

(2022) 07 GUJ CK 0087

In the Gujarat High Court

Case No : R/Special Civil Application No. 12008, 12009, 12010 Of 2017

Ketankumar Shanabhai Kotwal & 1 Other(S)

APPELLANT

Vs

State Of Gujarat & 1 Other(S)

RESPONDENT

Date of Decision : 22-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 309

Superior Panchayat Service Recruitment Rules, 2014 — Rule 3, 3(b), 3(b)(i), 4, 10A, 10(a)(ii), 15, 16, 19

University Grants Commission Act, 1956 — Section 3

Gujarat Panchayats Act, 1961 — Section 203, 227, 274, 274(5), 323

National Council For Teacher Education Act, 1993 — Section 12(d)

Citation : (2022) 07 GUJ CK 0087

Hon'ble Judges : Bhargav D. Karia, J

Bench : Single Bench

Advocate : Gautam Joshi, Vyom H Shah, Meet Thakkar, Hs Munshaw, Kruti M Shah

Final Decision : Dismissed

Judgement

Bhargav D. Karia, J

1. In this group of three petitions, the petitioners have challenged the action of the respondent No.2-District Panchayat Service Selection Committee in deleting the name of the petitioners from the Select List and including the names of the candidates having educational qualification other than what is prescribed in para 3.1 of the advertisement which requires a candidate to possess either two or three years Diploma in Agriculture or Bachelor degree in Rural Studies.

2. As the facts in all these three petitions are similar, the same were heard analogously and are being disposed of by this common order. For the sake of convenience, facts are taken from Special Civil Application No. 12008 of 2017 treating it as a lead matter.

2.1 The petitioners are having the qualification of Bachelor in Rural Studies [for

short 'BRS'] from the recognized university.

2.2 The respondent No.2-District Panchayat Selection Committee issued advertisement inviting application for the post of Gram Sevak in November 2016. The advertisement prescribed the requisite qualification to be Diploma in Agriculture of either two or three years or Bachelor in Rural Studies.

2.3 The petitioners preferred online application pursuant to the said advertisement and petitioners thereafter appeared and cleared the written test and name of the petitioners appeared in the provisional list published by the respondent No.2.

2.4 It is the case of the petitioners that when the petitioners were called for the verification of documents, they were conveyed that the candidates having prescribed qualification as per Clause 3 of the advertisement were only the eligible candidates. However, when the select list was prepared by the respondent No.2, the names of the petitioners did not appear in the Select List but names of some other candidates who were not having the prescribed qualification of either two year or three year Diploma in Agriculture or BRS were included in the Select List. The petitioners, therefore, preferred these petitions challenging the action of the respondent No.2.

3. After issuance of the notice by this Court, the petitioners sought amendment to join respondent Nos. 3 and 4 who have been appointed on the post of Gram Sevak possessing the Degree of BSc [Agriculture] which according to the petitioners, is not a valid degree as per the Recruitment Rules and the advertisement issued. By order dated 07.02.2020, the draft amendment was granted joining the respondent Nos. 3 and 4 in the petitions.

4. It appears that Special Civil Application No. 12008 of 2017 was decided by this Court along with the other group of matters in which, the question as to whether the candidates from zone of consideration eligible for appointment of Gram Sevak can be eliminated on the ground that the Degree of BRS in subject of Home Science even though the relevant Rule prescribed the qualification to be the Degree of BRS without any further specification. The petitioners therefore preferred Misc. Civil Application No.1 of 2018 for review of the aforesaid judgement dated 23.02.2018 on the ground that the facts of the present petition was different and could not have been included in the group of petitions decided by the Court as the issue arising in this petition pertains only to the consideration of the petitioners as eligible candidates having degree in BRS. This Court [Coram: Hon'ble Mr. Justice N.V.Anjaria], by order dated 29.01.2019, allowed the Misc. Civil Application for review recalling the order dated 23.02.2018. Similar order was passed in Special Civil Application Nos. 12009 of 2017 and 12010 of 2017.

5. Heard learned Senior Advocate Mr. Gautam Joshi assisted by learned advocate Mr. Vyom Shah appearing for the petitioners in all the matters, learned advocate Mr. H.S.Munshaw for respondent No.2, learned advocate Ms. Kruti Shah for

respondent No.3 and learned advocate Mr. Mehul Sharad Shah for respondent No.3 in Special Civil Application No. 12010 of 2017, learned Assistant Government Pleader Mr. Meet Thakkar. Learned advocates for the respective parties concluded their arguments and the matters were kept for orders.

6. Learned Senior Advocate Mr. Joshi submitted that the petitioners are having requisite qualification of BRS as per the advertisement issued by respondent No.2 for the post of Gram Sevak. He invited the attention of the Court to the Clause No. (3.1) prescribing the educational qualification for the appointment of Gram Sevak which reads as under:

"A candidate shall possess-

(i) either two years or three years diploma in Agriculture or Bachelor in Rural studies obtained from any of the university established or incorporated by or under the central or state Act in India or any other educational institutions recognized as such or declared as Deemed university under section 3 of the University Grants Commission Act, 1956;

(ii) the basic knowledge of computer applications as prescribed in the Gujarat Civil Service Classification and Recruitment (General) Rules, 1967;

(iii) adequate knowledge of Gujarati or Hindi or both."

6.1 Referring to the aforesaid criteria for educational qualification, it was submitted that the candidates who have either two years or three years Diploma in Agriculture or Bachelor in Rural Studies degree obtained from any of the University are only considered to be eligible for the post of Gram Sevak.

6.2 Learned Senior Advocate Mr. Joshi thereafter referred to the provisional merit list published by the respondent No.2 and pointed out that the names of the petitioners are included in the said list. It was submitted that though the petitioners are eligible for appointment as Gram Sevak having qualification of BRS, could not have been denied to be considered for selection and on the other hand, names of some other candidates who did not possess two years or three years in Diploma in Agriculture or BRS were included in the final Select List and thereafter respondent Nos.3 and 4 are appointed as Gram Sevak which is arbitrary illegal and unauthorized contrary to the advertisement issued by respondent No.2 for purpose of employment of the recruitment of Gram Sevak. It was further submitted that the Select List prepared by the respondent No.2 is in operation for two years as per the Government Resolution dated 24.12.2008. Learned Senior Advocate Mr. Joshi also referred to the order dated 02.06.2017 passed by this Court in Special Application No. 7223 of 2017 and other allied matters directing the respondents to keep one post vacant for each petitioner for the recruitment of the Gram Sevak.

6.3 In support of his submissions, learned Senior Advocate Mr. Joshi referred to and relied upon the decision in case of Changalal Nareshkumar Laxminarayan vs. State of Gujarat [Special Civil Application No. 1780 of 2007] reported in 2016

SCC online GUJ 7167 wherein, this Court while considering the similar issue with regard to qualification of C.P.Ed [Certificate in Physical Education] held that the candidates having qualification of B.P.Ed [Bachelor of Physical Education], D.P.Ed [Diploma in Physical Education] could not have been appointed as they were not possessing the requisite qualification of C.P.Ed for the post in question. It was therefore submitted that the respondent No.2 also could not have appointed respondent Nos. 3 and 4 who are not having requisite qualification as prescribed in the advertisement.

6.4 Learned Senior Advocate Mr. Joshi also relied upon the decision of the Division Bench of this Court in case of Gujarat Public Service Commission vs. Dhanjibhai Savjibhai Maru and another reported in 2014 2 GLR 1218 wherein it is held that when the requirement of law in the Rules for recruitment is that the candidate must have actual degree and not an equivalent degree, he cannot claim right by getting equivalent degree and he should not be held to be holding eligible qualification.

6.5 Further reliance is based on the decision of Supreme Court in case of Prakash Chand Meena and ors vs. State of Rajasthan reported in 2015 (8) SCC 484 wherein upholding the view of the learned Single Judge it is held that the recruitment process must be completed as per the terms and conditions in the advertisement and as per the Rules existing when the recruitment process began. In the facts of the said case, it was held that the Division Bench could not have gone into examining the issue whether B.P.Ed and D.P.Ed qualification are equivalent or superior to C.P.Ed qualification when the advertisement prescribed the qualification for recruitment as per the Rules.

6.6 Reliance is also placed on the decision in case of Yogesh Kumar and others vs. Government of NCT Delhi and ors. reported in (2003) 3 SCC 548 wherein the Apex Court in the facts of the said case held that B.Ed qualification, although a well recognized qualification in the field of teaching and education- being not prescribed in the advertisement, only some of the B.Ed. candidates took a chance to apply for the post cannot be given entry in the field of selection. It was held that merely because primary teacher can also earn promotion to the post of teachers to teach higher classes and for which B.Ed is prescribed qualification, it cannot be held that B.Ed is higher qualification than Teacher Training Certificate.

7. Learned advocate Mr. H.S.Munshaw, on the other hand, submitted that the case of the petitioners was considered on merits and the grievance made by the petitioners that the persons who were selected and appointed as Gram Sevaks and not holding the qualification as per the advertisement is not true and correct as both the respondents Nos. 3 and 4 are holding higher qualification of BSc [Agriculture] and therefore, they are holding the qualification of more than a Diploma in Agriculture and hence, they are found eligible as Gram Sevak.

7.1 It was submitted that notification dated 30.12.2014 provides for Gram Sevak, Class- III in the Superior Panchayat Service Recruitment Rules, 2014 and

Rule 3(b) provides educational qualification which are same as published in the advertisement. It was further pointed out that the candidates, who are selected and appointed as Gram Sevaks, are found eligible taking into consideration their educational qualification and in all 52 posts were to be filled up as per the advertisement and first provisional list of 82 candidates was declared and thereafter additional provisional list of 94 candidates was also published and out of the said list, 46 candidates are issued appointment orders on the basis of their merits after considering the roster system keeping six posts vacant as the candidates were holding the qualification of University situated outside the State of Gujarat.

7.2 Learned advocate Mr. Munshaw relied upon the further affidavit filed on behalf of the respondent No.2 to point out from the statement annexed thereto indicating the names of the candidates who are selected and later appointed as Gram Sevak pursuant to the advertisement issued in the year 2016. It was further pointed out that the two persons against whom the petitioners have raised objection, notices have been issued by the District Agriculture Officer, Aravali District Panchayat against which two more persons have preferred petitions in the year 2021 being Special Civil Application Nos. 1217 of 2021 and 1213 of 2021 which are pending for adjudication.

7.3 It was further submitted by learned advocate Mr. Munshaw that the contention raised by the petitioners that candidates holding qualification of BRS and/or Diploma in Agriculture are only eligible for appointment in accordance with the Recruitment Rules of 2014 is baseless as the candidates having higher qualification cannot be debarred from competing for the post of Gram Sevak as contended by the petitioners. It was submitted that the candidates having higher qualification are always welcome in the interest of public at large. Reference was made to the statement annexed with the further affidavit filed by respondent No.2 to point out the details about the subjects qua the course of (I) BRS (II) Department of Agriculture and (III) BSc [Agriculture] to point out that the subjects studied by the student of different courses clearly shows that the student of BSc [Agriculture] studies as many as 69 subjects in four years whereas the student of Diploma in Agriculture studies only 16 subjects in two years and therefore, more qualified candidates are in a position of rendering better service to the public at large. In support of his submissions, learned advocate Mr. Munshaw relied upon the following decisions:

(I) Mohd. Riazul Usman Gani and Ors vs. District and Sessions Judge, Nagpur reported in 2000 (2) SCC 606 wherein the Hon'ble Supreme Court held that the 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 the recruitment is made. It was further held that the criteria which has effect of denying the candidate is to be considered for the post on the ground that he is having higher qualification than prescribed cannot be rational. The Supreme Court however with a rider that such rule has to be applied to the facts

of the said case and should not be taken to be a rule of universal application.

(ii) Reliance was placed on the decision of *Chaklesh Sarswat vs General Manager, U.P. State Road Transport* reported in 1995 (Suppl) 4 SCC 597 wherein the Hon'ble Supreme Court held that in the facts of the said case of compassionate appointment it is not proper for the Courts to compel the authority to appoint a person on particular post on the basis of possessing merely a minimum qualification and person with higher qualification can be considered for the post when it suggest that qualification for such appointment are broadly of commensurate with level of the candidates who further themselves for appointment and not merely the minimum qualification.

(iii) Reliance was also placed on the decision of *Life Insurance Corporation of India and vs Triveni Sharan Mishra* reported in (2014) 10 SCC 346 wherein relying on the decision of *Mohamad Riyaz Ul Usman Gani*(supra) it is held that in absence of certain maximum qualification in addition to possession of minimum qualification, a person with higher qualification can be considered eligible for appointment.

8. Learned advocates Mr. Mehul Sharad Shah and Ms. Kruti Shah for the respondent Nos. 3 and 4 in respective petitions, who are appointed as Gram Sevak pursuant to the advertisement issued by the respondent No.2, submitted that such persons are not at fault as they are considered eligible by the respondent No.2 as they were having higher qualification than that of two years or three years diploma course or BRS and as such, there is no irregularity in their appointment.

8.1 It was further submitted that as they are already appointed on the post of Gram Sevak irrespective of the outcome of the petitions, their appointment should not be disturbed as they are appointed in accordance with the Recruitment Rules of 2014 which do not prescribe for maximum qualification. It was submitted that the Rules only provide for minimum qualification and therefore, as the respondent Nos. 3 and 4 who are appointed having higher qualification cannot be considered as ineligible for the post of Gram Sevak. It was pointed out that the respondents Nos. 3 and 4 have studied more subjects in four years of Bachelor of Agricultural Science than that of the petitioners who are having qualification of BRS having only 12 subjects as pointed out by the respondent No.2 in the further affidavit.

9. Considering the submissions made by learned advocates, the short question which arises is, whether the persons having higher qualification could have been considered eligible for the post of Gram Sevak when the Recruitment Rules of 2014 as well as advertisement stipulates the requisite qualification.

10. The issue about interpretation of Rule 3 of the Recruitment Rules, 2014 as well as the advertisement issued by respondent No.2 came up for consideration before the learned Single Judge as well as the Division Bench of this Court with regard to question of interpretation of the degree of BRS with Home Science

subject. It would therefore be germane to refer to the decision of the Division Bench whereby the decision of the learned Single Judge was reversed in Letters Patent Appeal No. 349 of 2018 in Special Civil Application No. 11445 of 2017 and other allied matters to consider as to how Gujarat Panchayat Service came to be constituted and the way in which various amendments are made from time to time in the Statutory Rules.

"11. We have given our thoughtful consideration to above facts and submissions of learned counsel for the parties. This Court in the case of Rathodbhai J. Dungarbhai and Others v. State of Gujarat and Others reported in 1995 (1) GLH 180 had an occasion to deliberate on the issue as to how Gujarat Panchayat Services came to be constituted and the way in which it has undergone change as per amendment of statutory rules from time to time and it was observed as under:-

"8. The aforesaid is sought to be made good by reference to the history of formation of Panchayat Raj in the State of Gujarat from 1-4-1963 and as to how Gujarat Panchayat Services came to be constituted. Since reference to the history of the cadre is pressed into service by Mr. R. M. Chhaya, Ld. AGP and Mr. P. M. Raval, Ld. Addl. AG I shall now proceed to set out the history of cadre of Gram Sevak, and the way in which it has undergone sea-change on amendment of statutory rules, from time to time. Cadre of Gram Sevak, its Constitution & Reconstitution:

9. Initially, recruitment to the cadre of Gram Sevak was governed by the Gujarat Panchayat Services (Classification)& Recruitment) Rules, 1957 (hereinafter referred to as 'Rules of 1967"). The recruitment to the post of Gram Sevak was to be made by (i) nomination and (ii) by promotion Talati-cum-Gram Panchayat Mantris in the ratio of 2:1. In order to be eligible for appointment by nomination a candidate shall possess (a) vernacular final pass with diploma of an Agrl. school or Matriculation/SSC examination passed. It is also stipulated that preference shall be given to candidates having higher qualifications/experience in the field of social service, knowledge of agricultural practice, background of village life and working knowledge of local language will be considered as additional qualification. It was also stipulated that those candidates who are called for selection will have to appear for qualifying written test at their own expenses. Recruitment examination for the post of Gram Sevak shall be conducted by the Dist. Panchayat Services Selection Committee in accordance with rules framed by the State Govt. in that behalf.

10. It is required to be noted that at the initial stage there was a separate cadre of Agrl. Asstt. and recruitment rules for this cadre were prescribed. Under the Rules Agrl. Asstts. were categorised into Gr. I, II & III. Appointment to the post of Agrl. Asstt. Gr. III was to be made by direct recruitment from amongst the candidates who have successfully completed two years course in agriculture. Appointment to the post of Agrl. Asstt. Gr. I & II was to be made by promotion of persons from Gr. II & III respectively in order of seniority and merit.

11. In the year 1977-'78, Dr. Benor's scheme was sponsored by the World Bank for upliftment of agricultural produce in the State of Gujarat. In order to implement the scheme it was found necessary by the State Govt. that it should be implemented at the grassroot-level and tillers and farmers were required to be imparted knowledge of the said scheme. With this object in mind and for the best and expeditious implementation of Dr. Benor's scheme the State Govt. abolished common cadre of Gram Sevak and two separate cadres, namely, Gram Sevak (Multipurpose) and Gram Sevak (Training & Visit) were created. It is because of such creation of new cadres, new Recruitment Rules were required to be framed and the State Govt. vide its notification dated 15-2-80 inserted new Recruitment Rules known as "Gujarat Panchayat Services (Classification & Recruitment) (19th Amendment) Rules, 1980". Under the new Rules with effect from the date of publication of notification following two cadres of Gram Sevaks, i.e. (i) Gram Sevak (Multipurpose) and (ii) Gram Sevak (Training & Visit) are created. Under the said Rules, it is provided that appointment to the cadre of Gram Sevak (Training & Visit) shall be by nomination and by promotion in the ratio of 85:15. To be eligible for appointment by nomination a candidate should have at least passed vernacular final examination with a diploma of Agri. School conducted by the Agri. University. It is also stipulated that the candidates who are called for selection shall have to appear for qualifying written test at their own expenses. Appointment by promotion to the said post shall be made from out of Talati-cum-Panchayat Mantris who have at least passed the vernacular final examination and have experience of work at Talati-cum-Mantris in Gram or Nagar Panchayats at least for five years.

12. It is also required to be noted that on creation of new cadre of Gram Sevaks (Multipurpose) & (Training & Visit) under Rules of 1980, the Rules relating to recruitment examination for Gram Sevaks were required to be deleted and new Rules were required to be introduced. The State of Gujarat accordingly enacted Recruitment Examination Rules in the year 1982, and Notification dated 3-3-1982 was published. Accordingly, the Gram Sevak (Panchayat Service) Recruitment (Exam.) Rules, 1982 were framed. Under the Rules of 1982 it is inter alia provided that the Gujarat Panchayat Act, 1961 shall hold written examination for selecting candidates for recruitment to the post of Gram Sevak (Multipurpose) and Gram Sevak (Training & Visit) in the Panchayat Services. The Rules inter alia prescribed the syllabus for examination, fixation of date and place of examination, conduct of examination and declaration of result of examination. Rule 16 of the Rules also provides that there shall be oral interview for 10 marks from amongst candidates whose results have been declared under : Rule

15. The Committee is also required to assign marks for oral interview of candidates. The Committee is also expected under Rule 19 to prepare a select-list which shall cover up existing vacancies and future vacancies as notified by the District Panchayats. Rule

19 reads as under:

"19. Publication of result of selected candidates :- The Committee shall publish the select list on the notice Board of the District Panchayat. The select-list remain in force till the result of the next examination is published."

12. Other paragraphs of the above judgment as such are not relevant for the purpose of deciding this appeal since the subject matter of the writ petition was about validity of select list prepared under earlier Rules and effect of amendment of Rules on pending select list.

5th May 1988

Orders and notifications (other than those published in Part IV-B) under the Gujarat Local Boards, Village Panchayats, Municipal Boroughs, District Municipal, Primary Education and local Fund Audit Acts.

PANCHAYATS AND RURAL HOUSING

DEPARTMENT

NOTIFICATION Sachivalaya, Gandhinagar

5th May, 1988 Gujarat Panchayats Act, 1961.

No.KP/9/(88)/PRR/1083/14-KH1. - In exercise of the powers conferred by section 323 read with section 203 of the Gujarat Panchayats Act, 1961 (Guj.VI of 1962) and in suppression of all notifications issued in this behalf, the Government of Gujarat hereby makes the following rules further to amend to the Gujarat Panchayat Service (Classification and Recruitment) Rules, 1967, namely:-

1. These rules may be called the Gujarat Panchayat Service (Classification and Recruitment) Rules, 1988.

2. In the Gujarat Panchayat Service (Classification and Recruitment) Rules, 1967, in Schedule-IV.

(i) under the heading "Agriculture Branch (Executive)" entry 4 relating to '(Agricultural Assistants' and the rules made thereunder shall be deleted;

(ii) under the heading 'Revenue and Rural Development Branch,(Executive)' for entry "4 Gram Sevak" and the rules made thereunder, the following shall be substituted, namely:-

"4. Gram Sevak:-

(1) Appointment to the post of Gram Sevak shall be made by direct selection.

(2) To be eligible for appointment b y direct selection a candidate shall:-

(a) not be more than 30 years of age;

(b) have obtained Agriculture Diploma or obtained Rural Development Science Diploma from Krishishala of Gandhi Vidhyapith, Vedachhi or

(c) have successfully completed two years course in Agriculture at any Agricultural Schools under the Control of the Agriculture University of the Gujarat State; or

(d) possess a degree of Bachelor in Rural Studies (Agriculture) of the Saurashtra University; or

(e) be an Agricultural Snatak of the Saraswati Gram Vidhyapith, Samoda Ganawada, District Mehsana.

Explanation: Gram Sevak shall consist of the Gram Sevaak (Training and Visit), Gram Sevak Multipurpose) and Agriculture Assistant.”

By order and in the name of the Government of Gujarat.

S.H.SHAH

Deputy Secretary to Government.

Government Central Press,

Gandhinagar.

26.11.1992

Educational Qualification

(I) A Diploma in Agriculture obtained from the State Agriculture University or have successfully completed two years course in Agriculture at any school under the control of the Agriculture University of the Gujarat State; or

(ii) A degree in Rural Studies (Agriculture) obtained from the Saurashtra University; or

(iii) A bachelor degree or Diploma in Rural Studies of the institution recognized by the Government of Gujarat for the purpose of recruitment.

GRAM SEVAK (CLASS III) (PANCHAYAT SERVICE RECRUITMENT RULES, 1998

Notification

No.KP/96/98/PRR/1197/1811/9-9/D,Dt.19.

11.98, Published in G.G.G. Ext.Pt.1-A dated 19.11.98 P.84-1)

1. These rules may be called the Gram Sevak (Class III) (Panchayat Service) Recruitment Rules, 1998.

2. Appointment to the post of Gram Sevak (Class III) (Panchayat Service) shall be made by direct selection.

3. To be eligible for appointment by direct selection to the post mentioned in rule 2, a candidate shall,

a. not be less than 18 years and not more than 28 years of age,

b. possess:-

i. a Diploma in Agriculture obtained from the State Agricultural University or a Certificate of successfully completed two years course in Agriculture at any Agriculture School under the Control of the Agricultural University of the Gujarat State; or

c. have adequate knowledge of Gujarati and Hindi,

4. A selected candidate shall be on probation for a period of one year.

5. A selected candidate shall be required to undergo such training for such period and pass such post-training examination as may be prescribed by the Government.

6. A selected candidate shall be required to pass the departmental examination and an examination in Gujarat or Hindi or both as may be prescribed by the Government.

7. A selected candidate shall be required to furnish a security and surety bond in such form for such amount, and for such period as may be prescribed by the Government.

PART I-A

Orders and notifications (other than those published in Part IV-B) under the Gujarat Local Boards, Village

Panchayats, Municipal Boroughs, District Municipal, Primary Education and local Fund Audit Acts.

PANCHAYATS AND RURAL HOUSING DEPARTMENT NOTIFICATION Sachivalaya, Gandhinagar 13th August, 2010 GUJARAT PANCHAYAT ACT, 1993 No.KP/14-2010-PRR-102009-2839-PART-1-D

: - In exercise of the powers conferred by section 227 read with section 274 of the Gujarat Panchayats Act, 1993 (Guj.18 of 1993), the Government of Gujarat hereby makes the following rules further to amend the Gram Sevak

(Class-III) (Panchayat Service) Recruitment Rules, 1998, namely:-

(1) These rules may be called the Gram Sevak (ClassIII) (Panchayat Service) Recruitment (Amendment) Rules, 2010.

(2) In the Gram Sevak (Class-III) (Panchayat Service) Recruitment Rules, 1998, (hereinafter referred to as "the said rules") in rule 3, in clause

(b), after sub-clause (I) the following new sub-clause shall be inserted namely:-

"(ii) a degree in Rural Studies obtained from any of the Universities established or incorporated by or under the Central or State Act in India; or any other educational institution recognized as such or declared as deemed University

under section 3 of the University Grants Commission Act, 1956 or possess an equivalent qualification recognized by the Government.”

(3) In the said rules, after rule 4, the following shall be inserted, namely:-

“4A. The candidate appointed by direct selection shall, during his probation period be required to undergo pre-service training and to pass the post training examination in accordance with the rules as may be prescribed by the Government.”

By order and in the name of the Governor of Gujarat C.S.RAJPAL,

Deputy Secretary to Government.

PART I-A

Orders and notifications (other than those published in Part IV-B) under the Gujarat Local Boards, Village

Panchayats, Municipal Boroughs, District Municipal, Primary Education and local Fund Audit Acts.

PANCHAYATS AND RURAL HOUSING DEPARTMENT NOTIFICATION Sachivalaya, Gandhinagar 30th December, 2014 GUJARAT PANCHAYAT ACT, 1993

No.KP/116 of 2014/PRR/102013/1864/KH:- In exercise of the powers conferred by section 227 read with sub-section (5) of section 274 of the Gujarat Panchayats Act, 1993 (Guj.18 of 1993) and in supersession of all the rules made in this behalf, the Government of Gujarat hereby makes the following rules to provide for regulating the recruitment to the post of Gram Sevak, Class-III, in the Superior Panchayat Service, namely:-

1. These rules may be called the Gram Sevak, Class III, in the Superior Panchayat Service Recruitment Rules, 2014.
2. Appointment to the post of Gram Sevak, Class III, in the Superior Panchayat Service shall be made by direct selection.
3. To be eligible for appointment by direct selection to the post mentioned in rule-2, a candidate shall-

(a) not be less than 18 years and not be more than 30 years of age:

Provided that the upper age limit may be relaxed in favour of a candidate who is already in the Gujarat Panchayat Service in accordance with the provisions of the Gujarat Panchayat Services Classification and Recruitment (General) Rules, 1998:

Provided further that the upper age limit may also be relaxed in favour of a candidate who is already in the service of the Government of Gujarat in accordance with the provisions of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967;

(b) possess-

(i) either two years or three year Diploma in Agriculture or Bachelor in Rural Studies obtained from any of the

Universities established or incorporated by or under the Central or State Act in India or any other educational institutions recognized as such or declared as Deemed University under section 3 of the University Grants Commission Act, 1956;

(ii) the basic knowledge of computer application as prescribed in the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967; and

(iii) adequate knowledge of Gujarat or Hindi or both.

4. Notwithstanding anything contained in any rules, a candidate selected by direct recruitment under rule 3 shall be appointed on contractual basis for a period of five years on such terms and conditions as prescribed by the Government Resolution, Panhayats, Rural Housing and Rural Development Department Resolution No.KP-12-201 - PPR - 102010-2530-D, Dated 15-06-2011.

5. A candidate appointed under rule 4 shall be given the prescribed pay scale of the post of Gram Sevak, Class III after completion of contractual period on his performance being found satisfactory during the stipulated period of service on contract basis.

6. A candidate appointed in accordance with rule 4 shall, during the stipulated period of service on contractual basis, be required to pass the ccc examination for computer knowledge in accordance with the provisions of the Gujarat Civil Services Computer Competency Training and Examination Rules, 2006.

7. A candidate appointed in accordance with rule 4 shall, during the stipulated period of service on contractual basis, be required to undergo pre-service training and pass the posttraining examination in accordance with the rules as may be prescribed by the Government.

8. A candidate appointed by direct selection shall required to pass an examination in Hindi or Gujarati or both in accordance with the rules prescribed by the Government.

9. A candidate appointed by direct selection shall have to undergo such training and to pass such examination as may be prescribed by the Government.

10. A candidate appointed by direct selection shall be required to furnish a security and surety bond in such form, for such amount and for such period as may be prescribed by the Government.

By order and in the name of the Governor of Gujarat,

I.M.SHAIKH,

Joint Secretary to Government.

13. The above rules reveal framing of recruitment Rules for Gram Sevak from time to time and it is to be noted that the post is 'Gram Sevak' and has to perform duties in rural areas and is exclusively not restricted to agriculture or likewise activities. From 1982 onwards requirement of Diploma in Agriculture from a recognized University has remained consistent while alternative educational qualification viz. a Degree in Rural Studies (Agriculture) from Saurashtra University or a Bachelor Degree or Diploma in Rural Studies of an institution recognized by the Government of Gujarat was subject to necessary changes.

14. Thereafter, vide notification dated 13.8.2010 amendment was carried out in the Recruitment Rules of 1998 by adding sub-clause in Rule 3 (b) after sub-clause (i), whereby a degree in Rural Studies obtained from any of the Universities established or incorporated by or under Central or State Act in India or any other educational institutions recognized as such or declared as deemed University under Section 3 of the University Grants Commission Act, 1956 or any equivalent qualification recognized by the Government came to be added. Here also no specific requirement of a degree in Rural Studies with specialization in Agriculture was required. So far as Notification dated 30.12.2014 is concerned for which the recruitment is undertaken and form part of all these appeals, two years of three years Diploma in Agriculture has remained as one of the educational qualifications but alternatively Bachelor in Rural Studies without any suffix viz. specific requirement of Agriculture as the main or primary subject is not appearing in the Rules. Thus, it is clear that nowhere Recruitment Rules for the post of 'Gram Sevak' of 2014 as a whole mandate qualification of Bachelor of Rural Studies exclusively for the subject of agriculture.

15. The above position of law is to be examined in the context of the Government of Gujarat Resolution dated 10.11.2000 (page 256 in LPA 350 of 2018) whereby it is resolved to chart out a job chart for Gram Sevaks. The preamble of the resolution suggested that in the year 1952 a cadre of Gram Sevaks was constituted in the administrative setup as a result of consolidated development programme at the village level. According to the resolution, the Gram Sevaks had to carry out various duties in connection with agricultural production and various other activities connected thereto. The preamble further suggested that by virtue of the resolution dated 05.05.1988, the cadres of Gram Sevak (multipurpose), Gram Sevak (training and visit) and Agriculture Assistant (Panchayat) were consolidated and made into one cadre namely that of "Gram Sevaks". In view of such consolidation of cadres into one, it was necessary, according to the resolution to reconstitute the job chart.

(A) It was therefore resolved by the resolution under reference that the consolidated cadre of Gram Sevaks would be placed under the Taluka Development Officer. It was further resolved that a job chart will be so prepared in consultation with the Development Commissioner, and the Director of

Agriculture. The District Development Officer shall reassess the nature of work of Gram Sevaks. In such reassessment, the number of agriculturist, the group of such rural development groups shall be considered. The Gram Sevaks would also have to carry out work relating to agriculture, bagayat, rural development and duties concerned with panchayat and other government departments. The job chart was therefore listed with this resolution.

In brief, there were about 20 such nature of duties which read as under:

Giving advice on scientific advancements in the field of agriculture and co-ordinating between the agricultural officers and the farmers so as to see that complete information reaches the farmer.

To visit the village and be in contact with agriculturists group and hold sabhas and disseminate information in the context of agricultural related technology.

To maintain registers.

To co-ordinate with the District Rural Development Agencies to ameliorate the conditions of families in the village who are below poverty line.

In accordance with the instructions of the District and Taluka Development Officers, to create sources of income for beneficiaries of various schemes.

Make a concerted effort to see that the rural mass is uplifted above the poverty line. To maintain contact with village folk especially of the lower caste and down trodden.

The Taluka Development Officer could also assign duties in context of implementation of development schemes for the economic upliftment of adivasis / scheduled caste – scheduled tribes classes.

The Gram Sevak shall also be responsible for implementation of the National Rural Employment Schemes.

He shall also carry out such duties as are necessary and entrusted by the Taluka Development Officer.

(B) Another Resolution dated 25.01.2006 was framed by the State and in supersession of resolution of 10.11.2000, it was resolved that:

The total number of vacant posts would be entrusted under the control of Rural Development Department and the Panchayat and Rural Development Department shall frame a job chart. The resolution further stated that the Gram Sevaks apart from carrying out duties under the Rural Development and Krishi Mahotsavs shall also carry out work related to E-Gram Yojnas.

The job chart enlisted with the resolution at Schedule-1 was more or less similar to the one of the resolution of 10.11.2000, however, the title to such schedule stated that the job chart pertained to Gram Sevaks (Training and Visit) and Gram Sevak (multipurpose)

16. Learned Single Judge has emphasized on study of subject of Agriculture and other relevant subjects as better qualification but at the same time neither the decision in the case of Rajbirsing Dalal (supra), nor Chaudhary Kuldeep Prvainkumar (supra) would apply in the facts of this case. That in none of the decisions requirement of Recruitment Rule was specific. Besides, the appellants in this group of appeals have studied Bachelor of Rural Studies from a recognized institution and also passed out written examination and their names were placed in provisional merit list, we are of the view that no further scrutiny was permitted at the stage of preparing final select list based on study of various subjects while obtaining Degree of Bachelor of Rural Studies. Even otherwise, the appellants having degree in BRS either from Home Science or any other branch contain various subjects of studies of rural life including principles of Economy, economics and Management terms, Rural Economics and Cooperation, Home Management, Food Nutrition and child development which are basic subjects for upliftment of the rural masses. So far as duty chart is concerned, the very subject containing 35 marks in the written examination, in which the appellants have successfully passed and also to undergo training, therefore, when all the appellants in this group of appeals possess requisite qualification under the Recruitment Rules of 2014, their names ought not to have been deleted from the provisional merit list by preferring candidates, who passed out Bachelor of Rural Studies either in Animal Husbandry or Dairy Science. Such exercise was not permissible at the stage of second scrutiny which was only meant to verify genuineness of various certificates and documents.

17. The first group of appeals filed by the appellants viz. Letters Patent Appeal No.349 to 360 and 362 of 2018 and candidates having Bachelor Degree in Rural Studies irrespective of any specialization, in the facts of this case, simply BRS or BRS with Home Science and Management cannot be given discriminatory treatment since they possess requisite educational qualification for recruitment to the post of Gram Sevak under Rule 3 (b) (i) of Rules 2014, since rule framing authority has taken a conscious decision to do away with the requirement of 'agriculture' as specialization in the Degree of Bachelor of Rural Studies. Besides, all the candidates were enlisted in provisional merit list and after clearing written examination which contained 35 marks for subject of Agriculture out of total 100 marks and even duty chart is perused it is not pertaining to agriculture only but overall function to be discharged by Gram Sevak for betterment of rural masses. That subjects like child and female nutrition, agricultural economics, home science management, food nutrition, child development, health and sanitation etc. cannot be said to be not relevant as against preference given to those candidates having Degree of Bachelor of Rural Studies with Dairy and Animal Husbandry only.

17.1 Therefore, classification is held to be rational by learned Single Judge deserve to be interfered with in all these appeals filed by the candidates having Degree in BRS. Accordingly, Letters Patent Appeal Nos.349 to 360 and 362 of 2018 are allowed. To the extent, as above, order passed by learned Single Judge

impugned in this group of appeals viz. Letters Patent Appeal No.349 to 360 and 362 of 2018 is quashed and set aside. The respondents are directed to enlist successful candidates of this group, whose names have appeared in the provisional merit list for further process and based on individual merit shall be placed in the final select list, if they fulfill other requirements under the Rules and to be considered for appointment for the post of Gram Sevak.”

11. In view of the above, now the question which requires to be considered in these three petitions is whether the person with higher educational qualification of Bachelor’s Degree in Agricultural Science can be considered to be eligible for appointment of Gram Sevak or not.

12. The Hon’ble Supreme Court in case of Prakash Chand Meena and ors vs. State of Rajasthan and ors (supra) had the occasion to consider as to whether the recruitment is to be completed as per the terms and conditions in the advertisement and the Recruitment Rules as existing when the recruitment process began or not together with should the candidates with the qualification other than what is prescribed in the advertisement be considered to be eligible or not. In this context, the Apex Court held as under:

“9. 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 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 B.P.Ed. and D.P.Ed. qualifications are equivalent or superior to C.P.Ed. 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 C.A.@S.L.P.(C)Nos.22345-22346/13

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 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 C.P.Ed. 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.

10. The candidates who were aware of the advertisement and did not have the qualification of C.P.Ed. 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 C.P.Ed. 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 recognized as such in the recruitment rules or Government order existing on or before the initiation of recruitment process. In the C.A.@S.L.P.(C)Nos.22345-22346/13 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 the equivalent qualifications were reflected in the recruitment rules or Government Orders of the relevant time.”

13.The Division Bench of this Court in case of Gujarat Public Service Commission vs. Dhanjibhai Savjibhai Maru (supra) has held as under:

“7. It appears that the word ‘equivalent’ is not mentioned in subrule (b), and, therefore, the requirement of the aforesaid provision is that a candidate must have a Bachelor’s degree in Arts, Science, Commerce, Agriculture or Law of a statutory Indian or foreign University, and thus, there is no scope of having any equivalent degree. We do not, for a moment, dispute that B.R.S. degree may be equivalent to a Bachelor’s degree in Arts, but that is for a limited purpose as prescribed in the notification or circular indicated therein. When the requirement of law in sub-rule (b) is that a candidate must have actual degree, and not an equivalent degree as prescribed in sub-rule (c), he cannot claim that by getting an equivalent degree, he should be held to be holding eligible qualification under sub-rule (b).

8. We have already pointed that the requirement of sub-rule (c) is B.T./B.Ed. or an equivalent Degree or Diploma of a recognized University but for sub-rule (b), equivalent degree is not the requirement.

9. So far as the case of Dhanjibhai Savjibhai Maru is concerned, though he has obtained a Master of Arts Degree, the same is not from a ‘statutory Indian or foreign University’ but is given by Gujarat Vidyapith, which is a recognized College under the University Grants Commission. Therefore, the said M.A. Degree cannot be taken into consideration, the same not being a degree conferred by a statutory Indian or foreign university but by a college recognized by the University Grant Commission. The position would have been different if the said petitioner had M.A. Degree given by any statutory Indian or foreign University.”

14.This Court in case of Changla Nareshkumar Laxminarayan vs. State of Gujarat and ors (Supra) while considering the degree of C.P.Ed equivalent to B.P.Ed and D.P.Ed which requires completion of graduation as compared to two years course of C.P.Ed after Standard 12 has held after considering the decision relied upon by the respondent No.2 as under:

“27. At this stage, let me look into the decision of the Supreme Court in the case

of Yogesh Kumar and others v. Government of NCT, Delhi and others [2003 (3) SCC 548]. In this case, the candidates with the B.P.Ed. degree sought recruitment to the posts of the Assistant Teachers in the Primary Schools of the Municipal Corporation, Delhi. The Division Bench of the Delhi High Court, by its judgment in the public interest petition and the original petition filed by the B.P.Ed. Candidates, dismissed the claim of the B.P.Ed. candidates for appointments to the posts of the Primary Teachers. In such circumstances, the candidates holding the B.P.Ed. degree came before the Supreme Court. The Supreme Court, while dismissing the appeals, observed as under:

"4 The second contention advanced is that BEd qualification should be treated as higher qualification than TTC because primary teachers recruited on TTC qualification can get promotion as teachers to teach higher classes and BEd is the prescribed qualification for higher classes.

5 The division bench of the Delhi High Court in the impugned judgment has dealt with the above two arguments in great detail. In our considered opinion it has rightly come to the conclusion that B.Ed. qualification, although a well recognised qualification in the field of teaching and education being not prescribed in the advertisement, only some of the B.Ed. candidates who took a chance to apply for the post cannot be given entry in the field of selection. We also find that the High Court rightly came to the conclusion that teacher training imparted to teachers for B.Ed. course equips them for teaching higher classes. A specialized training given to teachers for teaching small children at primary level cannot be compared with training given for awarding B.Ed. degree. Merely because primary teachers can also earn promotion to the post of teachers to teach higher classes and for which B.Ed. is the prescribed qualification, it cannot be held that B.Ed. is a higher qualification than TTC. Looking to the different nature of TTC qualification the High court rightly held that it is not comparable with B.Ed. Degree qualification and latter cannot be treated as higher qualification to the former.

6 Lastly, learned counsel for the appellants urged that undisputedly for the last several years for recruitment of primary teachers in Municipal Corporation Schools, with B.Ed. degree were considered and appointed. This long standing practice should be taken as aid to construe the terms of the advertisement and particularly clause B(ii) on which reliance is placed by B.Ed. candidates to consider them eligible.

7 In support of the above contention learned counsel placed reliance on the decision of this Court in N. Suresh Nathan vs. Union of India [1992 Suppl. (1) SCC 584].

8 This last not argument advanced also does impress us at all. Recruitment to Public Services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the Rules allows entry to ineligible persons and deprives many others who could have competed

for the post. Merely because in the past some deviation and departure was made in considering the B.Ed. candidates and we are told that was so done because of the paucity of TTC candidates, we cannot allow a patent illegality to continue. The recruitment authorities were well aware that candidates with qualification of TTC and B.Ed. Are available yet they chose to restrict entry for appointment only to TTC pass candidates. It is open to the recruiting authorities to evolve a policy of recruitment and to decide the source from which the recruitment is to be made. So far as B.Ed. qualification is concerned, in the connected appeals [CA No. 172628 of 2001] arising from Kerala which are heard with this appeal, we have already taken the view that B.Ed. qualification cannot be treated as a qualification higher than TTC because the natures of training imparted for grant of certificate and degree are totally different and between them there is no parity whatsoever. It is projected before us that presently more candidates available for recruitment to primary school are from B.Ed. category and very few from TTC category. Whether for the aforesaid reasons, 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. In our view, the division bench of the Delhi High Court was fully justified in coming to the conclusion that B.Ed. candidates were rightly excluded by the authorities from selection and appointment as primary teachers. We make it clear that we are not called upon to express any opinion on any B.Ed. candidates appointed as primary teachers pursuant to advertisements in the past and our decision is confined only to the advertisement which was under challenge before the High Court and in this appeal.”

28. A Division Bench of the Rajasthan High Court in the case of Dinesh Kumar Panvar and others v. Suresh Chand and others [Civil Special Appeal (Writ) No.1181 of 2012 decided on 1st July 2013] had an occasion to consider almost an identical issue like the case in hand. In paragraph 14 of its judgment, the Division Bench noted the contentions raised by the learned counsel appearing for the NCTE. In paragraph 14, the Court observed as under:

“[14] Shri Santanu Sharma, learned counsel appearing for the NCTE, argued that issuance of advertisement for recruitment and undertaking recruitment for appointment to the post of PTI Gr. II and PTI Gr. III, lies within the domain and sphere of respective States. The NCTE is the central statutory body, which has been established by enactment of the Parliament viz., the NCTE Act, 1993. The object and purpose for establishment of the NCTE is to ensure planned and coordinate development of teacher education system throughout the country. The NCTE lays down the norms and standards in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognized institutions. In exercise of powers conferred under Section 32(2)(d)(i) read with Section 12(d) of the NCTE Act, 1993, the NCTE has made the Regulations of 2001, which are applicable for recruitment of teachers in all formal schools established, run, aided or recognized by the Central or State Government. Second Schedule of the Regulations of 2001 provides for

recruitment, qualifications of teachers of Physical Education in educational institutions wherein for teaching at elementary level a candidate is required to possess Senior Secondary School Certificate or Intermediate or its equivalent and Certificate in Physical Education of a duration of not less than two years or its equivalent. However, Graduation with Bachelor of Physical Education or its equivalent has prescribed as the eligibility qualification for teaching at Secondary/ High School level. Learned counsel relying on the judgment of the Supreme Court in *Yogesh Kumar v. Government of NCT Delhi* [2003 3 SCC 548], argued that the Supreme Court in Para 5 thereof has clearly held that a teacher training qualification (B.Ed. therein) meant to teach higher classes, cannot be construed to mean that such a qualification is comparable to or is higher than the teacher training qualification meant to teach lower level of classes i.e. TTE therein. It was therefore argued that both the courses i.e. C.P. Ed. and B.P. Ed. are distinct and separate physical education courses and that the impugned judgment passed by learned Single Judge is just and proper and does not suffer from any infirmity."

29. In para 16, the Court framed seven questions that emerged for its consideration. One of those or rather the very first question is as under:

"(1) Whether the appellants can be treated eligible for appointment on the post of PTI Gr.III on the analogy that the qualification of B.P. Ed./D.P. Ed. held by them, being a higher qualification, is equivalent to C.P. Ed?

30. The aforementioned first question was answered by the Division Bench as under:

"[17] On the first question posed above, whether the appellants can be treated eligible for appointment to the post of PTI Gr.II and PTI Gr.III merely on the analogy that the qualification of B.P. Ed. and D.P. Ed. possessed by them is higher qualification, a Larger Bench decision of Punjab and Haryana High Court has been cited before us in which an identical question, whether a candidate possessing higher qualification than the one prescribed and advertised for appointment to the posts, is eligible for such selection/appointment, was examined. The dispute was about the appointment on the post of Physical Training Instructor, wherefore the notification required Ed.) of a duration of not less than two years or its equivalent. Subsequently, a corrigendum dated 24.10.2006 was issued to even allow candidates having Certificate in Physical Education courses of one year duration after Senior Secondary School Certificate or Intermediate or its equivalent, however, with a rider that this may not be available after 2007 because the Educational Institutions are duty bound as per the NCTE Regulations to commence the two years course from 2005. Since divergent opinions were expressed by two Division Benches of that High Court, the matter was referred to the Larger Bench. The curriculum prescribed for C.P. Ed., B.P. Ed. and D.P. Ed. by various Universities in the State of Punjab and the State of Haryana, were produced before the Court, on a comparative study of which it was concluded by the Court that most of the subjects included in the curriculum of C.P. Ed. of two years duration, are also part of four years course of B.P. Ed., though with different nomenclatures, distinctively or conjunctively.

But, there of no commonality of curriculum some of the course The of various Universities. Advertisement that was subsequently issued, permitted the candidates having C.P. Ed. qualification or the qualification equivalent thereto; for appointment. It was therefore held that curriculum of B.P. Ed. or other higher courses, if included almost all the components of curriculum of C.P. Ed., that Degree should not be construed to be totally different and distinct qualification. The Larger Bench approved the judgment of the first Division Bench in *Multan & Ors. v. State of Haryana & Anrs.*, [2004 (4) SCT

45], of Punjab and Haryana high Court, which found that almost all components of C.P. Ed. course of one year or two years duration are taught in B.P. Ed. Course in all the Universities in the States of Punjab and Haryana, and it was therefore held that the candidates possessing higher qualification than prescribed, cannot be denied right to consideration for selection. The Larger Bench in holding so, relied on the judgment of the Supreme Court in *Mohd. Raizul Usman Gani & Ors. v. District & Sessions Judge, Nagpur*, [2000 (2) SCC 606], wherein it was held that a candidate possessing higher qualification than 8th standard prescribed for the post of Peon, would not be thereby rendered ineligible.

[18] In the present case, the Government in its letter dated 06.01.2010 have, in response to letter of the RPSC dated 13.10.2009, clarified on. The following three aspects, (1) that since C.P. Ed. certificate is awarded after 12th standard examination, the higher qualification of D.P. Ed. Should be considered eligible for PTI Gr.II and PTI Gr.III,

(2) that apart from D.P. Ed., candidates possessing B.P. Ed., should also be on that analogy treated eligible for appointment on the post of PTI Gr.III; (3) Since the B.P.E. has not been approved by NCTE, those possessing this qualification should not be considered eligible for appointment either on the post of PTI Gr.II or PTI Gr.III.

[19] Appellants in Special Appeal No. 1181/2012, have produced markssheets and Degrees as also the syllabus of Three Years B.P. Ed. Course of Nagpur University giving details of subjects taught, and training given in First Year, Second Year and of Final Year thereof. In some the writ petitions, out of the originally decided bunch, petitioners have also placed on record the marksheets issued by Mohan Lal Sukhadia University, Udaipur, indicating the same subjects covered in the aforesaid syllabus though with variation of years. The appellants have also produced number of marksheets issued to the candidates possessing the qualification of C.P. Ed., according to which subjects of: 1. Education Theories of Psychology & History of Physical Education, 2. Organization of Physical Education & Methods, 3. Human Anatomy/Physical Health Education, Safety Education, Balance Diet and First Aid, and 4. Guidance and Coaching, are taught therein. The syllabus of B.P. Ed. Course of Nagpur University, which is a graduation degree of the duration of three years, indicates that therein all subjects of C.P. Ed. are apparently covered, as would be evident from the following comparative table:

[20] A similar comparison of the curriculum in the syllabus of the two qualifications of the C.P. Ed. of duration of two years vis vis the B.P. Ed. of duration of four years and D.P. Ed. Of duration of one year, was made by the Punjab & Haryana High Court in Manjit Singh v. State of Punjab & Ors., CWP No. 451/2008, decided vide judgment dated 05.02.2010, which is reproduced hereunder:

Punjab University

[21] The Larger Bench of the Punjab and Haryana High Court, on the basis of aforesaid comparison made the following observations:

"From the above, it appears that Punjab University has prescribed C.P. Ed. two years course, B.P. Ed/D.P. Ed. one year course and B.P.E or B.P. Ed 4 years course. From the comparative study of these Courses, it is evident that disciplines like "Recreation", "Yoga", "Health Education" and "Sports Psychology" form part of curriculum of C.P. Ed. 2 years course. Most of these subjects are also part of B.P. Ed/D.P. Ed. one year course or B.P.E. or B.P. Ed. Four years course, though under different nomenclature distinctively or conjunctively. For example, under B.P. Ed/D.P. Ed. one year course, instead of "Recreation" it is "Philosophy as & Administration of Recreation" also "Officiating in Games and Track & Field". Similarly, Health Education and Sports Psychology is part of curriculum of all the courses. Yoga is not specifically mentioned in B.P. Ed/D.P. Ed. one year course, though it is also part of the B.P.E/B.P. is Ed. four years course. It noticed that "Recreation and Yoga" are common in Nagpur in University, Kurukshetra University B.P. Ed. course. It is relevant to notice that C.P. Ed. one year course and two years course prescribed by Kurukshetra University do not provide "Recreation" as one of the components of curriculum, though it is prescribed in B.P. Ed. One year course which is a post Graduation course in the same University. In Guru Nanak Dev University, B.P. Ed. Includes Recreation and Yoga" so and so on. Mr. Khosla has laid much stress on "Recreation" as part of C.P. Ed. course. However, it is found that it is not uniformly adopted in the curriculum of C.P. Ed. by all the Universities in the States of Punjab and Haryana. At the same time, it are appears that part these courses not only of C.P. Ed. curriculum but of higher\ courses as well may be under different nomenclature or in a different form in some universities. One thing is apparent, there is no commonality of curriculum of same course in various Universities. Since the qualification prescribed under be the advertisements/rules can acquired from any of the recognized Universities/ Institutions, curriculum of not Universities cannot and should be the sole basis for determining the eligibility of the candidates. It has to be on the broader spectrum of the curriculum, may be with few additions/omissions not impeding with the over all profile of the course."

[22] In the concluding part, the Larger Bench, while considering the argument based on the judgment of the Supreme Courtin Yogesh Kumar, supra, on the question whether the B.Ed. is a higher qualification than the T.T.C., held as under:

"Arguing on the same line Mr. Khosla has strenuously argued that the persons possessing any qualification other than C.P. Ed. are not eligible. With a view to appreciate the applicability of the aforesaid judgment, it is deemed appropriate to examine the rule position as prescribed under 1955 rules for the post of P.T.I. From the rule noticed in earlier part of this judgment, it appears that educational qualification like metric or 10+2 is not prescribed therein. Though in the advertisement, Senior Secondary Certificate or Intermediate or its equivalent basic qualification is an essential component for the post. Similarly, for professional qualifications, certificate in Physical Education C.P. Ed. of a duration of not less than two years or its equivalent is prescribed. However, by virtue of the corrigendum dated 24.10.2006, even a candidate with one year duration course of C.P. Ed. is made eligible for recruitment in question. Similarly, in the rule, no equivalent qualification of C.P. Ed. is referred to, though in the advertisement C.P. Ed. or its equivalent qualification is also recognized as professional qualification. It cannot be ignored that the qualification prescribed under the rule and the advertisement is always the minimum qualification. It is not for us to identify any course which can be termed as equivalent to C.P. Ed. course. At the same time, the curriculum of B.P. Ed. and other higher courses, if include almost all the components of curriculum of C.P. Ed. should not be construed to be a totally different and distinct qualification. In the case of Multan, a Division Bench of this Court has clearly observed that D.P. Ed., B.P. Ed. and M.P. Ed. are higher qualifications in the same line. From the curriculum of courses like C.P. Ed., B.P. Ed., D.P. Ed., it is found that almost all components of C.P. Ed. Course of one year or two years are taught in D.P. Ed. course in almost all the Universities in the States of Punjab and Haryana. In sum and substance, the controversy revolves around the curriculum of two types of courses, one prescribed in the advertisement i.e. C.P. Ed. and higher courses acquired by the petitioners. On facts, we are of the considered opinion that the curriculum of B.P. Ed., B.P.E, D.P. Ed. includes the curriculum prescribed for C.P. Ed. in major universities in the States of Punjab and Haryana. Higher qualifications being in the same subject and line cannot be ignored and candidates possessing higher qualification cannot be denied consideration for selection."

[23] Adverting now to the provisions of relevant recruitment Rules in the case in hand, Entry 3 of Section B of the Schedule appended to the Rules of 1971, while prescribing Senior Secondary/Secondary as the basic eligibility qualification, requires only Certificate of Physical Education, for appointment on the post of PTI at the level elementary education. Regulations of 2001 however prescribes the Certificate of Physical Education of the duration of two years and has also permitted to treat the candidates eligible, who possessed the qualification equivalent thereto. The equivalence cannot therefore be judged only from the perspective of qualification of exactly same duration and having the same syllabus and curriculum. It has to be also kept in view that the writ petitioners, who are resisting the claim of the appellants for appointment on the post of PTI Gr. III, are those, who possess the Certificate of Physical Education of the

duration of only one year. Training and education in the subjects that was given/ imparted to them, was also given/imparted to the appellants, who hold the Degree of B.P. Ed. However, when we compare the subjects taught in the B.P. Ed. Of three years duration, the subjects mentioned in its syllabus/ curriculum on the basis of which the appellants claim eligibility and those of C.P. Ed. of two years duration from Punjab University (there being no such course in the State of Rajasthan), referred to in the Larger Bench judgment of the Punjab and Haryana High Court, we find that the subjects are almost same and substantially cover the syllabus/ curriculum of the former. Those subjects are (1) History of Physical Education, (2) Anatomy & Physiology, (3) Education and Sports Psychology, (4) Methods of Physical Education and Sports, (5) Officiating & Coaching, (6) Principles of Physical Education, (7) Kinesiology, Exercise Physiology & Fitness, (8) Health Education & Safety Education and (9) Recreation & Yoga. In the syllabus of B.P. Ed. of three years duration, reference to which has already been made above, all these subjects are covered with almost the same names. The comparative table that has been extracted above, clearly shows that the first subject "Education Theories of Psychology & History of Physical Education" is taught in much expanded form in the first year as well as second year of the Degree Course of B.P. Ed. The subject "Organization of Physical Education & Methods" is also taught in the Degree course of B.P. Ed. in much more diversified manner in Second and Final Year of B.P. Ed. Similarly, subject of "Human Anatomy" which is taught as subject in C.P. Ed. is taught in first year of B.P. Ed. as subject known as "Anatomy and Physiology". The subject "Physical Health Education, Safety Education, Balanced Diet and First Aid" taught in C.P. Ed., is also included in B.P. Ed. as subject of "Health Education & Remedial & Corrective Physical Education" in the Final year, and then is the subject "Educational Psychology and Counselling and Guidance". Subject "Balance Diet and First Aid" in the C.P. Ed. Course is also taught in the First Year of B.P. Ed. as and the subject "Health, Hygiene Sanitation".

Subject "Guidance and Coaching" in the C.P. Ed. is taught as the subject "Counselling and Guidance", as also the subject of "Officiating and Coaching" in the B.P. Ed. course. Subject "Teaching & Officiating Ability, Officiating Assignment" in C.P. Ed. is taught in a much comprehensive format as the subject of "Officiating and Coaching" and then "Organization and Administration of Physical Education" and then the "Method in Physical Education". Even though B.P. Ed. is a higher qualification entitling its holder to secure appointment on the higher post of PTI Gr.II, but we are not deciding the question of equivalence herein only because it is higher degree. Analytical comparison of the two clearly brings out that the subjects of course are the same, but the curriculum of subjects in B.P. Ed. is much comprehensive, wider and diversified.

[24] We are however not inclined to concur with the view expressed by the Larger Bench of the Punjab and Haryana High Court treating the qualification of B.P. Ed./D.P. Ed. courses of one year duration higher than the C.P. Ed. of two years duration. Careful reading of the said judgment reveal that in fact the

Larger Bench in taking that view, heavily relied on earlier Division Bench judgment of the same Court in *Multan & Ors. v. State of Haryana & Anr.*, [2004 (4) SCT 45]. The qualification of C.P. Ed. of two years duration does not merely consist of theory papers but also practical training is imparted to the students during that period with respect to each of the subjects taught to them. The training consists of games, athletics and other activities. Nine papers are divided into four semesters spread over a period of two years. The students are imparted extensive training in each of the subjects with particular emphasis on practical aspects. Apart from that, neither the Larger Bench of Punjab & Haryana High Court in *Manjit Singh v. State of Punjab & Ors.*, CWP No. 451/2008, nor Division Bench in *R* , analyzed the effect of National Council for Teacher Education (Determination of Minimum Qualification for Recruitment of Teachers in School) Regulations, 2001, which has prescribed C.P. Ed. of two years duration as eligibility qualification for appointment on the post of PTI at elementary level. While therefore we do not find any reason to hold that any specialized physical training is imparted in C.P. Ed. For students of only elementary level, which training is not imparted in B.P. Ed., we are not persuaded to hold that qualification of B.P. Ed/D.P. Ed. of one year duration is higher qualification than the qualification of C.P. Ed. of two years duration and, therefore, should be considered equivalent.

[25] It therefore logically follows that those holding the qualification of B.P. Ed., recognized by NCTE, would not be holding an equivalent qualification. The degree of B.P. Ed., since its syllabus covers all the essential components of the subject of C.P. Ed., cannot be treated a totally different and distinct qualification.

Another significant aspect of the matter is that R.P.S.C. has also held common written examination for both the posts, thus indicating that merit of all the candidates has been tested applying the same yardstick. Apart from recognizing C.P. Ed. as the eligibility qualification for appointment on the post of PTI Gr. III at the elementary level, recognition has also been given to the degree of B.P. Ed. for appointment on the post of P.T.I. Gr. II at the secondary/High School Level.

[26] Adverting now to the qualification of D.P. Ed., it is to be noted that the Government, in its order dated 06.01.2010, has also directed the qualification of D.P. Ed. to be treated equivalent to that of C.P. Ed., but in the Regulations of 2001, the N.C.T.E. has neither accorded any recognition to the qualification of D.P. Ed. Nor prescribed it as one of the eligibility qualifications for appointment on the post of P.T.I. either at the Elementary or at Secondary/High School level. The analogy on which we are persuaded to hold the qualification to of B.P. of Ed. equivalent qualification C.P. Ed., is that besides being higher, it covers all the subjects in much expanded form. But this analogy cannot be applied to the qualification of D.P. Ed. Even though, the Rules of 1971 recognize the qualification of D.P. Ed. as eligibility qualification for appointment on the post of PTI Gr.II, but D.P. Ed. can not be treated equivalent to C.P. Ed. envisaged in the Regulations of 2001, which only recognize the C.P. Ed. Of not less than two years

duration, as the necessary qualification for appointment on the post of PTI at elementary level and Bachelor in Physical Education (B.P. Ed.) of the duration of three years or its equivalent at Secondary/High of School level.

Qualification C.P. Ed. With which the comparison has to be made, thus has to be of duration of not less than two years and therefore, the Diploma course of the duration of one year, cannot be on similar analogy treated equivalent thereto. Moreover, such comparison cannot be made with the C.P. Ed. of one year because only those already possessing qualification of C.P. Ed. of one year or admitted to C.P. Ed. course of one year, upto 2005, have been, by virtue of the Note given below Section 2 Second Schedule to the Regulations of 2001, treated as eligible and not otherwise. Therefore, the premise on which we have held the qualification of B.P. Ed. of the duration of three years, equivalent to the qualification of C.P. Ed. of the duration of two years, cannot be applied to the qualification of D.P. Ed. of one year duration.

[27] Question somewhat similar to the one involved in this matter, fell for consideration of Division Bench of this Court in *State of Rajasthan & Ors. v. Hari Ram & Ors.*, supra, albeit, in the context of direct recruitment to the post of PTI Gr.II. The relevant entry then prevalent in the Schedule appended to the that Rules of 1971, provided those possessing the qualification of Graduation or equivalent examination, with Diploma in Physical Education or Secondary with years diploma in Physical Education, would be eligible for appointment. Those possessing the Bachelor's degree in Physical Education from Indira Gandhi University, Nagpur and other Universities, recognized by University Grants Commission, were not considered eligible for direct recruitment to the post of PTI Gr.II. Such candidates approached this Court by filing writ petitions. The Single Bench of this Court allowed the petitions holding

that the candidates possessing the Bachelor's Degree in Physical Education from Universities recognized by the UGC should be considered eligible alongwith other candidates, who possess the Graduate Degree or equivalent to the Graduate Degree and Diploma in Physical Education. Challenge was made to the aforesaid Single Bench judgment before the Division Bench in appeal. It was argued on behalf of the State that the Single Bench has not considered the Rules in their proper perspective and that for the purpose of appointment on the post of PTI Gr.II, special physical practical training is most essential and if untrained persons are recruited and appointed on the post of PTI, they would not be able to impart physical training to the students. Contention of writ petitioners was that while pursuing the course of degree in Physical Education, they have undergone more theoretical studies and also more practical training in comparison to those persons, who have acquired diploma in Physical Education, and some of them from the same University, from which the writ petitioners acquired the degree qualification. While deciding the Special Appeal, the Division Bench of this Court, in Para 8 of the judgment, held that,

"....such is construction of the rules meaningless and it causes miscarriage of

justice with regard to the rights of the persons like the petitioners who are qualified and are in possession of the degree in Physical Education. This apart, a person who undergoes a degree course in particular subject has to pursue the said course for such education, study more papers and has to undergo more practical training in comparison to those persons who acquired diploma course which is comparatively of short duration...."

[28] It must therefore be held that while deciding the question of equivalence of two qualifications, comparative duration of two courses is a significant aspect, especially when the practical training is an important component of the curriculum. When the Regulations of 2001 for appointment of PTI at elementary level, requires C.P. Ed. qualification of duration of two, years, with a positive mandate to discontinue/ derecognize C.P. Ed. qualification of duration of one year from 2005 onwards, C.P. Ed. and D.P. Ed. qualification of one year and also, B.P. Ed. qualification of one year, cannot be treated equivalent to C.P. Ed. qualification of the duration of two years. Candidates possessing B.P. Ed. qualification be of three years have to however treated eligible for appointment on the post of PTI at elementary level for the aforestated reasons."

31. I may also refer to one another decision of the High Court of Rajasthan rendered by a Division Bench in the case of Madan Gir and others v. State of Rajasthan [2013 Labour Industrial Cases 724]. In Madan Gir (supra), the State Government, in exercise of its powers conferred by the proviso to Article 309 of the Constitution of India, framed rules called the "Rajasthan Education Subordinate Service Rules 1971" to regulate the recruitment and other service conditions relating to the members of the Rajasthan Education Subordinate Service. According to the Schedule I appended to the rules, the persons, having the qualification of the "Certificate in Physical Education" (in short, 'C.P.Ed.') eligible to be considered for appointments as the Physical Training Instructors, Grade III.

The eligibility prescribed for the appointment to the post of the Physical Training Instructor, Grade III was of having the Bachelor Degree in the Physical Education (B.P.Ed.) inter alia. The petitioners therein having the qualification of the C.P.Ed. and were eligible to be considered for the appointments to the posts of the Physical Education Instructors, Grade III. Thereafter, the rules came to be amended. As a consequent to the amendment, the persons having the also qualification of the B.P.Ed. were made available to be considered for appointments of the Physical Training Instructors, Grade III along with the persons having the qualifications of the C.P.Ed. And D.P.Ed.

32. The petitioners therein having the qualification of the C.P.Ed. challenged the amended eligibility i.e. the inclusion of the B.P.Ed. holders in the eligibility criteria for the appointments to the posts of the Physical Training Instructors, Grade III. While rejecting the writ application, the Division Bench held as under:

"[4] The submission of counsel for the petitioners is that as per the National

Council for Teacher Education Act, 1993 framed National Council for Teachers Education (Department of Minimum Qualification for Recruitment of Teachers) Regulations 2001 (hereinafter referred to as "the Regulations of 2001") and as per that a Physical Training instructor for elementary level is required to have Certificate in Physical Education (CPed.) of a duration not less than two years or equivalent. The BPed. holders are not eligible to be considered for appointment at elementary physical education level as per the Regulations aforesaid, therefore, the amendment introduced in the Rules of 1971 is bad.

[5] We do not find any merit in the argument advanced. The Regulations of 2001 prescribes minimum standards for recruitment of teachers. True it is, the qualification of CPed of duration not less than two years or its equivalent is prescribed as minimum academic and professional qualification for appointment to the post of Physical Training Instructor at elementary level, but the qualification of BPed is quite higher than the qualification of CPed. As per the Regulations of 2001 the respondents could have not prescribed any eligibility less than the eligibility prescribed under the Regulations aforesaid, but higher standards of qualification are certainly permissible to be introduced as necessary eligibility. The provisions under challenge in these petitions for writ as such are neither at all inconsistent with fundamental rights of the petitioners nor are also beyond the legislative competence. The amendment introduced is quite rational as that provides higher qualification as eligibility for appointment on the post of Physical Training Instructor Grade- III. It is further relevant to note that no institution in the State of Rajasthan is providing the qualification of CPed in the State of Rajasthan at least from last about a decade. No case, therefore, is made out to impeach the amended eligibility prescribed for appointment to the post of Physical Training Instructors Grade- III. The writ petitions, for the reasons given above, are dismissed."

33. What is important to note in the above referred decision of the Rajasthan High Court is the fact that no institution in the State of Rajasthan was providing the qualification of the C.P.Ed. in the State of Rajasthan at that time past almost a decade. Keeping that in mind the Division Bench declined to impeach the amended eligibility criteria for the appointment to the post of the Physical Education Instructor, Grade III.

35. I am of the view that as the writ applicants were not possessing the Requisite qualification of the C.P.Ed., they could not have been appointed on the posts in question, and more particularly, when the advertisement in this regard was very clear. In fact the applications should have been rejected at the threshold. It is very sad to note that the two writ applicants although worked for a period of almost five years, yet had to go home. The learned counsel appearing for the writ applicants submitted that even considering the equity, they should be reinstated in service with the continuity. It is submitted by the learned counsel that the back wages may not be granted. It must never be forgotten that one of the maxims of equity is that "Equity follows the law". If the law is clear, no

notions of equity can substitute the same.”

15. The Apex Court in case of *Puneet Sharma and ors vs. Himachal Pradesh State Electricity Board Ltd* and *anr* in Civil Appeal No. 1318-1322 of 2021 decided on 07 April, 2021, Electricity Board while considering the question as to whether degree in Electrical Engineer/Electronics Engineer is technically higher qualification than Diploma in their discipline and whether the degree holders are eligible for appointment to the post of Junior Engineers (Electrical) under the relevant Recruitment Rules held in similar facts that when the degree holders in the concerned discipline applied for the post of Junior Engineer claiming that since they possessed educational qualification higher than the prescribed minimum and advertised qualification, they could not have been denied consideration as under:

“22. The question whether the stipulation or prescription of the particular academic qualification excludes an applicant who possesses what is termed as a higher qualification, from their candidature to the concerned post has often arisen for consideration by this Court. In *P.M. Latha & Anr. v. State Of Kerala & Ors.* 11, the issue which arose for consideration was whether, for primary class teachers, the prescribed (and advertised) qualification Trained Teacher Certificates (TTC), included those who held B.Ed. degrees. This court was forthright in holding that the B.Ed. qualification could not be considered as a higher qualification than the TTC and that the TTC qualification was “given to teachers especially trained to teach small children “primary classes”, whereas those with B.Ed. were trained to impart education to students of “higher classes”. A similar view was expressed in *Yogesh Kumar & ors v. Government of NCT Delhi & Ors* 12 vis-a-vis the same stipulation i.e., B.Ed. and TTC qualifications. The Court further held in *Yogesh Kumar (supra)* that “a specialized training given to teachers for teaching small children at primary level cannot be compared with training given for awarding B.Ed. Degree.”

23. The next judgment is *Jyoti K.K. & Ors. v. Kerala Public Service Commission & Ors.* 13, where the issue was whether degree holders could be considered for the post of Sub-Engineer (Electrical) in the Kerala State Electricity Board, which had prescribed diploma in Electrical Engineering or SSLC or its equivalent as the eligibility criteria. This Court took into consideration Rule 10A and *inter alia* observed as follows:

“6. Rule 10(a)(ii) reads as follows:

“10. (a)(ii) Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications recognised by executive orders or 11 (2003) 3 SCC 541 12 (2003) 3 SCC 548 13 (2010) 15 SCC 596 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.”

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 qualification prescribed for that post in order to attract that part of the Rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. If a person has acquired higher qualifications in the same Faculty, such qualifications can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far.

8. Under the relevant Rules, for the post of Assistant Engineer, degree in Electrical Engineering of Kerala University or other equivalent qualification recognised or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is prescribed for the lower post, namely, the post of Sub-Engineer. In that view of the matter the qualification of degree in Electrical Engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post.

9. In the event the Government is of the view that only diploma-holders should have applied to post of Sub-Engineers but not all those who possess higher qualifications, either this Rule should have excluded in respect of candidates who possess higher qualifications or the position should have been made clear that degree-holder shall not be eligible to apply for such post. When that position is not clear but on the other hand the Rules do not disqualify per se the holders of higher qualifications in the same Faculty, it becomes clear that the Rule could be understood in an appropriate manner as stated above. In that view of the matter the order [Jyothi K.K. v. Kerala Public Service Commission, Original Petition No. 9602 of 1998, order dated 30-3-2000 (Ker)] of the High Court cannot be sustained. In this case we are not concerned with the question whether all those who possess such qualifications could have applied or not. When statutory Rules have been published and those Rules are applicable, it presupposes that everyone concerned with such appointments will be aware of such Rules or make himself aware of the Rules before making appropriate applications. The High Court, therefore, is not justified in holding that recruitment of the appellants would amount to fraud on the public."

24. It is evident therefore, that this Court was of the opinion that for the post of Sub-Engineer (which can be termed as comparable to the post of Junior Engineer in the present case), the Kerala State Electricity Board felt that those possessing degree as well could be considered. This Court upheld the contention.

25. In Anita (supra) this court was concerned with JBT teachers, where the minimum qualification was two years' junior basic teachers' training. Those with

MSc, B.Ed. and MA qualifications were held ineligible, looking at the nature of the job i.e. teaching primary classes. Jyoti (supra) was distinguished because the appointing authority had the option of considering appointment of persons with higher qualifications.

26. In Zahoor Ahmad Rather (supra) the post in question was "Technician-III" in the Power Development Department in the State of Jammu and Kashmir. The relevant stipulation with respect to qualification was "Matric with ITI in the relevant trade." The appellants held diploma in Electrical Engineering and were included in the list of disqualified candidates. This resulted in litigation which ultimately culminated in the judgment of this court. This court held in its judgment:

"Under the above provisions as well as in the advertisement which was issued by the Board, every candidate must possess the prescribed academic/professional/technical qualification and must fulfil all other eligibility conditions. The prescribed qualifications for the post of Technician III in the Power Development Department is a Matric with ITI in the relevant trade. The Board at its 116th meeting took notice of the fact that in some districts, the interviews had been conducted for candidates with a Diploma in Electrical Engineering while in other districts candidates with a diploma had not been considered to be eligible for the post of Technician

III. Moreover, candidates with an ITI in diverse trades had also been interviewed for the post. The Board resolved at its meeting that only an ITI in the relevant trade, namely, 14 (2019) 2 SCC 404 the Electrical trade is the prescribed qualification specified in the advertisement."

27. Thereafter, the Court discussed the previous rulings in P.M. Latha, Jyoti K.K. and Anita (supra), then concluded that the candidature of the diploma holders was correctly rejected and held as follows:

"26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] in the subsequent decision in Anita [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329] . The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the

State, as the recruiting authority, to determine. The decision in *Jyoti K.K.* [*Jyoti K.K. v. Kerala Public Service Commission*, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench [*Imtiyaz Ahmad v. Zahoor Ahmad Rather*, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the High Court was justified in reversing the judgment [*Zahoor Ahmad Rather v. State of J&K*, 2017 SCC OnLine J&K 936] of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision [*Imtiyaz Ahmad v. Zahoor Ahmad Rather*, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the Division Bench.

27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services.

Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in *Jyoti K.K.* [*Jyoti K.K. v. Kerala Public Service Commission*, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in *Jyoti K.K.* [*Jyoti K.K. v. Kerala Public Service Commission*, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned."

28. It would be also useful to notice a later judgment of this court, in *Chief Manager, Punjab National Bank and Another v Anit Kumar Das* 2020 SCC On Line SC 897 where the issue was, whether for the post of peon in the appellant Bank, a degree holder (graduate) could be appointed, given the conscious decision of the employer, that only those who held 10+2 pass qualifications would be considered and those with graduation qualification could not be considered. This court held that the appointment of the respondent, who was a graduate, after he suppressed the fact that he held a degree, and did not disclose it, was unsupportable. In this context, it was observed that as to what qualifications are applicable to what class of posts, is a matter of discretion to be exercised by the employer, which the courts would be slow to interdict. This decision too supports the conclusions in the present case, since the employer, HPSEB asserts that it considers degree holders eligible for appointment to the post of JE."

16. It emerges that the prescription of qualification for a post is a matter of recruitment policy and it is for the State as an employer which is entitled to prescribe the qualification and whether the particular qualification should or should not be regarded as equivalent is a matter for the recruiting authority to determine and holding of a higher qualification could pre-suppose the acquisition of a lower qualification has to be prescribed in the Recruitment Rules and absence of such a rule makes a crucial difference to the ultimate outcome as held by the Apex Court in case of Zahoor Ahmad Rather v Sheikh Imtiyaz reported in 2019 (2) SCC 404 referred in para 26 of the decision of Punit Sharma and ors vs. Himachal Pradesh State Electricity Board Ltd and anr (supra). Therefore, in the facts of the case when the respondent No.2 has considered the degree holders eligible for appointment to the post of Gram Sevak as they are having higher qualification the same cannot be interfered.

17. In view of the foregoing reasons, the petitions being devoid of any merit are dismissed.