

Before P.B. Bajanthri, J.

JYOTI SHARMA—*Petitioner*

versus

**HARYANA STAFF SELECTION COMMISSION AND
OTHERS**—*Respondents*

CWP No. 9619 of 2014

February 17, 2017

Constitution of India, 1950—Art.14 and 16—Recruitment—Post of Statistical Assistance—Prescribed qualification/Equivalence qualification—When rules of recruitment are very specific prescribing statistics as one of the papers at the Masters level or at the BA level, then the requisite qualification does not mean equivalent qualification—Even if certain subjects are equated with statistics, the same cannot be considered for the purpose of equating to the prescribed qualification—The Selection Commission should also not provide the academic or competitive marks to the Interview Committee to avoid arbitrariness—Such marks should be kept confidential—Petition allowed.

Held that, according to the learned counsel for respondent No.4 as well as Commission relied on various communications, Statistics subject is included in the Quantitative Analysis and Managerial Applications. Thus, 4th respondent fulfills the requisite qualification for the post of Statistical Assistant. When the rules of recruitment is very specific that Master degree from a recognized University in Commerce in the present case “with Statistics as one of the papers either at the Master's level or Statistics as one of the paper at B.A. Honours School level or a Master's degree in Statistics. The requisite qualification do not provide that equivalent qualification to that of Statistics. In other words, candidate must have Statistics as one of the paper at B.A. Honours School level, Master's degree in Statistics or Commerce with Statistics. In the absence of prescription of equivalent qualification to that of Statistics, question of taking into consideration equivalent qualification of Statistics is contrary to rules of recruitment governing the post of Statistical Assistant / Inspector (NSS) / Investigator. The State Government or University or any competent authority even if the certain subjects are equated to that of Statistics, the same cannot be considered for the purpose of equating to the prescribed qualification as the rules of recruitment has not stipulated any

equivalent qualification.

(Para 11)

Further held that, the respondent-State as well as selection commission here after make it point that they should not provide academic or competitive examination marks of the candidates to the interview committee to avoid arbitrariness in awarding interview marks to the candidates. If any academic marks are to be added to interview marks in such event it could be done after interview marks are announced. In other words academic marks are to be calculated and kept in confidential by other than interview members.

(Para 20)

Ram Niwas Sharma, Advocate,
for the petitioner.

Harish Rathee, Sr. DAG, Haryana.

Ashwani Talwar, Advocate,
for respondent No.4.

P.B. BAJANTHRI, J.

(1) In the instant writ petition, the petitioner has questioned the selection and appointment of 4th respondent to the post of Statistical Assistant and further sought for direction to consider the petitioner's name to the post of Statistical Assistant.

(2) On 15.09.2010, the Haryana Staff Selection Commission (for short 'Commission') advertised various posts including Statistical Assistant/Inspector (NSS)/Investigator. The Commission inviting applications from the eligible persons to fill up three posts of Statistical Assistant/Inspector (NSS)/Investigator. The petitioner and 4th respondent are the candidates to the post of Statistical Assistant. On 09.07.2013, results were notified in which 4th respondent was held to be qualified, whereas, the petitioner was not qualified. Thus, respondent no.4 was appointed to the post of Statistical Assistant.

(3) Learned counsel for the petitioner in support of the petition submitted that 4th respondent is not qualified for the post of Statistical Assistant as he did not fulfill the qualification prescribed for the post of Statistical Assistant in particularly Statistics as one of the paper either at the Master's level or if the candidate has also graduated in the Honours School in Mathematics or Economics, then with Statistics as one of the paper at B.A. Honours School level or a Master's

degree in Statistics. Whereas, the 4th respondent has passed Master of Commerce from the Institute of Advanced Studies in Education University, Rajasthan. Perusal of the marks card relating to Master of Commerce, 4th respondent has not passed the Statistics as one of the subject which is prescribed for the post of Statistical Assistant. It was further contended by the learned counsel for the petitioner that Selecting Authority have arbitrarily awarded interview marks in order to select the 4th respondent. He has been awarded 19 marks in the interview, whereas the petitioner has been awarded 8 marks. At the same time, 4th respondent's academic qualification marks is 32.55, whereas the petitioner is 41.43 marks. In view of this, 4th respondent ineligible to apply for the post of Statistical Assistant. Consequently, selection and appointment of 4th respondent is liable to be set aside.

(4) On the other hand, learned counsel for the respondent – Selecting Authority submitted that qualification acquired by the 4th respondent i.e. Master of Commerce contains Quantitative Analysis and Managerial Applications. Said subjects are equated to that of Statistics. Therefore, the 4th respondent's selection and appointment is in accordance with prescribed qualification for the post of Statistical Assistant. It was further submitted that there is no mala fide against the selecting authority insofar as awarding of marks in interview, awarding 19 marks to 4th respondent and 8 marks to the petitioner. Thus, the petitioner has not made out a case insofar as interference with the selection and appointment of 4th respondent.

(5) Learned counsel for respondent no.4 submitted that 4th respondent is qualified with Master of Commerce consists of Quantitative Analysis and Managerial Applications. Said subjects are part and parcel of Statistics subject. Therefore, 4th respondent is fully qualified with Statistics subject. In support of this, 4th respondent relied on various communications equating the Quantitative Analysis and Managerial Applications to that of Statistics. He has further submitted that PG Degree obtained through IASE deemed University (Rajasthan) is equated with PG Degree by Kurukshetra University. Therefore, 4th respondent has requisite qualification prescribed for the post of Statistical Assistant. Thus, the petitioner has not made out a case. Insofar as awarding of marks by the Interview Committee is concerned, he has not alleged any mala fide against the selecting authority so as to contend that petitioner has been awarded lesser marks than the 4th respondent in the interview.

(6) Heard learned counsel for the parties.

(7) The petitioner has questioned the selection and appointment of 4th respondent to the post of Statistical Assistant on the ground that 4th respondent do not fulfill the requisite qualification prescribed for the post. In this regard, it is necessary to extract the relevant qualification prescribed for the post of Statistical Assistant/Inspector (NSS)/Investigator, which reads as under:-

“Statistical Assistant/Inspector (NSS)/Investigator

(GEN = 2, ESM BCA=1)

E.Q. i) Master's degree from a recognized University in Economics or Agricultural Economics or Mathematics or Commerce with Statistics as one of the papers either at the Master's level or if the candidate has also graduated in the Honours School in Mathematics or Economics, then with Statistics as one of the paper at B.A. Honours School level in these subjects or a Master's degree in Statistics;

In case of Master's degree preference will be given to those possessing one year's experience in collection, compilation and analysis of Statistical Data in some Government office.

OR

Graduate with Economics or Mathematics or Agricultural Economics or Statistics or Commerce as one of the elective subjects.

In case of graduate three years experience of collection, compilation and analysis of Statistical Data in some Government office.

ii) Hindi/Sanskrit upto Matric Standard.”

(8) Perusal of the above criteria and qualification prescribed for the post of Statistical Assistant indicates that in the case of Master Degree in Commerce is concerned, one must have “Commerce with Statistics as one of the papers either at the Master's level or if the candidate has also graduated in the Honours School in Mathematics or Economics, then with Statistics as one of the paper at B.A. Honours School level or a Master's degree in Statistics”. Perusal of Master of Commerce degree obtained by 4th respondent vide Annexure R-4/4 from the Institute of Advanced Studies in Education University, Sardarshahr, Rajasthan, the following are the subjects which reads as

under:-

“MCM 110: Management Functions & Behavior; MCM 120: Accounting for Managers;

MCM 130: Quantitative Analysis and Managerial Applications;

MCM 140: Managerial Economics.”

(9) Perusal of the above subjects, it is evident that respondent no.4 has not passed Statistics as one of the subject.

(10) Now, the question for consideration is whether the subject “Quantitative Analysis and Managerial Applications” can be equated to that of Statistics or not?

(11) According to the learned counsel for respondent No.4 as well as Commission relied on various communications, Statistics subject is included in the Quantitative Analysis and Managerial Applications. Thus, 4th respondent fulfills the requisite qualification for the post of Statistical Assistant. When the rules of recruitment is very specific that Master degree from a recognized University in Commerce in the present case “with Statistics as one of the papers either at the Master's level or Statistics as one of the paper at B.A. Honours School level or a Master's degree in Statistics. The requisite qualification do not provide that equivalent qualification to that of Statistics. In other words, candidate must have Statistics as one of the paper at B.A. Honours School level, Master's degree in Statistics or Commerce with Statistics. In the absence of prescription of equivalent qualification to that of Statistics, question of taking into consideration equivalent qualification of Statistics is contrary to rules of recruitment governing the post of Statistical Assistant / Inspector (NSS) / Investigator. The State Government or University or any competent authority even if the certain subjects are equated to that of Statistics, the same cannot be considered for the purpose of equating to the prescribed qualification as the rules of recruitment has not stipulated any equivalent qualification. That apart Assistant Registrar (Academic) for Registrar of Kurukshetra University, Kurukshetra vide its communication dated 04.01.2013 (Annexure R-4/8) held as under:-

“Kurukshetra University, Kurukshetra

(Established by the State Legislative Act XII of 1956) (“A” Grade, NAAC Accredited)

No. ACS-II/13/18208

Date: 04.01.2013

To

The Assistant Director Budget & Planning
O/o Director General, Higher Education,
Haryana, Panchkula.

Subject: Information regarding M.A. Economics (quantity method) is equivalent to statistic.

Dear Sir,

Kindly refer to your office Memo No. 6/7-2012 ME(4) dated 21.12.2012 on the subject cited above.

It is to inform you that subject of M.A. Economics (Quantity Method) as a paper is not equivalent to Statistic for teaching purposes but for filed positions/surveys it can be stated that students do get to learn the necessary statistical tools.

Yours faithfully,
Sd/- Assistant Registrar (Academic)
for Registrar.”

(12) Having regard to the facts and circumstances, the 4th respondent has not appreciated this Court that he did fulfill the qualification prescribed for the post of Statistical Assistant.

(13) Learned counsel for the petitioner submitted that Commission while awarding marks in the interview arbitrarily awarded 8 marks to the petitioner, whereas 19 marks has been awarded to the 4th respondent. It was further submitted that interview committee were aware of the academic qualification marks of the petitioner as well as 4th respondent that petitioner's academic qualification is 41.43, whereas 4th respondent is 32.55. In order to eliminate the petitioner, he has been awarded 8 marks and 19 marks to the 4th respondent respectively.

(14) Learned State counsel was directed to furnish original record pertaining to the award of interview marks to the candidates so as to verify whether any arbitrary in awarding marks. Whereas record was not furnished. Some typed copy of awarding of marks was made available which is not true copy of the original. When asked for production of original records relating to award of marks in the

interview, it was stated that the same was destroyed. Thus, matter was reheard on 15.02.2017 and case was reserved.

(15) Learned State counsel produced decision of Supreme Court in *Pritpal Singh etc. versus State of Haryana and others*¹ wherein it is held as under:-

“23. The Board is directed to preserve the answer papers of the candidates and the tabulations of marks made by the examiners for at least three months after the declaration of the results of the selection. All records of the Board itself pertaining to the selection shall be maintained in files or registers chronologically and these shall also be preserved for the aforesaid period.”

(16) To that extent, the State of Haryana has passed a resolution dated 01.10.1994, which reads as under:-

“In view of the orders passed by the Hon'ble Supreme Court of India dated 27.7.94 in S.L.P. No. 7798-807/92 (Civil Appeal No. 5027-36 of 1994 Prit Pal Singh & Others v/s State of Haryana), the Board resolves to modify part (ii) of the resolution dated 27.7.92 to extent that the answer papers i.e. answer sheets (except written examination result, award lists, key book) will be destroyed after three months from the date of declaration of the result of selection.”

(17) One of the contention of the petitioner is that the petitioner is more merited than the fourth respondent in the academic and in order to accommodate the fourth respondent, the petitioner has been awarded 8 marks, whereas the fourth respondent has been awarded 19 marks. Therefore, on this count also, fourth respondent's selection and appointment is liable to be set aside.

(18) In the absence of perusal of assessment and award of interview marks by the interview committee whether it is arbitrary or illegal, said issue could not be decided for want of records. Even though on the face of record that academic and interview marks of the petitioner and 4th respondent reveals some arbitrariness.

(19) On the other issue that the fourth respondent do not fulfill the qualification prescribed for the post of Statistical Assistant, his selection and appointment is liable to be set aside. Accordingly, it is set

¹ (1994) 5 SCC 695

aside. The respondents – selecting authorities are directed to reconsider the petitioner's name for selection and appointment to the post of Statistical Assistant, if he is otherwise eligible and more merited. The above exercise shall be completed by the concerned respondents within a period of three months from today.

(20) The respondent-State as well as selection commission here after make it point that they should not provide academic or competitive examination marks of the candidates to the interview committee to avoid arbitrariness in awarding interview marks to the candidates. If any academic marks are to be added to interview marks in such event it could be done after interview marks are announced. In other words academic marks are to be calculated and kept in confidential by other than interview members.

(21) The Right to Information Act, 2005 has gone a long way to strengthen democracy by requiring that the government and its instrumentalities be transparent in its actions, so that an informed citizenry is able then to contain corruption and hold governments and their instrumentalities accountable to the people of India. Supreme Court in a recent decision rendered in *Cellular Operators Association of India and others* versus *Telecom Regulatory Authority of India and others*² has held as under:-

“92. We find that, subject to certain well defined exceptions, it would be a healthy functioning of our democracy if all subordinate legislation were to be “transparent” in the manner pointed out above. Since it is beyond the scope of this judgment to deal with subordinate legislation generally, and in particular with statutes which provide for rule making and regulation making without any added requirement of transparency, we would exhort Parliament to take up this issue and frame a legislation along the lines of the U.S. Administrative Procedure Act (with certain well-defined exceptions) by which all subordinate legislation is subject to a transparent process by which due consultations with all stakeholders are held, and the rule or regulation making power is exercised after due consideration of all stakeholders’ submissions, together with an explanatory memorandum which broadly takes into account what they have said and the reasons for agreeing

² (2016) 7 SCC 703

or disagreeing with them. Not only would such legislation reduce arbitrariness in subordinate legislation making, but it would also conduce to openness in governance. It would also ensure the redressal, partial or otherwise, of grievances of the concerned stakeholders prior to the making of subordinate legislation. This would obviate, in many cases, the need for persons to approach courts to strike down subordinate legislation on the ground of such legislation being manifestly arbitrary or unreasonable.”

(22) In the case of *Modern Dental College and research Centre and others* versus *State of Madhya Pradesh and others* (*Constitution Bench*)³ held as under:-

“167. Merit is the cumulative assessment of worth of any individual based on different screening methods. Ideally, there should be one common entrance test conducted by the State both for government colleges and for private unaided educational institutions to ensure efficacy, fairness and public confidence. As rightly contended by Mr. Purushaindra Kaurav, Additional Advocate General for the State of Madhya Pradesh appearing for AFRC, a common entrance test conducted by the State is more advantageous viz.:-

- (i) having adhered to the time schedule as laid down in Mridul Dhar case (2005) 2 SCC 65;
- (ii) multiple centres of examination and counselling throughout the State and a single window system for admission;
- (iii) standard question papers, preservation of question papers and answer books, prevention of leakage of question papers and fair evaluation and
- (iv) minimal litigation.

That apart, procedure for preparation of merit list, counselling and allotments to various colleges is subject to Right to Information Act and thus ensures fairness and transparency in the entire process.”

³ (2016) 7 SCC 353

(23) In view of the Right to Information Act, 2005 and later law laid down by the Supreme Court, State has to make serious endeavour to re-issue its instructions to preservation original selection records. Selection records can be stored by scanning them by using advanced technology.

(24) The Chief Secretary of State of Haryana should look into and take appropriate steps in the matter and report compliance to the Registry of this Court within four months. Copy of this judgment be communicated to the Chief Secretary to Government of Haryana.

(25) Instant writ petition stands allowed.

Payel Mehta