

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.210 of 2019

1. The Bihar State Food and Civil Supplies Corporation Limited through its Managing Director, Daroga Rai Path, Patna
2. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Daroga Rai Path, Patna
3. The Nodal Officer, Bihar State Food and Civil Supplies Corporation Ltd., Daroga Rai Path, Patna.

... .. Appellant/s

Versus

1. Pappu Kr. Pankaj, S/O Gopal Prasad (Roll No 109391), R/O village -Naser, PO gurua,PS Gurua, District-Gaya
2. Md. Ajaj Akhtar (Roll No. 101333), S/o Md. Fahim Akhtar S/O Md. Fahim Akhtar, At + P.O.- Basopatti, District- Madhubani, Pin 847225 (Course-MHRM)
3. Alok Kumar, S/o Pratap Narain (Roll No. 114699), resident of Mohalla-New Etwarpur, Lalu Path, P.O. Kurthaul, Via- Punpun, District- Patna
4. Sumit Prabhakar , S/o Vinod Prasad (Roll No. 101223), Resident of E-16, Peoples Cooperative Colony, P.O. Kankarbagh, District- Patna
5. Raj Kumar (Roll no. 113615), S/O (Late) R.S. Yadav Late R.S. Yadav, Ram Govind Enclave, Punai Chak, P.O. Shastri Nagar, At and District- Patna.
6. Manoj Singh, S/o Bindeshwari Singh (Roll No. 107641), Resident of village -Deoria, P.O. Pahleza, P.S. Dehri-on- son, District- Rohtas
7. Md Nazruddin, S/o Dil Mohammad (Roll No. 105300), resident of village and P.O. Mohanpur, P.S. Basantpur, District- Siwan.
8. Shamshay Alam, S/O Md. Idris (Roll No. 113316), resident of village Sandali, P.O. Barauli, P.S. Barauli, District- Gopalganj
9. Neelmani Jaiswal, S/O Ram Baboo Chaudhary (Roll No. 100217), resident of village- Rustampur Market, District- Darbhanga
10. Nishant kumar (Roll No. 108728), Son of Sri Prahald Pandey, Resident of village Tilka Manjhi, P.S. Tilka Manjhi, At and District- Bhagalpur
11. Abhishek Kumar, son of Tarak Nath Mahto, resident of village-Bhagwanpur, P.O. Bhagalpur, P.S. Sadar, District- Muzaffarpur.
12. Kanchaneswar Srivastava (Roll No. 106389), Son of Late B.P. Srivastava, resident of in the house of Late Shivbachchan Lal, Street No. 10A, Santoshi Maa Path, Mohalla Gaurakhani, At P.O. Sasaram, District- Rohtas.
13. Rajan Kr. Giri (Roll No. 114032) S/o Sri Baliram Giri Rajan Kr. Giri, resident of village P.O. Dindayalpur, P.s. G.B. Nagar, Tarwara, At District-Siwan.
14. Shashi Ranjan Kumar (Roll No. 102867), S/o Son of Vishnudeo Prasad, Resident of Saidpur, P.O. and P.S. Katrisarai, Bilari, District- Patna
15. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
16. All India Council for Technical Education.



... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anjani Kumar, Sr. Advocate
Mr.Shailendra Kumar Singh, Advocate
For the Respondent/s : Mr.Mukul Sinha, Advocate

**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)**

Date : 03-05-2021

Heard learned counsel for the appellants and learned counsel for the respondents.

In the present appeal, the appellants have challenged the order dated 05.11.2018 passed in CWJC No. 16481 of 2017 (Pappu Kumar Pankaj and Ors. Vs. The State of Bihar and Ors.) along with its analogous case bearing CWJC No. 4458 of 2017 (Avinash Kumar Vs. The State of Bihar and Ors.) whereby and whereunder the learned Single Judge has quashed the decisions of Managing Director, Bihar State Food and Civil Supplies Corporation Limited vide Memo Nos.7576 dated 31.07.2017, 7579 dated 31.07.2017, 7577 dated 31.07.2017, 7581 dated 31.07.2017, 7589 dated 31.07.2017, 7587 dated 31.07.2017, 7590 dated 31.07.2017, 7582 dated 31.07.2017, 7571 dated 31.07.2017, 7585 dated 31.07.2017, 7583 dated 31.07.2017, 7584 dated 31.07.2017 (Annexure-1 series) and Memo No. Nil



dated 31.07.2017 (Annexure-2) by which it has been held that the respective writ petitioners, who were possessing the qualification, do not match with the qualification mentioned in the advertisement i.e. M.B.A./P.G.D.B.M and, as such, the claim made by the writ petitioners has been rejected. The orders, which were under challenge in the writ application, were taken into consideration in the order passed in CWJC No. 17093 of 2016 in which this Court has considered thoroughly, the qualifications and their possession of the certifications, gave direction for consideration in the light of discussion made in that judgment/order.

The Bihar State Food and Civil Supplies Corporation Limited (appellants herein) issued an advertisement for recruitment and appointment to the post of Assistant Manager and Assistant Accountant. In the present case, the dispute is confined only with respect to the post of Assistant Manager. As per the advertisement, the total 407 post were divided in different categories, the educational qualification fixed, for that post, the candidate must possess degree of MBA/PGDBM from recognized University/ institute approved by AICTE. The writ petitioners (private respondents herein), in pursuance of advertisement, applied for the said post.



From the records, it appears that Pappu Kr. Pankaj (petitioner no. 1, Roll No.109391) has acquired the qualification of Master in Human Resources Management (MHRM) from Lalit Narayan Mishra Institute of Economic Development and Social Change, an autonomous institute under Magadh University, Bodh Gaya; Md. Ajaj Akhtar (petitioner no. 2, Roll No.101333) has acquired the qualification of Master of Human Resources Management (MHRM) from Lalit Narayan Mishra Institute of Economic Development and Social Change, an autonomous institute under Magadh University, Bodh Gaya; Alok Kumar (petitioner no. 3, Roll No.114699) has acquired the qualification of Master of Human Resources Management (MHRM) from Lalit Narayan Mishra Institute of Economic Development and Social Change, an autonomous institute under Magadh University, Bodh Gaya; Sumit Prabhakar (petitioner no. 4, Roll No.101223) has acquired the qualification of Master of Human Resources Management (MHRM) from Lalit Narayan Mishra Institute of Economic Development and Social Change, an autonomous institute under Magadh University, Bodh Gaya; Raj Kumar (petitioner no. 5, Roll No.113615) has acquired the qualification of Master in Human Resources Management (MHRM) from Institute of Management Technology, Cente for



Distance Learning, Ghaziabad, but University name has been shown as Vidyasagar University, Midnapore, West Bengal; Manoj Singh (petitioner no. 6, Roll No.107641) has acquired the qualification of M.A. in Personnel Management & Industrial Relation (PMIR) from the Patna University; Md. Nazaruddin (petitioner no. 7, Roll No.105300) has acquired the qualification of M.A. in Personnel Management & Industrial Relation (PMIR) from the Patna University; Shamsay Alam (petitioner no. 8, Roll No.113316) has acquired the qualification of M.A. in Personnel Management & Industrial Relation (PMIR) from the Patna University; Neelmani Jaiswal (petitioner no. 9, Roll No.100217) has acquired the qualification of M.A. in Personnel Management & Industrial Relation (PMIR) from the Alagappa University, Karaikudi; Nishant Kumar (petitioner no. 10, Roll No.108728) has acquired the qualification of Post Graduate Diploma in Rural Management from the Institute of Rural Management, Anand; Abhishek Kumar (petitioner no. 11, Roll No.105212) has acquired the qualification of Master in Forestry Management from Indian Institute of Forest Management, Bhopal; Kanchaneswar Srivastava (petitioner no. 12, Roll No.106389) has acquired the qualification of Post Graduate Programme in Management (PGPM Finance +HR) from Institute of



Management & Technology (IMT), Ghaziabad; Rajan Kumar Giri (petitioner no. 13, Roll No.114032) has acquired the qualification of Post Graduate Diploma in Business Administration from Symbiosis Centre For Distance Learning (SCDL), Pune; Shashi Ranjan (petitioner no. 14, Roll No.102867) has acquired the qualification of Post Graduate Diploma in Industrial Management from the National Institute of Industrial Engineering, Mumbai.

The writ petitioners qualified in test examination successfully and their role numbers were/are standing in the result (Annexure-16). The result shows that selected candidates were called for verification of their respective certificates of qualifications and degrees, further stipulates, the result would be published following the reservation policy of State of Bihar.

In pursuance of that, the writ petitioners submitted their respective certificates of degrees for verification with an undertaking from each petitioners that he has been informed that the decision regarding eligibility of his candidature for Assistant Manager is kept pending subject to verification of their respective educational qualifications.

The Magadh University has given the certification that two years course of Post Graduate of Human Resource



Management from Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna is declared as equivalent to MBA of Magadh University, Bodh Gaya (Annexure-18). Similarly, Patna University has given the certification to Manoj Singh that he has obtained two years Post Graduation degree in Personnel Management and Industrial Relations and the same is a full time regular course (Annexure-18/1) and a similar certification has been given to Md. Nazaruddin that he has obtained two years Post Graduation degree in Personnel Management and Industrial Relations, which is a full time regular course (Annexure-18/2). In the case of Shamsay Alam, the identical certification has been given that he has obtained two years Post Graduation degree in Personnel Management and Industrial Relations, which is a full time regular course (Annexure-18/3). The Magadh University has issued a letter dated 23.08.2003 (Annexure-18/4) wherein it has been mentioned that permission has been given by the University to name the course of Master of PMIR as Master of Human Resource Management from sessions 2000-2001. It has been mentioned that the same is similar to MBA and MCA certificate. The Patna University has issued a certificate in favour of Shamsay Alam that the degree of M.A. in Personnel



Management and Industrial Relations may be treated to be equivalent to the degree of MBA with specialization of Personnel Management and Industrial Relations or Human Resource Management (Annexure-18/5). Alagappa University has issued a equivalent certificate in favour of Neelmani Jaiswal that the degree of M.A. in Personnel Management and Industrial Relations awarded to him/her is equivalent to the degree of MBA (Human Resource Management) (Annexure-18/6). The Institute of Management and Technology, Centre for Distance Learning Ghaziabad issued a certificate in favour of Kanchaneswar Srivastava that he has done his three years PGPM (MBA Level) course through distance learning mode, recognized by the Distance Education Council, Government of India (Annexure-18/7). Similarly, Symbiosis Centre for Distance Learning has issued a certificate in favour of Rajan Kumar Giri that he has done his Post Graduate Diploma in Business Administration (PGDBA) (Annexure-18/8). The National Institute of Industrial Engineering has issued a certificate in favour of Shashi Ranjan Kumar that he was a student of two years full time Residential Post Graduate Diploma in Industrial Management (PGDIM) Programme and this programme is approved by AICTE and accredited by NBA, AICTE (Annexure-18/9).



The writ petitioners have brought a list of approved institutions from where they have acquired the qualification has been shown to be approved institution like the Institute of Rural Management, Anand.

The Association of Indian Universities has issued a letter dated 13.06.2015 to Nishant Kumar (writ petitioner no.10) wherein it has been mentioned that two years Post-graduate Diploma in Rural Management offered by Institute of Rural Management, Anand is Post-graduate Programme in Rural Management during the year 2008-10. The Association of Indian Universities has already accorded equivalence to the two year full time Postgraduate Programme in Rural Management to the Institute of Rural Management, Anand with MBA Degree (Rural Management) of an Indian University. The candidate having pursued Postgraduate Programme from the Institutes approved by AICTE, whose programme have been equated by AIU are eligible to enroll themselves for Ph.D Programme at Indian Universities/ employment.

Further, the writ petitioners have brought a list of universities which have been allowed to offer approved programmes through distance mode during academic year 2015-16 by the University Grants Commission in which the Institute



of Management Technology, Ghaziabad having been recognized by the University Grants Commission. Similarly, Symbiosis Centre for Distance Learning has also been granted recognition.

A letter of University Grants Commission dated 14.10.2013 has been brought on the issue of equivalence of the degree awarded by the Open and Distance Learning Institutions at par with conventional Universities/Institutions wherein paragraph 4 of the said letter shows that the Government of India, in exercise of power conferred under section 20 (1) of UGC Act, 1956 issued directions dated 29th December, 2012 entrusting UGC with the responsibility of regulating higher education programme in open and distant learning. Consequently, Universities/ Institutions desirous of offering any programme through distant mode would require recognition of UGC and finally view has been taken that the Degrees/Diplomas/Certificates awarded for programmes conducted by the Open and Distant Learning (ODL) institutions recognized by DEC (erstwhile) and UGC in conformity with UGC Notification on specification of Degrees should be treated as equivalent to the corresponding awards of the Degree/Diploma/Certificate of the traditional Universities/ Institutions in the country and on that basis, the writ petitioners



are claiming the right to be appointed to the post of Assistant Manager.

The Bihar State Food and Civil Supplies Corporation Limited (appellant herein) issued a list of selected candidates classified (Annexure-19) in four parts; Class (i) and (ii) have been found to be eligible to be appointed and they have been finally selected, but the writ petitioners and others fall in Class (iii) and their matters was kept for enquiry and consideration, directed the candidates to produce the original documents and certificates and, ultimately, after verification of the certificates by the Committee constituted by the Corporation, recorded in the meeting dated 30.08.2016 that they are claiming that the degrees are equivalent to the qualification mentioned in the advertisement and requested the Corporation to take decision accordingly.

From the records, it appears that the writ petitioners had approached this Court by filing CWJC No.17093 of 2016 with analogous cases and finally, the Court vide order dated 24.03.2017 directed for fresh consideration in the light of observation made in that order. It will be relevant to quote relevant portion of the said order :-

“The discussion above in reference to the qualifications held by these petitioners confirm



that these courses have been treated akin to a MBA degree or a Diploma in Business Management.

As I have already expressed since the respondent Corporation themselves have accepted the certification by the Banaras Hindu University as to the equivalence of a course on the basis of restructuring and have offered appointment on that post, the certification received by these petitioners through their University/Institution well deserves a consideration. In my opinion, it is the substance of a course which is to be a guiding factor for such consideration even if there may be a variance in the nomenclature of the course but a mere difference in nomenclature, cannot be a foundation nor can form any basis for exclusion of a candidate from consideration rather it is the utility aspect of the matter and whether the course attended by the applicant satisfies the requirement of the post on which this applicants are to be appointed, which normally should be a guiding factor. The choice is entirely with the Corporation and since demonstrably they have deviated in the matter by opening up to the other qualification(s) as well which are at variance with the advertisement, either by referring to the restructuring order or the certification by the concerned University as relied upon by Mr. Sahay in reference to Annexure H/1 and H/2 to C.W.J.C.no17093 of 2016 as well as Annexure-4 to the second writ petition, a similar certification possessed by these petitioners obtained from the institutions attended by these petitioners, would also require a similar consideration before a



final decision is taken by the Corporation on the issue.

As I have already indicated at the outset it is the discretion of the employer alone as to the utility of the person concerned based on the qualification possessed by him which has to be the determining factor and in my opinion the authorities of the Corporation need not get swayed by the nomenclature of the qualification so long as the qualification possessed by any candidate satisfies their requirements.

In the circumstances so discussed I deem it proper to dispose of the writ petition with the direction to the Managing Director of the corporation to consider the case of these petitioners afresh and in the light of the observation made hereinabove and pass appropriate orders in accordance with law preferably within six weeks from the date of receipt/production of a copy of this order.

The writ petitions are disposed of accordingly”.

Whereafter the Corporation has reconsidered the case of the writ petitioners as per the direction issued by this Court, refused to hold that their respective degrees are at par with the qualification mentioned in the advertisement or it is equivalent to the said degree. Thereafter, writ petitioners have challenged that order successfully and the learned Single Judge has set aside the impugned order, which is under challenge before this Court by the appellant Corporation.



The appellants have raised the issue for consideration that in exercise of power conferred under Article 226 of the Constitution of India, the Court would refrain to go into the issue of equivalence on the basis of course of study provided by the University. The game of the rule prevailing on the date of advertisement will be applicable till the final selection is not completed and, in the midway, the rule of game cannot be changed. If the illegality has been committed by the officers of the appellants, that cannot be allowed to be perpetuated, but the remedial measures may be taken.

It has further been submitted that the Selection Committee does not have a power and jurisdiction to relax the qualification mentioned in the advertisement. Making an appointment on the basis of inferior qualification on the theory of equivalence is fraud on the public and the direction to consider the matter of the writ petitioners on the basis of equivalence of certificates will not be appropriate for this Court in exercise of judicial review to issue a mandamus to appoint a person having such qualification, which is not mentioned in the advertisement. In support of such submissions, he has placed reliance on the following judgments :



1. 2019 (3) PLJR (SC) 457 (Zonal Manager, Bank of India & Ors. Vs. Aarya K. Babu & Anr.) (Paras 5, 10, 11, 14 and 15)

2. 2019 (3) PLJR 915 (Jitendra Kumar & Ors. Vs. The State of Bihar and Ors.) (Paras 1 and 5)

3. (1995) 6 SCC 1 (Dr. Krushna Chandra Sahu and Others Vs. State of Orissa and Others) (Paras 34 to 38)

4. 2015 (1) PLJR 849 (The State of Bihar Vs. Sri Krishna Prasad) PLJR 849 (Paras 10, 12, 13 & 23)

And emphasis has been given to the judgments reported in 2014 (3) SSC 767 (**Ganapath Singh Gangaram Singh Rajpur Vs. Gulbarga University and Ors.**) (Paras 21, 22 & 23) & 2019 (3) PLJR 951 (**Jitendra Kumar & Ors. Vs. The State of Bihar and Ors.**) (Para 5) wherein the issue was involved whether the person holding the degree of M.A. in Mathematics will be said to be the proper qualification of Lecturer for MCA.

Further, he has placed reliance on the following judgments :

1. AIR 1990 SC 405 (P. Mahendran and others Vs. State of Karnataka and Others) (Paras 4, 5 & 11)

2. (2011) 3 SCC 436 (State of Orissa and another Vs. Mamata Mohanty)(Paras 59 to 62)



3. (1984) 2 SCC 141 (P.K. Ramachandra Iyer v. Union of India) (Paras 30 and 31)

4. (2006) 3 SCC 674 (A.P. SRTC and Ors. Vs. G. Srinivas Reddy and Others) (Paras 14, 15, 16, 18 & 20)

5. AIR 1974 SC 1631 (Mohammad Shujat Ali and others Vs. Union of India and Others) (Para 13)

The letter no.12677 dated 14.12.2017 (Annexure-31), comprising names, reflects that some of the writ petitioners have been treated to possess the equivalent degree.

To adopt the modus of least resistance, counsel for the respondents submits that the institutions, from where the petitioners-respondents have acquired their qualification, have either been recognized by AICTE or by the UGC. It has been emphasized that their course of study was for two years and whereafter they have been granted the degrees. The question of equivalence would arise only when persons who are holding the degree from an institution which has not obtained the recognition by AICTE or UGC as the prescribed qualification in the advertisement as MBA/PGDBM. In nutshell, the petitioners-respondents are claiming that their qualification is identical or same to the degree of MBA or PGDM (PGDBM). Details of respondents' degrees and qualifications have already been mentioned hereinabove, so it does not require any repetition.



It has further been submitted that the decision of AICTE dated 28.11.2006, which has been mentioned in the Annual Report of 2006-2007, furnishes the information with regard to standardization of nomenclature of programmes and the decision dated 12.12.2006 mentions that every two year full time regular management programme will be referred to as PGDM and another every two year full time sector/function focused management programme will be referred to as PGDM, in parenthesis the focus or sector would be mentioned. For example, programmes focused on Finance, Marketing would be mentioned as PGDM (Finance), PGDM (Marketing) respectively and a sector programme in Energy Management would be mentioned as PGDM (Energy Management). So, on that basis, he claims that all persons have obtained the degree in which two years full time programme was provided and, as such, there may be a different nomenclature, but, in fact, they are holding the degree of PGDM, which is the qualification mentioned in the advertisement for being appointed as Assistant Manager. So, the claim of the appellants that they do not hold the qualification or its equivalence is completely erroneous and requires to be interfered by this Court and a direction for their appointment



may be issued as the vacancies of the Assistant Manager are still available.

Further, it has been submitted that they have appointed certain candidates, still they are working, are not holding the qualification as prescribed and mentioned in the advertisement, but treating them to be an equivalent to the qualification they have been appointed and the claim of the writ petitioners-respondents has wrongly been rejected holding that they do not have the requisite qualification as mentioned in the advertisement and he has pointed out the name of certain persons showing that if they can be adjusted and appointed, in that circumstances, the writ petitioners do have a right to be accommodated as Assistant Manager.

Counsel for the writ-petitioners (respondents herein) has placed reliance on the judgment reported in (2013) 8 SCC 287 explaining the status of UGC *vis-a-vis* AICTE, has submitted that the approval of AICTE is not mandatory requirement, but in the event, the institution does not maintain standard, AICTE will inform UGC to take action against that Institution. It is the UGC, which will at liberty to take appropriate action.



The power of Judicial Review on the issue of equivalence of Degree.

In the case of *Mohammad Shujat Ali and others Vs. Union of India and Others reported in AIR 1974 SC 1631*, one of the question has been dealt with with regard to equivalence of the qualification as to whether the Court does have expertise or the power to evaluate and assess two qualifications and record a finding with regard to equivalence of the qualifications. The Hon'ble Supreme Court has held that the question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function. The Court does not have such skill to decide the equivalence of two educational qualifications. It will be proper to quote paragraph 13 of the said judgment :-

“13. This contention has been adequately dealt with in the judgment given by the Division Bench of the Andhra Pradesh High Court on February 23, 1968 in Writ Petition No. 645 of 1967 and other allied petitions and the judgment of the Full Bench impugned in these appeals. We



are substantially in agreement with the reasons which have weighed with the Division Bench and the Full Bench in rejecting this contention. It must be noted that the question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government. It is only where the decision of the Government is shown to be based on extraneous or irrelevant considerations or actuated by mala fides or irrational and perverse or manifestly wrong that the Court would reach out its lethal arm and strike down the decision of the Government. Here in the present case it cannot be said that the view taken by the Government of Andhra Pradesh that US and OCE certificates of the Osmania Engineering College were not equivalent to US or OCE diploma of the College of Engineering, Guindy or LCE, LME or LEE diplomas of any other recognised institution suffered from any of these infirmities. It was based on the recommendation of an expert high powered body like the State Board of Technical Education consisting of distinguished



administrators, educationists and technical experts against whom nothing could be alleged on behalf of the petitioners/appellants. The State Board of Technical Education included inter alia principals of different engineering colleges in the State, the Secretary of the Regional Committee of the All-India Committee on Technical Education, retired Chief Engineers as also Chief Engineers in office who would be expected to be familiar with the academic standards and practical content of the different qualifications and the decision taken by the Government of Andhra Pradesh on the basis of the recommendation of the State Board of Technical Education could not be regarded as unreasonable or perverse or manifestly wrong nor could it be said to be mala fide or based on extraneous or irrelevant considerations. Indeed, the Government of Andhra Pradesh could not do better than rely on the recommendation of the State Board of Technical Education. The Full Bench as well as the Division Bench of the Andhra Pradesh High Court have in fact shown in their respective judgments, on a comparison of the duration and content of the respective courses, that US and OCE certificates of the Osmania Engineering College were, both from the point of view of academic learning as also from the point of view of practical experience, inferior to US or LCE diploma of the College of Engineering, Guindy or LCE, LME or LEE diploma of any other recognised institution. It may also be pointed out that even in the erstwhile State of Hyderabad



itself, US and OCE certificates of the Osmania Engineering College were not treated on a par with LCE, LME or LEE diploma. Firstly, an Overseer holding US or OCE certificates of the Osmania Engineering College was required to put in at least six years' service before he could be eligible for promotion as Supervisor while a Sub-Overseer holding LCE or LME diploma did not have to put in any minimum qualifying service for the purpose of promotion as Supervisor. Secondly, US or OCE certificate of the Osmania Engineering College was regarded as sufficient qualification only for Recruitment to the post of Sub-Overseer, while LCE or LME diploma qualified for recruitment not only to the post of Sub-Overseer but also to the posts of Supervisor. It is, therefore, not possible to overturn the decision of the Government of Andhra Pradesh denying equivalence of US and OCE certificates of the Osmania Engineering College with LCE, LME or LEE diplomas. It may be noted that the Central Government also affirmed the decision of the Government of Andhra Pradesh by its letter dated March 17, 1966. Even if it be assumed that the Central Government had the exclusive power under the States Reorganisation Act, 1956 to bring about integration of services in the reorganised State of Andhra Pradesh, this decision of the Central Government contained in the letter dated March 17, 1966 is sufficient to meet the requirement of the statute and it must be upheld for the same reasons as the decision of the



Government of Andhra Pradesh. There was a further ground of attack levelled against the decision of the Central Government, albeit, faint-heartedly, and that was that the decision of the Central Government was arrived at solely on the basis of the communication dated January 9, 1965 addressed by the Additional Secretary to the Government of Andhra Pradesh to the Secretary to the Government of India, Ministry of Home Affairs without giving any opportunity to the non-graduate Supervisors from the erstwhile Hyderabad State to put forward their case. This charge is plainly unsustainable as it is evident from para 9 of the affidavit dated July 27, 1970 filed by K.P. Singh, Under Secretary to the Government of India, Ministry of Home Affairs in reply to Writ Petition No. 385 of 1969, and it can hardly be disputed, that the representations made by the non-graduate Supervisors from the erstwhile Hyderabad State against the decision of the Government of Andhra Pradesh contained in the Order dated October 3, 1960 were forwarded to the Central Government and it was after giving due consideration to these representations on the basis of the recommendations of the Advisory Board which consisted of experts, that the Central Government affirmed the decision of the Government of Andhra Pradesh by its letter dated March 17, 1966. The present contention of the petitioners/appellants must, therefore, be rejected”.



In the case of *P.K. Ramchandra Iyer and Ors. Vs. Union of India reported in AIR 1984 Supreme Court 541*, the matter was related to granting the upgraded scale attached to the post of Professor which was not given while on the other hand new incumbents recruited in the newly created posts were awarded the revised scale, that led to the disturbance in the inter se seniority in the cadre of Professors. The Hon'ble Court has considered the essential qualification of experience and it has been held that the period spent in preparing thesis in acquiring the qualification of M.Sc. cannot be taken into consideration as an experience in which the claim was made and cannot be granted relaxation of essential qualification under the heading of experience. The High Court has granted the relaxation, but the Hon'ble Supreme Court did not uphold an appointment of a person to suit essential qualification, the essential qualification was amplified by providing an irrelevant additional qualification, yet he failed to qualify for the same by resorting to the power of relaxation and also held that the Selection Committee had no power to grant relaxation of qualification pertaining to experience and the Hon'ble Court has held that for the post of Senior Biochemist, there were others who fulfilled all essential qualification and one was left to speculate the reasons



which weighed with the Selection Committee to reject them and to select a person who did not fulfil the essential qualification for such a post as Senior Biochemist, claiming non-existent power to relax the qualification and the Hon'ble Court has held that the Committee comprised of experts and they were highly qualified persons who would be able to evaluate and assess the relative merits of each of the candidates and the Court held that as the power lies in the ICAR to appoint a person and the Court should not usurp that power merely because it would have chosen a different person as better qualified. The Court must look with respect upon the performance of duties by experts in the respective fields. It has been held that once the Committee does not have the power to relax the qualification pertaining to experience, the entire process of selection was in contravention of the established norms. It will be proper to quote relevant part of paragraph 31 of the said judgment :-

“31.Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification pertaining to experience, the entire process of selection of the 6th respondent was in contravention of the established norms prescribed by advertisement and power of the Selection Committee and procedure of fair and just selection and equality in the matter of public employment



and to rectify resultant injustice and establish constitutional value this Court must interfere”.

In the case of *Dr. Krushna Chandra Sahu and Others Vs. State of Orissa and Others reported in (1995) 6 SCC 1*, the matter related to recruitment of Junior Teachers in Orissa State Homeopathic Medical Colleges and one of the point came for consideration the power and function of Selection Board and Hon'ble the Supreme Court has held that the Selection Board has to work within the frame of the Rule and at the guidelines and regulations, the qualification has to be fixed by the executive. The Selection Board do not have the power or jurisdiction to add, amend or modify or give relaxation to the qualification as this does not lie in its domain. The basic power is to select the candidate and the Selection Committee or the Board does not have jurisdiction to prescribe the minimum marks which a candidate had to secure at the viva voce test. The Selection Body cannot sit over the mode of recruitment and category from which recruitment should be made as these are the matters of policy, falling exclusively within the purview of the executive. In absence of Rule, the executive instruction will provide the guideline and condition and eligibility for selection



of a candidate. It is proper to quote paragraph nos. 33, 34, 35 & 36 of the said judgment :-

“33. The members of the Selection Board or for that matter, any other Selection Committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the Rules made under Article 309. It is basically the function of the rule-making authority to provide the basis for selection. This Court in State of A.P. v. V. Sadanandam [1989 Supp (1) SCC 574 : 1989 SCC (L&S) 511 : (1989) 11 ATC 391] observed as under: (SCC pp. 583-84, para 17)

“We are now only left with the reasoning of the Tribunal that there is no justification for the continuance of the old rule and for personnel belonging to other zones being transferred on promotion to offices in other zones. In drawing such conclusions, the Tribunal has travelled beyond the limits of its jurisdiction. We need only point out in the case of Mohammad Shujat Ali and others Vs. Union of India that the mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision



falling exclusively within the purview of the executive.”

34. The Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. In P.K. Ramachandra Iyer v. Union of India [(1984) 2 SCC 141 : 1984 SCC (L&S) 214 : (1984) 2 SCR 200] , it was observed: (SCC pp. 180-81, para 44)

“By necessary inference, there was no such power in the ASRB to add to the required qualifications. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm.”

35. Similarly, in Umesh Chandra Shukla v. Union of India [(1985) 3 SCC 721 : 1985 SCC (L&S) 919 : 1985 Supp (2) SCR 367] , it was observed that the Selection Committee does not possess any inherent power to lay down its own standards in addition to what is prescribed under the Rules. Both these decisions were followed in Durgacharan Misra v. State of Orissa [(1987) 4 SCC 646 : 1988 SCC (L&S) 36 : (1987) 5 ATC 148 : (1987) 2 UJ (SC) 657] and the limitations of the Selection Committee were pointed out that it had no jurisdiction to prescribe the minimum marks which a candidate had to secure at the viva voce.

36. It may be pointed out that rule-making function under Article 309 is legislative and not executive as was laid down by this Court



in B.S. Yadav v. State of Haryana [1980 Supp SCC 524 : 1981 SCC (L&S) 343 : AIR 1981 SC 561] . For this reason also, the Selection Committee or the Selection Board cannot be held to have jurisdiction to lay down any standard or basis for selection as it would amount to legislating a rule of selection”.

One of the point has been taken by the appellants that in the Advertisement the qualification has been mentioned as MBA/PGDBM and if a candidate fails to satisfy the eligibility qualification, his candidature cannot be considered. The condition imposed in the advertisement cannot be diluted nor consideration would be made on the factor of equivalence of that qualification. It has to be seen that as to whether the Writ Court while exercising power of judicial review can rewrite the condition mentioned in the advertisement as fixing of the qualification and condition of appointment lies within the domain of the employer and once the rule of game has been fixed, it cannot be changed in the midway in the sense that the qualification cannot be diluted and cannot be tested in terms of equivalence unless advertisement so provides or there is statutory provision or rule mentioned in the recruitment rules as in the recent judgment in the case of *Zonal Manager, Bank of India & Ors. Vs. Aarya K. Babu & Anr reported in 2019 (3)*



PLJR (SC) 457, the identical question came for consideration. In that case, the matter related to recruitment on the post of Agriculture Field Officer (Scale I) and the qualification was fixed that the candidate must be a Graduate possessing the degree of Agro-Forestry. In that case the respondent Aarya K. Babu had secured four years degree in Forestry, which was the basis for claiming the equivalence to that qualification mentioned in the advertisement. For that consideration, the Hon'ble Supreme Court held that equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government and further in that case, it has been held that when the qualification has been specially mentioned in the advertisement, that cannot be substituted or modified by another qualification that too in the midstream of selection on the principle that when the selection process is



started, the rule prescribing qualification has been mentioned, cannot be changed before the recruitment process is completed. It will be proper to quote paragraph nos. 12, 13, 14, 15 & 16 of the said judgment :-

“12. The learned counsel for the private respondents however contended that the High Court was justified in taking note that the course for degree in BSc (Agro-Forestry) was not being imparted in the country and in such event the very notification seeking for candidates possessing 4-year degree in BSc (Agro-Forestry) was erroneous and as such the degree in BSc (Forestry) should be considered. The learned counsel seeks to rely upon the Bank of India (Officers) Service Regulations, 1979 to contend that in Clause 16.9 thereof a reference is made to “Special Officers” wherein it is indicated that one of the category therein being “Agriculture Officers”, the qualification thereunder indicated is degree in Agriculture and/or allied subjects and recruited/promoted/converted as such. In that view the learned counsel contends that as per the information furnished by ICAR dated 1-4-2015 the definition of “Agriculture” would include “Forestry” and in such event it will have to be construed that even though the notification seeks for candidates possessing degree in BSc (Agro-Forestry) it would include BSc (Forestry) which is an allied subject of Agriculture.



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

14. In fact, this view is fortified by the decision of this Court in the case of Mohd. Sohrab Khan v. Aligarh Muslim University & Ors., (2009) 4 SCC 555 relied on by the learned counsel for the



appellant. In the said decision it is held as hereunder:

“24. According to us, the Selection Committee as also the University changed the rule in the midstream which was not permissible. The University can always have a person as a Lecturer in a particular discipline that it desires to have, but the same must be specifically stated in the advertisement itself, so that there is no confusion and all persons who could be intending candidates, should know as to what is the subject which the person is required to teach and what essential qualification the person must possess to be suitable for making application for filling up the said post.

25. We are not disputing the fact that in the matter of selection of candidates, opinion of the Selection Committee should be final, but at the same time, the Selection Committee cannot act arbitrarily and cannot change the criteria/qualification in the selection process during its midstream. Merajuddin Ahmad did not possess a degree in Pure Chemistry and therefore, it was rightly held by the High Court that he did not possess the minimum qualification required for filling up the post of Lecturer in Chemistry, for Pure Chemistry and Industrial Chemistry are two different subjects.

26. The advertisement which was issued for filling up the post of Lecturer in Chemistry could not have been filled up by a person belonging to the subject of Industrial Chemistry when the



same having been specifically not mentioned in the advertisement that a Master's degree-holder in the said subject would also be suitable for being considered. There could have been intending candidates who would have applied for becoming candidate as against the said advertised post, had they known and were informed through advertisement that Industrial Chemistry is also one of the qualifications for filling up the said post.

27. The Selection Committee during the stage of selection, which is midway could not have changed the essential qualification laid down in the advertisement and at that stage held that a Master's degree-holder in Industrial Chemistry would be better suited for manning the said post without there being any specific advertisement in that regard. The very fact that the University is now manning the said post by having a person from the discipline of Pure Chemistry also leads to the conclusion that the said post at that stage when it was advertised was meant to be filled up by a person belonging to Pure Chemistry stream.

If the above decision is kept in perspective it is clear that while examining the correctness of the action of the employer what would be sacrosanct will be the qualification criteria published in the notification, since if any change made to the qualification criteria midstream is accepted by the Court so as to benefit only the petitioners before it, without making it open to all the qualified persons, it would amount to causing injustice to the others who possess such



qualification but had not applied being honest to themselves as knowingly they did not possess the qualification sought for in the notification though they otherwise held another degree. Therefore, if there is any change in qualification/criteria after the notification is issued but before the completion of the selection process and the employer/recruiting agency seeks to adopt the change it will be incumbent on the employer to issue a corrigendum incorporating the changes to the notification and invite applications from those qualified as per the changed criteria and consider the same along with the applications received in response to the initial notification. The same principle will hold good when a consideration is made by the Court.

15. If in that background the instant facts are taken note, it would disclose that the notification depicting the qualification required as degree in BSc (Agro-Forestry) was issued on 17-11-2014 and the process of selection had come to an end when the private respondents herein were issued the appointment letters dated 17-9-2015 and 29-5-2015 respectively. Admittedly as on such date the notification required the candidates possessing BSc (Agro-Forestry) but the private respondents were graduates in BSc (Forestry) and as such were not qualified to respond. The change was made subsequent thereto by the general corrigendum dated 16-1-2016 by including the qualification of BSc (Forestry), which would be effective from that day by providing opportunity to all those holding that qualification. Therefore, in such cases the



change of qualification whereby the qualification of the private respondents gets included subsequently cannot enure to their benefit alone when several others who could have applied were prevented from doing so.

16. Further it is not for the Court to provide the equivalence relating to educational qualifications inasmuch as the said issue has been settled by the Constitution Bench of this Court in the decision relied upon by the learned counsel for the appellants in the case of Mohammad Shujat Ali & Ors. vs. Union of India & Ors. (1975) 3 SCC 76 wherein it is held that the question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government”.

The same issue came for consideration before this Court in the case of *Jitendra Kumar & Ors. Vs. The State of Bihar and Ors. reported in the same volume i.e. 2019 (3) PLJR 915*. In that case, the matter was related to recruitment to the post of Assistant Professor in Botany and Zoology in which the



candidates raised a grievance that they have done their degree in Life Sciences which includes the aforesaid subjects and, therefore, the definition is inclusive. They were claiming equivalence of qualification as the candidate was possessing, but this plea was rejected on the ground that when the qualification has been made in the advertisement, it cannot be substituted and modified at the subsequent stage either by recruiting agency or the Court. Dealing with the said subject, this Court has placed reliance on the judgment rendered in the case of *Reshamlal Pradhan Vs. State of Chhattisgarh Public Service Commission in Writ Petition (S) No. 3169 of 2015* wherein all the previous judgments have been taken into consideration and finally arrived to the finding that equivalence of educational qualification is purely a technical academic matter and it has to be done by appropriate authority/ expert body that too by specific order duly published prior to initiation of recruitment process and refused to grant the relief on the plea of equivalence of qualification. It will be proper to quote paragraph 5 of the said judgment :-

“5. We have considered the submissions raised at length and what we find is that this Court in the exercise of jurisdiction under Article 226 of the Constitution of India could not have assumed an equivalence of curriculum for the purpose of equating the qualifications possessed by the



appellants with that as required under the advertisement. It is for the expert body, i.e., either the employer or the Commission to take a decision in the matter for deciding such an equivalence. We have come across the judgment of a learned Single Judge of the High Court of Chhatisgarh in Writ Petition (S) No.3169 of 2015 (Reshamlal Pradhan Vs. State of Chattisgarh and Chattisgarh Public Service Commission) where the learned Single Judge traversed the entire law laid down by the Apex Court on this issue. The same is extracted hereinunder which we adopt to support our conclusion hereinabove:-

15. Meaning of “relevant subject” for appointment on a post with reference to eligibility condition for recruitment came to be considered by Their Lordships of the Supreme Court in the matter of Ganapath Singh Gangaram Singh Rajput v. Gulbarga University represented by its Registrar and others (2014) 3 SCC 767, in which Their Lordships have answered the question holding that post-graduate degree in “relevant subject” in the context would mean post-graduate degree in which the candidate has applied for recruitment to teach a particular subject and observed in paragraphs 21 and 22 as under: -

“21. As is evident from the advertisement, applications were invited for filling up various posts in different subjects including the post of Lecturer in MCA. The advertisement requires post-graduate degree in the ‘relevant subject’. The relevant subject would, therefore, in



the context of appointment to the post of Lecturer, mean postgraduate degree in MCA. In our opinion, for appointment to the post of Lecturer, Masters degree in the Mathematics is not the relevant subject. The advertisement requires Masters degree in the 'relevant subject' and not 'appropriate subject'. In the present case, the Board of appointment has not stated that post-graduate degree in Mathematics is the relevant subject for MCA but in sum and substance it is equivalent to a post-graduate degree in MCA for the reason that Mathematics is one of the subjects taught in MCA. This, in our opinion, was beyond the power of the Board of appointment. 22. It shall not make any difference even if Mathematics is taught in the Masters of Computer Application course. The learned Single Judge, in our opinion, gravely erred in upholding the contention of Ganpat and the University that 'relevant subject' would mean 'such of those subjects as are offered in the MCA course'. If Mathematics is taught in a post-graduate course in Commerce, a Masters degree in Commerce would not be relevant for appointment in Mathematics or for that matter in MCA. There may be a situation in which Masters degree in MCA is differently christened and such a degree may be considered relevant but it would be too much to say that a candidate having postgraduate degree in any of the subjects taught in MCA would make the holders of a Masters degree in those subjects as holder of Masters degree in Computer Application and, therefore, eligible for appointment."



16. In a very recent decision in the matter of Prakash Chand Meena and others v. State of Rajasthan and others (2015) 8 SCC 484, a question of equivalence of two qualifications which may be treated as equivalent came up before the Supreme Court in which Their Lordships of the Supreme Court have held that in the matter of eligibility qualification, equivalent qualification must be recognized as such in existing recruitment rules or government order existing on or before the initiation of recruitment process and observed as under: -

“... In the matter of eligibility qualification, the equivalent qualification must be recognised as such in the recruitment rules or government order existing on or before the initiation of recruitment process...”

17. Similarly, in the matter of Guru Nanak Dev University v. Sanjay Kumar Katwal and another (2009) 1SCC 610, Their Lordships of the Supreme Court have held in no uncertain terms that equivalence is a technical academic matter and decision on question of equivalence must be by specific order or resolution duly published, by holding as under:-

“15. ...Equivalence is a technical academic matter. It cannot be implied or assumed. Any decision of the academic body of the university relating to equivalence should be by a specific order or resolution, duly published. The first respondent has not been able to produce any document to show that the appellant University has



recognised MA (English) (OUS) of Annamalai University through distance education as equivalent to MA of appellant University. Thus, it has to be held that the first respondent does not fulfill the eligibility criterion of the appellant University for admission to the three year law course.”

18. Further, it is well settled law that the question of equivalence of educational qualification is not the domain and jurisdiction of the Court under Article 226 or 227 of the Constitution of India, it has to be done by a body of academicians or an expert body qualified for that job, as such, this Court cannot consider and hold one educational qualification to be equivalent to other qualifications. In this respect, in umpteen number of cases the Supreme Court has observed that it is not within the scope of judicial review to draw equivalence of qualification. Drawing of equivalence of qualification is essentially the job of experts of the field and it is not for the Court to enter into the arena of comparing two qualifications on certain parameters and then to declare equivalence.

19. Way back in the year 1965, in the matter of University of Mysore v. C.D. Govinda Rao and another A.I.R. 1965 SC 491, in Constitution Bench judgment Their Lordships of the Supreme Court have held that in the academic matters regarding equivalence of university degree the Courts will not express a definite opinion. Paragraph 12 of the report states as under:-



“12. Where one of the qualifications for the appointment to the post of a Reader in the University was that the applicant should possess a First or High Second Class Master’s Degree of an Indian University or an equivalent qualification of a foreign University, the candidate should possess a First Class Master’s Degree of an Indian University or High Second Class Master’s degree of an Indian University or qualification of a foreign university which is equivalent to a First Class or a High Second Class Master’s degree of an Indian University. Whether the foreign degree is equivalent to a High Second Class Master’s degree of an Indian University is a question relating purely to an academic matter and courts would naturally hesitate to express a definite opinion, specially when the selection Board of experts considers a particular foreign university degree as so equivalent”.

20. Similar is the proposition of law rendered by the Constitution Bench of the Supreme Court in the matter of Mohammad Shujat Ali and others v. Union of India and others (1975) 3 SCC 76 in which Their Lordships of the Supreme Court have held that question in regard to equivalence of educational qualification is a technical question based on proper assessment by holding as under:-

“13. ... It must be noted that the question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of



such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government. It is only where the decision of the Government is shown to be based on extraneous or irrelevant considerations or actuated by mala fides or irrational and perverse or manifestly wrong that the Court would reach out its lethal arm and strike down the decision of the Government. ...”

21. Similarly in the matter of State of Rajasthan and others v. Lata Arun (2002) 6 SCC 252, Their Lordships of the Supreme Court have held that question of equivalence of qualification are the matters which falls within the realm of the policy decision to be taken by the State by holding as under:-

“13. From the ratio of the decisions noted above, it is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It is not for courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority.”



22. *Very recently, a Division Bench of this Court in W.P.(S) No.2992/2015 (Sudhir Dewangan v. State of Chhattisgarh and others) decided on 14-9-2015, while examining the issue as to whether the degree in Electrical Engineering would be equivalent to the degree in Electrical & Electronics Engineering, has held as under: -*

“... We are in agreement with the submission on behalf of the State Counsel that the nomenclature of the two courses being different there has to be difference in the nature of study and knowledge imparted in the two disciplines, course content, qualifications acquired etc. It is not open for the Court in academic matters to declare equivalence of courses as may have been advertised by the employer.”

23. *Concludingly, equivalence of educational qualification is purely a technical academic matter and it has to be done by appropriate authority / expert that too by specific order duly published prior to initiation of recruitment process. Thus, after having examined the legal position with regard to equivalence of two qualifications in exercise of jurisdiction under Article 226 of the Constitution of India, before proceeding further, it would be appropriate to notice the query raised by the Commissioner-cum-Director, Technical Education to the Chairman, AICTE, in this regard which is as under:-*

“(A) Whether a person possessing B.E./ B.Tech. (Information Technology) and M.E./ M.Tech. (Computer Science) is eligible for the post



of Assistant Professor/Lecturer (Information Technology) in Engineering College/Polytechnic. (B) Whether a person possessing B.E./B.Tech. (Computer Science) and M.E./M.Tech. (Information Technology) is eligible for the post of Assistant Professor/Lecturer (Computer Science) in Engineering College/Polytechnic.”

The same issue came up for consideration before the Hon'ble Supreme Court in the case of *Ganapath Singh Gangaram Singh Rajpur Vs. Gulbarga University and Ors. reported in (2014) 3 SCC 767* wherein the appointment has to be made on the post of Lecturer in MCA for that qualification was fixed as Master in Computer Application (MCA). The person was claiming to be equivalent qualification as per the advertisement made therein as he was M. Sc. in Mathematics and mathematics is one of the subject in MCA and on that basis, claim was made to make him eligible for the said post. The contention was repelled. It has been held that M.Sc. in Mathematics cannot be said to be equivalent to Master in Computer Application (MCA) as because of one of the subject was taught in MCA and when the advertisement speaks and provides a degree to make him eligible that cannot be modified, substituted or diluted in the name of equivalence. It will be proper to quote paragraphs 14, 16, 17, 18 and 19 of the said judgment :-



“14. The main thrust in the appellant's contention is that when an expert body i.e. the Board of Appointment consisting of high academicians, has found Ganpat eligible and qualified and which has been approved by the Syndicate, another expert body, the High Court ought not to have acted as a court of appeal, examined the pros and cons and come to the conclusion that Ganpat did not possess the requisite qualification. There is no difficulty in accepting the broad submission that academic issues must be left to be decided by the expert body and the court cannot act as an appellate authority in such matters. It deserves great respect. When two views are possible and the expert body has taken a view, the same deserves acceptance. However, to say that expert body's opinion deserves acceptance in all circumstances and is not subject to judicial review does not appeal to us. In our constitutional scheme the decision of the Board of Appointment cannot be said to be final and absolute. Any other view will have a very dangerous consequence and one must remind itself of the famous words of Lord Acton “power corrupts and absolute power corrupts absolutely”.

16. B.C. Mylarappa deals with the appointment to the post of Professor, in which one of the eligibility condition for appointment was “10 years” of experience of postgraduate teaching. The Board of Appointment considered the selected candidate eligible by taking into consideration his experience as Lecturer and Research Assistant and



in the absence of any mala fide, this Court observed that its opinion is not fit to be rejected. This would be evident from para 24 of the judgment, which reads as follows: (SCC p. 315).

“24. There is another aspect of this matter which is also relevant for proper decision of this appeal. We have already indicated earlier that the Board of Appointment was constituted with experts in this line by the University Authorities. They have considered not only the candidature of the appellant and his experience as a Lecturer and Research Assistant along with others came to hold that it was the appellant who was the candidate who could satisfy the conditions for appointment to the post of Professor. Such being the selection made by the expert body, it is difficult for us to accept the judgments of the High Court when we have failed to notice any mala fides attributed to the members of the expert body in selecting the appellant to the said post.”

However, this judgment cannot be read to mean that the courts are denuded of the power to scrutinise the experience in a given case and come to a contrary conclusion.

17. As stated earlier, when the view taken by the expert body is one of the possible views, the same is fit to be accepted. Further, the yardstick would be different when it concerns eligibility conditions pertaining to “qualification” and “experience”. In case of experience it is best known to the expert body in the field in regard to the actual



work done and, therefore, its opinion is of higher degree deserving acceptance ordinarily. Hence, in our opinion, this judgment did not fetter the power of the High Court.

18. As regards the decision of this Court in **Rajbir Singh Dalal** the same is clearly distinguishable. In the said case the controversy which fell for consideration was as to whether public administration is one of the branches of Political Science and in the face of the opinion of the expert body that they are interchangeable, the conclusion of the High Court that they are distinct and separate was not approved. This would be evident from the following passage from the said judgment: (SCC p. 297, paras 45-46)

“45. As has been pointed out by my learned Brother, the University has in its counter-affidavit taken a stand that Public Administration is one of the branches of Political Science and the Selection Committee comprised of eminent scholars had rightly chosen the appellant for the post of Reader after considering his academic achievements and also relying upon the view of the University Grants Commission in its letter dated 5-3-1992 stating that the subjects of Political Science and Public Administration are interchangeable and interrelated and that a candidate who possesses a Masters degree in Public Administration is eligible to be appointed as Lecturer in Political Science. Similarly, a candidate possessing a Masters degree in Political Science is eligible for appointment to the post of Lecturer in Public Administration.



46. Despite the aforesaid views expressed by the expert bodies such as the University and the University Grants Commission, the High Court has held Public Administration and Political Science to be distinct and separate disciplines.”

In the present case, there is no such plea. Here, the plea is that as Mathematics is one of the subjects in MCA and, therefore, Ganpat possessing Masters degree in Mathematics is eligible. It is not the plea of the University that Masters degree in Mathematics is interchangeable with MCA.

19. Not only this, in Rajbir Singh Dalal, this Court came to the aforesaid conclusion due to different eligibility criteria prescribed for appointment to the post of Reader and Lecturer. It was pointed out by this Court that in the case of Reader the requirement was Masters degree in an “appropriate subject”, whereas for appointment as Lecturer it was “relevant subject”. The said case related to the appointment of Reader. On account of the use of different expressions, this Court came to the conclusion that postgraduate degree-holder in Political Science is eligible to be appointed to the post of Reader in Public Administration. This would be evident from paras 48 and 49 of the judgment, which read as follows: (SCC p. 298)

“48. The recruitment rules followed by the University clearly indicate that in order to be appointed as Lecturer in a particular discipline a candidate must have a postgraduate degree in the relevant subject. On the other hand, for



appointment to the post of Reader such a condition has not been specified. In fact, in Regulation 2 it has been generally indicated that no person shall be appointed to a teaching post in the University or in any institution, including constituent or affiliated colleges recognised under the UGC Act, 1956, or any institution deemed to be a university under Section 3 of the said Act, in a subject, if he/she does not fulfil the requirement as to the qualifications for the appropriate subject.

49. In my view, the omission in the Regulations cannot be said to be unintentional or a case of casus omissus. In my view, the expression ‘appropriate subject’ was intended to cover the post of Reader and once the expert bodies had indicated that the appellant who held a postgraduate degree in Political Science was eligible to be appointed to the post of Reader in Public Administration and had been rightly appointed to such post, it is normally not for the courts to question such opinion, unless it has specialised knowledge of the subject.”

(emphasis supplied)

This Court did not say that Political Science is the relevant subject for appointment as Lecturer in Public Administration”.

Rule of Game cannot be changed in the middle of the Game.

Another judgment is, in the case of *P. Mahendram Vs. State of Karnataka* reported in AIR 1990 SC 405, on this



proposition that criteria which has been fixed cannot be changed retrospectively or in the midway. That matter was related to appointment of Motor Vehicle Inspector and for that qualification has been fixed as Diploma in Automobile Engineering or Mechanical Engineering. The Karnataka Public Service Commission issued an advertisement for recruitment of 56 posts of Motor Vehicle Inspectors which was later on increased to 102 posts. The advertisement stipulates recruitment under Rules, 1976 and further stipulates that a candidate for selection must be holder of Diploma in Automobile Engineering or Mechanical Engineering. The appellants/petitioners of that case, who were holding Diploma in Mechanical Engineering along with others applied for selection to the post of Motor Vehicle Inspectors and after scrutiny of the applications, interview letter was issued, the interview was conducted and select list was prepared giving intimation for their selection and the Government took steps for imparting them three months training before the appointment to the Motor Vehicle Inspectors, but in the meantime, the Government amended the Recruitment Rules omitting the qualification of Diploma of Automobile Engineering for the post of Motor Vehicle Inspectors. Consequent to the amendment of Rules the holders of Diploma of Automobile Engineering



became exclusively eligible for appointment to the post of Motor Vehicle Inspectors and the holders of Diploma in Mechanical Engineering ceased to be eligible for selection and appointment to the said post. The question arose that Government could have done it in midway when the process for selection has been started and the Hon'ble Supreme Court came to the conclusion that it is not permissible in law as once the selection process has been initiated and set the rule of game, that cannot be amended before its conclusion. It will be relevant to quote paragraphs 5 & 7 of the said judgment :-

“5. It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rules of 1987 do not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the rule with retrospective effect. Since the amending Rules were not retrospective, it could not adversely affect the right



of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter.

7. In view of the above the appellants' selection and appointment could not be held as illegal as the process of selection had commenced in 1983 which had to be completed in accordance with law as it stood at the commencement of the selection. The amended Rule could not be applied to invalidate the selection made by the Commission. Strangely the Tribunal did not follow the latest authority of this Court as laid down in Calton case [(1983) 3 SCC 33 : 1983 SCC (L&S) 356] , on the ground that the view taken in that case was contrary to the Constitution Bench decision of this Court in State of Andhra Pradesh v. T. Ramakrishna Rao [(1972) 4 SCC 830] . We have carefully considered the decision but we do not find anything therein contrary to the view taken in Calton case”.



Another judgment cited by the appellants is **(2011) 3 SCC 436 (State of Orissa and another Vs. Mamata Mohanty)** wherein the matter was related to grant better facility to teachers and enhance the standard of higher education. The Government came out with the notification for revised pay scale enforceable as per the recommendations of UGC, but the notification was applicable only in such cases where the post has been granted the benefit of grant-in-aid scheme and person manning that post had a good academic record i.e. 54% or its equivalent grade in a Master's course. The matter went to the Hon'ble Supreme Court and the State has taken a plea that the appointment of Mamta itself was illegal as wrong procedure was followed, without publishing the advertisement in newspaper, save and except affixing the notice on the noticeboard, she was appointed inasmuch as Mamta did not face the Selection Board as envisaged by the statutory rules in force at the relevant time. The Hon'ble Supreme Court has considered several points raised in what manner the appointment should be made and it has been held that it should be advertised in newspaper otherwise it will violate the Articles 14 and 21 of the Constitution of India and also found that she was not holding the proper educational qualification. The question for relaxation came up and one of the



points raised for consideration of relaxation of qualification. It has been held that the Selection Committee did not have a power to relax the essential qualification and the grant of relaxation in this manner is tantamount to changing the selection criteria after initiation of selection process, which is not permissible at all. The rules of the game cannot be changed after the game is over. It has further been held that the rule of law inhibits arbitrary action and also makes it liable to be invalidated. Every action of the State or its instrumentalities should not only be fair, legitimate and above board, but should be without any affection or aversion. It should neither be suggestive of discrimination nor even give an impression of bias, favouritism and nepotism. Procedural fairness is an implied mandatory requirement to protect against arbitrary action where statute confers wide power coupled with wide discretion on any authority. It will be proper to quote relevant paragraph nos. 42, 43, 44, 45, 46, 47, 48, 51, 59 and 62 of the said judgment :-

“42. In J.P. Kulshrestha (Dr.) v. Allahabad University [(1980) 3 SCC 418 : 1980 SCC (L&S) 436 : AIR 1980 SC 2141] issue of relaxation of eligibility came up for consideration before this Court wherein it was held as under: (SCC pp. 425-26, paras 15-16)

“15. ... We regretfully but respectfully disagree with the Division Bench and uphold the



sense of high second class attributed by the learned Single Judge. The midline takes us to 54% and although it is unpalatable to be mechanical and mathematical, we have to hold that those who have not secured above 54% marks cannot claim to have obtained a high second class and are ineligible.

16. ... We have earlier held that the power to relax, as the Ordinance now runs, insofar as high second class is concerned, does not exist. Inevitably, the appointment of the 3 respondents violate the Ordinance and are, therefore, illegal.”

43. In Rekha Chaturvedi v. University of Rajasthan [1993 Supp (3) SCC 168 : 1993 SCC (L&S) 951 : (1993) 25 ATC 234] this Court again dealt with the power of relaxation of minimum qualifications as the statutory provisions applicable therein provided for relaxation, but to what extent and under what circumstances, such power could be exercised was not provided therein. Thus, this Court issued the following directions: (SCC p. 176, para 11).

“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. ...



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.”

44. In P.K. Ramachandra Iyer v. Union of India [(1984) 2 SCC 141 : 1984 SCC (L&S) 214 : AIR 1984 SC 541] this Court while dealing with the same issue, held that once it is established that there is no power to relax the essential qualifications, the entire process of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised.

45. In A.P. Public Service Commission v. B. Swapna [(2005) 4 SCC 154 : 2005 SCC



(L&S) 452] this Court held that: (SCC p. 160, para 15)

“15. Another aspect which this Court has highlighted is scope for relaxation of norms. ... Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated.”

46. This Court in Kendriya Vidyalaya Sangathan v. Sajal Kumar Roy [(2006) 8 SCC 671 : (2007) 1 SCC (L&S) 23] held: (SCC p. 675, para 11)

“11. ... The appointing authorities are required to apply their mind while exercising their discretionary jurisdiction to relax the age-limits. ... The requirements to comply with the rules, it is trite, were required to be complied with fairly and reasonably. They were bound by the rules. The discretionary jurisdiction could be exercised for relaxation of age provided for in the rules and within the four corners thereof.”

47. In Food Corpn. of India v. Bhanu Lodh [(2005) 3 SCC 618 : 2005 SCC (L&S) 433 : AIR 2005 SC 2775] this Court held: (SCC p. 628, para 12)

“12. ... Even assuming that there is a power of relaxation under the Regulations, ... the power of relaxation cannot be exercised in such a manner that it completely distorts the Regulations. The power of relaxation is intended to be used in marginal cases.... We do not think that they are



intended as an 'open sesame' for all and sundry. The wholesale go-by given to the Regulations, and the manner in which the recruitment process was being done, was very much reviewable as a policy directive, in exercise of the power of the Central Government under Section 6(2) of the Act."

48. In Bhanu Prasad Panda (Dr.) v. Sambalpur University [(2001) 8 SCC 532 : 2002 SCC (L&S) 14] one of the questions raised has been as to whether a person not possessing the required eligibility of qualification i.e. 55% marks in Master's degree can be appointed in view of the fact that UGC refused to grant relaxation. On the issue of relaxation of eligibility, the Court held as under: (SCC p. 536, para 5)

"5. ... the essential requirement of academic qualification of a particular standard and grade viz. 55%, in the 'relevant subject' for which the post is advertised, cannot be rendered redundant or violated.... ... The rejection by UGC of the request of the Department in this case to relax the condition relating to 55% marks at postgraduation level ... is to be the last word on the claim of the appellant and there could be no further controversy raised in this regard."

51. More so, relaxation in this manner is tantamount to changing the selection criteria after initiation of selection process, which is not permissible at all. Rules of the game cannot be changed after the game is over. (Vide K. Manjusree v. State of A.P. [(2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841 : AIR 2008 SC 1470] and



Ramesh Kumar v. High Court of Delhi [(2010) 3 SCC 104 : (2010) 1 SCC (L&S) 756 : AIR 2010 SC 3714].)

*59. The rule of law inhibits arbitrary action and also makes it liable to be invalidated. Every action of the State or its instrumentalities should not only be fair, legitimate and above board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even give an impression of bias, favouritism and nepotism. Procedural fairness is an implied mandatory requirement to protect against arbitrary action where statute confers wide power coupled with wide discretion on an authority. If the procedure adopted by an authority offends the fundamental fairness or established ethos or shocks the conscience, the order stands vitiated. The decision-making process remains bad. [Vide *Haji T.M. Hassan Rawther v. Kerala Financial Corpn. [(1988) 1 SCC 166 : AIR 1988 SC 157]* , *Rash Lal Yadav (Dr.) v. State of Bihar [(1994) 5 SCC 267 : 1994 SCC (L&S) 1063 : (1994) 27 ATC 855]* and *Tata Cellular v. Union of India [(1994) 6 SCC 651].]**

62. It is a matter of common experience that a large number of orders/letters/circulars, issued by the State/statutory authorities, are filed in court for placing reliance and acting upon it. However, some of them are definitely found to be not in conformity with law. There may be certain such orders/circulars which are violative of the mandatory provisions of the Constitution of India.



While dealing with such a situation, this Court in Ram Ganesh Tripathi v. State of U.P. [(1997) 1 SCC 621 : 1997 SCC (L&S) 186 : AIR 1997 SC 1446] came across with an illegal order passed by the statutory authority violating the provisions of Articles 14 and 16 of the Constitution. This Court simply brushed aside the same without placing any reliance on it observing as under: (SCC p. 625, para 9)

“9. ... The said order was not challenged in the writ petition as it had not come to the notice of the appellants. It has been filed in this Court along with the counter-affidavit.... This order [is also deserved] to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblige the respondents....”

Illegality cannot be perpetuated.

One of the plea has been taken by the appellants that even if some illegality has been committed, that cannot be allowed to be perpetuated as has been claimed by the respondents that certain persons having no such qualification as mentioned in the advertisement, having been appointed, so they should be also allowed to be appointed in the same term, which is not permissible in the law as in the sense that there cannot be equality in illegality inasmuch as if any illegality has been done, that cannot be allowed to be perpetuated for that he has placed reliance on the judgment rendered in the case of *The State of*



Bihar Vs. Sri Krishna Prasad reported in 2015(1) PLJR 849. It will be proper to quote relevant paragraph nos. 34 and 35 of the said judgment :-

“ 34. Situated thus, it becomes crystal clear that there was, in the present case, not even an iota of material to show that the two persons, junior to the writ petitioner-sole respondent herein, namely, Krishna Prasad, whose services are claimed to have been regularized, had worked, before their regularization, against vacant sanctioned posts. In the absence of any such concrete finding, there ought not to have been any direction for ‘favourable’ consideration of the case of the present respondent for regularization of his service, more so, when the writ petitioner-sole respondent herein, Krishna Prasad, is even not claimed to have worked against vacant sanctioned post.

35. In the name, therefore, of removing the discrimination, it was, in the present case, not open, in the light of the decision, in Chandigarh Administration (supra), to direct the State Government to regularize the service of the writ petitioner- sole respondent herein, namely, Krishna Prasad, and thereby perpetuate illegality. Consequently, the impugned order, dated 20.11.2013, passed in CWJC No. 7852 of 2010, cannot be sustained, for, the direction suffers from severe legal infirmities”.



In the case of *Sardara Singh and Others Vs. State of Punjab and Ors. reported in (1991) 4 SCC 555*, the matter was related to appointment on ad-hoc basis to the post of Patwaris and the Government failed to constitute the Service Selection Board and other authority was conferred power to make recommendation for service. The different points were raised with regard to the selection as has been made allegation for procedural infringement in recruitment and one of the point was raised that the District Collector was not competent to invite applications afresh and selection of the candidates from out of those applicants is illegal and one of the point was raised that instead of publishing the advertisement in newspaper, it was pasted on the noticeboard. In that case, the petitioner had participated in the selection process and it has been held that this point could be raised by other person who did not participate or failed to get opportunity to make application, but in the case of the petitioner he cannot take this plea as he has participated in the selection, so the procedure adopted though irregular, does not vitiate the selection of candidates. It will be proper to quote relevant paragraph no. 4 of the said judgment :-

“4. It is next contended that the District Collector was not competent to invite applications afresh and selection of the



candidates from out of those applicants is illegal. It is true that he is bound by the instructions issued by the government in Annexure 'D' wherein it was stated that since the number of applicants are quite large in number, it would not be necessary to solicit candidates afresh from Employment Exchange or through public advertisement. But in paragraph 4 therein it was stated that priority categories listed in the proceeding dated April 24, 1986 will have to be given precedence over candidates from all other sources other than the regularisation of the existing ad hoc Patwaris. It had given room to the District Collector to invite applications from those categories. Though it was a mistaken compliance on wrong impression, the selection of the candidates, so applying, does not become illegal. It was next contended that instead of calling the applications by publication in the newspapers, only notice was put on the notice board of the Collector's office and some candidates submitted their applications in pursuance thereof and that is not a proper notification. Though we find that the procedure, adopted by the Collector, in inviting applications is not commendable, but the grievance would be voiced only by the persons who did not have the opportunity to make applications within the prescribed period. But no such grievance could be raised by persons like the appellants. Under those circumstances, the procedure adopted, though irregular, does not



vitiate the selection of candidates, ultimately made by the Committee”.

Remand for fresh consideration-what procedure to be followed.

Before dealing with the case on merit, one of the point has been raised by the writ-petitioners (respondents herein) that on earlier litigation, the learned Single Judge has given direction for consideration of qualification in the terms mentioned therein.

The contention has been raised that the Authority has failed to consider the case of the writ petitioners- respondents as per the guidelines set out by the earlier Bench in CWJC No.17093 of 2016 and decided the case *de hors* to the tenor of the judgment.

In that aspect of the matter, it has to be seen that when the Court has remanded back the matter for fresh consideration in what manner the Authority would react and take decision in terms of the judgment. In that context, it will be relevant to consider the relevant judgment in the case of *A.P. SRTC and Ors. Vs. G. Srinivas Reddy and Others reported in (2006) 3 SCC 674* and the Court has given a detailed consideration and set out the manner the Authority would consider the case on remand. It will be proper to quote paragraph nos. 16, 17 and 18 of the said judgment :-



“16. The High Courts also direct the authorities to “consider”, in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of the power of judicial review, directs the authority to “consider” and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs “consideration” without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to “consider” afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, the High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.

17. Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to “consider” the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to “consider” the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances



of the case, its power not being circumscribed by any observations or findings of the court.

18. We may also note that sometimes the High Courts dispose of the matter merely with a direction to the authority to “consider” the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to “consider” the matter afresh. Be that as it may”.

In this view of the matter, this Court has to consider as to whether the Authority has acted in accordance with the order of remand passed by this Court or it has been passed on extraneous considerations without taking guidelines and without considering the reasons assigned.

In the earlier writ application, the learned Single Judge has allowed the writ petition solely on the ground that mere difference in nomenclature cannot be a foundation nor can form any basis for exclusion of a candidate from consideration rather it is the utility aspect of the matter and whether the course attended by the applicant satisfies the requirement of the post on which this applicants are to be appointed, the Authority should not swayed away by the nomenclature of the qualification.



The Authority has considered the qualification of the writ petitioners-respondents and they have found that it is not matching the qualification fixed in the advertisement as he has already explained that AICTE has given the details about the qualification held by the respondents is mismatching. This Court has to consider the matter on merit.

Consideration of merit of the case.

On forgoing discussion, it is very much clear that the recruitment/selection/appointment has to be made in terms of the rules and regulations and the notification prescribing the qualification. In the midway the qualification cannot be changed or relaxed or modified as the rule of game has to follow till the end. It is also very much clear that if the recruitment/selection has to be made in terms of the qualification fixed under the notification, it cannot be changed, modified or relaxed by the recruitment Board or Selection Committee nor the Court has business to grant the relief in terms of equivalence of the qualification, as the equivalence of qualification is a technical business that lies within the domain of the experts, and it is better for the Court to keep away or refrain from embarking on such exercise, but it should be left to the wisdom of expert body. It is also clear that if the recruitment has to be made on a



principle of equivalence of the degree, in that circumstances, other candidates, who does have the same qualification, they did not apply against the advertisement for the recruitment on the basis of equivalence of qualification and did not opt to join the fray under the impression that the qualification which prescribes in the notification is not meant for him/her. The direction for appointment in giving benefit of equivalence of qualification would be violation of Articles 14 & 16 of the Constitution of India.

The judgment under challenge and earlier judgment passed in CWJC No.17093 of 2016 have considered primarily the case of the writ-petitioners/respondents in the light of the equivalence of qualification on the basis of degree granted by the respective institutions from where they have obtained their qualifications.

In the present case, thrust has been given by the writ-petitioners/respondents upon the 2006 resolution of AICTE wherein it has been provided that the two year full time regular management course will be treated to be PGDM as they are claiming that they have studied for two year full time regular management programme course and, in such, view of the matter,



nomenclature may be different, but their qualification is PGDM or MBA.

In order to remove the confusion about the status of the qualification of the writ-petitioners/respondents, this Court vide order dated 23.02.2021 impleaded/added the AICTE as a party respondent and directed the entire brief be handed over to the counsel for the AICTE within four days by the appellants and, in the event of non-availability, this Court would take suitable action with respect to the service of notice on the newly added respondent. The order dated 02.03.2021 shows that Ms. Archana, learned counsel has appeared for the AICTE and sought three weeks' time to file reply in the matter. This Court has directed the AICTE to give its response to the extent as to whether the qualification acquired by the respondents-writ petitioners is the same as that of qualification of MBA or PGDBM or standing at par with those qualifications. The AICTE has filed a counter affidavit, but it was not to the satisfaction of the Court and this Court on 23.03.2021 has passed the following order :-

“Today, AICTE has filed its counter affidavit, but on perusal of the same, it does not serve the purpose as there is no explanation in the affidavit as to whether the qualification acquired by



the respondents is identical as that of qualification mentioned in the advertisement.

In such view of the matter, let AICTE file its detailed counter affidavit of the Memo of Appeal filed by the appellants on or before 8.04.2021 after serving a copy of the same upon the respective parties well in advance i.e. on or before 06.04.2021.

Let this case be listed on 08.04.2021 at the top of the list.

Let the counter affidavit filed by the AICTE be kept on record”.

Whereafter, the AICTE has filed its detailed counter affidavit. It will be relevant to examine first counter affidavit filed by AICTE wherein a plea has been taken that AICTE does not give equivalency to any qualifications acquired from AICTE approved institution and it is for the employer to consider and decide for employment purpose and institution to consider for higher education purpose. Later on, a supplementary counter affidavit has been filed by AICTE wherein a stand has been taken that the degree of respondents nos. 1 to 14 is not equivalent and identical to the degree fixed in the advertisement. It will be relevant to quote paragraphs 6, 7, 8 & 9 of the supplementary counter affidavit :-

“6. (i) That the degree of respondent no. 1 to 14 do not match to the qualification as per the advertisement as the respondents were



awarded PGDM/MBA/MA degree which varied nomenclature as mentioned earlier. AICTE, as such, is not giving equivalency to any qualification acquired from A.I.C.T.E approved institution and updating nomenclature for P.D.D.M/M.B.A. course.

(ii) The employer has to see the appropriateness of the qualifications of the candidates for a particular post.

7. That from perusal of the L.P.A, it appears that the respondent nos. 1, 2, 3 and 4 possesses degree in Master of Human Resources Management in short M.H.R.M. from L.N. Mishra Institute of Economic Development & Social Change. The L.N. Mishra Institutes runs a two year M.B.A. Programme which cannot be treated equivalent to another already running course of M.B.A. within the same institutes. Similarly so far the respondent no. 1 possess degree in P.G.D.M. (Post Graduate Programme in Management from T.M.T. qualification which runs a course of P.G.D.M. and as such cannot be treated equivalent to another already running course from the same institute.

8. That so far the respondent nos. 5, 6, 7, 8, 9, 10, 11, 13 and 14 degree are concerned of M.B.A./P.G.D.B.M. are also not equivalent to the degree invited under advertisement Committee of Board of Directors also held that those candidates degree fall within the specified eligibility/qualification cases were considered but



degree of other candidates not being found to the match of advertisement were not considered.

9. That on advertisement behalf of the respondent no. 16 earlier it has been stated that as per policy of A.I.C.T.E. the degree of the respondents are not equivalent as the same has not been acquired from A.I.C.T.E. approved institution and as such the same cannot be said equivalent”.

We have already held hereinabove that granting of equivalence to any degrees does not fall within the domain of the Court, but it lies to the Expert Body, and it is better for the Court to keep away or refrain from embarking on such exercise, but it should be left to the wisdom of expert body and we do not have any expertise in the field to hold that any qualification is equivalent to another, it is within the domain of the expert body, which are the best body to find out the equivalence and hold that the degree is identical to the another degree, but AICTE, which is the main body, has filed its counter affidavit specially has given parawise reply with regard to the equivalence of qualification and has categorically stated that the respondents do not possess matching qualification prescribed in advertisement and their qualification cannot be stated to be identical or equivalent certificates.



In such view of the matter, this Court comes to the irresistible conclusion that this appeal is fit to be allowed and, accordingly, the same is allowed. The judgment/order of learned Single Judge dated 05.11.2018, which is under challenge in this memo of appeal, is quashed and set aside.

Before parting with this judgment, this Court directs the Managing Director, Bihar State Food and Civil Supplies Corporation Limited (appellant no.2) to take action against those who do not have matching qualification, but they have been appointed on the plea of equivalence of qualification, but after giving them proper hearing before passing any adverse order against them.

However, in the facts and circumstances of the case, there will be no order as to costs.

(Shivaji Pandey, J)

Partha Sarthy, J. :- **I Agree.**

(Partha Sarthy, J)

V.K.Pandey/-

AFR/NAFR	A.F.R.
CAV DATE	12.04.2021
Uploading Date	06.05.2021
Transmission Date	

