

(2000) 02 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No"s. 9425, 10625, 11006, 11304, 11746 and 12651 of 1999

K. Narasimha Murthy and others

APPELLANT

Vs

Karnataka Public Service Commission, Bangalore

RESPONDENT

Date of Decision : 23-02-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16 (1), 226
Karnataka Recruitment of Gazetted Probationers (Appointment by Competitive Examinations) Rules, 1997 — Rule 4, 5, 6, 7, 9

Citation : (2000) ILR (Kar) 1821 : (2000) 4 KarLJ 97 : (2000) 3 KCCR 56 SN

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Sri S.V. Narasimhan, Sri B.B. Bhajentri, Sri N. Swayamprakash, Sri H.R. Shailendra, Sri V.T. Rayareddi and Sri M. Sudhakar Pai, for the Appellant; Sri T. Narayanaswamy and Sri K. Nagaraj, Additional Government Advocate, for the Respondent

Judgement

1. Since the questions raised in these petitions are similar and identical, all these petitions are taken up for final hearing together and disposed of by this common order.

2. The petitioners, in these petitions, were all applicants for recruitment to the post of Gazetted Probationers Groups-A and B in the services of the State. The recruitment to the post of Gazetted Probationers is made as provided under the provisions of the Karnataka Recruitment of Gazetted Probationers (Appointment by Competitive Examinations) Rules, 1997 (hereinafter referred to as "the Rules").

3. In these petitions, the petitioners have called in question the endorsement issued to them by the Karnataka Public Service Commission at Bangalore (hereinafter referred to as "the Commission"), informing them that their applications for Gazetted Probationers (Main) Examination were rejected as they had not enclosed Bachelor Degree Marks Card and they had enclosed only

Master's Degree certificate.

4. In Writ Petition No. 10625 of 1999, the petitioner has prayed for striking down the word "Bachelor" appearing in Rule 7 of the Rules.

5. The few facts, which are not in dispute and which are relevant for the disposal of these petitions, may be stated as hereunder:

(a) All the petitioners have acquired Postgraduate qualification and possess the Postgraduate Degree issued by the University of Mysore. However, none of them possesses the basic Degree qualification. The University of Mysore had introduced a scheme known as "correspondence Course" wherein a candidate, even if he does not possess any basic Degree or other educational qualification, could directly appear for the Postgraduate Course; and if he passes the examination conducted by the University, he would be entitled for conferment of Postgraduate Degree.

(b) Pursuant to the application filed by the petitioners for being considered to the post of Gazetted Probationers Groups-A and B, the petitioners were called for preliminary examination held on 30th of August, 1998. Thereafter, in the endorsements given to the petitioners, they were informed by the Commission that since they do not possess the basic Degree qualification, their applications were rejected. During the pendency of these petitions, this Court has passed an interim order directing the Commission to permit all the petitioners to appear for the main examination. Pursuant to the said direction given by this Court, all the petitioners have written the main examination. However, the result of some of the petitioners does not appear to have been announced. The Commission is yet to call the candidates who have passed the main examination, for interview.

6. Sriyuths S.V. Narasimhan, V.T. Rayareddy, N. Swayamprakash, H.R. Shailendra, M. Sudhakar Pai and B.B. Bhajentri, learned Counsels appearing for the petitioners in these petitions, made two submissions. Firstly, they submitted that the impugned endorsements issued by the Commission to the petitioners rejecting their applications on the ground that since they do not possess the Bachelor Degree, they are not eligible to be considered for appointment to the post of Gazetted Probationers Groups-A and B, are totally illegal and void in law. According to them, the qualification prescribed under Rule 7 of the Rules that no candidate shall be eligible for the recruitment under the Rules unless he possesses a Bachelor Degree awarded by a University established by law in India or possesses an equivalent qualification, must be understood as prescribing the minimum qualification; and a person, who possesses a higher Degree than the Bachelor Degree, even if he does not possess the basic Bachelor Degree, must be held to be possessing the requisite qualification prescribed in terms of Rule 7 of the Rules. Secondly, they submitted that if, for any reason, Bachelor Degree, referred to in Rule 7 of the Rules, is to be understood as a prerequisite qualification; and even holding of Postgraduate or Doctorate Degree without basic Bachelor Degree qualification, is not to be considered as a qualification

prescribed for being considered for the post of Gazetted Probationers Groups-A and B, the word "Bachelor" referred to in Rule 7 of the Rules, requires to be declared as ultra vires and void in law as being highly arbitrary, unreasonable, discriminatory and violative of the rights guaranteed to the petitioners under Articles 14 and 16(1) of the Constitution of India. Elaborating this submission, they contended that the object of the selection for the post of Gazetted Probationers Groups-A and B being to pick up the best candidates among large number of aspirants to the State Civil Services, the insistence on basic degree as a qualification in preference to the candidates who possess higher academic qualification, like, Postgraduate and Doctorate, would be highly unreasonable, arbitrary and discriminatory in nature and such a classification will not be a reasonable classification and will not have any nexus with the object sought to be achieved. They pointed out that the marks obtained in the Bachelor Degree is not to be taken into consideration for the purpose of eligibility to appear for either the preliminary or final examination prescribed under the Rules; and the qualification prescribed under Rule 7 is only a minimum qualification to be considered for eligibility to appear for the preliminary examination; and ultimately the selection is required to be made only on the basis of the performance in the preliminary and final examinations and also the marks obtained in the interview and on comparative assessment of the merits of the candidates; and therefore there is no rationale in insisting that the candidate should possess the basic degree qualification to be eligible for being considered to appear for the examinations. They also submitted that insofar as the selection to the Indian Civil Services Examination (i.e., IAS, IPS, IRS, IFS etc.) is concerned, the Postgraduate Degree awarded by the University of Mysore is also considered as the qualification prescribed for the purpose of Civil Services Examination. In this connection, they drew my attention to communication dated 13th of February, 1999, a copy of which has been produced as Annexure-F in Writ Petition No. 11746 of 1999, wherein the Under Secretary to the Union Public Service Commission has stated that the Degrees including the Postgraduate Degree awarded by the University of Mysore, are acceptable for admission to the Civil Services Examination. The learned Counsel also relied upon the Rules known as Karnataka Civil Services (Special Recruitment of Scheduled Castes and Scheduled Tribes candidates to certain Groups-A and Group B Posts) Rules, 1985, wherein the Postgraduate qualification is prescribed as the basic qualification for recruitment to the post of Assistant Commissioner, Assistant Controller of State Accounts, Commercial Tax Officers, Treasury Officers etc. The learned Counsel for the petitioners would further submit that when a Degree qualification, like, Degree in Dental Science, Medicine and Engineering, is treated as the basic qualification for being considered for appointment to the post of Gazetted Probationers, there cannot be any rationale or principle in holding that the person who possesses Postgraduate Degree or Doctorate Degree in the subjects, like, Economics, History, Commerce, Statistics or Sociology, the knowledge of which will be of day-to-day use for administrative services, is not eligible for appointment as Gazetted Probationer. Therefore, they pointed out

that Rule 7 of the Rules, which prescribes Bachelor Degree as qualification for being considered for the post of Gazetted Probationers, must be understood in the background of the post for which the qualification is prescribed; and if it is so understood, there cannot be any doubt that what is prescribed under Rule 7 of the Rules is only a minimum qualification of Bachelor Degree and the persons who possess higher qualification like Postgraduate Degree or Doctorate Degree, are not ineligible to be considered for the post of Gazetted Probationers even if they do not have the basic Bachelor Degree qualification. It is their submission that for any reason, if the rule has to be given strict interpretation as contended by the respondents, then the rule requires to be struck down as being violative of Articles 14 and 16(1) of the Constitution of India; and in such a situation where the rule is required to be struck down, the Court would normally place harmonious construction to the rule and give effect to the object of the rule by reading down the rule. In support of their submission that the case of the petitioners having higher qualification cannot be ignored, they relied upon the decision of the Supreme Court in the case of Y. Srinivasa Rao Vs. J. Veeraiah and Others, .

7. However, Sri Narayanaswamy, learned Counsel appearing for the Commission, while strongly supporting the impugned endorsement issued by the Commission, submitted that when the rule making authority, in its wisdom, has provided in Rule 7 of the Rules, that a candidate should possess the basic Bachelor Degree, it is not permissible for this Court while exercising its power under Article 226 of the Constitution of India to go into the wisdom of the rule making authority and come to the conclusion that the higher Degree possessed by a candidate without the basic Degree, would also satisfy the requirement of Rule 7 of the Rules. He submitted that the contents of the subject in Bachelor Degree and Postgraduate Degree varies inasmuch as while large number of subjects are taught at the Graduate level, at the Postgraduate level and Doctorate level, specialisation is made only in one subject. He further submitted that for the purpose of admission to the Bachelor Degree, the eligibility prescribed for the Bachelor Degree is taken into account; and all these are not taken into account when a person acquires Postgraduate Degree. Sri Narayanaswamy also submitted that the Commission cannot be found fault with for issuing the impugned endorsements as the Commission has interpreted the rule which states that the candidate should possess a "Bachelor Degree". He also submitted that since the Bachelor Degree has not been equated to the Postgraduate Degree, the Commission did not consider the Postgraduate Degree obtained by the petitioners as satisfying the minimum qualification prescribed. In support of his submissions, Sri Narayanaswamy relied upon a decision of the Supreme Court in the case of V.K. Sood v Secretary, Civil Aviation, and that of a Full Bench of this Court in the case of Karnataka Public Service Commission v N.C. Hugar.

8. In the light of the rival contentions effectively advanced by the learned Counsel appearing for the parties, two questions of considerable importance that would arise for consideration in these petitions, are-

(1) Whether a candidate, who possesses a higher degree Qualification than the Bachelor's Degree qualification, but who does not possess the Bachelor Degree qualification in terms of Rule 7 of the Rules, is not qualified to be considered for appointment to the post of Gazetted Probationers Groups-A and B?

(2) Whether the words "Bachelor Degree" in Rule 7 of the Rules require to be struck down as ultra vires and void in law?

9. The Gazetted Probationers are recruited by the State for the purpose of State Civil Services. It consists of Groups-A and Group B posts. Schedule I given to the Rules sets out various categories of Group-A and Group-B posts. Rules 4 and 9 of the Rules provide for holding and conducting of the competitive examinations for recruitment to the State Civil Services; Rule 5 of the Rules prescribes the age limit for recruitment; Rule 6 of the Rules provides that every candidate appearing for the examination, who is otherwise eligible, would be permitted for not more than five attempts; and Rule 7 of the Rules prescribes academic qualification and physical standard. Sub-rule (1) of Rule 7 of the Rules provides that no candidate shall be eligible for recruitment under the Rules unless he possesses a Bachelor Degree awarded by a University established by law in India or possesses an equivalent qualification. The said sub-rule reads as follows:

"(1) No candidate shall be eligible for recruitment under these rules unless he possesses a Bachelor Degree awarded by a University established by Law in India or possesses an equivalent qualification".

Schedule II given to the Rules provides for the scheme of examination. The scheme of examination prescribed provides for preliminary examination and main examination. Preliminary examination consists of two papers of objective type i.e., multiple choice. Paper-I containing general studies, is of 150 marks and Paper-II with one subject to be selected from the list of optional subjects, is of 300 marks; in all 450 marks are prescribed for the preliminary examination. The main examination consists of written examination and personality test. The written examination is in respect of 2100 marks. It consists of Paper-I Kannada; Paper-II English; Papers-III and IV General Studies of 300 marks for each paper; and Papers-IV, V, VI, VII and VIII relating to two subjects to be selected from the list of optional subject and each subject will have two papers of 300 marks each. Insofar as Kannada and English, which are prescribed as compulsory subjects are concerned, unless a candidate secures 30% in each of the papers and aggregate of 35% in Kannada and English put together, he will not be eligible for being considered for selection on merits and the marks obtained in the said papers, will also not be taken into account while assessing the comparative merit of the candidates. In other words, minimum marks are prescribed for Kannada and English papers only for the purpose of deciding their eligibility for appointment to the post of Gazetted Probationers Groups-A and B while assessing their comparative merit. When this being the scheme of examination for the purpose of selection, the question that would arise for consideration is that if a candidate possesses a Master's Degree or Doctorate Degree, can such a candidate be held

to be not eligible for being considered for appointment to the post of Gazetted Probationers if he does not possess the basic Bachelor Degree? In my considered view, the answer should be in the negative. Merely because a candidate possesses either a Bachelor Degree or a Master's Degree, he will not be automatically selected as a Gazetted Probationer. As noticed by me earlier, the basis of the marks secured in the said examination has no relevance while making selection on merits. Ultimately, a candidate has to write the examination as per the scheme of the examination prescribed and establish his merits for being considered for appointment to the post of Gazetted Probationers Groups-A and B. The percentage of marks obtained in Bachelor Degree is not the basis either for permitting the candidates to write the preliminary or main examination, or to consider their case on merits along with the marks obtained in the written examination. The academic qualification prescribed under Rule 7 of the Rules is only the qualification prescribed for being eligible to be considered for appointment to the post of Gazetted Probationers. In this background, I do not find any rationale or principle to disqualify persons who possess higher Degree than that of a Bachelor Degree to write either the preliminary or main examination for the post of Gazetted Probationers on the ground that they do not possess Bachelor Degree. May be that the candidates who have acquired Postgraduate qualification, may not have the advantage of going to colleges or possessing requisite qualification to enable themselves to get into Bachelor Degree as vehemently contended by Sri Narayanaswamy. However, in my view, that alone cannot be made as a justification to take the view that only such of those candidates who have Bachelor Degree, are only eligible for appointment as Gazetted Probationers. The question is one of the nature of the academic qualification prescribed. Unless a person has acquired necessary equipment, training, knowledge and academic excellence prescribed to pass either the Postgraduate or Doctorate Degree, he cannot acquire such a Degree. In these cases, the Postgraduate Degree is given by the University of Mysore. There is no distinction made in the matter of Postgraduate Degree conferred on the regular students and to the students who have acquired Postgraduate qualification through correspondence course. It is also not in dispute that Bachelor Degree is also awarded to those who pass the graduation through correspondence course. Rule 7 of the Rules does not disqualify a person who has acquired Bachelor Degree through correspondence course. Therefore, if a person, who has secured Bachelor Degree in correspondence course, is eligible to be considered for being appointed as Gazetted Probationers, there cannot be any objection for considering a person who possesses the higher degree like Postgraduate or Doctorate Degree to be eligible to write the preliminary and main examinations prescribed for appointment to the post of Gazetted Probationers. It is not the case of the respondents that the Postgraduate qualification is in anyway inferior to the Degree qualification prescribed under Rule 7 of the Rules. In fact, such a contention cannot also be advanced. Though these rules are of the year 1997, the earlier rules were made as far back as in the year 1966. Rule 7 of the Rules is similar to the 1966 Rules. Therefore, may be, 30 years back, when the persons

who had acquired Postgraduate Degree or Doctorate Degree, were less in number, the rule making authority was of the opinion that the Bachelor Degree would be the ideal academic qualification that could be prescribed. When the people are able to achieve higher academic qualification over the years on account of all round development of the Country and the State, and opportunity to acquire higher qualification is made easier and possible, it is not possible to take the view that a candidate who possesses higher qualification without the basic Bachelor Degree, should be treated as ineligible for appearing for the preliminary and main examination for the purpose of appointment to the post of Gazetted Probationers. No doubt, what should be the qualification prescribed for a post is within the realm of the rule making authority. But, if the qualification prescribed has absolutely no rationale with the object sought to be achieved and such a qualification results in discrimination or the classification prescribed is unreasonable or arbitrary, certainly this Court is entitled to examine the validity of such a rule with reference to the parameter laid down under Articles 14 and 16(1) of the Constitution of India. In the instant case, as observed by me earlier, the object of selection is to pick up the candidates who are more suitable to the State Civil Services. Under these circumstances, it will be highly unreasonable and discriminatory in nature to prevent the persons, who have acquired higher qualification and who have academically attained higher achievements and are superior, from taking up the preliminary and main examinations for the post of Gazetted Probationers. The rules which prescribe for selection to the post, clearly indicate that selections are made only on the basis of the comparative merit of the candidates based on their performance in the written examination held and also the assessment of their suitability in the personality test conducted. This is clear from Rule 11 of the Rules and also the scheme of examination prescribed, which is referred to earlier. The various subjects prescribed both for preliminary examination and main examination which consist of written and personality test, provide for the mechanism to test the comparative merit and suitability of the candidates for appointment as Gazetted Probationers. When there are large number of applicants to the posts, unless a candidate secures fairly high percentage of marks both in the written examination and in the personality test, he has no hope of being appointed as a Gazetted Probationer. Therefore, the contents of the study of the subjects by a candidate only in Bachelor Degree, in my view, has no bearing and are not relevant to assess the comparative merit of a candidate. The study of the subjects prescribed for Bachelor Degree, Master Degree or Doctorate will only help a candidate to acquire knowledge and competence. As observed by me earlier, the basis for selection is the performance both in the written examination conducted and the personality test held. Further, as pointed out by the learned Counsel for the petitioners, if a candidate, who has secured Degree in Dental Science is eligible to write the preliminary and main examinations for the post of Gazetted Probationers, it does not appeal to any reason as to why a Postgraduate with a First Class or a Doctorate Degree in Economics or Statistics or History with high academic distinction should be treated as not qualified to write the said examinations.

Therefore, in my view, Rule 7 of the Rules must be understood as prescribing the Bachelor Degree as the minimum qualification for being eligible for selection to the post of Gazetted Probationers. Otherwise, the rule requires to be struck down as being highly arbitrary, unreasonable, discriminatory in nature and violative of the right guaranteed to the petitioners under Article 14 of the Constitution of India. In my view, the insistence on the minimum qualification of Bachelor Degree, even in the case of candidates who possess Postgraduate Degree or Doctorate, has no nexus with the object sought to be achieved. However, it is well-settled rule of construction as laid down by the Supreme Court in the case of *The State of Gujarat Vs. Chaturbhuji Maganlal*, , "that where the language of a statutory provision is susceptible of two interpretations, the one which promotes the object of the provision, comports best with its purpose and preserves its smooth working, should be chosen in preference to the other which introduces inconvenience and uncertainty in the working of the system. This rule will apply in full force where the provision confers ample discretion on the Government for a specific purpose to enable it to bring about an effective result". Therefore, it is clear that the endeavour of the Court should be normally to save the rule by interpreting the rule in a way it serves the purpose and object of the rule. Therefore, in my view, if Rule 7 of the Rules is interpreted and understood as to mean that a candidate who possesses higher degree qualification, like, the Postgraduate or Doctorate, is eligible to write the examination, the rule can be sustained even without striking down the word "Bachelor". However, in the instant case, in my view, even if the word "Bachelor" is struck down, it will not affect in any manner the proper construction or reading of the rule or cause damage to the meaning that could be given to the rule; and it will not result in any incongruous situation or defeat the object of the rule. On the other hand, striking down of the word "Bachelor" appearing in Rule 7 of the Rules, would make the qualification prescribed more clear and understandable. The principle of harmonious construction of the rule and reading down of the rule, need not be applied in the present situation. If the word "Bachelor" is struck down, a person, who possesses a Degree whether it is a Bachelor Degree, Postgraduate or Doctorate Degree, will be eligible to be considered for appointment to the post of Gazetted Probationers and consequently, eligible to write the preliminary and main examinations. Therefore, I am of the view that it would be more appropriate, in the instant case, to strike down the word "Bachelor" appearing in Rule 7 of the Rules instead of reading down the rule. If that is done, the rule will be workable and it will serve the purpose and object of the qualification prescribed.

10. The only other question is whether the principle laid down by the Full Bench of this Court in the case of *N.C. Hugar*, supra, strongly relied upon by Sri Narayanaswamy would apply to the present case. In my considered view, the principle laid down in the case of *N.C. Hugar*, supra, has no application to the present case. As it could be seen from the discussion in the said case, the majority of the Judges took the view that a candidate should possess the

minimum educational qualification prescribed for the post of Technical Assistant in the Department of Public Libraries i.e., a Certificate in Library Science of the Government Library Training School, Bangalore, or Diploma in Library Science of the Women's Polytechnic, Bangalore, in the light of Rule 5 of the Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1973, which provided the percentage of marks secured in the qualifying examination as the basis for inviting a candidate for interview. Rule 5 of the said Rules required that for the purpose of inviting candidates for interview for the purpose of selection to the post of Technical Assistants, the Selecting Authority should prepare a list of names of candidates on the basis of percentage of total marks secured in the qualifying examination in the order of merits and the candidates should be called for interview on the basis of the merit list so prepared. This is clear from the observations made in paragraphs 5, 6 and 7 of the judgment, which read as hereunder:

"5.....Rule 4 of the said Selection Rules provides that recruitment shall be made on the basis of the percentage of total marks secured in the qualifying examination as determined under Rule 5 and of the marks secured at the interview under Rule 6 by the Selection Authority eligibility of candidates for interview is regulated by Rule 5 of the Selection Rules. Relevant portions of sub-rules (1) and (3) of Rule 5 read as follows:--

"5. Eligibility of candidates for the interview:--

(1) For purposes of selection of candidates for the interview, the selecting authority shall prepare a list of names of candidates on the basis of the percentage of total marks secured in the qualifying examination in the order of merit and if two or more candidates have secured equal percentage of total marks in the qualifying examination, the order of merit in respect of such candidates shall be fixed on the basis of their age, the person or persons older in age, being placed higher in the order or merit. From among the candidates whose names are included in such list, as far as may be, such number of candidates as is in the order of merit, shall be eligible for the interview:

Provided that where the rules of recruitment to any cadre or post prescribe any preferential or desirable qualification (whether academic or otherwise), then all candidates possessing such qualifications shall also be eligible for interview irrespective of the marks obtained by them in the qualifying examination, subject to the condition that the number of such candidates eligible for interview shall not exceed 10 times the number of vacancies notified.

(2) xxx xxx xxx. (3) For the purposes of this rule.-

(a) "Qualifying examination" means the examination or examinations prescribed as the minimum qualification required for appointment in the rules of recruitment to the cadre or post concerned.

(b) Where the qualifying examination consists of more than one examination the

percentage of total marks secured in the qualifying examination shall be the average of the percentage of total marks secured in those examinations.

(c) Whether different qualifying examinations have been prescribed alternatively in the rules of recruitment applicable to a post or category of posts and a candidate has passed more than one such qualifying examinations the percentage of total marks obtained in the qualifying examination shall be the percentage of total marks obtained in such qualifying examination in which he has obtained highest percentage of total marks.

(d) Where the qualifying examination prescribed is a Doctorate obtained on the basis of thesis submitted by the candidate, the percentage of total marks secured by the candidate in the qualifying examination shall be deemed to be ninety-five".

Rule 6 provides that the selecting authority shall interview the eligible candidates selected under Rule 5 and award marks on the basis of their performance in the interview. Sub-rule (1) of Rule 7 provides that the selecting authority shall on the basis of the aggregate of the percentage of the total marks secured in the qualifying examination as determined under Rule 5 and of the marks secured at the interview under Rule 6 and taking into consideration the orders in force relating to reservation of posts of Scheduled Castes, Scheduled Tribes, Backward Tribes and Other Backward Classes prepare in the order of merit list of candidates eligible for appointment to the cadre or post. Rule 8(1) provides that candidates whose names are included in the list published under sub-rule (1) of Rule 7 may be appointed by the appointing authority in the vacancies in the particular cadre or post in the order in which the names are found in the list after satisfying itself after such enquiry as may be considered necessary that each such candidate is suitable in all respects for appointment, to a post in the cadre.

6. As provided in Rule 5(3)(a) of the Selection Rules, qualifying examination means the examination or examinations prescribed as the minimum qualification required for appointment in the rules of recruitment to the cadre or post concerned. Where the qualifying examination consists of more than one examination, the selecting authority is required to make the selection on the basis of the aggregate of the percentage of the total marks secured by the candidate in all those examinations and the marks secured at the interview under Rule 6 of the Selection Rules. Where different qualifying examinations are prescribed alternatively and a candidate has passed more than one such examination, the percentage of the total marks obtained in the qualifying examination shall be the percentage of the total marks obtained in such qualifying examination in which he has obtained the highest percentage of total marks as provided under Rule 5(3)(c) of the Selection Rules.

7. In respect of some posts the rule making authority after prescribing the qualification for the posts has further prescribed certain qualifications as preferential or desirable qualifications. When that is done, proviso to Rule 5(1) of

the Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1973, comes into play which provides that the candidates possessing such qualifications shall also be eligible for interview irrespective of the marks obtained by them in the qualifying examination, subject to the condition that the number of such candidates eligible for interview shall not exceed 10 times the number of vacancies notified. Having regard to the scheme of the Selection Rules so far discussed, it is clear that the question as to whether a particular qualification is higher than the minimum qualification prescribed for a post is not at all relevant inasmuch as marks secured at such higher examination cannot be taken into consideration either for determining eligibility of the candidate for interview or for final selection for appointment".

The majority view expressed by the Court at paragraphs 8 and 9 of the judgment, on which strong reliance was placed by Sri Narayanaswamy, must be understood in the backdrop of the qualification prescribed under Rule 5 of the Rules for inviting candidates for interview. In that context, no doubt, the Court (majority view) has held that it is for the rule making authority to prescribe the qualification for a particular post and the duty of the Court is only to interpret the rule and not to add or substitute other qualification for those prescribed by the rule making authority; and it is for the rule making authority to pick and choose among the various qualifications that are available as to which of them should be prescribed as the qualification for the particular post. Therefore, in my view, the decision of the Full Bench of this Court in the case of N.C. Hugar, *supra*, relied upon by Sri Narayanaswamy is of no assistance to him to decide the question that has arisen for consideration in these petitions. On the other hand, in my view, the observations made by the Supreme Court in the case of Srinivasa Rao, *supra*, relied upon by the learned Counsel for the petitioners, would support the view I have taken above. In the said decision, the Supreme Court, while considering the case of two rival applicants for establishment of a Fair Price Shop in a village, has observed that the decision to prefer an uneducated person over an educated person amounts to allowing premium on ignorance, incompetence and consequently inefficiency. It is useful to refer to paragraph 6 of the judgment, which reads as hereunder:

"The decision to prefer an uneducated person over an educated person amounts to allowing premium on ignorance, incompetence and consequently inefficiency. The only fault of the appellant is to have pursued his studies beyond 10th class of his school. If he had discontinued his career as a student even earlier, say after passing 7th or 8th class, he would have been running the shop today. This clearly amounts to gross arbitrariness and, therefore, illegal discrimination. Pursuing this line the State will have to be going in search of a more inefficient person and we do not know where this process would end. If we assume that since a better qualified person has got a better chance to succeed in life, an intelligent applicant who can run the shop efficiently should be rejected and a dim witted fellow should be selected. This is an absurd situation".

The above observation of the Supreme Court makes it clear that the higher academic or educational qualification cannot be ignored. Therefore, as observed by me earlier, the decision of the Full Bench relied upon by Sri Narayanaswamy should not deter me from taking the view which I have expressed above. Possessing of higher qualification is an evidence of better suitability and efficiency. That being the position, Rule 7 of the Rules should not be construed to give its technical meaning that only such of those persons who have Bachelor Degree are only eligible for being considered for appointment to the post of Gazetted Probationers and those who have higher academic qualification than the Bachelor Degree, in the absence of Bachelor Degree, are not qualified for being considered to the said post. In the light of what is stated above, other decisions referred to by Sri Narayanaswamy, also have no bearing to the facts of the present case and are of any assistance to him to support his contentions.

10-A. In the light of the discussion made above, I make the following:

ORDER

(i) The word "Bachelor" appearing in Rule 7 of the Karnataka Recruitment of Gazetted Probationers (Appointment by Competitive Examinations) Rules, 1997, is ultra vires and void in law and, therefore, is struck down.

(ii) The endorsement issued to each of the petitioners notifying that they are not eligible to appear for the preliminary and main examination for the post of Gazetted Probationers Groups-A and B on the ground that they do not possess the Bachelor Degree qualification, is hereby quashed.

(iii) The Karnataka Public Service Commission is directed to announce the results of the main examination of such of those petitioners whose results have not yet been announced.

(iv) The Karnataka Public Service Commission is directed to consider the case of the petitioners for appointment to the post of Gazetted Probationers Groups-A and B on merits and in accordance with law and the Rules governing the selection.

11. In terms stated above, these petitions are allowed and disposed of. Rule issued is made absolute.

12. Sri K. Nagaraj, learned Additional Government Advocate, is permitted to file his memo of appearance within four weeks from today.