

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF MARCH, 2021

PRESENT

THE HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

WRIT APPEAL NO.509 OF 2020 (S-RES)

BETWEEN:

THE BANGALORE WATER SUPPLY
AND SEWAGE BOARD
1ST FLOOR CAUVERY BHAVAN
K G ROAD
BANGALORE-560009.
REPRESENTED BY ITS
CHIEF ADMINISTRATIVE OFFICER
CUM SECRETARY.

...APPELLANT

(By Sri.SANJEEV.B.L, ADV.)

AND:

1. SRI AMBARISH KUMAR.S
AGED ABOUT 31 YEARS
S/O SREERAMAREDDY
R/ AJANAGAMANAHALLI VILLAGE
BETHAMANGALA POST
BANGARPET TALUK
KOLAR DISTRICT-563116.
- 2 . MS KAVYASHREE.D
AGED ABOUT 28 YEARS
D/O DEVARAJU H L
R/A HOUSING BOARD
1ST STAGE
NEAR KRISHIK SARVODAYA TRUST
MANDYA DISTRICT-571401.
- 3 . SRI. D.S.TARUNKUMAR
AGED ABOUT 27 YEARS
S/O SHIVASHANKAR T DHUPAD

R/A SHRIKHANDE
PLOT NO.46 VIJAYANAGAR COLONY
ILKAL
BAGALKOT DISTRICT-587125.

4. SRI NIMBALAGERI CHOWDAPPA
AGED ABOUT 28 YEARS
S/O NIMBALAGERI MUGABASAPPA
R/A PALAYYANAKOTE VILLAGE
SULADAHALLI POST
KUDLIGI TALUK
BELLARY DISTRICT-583126.
5. SRI NARASIMHA SWAMY H J
AGED ABOUT 31 YEARS
S/O JAYANNA
R/A ALILUGHATTA POST
HAGALVADI HOBLI, GUBBI TALUK
TUMKUR DISTRICT-572222.
6. SRI KYATHEGOWDA S A
AGED ABOUT 27 YEARS
S/O ANNAIAH
R/A SHIVALLI VILLAGE POST
DUDDA HOBLI
MANDYA TALUK AND DISTRICT-571405.
7. MS HEMA P
AGED ABOUT 25 YEARS
D/O PUTTAIAH
R/A MACHOHALLI COLONY
BAPAGRAMA POST, MAGADI MAIN ROAD
BANGALORE NORTH TALUK
BANGALORE DISTRICT-56009.
8. THE STATE OF KARNATAKA
REP. BY ITS PRINCIPAL SECRETARY
VIDHANA SOUDHA
AMBEDKAR VEEDI
BENGALURU-560001.

...RESPONDENTS

(BY SRI.S.R.KAMALACHARAN, AGA FOR R-8
R-5 SERVED; R-2 SERVICE HELD SUFFICIENT V/C/D 24.3.2021;
SRI.V.V.GUNJAL, ADV. FOR C/R-1, R4, R-6&R7 AND R-3)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 3.09.2020 PASSED BY THE LEARNED SINGLE JUDGE IN W.P.NO.8645/2020 (S-RES_ AND CONSEQUENTLY DISMISS THE SAID WRIT PETITION.

THIS WRIT APPEAL COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 24.03.2021, THIS DAY, **SATISH CHANDRA SHARMA J.**, PRONOUNCED THE FOLLOWING:

JUDGMENT

1. The present Writ Appeal is arising out of the Judgment dated 3.09.2020 passed in W.P.No.8645/2020 (The Bangalore Water Supply and Seweage Board –vs- Sri.Ambarish Kumar.S and others).

2. The facts of the case reveal that the present appellant, Bangalore Water Supply Seweage Board has issued a notification on 24.08.2018 for Non Hyderabad-Karnataka area and Notification of even dated 24.08.2018 for Hyderabad-Karnataka area inviting applications to various posts. At Sl.No.8 of the aforesaid notification, the present appellant invited candidature for the post of 'Assistant' and the qualification prescribed under the notification is reflected as "Should possess a decree in Arts/Commerce/Science of a recognised University. One year duration Course in Computer Basics". The respondents (Petitioners) are undisputedly engineers possessing Bachelors

degree in Engineering from recognised University, recognised by the University Grant Commission and they came up before this Court by filing a writ petition praying for the following reliefs:

"a) Issue a writ of mandamus directing the Respondent BWSSB that the Petitioners who are BE graduates have to be considered as holder a Degree equivalent any degree, be it arts science or commerce or any other graduate and that the petitioner is entitled to be appointed to the post of vide ANNEXURE-B –Assistants Recruitment Notification dated 24/08/2018 bearing No.bwssb/ak/maa-k/scy/23-32-2017/2019/2018-19 for Non-Hyderabad Karnataka Region and ANNEXURE B - 1 Recruitment Notification dated 24/08/2018 bearing No.BWSSB/AK/MAA-K/SCY/23-32-2017/2019/2018-19 for Hyderabad-Karnataka Region.

b) Grant such other direction, writ or order as this Hon'ble Court deems fit and proper under the facts and circumstances of this case, in the interest of justice and equity."

3. Thus, it is prayed by them to consider their candidature also, as they are holding Bachelors of Engineering degree and the same should be treated as a decree in science.

4. A detailed/extensive reply was filed in the matter and the learned Single Judge after taking into account the Judgments

delivered in the cases of **Dr.Rameshchandra –v- State of Rajasthan [(1977) WLN 353]**, **Zahoor Ahmed Rather and others –v- Sheikh Imtiyaz Ahmad and Others [(2019) 2 SCC 404 and State of Punjab and Others –v- Anitha and Others [(2015)2 SCC 170]** has allowed the writ petition by directing the employer to treat the degree in Engineering as Bachelors degree in Science by holding as under:

" 6. Attention of the Court is drawn to the decision of the Hon'ble Supreme Court of India in **ZAHOOR AHMAD RATHER AND OTHERS VS. SHEIKH IMTIYAZ AHMAD AND OTHERS reported in (2019) 2 SCC 404**, wherein at para 26 it is observed as under

"26. We are in respectful agreement with the interpretation which has been placed on the judgment in *Jyoti KK* in the subsequent decision in *Anita*. The decision in *Jyoti KK* 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 pre-supposes 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 KK* turned on a specific statutory rule under which the holding of a higher qualification could pre-suppose 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 of the High Court was justified in reversing the judgment 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 of the Division Bench."

At para 29 it has been observed as follows:

“29. The submission based on Note 12, urged by Ms Wadia, cannot be accepted. The stipulation that the qualification prescribed is the bare minimum requirement of the job emphasises that it is an essential requirement, a threshold which cannot be dispensed with. Under Note 12, the Board is entitled to assign additional weightage for a higher qualification. Whether such a weightage should be assigned is a matter for the Board to determine. The SSSB did not assign an additional weightage for a higher qualification. In not exercising an enabling power, no fault can be found with the SSSB. An enabling provision postulates a discretion which may or may not be exercised. A candidate has no vested right to assert that the Board must as a mandate assign an additional weightage to a higher qualification. Whether to do so or not is a matter for the Board to determine. All that Note 12 postulates is that the mere possession of the prescribed qualification will not entitle a candidate to be called for the written test or interview. The Board may shortlist among eligible candidates by granting a weightage to a higher qualification in the relevant line or discipline. But the words “as may be decided by the Board” in Note 12 indicate that the Board is vested with a discretion in pursuance of an enabling power which it may or may not exercise.”

Reliance is also placed on the judgment of the Hon'ble Supreme Court of India in *STATE OF PUNJAB AND OTHERS VS. ANITA AND OTHERS* reported in (2015) 2 SCC 170 wherein at para 12 it is observed as under:

*“12. Reference may also be made to the decision rendered by this Court in *Yogesh Kumar vs. Govt. (NCT of Delhi)*, wherein this Court held as under: (SCC pp.550-51, para 5):*

“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 the latter cannot be treated as higher qualification to the former.”

At para 13 it has been observed as follows:

“13. A perusal of the aforesaid judgments leave no room for any doubt, that it is imperative for candidates to possess the statutory qualification prescribed for appointment to the posts, to which they are seeking appointment. In view of the position declared by this Court, qualifications of B.Ed and other qualifications possessed by the private respondents, namely, M.A., M.Sc, M.Com. Etc. cannot be treated as higher qualifications with reference to the prescribed qualifications(JBT/ETT). We, therefore, find the reasons recorded by the DEO in the impugned order dated 4.4.2005 were fully justified, and in consonance with the legal position declared by this Court, as has been noticed hereinabove”.

Reliance is also placed on the decision of the co-ordinate Bench of this High Court passed in Writ Petition No.1652/2018 wherein at para 6 it has been observed as under:

“6. In the case of P.M.LATHA & ANR.(supra), the Hon'ble Supreme Court has clearly opined that it is the prerogative of the employer to fix the qualification for a particular post, as it is a matter of recruitment policy to be decided by the employer. Similar view was also expressed by this Court in the case of RAJESAB ONTI(supra), wherein the learned Division Bench had clearly observed that, “it is now well-settled that, what should be the appropriate qualification for a particular post is the domain of the administration or the recruiting agency and the judicial scrutiny cannot be stretched for substituting its own reasons and decision in place of recruiting agency/employer who can be said as an expert body for requisite qualification to be decided for a particular post”. Therefore, the scope of jurisdiction of this Court in dealing with a qualification, is an extremely narrow one. Since it is for the employer to consider the expertise required for a particular post, this Court cannot substitute its opinion in place of the employer's. For, this Court

neither sits as an Appellate Court in such matter, nor freedom at the joints can be denied to the employer by this Court. It is exclusively the domain of an employer to decide as to what qualifications are required for a particular post."

7. Based on the above decisions it is contended that it is a prerogative of respondent No.2 to fix necessary qualification for any post; respondent No.2 alone can determine the qualification and its equivalent; determination of qualification is purely an administrative function and judicial discretion cannot substitute the decision of the employer. The Court cannot substitute its opinion in the place of the employer. The Court cannot sit as an appellate authority also over the decision taken by respondent No.2.

8. It is true that the respondent No.2 is at liberty to prescribe the qualification for any post. Respondent No.2 is also at liberty to prescribe that a person with higher qualification cannot apply for a particular post. However, the term prescribed by the respondent No.2 has to be clear and not ambiguous. If the qualification prescribed by respondent No.2 is of a particular nature it cannot turn around and contain something contrary to it. If the term is ambiguous, in writ jurisdiction, this Court can interpret what the term means. None of the decisions relied upon by the respondent No.2 indicate that the term science does not include a technical degree and it includes only a degree in pure science. However, the earlier notification of the respondent No.2 of the year 2015 clearly stated the qualification for the post of Assistant should be a pass in Bachelor Degree (Three years non-technical course) from a recognized university. But, in the present notification what is stated is that a candidate should possess a degree in Science from a recognized university. The said term 'Science' not been defined anywhere it cannot be limited to include only a Bachelor Degree in pure science.

For the aforementioned reasons, writ petition is hereby allowed."

5. Learned counsel appearing for the appellant has vehemently argued before this Court that by no stretch of imagination the degree in Engineering can be treated as a graduation in Science. Engineering and Science are two different disciplines and the ratio of the Judgment in the case of **Zahoor Ahmed (supra)** has not been applied correctly.

6. On the other hand, learned counsel appearing for the respondents have argued before this court that degree in Engineering is certainly a degree in Science as Engineering also forms part of Science stream. Therefore, learned Single Judge was justified in holding that the respondents are entitled to participate in the process of selection.

7. This Court has carefully gone through the Judgment delivered in the case of **Zahoor Ahmed (supra)**. Paragraphs Nos.26, 27 and 29 of the aforesaid Judgment reads as under:

"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.

29. *The submission based on Note 12, urged by Ms Wadia, cannot be accepted. The stipulation that the qualification prescribed is the bare minimum requirement of the job emphasises that it is an essential requirement, a threshold which cannot be dispensed with. Under Note 12, the Board is entitled to assign additional weightage for a higher qualification. Whether such a weightage should be assigned is a matter for the Board to determine. The SSSB did not assign an additional weightage for a higher qualification. In not exercising an enabling power, no fault can be found with the SSSB. An enabling provision postulates a discretion which may or may not be exercised. A candidate has no vested right to assert that the Board must as a mandate assign an additional weightage to a higher qualification. Whether to do so or not is a matter for the Board to determine. All that Note 12 postulates is that the mere possession of the prescribed qualification will not entitle a candidate to be called for the written test or interview. The Board may shortlist among eligible candidates by granting a weightage to a higher qualification in the relevant line or discipline. But the words "as may be decided by the Board" in Note 12 indicate that the Board is vested with a discretion in pursuance of an enabling power which it may or may not exercise."*

8. The Judgment delivered in the case of **Zahoor Ahmed** (*supra*) makes it very clear that the employer is entitled to prescribe the qualifications as a condition of eligibility and there is

no part of the role or function of judicial review to expand upon the ambit of prescribed qualifications. It is further held that equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. It has been further held whether a particular qualification should or should not be regarded as equivalent is a matter for the State as the recruiting Authority.

9. In the light of the Judgment delivered in the case of **Zahoor Ahmed (supra)** as the respondents are not holding the qualification i.e. Bachelor degree in Science, though they do possess Bachelors degree in Engineering, the qualification prescribed for the post of 'Assistant (Clerk)' is only a graduation and therefore, the learned Single Judge has erred in law and facts in allowing the writ petition. The Appointing Authority keeping in view the Recruitment Rules invites an application for a post and it is a purely the domain of the employer to frame the Recruitment Rules and the prescription of qualification for a post is a matter of recruitment policy. The Hon'ble Supreme Court has held that the State, as a public employer, has to take into account social perspectives that require creation of job opportunities across the societal structure. The Courts are not the expert bodies who can

give a finding that Bachelors degree in Engineering has to be treated equivalent to a degree in Science. It is for the expert bodies like the University Grant Commission to arrive at such a finding and therefore, as the qualification required for the post in question was graduation in science, the appeal preferred by the employer deserves to be allowed and is, accordingly allowed. The Judgment dated 3.09.2020 passed by the learned Single Judge is hereby set-aside.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

In