
(2021) 04 SHI CK 0065

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 4375 Of 2019, 520, 603, 821, 822, 845, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1349, 1350, 1354, 1697, 1698, 1699, 1730, 1731, 1830, 1878, 1880, 1897, 1898, 2243, 2889, 2890, 3283, 3284, 3372 Of 2020, CWPTA No. 3, 4,

Engineer In Chief And Others

APPELLANT

Vs

Narender Kumar & Ors

RESPONDENT

Date of Decision : 09-04-2021

Acts Referred:

Constitution Of India, 1950 — Article 309

Citation : (2021) 04 SHI CK 0065

Hon'ble Judges : Tarlok Singh Chauhan, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : Ashok Sharma, Vikas Rathore, Vinod Thakur, Shiv Pa Manhans, Bhupinder Thakur, Rajnish Maniktala, Naresh Kumar Verma, Jitender Pal Ranote, Rajinder Thakur, Bhim Raj Sharma, Mandeep Chandel, Vikram Singh, Kashmir Singh Thakur, Abhinandan Thakur

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. Since common question of law and facts arise for consideration in these petitions, therefore, they are taken up together and are being disposed of by way of a common judgment.

2. The brief facts of the case are that the petitioner-State sent a requisition for filling up of 250 posts of Pump Operator to the H. P. Staff Selection Commission, Hamirpur vide requisition dated 18.06.2016 alongwith the R & P Rules to the post of Pump Operator.

3. In the advertisement, essential qualification for the post of Pump Operator (Post Code 537) was prescribed as under:-

Essential Qualification:

(i) Should be a Matriculate from a recognized Board of School Education/Institute or its equivalent from a recognised University/Board.

(ii) Should possess certificate in trades Electrician/Wireman/Diesel Mechanic/Pump Mechanic/Motor Mechanic/ Pump Operator-cum-Mechanic from recognized ITI.

4. In response to the above advertisement, the respondents applied for the post of Pump Operator and were allowed provisionally to appear in the objective type written screening test conducted on 09.06.2017 alongwith other candidates on the basis of the information furnished by them. Their candidatures were not checked by the proforma respondent No. 1 at the time of allotting the Roll Numbers but they were allowed to sit in the screening test on the basis of declaration and by relying upon that they have ensured their eligibility in terms of advertisement. It was made clear under condition No. 4 of important instructions for filling up online applications that the candidates must ensure their eligibility in terms of essential qualification etc. to avoid rejection of their candidature at the later stage.

5. The respondents/applicants emerged successful in the above objective-type written/screening test conducted by proforma respondent No. 1 and were shortlisted for further selection process and were called for evaluation of documents/certificate alongwith original testimonials/documents and one attested copy of each for checking up of their eligibility criteria. Then, it was found by proforma respondent No. 1 that the respondents/applicants did not possess the essential qualification as prescribed in the R & P Rules and rejected the candidature of the respondents/applicants on the ground that they did not fulfill the requisite essential qualification.

6. Respondents/applicants feeling aggrieved by the decision of the proforma respondent whereby their candidature was rejected for the post of Pump Operator, filed various petitions before the erstwhile learned Administrative Tribunal. Vide interim order dated 28.08.2018 read with order dated 12.12.2018, the learned Administrative Tribunal directed the petitioner- State to refer the matter to the State Level Board of Equivalence Committee for its consideration whether certificate/diploma from a recognized ITI in Electrical, Mechanic (Motor-Vehicle) and Pump Operation and Maintenance trades are equivalent to the qualification as mentioned in the R & P Rules provided as second qualification beside matriculation from a recognized Board of School Education/Institutes for the post of Pump Operator (Post code 537) and submit the report of the Committee to it.

7. In compliance to order dated 28.08.2018, the matter was referred to the State Level Board of Equivalence Committee and the Committee submitted its report on 08.04.2019 to the government, who filed the same before the erstwhile learned Tribunal.

8. The learned Tribunal disposed of the OA vide its order dated 10.04.2019 with

the direction to the respondents/competent authority(ies) to proceed further in the matter in accordance with the decision of the State Level Board of Equivalence Committee held on 08.04.2019, as expeditiously as possible, preferably by 31.05.2019.

9. The petitioner-State feeling aggrieved and dis-satisfied with the impugned judgment/order dated 10.04.2019 has filed the instant petitions mainly on the ground that the learned Tribunal erred in not appreciating the fact that essential qualification as prescribed in R & P rules for the post of Pump Operator and notified in the advertisement as such candidate who possess certificate in trades of Electrician/ Wireman/ Diesel Mechanic/ Pump Mechanic/ Motor Mechanic/ Pump Operator-cum-Mechanic from a recognized ITI, which was specific in conformity with the Rules framed under Article 309 of the Constitution of India and being statutory in nature could not have been supplemented by any decision including the recommendations made by the State Level Board of Equivalence Committee.

10. The respondents-candidates have contested the petition by filing reply(ies) wherein it was averred that by virtue of advertisement, the Department had invited applications for the post of Pump Operator, however, the essential qualification prescribed in the Rules inter alia happens to be of the Motor Mechanic, which certificate course is not being run either by the government or any private institution under the Directorate of Technical Education in the State of H.P. or elsewhere in the country and, therefore, being a wrong classification of trade by the petitioners themselves, the Equivalence Committee had rightly come to the conclusion that eligibility for the post of Pump Operator could only be Mechanic (Motor Vehicle). It is for this precise reason that over the years candidates holding certificate in Motor Mechanic are being eligible under the R & P Rules for being appointed as Pump Operator. The information with regard to these candidates have been annexed alongwith the reply to the Original Application filed before the learned Tribunal and the same has also been annexed with the reply as Annexures R-1/21 to R-1/27.

11. Lastly, it is contended that the Equivalence Committee is constituted from amongst the experts and high level functionaries in the Government and, therefore, the learned Tribunal has rightly referred the matter to the Equivalence Committee, more particularly, when there was no objection whatsoever taken by the petitioners at any stage of the proceedings before the learned Tribunal, therefore, the petitioners are estopped from filing the instant petition.

We have heard learned Advocate General duly assisted by Mr. Vinod Thakur, learned Additional Advocate General and learned counsel(s) for the respondents and have gone through the material placed on record.

12. It is more than settled that essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who

is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The Court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders to proceed in accordance with law. In no case can the Court in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same. (Refer: Maharashtra Public Service Commission, through its Secretary vs. Sandeep Shriram Warade and others 2019 (6) SCC 362)

13. However, the other questions still remain whether the petitioner while issuing the advertisement had actually applied the mind to the qualification that was laid therein. The answer to the same is clearly a big no, as admittedly the one of the qualifications that was prescribed under Rules and in the advertisement, had long been discontinued in the entire country.

14. That apart, it was incumbent upon the petitioner as a model employer to ensure that the persons with required qualification and not the qualification as laid down are actually appointed to the service.

15. The State Level Equivalence Committee meeting was held on 08.04.2019 and comprised of higher ranks officials and experts, as is evident from the proceedings which are extracted in its entirety hereinbelow:-

"PROCEEDINGS OF THE MEETING OF STATE LEVEL, BOARD OF EQUIVALENCE COMMITTEE HELD ON 08.04.2019 AT 03:30 PM UNDER THE CHAIRMANSHIP OF ADDL. CHIEF SECRETARY (EDUCATION) TO THE GOVERNMENT OF H.P.

A meeting of the State Level Board of the Equivalence Committee was held on 08.04.2019 at 3:30 PM under the Chairmanship of the Addl. Chief Secretary (Education) t the govt. of Himachal Pradesh in the Conference Hall, 6th Floor, Armsdale Building, H.P. Secretariat, Shimla-2, the following were present:-

1. Dr. Amarjeet K. Sharma, Director (Hr. Edu.)
2. Dr. Basu Sood, Adviser Planning, H.P. Shimla
3. Sh. Ved Bhushan Sugyan, Deputy Secretary, (Ele. Edu) to the Govt. of H.P.
4. Sh. Rajinder Kumar, Deputy Secretary, HPBOSE, Dharamshala.
5. Sh. D. R. Raju, Joint Director (Agriculture)
6. Sh. Rakesh Kumar, Joint Director of Elementary Education.
7. Dh. Davinder Singh, DD (T) o/o the (DTE) Sundernagar, H.P.

8. Sh. Mahi Pal Verma, Under secretary (I&PH) to the Govt. of H.P.

9. Dr. Arvind Bhatt, Dean Planning HPU-Shimla.

10. Sh. Jaswant Singh, Section Officer, (I&PH)

At the outset, the Deputy Secretary (Elementary Education) to the Govt. of Himachal Pradesh welcomed the Chairman of the Committee and all the members. Thereafter, the committee discussed the agenda item as under:-

Item No. 1 (I&PH) Department

Suggestion of Equivalence Committee regarding equivalence of certificate/Diploma from a recognized ITI in Electrical, Mechanic (Motor-Vehicle) and Pump Operation & Maintenance trades with certificate/Diploma in electrician /wireman / diesel Mechanic /Pump Mechanic/ Motor Mechanic/Pump Operator-cum-Mechanic trades from a recognized ITI.

The matter was discussed at length by the Board of Equivalence Committee. During course of discussion, the representative of Director, Technical Education, Directorate of Technical Education Vocational & Industrial Training, H.P. Sundernagar informed that the courses from a recognized ITI in electrical, Mechanic (Motor Vehicle) and Pump Operation & Maintenance trades are equivalent to certificate/Diploma in Electrician/diesel Mechanic/Pump Mechanic/Motor Mechanic/Pump Operator- cum-Mechanic trades from a recognized ITI, for the post of Pump Operator, IPH Department agreed to the views/suggestion made by the representative of Director, Technical Education, Directorate of Technical Education Vocational & Industrial Training H.P. Sundernagar.

In view of the above discussion, the Board was of the view that the above courses from a recognized ITI in Electrical, Mechanic (Motor Vehicle) and Pump Operation & Maintenance trades are Equivalent to certificate/Diploma in electrician/ diesel Mechanic/Pump Mechanic/Motor Mechanic/Pump Operator-cum-Mechanic trades from a recognized ITI, for the post of Pump Operator.

Item No. 2 (Adviser Planning Department)

Regarding Equivalence in Master's/Bachelor's Degree. During course of discussion, the representative of Planning Department informed that the word "Equivalent" is to be rescinded from the R & P Rules of Deputy Director, Research Officer and Assistant Research Officers of the Planning Department HP. The matter was discussed at length by the Board and during course of discussion it was observed that suitability of candidates is to be ascertained by the respective Department in the R & P Rules. Therefore, suitable qualification is to be inserted by the concerned Department in the R & P Rules. Thus, the Board was of the view that the Planning Department may take appropriate decision and action at their own level.

The meeting ended with vote of thanks to and from the Chair.

Sd/-

Addl. Chief Secretary

(Education to the Government of Himachal Pradesh:

16. The records reveal that the petitioner, at no stage, had objected to the matter being referred to the Equivalence Committee and rather it was the petitioners themselves, who without any objection had placed the report of the Equivalence Committee before the learned Tribunal, as is evident from the order dated 10.04.2019, which is reproduced in its entirety hereinbelow:-

"The learned Additional Advocate General has filed Affidavit for submission of report of the State Level Board of Equivalence Committee in compliance to the order dated 28.08.2018 read with order dated 05.03.2019 alongwith the report (in fact proceedings) of the said Committee as Annexure R-1, which are taken on record in O.A. No. 374 of 2018 (copies supplied). The relevant portion of the proceedings of the meeting of the aforesaid Committee dated 08.04.2019 relating to these matters is extracted below:-

Item No. 1 (I&PH) Department

Suggestion of Equivalence Committee regarding equivalence of certificate/Diploma from a recognized ITI in Electrical, Mechanic (Motor-Vehicle) and Pump Operation & Maintenance trades with certificate/Diploma in electrician /wireman /diesel Mechanic /Pump Mechanic/ Motor Mechanic/Pump Operator-cum-Mechanic trades from a recognized ITI.

The matter was discussed at length by the Board of Equivalence Committee. During course of discussion, the representative of Director, Technical Education, Directorate of Technical Education Vocational & Industrial Training, H.P. Sundernagar informed that the courses from a recognized ITI in electrical, Mechanic (Motor Vehicle) and Pump Operation & Maintenance trades are equivalent to certificate/Diploma in Electrician/diesel Mechanic/Pump Mechanic/ Motor Mechanic/Pump Operator- cum-Mechanic trades from a recognized ITI, for the post of Pump Operator, IPH Department agreed to the views/suggestion made by the representative of Director, Technical Education, Directorate of Technical Education Vocational & Industrial Training H.P. Sundernagar.

In view of the above discussion, the Board was of the view that the above courses from a recognized ITI in Electrical, Mechanic (Motor Vehicle) and Pump Operation & Maintenance trades are Equivalent to certificate/Diploma in electrician/ diesel Mechanic/Pump Mechanic/Motor Mechanic/Pump Operator-cum-Mechanic trades from a recognized ITI, for the post of Pump Operator.

2. In view of the decision of the State Level Board of Equivalence Committee "that the above courses from a recognized ITI in Electrical, Mechanic (Motor-Vehicle) and Pump Operation & Maintenance trades are Equivalent to certificate Diploma in Electrician/diesel Mechanic/Pump Mechanic/ Motor Mechanic/Pump

Oprator-cum-Mechanic trades from a recotnized ITI, for the post of Pump Operator", nothing survives for any further adjudication in thse matters, which are disposed of accordingly with a direction to the respondents competent authority(s) to proceed further in the matter in accordance with the decision of the State Level Board of Equivalence Committee held on 08.04.2019, Annexure R-I, as expeditiously as possible preferably by 31st May, 2019.

3. The original applications as also pending miscellaneous application9s), if any, stand disposed of in the above terms.

4. Let, this order be placed in OA No. 374 of 2018 and duly authenticated copy in the concerned matter."

17. Apart from above, it would be noticed that the petitioners themselves have always considered the qualification possessed by the respondents herein to be one fulfilling eligibility criteria as laid down in the Rules and it is for this reasons that it has over the years appointed a number of persons, some of whose details have been provided under Right to Information Act vide Annexures R-1/21 to R-1/27 and also found in the body of the petition of the original application.

18. No doubt, the learned Advocate General, in principle, is right in arguing that two wrongs do not make a right, however, in the given facts and circumstances of the case, this principle is not applicable, as we are of the considered opinion that the petitioner committed no wrong in appointing the respondents herein or persons with similar qualification at earlier instances for the post of Pump Operator.

19. Our finding is further buttressed and strengthened from the fact that the petitioners themselves have now prescribed the qualification for the post of Pump Operators, which makes the respondents eligible and are, in fact, in conformity with the recommendations of the Equivalence Committee.

20. As a matter of fact, the Director, Technical Education in its reply to OA No. 2761 of 2018 had averred as under:-

"2. That it is respectfully submitted that the respondent No.3 vide letter dated 02.02.18 received through fax has sought clarification that as to whether the Motor Mechanic Trade and Mechanic Motor Vehicle Trade are different in nature or whether the trade of Motor Mechanic or not, if yes since when? Accordingly the Replying Respondent vide letter dated 03.02.2018 has taken up the matter with the competent Authority i.e. Directorate General Training, Ministry of Skill Development and Entrepreneurship, Government of India, New Delhi who has not been impleaded as a necessary party by the Applicant in the present OA. The aforesaid competent Authority vide its letter dated 5.03.2018 has clarified "that Mechanic Motor' and 'Mechanic Motor Vehicle' are two different trade. 'Motor Mechanic Vehicle' has not been renamed from 'Mechanic Motor' trade. During year 1698 both of the above trades were available under the Craftsman Training Scheme (CTS). The trade 'Mechanic Motor' has been deleted from the CTC before

year 1994" (Copy of the Directorate General of Training, Ministry of Skill Development & Entrepreneurship, Government of India dated 5.3.2018 is enclosed as Annexure R1)."

21. It was thereafter that the petitioners themselves had amended the Rules vide issuing Notification dated 11.03.2020 by including the Pump Operator-cum-Mechanic/ Mechanic (Motor Vehicle)/ Pump Operation-cum-Mechanic/Pump Operation & Maintenance, has been made eligible for being appointed as Pump Operator.

22. Once this is the fact situation, then obviously no exception can be taken and was rightly not taken by the petitioners before the learned Tribunal at the time when the matter was referred to the Equivalence Committee.

23. The learned Tribunal was conscious of the fact that it is neither the job of the Tribunal nor it was within the competence to determine whether one qualification was relevant to the other or not. Once it had been pressed that the contesting respondents do not possess the minimum qualification, in such circumstances, the learned Tribunal in its wisdom has rightly referred the matter to the Equivalence Committee.

24. That apart, no fault can be found with the directions issued by the learned Tribunal to refer the matter to the Equivalence Committee, particularly, when the State at earlier occasion had repeatedly appointed candidates with same and similar qualification to the one possessed by the respondents herein.

25. As observed above, the State has already acted upon the recommendations of the Equivalence Committee by amending its Rules, therefore, we really do not see any reason why and how the petitioners can be said to be aggrieved by the orders of the learned Tribunal. Would the recommendations of the Equivalence Committee have been without merit, obviously, the petitioners would not have taken the same into consideration and thereafter amended its rules so as to bring it in conformity with the opinion of the Equivalence Committee.

26. In addition to the above, once the Equivalence Committee has given its recommendations, the same will have to apply retrospectively from the date on which the certificate/diploma/degree has been obtained.

27. In arriving at such conclusion, we are duly supported and fortified by the decision rendered by the Hon'ble Full Bench of the Madras High Court in Nadar Thanga Shubha Laxman.

A. versus The State of Tamil Nadu and another (2015) LAB I.C. 954 , wherein it was observed as under:-

"23. Also, in the present case, neither the Equivalence Committee nor the Government Orders in G.O.Ms. Nos. 72, dated 30.04.2013 and 117 dated 02.07.2013, confined the validity of the degree obtained by the candidates to operate prospectively, therefore, as per the above judgments, when the vested

rights are created from the date of their acquisition of equivalent degrees, the respondents cannot take a stand that the degrees obtained by the petitioners will only have prospective effect from the date of issuance of Equivalence Certificate. When both the Equivalence Committee and the Government Order have consistently not mentioned the effect of the validity of the degree, it is not proper to hold prospective by any one, moreso, by the Court. That apart, a degree or a certificate issued by any University or competent educational authorities always have the effect on par with a decree issued by a competent civil court. Besides, it is well settled legal position that even an executing court cannot go behind its decree and this principle will *mutatis mutandis* undoubtedly apply to the case on hand as well."

28. In view of the aforesaid discussion, we find no merit in these petitions and the same are accordingly dismissed, so also pending applications, if any. Parties are left to bear their own costs.