

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah, Muhammad Ali Mazhar and Shahid Waheed, JJ**WAQAS ASLAM and others---Petitioners****Versus****LAHORE ELECTRIC SUPPLY COMPANY LIMITED and others---Respondents**

Civil Petition No. 4806 of 2019, decided on 7th December, 2022.

(Against the judgment of the Lahore High Court, dated 21.11.2019, passed in I.C.A. No.1412 of 2016)

Civil service---

---Appointment---Eligibility criteria---Judicial review by Courts---Overqualified candidates---Autonomy, agency and free choice of the employing institution must be respected and be allowed to recruit according to the criteria advertised and anyone overqualified for the said post, if not entertained by the employing institution, the same being an institutional policy, the Court must refrain from interfering in the internal governance of institutions.

While prescribing qualifications for a post and determining eligibility criteria, the employing institution is best suited to assess its needs based on the function and nature of the post; the aptitude or suitability to fulfill such requirements and the qualification required for the post. Where one of the policy decisions of the recruiting company is that a candidate must possess a specific qualification and anyone overqualified will not be inducted, this being an internal policy decision of the company, judicial review must tread warily and must not be extended to expand the ambit of the prescribed eligibility criteria.

Zahoor Ahmad Rather v. Imtiyaz Ahmad (2019) 2 SCC 404; Asaf Fasihuddin v. Government of Pakistan 2014 SCMR 676 and Abdul Hameed v. WAPDA 2021 SCMR 1230 ref.

In the absence of any such stipulation in the advertisement or the recruitment policy of the employing company, it is not possible for the Court to draw an inference that a higher qualification presupposes the acquisition of a lower qualification or that a candidate having a higher qualification is better suited for the post as opposed to a candidate possessing the requisite qualification that has been expressly prescribed in the advertisement according to the nature of the post and the requirement of the employer. It is not for the Court to examine the qualification and eligibility in a recruitment process. The Court, at best, can look into the legality of the recruitment process but cannot delve deeper into the design and need of the employing institution or second guess their selection criteria and job requirement. It is also not open to the Courts to embark upon comparing various degrees held by the applicants/candidates with the advertised qualifications and carry out the function of an employer by carrying out the comparison of the said qualifications. The power of judicial review by the Courts cannot be extended to determine equivalence or comparison of academic qualifications for a post or assume the role of a human resource department of an employing institution. It is a specific expert area and can be best resolved by the institution itself according to the suitability and requirements of a certain post as designed and desired by the employer. It is an area for which the Courts are not best suited.

Zahoor Ahmad Rather v. Imtiyaz Ahmad (2019) 2 SCC 404 and P.M. Latha v. State of Kerala (2003) 3 SCC 541 ref.

Furthermore, inducting candidates possessing a higher qualification than the advertised criteria would also have a social impact as it would deprive people with lesser education of employment opportunities and encourage people with higher qualification. It will cause injustice to those applicants who possessed a lower prescribed qualification in the advertisement, because applicants with a higher qualification would seek automatic preference based on their qualification even when such qualification is not prescribed in the advertisement. It will also disrupt the working of the institution by having overqualified people and affect their hierarchy in the organization. The Court must take into account socio-economic perspectives in order to ensure that employment opportunities are created for at all tiers of the society.

Sakhawat Ali v. Deputy Commissioner/Chairman Recruitment Committee, Narowal, 1998 PLC (C.S.) 19 and Zahoor Ahmad Rather v. Imtiyaz Ahmad (2019) 2 SCC 404 ref.

The autonomy, agency and free choice of the employing institution must be respected and be allowed to recruit according to the criteria advertised and anyone overqualified for the said post, if not entertained by the employing institution, the same being an institutional policy, the Court must refrain from interfering in the internal governance of institutions.

Afnan Karim Kundi, Advocate Supreme Court and Ch. Akhtar Ali, Advocate-on-Record for Petitioners.

Munawar-us-Salam, Advocate Supreme Court and M. Sohaib Rashid, Advocate Supreme Court assisted by Muhammad Hassan Ali, Law Clerk for Respondents.

Date of hearing: 7th December, 2022.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---Brief facts of the case are that the petitioners applied for the post of Line Superintendent Grade-I (BPS-15) ("LS") at LESCO in pursuance of an advertisement in 2015. The petitioners were not considered for the said post on the ground that they did not meet the eligibility criteria/ selection requirement as per the advertisement. The refusal on behalf of the respondent company was challenged by the petitioners through a constitutional petition, which was allowed by the learned Single Judge and the respondent company was directed to appoint the petitioners to the said post. The respondents challenged the same before the Division Bench of the High Court through an Intra Court Appeal, which was allowed through the impugned judgment dated 21.11.2019 by holding that the petitioners did not meet the requirement of the advertisement and secondly that the petitioners being overqualified for the post were not suitable for the said position. Petitioners have assailed the said judgment through this petition.

2. The learned counsel for the petitioners submits that the petitioners hold a BS in Electrical Engineering ("BS degree") and are overqualified for the post advertised as the required qualification for the post is a Diploma in Associate Engineering (Electrical) ("DAE") with "B" Grade from any Government Poly Technical Institute. He submits that being overqualified does not debar them from applying for the said post and the policy of the respondent company as well as the impugned judgment are, therefore, not sustainable.

3. The learned counsel for the respondent company on the other hand submits that respondent company clearly specified the eligibility criteria and qualification for the post of LS. The requirement being Matric with 3-years DAE with "B" Grade from any Government Poly Technical Institute plus 3-years' experience of trade in any supervisory post in any electric concern. As far as the qualification is concerned, he submits that it is not within the domain of the Court to compare the BS degree with the DAE and further that the petitioners do not have the three years' experience of trade of any supervisory post in any electric concern. Therefore, having failed to meet the criteria advertised, the petitioners are not entitled to be appointed to the post of LS. He submits that it is not within the purview of the Court to judge equivalence of a higher degree and carry out comparison with the qualification advertised for the post. He further submits that the said posts are for people with less qualification and, therefore, the respondent company does not encourage persons who are overqualified to apply for the said job. He further submits that it is an internal policy matter of the respondent company to attract and target a specific set of people for the post of LS and anyone having qualification over and above that what is advertised for the post is considered not suitable by the company. The learned counsel for the respondents relied on Sakhawat Ali¹, P.M Latha², Yogesh Kumar³, Anita⁴ and Zahoor Ahmad Rather⁵ in support of his contentions.

4. Learned counsel for the respondent company, however, submits that the petitioners have an unblemished service record of six years with the respondent company, therefore, he does not now oppose their appointments at this stage, but supports the impugned judgment in principle and prays that the impugned judgment be maintained by this Court for future appointments.

5. We have heard the learned counsel for the parties and have examined the record and the case law submitted by the learned counsel. We have noticed that the respondent company, publically advertised various posts, including 89 posts of LS, clearly specifying the eligibility criteria/ qualification requirement for the said posts. The eligibility criteria settled by the respondent company and duly advertised in the public advertisement represents a policy decision of the respondent company. While prescribing qualifications for a post and determining eligibility criteria, the employing institution is best suited to assess its needs based on the function and nature of the post; the aptitude or suitability to fulfill such requirements and the qualification required for

the post. One of the policy decisions of the respondent company is that a LS must be a DAE holder and anyone overqualified will not be inducted. This being an internal policy decision of the respondent company, judicial review must tread warily and must not be extended to expand the ambit of the prescribed eligibility criteria, as has been rightly held in the impugned judgment⁶.

6. It is also important to note that in the absence of any such stipulation in the advertisement or the recruitment policy of the respondent company, it is not possible for the Court to draw an inference that a higher qualification presupposes the acquisition of a lower qualification or that a candidate having a higher qualification is better suited for the post as opposed to a candidate possessing the requisite qualification that has been expressly prescribed in the advertisement according to the nature of the post and the requirement of the employer⁷. As stated above, it is not for the Court to examine the qualification and eligibility in a recruitment process. The Court, at best, can look into the legality of the recruitment process but cannot delve deeper into the design and need of the employing institution or second guess their selection criteria and job requirement. It is also not open to the Courts to embark upon comparing various degrees held by the applicants with the advertised qualifications and carry out the function of an employer by carrying out the comparison of the said qualifications. The power of judicial review by the Courts cannot be extended to determine equivalence or comparison of academic qualifications for a post or assume the role of a human resource department of an employing institution. It is a specific expert area and can be best resolved by the institution itself according to the suitability and requirements of a certain post as designed and desired by the employer. It is an area for which the Courts are not best suited⁸. Therefore, there is no force in the contention that since the petitioners possess a higher qualification than what has been advertised, they are to be necessarily considered eligible for the post.

7. Furthermore, inducting candidates possessing a higher qualification than the advertised criteria for LS would also have a social impact as it would deprive people with lesser education of employment opportunities and encourage people with higher qualification⁹. It will cause injustice to those applicants who possess a DAE, the prescribed qualification in the advertisement, because applicants with a higher qualification would seek automatic preference based on their qualification even when such qualification is not prescribed in the advertisement. It will also disrupt the working of the institution by having overqualified people as LS and affect their hierarchy in the organization. The Court must take into account socio-economic perspectives in order to ensure that employment opportunities are created for at all tiers of the society¹⁰. The Division Bench of the High Court has, therefore, rightly repelled the contention of discrimination by placing reliance on judgments of this Court¹¹. The eligibility criteria, advertised in accordance with the recruitment policy of the respondent company, creates a distinct class of persons who are DAE holders and are eligible to apply for the post of LS. Whereas, the petitioners who do not hold such qualification do not belong to the said class of candidates. As such, there is no discrimination if the employing institution decides to only consider candidates who hold the prescribed qualification of DAE instead of the petitioners who do not possess the same and are over or differently qualified. Consequently, it cannot be held that the respondent company's policy of not inducting applicants with a higher qualification to the post of LS is discriminatory or arbitrary. Infact such an internal policy provides social justice by opening up employment at different tiers.

8. Recruitments, therefore, are to be made strictly in accordance with the criteria in the advertisement and the recruitment policy of the respondent company, and any deviation therefrom, would allow entry to ineligible persons and deprive many eligible candidates. The employing institution could have prescribed a BS degree as the qualifying criteria, however, the fact that it did not, indicates that the candidates with the prescribed qualification criteria i.e. DAE were required and would be deemed as eligible to apply¹². The prescribed qualification in the advertisement being a DAE is an essential requirement which cannot be dispensed with. Applicants not possessing such qualification, albeit possessing some other higher qualification, are ineligible unless the employing institution's recruitment policy catered for applicants that possessed a higher qualification.

9. In this view of the matter, we hold that the autonomy, agency and free choice of the employing institution must be respected and be allowed to recruit according to the criteria advertised and anyone overqualified for the said post, if not entertained by the employing institution, the same being an institutional policy, the Court must refrain from interfering in the internal governance of institutions.

10. In the present case, the petitioners also do not have three years working experience and on this score alone do not meet the advertised criteria. However, the learned counsel for the respondent company have been gracious enough and have stated that the petitioners having worked for the institution for the last six years with an unblemished service record, they do not oppose their appointment at this stage of their career. Learned counsel for the respondents, however, pray that this is to be considered as a one-time concession and is not to be considered as a precedent in future as long as the impugned judgment is maintained.

11. In the above background, this petition is disposed of with the observation that the impugned judgment for the reasons given in this judgment, is upheld. However, this shall not affect the appointment of the petitioners who shall continue to work as per the terms and conditions of their appointment as agreed by the respondent company. Disposed of in the above terms.

MWA/W-1/SC Order accordingly.