

Jomon K.K.
v.
Shajimon P. & Ors. Etc.

(Civil Appeal No(s). 4499-4500 of 2025)

02 April 2025

[Dipankar Datta* and Manmohan, JJ.]

Issue for Consideration

Whether the appellant who did not hold a current Lascar's licence but was the holder of a Syrang's licence (superior to Lascar's licence) could have been considered qualified to participate in the recruitment process for the post of "Boat Lascar" under Kerala State Water Transport Department and appointed as "Boat Lascar".

Headnotes[†]

Special Rules of 1975 for the Kerala State Water Transport Subordinate Service (Operating Wing) – r.6 – Appellant who did not hold a current Lascar's licence, as required, but was the holder of a Syrang's licence (superior to Lascar's licence), if was qualified to participate in the recruitment process for the post of "Boat Lascar" and appointed as "Boat Lascar" – Appellant's appointment as "Boat Lascar" was cancelled:

Held: The advertisement did not require anything else other than what the Special Rules require – Possession of a current Lascar's licence was an essential qualification for the post of Lascar – This was laid down in the qualifications required; which when read with r.6 shows that apart from those having a current Lascar's licence, none else was eligible – The word "current" is significant as the Rules insist on a subsisting licence, i.e., a certificate of competency, which is valid and operative during the time the last date for receiving applications intervene – However, the appellant did not have the 'current' Lascar's licence on the last date for receiving applications – On a conjoint reading of r.6, Special Rules and the advertisement, both mentioning a particular qualification, i.e., a current Lascar's licence, which each aspirant had to possess for being considered eligible to participate in the process of selection, thereby creating a distinct class, it was aspirants falling in such class alone who could have applied for being considered – Thus, any aspirant, even though possessing a Syrang's licence or a Driver's

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licence not being part of such distinct class, could not have been considered eligible – Furthermore, not only the qualifications but the nature of duties required to be performed and the nature of service to be rendered by a Lascar and a Syrang are different – Merely because the post of Lascar is a feeder post for promotion to the post of Syrang does not per se make the holder of a Syrang's licence qualified for the job of a Lascar – High Court rightly held that KPSC could not have included candidates with licences other than a Lascar's licence in the "Ranked List" and proceeded to recommend those candidates for appointment – An appointment made contrary to the statutory rule would be void – On merits, no legally protected right of the appellant having been affected by the impugned action, he has no valid claim. [Paras 22-24, 28-31]

Public employment – Selection – Exclusion of aspirants from selection process, if justified – Factors to be considered – Whether overqualification can be a disqualification:

Held: Whether or not the action of the employer to exclude an aspirant from the process of selection (on the ground that either he is over qualified for a particular post or has qualifications which, being over and above what is ordained by statutory rules or rules framed under the proviso to Rule 309 of the Constitution, does not match the qualification specifically required) is justified has to be decided considering the rules governing the selection, the qualifications prescribed, the nature of duty to be performed, the nature of service to be rendered and a host of other factors – At times, the employer's need to have the right people at the right place, and not always the higher qualified, has to be conceded – There are decisions holding that over-qualification cannot be a disqualification since such an approach amounts to discouraging the acquisition of qualifications on the one hand and on the other, such an approach could be seen as arbitrary, discriminatory and not in national interest – However, this principle cannot be put in a straitjacket imposing rigid or inflexible rules or norms – Each case has to be decided on its own peculiar facts and there can be no universally accepted rule that every time, a higher qualified candidate is to be preferred to a candidate who matches the essential qualification required for the post. [Para 36]

Public employment – Equality of opportunity – Absence of – Effect – Appellant did not hold a current Lascar's licence, as required, but was the holder of a Syrang's licence (superior to Lascar's licence) – Appellant was appointed as "Boat Lascar" however, his appointment was later cancelled:

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Held: The aggrieved are all those who had similar or even better qualifications than the appellant but who had not applied for the post because they were unaware of the fact that persons not having a current Lascar's licence would also be eligible to apply and compete in the process – Equality of opportunity in matters of public employment being a *sine qua non* for a fair and transparent selection process, such equality is conspicuously absent in the present case – If persons holding Syrang's licence who are better equipped than persons holding Lascar's licence are allowed to apply and participate in the process for appointment on the post of Lascar, the probability of the persons holding Lascar's licence being outperformed by the persons holding Syrang's licence would be quite high – In case all the vacant posts of Lascar are filled up by persons having Syrang's licence but not having a current Lascar's licence as per the statutory requirement, that would pose a real difficulty for persons not so fortunate and lacking in higher intelligence, abilities and intellect, as they would cease to have a level playing field of competing with other similarly qualified candidates, and left to compete with candidates having higher qualifications despite the zone of consideration having been specially carved out for holders of current Lascar's licence – If, in case, all the vacant posts of Lascar are filled up by persons having Syrang's licence and such holders of Syrang's licence do not participate in the process for direct recruitment to the post of Syrang, it is fairly likely that the persons holding Lascar's licence would never secure any public employment which could not have been the intention of a welfare State. [Paras 26, 27]

Constitution of India – Art. 142 – Exercise of power under – When not warranted – Discussed. [Paras 38-40]

Code of Civil Procedure – Non-joinder of a necessary party – Special Rules of 1975 for the Kerala State Water Transport Subordinate Service (Operating Wing) – Possession of a current Lascar's licence was an essential qualification for posts of "Boat Lascar" – Appellant was the holder of a Syrang's licence, license superior to Lascar's Licence – He was selected however, while he was awaiting offer of appointment, applications were filed in the Administrative Tribunal *inter alia* to declare candidates not possessing current Lascar's Licence on the last date for receipt of applications as ineligible – Appellant was not impleaded in the proceedings despite being a necessary party – Appellant appointed – Tribunal allowed applications – Appellant's appointment was

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cancelled – Tribunal's order challenged by the appellant, writ petitions dismissed by High Court:

Held: After appearing in a competitive examination and upon being selected, the appointees become an identified category and that if the rights of such appointees forming part of such identified category are to be affected by any determination, they should be impleaded in the proceedings as necessary parties – The non-joinder permits them to take the plea that the impugned order does not bind them – However, in the present case, the appellant did not immediately challenge the Tribunal's order and challenged it only after his service came to be terminated – He took a chance of favourable consideration of his case by responding to the show cause – Having taken a chance and not being successful, he cannot, thereafter, succeed before this Court on the ground of his non-joinder as a necessary party. [Paras 17, 19]

Case Law Cited

Parvaiz Ahmed Parry v. State of Jammu and Kashmir [2015] 12 SCR 810 : (2015) 17 SCC 709; *Chandra Shekhar Singh and Others v. State of Jharkhand*, 2025 SCC OnLine SC 595 – distinguished.

District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi [1990] 2 SCR 559 : (1990) 3 SCC 655 – held applicable.

Pramod Kumar v. U.P. Secondary Education Services Commission [2008] 4 SCR 559 : (2008) 7 SCC 153 – relied on.

Supreme Court Bar Association v. Union of India and Anr. [1998] 2 SCR 795 : 1998 4 SCC 409; *P.M. Latha and Anr. v. State of Kerala and Ors.* [2003] 2 SCR 653 : (2003) 3 SCC 541; *K. Ajit Babu v. Union of India* [1997] Supp. 3 SCR 56 : (1997) 6 SCC 473; *Rama Rao v. M. G. Maheshwara Rao* [2007] 9 SCR 446 : (2007) 14 SCC 54; *Ranjan Kumar v. State of Bihar* (2014) 16 SCC 187; *Kulwant Singh v. Dayaram* [2014] 11 SCR 1053 : (2015) 3 SCC 177; *Ashok Kumar Sonkar v. Union of India* [2007] 3 SCR 95 : (2007) 4 SCC 54 – referred to.

List of Acts

Special Rules of 1975 for the Kerala State Water Transport Subordinate Service (Operating Wing); Kerala Inland Vessels Rules, 2010; Kerala State and Subordinate Service Rules, 1958; Constitution of India; Administrative Tribunals Act, 1985.

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Kerala Public Service Commission (KPSC); Kerala State Water Transport Department; Boat Lascar; Current lascar's licence; "Current"; Syrang's licence; Eligibility criteria; Essential qualification; Public employment; Recruitment process; Overqualification; Higher qualifications than what was required; Distinct class; Nature of duties; Nature of service; Statutory prescription; Equality of opportunity in public employment; *Sine qua non*; Fair and transparent selection process; Over-qualification not a disqualification; Lack of public employment opportunities; Over qualified candidates; Non-joinder of necessary parties; Identified category; Article 142 of the Constitution of India.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No(s). 4499-4500 of 2025

From the Judgment and Order dated 02.12.2019 of the High Court of Kerala at Ernakulam in OPKAT Nos. 153 and 154 of 2019

Appearances for Parties*Advs. for the Appellant:*

P. N Ravindran, Sr. Adv., P. S. Sudheer, Rishi Maheshwari, Ms. Anne Mathew, Bharat Sood, Jai Govind M J.

Advs. for the Respondents:

Nishe Rajen Shonker, Mrs. Anu K Joy, Alim Anvar, Santhosh K, Vipin Nair, Mohd Aman Alam, Aditya Narendranath, Mrs. M.B.Ramya, Mrs. Madhavi Yadav, Mrs. Deeksha Gupta.

Judgment / Order of the Supreme Court**Judgment**

Dipankar Datta, J.

THE APPEAL

- These appeals, by special leave, take exception to the common judgment and order dated 2nd December, 2019 of the High Court of Kerala at Ernakulam dismissing the appellant's writ petitions.¹

¹ O.P.(KAT) No. 153 of 2019 and O.P.(KAT) No. 154 of 2019

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2. Facts giving rise to these appeals, which are not in dispute, are these:
- a. An advertisement dated 17th October, 2012 was published by the Secretary of Kerala Public Service Commission² inviting applications from interested candidates for filling up 12 vacant posts of “Boat Lascar” under the Kerala State Water Transport Department.³ The method of appointment was indicated as ‘direct recruitment’ and the qualifications stipulated therein read as follows:
7. Qualifications:
- (1) Literacy in Malayalam or Tamil or Kannada
 - (2) Possession of Current Lascar’s Licence
- Note :- Candidates should possess current Lascar’s Licence on the last date for receipt of applications, during Practical Test and Interview also.
- b. Incidentally, in terms of the Special Rules of 1975⁴ for the Kerala State Water Transport Subordinate Service (Operating Wing),⁵ the service would consist of 3 classes of officers. While Class I comprised 2 categories, Classes II and III comprised 3 categories, viz. Category 1, Category 2 and Category 3. Syrang, Driver and Lascar are listed at Categories 1, 2 and 3, respectively, of Class III. In terms of the Schedule appended to the Special Rules, the post of Syrang can be filled up either by direct recruitment or by promotion from among Lascars in the ratio of 1:1 whereas appointment on the post of Lascar is entirely by direct recruitment. It is also provided in the Schedule that while literacy in Malayalam or Tamil or Kannada is the common qualification required for appointment as Syrang as well as Lascar, an individual aspiring for the post of Syrang must possess current Syrang’s licence while an individual aspiring for appointment on the post of Lascar is similarly required to possess a current Lascar’s Licence.

2 KPSC

3 the department

4 the Special Rules

5 Subordinate Service

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- c. The licence noted above is a certificate of competency that is referred to in Chapter III of the Kerala Inland Vessels Rules, 2010. In terms thereof, any aspiring individual fulfilling the qualifications statutorily prescribed is issued a certificate of competency upon succeeding in the “viva voce examination” that is conducted either for a Syrang’s licence or a Lascar’s licence. *Inter alia*, while a person aspiring for a Syrang’s licence is required to be 10th standard pass, it is 8th standard pass for anyone aspiring for a Lascar’s licence.
- d. By a letter dated 9th October, 2012 addressed to the Director of the Department, the Director of Ports⁶ conveyed to the following effect:

...

This is to communicate formally that the Syrang, Master and Driver Certificate issued by the Chief Examiner under the KIV Rules- 2010 is a certificate superior to Lascar Certificate. Hence those who possess Syrang, Master and Driver Certificate will be proficient in Lascar work also. Thus Syrang and Master Certificate can be considered more than equivalent to Lascar Certificate and such persons are eligible for the job ‘lacer’ (sic, lascar) also.

This communication is issued based on the representation received from a few candidates who applied to the Public Service Commission for Lascar job in order to enable them to complete the application process. Copy of their representation is enclosed. However the final selection may be done based on practical test, on the skills required, type of vessel and other requirements of the organization.

...

- e. The appellant was the holder of a Syrang’s licence, which was valid when he noticed the advertisement.
- f. Perceiving that possession of a Syrang’s licence makes him eligible to apply for the post of Lascar which, incidentally, happens to be the feeder post for promotion to the post of

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Syrang, the appellant offered his candidature and acquitted himself creditably resulting in his name figuring at serial number 1 (OX category) in the “Ranked List” which was circulated *vide* No. 257/17/ERVI and brought into force with effect from 22nd February, 2017. He had secured 45.67 marks. Based on such rank, the Secretary, KPSC informed the appellant *vide* letter dated 2nd May, 2017 as follows:

...

You are informed that you have been advised for recruitment as Boat Lascar on Rs.8,960 -14,260/- in the above Department against BC Turn. The selection is subject to Rule 3(c) and 10(b) of the Kerala State and Subordinate Service Rules, 1958.

Further instructions will be issued to you in due course by the above Department.

...

- g. While the appellant was awaiting an offer of appointment, on 8th May, 2017 and 27th July, 2017, two sets of original applications under Section 19 of the Administrative Tribunals Act, 1985⁷ were filed before the Thiruvananthapuram and Ernakulam Benches of the Kerala Administrative Tribunal.⁸
- h. The prayer in O.A. No. 857 of 2017 was for a declaration that inclusion of ineligible candidates, who do not possess the essential qualification, is oppressive, arbitrary and illegal; a direction be issued to restructure the “Ranked List” by removing all such ineligible candidates; and to pass incidental orders. In OA (EKM) 1566 of 2017, similarly, the Tribunal was urged to declare candidates who did not have valid and current Lascar’s licence as on 17th October, 2012, i.e., the last date for receipt of applications, as not eligible to be included in the “Ranked List” as well as for issuance of a direction to KPSC to recast the “Ranked List” by excluding the candidates not possessing valid Lascar’s licence on 17th October, 2012.

⁷ O.A. No. 857 of 2017 and O.A. (EKM) No. 1566 of 2017

⁸ Tribunal

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- i. Importantly, in OA No. 857 of 2017, no private party figured in the array of respondents and there were only three official respondents (Director of the department, the Director and KPSC). In OA (EKM) No. 1566 of 2017, apart from the official respondents, only 5 of the several selected candidates were joined as respondents. The appellant was not one among the five private respondents who were impleaded in the said application.
- j. During the pendency of the original applications before the Tribunal, the appellant came to be appointed on 28th July, 2017 as “Boat Lascar”.
- k. The reply statement filed by the Director before the Tribunal on 20th February, 2018 is extracted hereunder:

“2. Port Department is implementing KIV Rules 2010. Director of Ports is the competent Authority to oversee the various regulations, under the provisions of KIV Rules 2010. KIV Rules insist that the MASTER, DRIVER AND SYRANG certificates will be issued only after 2 years from the date of issue of Lascar certificate by the Chief Examiner, Department of Ports. So the persons who got competency certificates for Master, Driver and Syrang also have sufficient eligibilities to be the boat lascar. The above competency certificate holders are also eligible to apply for the post of Lascar and it is stated by the Director of Ports in the letter No.B3-389/2011 dated 9.10.2012.”

- l. In due course, the original applications were heard by the Tribunal. *Vide* its judgment and order dated 9th March, 2018,⁹ the Tribunal allowed both the original applications and directed KPSC to recast the “Ranked List” and to cancel the advice to appoint ineligible candidates.
- m. Acting in pursuance of the Tribunal’s order, KPSC issued a show cause notice dated 31st July, 2018 to the appellant calling upon him to explain why the advice for his appointment be not treated as cancelled. The appellant responded thereto by his reply dated 10th August, 2018. Thereafter, KPSC issued an order

⁹ Tribunal's order

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dated 24th October, 2018 cancelling the advice for appointment of the appellant following which the Director cancelled the appellant's appointment as "Boat Lascar" by his order dated 27th October, 2018.

- n. On 3rd November, 2018, the appellant challenged the Tribunal's order before the High Court in separate writ petitions. However, a Division Bench of the High Court by the common impugned judgment and order dismissed such writ petitions.

CONTENTIONS OF THE PARTIES

- 3. Mr. P. N. Ravindran, learned senior counsel for the appellant, argued that both the Tribunal in allowing the original applications as well as the High Court in dismissing the writ petitions fell in error in not appreciating that a higher qualification could never have been regarded as a disqualification for appointment on the post of Lascar.
- 4. Mr. Ravindran relied on the decisions in *Parvaiz Ahmed Parry v. State of Jammu and Kashmir*¹⁰ and *Chandra Shekhar Singh and Others v. State of Jharkhand*¹¹ in support of the contention that a candidate having a higher degree in the subject prescribed under the advertisement cannot be disqualified by reason of ineligibility for not possessing the required degree.
- 5. Mr. Ravindran further argued that by the time the Tribunal was moved by the unsuccessful candidates, the appellant had not been appointed. However, he did figure in the "Ranked List". During the pendency of the original applications, the appellant came to be appointed. Despite such appointment, he was not impleaded as a respondent in either of the two original applications filed before the Tribunal. When the original applications were filed, seeking exclusion of candidates holding Syrang's licence and recasting of the "Ranked List", without the appellant being included as a respondent, no adverse order could have been passed by the Tribunal *qua* him. Since the appellant was not impleaded as a respondent in the original applications, the same were defective and no relief could have been granted to the unsuccessful candidates/original applicants.

¹⁰ (2015) 17 SCC 709

¹¹ 2025 SCC OnLine SC 595

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6. Mr. Ravindran also submitted that assuming this Court were not inclined to accept the claim of the appellant that he could have been considered for selection despite not possessing a current Lascar's licence, it was contended that this was an eminently fit case for exercise of power by this Court under Article 142 of the Constitution. Reliance was placed on the Constitution Bench decision in **Supreme Court Bar Association vs Union Of India and Anr.**¹².
7. *Per contra*, Mr. Nair, learned counsel for KPSC, contended that the appellant and similarly placed candidates having Syrang's licence were considered for selection in view of the letter of the Director dated 9th October, 2012. However, the Tribunal having held that candidates not possessing current Lascar's licence could not have been considered for selection and having directed KPSC to recast the "Ranked List", the same was duly complied with resulting in cancellation of the advice for appointment of the appellant.
8. Mr. Nair relied on the decision in **District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi**¹³ for the proposition that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned: the aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement.
9. According to him, had it been known that anyone not having a Lascar's licence but having a Syrang's licence would be eligible for consideration for appointment on the post of Lascar, others having Syrang's certificate could also have applied thereby enlarging the zone of consideration. However, keeping the process confined only to a select few and not extending opportunity to all others similarly situate like the appellant would contravene Article 16 of the Constitution and also amount to a fraud on public.

12 (1998) 4 SCC 409

13 (1990) 3 SCC 655

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10. **P.M. Latha and Anr. v. State of Kerala and ors.**¹⁴ was also cited by Mr. Nair in support of his contention that anyone holding a Syrang's licence could not have been considered on the ground of being more qualified than the holder of a Lascar's licence, and that whether Syrang's licence could be considered as appropriate for recruitment of a Lascar is a question which ought to be left to be considered by the authorities concerned. Since, in **P.M. Latha** (supra), this Court did not consider candidates having B. Ed degree as qualified for the vacancies advertised, which required recruitment to be made from candidates with TTC qualifications, he urged that dismissal of the appeal is the only logical conclusion.
11. Mr. Nishe Rajan Shonker, learned counsel for the State of Kerala, adopted the submissions of Mr. Nair.

QUESTION OF LAW

12. The central question of law arising for decision on this appeal is, whether the appellant who did not hold a current Lascar's licence but was the holder of a Syrang's licence could have been considered qualified to participate in the recruitment process as well as appointed.
13. Certain notable features having a bearing on the issue to be decided by us are these:
 - a. The advertisement dated 15th September, 2012 did stipulate that only those holding a current Lascar's licence are eligible to apply. At the same time, it did not specifically say that anyone holding a Syrang's licence or a licence higher than a Lascar's licence is not eligible to apply.
 - b. According to the Director, a Syrang's licence is something superior to a Lascar's licence and that holders of Syrang's licence can be considered more than equivalent to Lascar's licence, thus, being eligible for the job of Lascar also.
 - c. A communication to the above effect was made by the Director to KPSC, not on his own, but based on the representation received from a few candidates who, presumably having Syrang's licences, had applied for the post of Lascar and wanted to compete with aspirants having Lascar's licence.

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- d. Despite the appellant being selected, his name figuring in the “Ranked List”, he being recommended by the Secretary, KPSC on 2nd May, 2017 for appointment as “Boat Lascar” as well as his appointment on 28th July, 2017 during the pendency of the original applications, he was not impleaded as respondent therein.
- e. The original applicants could not have feigned ignorance as to the identity of candidates possessing Syrang’s licence who came to be appointed; also, the Tribunal did not take the pain of passing appropriate orders to have them impleaded. Thus, the Tribunal’s order adverse to the interest of the appellant was effectively passed behind his back.
- f. Despite there being a reference in the show cause notice dated 31st July, 2018 to the Tribunal’s order, the appellant chose to reply to the show cause notice instead of challenging the such order before the High Court either under Article 226 or 227 of the Constitution of India.
- g. Once the appellant’s appointment as “Boat Lascar” was cancelled on 27th October, 2018 by the Director, such order provided him a cause of action to move an original application before the Tribunal under Section 19 of the 1985 Act; however, instead of moving the Tribunal, the appellant moved the High Court in its writ jurisdiction, admittedly, when the Tribunal’s order had been acted upon.

ANALYSIS AND REASONS

- 14. In our considered opinion, the High Court would have been justified in dismissing the writ petitions of the appellant at the threshold on the ground that the order of cancellation had intervened in the meanwhile providing a cause of action for him to move the Tribunal. In such original application, he could have even prayed for recall of the Tribunal’s order on the ground of the same having been passed behind his back and upon such recall, to hear him on the merits of the original applications. Such a course of action was available to the appellant in terms of the decisions of this Court in *K. Ajit Babu v. Union of India*¹⁵ and *Rama Rao v. M. G. Maheshwara Rao*.¹⁶

15 (1997) 6 SCC 473

16 (2007) 14 SCC 54

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However, the High Court examined the appellant's claim on merits leading to dismissal of his writ petitions and we too having been addressed on the merits of the appeals, it would be just and fair to answer the question that we have formulated above without taking too technical a view.

15. First, we propose to consider the argument touching non-joinder of the appellant in the proceedings before the Tribunal though, undoubtedly, he was a necessary party.
16. The effect of non-joinder of a necessary party in proceedings where an order is passed adverse to the interest of the non-party was considered by a co-ordinate bench of this Court in **Ranjan Kumar v. State of Bihar**.¹⁷
17. The decision in **Ranjan Kumar** (supra) was followed by the decision in **Kulwant Singh v. Dayaram**,¹⁸ where promotion to the post of head constables in Chandigarh Police was the subject matter of consideration. This Court held that after appearing in a competitive examination and upon being selected, the appointees become an identified category and that if the rights of such appointees forming part of such identified category are to be affected by any determination, the situation commands that they should be impleaded in the proceedings as necessary parties. The non-joinder now permits them to take the plea that the impugned order does not bind them.
18. The decisions in **Ranjan Kumar** (supra) and **Kulwant Singh** (supra) are authorities for the proposition that selectees who are appointed or promoted must be arrayed as parties in the original proceedings where their selections are challenged. **Kulwant Singh** (supra) has taken a step further and ruled that mere awareness of pendency of litigation does not make the order passed by the Court/Tribunal interfering with the selection binding upon such appointees or promotees.
19. Though there can be little quarrel with the law laid down in **Ranjan Kumar** (supra) and **Kulwant Singh** (supra) and considering what has been argued by Mr. Ravindran as a proposition of law, noted above, to be correct, what stands out is that the appellant did

¹⁷ (2014) 16 SCC 187

¹⁸ (2015) 3 SCC 177

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not immediately challenge the Tribunal's order and rested on his oars to throw a challenge till his service came to be terminated. In fact, he took a chance of favourable consideration of his case by responding to the show cause. Having taken a chance and not being successful, he cannot, thereafter, succeed before us on the ground of his non-joinder as a necessary party. Having not initiated appropriate legal action that the law permitted him to take, he can get back his service only if the primary contention raised by Mr. Ravindran succeeds.

20. Next, turning to the crux of the issue, it is absolutely necessary to bear in mind that though the posts of Syrang and Lascar are included in Class III of the Subordinate Service, the requisite qualifications for appointment on such posts as ordained by the Special Rules are different. Moreover, it is specifically ordained by Rule 6 of the Special Rules as follows:

"6. Other Qualifications. - No person shall be eligible for appointment to the categories specified in column (1) of the Table below by the method specified in column (2) unless he possesses the qualifications prescribed in the corresponding entry in column (3) thereof."

21. As noted in the factual narrative, possession of a current Lascar's licence is an essential qualification for anyone aspiring for the post of Lascar. This is what is laid down in column (3), i.e., the qualifications required; and going by what is said therein read with Rule 6, there can be no gainsaying that apart from those having a current Lascar's licence, none else is eligible. The word "current" is also significant in the sense that the Rules insist on a subsisting licence, i.e., a certificate of competency, which is valid and operative during the time the last date for receiving applications intervenes.
22. The advertisement did not require anything else other than what the Special Rules require. The absence of express mention that those holding a Syrang's licence or a Driver's licence which, according to the Director, are superior to a Lascar's licence, is insignificant, irrelevant and immaterial having regard to the clear terms of Rule 6 (supra).
23. Viewed from a different angle, on a conjoint reading of Rule 6 of the Special Rules and the advertisement, we find both mentioning a particular qualification, i.e., a current Lascar's licence, which each aspirant has to possess for being considered eligible to participate

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in the process of selection, thereby creating a distinct class and it is aspirants falling in such class alone who could have applied for being considered. Thus, any aspirant, even though possessing a Syrang's licence or a Driver's licence not being part of such distinct class, could not have been considered eligible. The classification has not been shown to be and is not unreasonable.

24. True it is, from the reply statement of the Director filed before the Tribunal and also from the 2010 Rules, it does appear that the holder of a Syrang's licence is mandatorily required to obtain and have a Lascar's licence for 2 years and, therefore, without having a Lascar's licence one cannot apply for a Syrang's licence. By the same analogy, it could be presumed that the holder of a Syrang's licence is having the requisite eligibility to be a Lascar. However, what turns the tide against the appellant is the requirement of the 'current' Lascar's licence, discussed above, which the appellant did not have on the last date for receiving applications.
25. We have further seen from the letter of the Director dated 9th October, 2010 addressed to KPSC that it was not voluntary; rather, it was at the behest of candidates who did not possess current Lascar's licence. It can well be presumed that the Director buckled under pressure. However, notwithstanding that, qualifications statutorily laid down could not have been diluted by what the Director felt should be considered by KPSC and, therefore, it is the statutorily prescribed qualifications that should prevail.
26. Mr. Nair is also right in referring to us the decision in *M. Tripura Sundari Devi* (supra). Although in such decision it was held that it amounts to a fraud on public to appoint candidates with qualifications inferior to the qualifications advertised, which is not precisely the case here because the appellant has higher qualifications than what was required, yet, the other principle of law flowing from such decision is squarely applicable. It has neither been shown that the Director's letter dated 9th October, 2012 was given wide publicity nor has it been shown by the appellant that KPSC had issued any corrigendum *vide* public notice whereby the zone of consideration was enlarged permitting holders of a Syrang's licence to participate in the process. We, thus, hold drawing inspiration from the said decision that the aggrieved are all those who had similar or even better qualifications than the appellant but who had not applied for the post because they were unaware of the fact that persons not having a current Lascar's

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licence would also be eligible to apply and compete in the process. Equality of opportunity in matters of public employment being a *sine qua non* for a fair and transparent selection process, such equality is conspicuously absent in the present case.

27. There is one other important aspect which also cannot be lightly overlooked. We shall assume for a moment that though the process was commenced for appointment on vacant posts of Lascar, there was no illegality in persons having Syrang's licence being permitted to participate. Of course, there could be aspirants holding Lascar's licence in sufficient numbers who might not have the higher qualifications necessary for even appearing for a *viva voce* to aim at possessing a certificate of competency as Syrang. Those aspirants, holding a Lascar's licence, might not also be so capable and/or competent for obtaining a Syrang's licence. After all, all individuals are not blessed with the same level of intelligence, human abilities and intellect. The distribution of innate abilities and intellectual prowess being far from uniform, resulting in a diverse spectrum of human potential, it is axiomatic that aspirants having only a Lascar's licence can never be considered for direct recruitment on any post in Class III of the Subordinate Service other than a Lascar. It is quite but natural that in the matter of observation, perception and memorisation of details of principles of navigation, and skill in respect of seamanship, there would be significant differences in the faculties of different individuals. If persons holding Syrang's licence - who are obviously better equipped than persons holding Lascar's licence - are allowed to apply and participate in the process for appointment on the post of Lascar, the probability of the persons holding Lascar's licence being outperformed by the persons holding Syrang's licence would be quite high. It could also be a distinct possibility where all the vacant posts of Lascar are filled up by persons having Syrang's licence but not having a current Lascar's licence as per the statutory requirement. That would pose a real difficulty for persons not so fortunate and lacking in higher intelligence, abilities and intellect, for, they would cease to have a level playing field of competing with other similarly qualified candidates, and left to compete with candidates having higher qualifications despite the zone of consideration having been specially carved out for holders of current Lascar's licence. It is not that the holders of Syrang's licence are left in the lurch. Those having Syrang's licence could well compete for appointment on the

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post of Syrang in the 50% direct recruitment quota along with others having current Syrang's licence. If, in case, all the vacant posts of Lascar are filled up by persons having Syrang's licence and such holders of Syrang's licence do not participate in the process for direct recruitment to the post of Syrang, it is fairly likely that the persons holding Lascar's licence would never secure any public employment. That could not have been the intention of a welfare State.

28. Also, it cannot be gainsaid that not only the qualifications but the nature of duties required to be performed and the nature of service to be rendered by a Lascar and a Syrang are different. Merely because the post of Lascar is a feeder post for promotion to the post of Syrang does not *per se* make the holder of a Syrang's licence qualified for the job of a Lascar. Thus, nothing much turns on it.
29. Law is well-settled that an appointment made contrary to the statute/statutory rule would be void [see: **Pramod Kumar v. U.P. Secondary Education Services Commission**¹⁹].
30. Based on such consideration, we are *ad idem* with the Division Bench of the High Court that KPSC could not have included candidates with licences other than a Lascar's licence in the "Ranked List" and proceed to recommend those candidates for appointment.
31. On merits, therefore, no legally protected right of the appellant having been affected by the impugned action, he has no valid claim.
32. We have considered the decisions of this Court in **Parvaiz Ahmed Parry** (supra) and **Chandra Shekhar Singh** (supra).
33. In **Parvaiz Ahmed Parry** (supra) the appellant therein possessed degrees in BSc with Forestry as one of his major subjects as well as MSc (Forestry). The qualification prescribed in the Advertisement was "*BSc (Forestry) or equivalent from any university recognised by ICAR*". This Court held that the appellant's qualifications were equivalent to the minimum prescribed qualifications and should be considered for the concerned post.
34. **Chandra Shekhar Singh** (supra) was on the question of whether 'degree' as mentioned in the advertisement therein included a post-graduate degree, which the appellants therein possessed. This Court

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applying the golden rule of interpretation held that the word ‘degree’ would include within its scope and ambit all three degrees – bachelor’s degree, master’s degree and a doctorate degree – unless a specific expulsion has been made.

35. The said decisions are, thus, distinguishable on facts.
36. We hasten to add that whether or not the action of the employer to exclude an aspirant from the process of selection (on the ground that either he is over qualified for a particular post or has qualifications which, being over and above what is ordained by statutory rules or rules framed under the proviso to Rule 309 of the Constitution, does not match the qualification specifically required) is justified has to be decided considering the rules governing the selection, the qualifications prescribed, the nature of duty to be performed, the nature of service to be rendered and a host of other factors. It has to be remembered that, at times, the employer’s need to have the right people at the right place, and not always the higher qualified, has to be conceded. We know of decisions holding that over-qualification cannot be a disqualification since such an approach amounts to discouraging the acquisition of qualifications on the one hand and on the other, such an approach could be seen as arbitrary, discriminatory and not in national interest. However, this principle cannot be put in a straitjacket imposing rigid or inflexible rules or norms. Lack of public employment opportunities in sufficient numbers may force even a Master degree holder to apply for the job of a peon but, if he is appointed upon his application being favourably considered, what happens to the aspirants who have not had the means of pursuing study beyond the 12th standard? Do they remain unemployed for ever, if all or majority of the posts of peon are filled up by such degree holders? What happens if the Master degree holder, in pursuit of greener pastures, leaves the post of Peon for a better and secured higher job commensurate with his qualifications after a couple of years? Does it not, in such a case, burden the public exchequer by requiring the employer to initiate a fresh selection process? Is not the State, as a model employer, obliged to ensure that the posts of peon are filled up only by those having the basic qualification, and not by over qualified candidates, for sub-serving the common good? Does not the State have the obligation to strive to ensure that all citizens have adequate means of livelihood? These are questions which no Court can afford to ignore. We end by saying that each

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case that comes before the Court has to be decided on its own peculiar facts and the problem that it presents for resolution and that there can be no universally accepted rule that every time, a higher qualified candidate is to be preferred to a candidate who matches the essential qualification required for the post.

37. It is now time to consider Mr. Ravindran's final submission that this is an eminent case for exercising powers under Article 142 of the Constitution.
38. This Court in **Ashok Kumar Sonkar v. Union of India**²⁰ held that if an appointment is illegal, it is *non-est* in the eye of law and rendering the appointment a nullity and principles of equity in a case of such nature would have no role to play; also that, sympathy should not be misplaced.
39. Exercise of power under Article 142 of the Constitution would have been warranted in the present case if palpable injustice were demonstrated. Unfortunately for the appellant, despite the assiduous endeavour of Mr. Ravindran, we have consciously decided to confine our role to being the dispute-settlers.
40. We are of the considered opinion that the appellant having gained entry through a process which was not legal and valid, this is not a fit and proper case where this Court ought, in exercise of its power under Article 142 of the Constitution, to ignore the illegality and invalidity to come to his rescue.

CONCLUSION

41. The appeals, accordingly, fail and are dismissed. No costs.
42. Pending application, if any, stands disposed of.

Result of the case: Appeals dismissed.

²⁰Headnotes prepared by: Divya Pandey