and relied upon section 22 of the University Grants Act, 1956 to submit that a

student who wants to pursue B.Ed. Course is required to have degree of Graduate. It was submitted that a student who wants to pursue LL.B. course then the eligibility for the same is graduation and similarly, B.Ed. is also a Post Graduate course.

12. Learned advocate also relied upon the clarification received from Hemchandracharya North Gujarat University, Patan which is produced on record wherein it is clarified that for admission in B.Ed. course, the eligibility of a student is to have qualification of graduation in any of the branches of arts or science. It was therefore, submitted that the petitioners who are either B.Ed. Or having higher qualification than that of Graduate are not eligible for consideration for the respective posts.

13. Learned advocate placed reliance on the decision of Supreme Court in case of **Chief Manger, Punjab National Bank & Anr. v. Anit Kumar Das** (Judgment dated 03.11.2020 rendered in Civil Appeal No.3602/2020) wherein the Supreme Court held that it is for the employer to determine and decide the



relevancy and suitability of the qualifications for any post and when qualifications are prescribed keeping in view the need and interest of an institution or an industry or an establishment, as the case may be, the employer is required to assess the expediency or advisability or utility of such prescription of qualifications. It was submitted that it is not for the Court to consider and assess the education qualification. It was submitted that as the petitioners are having higher qualification than what is required by respondent no.2-Corporation, the candidature of the petitioners have rightly been rejected for the respective posts.

14. Having considered the rival submissions and having gone through the materials on record, it appears that the petitioners of Special Civil Application No.16694/2017 and Special Civil Application No. 17639/2017 are having qualification of Bachelor of Education whereas petitioner of Special Civil Application No.17739/2017 is having qualification of B. Tech (Mechanical). All the petitioners are therefore, having higher qualification than what is required as

minimum qualification as per the advertisement issued by respondent no.2.

15. Reliance placed on behalf of the petitioners on various dictionary meanings of words "Bachelor" and "Graduate" are concerned, the same are required to be considered in facts of the case. Respondent no.2 has issued advertisement with minimum qualification of graduation which can be translated as "Snatak" in Gujarati which means person having Degree of any University considering the first degree in University. It is also not in dispute that for pursuing the course of Bachelor of Education, a student has to possess the Bachelor degree of graduation either in Arts or in Science then only the B.Ed. course can be pursued. Therefore, Degree of B.Ed. cannot be considered as Bachelor Degree of graduation as such. In similar analogy for the purpose of pursuing the course of law, a student has to be a graduate so as to get admission in LL.B course and only exception is to pursue as a integrated Five years course as being taught by various Law Universities which gives degree of graduation and LL.B. A student cannot get admission either in B.Ed.

or three years LL.B. course after passing 12<sup>th</sup> standard examination directly without having Bachelor Graduation Degree. Therefore, the interpretation made by respondent no.2 Corporation for not considering B.Ed. as a Bachelor Graduate degree is in consonance with aforesaid reasoning. Similarly, section 22 of the University Grants Act, 1952 provides for granting Degree by the respective Universities and as such, similar nomenclature of the particular qualification cannot entitle the petitioners for having minimum qualification. The petitioners are having more qualifications than that of Bachelor Graduate.

16. The Hon'ble Supreme Court in case of **Anit Kumar Das** (supra) held that person having higher qualification was rightly not considered for the post of peon in the bank when minimum prescribed qualification was of passing 12<sup>th</sup> standard or its equivalent with basic reading/writing knowledge of English. The Hon'ble Supreme Court held as under :

"7. Even otherwise, prescribing the eligibility criteria/educational qualification that a graduate shall not be eligible to apply was a conscious

decision taken by the Bank and the same was as per the Circular letter No. 25 of 2008 dated 06.11.2008. In the case of J. Rangaswamy (supra), it is observed and held by this Court that it is not for the court to consider the relevance of qualifications prescribed for various posts.

7.1 In the case of Yogesh Kumar (supra), it is observed and held by this Court that recruitment to public service should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the rules allows entry to ineligible persons and deprives many others who could have competed for the post.

7.2 In a recent decision of this Court in the case of Zahoor Ahmad Rather (supra), this Court has distinguished another decision of this Court in the case of Jyoti K.K. v. Kerala Public Service Commission (2010) 15 SCC 596 taking the view that in a case where lower qualification is prescribed, if a person has acquired higher qualifications, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In the said decision, this Court also took note of another decision of this Court in the case of State of Punjab v. Anita (2015) 2 SCC 170, in which case, this Court on facts distinguished the decision in the case of Jyoti K.K. (supra). While distinguishing the decision in the case of Jyoti K.K. (supra), it is observed in paras 25 and 26 as under:

"25. The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] has been considered in a judgment of two learned Judges in State of Punjab v. Anita [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329]. In that case, applications were invited for JBT/ETT qualified teachers. Under the rules, the prescribed qualification for a JBT teacher included a Matric with a two years' course in JBT training and knowledge of Punjabi and Hindi of the Matriculation standard or its equivalent. This Court held that none of the respondents held the prescribed qualification and an MA, MSc or MCom could not be treated as a "higher qualification". Adverting to the decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664], this Court noted that Rule 10(a)(ii) in that case clearly stipulated that the possession of a higher qualification can presuppose the acquisition of a lower qualification prescribed for the post. In the absence of such a stipulation, it was held that such a hypothesis could not be deduced: (Anita case [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329], SCC p. 177, para 15)

"15. 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. case [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] , permitted the aforesaid course. The statutory rule, in the decision relied on by the learned counsel for the private respondents, is extracted hereunder:

(SCC p. 598, para 6)

16. Rule 10(a)(ii) reads as follows:

10. B C (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 [Ed.: The matter between two asterisks has been emphasised in original.] 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.' (emphasis supplied) 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 authorising the appointment of persons with higher qualifications." (emphasis supplied)

26. We are in respectful agreement with the interpretation which has been placed on the judgment in *Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664]* in the subsequent decision in *Anita [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329]*. 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 the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily 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. In this view of the matter, the Division Bench [*Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12/10/2017 (J&K)*] of the High Court was justified in reversing the judgment [*Zahoor Ahmad Rather v. State of J&K, 2017 SCC OnLine J&K 936*] of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision [*Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12-*

102017 (J&K)] of the Division Bench.”

That thereafter it is observed in para 27 as under:

“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."

7.3 Thus, as held by this Court in the aforesaid decisions, it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. In the present case, prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed 12th standard is justified and as observed hereinabove, it is a conscious decision taken by the Bank which is in force since 2008. Therefore, the High Court has clearly erred in directing the appellant Bank to allow the respondent original writ petitioner to discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement."

17. Therefore, in view of above decision of Hon'ble Supreme Court in case of **Anit Kumar Das** (supra), the petitioners have rightly not been considered for the respective posts by respondent no.2 as the petitioners are having higher qualification than the minimum prescribed

qualification as per the advertisement and there is no provision or rule which prescribes that the higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post.

18. For the foregoing reasons, the petitions being devoid of any merit, stands dismissed. Notice is discharged. Interim relief stands vacated.

**(BHARGAV D. KARIA, J)**

At this juncture, learned advocate Mr. Manish Shah in Special Civil Application No.16694/2017 and learned advocate Mr. Harsh V. Gajjar in Special Civil Application No.17639/2017, pray for continuation of the interim relief which was granted by this Court while issuing notice to keep one post vacant by the respondent authority.

In view of the reasons stated in the order, the prayer is refused.

**(BHARGAV D. KARIA, J)**

RAGHUNATH R NAIR