

(2018) 05 RAJ CK 0270
In the Rajasthan High Court
Case No : Civil Writs No. 4043 of 2018

Gajendra Singh @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 29-05-2018

Acts Referred:

Citation : (2018) 05 RAJ CK 0270

Hon'ble Judges : VEERENDR SINGH SIRADHANA, J

Bench : Single Bench

Advocate : Sunil Samdaria, R.N. Mathur, Jhahharia, Karan Tibrewal, Rajendra Prasad, Sanjeev Kumar Mahla, Vigyan Shah, Rajaram Choudhary

Final Decision : Dismissed

Judgement

Assailing the action of the Respondents in treating B.Tech qualification as valid and holders eligible for appointment to the post of Lower Divisional Clerk (for short, 'LDC') in the Lower Divisional

Clerk Examination-2013, following the recruitment process initiated vide advertisement dated 26th July, 2013; the petitioner has instituted the present writ application praying for the following relief(s):

(i) To issue an appropriate writ / order / direction declaring the decision taken by Rajasthan Public Service Commission, which has been dilated under the letter dated 9.1.2018, to treat qualification of

B.Tech as valid one or holders of B. Tech qualification as eligible for the post of Lower Divisional Clerk in Lower Divisional Clerk Examination, 2013 under the recruitment exercise initiated vide

advertisement dated 26.07.2013, as null and void and contrary to law.

(ii) To issue an appropriate writ / order / direction to the Commission to revise the result of Lower Divisional Clerk Examination, 2013 by excluding candidates who have been treated as eligible for the

post of Lower Divisional Clerk on the strength of B.Tech qualification.

(iii) To issue an appropriate writ / order / direction to revise the result of Lower Divisional Clerk Examination, 2013 by excluding the candidates who had given the incorrect / false / wrong or incomplete

information qua their qualification in their online application forms or qua any other information which was supposed to be given in the online application forms and consequently issue appropriate

direction to the Respondents to annual their appointment/posting order.

(iv) Consequently, issue an appropriate writ / order /direction directing the Respondents to appointment the petitioner as Lower Divisional Clerk with all consequential benefits.

(v) Any other order which Court deem fit and proper in facts and circumstances of case may also be passed in favour of the petitioner.

(vi) Award cost of petition.

2. Briefly, the essential skeletal material facts are that the Rajasthan Public Service Commission (for short, 'RPSC'), invited applications from eligible candidates for appointment to the post of Clerk Gr-

II, for the office of Rajasthan Public Service Commission and filling up 7538 posts of Clerk Gr.-II, in Subordinate Offices in the State of Rajasthan, vide advertisement dated 26th July, 2013, under the

Rajasthan Sub-ordinate Offices Ministerial Service Rules, 1999 (for short, 'the Rules of 1999'). It is pleaded case of the petitioner that the advertisement (supra), specifically detailed out the essential

educational qualifications and the participating candidates were required to be in possession of while applying for consideration of their candidature for appointment to the post of Lower Divisional Clerk.

The petitioner satisfies the educational as well as technical qualifications required for he holds a certificate of Rajasthan State Certificate Course in Information Technology (for short, 'RS-CIT'), issued

by the Rajasthan Knowledge Corporation Limited.

3. Mr. Sunil Samdaria, learned counsel for the petitioner insistingly argued that a bare perusal of the advertisement would demonstrate that it includes holders of various qualification(s), as eligible for the

post of Lower Divisional Clerk. The qualification of B.Tech, is not among the qualification(s) prescribed either under the advertisement or under the Rules of 1999. Yet, the respondent-RPSC took a

decision to treat B.Tech qualification as a valid qualification and the holder, eligible for the post of Lower Divisional Clerk and have included them in the

recruitment process. The information, aforesaid,

was furnished to the petitioner in response to an application filed by him under Right To Information Act, 2005, vide communication dated 20th December, 2017.

4. Learned counsel would further submit that though the respondent-Commission responded to the application made by the petitioner under Right To Information Act, 2005, vide letter dated 9th January,

2018; however, it did not furnish complete information that was sought for by the petitioner. However, it is an admitted fact that the Commission took a decision on 21st November, 2017, to treat B.Tech

qualification as a valid qualification and the holder eligible for appointment to the post of Lower Divisional Clerk under the Clerk Grade-II Examination-2013.

5. Learned counsel further urged that though the respondent-RPSC did not furnish any information as to number of candidates with B.Tech qualification, who have been treated as eligible and included

in the select list of Lower Divisional Clerk; however, the petitioner believes that hundreds of such candidates, holding the qualification of B.Tech, have been treated eligible; jeopardising the right of

other eligible candidates like the petitioner, who have been ousted of the select list owing to illegal and invalid placement of ineligible candidates in the select list with B.Tech qualification.

6. That apart, according to the learned counsel, a large number of candidates, who furnished incorrect/incomplete and false information, at the time of filling up of their application forms, have also been

included in the select list. In order to fortify the stand, illustration has been furnished with reference to the some of the candidates, namely; Shri Deepak Kumar Sharma, who filled his application form

on 26th September, 2013, stating to be in possession of RS-CIT qualification, whereas the Certificate was issued on 21st April, 2014. Yet, he was declared eligible/qualified and selected. Similarly,

another participating candidate, Shri Ajay Ranwa, who submitted his application for on 14th September, 2013, with the statement of RS-CIT qualification/ Certificate acquired from Kota University,

while the Certificate was, in fact, issued on 6th June, 2017, yet he has been declared eligible/qualified and selected by the respondent Commission. Similar is stated to be a case of Shri Pankaj Kumar

and Shri Babulal Kumawat. However, there may be many more but the petitioner is not aware for complete information not furnished to him. According to the learned counsel, treating such candidates

as eligible is also contrary to a special note (3)(i), which in no uncertain terms contemplated that all required information was to be furnished in the online application form, by the participating

candidates; and in the event of any false/incorrect/incomplete information furnished; his/her application form shall be cancelled and would not be allowed admission to the

examination in the recruitment process involved herein. Thus, inclusion of participating candidates with B.Tech qualification as eligible for appointment to the post of Lower Divisional Clerk and

entertaining the application forms of those participating candidates who furnished incorrect /false /incomplete information in the application forms; is bad in the eye of law.

7. Referring to the advertisement and Rules of 1999, learned counsel further pointed out that neither under the Rules nor under the advertisement, the qualification of B.Tech has been incorporated as a

valid qualification so as to confer eligibility on the candidates who are in possession thereof. Hence, the action of the respondents is without jurisdiction.

8. Further, the recruitment process involved herein was initiated vide advertisement dated 26th July, 2013. Result was declared on 31st March, 2017, which was revised on 27th July, 2017, whereas the

respondent-RPSC, admittedly, took a decision on 21st November, 2017, to treat B.Tech qualification as a valid qualification for the post of Lower Divisional Clerk, under the recruitment process

involved herein. Hence, the decision taken by the respondentCommission, conferring eligibility on the candidates with B.Tech qualification, after conclusion of recruitment process; is bad in the eye of

law and contrary to the Rules of 1999, for such a qualification is not a prescribed qualification for appointment to the post of Lower Divisional Clerk. The action of the respondent-RPSC, therefore, is

without jurisdiction on that Count as well.

9. Further, the specific pleadings, to the stand aforesaid, under paragraph 2, 3 and 4 of the writ application, have not been specifically denied by the respondent-RPSC, but for a statement that 'the

grounds pleaded being mere repetition, hence, needs no reply'.

10. It is further pointed out that the State-respondent in their counter affidavit, has specifically stated that the qualification of Computer B.Tech, has been introduced by RPSC, and not by the State-

respondent. Therefore, the matter calls for interference. For the action of the respondents cannot be sustained, while introducing a qualification not contemplated under the Rules and that too after

declaration of the result. In order to fortify his stand reliance has been placed on the opinion of the Apex Court of the land in the case of Prakash Chand Meena & Ors. Vs. State of Rajasthan and Ors.:

2015 (8) SCC 484, State of Uttar Pradesh Vs. Vijay Kumar Mishra: (2017) 11 SCC 521 and opinion of a Division Bench of this Court in this case in a batch of writ applications lead case being DBCSA

No.1657/2017: Babulal Kumawat and Ors. Vs. State of Rajasthan and Ors., decided on 3rd November, 2017.

11. In response to the notice on writ application, the State respondent so also the respondent-RPSC, have filed their counter affidavits, separately; resisting the claim of the petitioner while supporting the

stand of the respondent-RPSC for inclusion of candidates with B.Tech qualification, is only a clarification. Further, the object of the selection is to select the most suitable, having regard to the nature of

duties attached to the post of Lower Divisional Clerk Gr.-II, in the backdrop of rapid computerization in all the fields of governmental functioning.

12. Mr. R.N. Mathur, learned senior counsel with Mr. Prateek Mathur, Advocate, appearing on behalf of the selected candidate(s) with B.Tech qualification, supporting the action of the respondents in

treating the participating candidates as eligible with B.Tech qualification and their inclusion in the select list and Mr. M.F. Baig, learned counsel appearing on behalf of the respondent-RPSC; argued that

there is no element of any illegality in the action of respondents. It is further contended that the respondent-Commission, made not mistake in accepting the decision dated 21st November, 2017, made by

the Committee, constituted for the purpose i.e. to examine the issue of computer qualification of B.Tech as valid and participating candidates eligible.

13. It is further contended that with reference to the recruitment process involved herein the Committee was specifically constituted to examine the issue of eligibility of participating candidates with

B.Tech qualification. The Committee in its report dated 21st November, 2017, after due deliberations accepted the participating candidates with B.Tech qualification, as eligible. It is further urged that

the decision arrived at, by the Committee constituted, is in consonance with the Recruitment Rules so also the advertisement dated 26th July, 2013.

14. Mr. M.F. Baig, learned counsel for the respondent-RPSC, made a specific reference to the report of the Committee, which has been placed on record as Annexure-R/2 dated 21st November, 2017,

detailing out the reasons and previous practice so also the reasons recorded while concluding to treat the qualification of B.Tech computer as a valid qualification in the recruitment process involved

herein.

15. Mr. Vigyan Shah, learned counsel, also appearing on behalf of the successful/selected candidates, contended that a glance of Rules of 1970/1999 and advertisement dated 26th July, 2013, would

reveal that the educational qualifications for the participating candidates have been detailed out under caption ""A"" and ""B"". Under caption ""A"", the qualification is Senior Secondary from a recognized

Board or its equivalent examination AND under caption ""B"" contemplation is for ""O"" or Higher level Certificate Course conducted by DOEACC under control of the Department of Electronics,

Government of India, Or Computer operator & Programming Assistant (COPA)/Data Preparation and Computer Software (DPCS) certificate organised under National/State Council of Vocational

Training Scheme or Diploma in Computer Science/Computer Applications from a University established by law in India or from an institution recognised by the Government. Or Diploma in Computer

Science & Engineering from a polytechnic institution recognised by the Government. Or Rajasthan State Certificate Course in Information Technology (RS-CIT), conducted by Verdhaman Mahaveer

Open University, Kota under control of Rajasthan Knowledge Corporation Limited.

16. According to the learned counsel, the very contemplation under Caption ""B"", which contemplates ""O"" or Higher level Certificate Course conducted by DOECC under the control of Department of

Electronics, Government of India; would reflect that while ""O"" Level Certificate is minimum and the higher would also confer eligibility. Similarly, diploma in Computer Science applications from a

University established by law in India; further contemplates that the qualification of B.Tech is a valid qualification; which has been included in the terms and conditions of the advertisement so also

under the Recruitment Rules.

17. Referring to the various opinions of the Apex Court of the land, learned

counsel impressed upon this Court that if a person has acquired higher qualification(s), in the same faculty, such qualification

would certainly presuppose the acquisition of the lower qualification(s) prescribed for the post. Moreover, an employer cannot be deprived of recruiting a person, who otherwise meets the requisite

criteria of qualifications and is in possession of higher qualification(s).

Hence, restricting the appointment to candidates having studied only the minimum lower qualifications will not be encouraging in the ever changing dynamics in the field of Information Technology,

which has now acquired indispensable application in day to day governmental functioning as well, including the area for which recruitment process involved herein, was initiated.

18. Referring to communication dated 30th May, 2013, which was specifically taken note of a Division Bench of this Court by adjudicating upon somewhat identical controversy in the case of Pinal

Singh Ranawat (Miss) Vs. State of Rajasthan & Ors.: DBCWP No. 2781/2014, decided on 1st August, 2016; learned counsel would submit that the qualification of B.Tech has been recognized as a

valid qualification for appointment to the post of Clerk Gr.-II in the recruitment process involved herein for which an advertisement was issued on 26th July, 2013, after communication/letter dated 30th

May, 2017. In order to buttress the stand of the participating candidates with B.Tech qualification, is eligible; reliance is placed on the opinion of the Apex Court of the land in the case of Jyoti K.K. and

Ors. Vs. Kerala Public Service Commission and Ors.: (2010) 15 SCC 596, Mohd. Riazul Usman Gani & Ors. Vs. District & Sessions Judge, Nagpur and ors.: (2000) 2 SCC 606, Parvaiz Ahmad Parry

Vs. State of Jammu and Kashmir and Ors.: 2016 (1) SCT 163 (SC), State of Uttarakhand and Ors. Vs. Deep Chandra Tewari and Anr.: (2013) 15 SCC 557. Reference has also been made the opinion

of another Division Bench of this Court in the case of Shivom Gupta Vs. State of Rajasthan and Anr.: DBSAW No.1177/2016, decided on 3rd May, 2017, endorsing the view in the case of Pinal Singh

Ranawat (Miss) (supra). Reliance is also placed on the opinion of a Coordinate Bench of this Court in the case of Jeetesh Gupta Vs. Rajasthan State Road Transport Corporation and Ors.: SBCWP

No.13356/2016, decided on 20th December, 2016, which according to the learned counsel for the petitioner was also further subjected to an intra-court

appeal unsuccessfully and Special Leave to

Appeal (C) No(s). 10124/2017:Rajasthan State Road Transport Corporation and Ors. Vs. Jeetesh Gupta, declined by the Apex Court of the land vide order dated 19th January, 2018.

19. Mr. Ram Pratap Saini, appearing in the connected writ application No.8610/2018, while endorsing the view of the counsel for the respondents so also of the participating candidates with B.Tech

qualification, as a valid qualification, for the recruitment to the post Clerk-Grade-II, involved herein; asserted that while the petitioner is qualified in terms of the recruitment rules and advertisement, with

RS-CIT, has been deprived of appointment, inspite of being successful, only in view of the interim order dated 22nd February, 2018, made by this Court, restraining the respondents from issuing any

appointment orders.

20. I have heard the learned counsel for the parties and with their assistance perused the materials available on record so also gave my thoughtful consideration to the rival submissions at Bar.

21. Indisputably, the advertisement inviting application form from eligible candidates for appointment to the post of LDC while advertisement dated 26th July, 2013, contemplated educational

qualifications, which read thus:

1. 'kS{kf.kd ;ksX;rk

A. Senior Secondary from a recognized Board or its equivalent examination

AND

B. ""O"" or Higher level Certificate Course conducted by DOEACC under control of the Department of Electronics, Government of India.

Or

Computer operator & Programming Assistant (COPA)/Data Preparation and Computer Software (DPCS) certificate organised under

National/State Council of Vocational Training

Scheme

Or

Diploma in Computer Science/Computer

Applications from a University established by law in India or from an institution recognised by the Government.

Or

Diploma in Computer Science & Engineering from a polytechnic institution recognised by the Government.

Or

Rajasthan State Certificate Course in Information Technology (RS-CIT) conducted by Verdhaman Mahaveer Open University, Kota under control of Rajasthan Knowledge

Corporation Limited.

2. vfuok;Z ;ksX;rk%& Working knowledge of Hindi written in Devnagri Script and knowledge of Rajasthani Culture.

22. A glance of qualifications incorporated under the rules and advertisement, as extracted hereinabove, would reflect that the participating candidate is required to possess the qualification of Senior

Secondary from recognized Board or its equivalent examination. The dispute is only with reference; to the qualification(s) under caption ""B"" which specifically contemplates ""O"" or higher level

certificate course conducted by DOAECC under the control of the Department of Electronics, Government of India. In alternative diploma in computer science/ computer application from a University

established by law in India or from an institution recognized by the Government; has also been included as a valid educational qualification.

23. Taking note of the B.Tech (IT), and other analogous/equivalent qualifications in the field of Information Technology, the full commission, constituted a Committee of three members to deliberate on

the issue and submit its report. The Committee vide its report dated 21st November, 2017, on due deliberations and after a detailed consideration on the issue, submitted its report, accepting B.Tech

computer as a valid qualification for consideration of candidature of the participating candidates, in the recruitment process involved. At this juncture, it will be gainful to take note of the text of the

contents of the report submitted by the Committee after due deliberation, placed on record as Annexure R/2, which reads thus:

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1- 'kS{kf.kd ;ksX;rk-

A. Senior Secondary from a recognized Board or its equivalent examination AND

B. ""O"" or Higher level Certificate Course conducted by DOEACC under control of the Department of Electronics, Government of India. Or Computer operator & Programming Assistant (COPA)/Data

Preparation and Computer Software (DPCS) certificate organised under

National/State Council of Vocational Training Scheme

Or

Diploma in Computer Science/Computer Applications from a University established by law in India or from an institution recognised by the Government.

Or

Diploma in Computer Science & Engineering from a polytechnic institution recognised by the Government.

Or

Rajasthan State Certificate Course in Information Technology (RS-CIT) conducted by Verdhaman Mahaveer Open University, Kota under control of Rajasthan Knowledge Corporation Limited.

2. vfuok;Z ;ksX;rk%- Working knowledge of Hindi written in Devnagri Script and knowledge of Rajasthani Culture.

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dEI;wVj f'k{kk dks clsa fofHkUu ladk; esa Lukrd@vf/kLukrd Lrj ij dEI;wVj dk ,d iz'u i= ysdj mrh.kZ vH;fFkZ;ksa dks Hkh ik= ekuk tk ldrk gSA

24. In the case of Jyoti K.K. and Ors. (supra), the Apex Court of the land while dealing with the issue of higher qualification and claim of the participating candidates, for appointment, in no uncertain

terms observed that higher qualifications in the same faculty by a person, such qualification can certainly be stated to presuppose the acquisition of lower qualification prescribed for the post. Here, it

will be relevant to take note of the contents

paragraph 4, 5, 6 and 9, of the opinion aforesaid, which reads thus:

â??4. The Kerala Public Service Commission invited applications for selection to the post of subengineers (electrical) in the Kerala State Electricity Board as per the notification dated 21.6.1994. The

said notification provided that the qualifications for the post would be as follows:

1. SSLC or its equivalent 2. Technical qualifications -

(a) Diploma in electrical engineering of arecognised institution after 3 years course of study.

Or

(b) A certificate in electrical engineering from anyone of the recognised technical school's shown below with five years service under Kerala State Electricity Board. (Not fully extracted as not

relevant)

Or

(c) MGTE/KGTE in electrical light and power(higher) with five years experience as II grade overseer (electrical) under the Board.

5. The appellants before us are holders of B.Tech. degree in electrical engineering or bachelor's degree in electrical engineering.

On the basis that the appellants did not possess the necessary qualifications, the commission held that they were not eligible for selection. In the writ petitions, the same having been challenged, it was

contended that they possess higher qualifications and therefore non consideration of their cases is not correct. They sought for a direction to the commission to consider them as eligible candidates. It

was also pointed out that ever since the inception of the board, persons

possessing higher qualifications have been considered and appointed in terms of Rule 13(1) of the Kerala State and Subordinate

Services Rules, 1956 and the board having accepted higher qualifications to be applicable in all such cases could not exclude them in the present cases.

6. The commission contended before the High Court as is done before us now that the graduates in engineering or persons possessing other qualifications, as held by the appellants, that may not be taken

as higher qualifications, they are not equivalent qualifications prescribed for that post and persons who possessed higher qualifications can only be taken note of, in cases where they acquired such

higher qualifications after acquiring the prescribed qualifications. Rule 10 (a) (ii) of part I of the rules was also adverted to contend that such of those higher qualifications which presuppose the

acquisition of the lower qualifications prescribed for the post shall be sufficient for the post. The qualifications, it was stated, possessed by the appellants do not presuppose the acquisition of the

prescribed lower qualifications and, therefore, they were not eligible to be considered.

9. It is no doubt true, as stated by the High Court that when a qualification has been set out under the relevant rules, the same cannot be in any manner whittled down and a different qualification cannot

be adopted. The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract

that part of the rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post.

If a person has acquired higher qualifications in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it

may not be necessary to seek far. Under the relevant rules, for the post of assistant engineer, degree in electrical engineering of Kerala University or other equivalent qualification recognised or

equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is

definitely higher qualification than what is prescribed for the lower post, namely, the post of sub-engineer. In that view of the matter the qualification of degree in

electrical engineering presupposes the

acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post. In the event the government is of the view that only diploma

holders should have applied to post of sub-engineers but not all those who possess higher qualifications, either this rule should have excluded in respect of candidates who possess higher qualifications or

the position should have been made clear that degree holder shall not be eligible to apply for such post. When that position is not clear but on the other hand rules do not disqualify per se the holders of

higher qualifications in the same faculty, it becomes clear that the rule could be understood in an appropriate manner as stated above. In that view of the matter the order of the High Court cannot be

sustained. In this case we are not concerned with the question whether all those who possess such qualifications could have applied or not. When statutory rules have been published and those rules are

applicable, it presupposes that everyone concerned with such appointments will be aware of such rules or make himself aware of the rules before making appropriate applications. The High Court,

therefore, is not justified in holding that recruitment of appellants would amount to fraud on the public.

25. In the case of Mohd. Riazul Usman Gani & Ors. (supra), the Supreme Court repelling the contention that candidate with higher qualification than prescribed, in the matter of appointment, observed

that higher qualification cannot become a disadvantage to the candidate, holding thus:

“20. If an employee does not perform the duties attached to the post disciplinary proceedings can certainly be taken against him. An employer cannot throw up his hands in despair and devise a

method denying appointment to a person who otherwise meets the requisite qualifications on the ground that if appointed, he would not perform his duties Qualification prescribed is minimum. Higher

qualification cannot become a disadvantage to the candidate.”

26. In the case of Deep Chandra Tewari and Anr. (supra), while dealing with the matter of appointment on the post of Assistant Teachers by direct recruitment with minimum qualification prescribed as

Bachelor Degree in any of the two prescribed subjects or L.T. Diploma and

candidature rejected for the candidate possessing higher qualification; while allowing an appeal of the State of Uttarakhand,

the Apex Court of the land detailed out the circumstances where the normal Rule would be that candidate with higher education is deemed to fulfill the lower qualification prescribed for the post, holding

thus:

“10. We are conscious of the principle that when particular qualifications are prescribed for a post, the candidature of a candidate possessing higher qualification cannot be rejected on that basis. No

doubt, normal rule would be that candidate with higher qualification is deemed to fulfill the lower qualification prescribed for a post. But that higher qualification has to be in the same channel.

Further, this rule will be subject to an exception.

Where the prescription of a particular qualification is found to be relevant for discharging the functions of that post and at the same time, the Government is able to demonstrate that for want of said

qualification a candidate may not be suitable for the post, even if he possesses “better” qualification but that “better” qualification has no relevance with the functions attached with the post.”

27. In the case of Pinal Singh Ranawat (Miss) (supra), a Division Bench of this Court, while dealing with somewhat identical controversy in the backdrop of the communication dated 30th May, 2013,

allowing the claim of the petitioner with a Degree in Computer Science, observed thus:

“As per the petitioner, she is having requisite qualification but the respondents rejected her candidature erroneously. It is submitted that under the Rules of 1971, the educational eligibility prescribed

to be considered for appointment to the post of Computer, is that a Certificate of RS-CIT course conducted by the Rajasthan Knowledge Corporation Limited or any other certificate awarded by a

competent authority declared equivalent to the above certificate by the Department of Information, Technology and Communication, Government of Rajasthan. The petitioner is having a qualification

higher than the prescribed one, therefore, no reason was available to reject her candidature.

Per contra, as per the respondents, the qualification available with the petitioner is not the qualification prescribed under the Rules, hence, her candidature was

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In light of the order dated 30.5.2013, we are of the view that the petitioner is eligible to be considered for appointment to the post of Computer as per the Rules of 1971 being having a degree in

Computer Science from a university established by law.

Accordingly, the writ petition is allowed. The petitioner is declared entitled to be considered for appointment to the post of Computer under the Rajasthan Statistical Subordinate Service Rules, 1971. The

respondents are directed to consider candidature of the petitioner for the purpose of appointment to the post of Computer as a consequent to the process of selection initiated under the

notification/advertisement dated 19.6.2013 and if she is otherwise eligible, appointment be accorded to her with all consequential benefits except the actual payment of salary and other running monetary

benefits.

No order to costs.â??

28. In the case of Shivom Gupta (supra), another Division Bench of this Court endorsed the view in the case of Pinal Singh Ranawat (Miss) (supra), observing that even SLP against the adjudication in

the case of Pinal Singh Ranawat (Miss) (supra), was declined.

29. In the case of Jeetesh Gupta (supra), while dealing with somewhat similar controversy, a Coordinate Bench of this Court, observed thus:

â??22. If the requirement provided under the Rules is that a candidate who is holding degree of graduation in Statistics, Economics, Mathematics, Commerce or Science (Maths) with 'O' Level

certificate of Computers is eligible for the post of Computer, this court finds no reason in holding that who is B.E. (Computer) ineligible for the post of Computer and the view of this court is further

strengthen by the order Dt. 11.05.2016 passed by the coordinate Bench of this court in the earlier round of litigation that no reasoning is coming forward in not treating the degree of B.E. (Computer)

which in the normal understanding inherently presupposes the fundamentals of Mathematics and when the degree of Mathematics or Science with Maths is treated to be a qualification, there is no

reasoning put forth for declining the degree of B.E.(Computer) ineligible but as the coordinate Bench of this Court was reluctant to go ahead in directing the respondent Corporation to consider the

petitioner for appointment and left for the respondents to revisit the matter & pass a reasoned & speaking order regarding his eligibility and as usual no one in the respondent-Corporation took

responsibility on his shoulders while re-visiting the matter in compliance of order of the coordinate Bench Dt. 11.05.2016 what was earlier expressed by the respondent-Corporation for cancellation of

his appointment vide order Dt. 20.03.2014 and stated by the respondent in their counter affidavit, the same has been reiterated as verbatim by the respondent-Corporation while rejecting his

representation submitted under the directions of the Court Dt. 11.05.2016 in S.B. Civil Writ Petition No. 4219/2014 and rejected his representation vide order Dt. 27.07.2016.

24. It is no doubt true that what should be the qualification for the post is completely within the domain of the employer and unless the person affected demonstrates with documentary evidence to

support that the qualification prescribed for the post in question has no nexus at all or the qualification prescribed is wholly absurd, the question may be open for this court to consider within the limited

scope of judicial review but in the given facts & circumstances, where the requirement laid down by the recruiting authority that holder of Degree in the subject Statistics, Economics, Mathematics,

Commerce or Science (Maths) with 'O' Level certificate is the benchmark, this court finds no reason as to why a candidate like petitioner who is better qualified and B.E.(Computer) is not meeting out

the eligibility requirement introduced after the amendment of 2013 and this is something which is not acceptable to a man of ordinary prudence.

26. This court is not able to persuade as to why a person with higher qualification of B.E.(Computer) is ineligible for the post of Computer vis-à-vis that of BCA but as already observed it is the normal

practice the process which is initiated is so mechanical where everyone has to rush to the court for redressal of his legitimate grievance which can easily be ventilated at their own end and this is the

reason, since no one in the present scenario is ready to take responsibility on his shoulders, rejection of representation under directions of this court is imperative and present is the instance where the

petitioner is running from pillar to post to satisfy that his qualification is higher in comparison to what is expected for the post in question but no one is ready to listen and the authorities have turned down

his request with deaf ears on the premise that the requirement for the post in question lays down the holder of degree in the subject Statistics, Economics, Mathematics, Commerce or Science (Maths)

with 'O' Level certificate and a person hold B.E.(Computer) may be above the benchmark but not ready to take decision of holding higher qualifications than desirable is eligible to participate in the

process of selection.

28. Consequently, the writ petition succeeds & is hereby allowed. The orders Dt. 23.03.2014 & 27.07.2016 are quashed & set aside and the respondent-Corporation is directed to permit the petitioner to

join on the post of Computer pursuant to order of appointment Dt. 14.02.2014 and as he has not worked for the intervening period, he will be entitled for notional fixation of pay and not the actual salary

for the intervening period for which he has not discharged his duties. Necessary compliance be made by the respondent-Corporation within four weeks. No costs.â??

30. It is informed by Mr. Vigyan Shah, counsel appearing on behalf of the selected candidates that an intra-court appeal against the opinion of the learned Single Judge, in the case of Jeetesh Gupta

(supra), was also declined by the Division Bench vide order dated 20th February, 2017; DBCSA No.204/2017, confirming the opinion of the learned Single Judge. Further, Special Leave to Appeal (C)

No(s). 10124/2017:Rajasthan State Road Transport Corporation & Anr. Vs. Jeetesh Gupta, has also been declined by the Supreme Court vide order dated 19th January, 2018.

31. In the case of Vijay Kumar Mishra (supra), which has been heavily relied upon by the counsel for the petitioner, the Apex Court of the land observed that a candidate not in possession of prescribed

qualification at the time of submissions of application or cut off date, if any, prescribed under the Rules or stated in the advertisement; cannot be considered for appointment to the post merely on the

basis of a concession/confession made by the Officer in the court that persons

having lower merit than the respondent have been appointed. In this case, the writ petitioner (Vijay kumar Mishra), did not

have the educational qualification prescribed under the rules for he has been in possession of Degree of Bachelor in education and did not have the L.T. certificate at the time of submission of the

application so also at the time of selection. Thus, the case is entirely different and distinguishable on facts from the factual matrix obtaining in the case at hand wherein the participating candidates with

B.Tech, a higher qualification in the same faculty, have been considered eligible.

32. In the case of Prakash Chand Meena And Ors. (supra), the Apex Court of the land examined the controversy in the backdrop of the factual matrix where change in norms was post advertisement

and after recruitment/selection process had begun; which was held to be impermissible.

33. Be that as it may a glance of communication dated 30th May, 2017, which has been specifically taken note of by a Division Bench of this Court in the case of Pinal Singh Ranawat (Miss) and

subsequently followed by another Division Bench in the case of Shivom Gupta (supra), would reflect that qualification of Computer application/ Diploma in IT/ Diploma/Computer Science, was

recognized as equivalence/higher to RS-CIT whereas the advertisement, in the recruitment process involved herein, was issued on 26th July, 2017, subsequent to recognition of the qualification(s) of the

participating candidates in the face of communication dated 30th May, 2013. Hence, the opinion referred to and relied upon by the counsel for the petitioner is, distinguishable on facts for there is no

action of respondents which could be treated as a change in norms post advertisement and after recruitment/selection process began.

34. From the factual matrix as obtaining in the case at hand and applying the principles deducible from the opinions referred to and relied upon by the counsel for the parties; it can safely be concluded

that the candidates with B.Tech. Qualification, or candidates in possession of qualifications equivalent or higher, would be deemed to fulfill the lower qualification prescribed for the post. But that

qualification has to be in the same channel. However, this rule could be subjected to exception where the prescription of a particular qualification is found to be irrelevant for discharging the functions of

that post and at the same time, government is able to demonstrate that for want of said qualification, a candidate may not be suitable for the post, even if he is in possession of a better qualification?

but that a better qualification has no relevance with the functions attached to the posts.(vide Deep Chand Tiwari And Anr.).

35. The Apex Court of the land has in no certain terms held that a criteria which has the effect of denying the candidate his right to be considered for the post on the principle that he is having higher

qualification than prescribed, cannot be rational [(vide Mohd. Riazul Usman Gani & Ors. (supra)].

36. For the reasons and discussions aforesaid and in view of the factual matrix of the case at hand; this court has no hesitation to hold that the participating candidates with B.Tech. Qualification, higher

than RSCIT in the same channel; are eligible for consideration of their candidature in the recruitment process involved herein. The respondents committed no illegality in including them in the

recruitment process so also in the select list.

37. In the result, the writ application instituted by the petitioner fails, and, is hereby dismissed. Interim order dated 22nd February, 2018, stands vacated.

38. However, in the facts and the circumstance of the case, there shall be no order as to cost.