

**HIGH COURT OF TRIPURA
AGARTALA**

WA 09 of 2020

Sri Pranab Majumder
son of Sri Narayan Majumder,
resident of village & P.O. Krishnanagar,
PS : Belonia, District: South Tripura, PIN: 799156

----Appellant(s)

Versus

1. The State of Tripura represented by the Commissioner & Secretary to the Department of Industries & Commerce, Government of Tripura, having his office at New Secretariat Complex, Gurkhabasti, Agartala, PO: Kunjaban, P.S. New Capital Complex, Sub-Division Sadar, District: West Tripura
2. The Commissioner & Secretary, Department of Industries & Commerce, Government of Tripura, having his office at New Secretariat Complex, Gurkhabasti, Agartala, PO: Kunjaban, P.S. New Capital Complex, Sub-Division Sadar, District: West Tripura
3. The Director, Department of Industries & Commerce, Government of Tripura, having his office at New Secretariat Complex, Gurkhabasti, Agartala, PO: Kunjaban, P.S. New Capital Complex, Sub-Division Sadar, District: West Tripura

.....Official respondents

4. Sri Braja Gopal Debbarma,
son of late Madan Debbarma, resident of
village: Bastali, Jangalia, PS: Bishramganj,
District: Sepahijala, Tripura

5. Smt. Sabini Kalai, daughter of Pranir Kalai,
resident of Baishyamanipara, Ompinagar
6. Smt. Rima Debbarma, daughter of Bires
Chandra Debbarma, resident of village
Sepahijala, Bishalgarh
7. Sri Arun Kumar Reang, son of Dharmaram
Reang, resident of village Chailengta,
District: Dhalai, Tripura
8. Sri Goutam Biswas, son of Anil Biswas,
resident of Village: Madhya Bhubanban,
District: West Tripura

-----Private Respondent(s)

WA 10 of 2020

1. Sri Amitava Dasgupta,
son of late Rati Ranjan Dasgupta,
resident of village Banamalipur, Jorapukurpar,
P.O. Agartala, PS East Agartala, District : West Tripura,
PIN: 799001
2. Sri Abhishek Chakraborty,
son of Sri Ashok Kr. Chakraborty,
resident of village Krishnanagar, Suparibagan,
P.O : Agartala, P.S. West Agartala, District: West Tripura,
PIN:799001

-----Appellant(s)

Versus

1. The State of Tripura
represented by the Commissioner &
Secretary to the Department of Industries &
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his office at New Secretariat Complex,
Gurkhabasti, Agartala, PO: Kunjaban, P.S.
New Capital Complex, Sub-Division Sadar,
District: West Tripura

2. The Commissioner & Secretary,
Department of Industries & Commerce,
Government of Tripura, having his office at
New Secretariat Complex, Gurkhabasti,
Agartala, PO: Kunjaban, P.S. New Capital
Complex, Sub-Division Sadar, District: West
Tripura

3. The Director,
Department of Industries & Commerce,
Government of Tripura, having his office at
New Secretariat Complex, Gurkhabasti,
Agartala, PO: Kunjaban, P.S. New Capital
Complex, Sub-Division Sadar, District: West
Tripura

.....Official respondents

4. Smt. Ashima Bhowmik, daughter of Kiran
Sankar Bhowmik, resident of village:
Brajanagar, P.O. Ranirbazar, District: West
Tripura

5. Sri Biplab Dey, son of Haradhan Dey,
resident of village Jail Road, P.O & P.S.
Radhakishorepur, Udaipur, District: Gomati,
Tripura

6. Sri Sujoy Bhowmik, son of Sankar Bhowmik,
resident of village Nalgaria, Ranirbazar,
District: West Tripura

7. Sri Hamon Uchoi, son of Amairam Uchoi,
resident of village Depachara, P.O. Jatanbari,
District: Gomati, Tripura

8. Sri Jeevan Debbarma, son of Haridas
Debbarma, resident of village Jangalia Para,
P.O. & P.S. Bishramganj, District: Sepahijala,
Tripura

-----Private Respondent(s)

WA 11 of 2020

Sri Uttam Chakraborty
son of late Joy Gobinda Chakraborty,
resident of village Thakurpalli, P.O. Kulai Bazar,
P.S. Ambassa, District: Dhalai, Tripura, PIN: 799204

----Appellant(s)

Versus

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New Capital Complex, Sub-Division Sadar,
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2. The Commissioner & Secretary,
Department of Industries & Commerce,
Government of Tripura, having his office at
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Agartala, PO: Kunjaban, P.S. New Capital
Complex, Sub-Division Sadar, District: West
Tripura
3. The Director,
Department of Industries & Commerce,
Government of Tripura, having his office at
New Secretariat Complex, Gurkhabasti,
Agartala, PO: Kunjaban, P.S. New Capital
Complex, Sub-Division Sadar, District: West
Tripura

.....Official respondents

4. Sri Amitava Dey, son of Haripada Dey,
resident of Village Haradhan Sangha, P.O.
Agartala, District: West Tripura

5. Sri Deeptaneel Ray, son of Dibyendu Kr. Ray, resident of Village & PO Gurkhabasti, Agartala Airport Road, District: West Tripura
6. Sri Ripan Debbarma, son of Rabi Chandra Debbarma, resident of village Ballavi Sardar para, P.O. : T.E. College, Jirania
7. Smt. Rupali Debbarma, daughter of Alindra Debbarma, resident of village Banerjee Para, P.O. Agartala, District: West Tripura
8. Sri Lalchhandama Hrangkhawl, son of Nirjar Chondro Hrangkhawl, resident of village Sonarai, P.O. Sangkuma, P.S. Takerjala, District: Sepahijala, Tripura

-----Private Respondent(s)

WA 13 of 2020

Sri Jayanta Das, son of Sri Sunil Ch. Das,
resident of village Milan Chakra, TV Tower,
P.O. & PS A.D. Nagar, District West Tripura, PIN:799003

-----Appellant(s)

Versus

1. The State of Tripura
represented by the Commissioner &
Secretary to the Department of Industries &
Commerce, Government of Tripura, having
his office at New Secretariat Complex,
Gurkhabasti, Agartala, PO: Kunjaban, P.S.
New Capital Complex, Sub-Division Sadar,
District: West Tripura
2. The Commissioner & Secretary,
Department of Industries & Commerce,
Government of Tripura, having his office at
New Secretariat Complex, Gurkhabasti,
Agartala, PO: Kunjaban, P.S. New Capital

Complex, Sub-Division Sadar, District: West Tripura

3. The Director,
Department of Industries & Commerce,
Government of Tripura, having his office at
New Secretariat Complex, Gurkhabasti,
Agartala, PO: Kunjaban, P.S. New Capital
Complex, Sub-Division Sadar, District: West
Tripura

.....Official respondents

4. Sri Ashim Dey, son of Smar Kanti Dey,
resident of Village Dhaleswar, Road No. 11,
A.A. Road, PS East Agartala, District: West
Tripura
5. Sri Tikendra Debnath, son of late Prafulla Kr.
Debnath, resident of village Nalgaria, P.O.
Ranirbazar, District: West Tripura
6. Sri Sushanta Debbarma, son of Jugal Kishore
Debbarma, resident of village Pekurjala, P.O.
Nabasantiganj Bazar, PS Takarjala, District:
Sepahijala, Tripura

----Private Respondent(s)

IN ALL CASES

For the appellant(s)	:	Mr. Somik Deb, Adv
For the respondent(s)	:	Mr. D Bhattacharjee, GA Mr. SM Chakraborty, Sr. Adv. Mr. D Sarma, Addl GA Mr. TD Majumder, Adv Mr. P Sen, Adv.
Date of hearing	:	13.01.2021
Date of delivery of Judgment & Order	:	31.03.2021
Whether fit for reporting	:	NO

**HON'BLE MR. JUSTICE S. TALAPATRA
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

J U D G M E N T & O R D E R

(Talapatra, J)

As these writ appeals being WA 09/2020 [Sri Pranab Majudmer Vs. The State of Tripura & Ors.], WA 10/2020 [Sri Amitava Dasgupta Vs. The State of Tripura & Ors.], WA 11/2020 [Sri Uttam Chakraborty Vs. The State of Tripura & Ors.] and WA 13/2020 [Sri Jayanta Das Vs. The State of Tripura & Ors.] emerged from the common judgment and order dated 03.12.2021 delivered in WP(C) 668/2019 [Sri Pranab Majudmer Vs. The State of Tripura & Ors.], WP(C) 669/2019 [Sri Uttam Chakraborty Vs. The State of Tripura & Ors.], WP(C) 712/2019 [Sri Amitava Dasgupta Vs. The State of Tripura & Ors.], and WP(C) 713/2019 [Sri Jayanta Das Vs. The State of Tripura & Ors.], those are combined for disposal by a common judgment. Facts relevant for consideration of these appeals are briefly introduced at the outset.

2. The appellants applied for the post of Sr. Instructors (Engineering Group) viz, Sr. Instructor (Mechanical), Sr. Instructor (Civil) etc. but could not come out successful in the

selection process. The common grievance as projected in the writ petitions, as stated, is that the respondents No. 4 to 8 have been wrongly held to be eligible in terms of the recruitment rules and suitable for the post in question. The Director of Industries and Commerce, Government of Tripura framed the recruitment rules for those posts (Sr. Insturctors) and published the same by the notification dated 25.07.2009. In the recruitment rules the essential qualifications as prescribed are Madhyamik or equivalent examination passed with technical qualification of 3 years diploma course in electrical engineering from a recognized institution approved by the All India Council for Technical Education (AICTE, in short). In the recruitment rules for each of the posts, there are some variations in respect on technical qualification and that change is limited to the connected branch of engineering. According to the appellants, the respondents No. 4 to 8 are inelligible as they do not have the requisite technical qualification of 3 years "diploma course in the respective branch of engineering from a reconized institution".

3. According to the appellants, none of those private respondents did have the said technical qualification but despite

that deficiency on the basis of their possessing degree in the respective branch of engineering, they have been selected and appointed by-passing the petitioners even though they do conformed to the required technical and other qualifications.

4. According to the appellants, the degree in electrical engineering cannot be treated as a higher qualification with reference to the prescribed qualifications in the recruitment rules. The appellants by filing the writ petitions urged this court for directing the respondents for rescinding the select panel and redo the same, and pursuant thereto appoint them in the posts of Sr. Instructor in the respective branch.

5. The respondents seriously resisted the claim of the petitioners and contented that in the recruitment rules as well as in the advertisement inviting application from the eligible candidates for those posts there is no stipulation that if a candidate possess a degree in the appropriate branch in the trade from the AICTE recognized institution he will be barred from offering the candidature. Thus, there is no infirmity in the decision of the official respondents.

6. Learned single judge by the order dated 03.12.2019 dismissed the writ petitions by rejecting the contention that the private respondents who were possessing degrees in the required branch of engineering were not eligible for appointment. Per contra, in reference to the contention of the official respondents that the respondents No. 4 to 8 were eligible, the learned single judge has observed that it is an accepted norm that degree in the relevant branch is a higher qualification than diploma in the concerned branch. Whether in terms of the recruitment rules a degree holder should be held eligible is not so much a matter of interpretation of rules but of equivalence of technical/ educational qualification. It has been held time and again that where it comes to the question of deciding equivalence on educational qualification, it is the opinion of the employer, duly supported by the opinion of the expert must have the higher acceptability. It is not disputed that in the case in hand, according to the learned single judge, it has not been disputed that the respondents No. 4 to 8 do possess the degree in the relevant field and upon being tested during the selection tests were found more meritorious than the rival candidates.

7. Thereafter, learned single judge having regard to the decision of the apex court, as relied, has observed as follows:

"In case of Jyoti K.K. (supra), the Supreme Court had observed that a person holding higher educational qualifications than those prescribed under the Rules would be qualified for being appointed. Even in the decision in case of Zahoor Ahmad Rather (supra) relied upon by the counsel for the petitioners, the Supreme Court had observed that the State as an employer is entitled to prescribe qualifications as a condition of eligibility after taking into consideration nature of the job, aptitude required for discharge of duties etc. It was observed that equivalence of qualification is a matter for State, as recruiting authority to determine. It was the case in which the State Government as an employer had refused to accept Diploma as a necessary qualification though stated to be higher than the qualification of ITI prescribed by the Rules. Facts in the present case are to be contrary. It is the State in the present case which has held that on the principle of equivalence a Degree holder in the relevant field of Engineering would be qualified for the post which prescribes a minimum qualification of diploma."

The said decision of the learned single judge has been challenged in these appeals.

8. Mr. Somik Deb, learned counsel appearing for the appellants has submitted that the proposition as held by the learned single judge is inconsistent with the decision of the apex court. He has for that purpose, referred ***P.M. Latha & Anr. Vs. State of Kerala & Ors.***, reported in ***(2003) 3 SCC 541*** where the apex court has observed that holding the degree

cannot necessarily be held to be holding qualification suitable for appointment. Whether for a particular post the source of recruitment should be from the candidate with the prescribed qualification or the higher qualification is a matter of the recruitment policy. Whether the higher qualification can be accepted for the post where a lesser qualification has been prescribed by the recruitment rules? This question becomes paramount in these appeals.

9. Reference has been made to ***Yogesh Kumar and Ors Vs. Govt. of NCT. Delhi and Ors.*** reported in **(2003) 3 SCC 548** where the apex court had occasion to observe that the recruitment to public services 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. The recruitment authorities having due knowledge that the higher qualification [in this case, the degree in engineering] are available, yet they chose to restrict entry for appointment only for person who have passed the prescribed qualification. It has been also held that it is open to the recruiting authorities to evolve a policy of recruitment and to

decide the source from which the recruitment is to be made. It cannot be disputed that the degree of engineering is a higher qualification in comparison to the diploma in engineering and there cannot be any parity whatsoever.

10. In ***Dilip Kumar Ghosh & Ors. Vs. Chairman & Ors.***, reported in **(2005) 7 SCC 567** the apex court has held that it is significant to note that the recruitment rules are framed to achieve the object of finding out the suitable person for the recruitment. In ***Dilip Kumar Ghosh*** (supra), the apex court has embarked on a comparative study of the courses, which may be called in this context, lower and higher. Thereafter, it has been observed that when the qualification is prescribed, several factors are considered. Notwithstanding that, it has been further observed that to accept a proposition that a candidate who holds a degree in the required field, that is, higher degree cannot be deprived appointment to the post, as that would negate the aims and objects of the Recruitment Rules for the purpose for which those were framed. The recruitment rules are framed, as stated, primarily for recruitment to the post so that the persons who are selected can discharge the required duty efficiently.

11. Having referred **P.M. Latha** (supra) it has been repeatedly asserted by Mr. Deb, learned counsel for the appellants that qualifications prescribed for the post in the advertisement published in the final gazette cannot be bypassed for accommodating the candidates with higher qualification. It has been re-stated that merely for possessing the higher degree a candidate cannot be treated as eligible for selection. Similar view has been also taken in **Yogesh Kumar** (supra).

12. Mr. Deb, learned counsel has made reference to **State of Punjab & Ors. Vs. Anita & Ors.**, reported in **(2015) 2 SCC 170** where the apex court has observed that on perusal of the previous judgments such as **P.M. Latha** (supra) and **Yogesh Kumar** (supra) there is no room for any doubt that it is imperative for the candidates to possess the statutory qualification prescribed for appointment to which they are seeking appointment. A candidate who possesses the higher qualification per se cannot be treated as having the qualification with reference to the prescribed qualification.

13. In *Jyoti K.K. & Ors. Vs. Kerala State Public Service Commission & Ors.*, reported in **(2010) 15 SCC 596**

it has been observed as follows:

"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."

[Emphasis Added]

14. Finally, it has been held that a post that remains unfilled, can be filled up with persons possessing qualification, i.e. graduate/post-graduate/B.Ed. That was not the procedure which came to be adopted during selection. Thus, per se, no benefit can flow to the private respondents for having the degree. If any action is taken contrary to the recruitment rules that would be a clear violation of the statutory process of selection and appointment, as postulated under such rule.

15. Mr. Deb, learned counsel has also pressed into service another decision of the apex court in **Zahoor Ahmad Rather & Ors Vs. Sheikh Imtiyaz Ahmad & Ors.** reported in **(2019) 2 SCC 404**. In that decision, the apex court having considered **P.M. Latha** (supra), **Yogesh Kumar** (supra), and **State of Punjab & Ors. Vs. Anita & Ors.,** (supra), but a two judge bench of the apex court has reiterated the position that the candidate having degree than the certificate course should be held to be eligible to compete for the post. Even reference has been made to **Jyoti K.K.** (supra) where it has been held that the possession of a higher qualification can presuppose the acquisition of lower qualification prescribed for a post.

16. The apex court in **Zahoor Ahmad Rather** (supra) has categorically held that the interpretation which is structured on the judgment in **Jyothi K.K.** (supra), has held that 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 qualification for a post is a matter of recruitment policy. The state as the employer is entitled to prescribe the qualification as a condition of eligibility. It is not part of the rule or function of the judicial

review to expand upon the ambit of prescribed qualification. Similarly, equivalence of 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.

17. The decision in **Jyoti K.K.** (supra) turned on the specific statutory rule under which holding of a higher qualification can presuppose acquisition of lower qualification. **Zahoor Ahmad Rather** (supra) may make a crucial difference to the ultimate outcome. What was decided by the high court was held to be justified in referring the judgment of the learned single judge [in **Zahoor Ahmad Rather** (supra)] and in coming to the conclusion that the appellant of **Zahoor Ahmad Rather** (supra) did not meet the prescribed qualification. The apex court held that there is no error apparent in the decision.

18. Reference has also been made to **Zonal Manager, Bank of India & Ors. vs. Aarya K. Babu & Anr.**, reported in **(2019) 8 SCC 587** where it has been held that whether the courts would be justified in undertaking the exercise of

determining equivalence of another qualification so as to declare it to be equivalent to the qualification prescribed in the recruitment notification by taking note of the factors, may or may not be germane, though such equivalence of qualification is not declared by the employer? In response, it has been held in **Aarya K Babu** (supra) as follows:

"16. Further it is not for the Court to provide the equivalence relating to educational qualifications inasmuch as the said issue has been settled by the Constitution Bench of this Court in the decision relied upon by the learned counsel for the appellants in Mohd. Shujat Ali v. Union of India [Mohd. Shujat Ali v. Union of India, (1975) 3 SCC 76 : 1974 SCC (L&S) 454] wherein it is held that the question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government."

19. Mr. D Bhattacharjee, learned GA appearing for the official respondents has stated that the respondents No. 4 to 8 have been selected as they had while prosecuting the degree of the relevant engineering branch studied the course materials which are prescribed for the diploma course and hence, there is

no reason why the decision of the learned single judge be interfered with.

20. Mr. Bhattacharjee, learned GA has referred a decision of the apex court in ***Chandigarh Administration Vs. Usha Kheterpal Waie & Ors.*** reported in ***AIR 2011 SC 2956.***

It has been held in that decision that what is relevant to test the validity of the advertisement was the intention of the recruiting authority when the advertisement was issued. At the time, the appellant had the clear intention to enforce the recruitment rule in future. However, in absence of valid rules, it cannot be said that the advertisement was invalid. In exercise of its executive power, the appellant could issue administrative instructions from time to time in regard to all matters which were not governed by any statute or rules made under the Constitution or a statute. This decision is only relevant when there are no recruitment rules but in the advertisement the recruiting authority has given the condition of service including the requisite qualifications.

21. Mr. TD Majumder, learned counsel appearing for the respondents No. 4, 5, 7 and Mr. SM Chakraborty, learned senior

counsel assisted by Ms P Sen, learned counsel appearing for the respondents No. 6 have adopted the basic plea of the official respondents. In some matters, Mr. D Sharma, learned Addl. GA has appeared for the official respondents in lieu of Mr. Bhattacharjee, learned GA. Mr. Sharma, learned Addl. GA has adopted the submission of Mr. Bhattacharjee, learned GA.

22. Mr. Majumder, learned counsel has in addition relied on ***Chandigarh Administration*** (supra) to refer the following passage from the said report. *".....When the said qualification is not unrelated to the duties and functions of the post of Principal and is reasonably relevant to maintain the high standards of education, there is absolutely no reason to interfere with the provision of the said requirement as an eligibility requirement. It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. The courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the authority concerned so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of the*

Constitution, statute and rules. (See J. Ranga Swamy v. Govt. of A.P. [(1990) 1 SCC 288 : 1990 SCC (L&S) 76] and P.U. Joshi v. Accountant General [(2003) 2 SCC 632 : 2003 SCC (L&S) 191] .) In the absence of any rules under Article 309 or statute, the appellant had the power to appoint under its general power of administration and prescribe such eligibility criteria as it is considered to be necessary and reasonable. Therefore, it cannot be said that the prescription of PhD is unreasonable.”

23. Mr. Majumder, learned counsel has also referred the decision of the apex court in **Jyoti K.K.** (supra) to contend further that the qualification of degree in engineering not only presupposes the acquisition of lower qualification of diploma in that subject prescribed for the post shall be considered to be sufficient for that post.

24. Mr. Majumder, learned counsel has also referred to another decision in **Mohd. Riazul Usman Gani & Ors. vs. district & Sessions Judge, Nagpur & Ors.** reported in **(2000) 2 SCC 606** where the apex court has laid down the principle quite succinctly in the following words.

"13. Laying of criteria when there are a large number of candidates is permissible but that criteria must be reasonable and not arbitrary having regard to the post for which recruitment is made."

25. It has been further observed in the said report that a criteria which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification than prescribed cannot be rational.

26. Mr. Maumder, learned counsel has finally relied on a decision of the Single Judge of this Court in **Smt. Bani Debbarma Vs. The State of Tripura & Anr.** [order dated 08.01.2019 delivered in WP(C) 1521 of 2017] where this Court had held that the State shall treat the degree in Pharmacy as a higher qualification of the diploma in pharmacy. On that premise the respondents were directed to consider whether such higher degree presupposes the acquisition of lower qualification or not and act accordingly. If it is found that higher qualification presupposes the lower qualification, a person may be treated as eligible for the post. If it is found that the qualification presupposes the acquisition of the lower qualification, the person having such higher qualification be treated as having the requisite qualification. In that case, the

inference that had been drawn is that degree holder would be accommodated against the vacancy.

27. Mr. SM Chakraborty, learned senior counsel has also submitted that the plea that has been raised by Mr. Somik Deb, learned counsel cannot be sustained in view of the decision in ***Chandrakala Trivedi Vs. State of Rajasthan & Ors.*** reported in **(2012) 3 SCC 129** where the apex court has observed that the word "equivalent" must be given a reasonable meaning. By using the expression "equivalent" one means that there are some degrees of flexibility or adjustment which do not however, lower the stated requirement. There may be some difference between what is equivalent and what is exact.

28. Mr. Somik Deb, learned counsel in reply has stated that the respondents have not taken any exercise to consider whether the degree in the relevant branch of engineering presupposes acquisition of the diploma in engineering. Hence, according to Mr. Deb, learned counsel for the appellants, the decision of the learned single judge requires to be interfered

with and selection and appointment of the respondents No. 4 to 8 be set aside.

29. Having considered the submission of the learned counsel for the parties, this Court at the outset would observe that a coordinate bench of equal strength of this Court had occasion to deal with the similar issue and in that Bench one of us (Chattopadhyay J) was a member. We are making reference to ***Sri Chakrapani Das Vs. Sri Bhaskar Das & Anr.*** [dated 10.03.2021 delivered in WA 03 of 2017]. In that case, this court having appreciated all those decisions including the decision in ***State of Haryana & Anr. Vs. Abdul Gaffar Khan & Anr.*** reported in ***(2006) 11 SCC 153, Maharashtra Public Service Commission, through its Secretary Vs Sandeep Shriram Warade & Ors,*** reported in ***(2019) 6 SCC 362*** has observed that the court would not undertake the exercise of judging equivalence, particularly when the employer has come to the conclusion that the qualification other than one prescribed in the recruitment rules can be equated. One decision rendered by the apex court has been no doubt in the background of appointment to the post of primary school teachers where Teachers Training Certificate or similar such

certificate course by whatever name it is called, was seen as a specialized course meant for training a person for imparting education to young children or primary schools. A B.Ed. course which did not focus on that special requirement was considered neither higher nor equivalent.

30. In that case, according to the said coordinate Bench, the employer had come to the conclusion that the degree in engineering in the relevant field is a higher qualification than the diploma in the same subject and that holder of such degree would be eligible for selection.

31. In *Maharashtra Public Service Commission* (supra) the apex court has held as follows:

"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.”

32. Thus, we are of the view that the decision of the employer in respect of parity or equivalence may not be disturbed. Even though, the degree is not the requisite qualification in the recruitment rules but the degree might presuppose acquisition of diploma course in relevant branch of engineering. Since presupposing of the acquisition of the requisite qualification should be left with the recruiting authority, unless it is shown that such decision was grossly arbitrary or highly unreasonable, we are not inclined to exercise our power of judicial review, more particularly, having regard to the decision of the co-equal Bench of this Court in **Chakrapani Das** (supra).

33. In the result, all these appeals are dismissed. However, there shall be no order as to costs.

JUDGE

JUDGE