

**IN THE HIGH COURT OF HIMACHAL PRADESH,  
SHIMLA.**

**CWP No. 138 of 2020 and  
other connected matters.  
Reserved on: 06.08.2020  
Decided on: 14<sup>th</sup> August, 2020**

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1. CWP No. 138 of 2020  
Robin Kumar and another ...Petitioners.  
Versus  
State of H.P. and others ...Respondents.
2. CWPOA No. 3601 of 2019  
Anshul Thakur and others ...Petitioners  
Versus  
H.P. State Electricity Board Ltd. And others  
..Respondents.
3. CWPOA No. 3633 of 2019  
Pankesh ...Petitioner  
Versus  
H.P.State Electricity Board Ltd. And another  
...Respondents.
4. CWPOA No. 6534 of 2019  
Vijay Kumar and another ....Petitioners  
Versus  
H.P.State Electricity Board Ltd. And another  
...Respondents.
5. CWPOA No. 6252 of 2020  
Ramesh Chand ...Petitioner  
Versus  
H.P.Staff Selection Commission ...Respondent
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**Coram:**

**Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.**

**Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.**

**Whether approved for reporting? <sup>1</sup> Yes**

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<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment? yes

**For the Petitioner(s):** Mr. K.D. Shreedhar, Sr. Advocate, with Mr. Kush Sharma and Ms. Tanvi Chauhan, Advocate, for the petitioners in CWP No. 138 of 2020.

Mr. Nimish Gupta, Advocate, for the petitioner(s) in CWPOA Nos. 3601 and 3633 of 2019.

Mr. Dilip Sharma, Senior Advocate, with Mr. Manish Sharma, Advocate, for the petitioner, in CWPOA No. 6534 of 2019.

Mr. Bhuvnesh Sharma, Advocate, for the petitioner in CWPOA No. 6252 of 2020.

**For the Respondents:** Mr. R.P. Singh and Ms. Seema Sharma, Deputy Advocate Generals, for respondent No.1/State.

Mr. Ashok Sharma, Senior Advocate with Mr. Tara Singh Chauhan, Advocate, for respondent No.2-HPSEBL.

Mr. Sanjeev Kumar, Advocate, for respondent No.3 in CWP No.138/2020, CWPOA No. 6534 of 2019 and CWPOA No. 6252 of 2020.

Mr. Angrez Kapoor, Advocate, for respondent No.2 in CWPOA No. 3601 of 2019 and CWPOA No. 3633 of 2019.

Mr. Rakesh Kumar Sharma, Advocate, for respondents No.3 to 7 in CWPOA No. 3601 of 2019.

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**Justice Tarlok Singh Chauhan, J.**

Whether a degree in Electrical Engineering/Electrical & Electronics Engineering is technically higher qualification than a diploma in the aforesaid subject and, if so, are the degree holders eligible for the appointment to the post of Junior

Engineer (Electrical), is the core issue that arises for consideration in these petitions.

2. CWP No. 138 of 2020, CWPOA No. 3601 of 2019 and CWPOA No. 3633 of 2019 have been filed by the degree-holder petitioners (for short 'degree-holder petitioners) claiming the right of consideration, whereas CWPOA No. 6534 of 2019 and CWPOA No. 6252 of 2020 have been filed by the diploma-holder petitioners (for short diploma-holder petitioners) opposing the claim of the degree-holders.

3. On 27.06.2018, the Himachal Pradesh Staff Selection Commission on the requisition sent by the Himachal Pradesh State Electricity Board Ltd., advertised 222 posts of Junior Engineer (Electrical). The petitioners applied for the post and after qualifying the written examination were called for verification of the documents but the final result was not declared, hence these petitions.

4. It is urged on behalf of the degree holder petitioners that even though the qualification possessed by them is not stipulated in the rules or in the advertisement as the only minimum qualification has

been prescribed, however being possessed of technical qualification higher than the prescribed qualification, they have every right to be considered for appointment. ◇

5. On the other hand, the diploma holder petitioners opposed the consideration of the candidature of the degree holder petitioners on the ground that the qualifications possessed by these petitioners is neither higher nor can be considered in teeth of the recruitment rules as also on the basis of the advertisement issued by the Himachal Pradesh Staff Selection Commission.

6. The Employer i.e. Himachal Pradesh State Electricity Board Ltd. (for short 'HPSEBL') has adopted a very guarded stand as is evident from para 13 of the reply which reads as under:

*“13. That the para No.13 of the petition pertaining to record is admitted and contrary to record is denied specifically. It is further submitted with utmost respect that as per the provisions of R&P regulations the minimum essential qualification provided for making recruitment to the post of Junior Engineer (Elect.) is “matriculation with Diploma in Electrical/ Electronics/Electronics and Communication/*

Computer Science from the recognized Institution/ Board/University duly recognized by the Central or State Government". Accordingly the replying respondent has requested respondent No.3 being the recruiting agency for conducting the process of selection in accordance with law taking into account the aforesaid provisions of the R&P Regulations and to sponsor the name of eligible successful candidates for considering their appointment to the post of Junior Engineer (Elect.) and respondent No.3 has to initiate the selection process strictly in accordance with the provisions of the R&P Regulations, which have also been incorporated in the advertisement issued for that purpose and the petitioners are fully aware of this essential requirements and which has been notified in the advertisement as is published by respondent No.3 and respondent No.3 could not travel beyond the provisions of the R&P as framed and notified by the replying respondent as such the petition of the petitioners is premature and same is liable to be dismissed."

7. Similar averments have been made in para-5 of the preliminary submissions.

8. The respondent-Staff Selection Commission, which has issued the advertisement and has conducted the selection takes exception to the consideration of the

graduate degree holder petitioners as being not eligible and it is because of such exception that the selection has not been taken to its logical end.

9. We have heard learned counsel for the parties and have gone through the records of the case carefully.

10. Rules 7 & 10 of the Junior Engineer (Electrical)/Junior Engineer (IT) Class-III (NonGazette) Recruitment and Promotion Rules, 2006 lays down the minimum educational and other qualification required for direct recruits J.Es and the same is as under:

**7. Amended Provision**

**Essential:**

(I) Minimum matriculation with diploma in Electrical Engineering/ Electrical & Electronics Engineering from a recognized Institution/ Board/University duly recognized by the Central/State Government for JE (Elect) post.

(ii) Minimum matriculation with diploma in Computer Science Engineering or Electronic & Communication Engineering of Information Technology or equivalent from recognized Institute/ University for JE (IT) post.

**Desirable:**

(iii) Knowledge of customs, manners and dialects of Himachal Pradesh & suitability for appointment in peculiar conditions prevailing in the State.

**10. Amended Provision:**

(I) 72% posts including 50 posts of Junior Engineer (IT) by direct recruitment on regular or on contract basis, through the H.P. Subordinate Services Selection Board or a recruiting agency, including the department recruitment committee as constituted by the Board, from time to time.

(ii) 28% by promotion.”

11. Advertisement issued by respondent No.3, set out the minimum qualification as under:

**“Junior Engineer Electrical (post code 663):**  
*Minimum matriculation with diploma in Electrical Engineering/Electrical & Electronics Engineering from a recognized Institution/Board/ University duly recognized by the Central/State Government”.*

12. It is more than settled that essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The Court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same.

If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders to proceed in accordance with law. In no case can the Court in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same. (Refer: **Maharashtra Public Service Commission, through its Secretary vs. Sandeep Shriram Warade and others 2019 (6) SCC 362**).

13. Learned counsel for the degree holder petitioners vehemently argued that the rule in question only prescribes for minimum qualification and would, therefore, not debar the consideration and eligibility of the candidates, who have higher technical qualification. Strong reliance in support of such submission has been placed on the judgment rendered by the Hon'ble Supreme Court in **Jyoti K.K. and others vs. Kerala Public Service Commission and others (2010) 15 SCC 596**.



14. On the other hand, the Board as also the diploma holder petitioners would argue that the judgment rendered in **Jyoti K.K.'s** case (supra) is not at all applicable to the present facts in view of the clarification issued by the Hon'ble Supreme Court in subsequent decisions, more particularly, in **State of Punjab and others vs. Anita and others (2015) 2 SCC 170** and **Zahoor Ahmad Rather and others vs. Sheikh Imtiyaz Ahmad and others (2019) 2 SCC 404**.

15. In order to appreciate the rival contentions, the first question that arises for consideration is whether the decree in the field in question can be held to be higher qualification when compared to the diploma in the field.

16. A diploma in engineering essentially is designed to impart practical aspect of the engineering and the mere perusal of the syllabus reveals that the Diploma in Engineering is aimed to equip the candidates, who can cater to the practical requirement of engineering with emphasis on the practical works. In

short, it aims to train persons for execution of the works and handling of equipments, etc. whereas the graduates in Engineering are taught with syllabus which provides theoretical training in the field of Engineering with low emphasis on the practical part of the engineering.

17. In India, Diploma Course in Engineering, is offered to the students and is a short duration course with the focus on training a person in a particular field. The curriculum includes basic theoretical knowledge and extensive practical knowledge and the diploma can be conferred by various institutes who may or may not be affiliated to the University Grant Commission (hereinafter referred to 'UGC') or All India Council for Technical Education (hereinafter referred to 'AICTE'). The same can be offered even to students after passing their Class-X Examination, in contrast, the Bachelor in Technical Education is offered to students after their completion of Class-XII Examination. A 'degree' can be granted only by the Institutes affiliated to UGC or AICTE. The duration of the course is longer (at present 4 years) and the emphasis in the curriculum is on

academics. Thus, in India, focus and the aim of the two streams of education is entirely different with stress on extensive practical knowledge in the case of diploma holders and major emphasis on academic in the case of degree holders. Thus, the Diploma in Engineering and Degree in Engineering cater to different situations and, in view thereof, a degree in the field, in question, cannot be viewed as a higher qualification when compared to a diploma in that field.

18. In taking this view, we are supported by the judgment of the Full Bench of the Allahabad High Court in **Deepak Singh and others vs. State of U.P. and others 2019 (7) ADJ 453.**

19. No doubt, the Hon'ble Supreme Court in **Jyoti K.K.** case (supra) held the degree to be higher qualification than a diploma, but the said judgment was based upon the interpretation of rules before it, under which the essential technical qualifications prescribed by the Rules for recruitment to the post of Sub Engineers (Electrical) in the Kerala State Electricity Board were (i) a Diploma in Electrical Engineering of a

recognized Institution obtained after a three years course of study, or (ii) a Certificate in Electrical Engineering from any one of the recognized technical schools with five years of service in the Kerala State Electricity Board.

20. The Kerala Public Service Commission rejected the applications of candidates who possessed a B. Tech. or B. Degree in Electrical Engineering. But, the Hon'ble Supreme Court took note of Rule 10 (a) (ii) of Part I of Kerala State and Subordinate Services Rules, 1956, which clearly stipulated that the qualifications recognized by Executive Orders or Standing Orders of the Government as equivalent to a qualification stipulated in the special Rules as well as those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be considered as fulfillment of the eligibility criteria. Interestingly Rule 10 (a) (ii), though contained in the General Rules for State and Subordinate Services, also contained a *non-obstante* Clause. Rule 10 (a) (ii) of the Kerala State and

Subordinate Services Rules, extracted by the Hon'ble Supreme Court in **Jyoti K.K** 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 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.”*

21. It is relevant to note that the prescription contained in Rule 10 (a) (ii) of the General Rules, was notwithstanding anything contained even in the Special Rules.

22. The Hon'ble Supreme Court also observed in para-9 of its decision in **Jyoti K K** that the Special Rules did not contain any clause for exclusion of candidates who possessed higher qualifications. Therefore, the Hon'ble Supreme Court allowed the case of the Degree Holders in Engineering. While this is not the fact situation obtaining in the present case.

23. The aforesaid decision was considered in **State of Punjab and others vs. Anita and others**

**(2015 )2 SCC 170**, wherein 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. In this background, the Hon'ble Supreme 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".

24. At this stage, we may take note of the judgment rendered by the Hon'ble Supreme Court in ***Parvaiz Ahmad Parry vs. State of Jammu and Kashmir and others (2015) 17 SCC 709*** wherein the eligibility conditions/criteria in the advertisement was BSc (Forestry) or equivalent from any university recognized by ICAR. Whereas the appellant therein was possessing BSc degree with Forestry as one of the major subjects and also MSc (Forestry) and it was in this background that the Hon'ble Supreme Court concluded that the appellant possessed the prescribed

qualification and hence rejection of his application by treating him as ineligible was not proper. ◇

25. In **Zahoor Ahmad** case (supra), the question before the Hon'ble Supreme Court pertained to the appointment of Technician III. The qualification prescribed was Matriculation with ITI in Electrical Trade. Some of the diploma holders appellants in Electrical Engineering and diploma in Electronics and Communication had applied. It was noted that in some District Centres their interviews were conducted. The Selection Board held a meeting that only ITI is relevant for the trade in question and rest of the candidates were not eligible. It is in such background that the Hon'ble Supreme Court concluded and observed as under:

*“26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti KK in the subsequent decision in Anita (supra). The decision in Jyoti KK turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily pre-supposes the acquisition of another, albeit*

lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The state as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the state, as the recruiting authority, to determine. The decision in *Jyoti KK* turned on a specific statutory rule under which the holding of a higher qualification could pre-suppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench of the High Court was justified in reversing the judgment of the learned Single Judge and in coming to the 10 id at page 177 conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision of the Division Bench.”

26. In **Zonal Manager, Bank of India, Zonal Office, Kochi and others vs. Aarya K. Babu and another (2019) 8 SCC 587**, the Hon'ble Supreme



Court was dealing with a case pertaining to the post of Agricultural Field Officer (Scale-1). The qualifications prescribed were of graduate possessing degree in Agro-Forestry. Some of the candidates had secured a four year degree in Forestry. The High Court had held such candidates were eligible. However, the matter was taken up before the Hon'ble Supreme Court. One of the questions raised was whether the High Court was justified in undertaking the exercise of providing equivalence to another qualification so as to declare it to be equivalent to the qualification prescribed in the recruitment notification ignoring the fact that the employer who makes the recruitment had not considered such degree as equivalent. It was in this background that the Hon'ble Supreme Court observed that any such approach would amount to denial of opportunity to those who possess such qualification but had not applied. It is apt to reproduce the relevant observations as contained in para-12 of the judgment, which reads as under:

*“12. Though we have taken note of the said contention we are unable to accept the same. We are of such opinion in view of the well established position that it is not for the Court to read into or assume and thereby include certain qualifications which have not been included in the Notification by the employer. Further the rules as referred to by the learned counsel for the respondents is pointed out to be a rule for promotion of officers. That apart, even if the qualification prescribed in the advertisement was contrary to the qualification provided under the recruitment rules, it would have been open for the candidate concerned to challenge the Notification alleging denial of opportunity. On the other hand, having taken note of the specific qualification prescribed in the Notification it would not be open for a candidate to assume that the qualification possessed by such candidate is equivalent and thereby seek consideration for appointment nor will it even be open for the employer to change the requirements midstream during the ongoing selection process or accept any qualification other than the one notified since it would amount to denial of opportunity to those who possess the qualification but had not applied as it was not notified.”*

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27. Similar issues have time and again come up before this Court. In **Himachal Pradesh Staff Selection Commission and others vs. Pawan Thakur 2019 (3) Shim. L.C. 1676**, the facts of the case were set-out in paras 3 to 9 and same are as under:

“3. By a Notification dated 16.5.2016, the Staff Selection Commission invited applications for appointment to various posts, in various departments of the Government. One of the posts included in the Notification for recruitment was the post of Surveyors, to be appointed on contract basis, in the Department of Industries and in the Department of Irrigation and Public Health. The post code allotted to the said post in the Department of Irrigation and Public Health was 527. The post code allotted to the said post in the Department of Industries was 488.

4. The essential qualifications prescribed in the Notification for recruitment to the post of surveyors in the Department of Irrigation and Public Health were (i) a pass in 10+2 examination from a recognized Board/University; and (ii) a certificate in the trade of Survey Work or its equivalent from a recognized I.T.I or from an Institute duly recognized by the Central/HP Government. The essential qualifications

prescribed for recruitment to the post of surveyors in the Department of Industries were (i) Matric Examination or its equivalent from a recognized Board of School Education/ Institution duly recognized by the Central /H.P. Government and (ii) two years Certificate Course in the trade of Survey Work from a recognized I.T.I./Institution duly recognized by the Central/H.P. Government.

5. The post of Surveyor is in Class-III and is a Non-Gazetted State Cadre post. The Rules relating to recruitment and Promotion to the said post, in the department of Irrigation and Public Health, titled as "Himachal Pradesh Department of Irrigation and Public Health Surveyor Class-III (Non-Gazetted) Recruitment and Promotion Rules, 2013" issued by the Governor in exercise of the powers conferred by proviso to Article 309 of the Constitution, also prescribe the very same qualifications as indicated in the Notification for recruitment, namely (i) a pass in 10+2 examination from a recognized Board/University; and (ii) a Certificate in the trade of Survey Work or its equivalent from a recognized I.T.I or from an Institute duly recognized by the Central/H.P. Government.

6. Similarly, the prescription in the notification, with regard to post of Surveyor in the department of Industries was also in tune with

*the Recruitment and Promotion Rules for the post of Surveyors in the Department of Industries.*

7. *In response to the said Notification for recruitment, a lot of candidates, including those who were either Diploma Holders or Degree Holders in the discipline of Civil Engineering, also applied. The diploma/degree holders applied on the basis that they were holding a higher qualification in the same discipline and that therefore, there could be no bar.*

8. *On 25.9.2016, a written screening test was conducted and even the Diploma Holders and Degree Holders in Civil Engineering were allowed to participate in the written screening test. The results of this screening test were declared on 20.1.2017, and the short-listed candidates were invited for interview from 6.3.2017 to 9.3.2017.*

9. *But in the meantime, the applications of candidates holding a Diploma or Degree in Civil Engineering were rejected. Challenging the orders of rejection, a set of candidates filed Original Applications in O.A. Nos. 787, 801, 802, 823, 836, 942 and 1329 of 2017 on the file of the Tribunal.”*

28. The Tribunal allowed all the petitions mainly on the basis of the judgment rendered by the Hon'ble Supreme Court in **Jyoti K.K.** case (supra)

and when the matter was assailed before a Co-ordinate Bench of this Court, **Jyoti K.K.** case (supra) was not only taken into consideration but the distinction brought about by the Hon'ble Supreme Court in **Anita** and **Zahoor Ahmad** case (supra) was also meticulously set out and it was observed as under:

*“13. As we have stated earlier, the main ground on which the Tribunal allowed the Original Applications of the respondents herein, was the ratio purportedly laid down by the apex Court in **Jyoti K.K.** But in **Jyoti K.K.** the essential technical qualifications prescribed by the Rules for recruitment to the post of Sub-Engineers (Electrical) in the Kerala State Electricity Board were (i) a Diploma in Electrical Engineering of a recognized Institution obtained after a 3 years course of study, or (ii) a Certificate in Electrical Engineering from any one of the recognized technical schools with five years of service in the Kerala State Electricity Board. The Kerala Public Service Commission rejected the applications of candidates who possessed a B. Tech. or B. Degree in Electrical Engineering. But, the Supreme Court took note of Rule 10 (a) (ii) of Part I of Kerala State and*

Subordinate Services Rules, 1956, which clearly stipulated that the qualifications recognized by Executive Orders or Standing Orders of the Government as equivalent to a qualification stipulated in the special Rules as well as those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be considered as fulfillment of the eligibility criteria. Interestingly Rule 10 (a) (ii), though contained in the General Rules for State and Subordinate Services, also contained a non-obstante Clause. Rule 10 (a) (ii) of the Kerala State and Subordinate Services Rules, extracted by the Supreme Court in **Jyoti K.K** 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 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.”

14. It is relevant to note that the prescription contained in Rule 10 (a) (ii) of the General Rules, was notwithstanding anything contained even in the Special Rules.

15. The Supreme Court also observed in para-9 of its decision in **Jyoti KK** that the Special

Rules did not contain any clause for exclusion of candidates who possessed higher qualifications. Therefore, the Supreme Court allowed the case of the Degree Holders in Engineering.

16. It is exactly for the above stated reasons that in a subsequent decision in **State of Punjab vs. Anita [(2015) 2 SCC 170]** the Supreme Court distinguished the decision in **Jyoti K.K.** The distinction made in **Anita**, was relied upon by the Supreme Court in a more recent decision in **Zahoor Ahmad Rather vs. Sheikh Imtiaz Ahmad [(2019) 2 SCC 404]**. In fact in paragraph 25 of the report in **Zahoor Ahmad**, the Supreme Court made it clear that the hypothesis formulated in **Jyoti K.K.** as though the possession of a higher qualification would presuppose the acquisition of a lower qualification, cannot be accepted in the absence of a statutory stipulation like the one contained in Rule 10(a) (ii) of the Kerala State and Subordinate Services Rules. Again in para 26 of the report in **Zahoor Ahmad**, the Supreme Court reiterated that the decision in **Jyoti K.K.** turned on the provisions of Rule 10(a) (ii) of General Rules and that in the absence of such a Rule, it is not possible to draw an inference that a higher qualification presupposes the acquisition of a lower qualification. The Supreme Court cautioned in **Zahoor Ahmad** that the



prescription of qualifications for a post, is a matter of recruitment policy and that the State as the employer, is entitled to prescribe the qualifications as a condition of eligibility. The Court cautioned that it is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications.

17. Emphasis was laid by the Supreme Court in **Zahoor Ahmad** that the equivalence of qualification is not a matter which can be determined in exercise of the power of judicial review. One of the important observations made by the Supreme Court in para 27 of the report in **Zahoor Ahmad** is that the State, as a public employer, may well take into account social perspectives that require the creation of job opportunities across the societal structure. This observation assumes significance in the light of the fact that there are different layers of unemployed youth, with some dropping out of Schools, some abandoning studies after acquiring a Certificate Course, some pursuing a Diploma and a few pursuing a Degree. If the State thinks that different job opportunities had to be created across the board, for all these sections of unemployed youth, the same cannot be found fault with. Therefore, the only ground on which the Tribunal allowed the Original Applications of the respondents herein, on the basis of ratio in **Jyoti K.K** cannot be upheld. It is true that the

judgment of the Tribunal was rendered on 17.5.2018 and the decision in **Zahoor Ahmad** came on 5.12.2018. But **Jyoti K.K.** was not distinguished for the first time in **Zahoor Ahmad**. It had already been distinguished in **Anita** which the Tribunal did not take note of.”

(underlying supplied by us).

29. It would be noticed that the issue in question is no longer *res integra* and stands decided against the decree holder petitioners in view of the judgment rendered in **Pawan Thakur** case (supra), but we would complete this discussion by referring to certain other judgments of this Court as also the judgments of the Hon'ble Supreme Court.

30. In CWP No. 161 of 2019 titled **Bhupinder Sharma vs. State of H.P. and others and connected matters**, decided on 29.08.2019 the post sought to be filled up was that of Junior Office Assistants for which the essential qualification as prescribed by the Recruitment and Promotion Rules was as under:

(i) 10+2 from a recognized Board of School Education/University.

*(ii) One year diploma in Computer Science/Computer Application/Information Technology from a recognized University/Institution.*

*(iii) Computer typing speed of 30 words per minute in English or 25 words per minute in Hindi.*

Or

*(i) 10+2 from a recognized Board of School Education/University.*

*(ii) 'O' or 'A' level Diploma from National Institute of Electronics & Information Technology (NIELIT).*

*(iii) Computer typing speed of 30 words per minute in English or 25 words per minute in Hindi.*

OR

*(i) 10+2 from a recognized Board of School Education/University.*

*(ii) Diploma in Information Technology (IT) from a recognized ITI/Institution.*

*(iii) Computer typing speed of 30 words per minute in English or 25 words per minute in Hindi."*

31. Various petitions came to be filed before this Court. One set of such petitions was filed by the candidates who aggrieved by the strict adherence to the Recruitment and Promotion Rules.

32. Apart from the other contentions, one of the contentions put-forth by the petitioners therein was “That persons who possess a higher qualification in the same discipline cannot be rejected, especially after they have participated in the process of selection and also secured higher marks than the other candidates”.

33. Dealing with such contentions, a Co-ordinate Bench of this Court observed as under:

“36. The third contention of the learned Senior Counsel for the petitioner is that the petitioner has a higher qualification in the same discipline than what is prescribed and that he has also secured a higher rank in the written examination, proving himself to be more meritorious. Therefore, it is his contention that a more meritorious candidate cannot be thrown out, paving the way for less meritorious.

37. Though the aforesaid contention is very attractive, we do not think that the same is acceptable on a deeper scrutiny. The argument that the possession of a higher qualification would presuppose the possession of lower qualification, originally accepted by the Supreme Court in **Jyoti K.K. vs. Kerala Public Service Commission** {(2010) 15 SCC 596}, had already been

distinguished in **State of Punjab vs. Anita** **{(2015) 2 SCC 170}**. This distinction was quoted with approval in a subsequent decision in **Zahoor Ahmad Rather vs. Sheikh Imtiyaz Ahmad** **{(2019) 2 SCC 404}**. Therefore, the petitioner cannot advance his cause on the basis of a purported higher qualification. Insofar as the argument revolving around merit is concerned, it is to be pointed out that the assessment of merit should be confined only to those who satisfy the eligibility criteria prescribed by the Rules. Persons who fall outside the purview of the Rules cannot take advantage of the result of the written examination. Therefore, the third contention also deserves to be rejected.

46. As a result, persons holding diplomas, of durations of one year, two years or three years have now become eligible as per the amended Rules. A person holding a BA degree with Mathematics and a Masters' degree in Computer Application cannot take advantage of the said amendment. The amendment does not include within its purview, degree holders and the post graduate holders. Therefore, the last contention also deserves to be dismissed.

51. Whether we like it or not, ours is a society which is full of inequalities. Some are less fortunate and end up only with a Diploma. Some are better placed to acquire degrees and Post

Graduate Degrees. If the State has different avenues of employment for different sections of people, the same cannot be undone by the Courts by juxtaposing higher qualifications into lower qualifications. Therefore, the challenge to the impugned judgment of the Tribunal is merit-less. Hence CWP No. 161 of 2019 is liable to be dismissed. All applications for intervention are dismissed, as the interveners have no common cause either with the writ petitioner or with the 5<sup>th</sup> respondent herein. The theme of their song is not in tune either with that of the writ petitioner or with that of the 5<sup>th</sup> respondent herein, who was the applicant before the Tribunal. Hence CWP No. 161 of 2019 as well as the intervention applications filed therein is dismissed.”

34. In CWP No. 1155 of 2020 titled **Avinash Koundal vs. Himachal Pradesh Staff Selection Commission and another** and connected matter, decided on 16.07.2020, this Bench was dealing with a case where the candidature of the petitioners for direct recruitment to the posts of Technical Superintendents (Production/Store/Marketing/MIS/P&I) on contract basis had been rejected on the ground that they do not possess the minimum educational qualifications

prescribed in the advertisement, which in turn, was based upon the service Rules for the posts. The minimum essential qualification as reproduced in the advertisement was that the “*candidates should possess full time 04 years degree in Dairy Technology/Dairy Husbandry from the Recognized University.*” The petitioners had obtained a degree in Food Science and Technology and claimed that the same was higher qualification as compared to degree in Dairy Technology/ Dairy Husbandry.

35. This Court after placing reliance on the judgments rendered by the Hon'ble Supreme Court in **Sandeep Shriram Varde's** case (supra) and **Zahoor Ahmad Rather's** case (supra) and the judgment rendered by this Court in **Bhupender Sharma's** case (supra), dismissed the writ petition by observing as under:

*“3. We have heard learned counsel for the parties and gone through the material available on record. Admittedly, the petitioners do not possess the minimum essential qualification of four years degree in Dairy Technology/Dairy Husbandry from a recognized University as*

stipulated in the advertisement and as prescribed under the Service Rules for the posts in question.

**3(i).** Learned counsel for the petitioners contends that:- **firstly**, no University in the respondent-State is imparting four years degree in Dairy Technology/Dairy Husbandry, therefore, insistence in the advertisement as well as under the service Rules for the posts in question upon possessing this degree, is not justified.

The aforesaid contention has no force. The mere fact that four years degree in Dairy Technology/Dairy Husbandry is not imparted in the respondent-State, will not preclude the employer to insist upon possession of this degree as an essential qualification for the post. It is not the case of the petitioners that the degree sought for the posts in terms of the advertisement as well as under the service Rules, is not being imparted in any of the Indian Universities. The service Rules for the posts in question prescribing four years degree in Dairy Technology/Dairy Husbandry as an essential qualification for recruitment, have not been challenged by the petitioners.

**3(ii).** **Second**, contention raised on behalf of the petitioners is that degree in Food Science and Technology possessed/obtained by the petitioners is a higher qualification as compared to degree in Dairy Technology/Dairy Husbandry



required by the respondents. Therefore, their candidature should not have been rejected. In making this submission, learned counsel relied upon Appendix 'B' to the service Rules framed pursuant to bye-laws No.26 of the Himachal Pradesh State Cooperative Milk Producers Federation Limited, detailing required 'minimum qualifications and experience for filling up various posts by direct recruitment'. Sr. Nos.1, 2, 3 & 5 of the aforesaid Appendix 'B', pertain to the posts of Managing Director, General Manager, Senior Manager (Plants) and Manager (Production), respectively. For these Managerial posts, a candidate, inter-alia, possessing a degree in Dairy Technology/Dairy Husbandry or a degree in Food Technology, is eligible to participate in the selection process by way of direct recruitment.

A perusal of qualifications required for posts at Sr. Nos.1, 2, 3 & 5 of Appendix 'B', makes it evident that degree in Dairy Technology/Dairy Husbandry and Food Technology have been identified as separate degrees by the respondents. Degree in Food Technology is not considered as a higher qualification to the degree in Dairy Technology/Dairy Husbandry. For direct recruitment to the posts of Managing Director, General Manager, Senior Manager (Plants) and Manager (Production), which are all essentially

managerial posts, the candidates, inter alia, possessing degree in Dairy Technology/Dairy Husbandry or a degree in Food Technology, will be eligible to participate in the selection process. However, this fact alone will not advance the contention of the petitioners that degree in Food Technology is to be considered at higher pedestal to the degree in Dairy Technology/Dairy Husbandry. Hon'ble Apex Court in **(2019) 6 SCC 362**, titled **Maharashtra Public Service Commission versus Sandeep Shriram Warade and others and connected matters**, has held that:- it is otherwise the prerogative of the employer to prescribe qualifications required for a post. The Court is neither equipped nor can lay down eligibility conditions required for a post nor can delve into these issues by re-writing the Advertisement/Rules. The relevant paras from the judgment are extracted herein-in-below:-

**“9.**The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive rewriting of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to

proceed in accordance with law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.

**10 to 13. xxx xxx xxx**

**14.** The view taken by the Tribunal finds approval in Deptt. Of Health & Family Welfare v. Anita Puri, observing as follows:

“7. Admittedly, in the advertisement which was published calling for applications from the candidates for the posts of Dental Officer it was clearly stipulated that the minimum qualification for the post is B.D.S. It was also stipulated that preference should be given for higher dental qualification. There is also no dispute that M.D.S. is a higher qualification than the minimum qualification required for the post and Respondent 1 was having that degree. The question then arises is whether a person holding a M.D.S. qualification is entitled to be selected and appointed as of right by virtue of the aforesaid advertisement conferring preference for higher qualification? The answer to the aforesaid question must be in the negative. When an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference should be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher qualified candidates. But by no stretch of imagination it can be construed to mean that a higher qualified person automatically is entitled to be selected and appointed..... In this view of the matter, the High Court in our considered opinion was wholly in error in holding that a M.D.S. qualified person like Respondent 1 was entitled to be selected and appointed when the Government indicated in the advertisement that higher qualification person would get some preference. The said conclusion of the High Court, therefore, is wholly unsustainable and must be reversed.”

**3(iii). Third,** contention put-forth on behalf of the petitioners, is that degree in Food

Technology obtained by them from Chaudhary Sarwan Kumar Agriculture University, Palampur, is equivalent to the four years degree in Dairy Technology/Dairy Husbandry required by the respondents under the advertisement, therefore, their candidatures could not have been rejected for not possessing the degree in Dairy Technology/Dairy Husbandry. A coordinate Bench of this Court in **CWP No.161 of 2019**, titled **Bhupender Sharma versus State of HP and others and connected matters**, decided on 29.08.2019, while adjudicating a similar issue, after considering plethora of judgments including judgment rendered by Hon'ble Apex Court, cited in **(2019) 2 SCC 404**, titled **Zahoor Ahmad Rather and others vs. Sheikh Imtiyaz Ahmad and others and connected matter**, has observed thus:

**“37.** Though the aforesaid contention is very attractive, we do not think that the same is acceptable on a deeper scrutiny. The argument that the possession of a higher qualification would presuppose the possession of lower qualification, originally accepted by the Supreme Court in *Jyoti K.K. vs Kerala Public Service Commission* {(2010) 15 SCC 596}, had already been distinguished in *State of Punjab vs. Anita* {(2015) 2 SCC 170}. This distinction was quoted with approval in a subsequent decision in *Zahoor Ahmad Rather vs. Sheikh Imtiyaz Ahmad* {(2019) 2 SCC 404}. Therefore, the petitioner cannot advance his cause on the basis of a purported higher qualification. Insofar as the argument revolving around merit is concerned, it is to be pointed out that the assessment of merit should be confined only to those who satisfy the eligibility criteria prescribed by the Rules. Persons who fall outside the purview of the Rules

cannot take advantage of the result of the written examination. Therefore, the third contention also deserves to be rejected.

**38 to 46.** xxx xxx xxx xxx

**47.** Relying upon the decision of the Supreme Court in *Mohd. Riazul Usman Gani vs. District & Sessions Judge* {(2000) 2 SCC 606}, it is contended by the learned Senior Counsel for the petitioner that the possession of a higher qualification cannot be a bar for the consideration of a candidate for selection to a post requiring a lower qualification.

**48.** It is true that the Supreme Court held in that case that the possession of a higher qualification cannot become a disadvantage to a candidate. But the Supreme Court made it clear in the fourth last paragraph of the same judgment that they were saying what they said, on the facts of the case on hand and that the same should not be understood as laying down a rule of universal application. Hence the said decision is of no assistance to the petitioner.

**49.** The reliance placed by the learned Senior Counsel for the petitioner in *Parvaiz Ahmad Parry vs. State of Jammu and Kashmir* {(2015) 17 SCC 709}, is also misplaced. That was a case where the Rules stipulated the qualification of a BSc in Forestry or equivalent from any University recognized by the Indian Council of Agricultural Research. The appellant before the Supreme Court had acquired a degree in another subject with Forestry as one of the ancillaries and he had also acquired a MSc degree in Forestry. Therefore, the said decision turned on the special facts of the case. Hence it is distinguishable.

**50.** Today the declaration of law that holds the field is the one in *Zahoor Ahmad Rather*. It was made clear in the said case that it is not the role of the Courts to find out the equivalence. In fact the Court implored in *Zahoor Ahmad Rather* that the State, as the employer, may legitimately bear in mind several factors including the nature of the job, the aptitudes required for efficient discharge of duties, functionality of qualification and the content of the course of studies. The State as a public employer, it was pointed out in the said decision, may well take into account social perspectives that require creation of job opportunities across the societal structure.”

In **Maharashtra Public Service Commission's** case (*supra*), it has been held by

Hon'ble Apex Court that questions of equivalence will fall outside domain of judicial review. Even otherwise, no material has been placed by the petitioners to show that degrees possessed by them in Food Technology from Chaudhary Sarwan Kumar Agriculture University, Palampur, is equivalent to the degree in Dairy Technology/Dairy Husbandry. The advertisement issued by the respondents requiring four years degree in Dairy Technology/Dairy Husbandry for the Post Code No.719, is in turn based upon the service Rules for the posts in question. The word 'equivalent' is not mentioned either in the Advertisement or in the service Rules.

**3(iv).** We may also take note of the fact that the petitioners had participated in the selection process fully aware of the terms and conditions mentioned therein. After rejection of their candidature on the basis of eligibility condition, mentioned in the advertisement, which in turn is based upon provisions of service Rules, it is not open for them to contend that the degree in Food Technology obtained by them from Chaudhary Sarwan Kumar Agriculture University, Palampur, should be treated at par/equivalent or at higher pedestal to the degree in Dairy Technology/Dairy Husbandry. **[Refer (2017) 4 SCC 357, titled Ashok Kumar and another vs. State of Bihar].** It has also

*been pointed out by the respondents in their reply that the advertisement in question, issued for filling in, inter-alia, aforesaid 11 posts in question under Post Code 719, stands concluded as no candidate was found eligible.”*

36. Discussion on the subject would be incomplete in case we do not refer to the latest judgment of the Hon'ble Supreme Court in **Ajith K. and others vs. Aneesh K. S. and others JT 2019 (9) SC 74**, wherein the question posed was whether candidates possessing higher qualifications than the prescribed qualification can be considered for the post advertised. The prescribed qualification for the post of Junior Health Inspector Grade-II was SIDC, yet the candidates possessing the qualification of Diploma in Health Inspectors Course (for short DHIC) was also short-listed. The State justified this decision on the basis of a three-member Committee report which concluded that DHIC was a higher qualification. When the issue came up before the Tribunal, it was observed that though diploma course was superior, but to qualify under Rule 10 (a) (ii), it was to be shown that the

course pre-supposed the completion of the certificate course (SIDC) which was prescribed. The Hon'ble Supreme Court held that none of the conditions stipulated in Rule 10 (a) (ii) was met. As per the first condition, qualification should have been recognized by executive orders or standing orders of the government as equivalent to qualification specified for the post. As per second condition, there should have been determination by Service Commission of equivalence of the qualifications, in accordance with Rule 13 (b) (I). This was not done in advance and an exercise was undertaken only during pendency of the proceedings. As per the last condition, qualification should have been pre-supposed the acquisition of a lower qualification prescribed for the post. Report of the three-member Committee contained no finding that the acquisition of DHIC pre-supposed the completion of SIDC (certificate course). Reference to diploma as an additional qualification or that diploma was acceptable in Health Department was extraneous consideration and the judgment in **Jyoti K.K.** case (supra) was distinguished, whereas the judgment rendered in



**Zahoor Ahmad Rather** case (supra) was relied upon as would be evident from the observations as contained in paras 13 to 16 of the judgment which read as under:-

“13. The decision in *Jyoti K K* concerned a situation where KPSC invited applications for selection for the post of Sub-Engineers (Electrical) in the Kerala State Electricity Board<sup>7</sup>. The technical qualifications prescribed were as follows:

2. Technical qualifications—

(a) Diploma in Electrical Engineering of a recognised institution after 3 years' course of study, OR

(b) a certificate in Electrical Engineering from any one of the recognised technical schools shown below with five years' service under the Kerala State Electricity Board, [Not fully extracted as not relevant] OR

(c) MGTE/KGTE in electrical light and power (higher) with five years' experience as IInd Grade Overseer (Electrical) under the Board.

The appellants were B.Tech degree holders or Bachelor's degree holders in electrical engineering. KPSC held that they were not eligible for selection. The candidates contended that they were persons possessing higher qualifications and hence could not be excluded. This Court interpreted the provisions in Rule 10(a)(i) and held:

7. It is no doubt true, as stated by the High Court that when a qualification has been set out under the relevant Rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the Rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. If a person has acquired higher qualifications in the same Faculty, such qualifications can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far.

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

14. The above extract indicates that the qualification for the promotional post of assistant engineer was a degree in engineering. Consequently, the acquisition of the degree was held to pre-suppose the acquisition of the 'lower qualification' of the diploma prescribed

for the post of sub-engineer. This constitutes a distinguishing factor and hence the decision in *Jyoti K K* does not apply to the present facts. The decision in *Jyoti K K* was subsequently distinguished in *State of Punjab v Anita*, as noted by this Court in a more recent decision in *Zahoor Ahmad Rather v Sheikh Intiyaz Ahmad*. (See also in this context, the decision of the two judge Bench in *P M Latha v State of Kerala*.)

15 The Principal Secretary to the State Government (EU) in a communication dated 7 July 2017 to KPSC stated:

“Though, diploma in Health Inspector course having a duration of 2 years is not included in the qualifications required as per the notification for Junior Health Inspector, Grade II in Municipal Common Service, the PSC has included those candidates having qualifications in diploma in Health Inspectors Course shortlist of the said post by taking the same as an additional qualification to the rest of qualifications...

Since in the circumstances that the report submitted by the Director of Health Department after conducting comparison study of syllabus of both the course, the diploma in Health Inspectors course is a higher qualification above the qualification prescribed under the concerned special rule and that diploma in Health Inspector course is accepted as a qualification to the post of Junior Health Inspector in the Health Department, the diploma in Health Inspectors Course can be accepted and reckoned as a higher

*qualification compared to the qualification prescribed to the post of Junior Health Inspector Grade II in Municipal Common Service. (Emphasis supplied)*

16 The reference to the diploma being an additional qualification is extraneous to Rule 10(a)(ii). The reference to a diploma being acceptable in the Health Department is again an extraneous consideration. *Ex facie*, it is evident that in coming to the conclusion extracted above, there was no application of mind to the requirements contained in Rule 10(a)(ii). There was no determination of equivalence by any executive order or standing order of the State Government. Nor was there any finding that a DHIC pre-supposes the acquisition of the lower qualification. KPSC has not carried out any exercise as required by the provisions of the rule.”

37. We may also at this stage take a note of the judgment of the Full Bench of the Allahabad High Court in **Deepak Singh** case (supra) wherein on account of the conflict of various judgments, the matter was referred to the Full Bench. Six questions were referred by the learned Single Judge to the Larger Bench and after elaborate discussion and reasoning the same were answered as under:

*“(1) A Diploma in Engineering and Degree in Engineering are two distinct qualifications and a degree in the field in question cannot be viewed as a higher qualification when compared to Diploma in that field.*

*(2). The decision in the case of Alok Kumar Mishra (supra) and Kartikey (supra) laid down the correct position in law holding that the degree holder is excluded from the zone of consideration for appointment as a Junior Engineer with regard to the Diploma in question.*

*(3). The degree holder is held to be ineligible to participate in the selection process of Junior Engineer in the light of the Advertisement issued.*

*(4) The exclusion of the degree holders from the zone of consideration is in consonance with the tests propounded by the Supreme Court in case of State of Uttarakhand and others vs. Deep Chandra Tewari and another.*

*(5). The State Government, while prescribing the essential qualifications or desirable qualifications are best suited to decide the requirements for selecting a candidate for nature of work required by the State Government and the courts are precluded from laying down the conditions of eligibility. If the language in the Rules is clear*

*judicial review cannot be used to decide what is best suited for the employer.*

*(6). The 'O' level Diploma granted by NIELIT is not equivalent to Post Graduate Diploma in Computer Application and there is no presumption available to hold that the PGDCA possess the necessary qualification as prescribed for 'O' level Diploma accorded by NIELIT."*

38. Lastly and more importantly, we may refer to a judgment of the Hon'ble Supreme Court in **State of Uttarakhand and others vs. Deep Chandra Tewari and another (2013) 15 SCC 557** wherein the Apex Court was confronted with a case where the requirement for appointment as a Assistant Teacher was Bachelor's Degree in any of two subjects Geography, Economics, Political Science and History from any University established by law in India whereas the respondents had the qualification of B.Ed. with specialization in vocational education. It was argued before the Hon'ble Supreme Court that there is no marked difference between B.Ed. degree and the B.Ed. degree with specialisation in vocational education. The Hon'ble Supreme Court held as under:

*“We notice, however, for the post in question i.e Assistant Teacher (General), the qualification is simply Bachelor’s degree in any of two subjects, Geography, Economics, Political Science and History from any university established by law in India, or LT Diploma from any training institution/degree college. If B.Ed. with specialisation in vocational education was the required qualification, then it would have been specifically mentioned in the notification, which has not been done. Consequently, we have to take it that the B.Ed. degree mentioned in the advertisement is B.Ed. degree simpliciter and not B.Ed. with specialisation in vocational education. The post to be filled up i.e Assistant Teacher (General) nowhere indicates that for the purpose of appointment to the said post, specialisation in vocational education is a necessary requirement.”*

39. Although a question raised before the Hon’ble Supreme Court was with regard to the difference in between B.Ed. with specialisation in vocational course and B.Ed. in specified subjects, the Hon’ble Supreme Court recorded the general principle as under:

*“We are conscious of the principle that when particular qualifications are prescribed for a post, the candidature of a candidate possessing higher*

qualification cannot be rejected on that basis. No doubt, normal rule would be that candidate with higher qualification is deemed to fulfill the lower qualification prescribed for a post. But that higher qualification has to be in the same channel. Further, this rule will be subject to an exception. Where the prescription of a particular qualification is found to be relevant for discharging the functions of that post and at the same time, the Government is able to demonstrate that for want of the said qualification a candidate may not be suitable for the post, even if he possesses a "better" qualification but that "better" qualification has no relevance with the function attached with the post."

40. It would be noticed that the Hon'ble Supreme Court has categorically held that normal rule would be that candidate with higher qualification is deemed to be fulfilled the lower qualification prescribed for the post. But that higher qualification has to be in the same channel, which is not the position in the present case. Therefore, the guiding factor while considering the case of higher qualification is that it must be in the same line. The degree in engineering is not in the same line as diploma in engineering and it,



therefore, cannot be considered to be a higher qualification.

41. Judged in light of the aforesaid exposition of law, a Diploma in Engineering and Degree in Engineering are two distinct qualifications and a degree in the field in question cannot be viewed as a higher qualification when compared to Diploma in that field. Consequently, the degree holder petitioners cannot be permitted to urge that they possess higher qualification which would meet the requirement of specific qualifications specified in the rules or advertisement.

42. In addition to the aforesaid, it would be noticed that the respondent-Electricity Board has itself not considered the degree in Electrical Engineering/ Electrical & Electronics Engineering to be superior to the diploma and rather treated these to be two separate and distinct qualifications and that is why its vide notification dated 03.06.2020 has amended the Recruitment and Promotion Rules for the post of Junior Engineer (Electrical/Junior Engineer (IT) Class-III (Non-Gazetted) in the following manner:

**Junior Engineer (Electrical):**

Existing provision against Column No.7 Annexure (A) regarding Education qualification.	Amended Provision.
(1) Minimum Matriculation with Diploma in Electrical Engineering/Electrical & Electronic Engineering from a recognized Institution/ Board/ University duly recognized by the Central/State Govt. for JE (Elect.) post.	Diploma or Degree in Electrical Engineering or Electrical & Electronic Engineering from a recognized Board/Institution/ University, established by law by the State/ Central Govt. OR AMIE from Institution of Engineers (India) (only those candidates who are enrolled for AMIE with the Institute of Engineer (India) Kolkata with permanent recognition upto 31.5.2013) would be eligible.

43. In view of the aforesaid discussion, we accordingly find no merit in the petitions filed by the degree holder petitioners being CWP No. 138 of 2020, CWPOA No. 3601 of 2019 and CWPOA No. 3633 of 2019 and the same are accordingly dismissed, whereas the petitions filed by the diploma holder petitioners i.e. CWPOA No. 6534 of 2019 and CWPOA No. 6252 of 2020 are allowed. Accordingly, the Himachal Pradesh Staff Selection Commission is directed to consider the case of only those diploma holders strictly in accordance with the rules and the advertisement which form the basis for recruitment to the post of Junior Engineer (Electrical).

44. These petitions are disposed of in the aforesaid terms, so also the pending applications if any, leaving the parties to bear their own costs. ◊

**(Tarlok Singh Chauhan)**  
**Judge**

**14<sup>th</sup> August, 2020.**  
**(GR)**

**(Jyotsna Rewal Dua)**  
**Judge**

High Court of H.P.