REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs.170-171 OF 2018
(Arising out of SLP (C) Nos. 24387-88/2013)

ASHISH KUMAR …APPELLANT

VERSUS

THE STATE OF UTTAR PRADESH & ORS. …RESPONDENTS

J U D G M E N T

ASHOK BHUSHAN, J.

1. These two appeals have been filed against the judgment of High Court of judicature at Allahabad (Lucknow Bench), Lucknow, dated 04.10.2010 dismissing the Special Appeal No.446 of 2006 of the appellant as well as judgment dated 20.12.2012 dismissing the review application filed by the appellant. Parties shall be referred to as referred in the appeal.

2. Brief facts of the case giving rise to these appeals are:

The appellant belongs to other backward caste who has passed graduation (B.A.) with Psychology and has also done

post-graduation in Psychology from Kanpur University. Appellant has also obtained master degree in Human Resource Management and Industrial Relations from Lucknow University in the year 1997. An advertisement dated 30.08.2001 was issued by the Director, Social Welfare Department, U.P., advertising various posts under Director, Social Welfare Department and other department of State. Advertisement also contained recruitment for post of Psychologist (03 posts). The appellant submitted the application for the post of 'Psychologist'. The appellant was issued admit card for appearing in the written examination. The appellant appeared in the written examination and was declared successful and included in the merit list. A letter dated 02.05.2003 was issued to the appellant asking the appellant to appear along with original certificates for verification of documents. The appellant appeared along with all the documents on 12.05.2003. When appellant appeared on 12th May, he was informed that he is not eligible and his appointment for the post of 'Psychologist' cannot be made. The appellant submitted a representation on 02.06.2003 to the respondent. The appellant having not been given appointment; hence, he filed a writ petition praying for the following relief:

" *PRAYER*

(I) issue a writ order or direction including a writ in the nature of mandamus commanding the opposite parties to appoint the petitioner on the post of Psychologist for which the petitioner is fully eligible and qualified as per advertisement published for direct recruitment in SAMOOH 'GA'.

(II) Issue a writ order or direction including a writ in the nature of mandamus commanding the opposite not to appoint any other candidature on the post of Psychologist for which the petitioner is fully eligible.

(III)Issue a writ order or direction including a writ in the nature of mandamus commanding the opposite parties not to harass and victimize the petitioner in any manner whatsoever.

(IV) Issue such other order/orders as may deem just and proper by this Hon'ble Court in the Circumstances of the case.

(V) Award the cost of petition in favour of the petitioner."

3. In the writ petition, learned single Judge directed for filing a counter affidavit and also bringing on record the copy of the Order passed on the representation of the appellant dated 02.06.2003. The appellant also filed a Contempt Application No.182 of 2004 in which Director, Social Welfare was directed to appear in person. An Order dated

19.04.2004 was passed by the respondent rejecting the representation of the appellant. The appellant prayed for amendment of the writ petition, praying for quashing the order dated 19.04.2004 which prayer was allowed to be added. Learned single Judge by its judgment dated 18.05.2006 dismissed the writ petition. Learned single Judge accepted the case taken up by the respondent in the counter affidavit that appellant is not qualified for the post since he does not have training qualification i.e. L.T./B.T.B.Ed. The appellant filed special appeal which too was dismissed. Review application filed thereafter was also rejected.

4. We heard Shri Mukesh K. Giri, learned counsel for the appellant and Shri Ajay Kumar Mishra, Additional Advocate General, appearing for the State of U.P.

5. Learned counsel for the appellant submits that the appellant being graduate and post-graduate in 'Psychology' was fully eligible for the post of 'Psychologist'. It is submitted that the advertisement has been wrongly read by the High Court. Graduate in Psychology was qualified for the post and advertisement does not prescribe qualification as graduate with Psychology and L.T./B.T. B.Ed. He further submits that although the post of Psychologist in the Social Welfare Department was declared as dead cadre by the Government Order

dated 09.05.2008 but said posts were again revised by the subsequent Government Order dated 17.08.2010. He submits that post of Psychologist is not a teaching post; hence, it was not necessary to have training qualification. Learned counsel has also relied on the rules namely Janjatiya Vikas Shikshan Aur Kermchariverg Sewa Niyamawali, 1991, according to which, he submits that for Psychologist, training qualification is not essential qualification and as per rule minimum qualification is M.A. in Psychology. B.Ed. is only preferable qualification. He submits that the essential work of the Psychologist was to provide educational counseling to the students and other duties and was not essentially a teaching post. He submits that the advertisement mentioned, in subject of Psychology Graduate or L.T./B.T. B.Ed.

6. Shri Ajay Kumar Mishra, Additional Advocate General, refuting the submissions of learned counsel for the appellant contends that respondents have rightly held the appellant not qualified. He submits that according to advertisement essential qualification is graduate in Psychology with L.T./B.T.B.Ed. He submits that Janjatiya Vikas Shikshan Aur Kermchariverg Sewa Niyamawali, 1991, hereinafter referred to as 1991 Rules governed the fields. It is, however, submitted that although appellant was called to appear in written

examination and interview but on discovering that he is not eligible as per the requirement of the recruitment rule, the respondent corrected the mistake on their part by not going any further with the appointment of the appellant by rejecting his candidature.

7. We have considered the submissions of the learned counsel for the parties and perused the record.

8. The parties are at variance with regard to correct import of the advertisement. The appellant's case was that as per the advertisement the graduation in Psychology was the minimum qualification and qualification of L.T./B.T. B.Ed. were independent qualification on fulfilling of which candidate was qualified. Advertisement does not require graduate with Psychology with L.T./B.T. B.Ed. to make candidate eligible. Whereas the respondent's case is that the candidate shall be qualified only when he is both graduate with Psychology and possesses L.T./B.T. B.Ed. The case of the respondent is that although the appellant was issued admit card and called to appear in the written and in interview but his appointment was not issued since it was realized that he does not have L.T./B.T. B.Ed. qualification. In paragraph 4(Xiii) of the counter affidavit it has been reiterated that even if there is some ambiguity in the advertisement, the appointment has to be

made as per the recruitment rules which in this case is 1991 Rules. It is useful to extract following as stated in paragraph 4(Xiii) of the counter affidavit:

> *"4.(Xiii) That is further respectfully submitted that arguendo, even if it is conceded that there was some ambiguity in the advertisement, the petitioner herein cannot be allowed to misinterpret the same in his favour as it is trite that the appointment has to be made in accordance with the recruitment rules which in this case is the Janjatiya Vikas Sikchan Aur Kermchariverg Sewa Niyamawali, 1991. It is also humbly submitted that if there was any ambiguity in the requirements mentioned in the advertisement, it has to be read in consonance with the recruitment rules.*
> ....
>
> *Therefore, keeping the abovesaid settled position of law in mind, it is most respectfully submitted by the respondent herein that though the petitioner herein was inadvertently issued the admit card for appearing in the written examination as well as called for the interview, the respondent authorities, on discovering that the petitioner herein was not eligible as per the requirements of the recruitment rules as he did not possess the requisite L.T./B.T./B.Ed as prescribed, rightly corrected the mistake on their part by not going any further with the appointment of the petitioner herein and rejected his candidature as such an appointment would be void."*

9. Learned single Judge took the view that the appellant should have possessed the qualification of trained graduate and since he does not possess the said qualification, his claim has rightly been rejected. It is useful to quote the

last portion of the judgment:

> *"...Accordingly the petitioner should have possessed the qualification of trained graduate and since he does not possess the said qualification, which is eligible for on the post of L.T.grade teacher, I am of the view that the claim for appointment on the post of L.T. grade teacher, has rightly rejected.*
>
> *The petition is dismissed. No order as to cost."*

10. The Division Bench of the High Court made following observations:

> *"...The educational qualification for the post in question is that the candidate must be graduate with the subject of Psychology along with other essential qualifications of being L.T./B.T./B.Ed. The condition of being B.Ed or being possessed L.T./B.T. certificates or B.Ed. degree is an essential qualification along with the condition of being graduate with the subject Psychology. If a candidate is not possessed of any of the aforesaid essential qualifications, he/she shall not be eligible for participating in selection nor can be appointed.*
>
> *Under the relevant rules i.e. Janjatiya Vikas Sikchan Aur Kermchariverg Sewa Niyamawali, 1991 of which a reference has been made by the learned Single Judge also shows that qualifications requires a graduate with the subject of Psychology, with L.T./B.T./B.Ed., as the case may be.*
>
> ....
>
> *Be that as it may, in the advertisement in pursuance of which the appellant had applied the prescribed qualification was graduation with subject Psychology along with L.T./B.T./B.Ed. degree. That being so the appellant fully knew at the time of application that he mus possess the said essential*

qualifications as pronounced in the advertisement. In case he was aggrieved by description of such qualifications, he could have been better advised to challenge the said advertisement event before applying but once he has applied in terms of the aforesaid advertisement without any protest he cannot take a turn and say that these conditions were illegally placed in the same."

11. The appellant has brought on record both the advertisement as well as 1991 rules. The advertisement has been filed as Annexure A-1 along with I.A.No.2 of 2013. The advertisement was issued in Hindi newspaper "Dainik Jagran" and photocopy of first page of the newspaper is also annexed at page 24 of Annexure A-1. The translated copy in English has also been attached at page 6. We are concerned with the post of Psychologist in the present case. Hence, it is useful to refer to the qualification prescribed for the aforesaid post.

12. The original advertisement being in vernacular Hindi, it is relevant to note the said content of vernacular advertisement which was to the following effect:

1	मनोवैज्ञानिक ***03***	***18*** से ***35*** वर्ष	***4500 - 7000***	मनोविज्ञान विषय में स्नातक***/*** एल.टी.***/*** बी.टी. बी.एड.। अधिमानी अर्हता ***:*** ***1.***ब्यूरो ऑफ़ साइकोलॉजी***,***इलाहबाद या भारत सरकार द्वारा मान्यता प्राप्त किसी अन्य संस्था में डिप्लोमा इन गाइडेंस साइकोलॉजी ***2.***हिंदी में कार्य का ज्ञान

13. The English translation of the advertisement at Page 6 of

Annexure A-1 with regard to the post of Psychologist is as follows:

1.	***Psychologist-03***	***18-35 years***	***4500-7000***	***Graduation in Psychology/L.T./B.T.B.Ed in the subject of Psychology. Preferential Qualification: 1.Diploma in guidance psychology from Bureau of Psychology, Allahabad or Government of India or from other recognized institutions, 2.Working experience in Hindi***

14. The careful reading of original advertisement which is in vernacular language indicate that what was prescribed was, "In Psychology subject graduate/L.T./B.T. B.Ed.". Use of Stroke between graduate and L.T./B.T. B.Ed. indicates that all were alternate qualification. The advertisement cannot be read to mean providing for graduate in Psychology with L.T./B.T. B.Ed. as has been read by the High Court and contended by the respondent.

15. The words graduate/L.T./B.T. B.Ed. are all alternative qualification which are prefixed with word "In subject of Psychology". A harmonious reading may mean that a person graduate in subject of Psychology or L.T./B.T. B.Ed. with Psychology is eligible. When the post is of Psychologist, both

graduation with Psychology and training certification i.e. L.T./B.T. B.Ed. have also to be with Psychology. The respondents have wrongly interpreted the advertisement to mean that the person should possess both graduate with Psychology as well as L.T./B.T. B.Ed. which on the face of it does not appear to be correct.

16. Present is a case where appellant was called to appear in written examination and interview and his name was included in the merit list. It was only at the time of verification of the certificate he was denied the appointment on the ground that he does not fulfill the qualification as advertised, whereas he fulfilled the advertised qualification.

17. There is one more reason to accept the meaning of advertisement as noticed above. In advertisement, with regard to various qualifications, words “या" (or) “साथ" (with), "अथवा" (either) and stroke ‘(/)’ have been used. The appointing authority is well aware of the meaning of stroke ‘(/)’, word “or”, “either” and “with” which has been frequently used in the qualifications which is apparent from the advertisement i.e. Annexure A-1. The Appointing Authority used word 'with'(साथ), when it wanted both the qualifications together. Wherever stroke '(/)' has been used it was used when either of the qualifications were indicated. The advertisement Annexure

A-1 contains qualifications for various posts and in several qualifications stroke (/) has been used. A look into those qualifications clearly indicate that stroke (/) was used in the other qualifications denoting one or either qualification. It is useful to extract some qualifications where stroke (/) was used apart from qualification prescribed for the post of Psychologist. The use of stroke (/) in the qualifications at Item No. 5 - Grah Mother, Item No. 6 — Karamshalal Prashikshak Foundary Shop / Black Smith Shop, Item No.11 — Sewing Trainer, Item No. 16 — Music Teacher and Item No. 17 — Stitching Trainer are extracted as below:-

5.	Grah Mother - 02	18-35 years	3200-4900	Intermediate examination passed along with Home Science. Essential Qualification: two years practical experience of Grah Mother in **any Institute/ Committee**
6.	Karamshalal Prashikshak Foundary Shop / Black Smith Shop — 02	-do-	4500-7250	Intermediate examination passed from U.P. Madhyamik Education Council or a Institution recognized by the Government equivalent thereto. Certificate of G.S.T.S. for three years from the concerned branch or **Certificate of G.I.T.I./ I.T.I.** from

				concerned branch or Diploma of Polytechnic. Essential Qualification: Three Years Industrial experience after the Certificate.
11.	Sewing Trainer (National Baggers Home) - 01	-do-	3050-4590	Passed Intermediate or equivalent thereto and **I.T.I. in concerned Trade/ Apprentice** Certificate or Diploma.
16.	Music Teacher- 03	-do-	4000-6000	Intermediate passed from Music College or a **Certificate/ Diploma** recognized by the Government.
17.	Stitching Trainer-01	-do-	-do-	Intermediate passed or equivalent thereto and **ITI in concerned Trade, Apprentice/ Certificate** or Diploma. Examination Fees :General Category 60/- Other Backward Class 40/-, Schedule Caste/Schedule Tribe 25/-

A perusal of the above qualifications clearly indicated that stroke (/) was used regarding qualifications, in alternative, i.e., one or either. In above view of the matter, we are of the view that the use of stroke (/) between Graduate / L.T. / B.T. B.Ed. were in the same line meaning thereby one or either. It is relevant to notice that before the aforesaid qualifications, the words “in Psychology

subject" has been used as prefix, which clearly means that all the alternative qualifications were required to have with Psychology subject i.e. Graduation with Psychology/L.T./B.T. B.Ed. in the subject of Psychology. Hence, all the three i.e. Graduation, L.T., B.T. B.Ed. has to be in Psychology subject. Those persons who have done L.T./B.T. B.Ed. with Psychology subject are eligible like person graduated with Psychology, which is the plain and simple meaning of the advertisement which has been missed by the State as well as the High Court.

18. The Division Bench in support of its view has interpreted the advertisement in the following manner:-

> ".....Even otherwise, if the interpretation of the learned counsel for the appellant is taken as correct, it would mean that there will be a different set of candidates namely, one who possess B.Ed. degree with the subject Psychology and the others who are not B.A. with Psychology, but if they are B.Ed. or possess L.T./B.T. certificates, they would be entitled for appointment."

The above view of the Division Bench that accepting the interpretation of appellant would mean that there is different set of candidates namely one who possess B.Ed. Degree with the subject Psychology and the others who are not B.A. with Psychology, but if they are B.Ed. or possess L.T./B.T. certificates, they would be entitled for appointment. The above view does not support the interpretation, which we have

put on the qualifications mentioned for the Psychologist i.e. Graduate L.T./B.T. B.Ed. were prefixed with the "in the subject of Psychology". Thus, there is no question of there being different set of candidates. All candidates, who have Psychology as their subject of Graduation/L.T./B.T. B.Ed. were eligible for the post and they all form one class, i.e. those, who have studied Psychology. Thus, the view of the High Court cannot be accepted.

19. In the counter affidavit filed in this court also the said qualifications are being read by the respondent as graduate in Psychology with L.T./B.T. B.Ed. 1991 Rules have been filed as Annexure P-1 along with the rejoinder affidavit of the appellant. It is relevant to note that in Schedule to the Rules, the post of Psychologist has been referred to at page 166; it is relevant to quote the qualification mentioned in the Schedule to the 1991 Rules, which is to the following effect:

S.No.	*Name of Post*	*No Of Post Te total Per mp*	*Source of recrui t-ment*	*Eligib ility for Direct recrui tment*	*Age Min.*	*Limit Max.*	*Pay-Scale*		
10.	*Psycho logist*	*4*	*4*	*8*	*Throug h the commis sion*	*M.A. in Psycho logy*	*21*	*32*	*515-15 -590-1 8-626- EB-18-*

					directly	*preferably B.Ed or diploma from any recognized institution in teaching subject*			*68-20-780-Eb-20-860(Before registration)*

20. The above rules clearly indicate that qualification for Psychologist is M.A. in Psychology. There is no other column in which Psychologist can be read in the entire rule. The B.Ed. is a preferential qualification and essential qualification is only M.A. in Psychology according to 1991 Rules. It is relevant to note that although learned Single Judge has referred to 1991 Rules but he observed that 1991 rules lays down the qualification as trained graduate along with L.T./B.T. B.Ed., the above observations of learned Single Judge are not sustainable in view of the qualification as prescribed in 1991 Rules as extracted above.

21. In the counter affidavit filed in this court by the state, 1991 rules have been accepted to be the relevant rules regulating the recruitment as has been noted in the Paragraph Xiii extracted above. The qualification prescribed in the

Rules does not provide for L.T./B.T. B.Ed. as essential qualification. Thus non-possession of L.T./B.T. B.Ed. does not make him disqualified for the post as per Statutory Rules of 1991. Appellant is post-graduate in psychology and thus, also fulfill the qualification prescribed in the 1991 Rules. The respondent in counter affidavit had themselves come with the case that the appointment has to be made in accordance with the statutory rules. When under the statutory rules, 1991, appellant fulfill the qualification; there is no occasion to deny appointment to him.

22. Any part of the advertisement which is contrary to the statutory rules has to give way to the statutory prescription. Thus, looking to the qualification prescribed in the statutory rules, appellant fulfills the qualification and after being selected for the post denying appointment to him is arbitrary and illegal. It is well settled that when there is variance in the advertisement and in the statutory rules, it is statutory rules which take precedence. In this context, reference is made in judgment of this Court in the case of ***Malik Mazhar Sultan & Anr. Vs. U.P. Public Service Commission & Ors., 2006 (9) SCC 507***. Paragraph 21 of the judgment lays down above proposition which is to the following effect:

> *"21. The present controversy has arisen as the advertisement issued by PSC stated that the*

candidates who were within the age on 01.07.2001 and 01.07.2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisements but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only of permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules."

23. It has also come on the record that although the post of Psychologist was declared as dead cadre by the Government Order dated 09.05.2008, but the posts were subsequently revived by another Government Order dated 17.08.2010. Reference of 2009 Rules, namely, Uttar Pradesh Social Welfare Department of Teacher Service Rule, 2009, has been made which may have no relevance with regard to issue in the present case since the appointment in the present case was made in pursuance of the 1991 Rules and advertisement was dated 30.08.2001. The appellant after being selected for the post of Psychologist was illegally denied issuance of appointment letter on wrong interpretation of the advertisement and the rules, hence, the appellant has made out a case for issuing a

direction to appoint him on the post of Psychologist.

24. We, thus, direct the respondents to issue an appointment order to the appellant in pursuance of his selection against the advertisement dated 30.08.2001 on the post of Psychologist within a period of two months from the date, copy of this Order is produced before the respondents.

25. The judgments of the High Court are set aside and the appeals are allowed accordingly.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI,
JANUARY 31,2018.