

(2018) 05 UK CK 0022

In the Uttarakhand High Court

Case No : Special Appeal No. 272 of 2016, 22, 31, 145, 214, 313, 392, 427, 566, 812, 1070 of 2017

HONBLE HIGH COURT OF UTTARAKHAND

APPELLANT

Vs

MAN MOHAN TRIPATHI AND ANOTHER

RESPONDENT

Date of Decision : 04-05-2018

Acts Referred:

Constitution of India, — Article 136, 309
Uttar Pradesh Reorganisation Act, 2000 — Section 30
Uttarakhand Government Servants (Criterion for Recruitment by Promotion) Rules, 2004 — Rule 4, 5, 6, 9, 17
Uttarakhand Subordinate Civil Courts Ministerial Establishment Rules, 2007 — Rule 20(10)
Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules 1976 — Rule 9(ii)(2)

Citation : (2018) 05 UK CK 0022

Hon'ble Judges : K.M. JOSEPH, C.J, SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : Paresh Tripathi, Pradeep Joshi, Shobhit Saharia, Navnish Negi, B.D. Kandpal, Ashish Joshi, N.S. Pundir, Bhagwat Mehra, Subhash Upadhyaya, Ganesh Kandpal, B.D. Upadhyaya, Sunil Upadhyaya, Subhash Upadhyaya, Ganesh Kandpal, B.D. Upadhyaya, Sanjay Bhatt,

Final Decision : Partly Allowed

Judgement

K.M. JOSEPH, C.J.Â Â Â Â Â Â

1. This batch of appeals raise certain issues, which are common and, hence, we are disposing of the same by this common judgment.Â Â

2. Special Appeal No. 313 of 2017 is filed by the Uttarakhand Public Service Commission (hereinafter referred to as the "Commission").Â It is

directed against the judgment passed in Writ Petition (S/S) No. 525 of 2016.Â Against the same judgment, High Court of Uttarakhand has also filed

an appeal as Special Appeal No. 566 of 2017.Â In the said writ petition, the learned Single Judge was dealing with selection to the post of Assistant Librarian in the High Court.Â It was noted that the minimum qualification as per Annexure No. 2 Advertisement is Degree in Law and Diploma in Library Science from a recognised University.Â It was, further, noted that the candidature of the writ petitioner was rejected on the ground that he did not possess Diploma in Library Science.Â The learned Single Judge noted that the writ petitioner had obtained Degree in Library Science from a recognised University.Â He, further, proceeded to notice that a higher qualification cannot be a disqualification and, since the writ petitioner possessed Degree in Library Science, it would imply that he had the essential qualification of Diploma in Library Science.Â The learned Single Judge, further, noted that the purpose of every public employment is to get the most meritorious candidate.Â Noting it to be not res integra in view of the judgment passed in Special Appeal No. 240 of 2009, dated 08.03.2010, wherein a Bench of this Court relied on the judgment in the case of P.M. Latha & another vs. State of Kerala & others, reported in (2003) 3 SCC 541, the writ petition was allowed and the appellants were directed to hold special interview for the writ petitioner, if found suitable to be considered for appointment within a period of 10 weeks.Â Â

3. Special Appeal No. 196 of 2016 is filed, on the other hand, as against the judgment passed in Writ Petition (S/S) No. 2086 of 2015.Â Writ Petition (S/S) No. 2659 of 2015, Writ Petition (S/S) No. 2661 of 2015 and Writ Petition (S/S) No. 2654 of 2015 came to be decided by a common judgment along with Writ Petition (S/S) No. 2086 of 2015.Â Special Appeal No. 198 of 2016 is filed against the judgment rendered in Writ Petition (S/S) No. 2661 of 2015.Â Likewise, against the judgment passed in Writ Petition (S/S) No. 2654 of 2015, Special Appeal No. 200 of 2016 is lodged.Â Special Appeal No. 199 of 2016 is filed against the judgment passed in Writ Petition (S/S) No. 2659 of 2015.Â In all these cases, the matter relates to the Education Department.Â Therein, persons, who belonged to Class IV, were considered for promotion to Class III under Rule 6 of the Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 2004 (hereinafter referred to as the '2004 Rules').Â 15 per cent was meant for persons, who were having High School qualification and 10 per cent was meant for persons, who were having Intermediate qualification.Â By the impugned

judgment, the learned Single Judge has taken the view that persons, who are having Intermediate qualification, were also entitled to be considered as

against the posts coming under 15 per cent, which was meant for persons having High School qualification.Â It is feeling aggrieved by the same that

the appeals have been lodged by the State.Â It is on the basis of the same that Special Appeal Nos. 272 of 2016, 31 of 2017, 145 of 2017 and 392 of

2017 also have been filed.Â Special Appeal No. 272 of 2016 also relates to Education Department.Â It is filed by a person, who is having the

qualification of High School.Â The complaint is against the judgment insofar as the learned Single Judge has permitted persons with Intermediate

qualification to be considered against the 15 per cent meant for the persons with High School qualification, as also interfering with the recruitment

process started in the year 2013.Â Special Appeal No. 22 of 2017 is filed by the writ petitioners in the writ petition seeking modification of the

judgment passed by the learned Single Judge to the extent that the benefit of the judgment should be confined to the writ petitioners.Â Â

4. Special Appeal No. 214 of 2017 relates to similar promotion, namely, from Class IV to Class III; but, in the Judicial Department of the State.Â We

will advert to it in greater detail.Â Â

5. Special Appeal No. 812 of 2017, again, relates to appointment to the post of Assistant Review Officer in the High Court.Â The question is as to

whether the writ petitioner, who is a Post Graduate in Computer Science, could be considered for the post of Assistant Review Officer for which the

qualification, which is fixed, is Diploma in Computer Science.Â The learned Single Judge dismissed the writ petition and, hence, the appeal is filed by

the writ petitioner.Â Â

6. Special Appeal No. 1070 of 2017 is filed by persons, who are having High School qualification and also by persons, who are having Intermediate

qualification.Â This appeal is filed on the basis of leave granted by the Court.Â Their complaint appears to be that the learned Single Judge, while

disposing of the writ petitions, has also stayed the proceedings started in the year 2013, which was a fresh selection, and this has put a clog on the

recruitment process and they are affected by the same.Â Â

7. Finally, there is also Special Appeal No. 427 of 2017.Â The issue, again, relates to the appointment to the post of Data Entry Operator in Public

Service Commission.Â There is some delay in filing the appeal.Â Having heard the learned counsel, we are of the view that the delay should be

condoned.Â Accordingly, the delay will stand condoned and the Application will stand allowed.Â The issue relates to the qualification required.Â

The learned Single Judge allowed the writ petition filed by the writ petitioner noting that the writ petitioner has the qualification of Bachelor in

Computer Applications; whereas, the qualification, which is fixed, is that a person should have minimum qualification of one-year Diploma or

Certificate in Computer Applications.Â Â

Special Appeal Nos. 313 of 2017 & 566 of 2017:

8. We, first, take Special Appeal No. 566 of 2017 and Special Appeal No. 313 of 2017.Â The issue, which is raised, relates to the post of Assistant

Librarian in the High Court.Â The learned Single Judge has proceeded on the basis that the Rules provide for a minimum qualification of Degree in

Law and Diploma in Library Science.Â Noticing that the writ petitioner has obtained Degree in Law and also Degree in Library Science and further

noticing that the writ petitioner has the essential qualification and that he has higher qualification and also relying on P.M. Latha's case (supra),

the writ petition has been allowed.Â It is the case of the appellants that the learned Single Judge has erred in holding that the writ petitioner must be

treated as possessing the essential qualification, which is Diploma in Library Science, by virtue of his having Degree in Library Science.Â It is

contended by Mr. Shobhit Saharia, learned counsel appearing on behalf of the High Court, that reading of the judgment of the Apex Court in P.M.

Latha's case (supra) does not yield the said result.Â Â

9. We must, first, notice the effect of the judgment dated 08.03.2010 passed in Special Appeal No. 240 of 2009 rendered by this Court.Â The facts of

the said case are noted as hereunder:

Appointment was given to the post of LT Grade Teacher in Physical Education by way of direct recruitment.Â Appellants responded to the said

Advertisement.Â As it was not being considered, they approached the Court.Â The eligibility condition was that a candidate should possess Bachelor

Degree from a recognised University or a Degree recognised by the Government as equivalent.Â Secondly, the candidate was to possess the

qualification of Diploma in Physical Education.Â The Court noted their arguments

to be that they have possessed a higher qualification, namely, Degree in Physical Education.Â Appellants relied on the judgment of the Apex Court in the case of Jyoti K.K. & others vs. Kerala Public Service Commission & others, reported in (2010) 15 SCC 596.Â Â

10. The Court, thereafter, referred to the judgment in P.M. Lathaâ??s case (supra), which was, in fact, relied on by the State of Uttarakhand.Â

Thereafter, the Division Bench proceeded to take the following view:

â??We have given our thoughtful consideration to the rival contentions advanced before us by the learned counsel for the parties. Although the

judgments relied upon by the learned counsel for the respondents seem to express contrary views, on a closure examination of the same, we are

satisfied that each of the judgments represents a different situation. In the judgment relied upon by the learned counsel for the respondents, namely,

P.M. Lathaâ??s case, the observations of the Supreme Court (extracted hereinabove) reveal that the possession of the B.Ed. qualification

(possessed by the petitioners therein) was treated as unacceptable because the same was not a suitable qualification for the advertised posts. TTC

i.e., the advertised qualification was considered as the only suitable qualification because it was a specialised qualification for teaching small children in

primary classes. In other words, even though the qualification possessed by the appellants was higher, yet it was a qualification which could not be

treated as in the same stream (as TTC) because B.Ed. was not a specialised qualification for teaching small children in primary classes.

Insofar as the present controversy is concerned, it is not the case of the respondents, either in the counter affidavit or during the course of hearing,

that the qualification of Bachelorâ??s degree in Physical Education, possessed by the appellants is a qualification, in a different stream than that of

Diploma in Physical Education. It is also not the case of the respondents that the qualification of Bachelorâ??s degree in Physical Education is

irrelevant/unsuitable for the post of L.T. Grade Teacher in Physical Education. Additionally, it is not disputed by the respondents that the qualification

of Bachelorâ??s degree in Physical Education is a higher qualification in the same stream as Diploma in Physical Education. Insofar as the instant

issue is concerned, it is necessary also to notice the observations made by the learned Single Judge in the impugned order dated 8.12.2009, wherein it

has been emphasised that although in the advertisements (which are subject matter of consideration in the present controversy) did not specify the qualification of B.P.Ed. as a necessary qualification, yet B.P.Ed. was recognized by the National Council for Teacher Education in 2006 as a valid qualification for appointment to the post of L.T. Grade Teacher in Physical Education. It is also acknowledged that for posts of LT Grade Teacher in Physical Education advertised after 2006, the qualification of Bachelor's in Physical Education was mentioned. The amendment of the 1983 Rules by the 2006 Rules clearly demonstrates that Bachelor in Physical Education is not an unsuitable qualification for appointment to the post of L.T. Grade Teacher in Physical Education. Thus viewed, the judgment relied upon by the learned counsel for the respondents in P.M. Latha's case, in our view, will not be attracted for the determination in the present controversy.

Insofar as Jyoti K.K.'s case (supra) is concerned, the extracted portion of the judgment reproduced above (as has been relied upon by the learned counsel for the appellants) leaves no room for doubt that if a candidate does not possess the prescribed qualification, but possesses a higher qualification in the same stream, he has to be treated as eligible. Based on the judgment rendered in P.M. Latha's case, we may add one further precondition to the same, namely, that the higher qualification should neither be irrelevant or unsuitable for the advertised post. Since it is not the case of the respondents that the qualification of Bachelor's Degree in Physical Education is not an irrelevant / unsuitable qualification for appointment to the post of L.T. Grade Teachers in Physical Education, but on the contrary, the said qualification has been accepted as a valid qualification for appointment to the advertised posts in the revised Rules of 2006, we are satisfied that the same cannot be treated as irrelevant / unsuitable for appointment to the post of L.T. Grade Teachers in Physical Education. By holding that the Degree holders in Physical Education are eligible, this Court is not granting any kind of equivalence to any degree, rather it is merely inferring a logical proposition i.e., that the possession of the higher qualification also presupposes the possession of the lower qualification, if the two are in the same stream. Therefore, since the appellants have a higher qualification in the same stream as the prescribed qualification, in terms of the judgment rendered by the Apex Court in Jyoti K.K.'s case

(supra), they are liable to be treated as eligible for consideration / appointment against the advertised posts of L.T. Grade Teachers in Physical

Education. Ordered accordingly.

Since the entire controversy, sought to be settled through Writ Petition (S/S) No. 95 of 2009, has been adjudicated upon by us through the instant

order, we are of the view that Writ Petition (S/S) No. 95 of 2009 also deserves to be disposed of in terms of the conclusion recorded by us

hereinabove. The aforesaid writ petition, with the consent of the learned counsel for the parties, is hereby accordingly taken up for final disposal today

itself. The aforesaid writ petition is hereby allowed. The petitioners in Writ Petition (S/S) No. 95 of 2009 shall be treated as eligible for consideration

against the advertised posts of L.T. Grade Teacher in Physical Education. The respondents are, therefore, directed to consider the petitioners in the

process of selection for the post of LT Grade Teacher in Physical Education in response to the advertisements referred to in the opening paragraphs

of this order.â??

11. A perusal of the judgment would show that the Division Bench has proceeded on the principle, which was laid down in Jyoti K.K.â??s case

(supra), and has not accepted the argument based on P.M. Lathaâ??s case (supra).â?? If this judgment holds good, then, certainly, the appeals must

fail; but, there have been subsequent developments, which will have an impact on the question whether we should follow the Division Bench judgment

of this Court.â?? This development is in the form of the judgments by the Apex Court on the very same issue.â??

12. We must, without delay, advert to the judgment of the Apex Court in the case of State of Punjab & others vs. Anita & others, reported in (2015) 2

SCC 170.â?? We may, in fact, notice that the said judgment was rendered by the learned Judge, who, in fact, had rendered the judgment on behalf of

the Division Bench in this Court in Special Appeal No. 240 of 2009.â?? Therein, posts of JBT/ETT Teachers in privately managed recognised schools

were advertised.â?? The Advertisement did not reflect the prescribed qualification as per the Rules; but higher qualification.â?? The respondents were

not possessing the qualification under the statutory Rules.â?? The State Government, therefore, declined to give approval to the selection.â?? The

question arose as to whether, however, the possession of the higher qualification

would suffice.Â The Apex Court took note of the judgments in P.M.

Lathaâ??s case (supra) and Yogesh Kumar & others vs. Government of NCT, Delhi & others, reported in (2003) 3 SCC 548; and proceeded to hold

as follows:

â??13. A perusal of the aforesaid judgments leave no room for any doubt, that it is imperative for candidates to possess the statutory qualification

prescribed for appointment to the posts, to which they are seeking appointment. In view of the position declared by this Court, qualifications of B.Ed

and other qualifications possessed by the private respondents, namely, M.A., M.Sc, M.Com. Etc. cannot be treated as higher qualifications with

reference to the prescribed qualifications (JBT/ETT). We, therefore, find the reasons recorded by the DEO in the impugned order dated 04.4.2005

were fully justified, and in consonance with the legal position declared by this Court, as has been noticed hereinabove.â??

13. More importantly, the court dealt with the argument based on Jyoti K.K.â??s case (supra) in paragraphs 14 & 15 and, finally, concluded as

follows:

â??14. To be fair to the learned counsel for the private respondents, we may also make a reference to the decision rendered by this Court in Jyoti

K.K. and others vs. Kerala Public Service Commission and others (2010) 15 SCC 596. Learned counsel had invited our attention to paragraph 7

thereof, wherein it was observed as under:Â

â??7. 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 qualifications prescribed for the post shall also be sufficient for the post. If a person has

acquired higher qualifications in the same Faculty, such qualifications can certainly be stated to presuppose the acquisition of the lower qualifications

prescribed for the post. In the case it may not be necessary to seek far.â??Â (emphasis supplied)

Â It is no doubt true, that this Court held in the afore-stated judgment, that if a person had acquired higher qualifications in the same faculty, such

qualifications can certainly be stated to presuppose the acquisition of the lower

qualification. Possession of higher qualification would therefore, according to learned counsel, make a candidate eligible for the post, even though, the candidate does not possess the prescribed qualification. The question however is, whether the above position can be applied to the present case?

15. It was sought to be asserted on the basis of the aforesaid observations, that since the private respondents possess higher qualifications, then the qualification of JBT/ETT, they should be treated as having fulfilled the qualification stipulated for the posts of JBT/ETT teachers. It is not possible for us to accept the aforesaid submission of the learned counsel for the private respondents, because the statutory rules which were taken into consideration by this Court while recording the aforesaid observations in Jyoti K.K.'s case (supra), permitted the aforesaid course. The statutory rule, in the decision relied on by the learned counsel for the private respondents, is extracted hereunder:Â

â??6. Rule 10(a)(ii) reads as follows:Â

â??10.(a)(ii) Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications recognised by executive orders or standing orders of Government as equivalent to a qualification specified for a post in the Special Rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post.â??Â (emphasis supplied)

A perusal of the rule clearly reveals, that the possession of higher qualification would presuppose the acquisition of the lower qualification prescribed for the posts. Insofar as the present controversy is concerned, there is no similar statutory provision authorizing the appointment of persons with higher qualifications.

16. Moreover, in view of the decision rendered by this Court in P.M. Latha's case (supra) and in Yogesh Kumar's case (supra) lead to the clear and unambiguous conclusion that none of the private respondents could be considered as eligible for selection or appointment to the advertised posts of JBT/ETT Teachers.â??

14. It is, thus, clear that, after the pronouncement of the law in this regard by the Bench explaining the dictum in Jyoti K.K.'s case (supra) and in the absence of any rule, which was similar to the Rule, which fell for

consideration in Jyoti K.K.'s case (supra), in the facts of these cases, the law as laid down by the Division Bench of this Court in Special Appeal No. 240 of 2009, which has been relied on by the learned Single Judge, may no longer hold the sway in the field of law in question.Â Â

15. We may also advert to the judgment of the Apex Court in P.M. Latha's case (supra), as the learned Single Judge has referred to it.Â In the said judgment, the Apex Court was dealing with a case, where recruitment to the post of Lower Primary / Upper Primary Teachers in Government Schools came for consideration on the basis that the qualification fixed was 'pass in TTC' (Trained Teachers' Certificate); but, instead of selecting TTC holders, those holding B.Ed. Degree were selected on the basis that B.Ed. is a higher qualification.Â In the course of the discussion, the Court proceeded to hold as follows:

'10. We find absolutely no force in the argument advanced by the respondents that B.Ed. qualification is a higher qualification than TTC and therefore, the B.Ed. candidates should be held to be eligible to compete for the post. On behalf of appellants, it is pointed out before us that Trained Teachers Certificate is given to teachers specially trained to teach small children in primary classes whereas for B.Ed. degree, the training imparted is to teach students of classes above primary. B.Ed. degree holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or B.Ed. qualification, is a matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for post of primary teachers as only TTC and not B.Ed. Whether B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed. candidates, for the present vacancies advertised, as eligible.

13. Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot over-ride written or settled law. The division bench forgot that in extending relief on equity to B.Ed. candidates who were unqualified and yet allowed to compete and seek appointments contrary to the terms of the advertisement, it is not redressing the injustice caused to the appellants who were TTC candidates and would have

secured a better position in the Rank List to get appointment against the available vacancies, had B.Ed. candidates been excluded from the selections.

The impugned judgment of the division bench is both illegal, inequitable and patently unjust. The TTC candidates before us as appellants have been

wrongly deprived of due chance of selection and appointment. The impugned judgment of the division bench, therefore, deserves to be set aside and of

the learned single judge restored.â??

16. It is this judgment, which has been referred to and followed by the judgment in *State of Punjab vs. Anita* (supra).Â Â

17. We may also notice the still later judgment of the Apex Court in the case of *Prakash Chand Meena & others vs. State of Rajasthan & others*,

reported in (2015) 8 SCC 484.Â Therein, recruitment to the post of PTI Grade II and PTI Grade III was in question.Â In terms of the

Advertisement, qualification for the post of PTI Grade III was CPED.Â The question arose whether BPED. / DPED. was equivalent or superior to

CPED.Â The Apex Court took the view that it was not open to go into the question as to equivalence or superiority.Â In this context, we may notice

paragraphs 8 & 9 as follows:

â??8. Having heard the parties, we have also perused the written submissions filed on behalf of some of them and have perused the judgment of the

learned Single Judge and the impugned judgment of the Division Bench. In our considered view, the issue noticed at the outset must be decided on the

basis of settled law noticed by the learned Single Bench that recruitment process must be completed as per terms and conditions in the advertisement

and as per Rules existing when the recruitment process began. In the present case, the Division Bench has gone to great lengths in examining the

issue whether BPED and DPED qualifications are equivalent or superior to CPED qualification but such exercise cannot help the cause of the

respondents who had the option either to cancel the recruitment process if there existed good reasons for the same or to complete it as per terms of

advertisement and as per Rules. They chose to continue with the recruitment process and hence they cannot be permitted to depart from the

qualification laid down in the advertisement as well as in the Rules which were suitably amended only later in 2011. In such a situation, factual

justifications cannot change the legal position that the respondents acted against

law and against the terms of advertisement in treating such applicants successful for appointment to the post of PTI Gr. III who held other qualifications but not the qualification of CPED. Such candidates had not even submitted separate OMR application form for appointment to the post of PTI Gr. III which was essential as per the terms of advertisement.

9. The candidates who were aware of the advertisement and did not have the qualification of CPED also had two options, either to apply only for PTI

Gr. II if they had the necessary qualification for that post or to challenge the advertisement that it omitted to mention equivalent or higher qualification

along with qualification of CPED for the post of PTI Gr. III. Having not challenged the advertisement and having applied for the other post, they could

not have subsequently claimed or be granted eligibility on the basis of equivalence clarified or declared subsequently by the State Government. 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. In the present case, this process was initiated through advertisement inviting application which did not

indicate that equivalent or higher qualification holders were eligible to apply nor were the equivalent qualifications reflected in the recruitment rules or

government orders of the relevant time.â??

18. We may, in this regard, also consider the judgment of the Apex Court in the case of Mohd. Riazul Usman Gani & others vs. District & Sessions

Judge, Nagpur & others, reported in (2000) 2 SCC 606.Â Therein, the question arose in the context of recruitment made to the post of Peon in the

District & Sessions Court in the State of Maharashtra.Â The Rule provided for qualification of â??pass in examination of standard IV in the regional

languageâ? as the requisite minimum qualification.Â There were a large number of applications.Â The appointing authority, apparently, took the view

that applicants possessing higher qualification might not take proper interest in the work of Peon and the Advisory Committee, therefore, decided to

call for interview only those candidates, who possessed the requisite minimum qualification and not those with higher qualification.Â This came to be

frowned upon by the Apex Court and the Court proceeded to hold, after a survey of the case-law relating to short-listing of candidates, as follows:

â??13. Laying of criteria when there are large number of candidates is

permissible but that criteria must be reasonable and not arbitrary having regard to the post for which recruitment is made.

14. We, however, do not think that principle laid by this Court in the case of T.R. Kothandaraman & Ors, v. Tamil Nadu Water Supply & Drainage

BD & Ors,, [1994] 6 SCC 282 has been correctly applied by the High Court in the present case. Question before the Supreme Court concerned with

classification based on higher educational qualification for the purpose of promotion in the service. This is how this Court said: (SCC p. 290, para

16)Â Â

â??16. From what has been stated above, the following legal propositions emerge regarding educational qualification being a basis of classification

relating to promotion in public service:Â

(1) Higher educational qualification is a permissible basis of classification, acceptability of which will depend on the facts and circumstances of each

case.Â

(2) Higher educational qualification can be the basis not only for bailing promotion, but also for restricting the scope of promotion.Â

(3) Restriction placed cannot however go to the extent of seriously jeopardising the chances of promotion. To decide this, the extent of restriction shall

have also to be looked into to ascertain whether it is reasonable. Reasons for this are being indicated later.â??

18. If the appointment of a candidate to the post of peon is restricted to his having qualified up to Standard VII he will have no chance of promotion to

the post of Regional Language Section Writer or a Clerk. It is not that qualifications required for Regional Language Section Writer and Clerk are to

be acquired by a peon during the course of his service. During the course of hearing we were referred to a few applications submitted by peons who

are already working wherein they had prayed for their being considered for appointment to post of clerks since they had acquired requisite

qualifications for that post. On this an argument is sought to be based that those peons with higher qualifications are not interested in their work as

peons. We can give no credence to such an argument when Recruitment Rules themselves prescribe that post of a clerk can be a promotional post for

a peon having requisite qualification. There is nothing wrong if a peon sends in his request for being considered to be promoted as a clerk.

19. We do not know what are the duties attached to the post of a peon. But perhaps one thing peons are not required to do the work of sweepers or gardeners. Qualifications for gardeners and sweepers have been separately provided in the Recruitment Rules and the only qualification for both the categories of these posts is good physique and also to carry out the duties attached to the post.

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.

21. A criterion which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification, than prescribed cannot be rational. We have not been able to appreciate as to why those candidates who possessed qualifications equivalent to SSC examination could also not be considered. We are saying this on the facts of the case in hand and should not be understood as laying down a rule of universal application.

19. It is to be noticed that this was a case, where, under the Rules, pass in the standard IV in the regional language was the requisite minimum qualification. Persons with higher qualification were excluded as per the view of the Advisory Committee that, if persons with higher qualification were selected, they may not devote enough attention to the job. This approach was found to be unacceptable.

20. There could be cases, where the appointing authority may provide for minimum qualification. In such a case, certainly, it may not be open to impair or take away the right of persons, who possess the higher qualifications. It would be opposed to the mandate of the statute to deprive them of their right when they, indeed, do possess the minimum qualification.

21. The situation, however, would be different if what is prescribed is not minimum qualification, but the qualification, which should be possessed.

There can be situations, where the appointing authority may also provide for an equivalent qualification. Without there being provision for an

equivalent qualification or a provision, which is akin to the Rule found in Jyoti K.K.'s case (supra), which contemplated that the possession of

higher qualification would presuppose possession of the statutory qualification, it is not proper for the Court to go on a roving expedition to ascertain

whether an equivalent qualification would suffice or a higher qualification would entitle the candidate to be considered for appointment.Â Â

22. In these two appeals, the judgment passed by the learned Single Judge reveals that he has proceeded on the basis that the qualification fixed for

the post of Assistant Librarian, namely, Degree in Law and Diploma in Library Science is the minimum qualification.Â The Rule, as amended, which

provides for the post of Assistant Librarian, inter alia, is as follows:

â??Degree in law and Diploma in Library Science from a recognised University.â??

23. This is besides basic knowledge of computer operation.Â The same was reflected in the Advertisement also.Â If this be so, this is not a case,

where what is prescribed is the â??minimum qualificationâ?; on the other hand, what is prescribed is the â??qualificationâ?, which alone would

suffice.Â

If that be so, the principle of law laid down by the Apex Court in P.M. Latha's case (supra), as followed in State of Punjab vs. Anita (supra) and

still later followed in Prakash Chand Meena & others vs. State of Rajasthan (supra), will necessarily apply to the facts of these cases.Â

Insofar as the Division Bench ruling of this Court in Special Appeal No. 240 of 2009 is concerned, in view of the direct pronouncement on the point by

the Apex Court, we do not think that it is necessary to constitute a larger Bench also.Â Â

24. In such circumstances, we would think that the principle of law being clear, the judgment passed by the learned Single Judge, purporting to follow

the Division Bench Judgment in Special Appeal No. 240 of 2009, cannot be sustained.Â Accordingly, Special Appeal No. 566 of 2017 and Special

Appeal No. 313 of 2017 are only to be allowed and the judgment passed by the learned Single Judge is to be set aside.Â Â

Special Appeal Nos. 196 of 2016, 198 of 2016, 199 of 2016, 200 of 2016, 22 of 2017, 31 of 2017, 145 of 2017 and 392 of 2017:

25. As far as the appeals relating to the Education Department are concerned, the aforesaid pronouncement of the law, by itself, may not conclude the

matter.Â The issue, which is raised in the said appeals, is slightly different.Â In order to appreciate what has happened, it is necessary to have

regard to the historical events, which have taken place in regard to the said Rule.Â Â

26. We have heard in this regard Mr. Bhagwat Mehra, learned counsel who appeared in many of the cases; Mr. B.D. Upadhyaya, learned Senior

Counsel in Special Appeal No. 145 of 2017; Mr. Siddhartha Sah, learned counsel in Special Appeal No. 392 of 2017; and Mr. Ganesh Kandpal,

learned counsel in Special Appeal No. 31 of 2017.Â The arguments were, essentially, led by Mr. Bhagwat Mehra.Â On behalf of the State, the

arguments were addressed by Mr. Paresh Tripathi, learned Chief Standing Counsel.Â Â

27. Mr. Paresh Tripathi, learned Chief Standing Counsel appearing on behalf of the State in these cases, would contend that the learned Single Judge

has erred in holding that the Intermediate holders could also be considered.Â It is his case that Rule 6, insofar as it relates to promotion, clearly

provides that 15 per cent is to be filled-up from amongst persons, who are having the qualification of High School, and 10 per cent is meant separately

for persons, who have done Intermediate.Â In such circumstances, there can be no question of persons having Intermediate qualification being

considered for the post of Class III, which is reserved for persons having the qualification of High School, runs the argument.Â Â

28. Per contra, Mr. Bhagwat Mehra would contend as follows:

i. He would submit that, in the undivided State of Uttar Pradesh, till 1972, Class III posts were being filled-up by way of direct recruitment. Thereafter,

in 1972, there was a recommendation made by the Second Pay Commission and 10 per cent of Class III posts came to be reserved for Class IV.Â

The criterion was the result of the written test undertaken by the members of Class IV, who were interested in the same.Â Still later, a Government

Order was issued by the State of Uttar Pradesh on 31.08.1982.Â There also, criterion was laid down for considering Class IV, but of the said office,

where the vacancy arose.Â Subsequently, in 1985, the Rules were made by the State of Uttar Pradesh under Article 309.Â The Rules provided that

up to 15 per cent of the vacancies of Class III were to be filled-up by those, who were having High School and who were working in that office.Â In

1995, in addition to filling-up 15 per cent of the posts from those who were having qualification of High School, 5 per cent was made available for persons who were having Intermediate qualification.Â Still later, after the formation of the State of Uttarakhand, statutory Rules were made in the year 2004, namely, the 2004 Rules.Â Therein, a total of 25 per cent of the total number of vacancies in Class III came to be reserved for persons working in Class IV, in aggregate.Â Out of the said 25 per cent, 15 per cent was to be filled-up by promotion of persons who were having qualification of High School and, again, those who were working in that office; and balance 10 per cent was to be filledup by persons who were having qualification of Intermediate.Â The Rule came to be amended in the year 2008 and a Note was added, which we shall advert to at appropriate stage.Â Â

ii. There was another development, he points out, namely, the mode of selection came in for consideration, which engaged attention of this Court and of the Apex Court also.Â Suffice it to say, he contends that, in the year 2010, 203 vacancies were advertised in the cadre of Class III for being filled-up from among Class IV.Â He would contend that a common test was actually held.Â The number of vacancies to be filled-up from those, who were having qualification of High School, and those, who were having qualification of Intermediate, was not separately specified.Â Resultantly, persons, who secured higher marks in the common test, were differently treated when it came to evaluation of their merit.Â In other words, persons, who secured higher marks, were not selected as against those, who secured lower marks.Â This was rendered permissible only on the basis that vacancies were earmarked for persons, who were having High School qualification only.Â This, he would submit, cannot be permitted, as was rightly held by the learned Single Judge in the cases.Â Â

iii. He would also submit the judicial history behind this provision.Â He would point out that, originally, a writ petition was filed as Writ Petition (S/S) No. 417 of 2008.Â It related to the Judicial Department; but it all related to promotion from Class IV to Class III.Â A learned Single Judge of this Court took the view that possession of superior qualification of Intermediate presupposes that the candidates possess qualification of High School and it would be impermissible in law to shut them out from consideration for the post

of Class III in regard to the 15 per cent reserved for persons having High School qualification.Â He would point out that this judgment has become final, as an appeal was though carried, the same came to be dismissed on the ground of delay.Â He also referred to a few judgments of the learned Single Judges, which have followed the said judgment.Â He would submit that, in the Higher Education Department itself, a judgment of the learned Single Judge has been rendered, which has become final by virtue of it not being appealed against.Â He would submit that, therefore, an anomalous position would emerge if the appeals of the State are to be accepted, as, on the basis of a single set of rules in some offices, the rule would be interpreted in the manner done by the learned Single Judge in the judgment, which has become final, and, yet, the Division Bench would place an interpretation, which would have a diametrically opposite result.Â This cannot be permitted.Â Â

iv. He would, further, submit that, in fact, under the Government Orders, the Rules prior to the 2004 Rules and the Rules as made in the year 2004, as amended in 2008, what is contemplated is consideration of the case of the candidates, who are working in the office, where the vacancies arise, and, yet, in these cases, the State has gone in for a joint selection.Â This is, again, contrary to the Rules.Â He would further submit that, actually, 203 vacancies were advertised.Â After filling-up the vacancies, there are large number of vacancies and they should be filledup on the basis of the law laid down by the learned Single Judge.Â He would, in fact, submit that there are even Graduates, who have applied, and the Government has classified Graduates in the category of Intermediates.Â Â

29. As we have already noticed, it is a case, where, in the year 2010, certain vacancies were notified for being filled-up from among persons, who were having qualification of High School and Intermediate.Â There is no dispute that the Government has understood that the vacancies pertaining to 15 per cent are to be filled-up by persons, who possess qualification of High School and only 10 per cent was left open for persons having Intermediate qualification (Mr. Bhagwat Mehra has a case that even Graduates are brought under the said category).Â Necessarily, therefore, though persons, who were having Intermediate qualification, had secured higher marks and the method of selection was merit as is discernible from

performance in the written test, since their claim was made against the 15 per cent vacancies, they were not selected in preference to those, who had

High School qualification and who had secured lesser marks. It is this, which has led to the litigation.

30. We must, in the first place, notice the terms of the Rules made in the year 2004, namely, the 2004 Rules. The Rules provide, inter alia, for

definition of the word "ministerial staff" as clerical staff of the subordinate offices which is required to be appointed by direct recruitment.

"Subordinate offices" is defined in Rule 4(h) as follows:

"(h) "Subordinate Offices" means all the offices under the control of the Government excluding Uttaranchal and of the establishment under

the control of the Advocate General.

Rule 5 declares that the strength of the ministerial staff in a particular department / office and of each of the category of posts shall be as

determined by the Government from time to time. It is open to the appointing authority to leave unfilled or for the Governor to hold in abeyance any

post or class of posts without thereby entitling any person to compensation. The most important Rule for the purpose of these cases is Rule 6. It

reads as follows:

"6. Source of Recruitment. " Recruitment to the lowest grade of the ministerial staff in a subordinate office shall be made by direct recruitment

through the Selection Committee referred in Rule 17 on the basis of academic and other attainments as provided in Rule 9:

Provided that up to 25 percent of the vacancies in a particular subordinate office may be filled by the Appointing Authority by promotion amongst 15

percent from amongst High School pass and 10 percent from Intermediate pass Group D employees of that office in accordance with the orders of

Government issued from time to time.

It is also necessary to notice Rule 9, as it provides for academic qualifications. It reads as follows:

"9. Academic Qualifications. " A candidate for direct recruitment must have passed the Intermediate Examination of the Board of High School

and Intermediate Education, Uttaranchal, or an examination declared by the Governor as equivalent thereto.

Rule 10, no doubt, provides for preferential qualifications. Part IV deals with

the procedure for recruitment.Â Rule 17 deals with the constitution of Selection Committee.Â Rule 18 mandates that selection for recruitment under these Rules shall be made every year or whenever it is necessary.Â Â

31. It is, now, necessary to notice the amendment, which was introduced in the year 2008.Â The amendment came into force by the deeming provision w.e.f. 14.06.2004.Â Thereby, a Note was added at the end of Rule 6.Â It reads as follows:

â??Note â?" Only those regular Group â??Dâ?? employees, who are working in the office, in which the recruitment to the ministerial staff posts is to be made, shall come within the ambit of eligibility.Â Selection of the persons against the vacancies reserved for recruitment to the ministerial posts by promotion from Group â??Dâ?? shall be made on the basis of merit by taking a simple test.Â The test shall consist of a single question-paper, which will include objective type questions on General Hindi, General Knowledge and General Studies.Â The written examination shall carry maximum 50 marks and 20 marks shall be for the annual character roll of the eligible candidate.Â In addition to the above, typing test on Computer carrying 20 marks and 10 marks shall be for practical knowledge of computer operations shall also be taken.Â Hence the total marks for the selection shall be 100:

Provided that the provisions of â??The Uttarakhand Government Servants (Criterion for Recruitment by Promotion) Rules, 2004 shall not apply to the promotion to be made under these rules.â??

32. Thereafter, it is also necessary to notice further developments, which took place in the form of amendments to these Rules in the year 2013.Â On 07.03.2013, an amendment was carried out in Rule 6.Â Therein, a proviso was added by which it was provided that, if there are no persons available, who are having qualification of High School, then the vacancies could be filled-up by those who are having higher qualification.Â The said amendment reads as follows:

â??Â¼6Â½ HkrhZ dk Izksr& Â¼,dÂ½ fdlh v/khuLFk dk;kZy; eas fyfid oxhZ; deZpkjh oxZ dh fuEure Js.kh esa 70 izfrâ??kr inksa ij HkrhZ fu;e 9 esa

;Fkk micaf/kr â??kSf{kd vkSj vU; micU/kksa ds vk/kkj ij fu;e 17 eas fufnZâ??V p;u lfefr ds ek;/e ls lh/kh HkrhZ }kjk dh tk;sxh]

Â¼nksÂ½ IEcfU/kr v/khuLFk dk;kZy; esa fyfid laoxZ ds fuEure Js.kh ds dqy inksa ds 25 izfrâ?kr fjfDr;ka fu;qfDr izkf/kdkjh }kjk le;≤ ij tkjh fd;s

x;s ljdkjh vknsâ?kksa ds vuqlkj ml dk;kZy; ds lewg ?k ds ,sls deZpkfj;ksa esa ls] 15 izfrâ?kr tks gkbZLdwy dh ijh{kk mRrhZ.k gkas rFkk 10 izfrâ?kr

tkb b.VjehfM,V dh ijh{kk mRrh.kZ gkas] inksUufr }kjk Hkjh tk;saxh] ijUrq ;g fd gkbZLdwy mRrh.kZ Js.kh ds fy, fpfUgr inkas ds lkis{k i;kZIr

vH;FkhZ muyC/k u gksus dh nâ??kk esa mu inksa dks mPprj ijh{kk mRrh.kZ vH;fFkZ;ksa esa ls inksUufr }kjk Hkjk tk ldsxkA

Â¼rhuÂ½ IEcfU/kr v/khuLFk dk;kZy; esa fyfid laoxZ ds fuEure Js.kh ds dqy inksa ds 05 izfrâ?kr fjfDr;ka fu;qfDr izkf/kdkjh }kjk ml dk;kZy; ds okgu

pkYdksa tks gkbZLdwy dh ijh{kk vFkok mlls mPprj ijh{kk mRrh.kZ gksa] esa ls inksUufr }kjkAâ??

Thereafter, the 2004 Rules were further amended on 13.08.2013.Â

Thereby, it was further provided that from recruitment year 2012-13 till 2015-16, promotions in the subordinate offices from Class IV would be made

up to an extent of 45 per cent of total vacancies, out of which, 25 per cent was for High School pass and 20 per cent was for Intermediate pass.Â

The said amendment reads as follows:

â??6. Source of Recruitment â?

(1) Recruitment on 70 percent of the posts to the lowest grade of the ministerial staff in a subordinate office shall be made by direct recruitment

through the Selection Committee referred to in rule 17 on the basis academic and other attainments as provided in rule 9.

(2) Up to 25 percent of the vacancies in a particular office may be filled by Appointing Authority by promotion from amongst such Group D

employees of the office, 15 percent from High School pass and 10 percent from Intermediate pass employees, in accordance with the orders of

Government issued from time to time.

Provided that in case of non-availability of sufficient High School pass candidates against the posts identified for them, those posts shall be filled up by

promotion from amongst higher examination pass candidates.

Provided further that up to the recruitment year 2012-13 to 2015-16, 45 percent of total vacancies in a particular office may be filled by Appointing

Authority by promotion from amongst such Group D employees of that office, 25 percent from High School pass and 20 percent from Intermediate

pass employees, in accordance with the prescribed selection process.

(3) Out of total posts of lowest category in ministerial cadre in the concerned subordinate office 05 percent vacancies shall be filled by the appointing

authority, from Drivers of that office who have passed High School examination or higher examination, by promotion.

Note- In the office in which recruitment is to be made on the posts of ministerial cadre, those Group D employees and Drivers of that office who have

completed five years continuous service shall be within the zone of eligibility. For recruitment on the ministerial posts by Promotion from Group D and

Drivers, the selection on reserved posts shall be made on merit through a simple examination. In examination, there shall be only one question paper, in

which there would be objective type question relating to General Hindi, General Knowledge and General Study. Maximum marks of written test would

be 40 and 10 marks would be of the annual character roll of eligible employees. For work experience, on the post of Group D and Drivers, 2 marks

shall be awarded for each year and maximum marks for work experience would be 50. Thus, in total the selection examination would of 100 marks.

Where recruitment is to be made in typing cadre, there shall be typing examination in Hindi of 50 marks, in addition to above. The candidates having

less than 4000 depression per hour shall not be qualified. Selection examination would be of total 150 marks.

Provided that the provisions of "Uttarakhand Government Servant (Standard for Recruitment by promotion Rules, 2004" shall not be applicable on

the promotions to be made under these rules.

33. Before we proceed to pronounce finally on the Rules, we must also notice, as pointed out by Mr. Bhagwat Mehra, that even prior to 2004 Rules,

while, originally, till 1972, there was no avenue open for promotion from Class IV and the entire recruitment was to be made by way of direct

recruitment; from 1972 onwards, slowly a process was commenced by which avenues for promotion were made open for Class IV. Initially, it was

provided that promotions can be made from those, who were having High School qualification. The Rules came to be made in the year 1985.

Therein also, what was contemplated is promotions from that office of persons, who possess High School qualification. Thereafter, additional

avenue of promotion was made available for those, who had Intermediate

qualification.Â Apparently, it is this pattern, which has found manifestation in the 2004 Rules, namely, 25 per cent of the vacancies are to be filled-up by promotion from amongst Class IV employees working in that office.Â It is split-up into two and 15 per cent is for those, who were having qualification of High School, and 10 per cent is for those, who were having qualification of Intermediate.Â Â

34. Now, we may cull out the effect of the statutory Rules made in the year 2004, as amended in the year 2008 and the effect of the two amendments carried out in the year 2013, insofar as it is relevant for our purpose.Â Â

35. In the year 2004, a perusal of Rule 6 along with the other Rules, to which we have made advertence, would show that the method of recruitment provided for Class III from Class IV is substantially by direct recruitment.Â However, in Rule 6, it is provided that up to 15 per cent of the vacancies

may be filled-up by promoting persons, who have High School.Â Likewise, it is provided that up to 10 per cent of the vacancies may be filled-up by

promoting persons, who are having Intermediate.Â A perusal of Rule 9 would show that the qualification, actually which is required for being

appointed by way of direct recruitment, is Intermediate or an examination declared by the Governor to be equivalent.Â It is while thus making

Intermediate as the qualification for the purpose of direct recruitment that a relaxation is given for persons, who were working in the lowest cadre,

namely, Class IV so that they may not stagnate.Â It is also, apparently, having regard to the historical relaxation, which was always granted to

persons, who were having High School qualification, that, when the Rules were framed in the year 2004, it is provided that promotions could be made

up to 15 per cent from those, who are having High School qualification.Â Though prior to 2004, in the first instance, such relaxation was given in

favour of those Class IV employees, who were having High School qualification, an additional avenue for promotion from amongst Class IV

employees was created for those, who were having Intermediate qualification also.Â This is so that, instead of going in for direct recruitment,

stagnation could be avoided and persons could be selected by promotion.Â After the promulgation of the 2004 Rules, as amended in the year 2008,

another fact, which emerges, is that the method of selection for the purpose of promotion is declared to be performance in the test and other aspects,

which are declared relevant, in the Note, which we have extracted.Â Subsequently, no doubt, in March, 2013, an amendment was incorporated by which, by the proviso, it was provided that, when persons are not available from amongst High School candidates, the posts could be filled-up by those, who had higher qualification.Â Lastly, by the amendment in August, 2013, for a period of four years, there was an increase in the percentage of vacancies, which could be filled-up by way of promotion, namely, it was increased from 25 per cent to 45 per cent, out of which, 25 per cent was meant for persons having High School qualification and 20 per cent was meant for persons having Intermediate qualification.Â Â

36. A survey of the above provisions, as they existed prior to 2004, the 2004 Rules, the amendment in the year 2008 and the further amendments that took place in the year 2013 lead us to think that the intention of the law-giver was to create avenues of promotion separately for persons, who were having High School qualification, and for those, who were having Intermediate qualification.Â In fact, a question may arise as to whether the provision of Rule 6 creates a quota or not; or, is it an enabling provision, which entitles the employer to appoint persons from Class IV by way of promotion, but subject to the maximum expressed in terms of percentage as found therein?Â We do not think it is necessary for us to go into this question; but, we must note an argument, which is addressed by Mr. B.D. Upadhyaya, learned Senior Counsel appearing in Special Appeal No. 145 of 2017, which also arises from the Education Department.Â Learned Senior Counsel contended that the creation of a preferential right in favour of persons, who have passed High School, would fall foul of a catena of decisions of the Supreme Court, which have taken the view that, once two categories of persons have been fused into a common category, then there cannot be further discrimination.Â It is contended that, if, both, persons, who are having High School qualification, and persons, who are having Intermediate qualification, are considered as eligible for promotion to Class III, then the Rule, which provides for an invidious discrimination, would violate the guarantee of equality.Â He would submit that, thus, the operation of the Rule can be demonstrated to be bad in the following manner:

Â A person with Intermediate qualification scores higher marks than a person, who is possessed of qualification of High School.Â The vacancy is to

be filled-up by person having High School qualification.Â As regards that vacancy, the right to equality, with which the Intermediate holder is clothed under the Constitution, would stand infringed insofar as he will not be considered for that vacancy for the sole reason that it is meant to be filled-up by person, who is possessed of High School qualification.Â Â

37. This, according to him, violates the law laid down by the Apex Court in The State of Jammu & Kashmir vs. Triloki Nath Khosa & others, reported

in AIR 1974 SC 1.Â He would also refer us to a Division Bench judgment of this Court in S.K. Singh & others vs. State of Uttarakhand & others,

reported in 2011 (2) UD 274.Â When we questioned the learned Senior Counsel as to what transpired in regard to the challenge which the writ

petitioner in this case has thrown to the Rule, he does not dispute that, by the judgment, the challenge to the Rule has not been dealt with or

accepted.Â There is no appeal filed by the writ petitioner calling in question the judgment on the score that the learned Single Judge ought to have

upheld the challenge to the Rule.Â Therefore, we are left with the situation, where the Rule must be taken as valid and we must proceed with the

matter on the said basis.Â When the Rule is taken as valid and challenge to it is not to be considered, then, we cannot allow the learned Senior

Counsel to draw support from the said judgments, which he has relied upon, which would have gained relevance only when the Rule came under a

cloud before us also by way of an appeal filed by the writ petitioner.

38. Another aspect we must notice at once is that this is not a case, where the rule-giver has provided in the Rules that the qualification by way of

High School is the â??minimum qualificationâ?.Â We have extracted the Rules.Â The Rules clearly do not provide that those persons, who have

High School qualification at least, would only be promoted.Â If it had been a case, where the Rules contemplated High School as the minimum

qualification, then, possibly, persons with Intermediate qualification could also have vied for selection even against the vacancies, which were made

available under the Rules for persons, who are possessed of High School qualification.Â Â

39. Further, we may notice that this is a case, where the principles of Jyoti K.K.â??s case (supra) cannot apply.Â There is no Rule corresponding to

the provision obtaining in Jyoti K.K.â??s case (supra), by which the possession of

higher qualification would presuppose possession of essential qualification.Â Even though it may be true that persons, who have passed Intermediate, would necessarily also have passed High School, there is no Rule which is analogous to the Rule in Jyoti K.K.'s case (supra), which will come to the rescue of persons, who have passed Intermediate.Â Â

40. In fact, this case would more appropriately be governed by the principle laid down in P.M. Latha's case (supra), besides State of Punjab vs. Anita (supra) and the decision in Prakash Chand Meena vs. State of Rajasthan (supra).Â The real issue is, when the rule-maker, having regard to the history of the provisions contained earlier in orders, later in Rules and finally in the Rules made by the Government of Uttarakhand, has made separate provision for persons, who are having qualification of High School, and for those persons, who are having qualification of Intermediate, and, in such circumstances, when the Rules are couched in the language as they are, it is the duty of the Court to give effect to the intent of the law-giver.Â No doubt, it does pose before us the issue in the form of choosing between merit on the one hand and the concern of the law-giver to protect Class IV employees, who have only got the qualification of High School, on the other hand.Â It may be true that some persons may be fortunate enough among the Class IV that they may have either obtained Intermediate even before they entered service or they may have obtained Intermediate after they have entered the service, as is evident from the facts in some of these cases; but the question would be, whether the rule-giver is not entitled to redress the concerns and complaints of those members of the Class IV, who may not have had the fortuitous circumstances that many of their counterparts may have had and pursued education further?Â This appears to be, in our view, a definite value judgment and a policy decision, which was adopted by the Government to cater specifically to the needs of those, who have only High School qualification.Â Apparently, in a situation, where direct recruitment was the actual method for the vast majority of the vacancies and the rule-giver intended to relax the requirement when it came to promotion in order to avoid stagnation of the employees with lesser qualification, the Court cannot refuse to give effect to the intent of the law-giver.Â This is not a case, where the Government has failed to address the concern of those, who were having qualification higher than High

School. It is to take care of their interest that the State has provided for the provision that 10 per cent of the vacancies initially and 20 per cent covered by the amendment in August, 2013 for four years will be filled up by persons, who are having Intermediate / higher qualification. Therefore, allowing a person with Intermediate qualification to vie for selection with those who are having only High School, in regard to the 15 per cent of the vacancies, would, in our view, trample upon the very intention, which animates the clear words of the Rules, as we see them.

41. Having taken this view, we are left with a few concerns. What is the impact of no appeal being filed against the judgment of the learned Single Judge of this Court in the Higher Education Department, which is one of the Departments, which is governed by the Rules in question?

When met with this contingency, the learned Chief Standing Counsel sought to tide over the obstacle by seeking to draw support from the judgment in

Col. B.J. Akkara (Retd.) vs. Government of India & others, reported in (2006) 11 SCC 709. The said case involved issuance of a Circular by which

NPA was directed not to be added to the pay. A question arose as to the effect of the upholding of the view taken by the High Court in respect of

certain employees and which appears to have been accepted also and implemented in respect of some persons. The question arose as follows:

23. It was alleged that in the case of civilian medical officers, the nodal Ministry had issued circulars dated 17.12.1998 and 29.10.1999

(corresponding to the Defence Ministry's Circulars dated 7.6.1999 and 11.9.2001); that some civilian Medical Officer Retirees had challenged the

said circular dated 29.10.1999 directing that NPA shall not be added to minimum pay in the revised scale, before the Delhi High Court; that the High

Court had allowed the said writ petitions (CWP No.7322/2001 and connected cases \026 K. G. Garg vs. Union of India) by order dated 18.5.2002;

and that the said order was not challenged by the Union of India, but on the other hand, was implemented by adding NPA to basic pay while stepping

up the pension in the case of civilian Medical Doctors who had retired prior to 1.1.1996. It is contended that the Respondents having accepted and

implemented the decision of the Delhi High Court in the case of civilian medical officers, cannot discriminate against the Defence service medical

officers placed in identical position and therefore the benefit given to the civilian medical officers in pursuance of the decision of the Delhi High Court

should also be extended to them. The petitioners rely on the broad principles underlying estoppel by Judgment, legitimate expectation, and fairness in action in support of their contention.

24. Respondents have filed an affidavit dated 1.8.2006 admitting that in pursuance of the decision of the Delhi High Court, the circular dated 29.10.999

had been withdrawn but clarified that it was withdrawn only in regard to the civilian medical officers who were petitioners in the said writ petitions

and not in regard to all civilian medical officers. It is contended that the fact that a decision of the High Court had been accepted or implemented in

the case of some persons, will not come in the way of the Union of India resisting similar petitions filed by others, in public interest.

25. A similar contention was considered by this Court in *State of Maharashtra vs. Digambar* [1995 (4) SCC 683]. This Court held:Â

â??Sometimes, as it was stated on behalf of the State, the State Government may not choose to file appeals against certain judgments of the High

Court rendered in Writ petitions when they are considered as stray cases and not worthwhile invoking the discretionary jurisdiction of this Court under

Article 136 of the Constitution, for seeking redressal therefor. At other times, it is also possible for the State, not to file appeals before this Court in

some matters on account of improper advice or negligence or improper conduct of officers concerned. It is further possible, that even where S.L.Ps

are filed by the State against judgments of High Court, such S.L.Ps may not be entertained by this Court in exercise of its discretionary jurisdiction

under Article 136 of the Constitution either because they are considered as individual cases or because they are considered as cases not involving

stakes which may adversely affect the interest of the State. Therefore, the circumstance of the non-filing of the appeals by the State in some similar

matters or the rejection of some S.L.Ps in limine by this Court in some other similar matters by itself, in our view, cannot be held as a bar against the

State in filing an S.L.P. or S.L.Ps in other similar matters where it is considered on behalf of the State that non-filing of such S.L.P. or S.L.Ps and

pursuing them is likely to seriously jeopardize the interest of the State or public interest.â??

26. The said observations apply to this case. A particular judgment of the High Court may not be challenged by the State where the financial

repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realized, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others. Of course, the position would be viewed differently, if petitioners plead and prove that the State had adopted a "pick and choose" method only to exclude petitioners on account of malafides or ulterior motives. Be that as it may. On the facts and circumstances, neither the principle of res judicata nor the principle of estoppel is attracted. The Administrative Law principles of legitimate expectation or fairness in action are also not attracted. Therefore, the fact that in some cases the validity of the circular dated 29.10.1999 (corresponding to the Defence Ministry circular dated 11.9.2001) has been upheld and that decision has attained finality will not come in the way of State defending or enforcing its circular dated 11.9.2001."

42. When this argument was addressed, immediately it was met with submission by Mr. Bhagwat Mehra that this is not a case, which involved any financial implications and what is involved is only the issue as to who is to be given promotion."

43. It is true that, in respect of Higher Education Department, a learned Single Judge has proceeded to pronounce the judgment, which was, in turn, based on the judgment of the learned Single Judge in the first among these cases, which related to the Judicial Department." It is true that the Rule is similar." As pointed out by the Apex Court, an appeal may not have been filed for various reasons as mentioned therein." One of the choices before this Court is declaring the law as it commends to itself as the correct one and give effect to it discountenancing the view taken by the learned Single Judge of this Court." Undoubtedly, such a course would involve making the declaration applicable in respect of the departments, which are covered by these cases." Necessarily, a conflict would arise between the law, which has been laid down by us in these bunch of appeals, and the

law, which was declared by the learned Single Judge in respect of department, which was concerned in the said case, namely, Higher Education

Department.Â Should we allow what we perceive to be an error to be perpetuated; should we abdicate our duty to declare the law correctly on the

score that appeal was not carried against the other judgment; or, should we, for the purpose of uniformity among all classes governed by a single Rule,

allow error to prevail with us?Â We would think that, in the interest of justice and having regard to the intention of the law-giver, which was to give

benefit to the holders of High School qualification in the form of relief from stagnation, we should choose to declare the law and to discountenance the

law laid down by the learned Single Judge.Â We would think that, though this may not be a case which involves financial implications as such, having

regard to the ramifications of the matter and the large number of employees it would affect and the duty of the Court to declare the law correctly

rather than perpetuate the error, we should choose to, should it otherwise commend to us, accept the case set-up by the State.Â We must,

immediately, notice that there is no case that these appeals are filed with any mala fide intention or that it is activated by any intention to harm or cause

any gain to anyone, a concern which has, in fact, been voiced in the judgment of the Apex Court, which we have extracted, in paragraph 26 thereof.

44. Another concern, which arises from the arguments of Mr. Bhagwat Mehra is from the employment of the words 'in the same office'.Â He

would submit that, in the Rule, what is contemplated since the time of the Government Orders and the Rules of 1985, is that those Class IV

employees, who work in the same office, alone, would be considered for the vacancies, which arise qua the said office.Â In this regard, he drew our

attention to a Bench decision in the unreported judgment in Writ Petition No. 164 of 2011.Â The said case did not, actually, involve the specific

question, which we are dealing with.Â Therein, what transpired was that promotion of the petitioner came to be cancelled.Â The Division Bench

traced the history of the orders and the Rules in respect of ministerial service and concluded that, if the petitioner was the senior-most Group

'D' employee in the office, the cancellation of his promotion was bad.Â On facts, it is found that he was not able to establish the same.Â In

the course of this judgment, however, the Division Bench did pose a question as to whether he was the senior-most Group 'D' employee in the

office, where he was working.Â Mr. Bhagwat Mehra would point out that, in the counter affidavit filed by the State also, such a stand was taken,

namely, that the petitioner must be the senior-most in the office, where he was working.Â By this analysis, Mr. Bhagwat Mehra would point out the

facts of this case that there are 203 vacancies, which were advertised, and they were filled-up on the basis of a common test.Â He poses a question

as to how persons, who were not working in the same office, could be considered against the vacancies, which did not arise qua the said office.Â Â

45. Mr. Paresh Tripathi, learned Chief Standing Counsel, would submit that the entire State was divided into two regions; one, Garhwal and the other,

Kumaon.Â According to him, it is not 203 vacancies, but 149 vacancies.Â It is to be noticed that selection is to be made on the basis of the

performance in the test and the marks obtained.Â One way of looking at it is that, having regard to the definition of 'subordinate office' and the

word 'office', all persons working in the offices in a particular department could be clubbed together.Â In fact, Mr. Paresh Tripathi would

submit that the Court may consider the case, where, in an office, there is only one person working as Group 'D' employee and the Rule

contemplates holding of a test.Â He poses a question that, in such a case, the person concerned would get the appointment without any competition

and without having to pass a test and this may not be an interpretation, which should pass muster.Â 46. We would think that we need not pronounce

on this issue as such.Â It is also submitted specifically that there is no pleading as such in this case on these lines.Â In such circumstances, we

would think that we need not go into the said issue.Â It is a matter, which we leave open.Â Â

47. The actual question, which arises, would be whether persons with Intermediate qualification would be entitled to be considered against 15 per cent

vacancies initially and, later on, 25 per cent, reserved for persons having High School qualification.Â As regards the case of Mr. Bhagwat Mehra that

persons, who were having qualification of Intermediate, concealed the fact that they had Intermediate qualification and, on that basis, they have been

considered and appointed in the vacancies, which were reserved for the High School candidates, it is pointed out by Mr. Paresh Tripathi that even

such aspects were brought to the notice and it has been dealt with.Â Â

48. Mr. Bhagwat Mehra would also contend that, subsequently, when the vacancies are filled-up, separately vacancies are to be determined and applications are to be invited.Â We would also think that it would be the proper way of doing it so that vacancies are clearly determined as pertaining to 15 per cent or 10 per cent (High School and Intermediate) and, on that basis, selection is made.Â Â

49. We also notice that, in the year 2013, a proviso was added by the amendment in March, 2013, by which it was provided that, when persons, who have passed High School, are not available, the vacancies could be filled-up by persons, who are having higher qualification.Â This also clearly goes to show that, till 2013, vacancies, which were meant to be filled-up by appointing persons with High School qualification, could not be filled-up by persons, who were having Intermediate qualification.Â The proviso, which was inserted, enabled the Government to make such appointments against the vacancies.Â In our view, this circumstance lends assurance to the view, which we have taken that, as far as the vacancies (15 per cent till 2013) are concerned, the same could be filled-up only by persons having High School.Â Â

50. The upshot of the above discussion is that the judgment passed by the learned Single Judge in cases pertaining to Education Department, where interference has been made, cannot be sustained and the appeals filed in this regard are to be allowed and the writ petitions are to be dismissed.Â As far as Special Appeal No. 22 of 2017 is concerned, the same is to be dismissed. Special Appeal Nos. 272 of 2016 & 1070 of 2017:

51. There are two appeals, which we must separately deal with, namely, Special Appeal No. 272 of 2016 and Special Appeal No. 1070 of 2017.Â

They are the appeals, where arguments were addressed by Mr. Subhash Upadhyaya and Mr. C.S. Rawat, Advocates.Â We have noticed that, in the case of Mr. Subhash Upadhyaya, the person was having qualification of High School.Â Mr. Subhash Upadhyaya has already adopted the same arguments as advanced by the State, which have found favour with us.Â He would point out that the learned Single Judge has erred in giving direction to the State for further promotions, which are, in fact, covered by the amendments, as we have noted.Â Â

52. The direction given by the learned Single Judge reads as follows:

11. In view of this, the writ petitions succeed. All the same, since the petitioners have not made such selected candidates (who had High School qualification) as a party, this Court is not inclined to pass any order disturbing their present service. However, since it has been brought to the notice of this Court that in the same selection process there are about 103 posts were not filled and were carry forward, in which during the pendency of the petition, an advertisement was issued and stay was granted by this Court, the petitioners can also be adjusted on such posts.

12. It is further made clear that the respondents shall consider not just the petitioners, but all such candidates who have Intermediate qualification and who had appeared in the examination and have qualified but have not been appointed, as they have not been considered against the High School quota and be given appointment therein strictly as per their seniority. It is made clear that if there are any such candidates who have secured higher marks than the petitioner, he shall be asked first to join on a Class III post and only thereafter the petitioner shall be given such appointment. Moreover, as already directed above the appointment shall be without disturbing the already selected and appointed candidates. It is further made clear that the new selection process has already been stayed, no further proceedings be made in the selection process till the directions given by this Court in the present writ petition are complied with.

53. In the view, which we are taking, and as the writ petition itself is to be dismissed, we would think that these two appeals also are to be allowed and the judgment passed by the learned Single Judge would, necessarily, have to be set aside.

Special Appeal No. 214 of 2017:

54. In Special Appeal No. 214 of 2017, the appeal is lodged, as we have noted, against the judgment passed by the learned Single Judge by which he has dismissed the writ petition. The writ petition was filed by a person with Intermediate qualification. He alleged that, as between him and the party respondent, he had secured higher marks in the test. He relied upon the judgment of this Court in Writ Petition (S/S) No. 417 of 2008. It is a judgment, which was, undoubtedly, allowed in favour of the Intermediate holder on the reasoning that possession of a higher qualification cannot stand in the way of the Intermediate holder being considered against the

vacancy qua the person having High School qualification, who had secured lesser marks.Â The learned Single Judge has noted that, if it had been a case, where there was no person having High School qualification available, the claim may have been correct.Â In this case, there was a person having High School qualification, namely, the party respondent, who, though had secured lesser marks, was the person to be considered against the vacancy.Â Â

55. As far as this case is concerned, we have already noticed the state of the law and have also found what should be the interpretation to be placed.Â That apart, we may notice, as contended by the respondents, that this is a case, where the Advertisement for the vacancy was issued after the amendments in the year 2013.Â The proviso, which was inserted in Rule 6 by the amendment in March, 2013, makes it clear that persons, who are having higher qualification than High School, can be considered against the vacancy reserved for persons with High School qualification only if persons with High School qualification are not available.Â The recruitment process was commenced after these Rules.Â Therefore, by any standard, the case of the writ petitioner was only to be dismissed and this is what the learned Single Judge has done.Â In such circumstances, there cannot be any scope for interference with the judgment passed by the learned Single Judge.Â Â

56. Another aspect, which we must notice in this regard, no doubt, is that the judgment passed in Writ Petition (S/S) No. 417 of 2008 has attained finality by virtue of the dismissal of the Application for condonation of delay and, consequently, the appeal therefrom.Â It is true, on a perusal of the judgment in Special Appeal No. 48 of 2016 and connected cases, that an appeal was sought to be lodged with delay of 900 and odd days.Â For the purpose of the said case, it is true that there is an observation that the judgment rendered in Writ Petition (S/S) No. 417 of 2008 in regard to them would become final.Â Mere dismissal of the Application for condonation of delay, leading to the dismissal of the appeal, cannot, in our view, be treated as accepting the judgment of the learned Single Judge as the correct view by the Division Bench. Â It only means automatic dismissal of an appeal consequent upon the rejection of the Application for condonation of delay.Â In that sense, it cannot be said that the view taken by the learned Single Judge in Writ Petition (S/S) No. 417 of 2008 has been declared to be the

correct law by the Division Bench.Â Therefore, rejection of the Application for condonation of delay and the consequent dismissal of the appeal against the judgment in Writ Petition (S/S) No. 417 of 2008 will not result in a judgment by a Division Bench, which takes the view which is opposed to the view, which we are inclined to take in these cases.Â There is no adjudication on merits as such by the judgment of the Division Bench rejecting the Application for condonation of delay.Â It may be true that the view, which we are declaring, may go contrary to the judgment passed by the learned Single Judge in regard to the Judgeship therein.Â We would think that the view taken by the learned Single Judge in Writ Petition (S/S) No. 417 of 2008, which, in turn, was based on Uttarakhand Subordinate Civil Courts Ministerial Establishment Rules, 2007, may not be the correct view.Â It is, in fact, to be noticed that, in the 2004 Rules, members of the High Court and the ministerial staff of the High Court and subordinate courts are excluded; but, in the Uttarakhand Subordinate Civil Courts Ministerial Establishment Rules, 2007, in Rule 20(10), which deals with promotion, it is provided that appointment by way of promotion from Group â??Dâ?? within the prescribed quota shall be made by the appointing authority in accordance with the conditions and procedure prescribed by the rules and Government Orders issued from time to time.Â It is, apparently, according to the same, that the quota of 15 per cent, as is provided in Rule 6 of the 2004 Rules, has been considered.Â The view taken by the learned Single Judge in Writ Petition (S/S) No. 417 of 2008 is to the effect that the writ petitioner having the qualification of Intermediate can be considered not only against the 5 per cent quota, but also against the quota, which is meant for persons with High School qualification, as such persons would have the qualification of High School also when they possess the qualification of Intermediate and, on this basis, alone, they were considered to be eligible.Â We have already given the reasons as to why this view cannot be accepted.Â We also take note of the fact that, after March, 2013, the position is clearly beyond the pale of any dispute that, only in the absence of persons having High School qualification, can persons having Intermediate qualification be considered for the vacancies, which are meant for persons with High School qualification.Â Â

Special Appeal No. 427 of 2017:

57. The next appeal, which we must advert to, is Special Appeal No. 427 of 2017. In this case, slightly different set of facts are present. The writ

petitioner applied for appointment as a Data Entry Operator in the office of the Public Service Commission. The Rule and the Advertisement

provided that the candidate should have acquired a Certificate or a Diploma of, at least, one year course. The learned Single Judge has allowed the

writ petition taking the view that, what is prescribed is the minimum by way of minimum of one year Certificate or Diploma in Computer

Applications. The writ petitioner has passed BCA (Bachelor of Computer Applications); this is a higher qualification; and since what is prescribed

in the Rule and in the Advertisement is possession of minimum qualification, the possession of higher qualification cannot stand in the way of the writ

petitioner's candidature being considered, were the arguments, which, apparently, have found favour with the learned Single Judge. In the

appeal, the stand taken is that it is not a correct interpretation of the Rule. The correct interpretation of the Rule, according to the appellant, would

be that the person would be deemed to be qualified if he has passed a Certificate or Diploma course, the duration of which must not be less than one

year. The word "minimum" would, therefore, pertain not to the course as such, but to the period that would be spent in pursuing the course.

In other words, a person, if he has completed only a Certificate course lasting for less than one year, he will not be treated as qualified. He may

undergo a Certificate course or a Diploma course in Computer Applications, which is more than one year. In such a case, he would be deemed to

be qualified. But the course must be one, which is a Certificate course or a Diploma course. A Degree course is conspicuous by its absence in

the Rules and in the Advertisement. Therefore, the contention is that, though the writ petitioner may be possessed of a higher qualification, the

qualification is not what is stipulated, namely, it is a Degree in Computer Applications and not a Certificate or a Diploma. We feel that the

contention of the appellant appears to be justified. The question really relates to the interpretation of the Rule. The actual Rule reads, inter alia,

that the candidate should have at least a qualification of one year Certificate or Diploma in Computer Applications. We would think that the word

"at least" is relatable to the period of the course. A course, which is not either Certificate or Diploma, would not, therefore, suffice as the

requisite qualification.Â We are not concerned with the value judgment of the rule-giver.Â If the writ petitioner had a case that the person with higher qualification, in the sense that which is not permissible as we have understood, should also be included and it is a case of under-inclusive classification, the rule on the basis of which, apparently, the Advertisement has been issued should have been challenged.Â Without doing that, it is not open to the writ petitioner to lay a claim to be considered for appointment on the basis of the qualification of BCA, which is, apparently, a Degree course and neither a Certificate course, nor a Diploma course.Â Apparently, the policy of the rule-giver is, as would appear to be, to provide opportunities for people with Certificate or Diploma in Computer Applications having regard to, both, considerations of efficiency and the requirements of the post, as also the need to create suitable employment for such persons.Â Therefore, the judgment passed by the learned Single Judge, holding to the contrary, cannot be sustained and the appeal is only to be allowed.Â Â

Special Appeal No. 812 of 2017:

58. Lastly, Special Appeal No. 812 of 2017 is maintained by the writ petitioner in the writ petition.Â He applied for the post of Assistant Review Officer in the High Court.Â The qualification, which is provided, is to the effect that the candidate must possess Bachelor's Degree from a University established by law in India or a qualification recognised as equivalent thereto.Â The further requirement is that the candidate must possess Diploma in Computer Science from a recognised Institute / University or â??Oâ?? Level Certificate from DOEACC society and a speed of minimum 9000 key depressions per hour in English Typing.Â His application was rejected.Â One of the reasons given was that he is having Master's Degree in Computer Science, which is higher than Diploma in Computer Science.Â The reliefs, which were sought by the writ petitioner, are as follows:

â??i) Issue a writ or order in the nature of Certiorari quashing Rule 9(ii)(2) of the Amendments in Allahabad High Court

Officers and Staff (Conditions of Service and Conduct) Rules 1976, as applicable to High Court of Uttarakhand vide Section 30 of U.P.

Reorganisation Act, 2000 as ultra vires so far it prohibits the candidature of the petitioner having Master's degree in Computer Science for the

post of Assistant Review Officer in Honâ??ble High Court of Uttarakhand.

ii) Issue a writ or order in the nature of Certiorari quashing the impugned condition of para 2(01)(ii) of the advertisement dated 16.12.2014 so far it

prohibits the candidature of the petitioner having Masterâ??s degree in Computer Science for the post of Assistant Review Officer in Honâ??ble

High Court of Uttarakhand.

iii) Issue a writ or order in the nature of Certiorari quashing the entry no. 477 in the rejection list dated 26.03.2016 by which the candidature of the

petitioner has been rejected for the post of Assistant Review Officer in Honâ??ble High Court of Uttarakhand.

iv) Issue a writ or order or direction in the nature of Mandamus directing the respondents to consider the candidature of the petitioner for the post of

Assistant Review Officer in Honâ??ble High Court of Uttarakhand based on his qualification.â??

59. The learned Single Judge dismissed the writ petition holding that the writ petitioner is not having the requisite qualification.â?? The learned Single

Judge, in fact, referred to Surendra Kumar & another vs. State of Uttarakhand, reported in 2015 (1) UD 163 and repelled his argument that he is

having a higher qualification.â?? From the judgment, it is not made out that the writ petitioner has pressed his challenge to the Rule.â?? It would also

appear that there is no ground taken in the appeal memorandum regarding challenge to the Rule.â?? That apart, he cannot also, in law, raise such a

contention for the reason that he has participated pursuant to the Advertisement, where the qualification was prescribed and he approaches the Court

only at a stage, where his application has been rejected.â?? Therefore, having participated, he cannot, certainly, be permitted to call in question the

qualification.â?? As far as the qualifications go, it is quite clear that he does not possess Diploma in Computer Science, as provided in the Rule.â?? The

fact that he has got Bachelorâ??s Degree in Computer Science as well as Masterâ??s Degree in Computer Science would not be sufficient in view

of the discussion, which we have had in the earlier part of this judgment, and the law, which has been laid down in State of Punjab vs. Anita (supra)

and Prakash Chand Meena vs. State of Rajasthan (supra).â?? In the light of this, the appeal filed by the writ petitioner is only to be dismissed.â??

60. Consequently, the upshot of the above discussion is as follows:

(i) Special Appeal Nos. 566 of 2017 and 313 of 2017 will stand allowed; the judgment passed by the learned Single Judge will stand set aside; and the writ petition will stand dismissed.Â Â

(ii) Special Appeals relating to Education Department, namely, Special Appeal Nos. 196 of 2016, 198 of 2016, 199 of 2016, 200 of 2016, 272 of 2016, 31 of 2017, 145 of 2017 and 392 of 2017 are, all, allowed; the judgments passed by the learned Single Judge in all these cases will stand set aside; and the writ petitions will stand dismissed.Â Special Appeal No. 22 of 2017 will stand dismissed.

(iii) Special Appeal No. 1070 of 2017 will stand allowed.

(iv) Special Appeal No. 214 of 2017 will stand dismissed.

(v) Special Appeal No. 427 of 2017 will stand allowed; the judgment passed by the learned Single Judge will stand set aside; and the writ petition will stand dismissed.Â Â

(vi) Special Appeal No. 812 of 2017 will stand dismissed.Â Â

(vii) There will be no order as to costs in all these cases.Â Â