

[2020] 9 S.C.R. 925

CHIEF MANAGER, PUNJAB NATIONAL BANK & ANR. A

v.

ANIT KUMAR DAS

(Civil Appeal No.3602 of 2020)

NOVEMBER 03, 2020 B

**[ASHOK BHUSHAN, R. SUBHASH REDDY AND
M. R. SHAH, JJ.]**

Service Law:

*Appointment/ Selection – To the post of Peon in Bank – C
Entitlement – Eligibility criteria for the post as per the circulars issued by the Bank was 12th class pass – It was specifically mentioned in the advertisement that the candidate should not be graduate – Respondent-candidate mentioned his qualification as 12th pass – Appointment letter issued – During scrutiny it was found by Bank that the candidate was graduate and hence not eligible for the post – Candidature cancelled – Writ Petition – Single Judge of High Court directed the Bank to allow the candidate to discharge his duties as peon as per the appointment order – In writ appeal, Division Bench of High Court affirmed the order of Single Judge – Appeal to Supreme Court – Held: A conscious decision was taken by Bank providing eligibility criteria/ educational qualification – It is for the employer to determine the relevance and suitability of the qualification for any post – Courts are not fit instruments to assess the expediency/ advisability/ utility of such prescription of qualifications – The candidate having not challenged the eligibility criteria/ educational qualification in the advertisement and having participated in the recruitment process, it is not open for him to contend that higher qualification cannot be a disqualification – The candidate cannot claim right to appointment having suppressed the material information and/ or giving false information – Impugned order is therefore set aside. G*

Allowing the appeal, the Court

HELD: 1. The appointments to the post of subordinate staff/ Peons were required to be made strictly in accordance with the eligibility criteria mentioned in the Circular letter No. 25 of 2008 H

- A dated 06.11.2008 and the selection of the Peons was required to be made as per Circular letter No. 6 of 2016 dated 04.3.2016. [Para 5.1][934-C-D]
2. In the advertisement itself, it was specifically mentioned that a candidate should have passed 12th class or its equivalent
- B with basic reading/writing knowledge of English and should not be a graduate as on 01.01.2016. The original writ petitioner never challenged the eligibility criteria/educational qualification mentioned in the advertisement. He participated in the recruitment process on the basis of the advertisement, without challenging the eligibility criteria/educational qualification
- C mentioned in the advertisement. Therefore, once having participated in the recruitment process as per the advertisement, thereafter it is not open for him to contend that acquisition of higher qualification cannot be a disqualification and that too when he never challenged the eligibility criteria/educational qualification
- D mentioned in the advertisement. [Paras 5 and 6][933-G; 935-F-H]
3. A conscious decision was taken by the bank providing eligibility criteria/educational qualification that a graduate candidate shall not be eligible for the post of Peon/subordinate
- E staff, looking to the nature of the post. Recruitment to public service 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. [Paras 6 and 7.1][935-F; 936-B-C]
- F *Yogesh Kumar v. Government of NCT of Delhi (2003) 3 SCC 548 : [2003] 2 SCR 662 – relied on.*
4. It is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess
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expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. In the present case, prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed 12th standard is justified and it is a conscious decision taken by the Bank which is in force since 2008. Therefore, the High Court has clearly erred in directing the appellant-Bank to allow the respondent-original writ petitioner to discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement. [Para 7.3][939-D-G]

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J. Rangaswamy v. Government of Andhra Pradesh (1990) 1 SCC 288; Zahoor Ahmad Rather v. Imtiyaz Ahmad (2019) 2 SCC 404 : [2018] 14 SCR 1082 – relied on.

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Jyoti K.K. v. Kerala Public Service Commission (2010) 15 SCC 596; State of Punjab v. Anita (2015) 2 SCC 170 : [2014] 14 SCR 819 – referred to.

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5. In the application/bio-data, the respondent-original writ petitioner did not mention that he was a graduate. He suppressed the material fact and declared his qualification as H.S.C. An employee is expected to give a correct information as to his qualification. The original writ petitioner failed to do so. He was in fact over-qualified and therefore ineligible to apply for the job. In fact, by such conduct on the part of the respondent –original writ petitioner, one another righteous candidate has suffered for his mischievous act. Had it been known to the bank that he was a graduate, he would not have at all been considered for selection as a Peon in the bank. A candidate having suppressed the material information and/or giving false information cannot claim right to continuance in service. Thus, on the ground of suppression of material information and the facts and as the respondent – original writ petitioner even otherwise was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement which was as per Circular letter No. 25 of 2008 dated 06.11.2008. The bank rightly cancelled his candidature and rightly did not

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- A permit him to resume his duty. The High Court ought not to have allowed the writ petition when it was a clear case of suppression of material fact by the original writ petitioner. [Para 8][940-A-F]

Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav
 (2003) 3 SCC 437 : [2003] 2 SCR 361 - relied on.

- B
State of Orissa v. Bibhisan Kanhar (2017) 8 SCC 608
 – referred to.

- C 6. Therefore, the impugned order passed by the Division Bench of the High Court and the judgment and order passed by the Single Judge of the High Court directing the appellant Bank to allow the respondent – original writ petitioner to discharge his duties as a Peon as per appointment order is unsustainable and deserves to quashed and set aside. [Para 10][941-A-B]

D	<u>Case Law Reference</u>		
	(2017) 8 SCC 608	referred to	Para 3.4
	(1990) 1 SCC 288	relied on	Para 7
E	[2003] 2 SCR 662	relied on	Para 7.1
	[2018] 14 SCR 1082	relied on	Para 7.2
	(2010) 15 SCC 596	referred to	Para 7.2
F	[2014] 14 SCR 819	referred to	Para 7.2
	[2003] 2 SCR 361	relied on	Para 8

G CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3602 of 2020.

From the Judgment and Order dated 22.11.2019 of the High Court of Orissa at Cuttack in Writ Appeal No. 278 of 2019.

H Rajesh Kumar-I, Anant Gautam, Nipun Sharma, Abhinav Agrawal, Rajesh Kumar, Advs. for the appearing parties.

The Judgment of the Court was delivered by A

M. R. SHAH, J.

1. Leave granted.

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 22.11.2019 passed by the Division Bench of the High Court of Orissa at Cuttack in Writ Appeal No. 278 of 2019, by which the Division Bench of the High Court has dismissed the appeal preferred by the appellant herein and has confirmed the judgment and order dated 13.03.2019 passed by the learned single Judge of the High Court in W.P. (C) No. 19261 of 2016, by which the learned single Judge allowed the said writ petition preferred by the respondent herein and directed the appellant Bank to allow the respondent herein – original writ petitioner to discharge his duties as a Peon as per the appointment order dated 03.10.2016, the employer – Punjab National Bank has preferred the present appeal. B

2. Applications were invited by the appellant Bank for the post of Peon by publishing an advertisement in the local newspaper. The eligibility criteria mentioned in the said advertisement was that a candidate should have passed 12th class or its equivalent with basic reading/writing knowledge of English. It specifically provided that a candidate should not be a Graduate as on 01.01.2016. A candidate was also required to submit the bio-data as per the prescribed format. The respondent herein, though a Graduate, applied for the said post. However, neither in the application nor in the bio-data, he disclosed that he was a graduate. At this stage, it required to be noted that the eligibility criteria and the educational qualification prescribed above was as per the Circular Letter No. 25 of 2008 dated 06.11.2008 issued by the Human Resources Development Division (for short “HRD Division”) of the Bank specifying the guidelines for recruitment of staff in subordinate cadre in the bank and prescribing the eligibility criteria. That on the basis of the information provided by the applicants in their applications, a list of eligible candidates was prepared on the basis of the marks obtained in 10th Class and 12th Class. As per Circular dated 04.03.2016 issued by the HRD Division of the Bank, the selection of the peons was required to be made on the basis of the percentage of marks obtained by the candidates in 10th standard and 12th standard. That so far as the respondent herein – original writ petitioner is concerned, based on the information provided by him in C

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- A his application, his name appeared in the selected candidates of Balsar District. That an order of appointment was issued. It appears that while scrutiny of the documents was going on, the appellant Bank came to know about a graduate certificate showing that the respondent – original writ petitioner was a graduate since 2014. Thus, it was noticed and found that he was not eligible as per the advertisement and the Circulars and that the respondent deliberately, wilfully and intentionally suppressed the fact that he was a graduate. Therefore, his candidature was cancelled and he was not allowed to join the bank in subordinate cadre. That, thereafter, the respondent filed the writ petition before the High Court, being Writ Petition (C) No. 19261 of 2016, for an appropriate order to allow him to discharge his duties as Peon as per the appointment order dated 03.10.2016 and to further direct that his appointment may not be cancelled on the ground that he has possessed higher qualification. That the said petition was opposed by the bank by filing a detailed affidavit-in-reply. It was specifically pointed out that the eligibility criteria and the educational qualification was fixed as per the Circular letter No. 25 of 2008 dated 06.11.2008 issued by the HRD Division of the Bank. It was also pointed out that on 04.03.2016 the HRD Division issued another Circular letter No. 6 of 2016 pursuant to the decision of the Bank's Board in their meeting dated 29.02.2016, by which it was decided that the selection of the Peons will be made on the basis of the percentage of marks obtained by the candidates in 10th standard and 12th standard. It was also submitted that the respondent deliberately, wilfully and intentionally suppressed the material fact that he was a graduate. It was pointed out that had it been known to the bank that he was a graduate, he would not have at all been considered for selection as a peon in the bank. Despite the above, the learned single Judge of the High Court allowed the said writ petition solely relying upon the decision of the Allahabad High Court in Civil Writ Petition No. 69034 of 2019 [**Pankaj Kumar Dubey v. Punjab National Bank**], in which the Allahabad High Court referring to the judgment and order passed by this Court in Civil Appeal No. 1010 of 2000 dated 11.02.2000 [**Mohd. Riazul Usman Gani v. District and Sessions Judge, Nagpur**] held that a candidate cannot be denied the appointment solely on the ground that he is possessing a higher qualification. The learned single Judge directed the bank to allow the respondent herein to discharge his duties as a Peon as per the appointment order dated 03.10.2016.

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2.1 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned single Judge allowing the aforesaid writ petition and directing the bank to allow the respondent –original writ petitioner to discharge his duties as a Peon as per the appointment order dated 03.10.2016, the appellant Bank preferred the writ appeal before the Division Bench of the High Court. By the impugned judgment and order, which as such is a non-speaking and unreasoned order, the Division Bench of the High Court has dismissed the appeal and has not interfered with the judgment and order passed by the learned single Judge. Hence, the present appeal.

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3. Learned counsel appearing on behalf of the appellant Bank has vehemently submitted that in the facts and circumstances of the case, more particularly, when in the advertisement it was specifically mentioned that a candidate should not be a graduate as on 01.01.2016 and that it specifically provided that a candidate should have passed 12th class or its equivalent with basic reading/writing knowledge of English and the educational qualification/eligibility criteria mentioned in the advertisement was as per Circulars dated 06.11.2008 and 04.03.2016 issued by the HRD Division of the Bank and admittedly the respondent – original writ petitioner was a graduate as on 01.01.2016 and therefore not eligible even to apply, both, the learned single Judge as well as the Division Bench of the High Court have materially erred in directing the appellant Bank to allow the original writ petitioner to perform his duties as a Peon pursuant to the appointment order dated 03.10.2016.

3.1 It is further submitted on behalf of the appellant Bank that in the present case the original writ petitioner did not challenge the eligibility criteria/educational qualification mentioned in the advertisement. He never challenged the circular prescribing the educational qualification/ eligibility criteria. It is submitted that once having not challenged the eligibility criteria/educational qualification mentioned in the advertisement, and thereafter having participated in the recruitment process, it is not open for him to contend that he cannot be denied appointment on the ground of having higher qualification.

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3.2 It is further submitted by the learned counsel appearing on behalf of the appellant Bank that the High Court has clearly erred in relying upon the decision of the Allahabad High Court, in which the decision of this Court in ***Mohd. Riazul Usman Gani*** (supra) was relied upon. It is submitted that in the case of ***Mohd. Riazul Usman Gani***

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- A (supra) this Court has specifically stated in Para 21 that the said decision is on the facts of the case in hand and should not be understood as laying down a rule of universal application.
- 3.3 It is submitted that even otherwise it is required to be noted that the said Circulars dated 06.11.2008 and 04.03.2016 were issued
- B prescribing the eligibility criteria/educational qualification on the basis of the decision approved by the Board of the Bank and considering the nature of the post – Peon/subordinate cadre and a conscious decision was taken by the bank that a candidate having the qualification of graduation shall not be eligible and the candidate who passed in 12th
- C standard or its equivalent with basic reading/writing knowledge of English shall only be eligible. It is submitted therefore apart from the fact that the original writ petitioner did not challenge the eligibility criteria/ educational qualification mentioned in the advertisement, once a conscious decision was taken by the employer – bank prescribing a specific qualification, thereafter unless it is found to be most arbitrary, the same
- D cannot be the subject-matter of a judicial review. Reliance is placed on the decisions of this Court in the cases of *J. Rangaswamy v. Government of Andhra Pradesh* (1990) 1 SCC 288, *Yogesh Kumar v. Government of NCT of Delhi* (2003) 3 SCC 548 and a recent decision of this Court in the case of *Zahoor Ahmad Rather v. Imtiyaz Ahmad* (2019) 2 SCC 404.
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- 3.4 It is further submitted by the learned counsel appearing on behalf of the appellant Bank that even otherwise on the ground that the respondent – original writ petitioner deliberately and willfully suppressed the material fact of having been graduate and did not disclose the same even in the bio-data which was required to be submitted in the prescribed form, the High Court has materially erred in directing the appellant Bank to allow the respondent – original writ petitioner to perform his duties as a Peon as per the appointment order dated 03.10.2016 which, as such, was already cancelled. Reliance is placed on the decisions of this Court in the cases of *State of Orissa v. Bibhisan Kanhar* (2017) 8 SCC 608
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- G and in the case of *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav* (2003) 3 SCC 437. It is submitted that had it been known to the bank that he was a graduate, he would not have at all been considered for selection as a Peon in the bank. It is submitted that based on the bio-data and the application submitted by him, in which he gave the particulars of having passed 12th standard, his candidature was accepted. It is
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submitted that before he was permitted to resume/join the duty, the bank came to know that he was a graduate since 2014 and therefore was not eligible at all and thereafter his candidature was cancelled and he was not allowed to join the duty. It is submitted that therefore the High Court has erred in directing the appellant bank to allow the respondent – original writ petitioner to discharge his duties as Peon as per the appointment order dated 03.10.2016.

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4. The present appeal is vehemently opposed by the learned counsel appearing on behalf of the respondent – original writ petitioner. It is vehemently submitted on behalf of the respondent – original writ petitioner that as rightly held by the High Court relying upon the decision of this Court in the case of *Mohd. Riazul Usman Gani* (supra) and the decision of the Allahabad High Court in the case of *Pankaj Kumar Dubey* (supra), the higher qualification cannot be a disqualification. It is submitted that in the case of *Mohd. Riazul Usman Gani* (supra), this Court has deprecated the criteria of maximum qualification for the post of Peon. It is submitted that therefore, as such, the High Court has not committed any error in directing the appellant Bank to permit the respondent – original writ petitioner to discharge his duties as a Peon pursuant to the appointment order dated 03.10.2016. It is submitted that the appointment of respondent – original writ petitioner was cancelled mainly/solely on the ground that he was having a higher qualification. It is submitted that in the present case the eligibility criteria/educational qualification mentioned in the advertisement was 12th standard and cannot be said to be a maximum educational qualification and therefore merely because the respondent-original writ petitioner was having a higher qualification than 12th standard, his candidature could not have been cancelled.

4.1 Making the above submission it is prayed to dismiss the present appeal.

5. We have heard learned counsel appearing on behalf of the respective parties at length. The appellant Bank invited the applications for the post Peon by giving an advertisement in the local newspaper. In the advertisement itself, it was specifically mentioned that a candidate should have passed 12th class or its equivalent with basic reading/writing knowledge of English and should not be a graduate as on 01.01.2016. Thus, as per the eligibility criteria mentioned in the advertisement, a candidate who was having qualification of graduate was not eligible even to apply. From the counter filed on behalf of the Bank before the High

- A Court, it appears that the educational qualification mentioned in the advertisement was as per Circular letter No. 25 of 2008 dated 06.11.2008 issued by the HRD Division of the bank. The relevant portion of the Circular letter No. 25 of 2008 dated 06.11.2008 reads as under:
- “Age Minimum – 18 years
- B Maximum – 24 years with applicable relaxations.
- Education: Pass in 12th Standard or its equivalent with basic reading/writing knowledge of English (Graduates are not eligible)”
- 5.1 It appears that thereafter on 04.03.2016 the HRD Division of
- C the Bank issued another Circular Letter No. 6 of 2016 indicating therein that the process of conducting interviews for recruitment of posts in subordinate cadre has since been discontinued, the Bank’s Board in its meeting 29.02.2016 has approved an alternative mechanism in lieu of interviews for recruitment of Peons in subordinate cadre selection on the basis of percentage of marks obtained by the candidates in 10th
- D standard and 12th standard. Therefore, the appointments to the post of subordinate staff/Peons were required to be made strictly in accordance with the eligibility criteria mentioned in the Circular letter No. 25 of 2008 dated 06.11.2008 and the selection of the Peons was required to be made as per Circular letter No. 6 of 2016 dated 04.3.2016.
- E 5.2 It is not in dispute that pursuant to the said advertisement, respondent herein – original writ petitioner applied for the post of Peon. However, in the application/bio-data, he did not disclose that he is a graduate from 2014. He only mentioned his qualification as 12th pass. On the basis of the information provided by him in his application, his
- F application was entertained and he was selected on the basis of the marks obtained in 10th class and 12th class. Therefore, the respondent – original writ petitioner deliberately, wilfully and intentionally suppressed the fact that he was a graduate. Had it been known to the bank that he was a graduate, he would not have at all been considered for selection as a Peon in the bank. That thereafter and before the original writ
- G petitioner was permitted to resume his duty pursuant to the appointment order dated 03.10.2016, the bank came to know that he was a graduate. That thereafter when scrutiny of the document was going on, the original writ petitioner produced the graduate certification showing that he was a graduate since 2014, the bank found that he was not eligible as he did not fulfill the criteria mentioned in the advertisement, and that he
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suppressed the material fact that he was a graduate, his candidature came to be cancelled and he was not allowed to join the bank in the subordinate cadre/Peon. A

5.3 The learned Single Judge of the High Court by the judgment and order allowed the writ petition preferred by the respondent and directed the appellant Bank to allow the original writ petitioner to discharge his duties as a Peon as per appointment order dated 03.10.2016 on the ground that as held by the Allahabad High Court in the case of *Pankaj Kumar Dubey* (supra), in which the decision of this Court in the case of *Mohd. Riazul Usman Gani* (supra) was relied upon, the higher qualification cannot be the qualification for the post of Peon. Decision of the learned Single Judge has been continuing by the Division Bench by impugned non-speaking and unreasoned order. Therefore, the short question which is posed for consideration of this Court is whether in the facts and circumstances of the case and despite the fact that there was suppression of the material fact by the respondent – original writ petitioner in not disclosing in the application/bio-data that he was a graduate, the High Court is justified in directing the appellant Bank to allow the respondent – original writ petitioner to discharge his duties as a Peon as per appointment order dated 03.10.2016 which, as such, was cancelled? B

6. It is required to be noted that the eligibility criteria/educational qualification mentioned in the advertisement inviting the applications was as per Circular letter No. 25 of 2008 dated 06.11.2008, the relevant portion of which is reproduced hereinabove. As stated in the counter to the writ petition, a conscious decision was taken by the bank providing eligibility criteria/educational qualification that a graduate candidate shall not be eligible for the post of Peon/subordinate staff. The said decision was taken consciously looking to the nature of the post. At this stage, it is required to be noted that the original writ petitioner never challenged the eligibility criteria/educational qualification mentioned in the advertisement. He participated in the recruitment process on the basis of the advertisement, without challenging the eligibility criteria/educational qualification mentioned in the advertisement. Therefore, once having participated in the recruitment process as per the advertisement, thereafter it is not open for him to contend that acquisition of higher qualification cannot be a disqualification and that too when he never challenged the eligibility criteria/educational qualification mentioned in the advertisement. C

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- A 7. Even otherwise, prescribing the eligibility criteria/educational qualification that a graduate shall not be eligible to apply was a conscious decision taken by the Bank and the same was as per the Circular letter No. 25 of 2008 dated 06.11.2008. In the case of *J. Rangaswamy* (supra), it is observed and held by this Court that it is not for the court to consider the relevance of qualifications prescribed for various posts.
- B 7.1 In the case of *Yogesh Kumar* (supra), it is observed and held by this Court that recruitment to public service 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.
- C 7.2 In a recent decision of this Court in the case of *Zahoor Ahmad Rather* (supra), this Court has distinguished another decision of this Court in the case of *Jyoti K.K. v. Kerala Public Service Commission* (2010) 15 SCC 596 taking the view that in a case where lower qualification is prescribed, if a person has acquired higher qualifications, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In the said decision, this Court also took note of another decision of this Court in the case of *State of Punjab v. Anita* (2015) 2 SCC 170, in which case, this Court on facts distinguished the decision in the case of *Jyoti K.K.* (supra). While distinguishing the decision in the case of *Jyoti K.K.* (supra), it is observed in paras 25 and 26 as under:
- “**25.** The decision in *Jyoti K.K.* [*Jyoti K.K. v. Kerala Public Service Commission*, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] has been considered in a judgment of two learned Judges in *State of Punjab v. Anita* [*State of Punjab v. Anita*, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329]. In that case, applications were invited for JBT/ETT qualified teachers. Under the rules, the prescribed qualification for a JBT teacher included a Matric with a two years’ course in JBT training and knowledge of Punjabi and Hindi of the Matriculation standard or its equivalent. This Court held that none of the respondents held the prescribed qualification and an MA, MSc or MCom could not be treated as a “higher qualification”. Adverting to the decision in *Jyoti K.K.* [*Jyoti K.K. v. Kerala Public Service Commission*, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664], this Court noted that Rule 10(a)(ii) in that case clearly stipulated that the possession of a higher

qualification can presuppose the acquisition of a lower qualification prescribed for the post. In the absence of such a stipulation, it was held that such a hypothesis could not be deduced: (*Anita case [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329]*, SCC p. 177, para 15) A

“15. It was sought to be asserted on the basis of the aforesaid observations, that since the private respondents possess higher qualifications, then the qualification of JBT/ETT, they should be treated as having fulfilled the qualification stipulated for the posts of JBT/ETT Teachers. It is not possible for us to accept the aforesaid submission of the learned counsel for the private respondents, because *the statutory rules which were taken into consideration by this Court while recording the aforesaid observations in Jyoti K.K. case [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664]*, permitted the aforesaid course. The statutory rule, in the decision relied on by the learned counsel for the private respondents, is extracted hereunder: (SCC p. 598, para 6) B C D

‘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 Standing Orders of Government as equivalent to a qualification specified for a post in the Special Rules [Ed.: The matter between two asterisks has been emphasised in original.] 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.’ E F

(emphasis supplied)

A perusal of the Rule clearly reveals that the possession of higher qualification would presuppose the acquisition of the lower qualification prescribed for the posts. Insofar as the present controversy is concerned, there is no similar statutory provision authorising the appointment of persons with higher qualifications.” G

(emphasis supplied) H

- A **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.”
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That thereafter it is observed in para 27 as under:

- H **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.

7.3 Thus, as held by this Court in the aforesaid decisions, it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. In the present case, prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed 12th standard is justified and as observed hereinabove, it is a conscious decision taken by the Bank which is in force since 2008. Therefore, the High Court has clearly erred in directing the appellant Bank to allow the respondent-original writ petitioner to discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement.

8. Even on the ground that respondent – original writ petitioner deliberately, wilfully and intentionally suppressed the fact that he was a

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- A graduate, the High Court has erred in directing the appellant Bank to allow the respondent – original writ petitioner to discharge his duties as a Peon. In the application/bio-data, the respondent-original writ petitioner did not mention that he was a graduate. Very cleverly he suppressed the material fact and declared his qualification as H.S.C., whereas as a matter of fact, he was holding a degree in the Bachelor in Arts. Had it been known to the bank that he was a graduate, he would not have at all been considered for selection as a Peon in the bank. That thereafter when scrutiny of the documents was going on and when the respondent – original writ petitioner produced a graduation certificate, at that time, the bank came to know that he was a graduate and therefore not eligible
- B and therefore the bank rightly cancelled his candidature and he was not allowed to join the bank in the subordinate cadre. Therefore, on the aforesaid ground alone, the High Court ought not to have allowed the writ petition when it was a clear case of suppression of material fact by the original writ petitioner. An employee is expected to give a correct information as to his qualification. The original writ petitioner failed to do so. He was in fact over-qualified and therefore ineligible to apply for the job. In fact, by such conduct on the part of the respondent –original writ petitioner, one another righteous candidate has suffered for his mischievous act. As held by this Court in the case of **Ram Ratan Yadav** (supra), suppression of material information and making a false statement has a clear bearing on the character and antecedents of the employee in relation to his continuance in service. A candidate having suppressed the material information and/or giving false information cannot claim right to continuance in service. Thus, on the ground of suppression of material information and the facts and as the respondent – original writ petitioner even otherwise was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement which was as per Circular letter No. 25 of 2008 dated 06.11.2008, the bank rightly cancelled his candidature and rightly did not permit him to resume his duty.
- G 9. On reading the judgment and order passed by the learned single Judge it appears that the learned single Judge has not at all considered the aforesaid aspect of suppression of material fact and information. So far as the impugned order passed by the Division Bench of the High Court, as such it is a non-speaking and unreasoned order, without even stating any facts.

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10. In view of the above and for the reasons state above, the impugned order dated 22.11.2019 passed by the Division Bench of the High Court and the judgment and order passed by the learned single Judge of the High Court dated 13.03.2019 in W.P. (C) No. 19261 of 2016 directing the appellant Bank to allow the respondent – original writ petitioner to discharge his duties as a Peon as per appointment order dated 03.11.2016 is unsustainable and deserves to quashed and set aside and are accordingly quashed and set aside. The appeal is allowed. However, considering the fact that the post in question was a subordinate staff post/Peon, and despite the fact that because of the mischievous act on the part of the original writ petitioner, one candidate could not get the job, we refrain from imposing the cost and leave the matter there.

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Kalpana K. Tripathy

Appeal allowed