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**(2010) 07 RAJ CK 0042**  
**In the Rajasthan High Court**

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| Harish Meghwal and Another    | Vs | APPELLANT  |
| State of Rajasthan and Others |    | RESPONDENT |

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**Date of Decision :** 06-07-2010

**Acts Referred:**

Constitution of India, 1950 — Article 14

**Citation :** (2010) 07 RAJ CK 0042

**Hon'ble Judges :** Vineet Kothari, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Vineet Kothari, J.—Heard the learned Counsel.

2. By this petition, Annex.5 order passed by the Commissioner, EGS of Rural Development and Panchayati Raj Department of the State Government has been challenged. By the said order, the Commissioner inter alia prescribed that the eligibility qualification for the post of Assistant Accountant/Accounts Assistant for employment in the Schemes framed under the provisions of National Rural Employment Guarantee Scheme Act would be B.Com./C.A. (Inter)/ICWA (Inter)/CS (Inter).

3. The learned Counsel for the petitioners submits that the petitioners holding B.A. degree were appointed as Accounts Assistant under the agreement dtd.2.7.2009 (Annex.3) for the period of one year which expired on 30.6.2010. She submitted that during the course of petitioners' employment vide Annx.5 which apparently does not bear a date, but from the side margin of the said order from endorsement the date 29.9.2009 and 30.9.2009 can be seen, the respondents could not change the qualification for said position of Accounts Assistant excluding the persons holding the degree of Bachelor of Arts. Though the learned Counsel also contended that the said communication (Annex.5) is given retrospective effect, she could not make good this submission as no such retrospectivity is borne from the said order. The learned Counsel further

submitted that the petitioners' contract of service may now not be renewed and they would also be rendered ineligible in view of change of qualification vide Annex.5 excluding the Graduates with Arts background. She also contended that several other Departments of the State Government and the Central Government provide for Arts Graduates also to be recruited for the position of the Accountant/Junior Accountant which is some what similar to the Accounts Assistant, the position involved in the present case. She referred to Rajasthan Accounts Service Rules, 1954 and the Rajasthan Subordinate Accounts Service Rules, 1964 and with reference to Schedule I of the said Rules of 1963 vide column 4 for the post of Accountant, a candidate for direct recruitment must hold a degree of Arts/Science/Commerce from a University established by law in India etc. is shown to be eligible person for such appointment on the post of Accountant. She also submitted that in some of the writ petitions filed by the similarly situated persons, this Court has entertained the writ petitions and has granted interim relief to the effect that the petitioners' services shall not be terminated.

4. After hearing the learned Counsel at some length, this Court finds itself unable to agree with the submissions of the learned Counsel made at the Bar. Doubtless it is, that to provide for eligibility qualification for any employment is choice of the employer and it does not lie within the domain of the employee concerned. The petitioners though appointed in the position of Accounts Assistant under the contract for a limited period hold the degree of B.A. only. The subsequent change in the qualification for the said position to be B.Com./C.A. (Inter)/ICWA (Inter)/CS (Inter), thus, excluding the B.A. Candidates does not in the first instance affect the petitioners at all and since the said order has not been given any retrospective effect, the services were neither terminated nor were liable to be terminated on the anvil of Annex.5 dated 29.9.2009. The said services came to an end merely by efflux of period of contract on 30.6.2010. The said change of qualification made by Annex.5 by the competent authority, namely, the Commissioner, ESG cannot be said to be beyond the competence of the said authority at all. If in the wisdom of the employer, namely, the State Government, henceforth prescribes the qualification for position of Accounts Assistant to be employed under the NREGS Act to be of Commerce background and not of Arts background, no valid exception to be same can be taken. This Court is also at loss to understand what fault can be found with the prescription of this qualification for the position of Accounts Assistant who is supposed to write up the books of accounts, drawing balance-sheet and present the same to the competent authority for the needful information. A graduate with Arts background might not undertake this technical exercise of making of accounting entries and making of balance-sheet etc. which requires an specialized subject knowledge and technical expertise. Merely because earlier the petitioners were appointed with the qualification of B.A. only on the said position under the agreement, which expired on 30.6.2010, he does not get a right to continue in the same position irrespective of prescription of new qualification. The decision to change the qualification to exclude the graduates of Arts for the position of

Accounts Assistant appears to be reasonable, rational and proper in the facts and circumstances of the present case. Since legal position about the prescription of eligibility qualification is settled and that lies within the domain of the employer, in the opinion of this Court, no valid challenge to the same can be laid in the Court of law.

5. Reference to other similar Rules like Rajasthan Accounts Service Rules and Rajasthan Accounts Subordinate Service Rules also does not ensure to the benefit of the petitioner. The said Rules ipso facto do not apply to the present petitioners. The inclusion of graduates with Arts in those Rules framed 50 years back cannot confer any right on the present petitioners in the present days, when the employment with prescribed skills, qualification and specialization is order of day. May be at that time, when the persons with the specialised qualifications and subjects were not available easily, the State Government might have thought it fit to include even the Graduates with Arts background to serve on the post of Accountant/Assistant Accountant. Now, with the increasing unemployment even in specialized fields and large availability of such candidates, such an argument as raised by the learned Counsel for the petitioners cannot be upheld by this Court and no case of discrimination resulting in violation of Article 14 of the Constitution of India can be made out on this basis. As far as interim order passed by the Coordinate Bench of this Court is concerned, this Court can only observe that the interim orders are not binding precedents and since this petition is being decided finally by this Court at this stage, grant of relief in some other matters of this nature also cannot come to the benefit of the present petitioners.

6. Accordingly, the present writ petition is dismissed. No order as to costs. A copy of this order be sent to the respondents.