Reserved On : 04/08/2025
Pronounced On : 14/08/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1214 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE SANDEEP N. BHATT

==========

Approved for Reporting	Yes	No
	√	

==========

GIRISH NAHAR S/O KAMALSINGH NAHAR
Versus
SARDAR VALLABHBHAI NATIONAL INSTITUTE OF TECHNOLOGY & ORS.

==========

Appearance:
HARSH K RAVAL(9068) for the Petitioner(s) No. 1
MS MEGHA JANI(1028) for the Respondent(s) No. 1,2
SERVED BY RPAD (N) for the Respondent(s) No. 3,4

==========

CORAM:**HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

CAV JUDGMENT

1. Rule returnable forthwith. Learned advocate for the respondent waives service of notice of rule on behalf of respondent. With the consent of the parties, the matter is taken up for final consideration and heard finally accordingly.

2. The present petition is filed by the petitioner for seeking the following reliefs:

"A) To issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of Mandamus directing the respondent authorities forthwith consider the case of the petitioner for interview and selection to post of Assistant Registrar;

(B) Your may be LORDSHIP/S pleased to direct the respondent frame a committee of experts and referee matter to expert council or board to decided whether CA course is equivalent to post graduate degree for post in question;

(C) Your LORDSHIP/S may be pleased to declare that action of respondent cancelling the candidature without referring expert body and changing rules of recruitment in mid process is bad in law, which had vitiated the whole recruitment process, and quash and set aside recruitment.

(D) Your LORDSHIP/S may be pleased direct the respondents to forthwith extend interview to the petitioner in fair and just manner, by another selection committee;

(E) During the pendency of the present petition, your LORDSHIP/S may be pleased to direct the respondent to forthwith extend opportunity of interview in fair and just manner by separate selection committee, and stay further process of issuance of declaration of result till final outcome of the petition, or keeping one post vacant till the final outcome of petition;

(F) Your Lordships be pleased to grant any other relief/s as may be deemed fit in the facts and circumstances of the case.

(G) Be please to award the cost of this petition.

(H) Such other and further relief as may be fit, just and proper in the facts and circumstances of the case.

(I) Your Lordships may be pleased to quash and set aside the Resolution No.53.7 dated 14.03.2020 of Respondent No.1 & 2in view of the AIU Equivalency certificate and PublicNotice issued by the UGC dated 15.04.2021 and further direct them to recruit the Petitioner in the post after due process of recruitment within stipulated time.

(J) Your Lordship may be pleased to direct the Respondents to not to advertise and/or recruit for the vacant post of Assistant Registrar of respondent Institution till the final disposal of this petition.

(K) Your Lordship may be pleased to direct the Respondent to keep one post vacant for the post of Assistant Registrar of Respondent Institution till the final disposal of this petition."

3. Brief facts as stated in the memo of the petition are as under:

3.1 It is the case of the petitioner in this petition that the petitioner has passed B.Com in the year 2015 and in the year 2016, awarded CA with 63.17% (First Class) in first attempt. It is further the case of the petitioner in this petition that on 31.10.2019, SVNIT issued the advertisement for the post of Asst. Registrar and the petitioner has made application to Ministry of Human Resources. Furthermore, on 22.11.2019, Patna IIT notification for Non-Teaching Staff CA considered as equivalent to Post Graduate Degree. On 25.11.2019, the petitioner met Registrar SVNIT, who suggested to apply, and appear. It is further the case of the petitioner in this petition that on 26.11.2019, the petitioner made online portal, which came to be registered as SVNIT/2019/11/1242. It is further the case of the petitioner in this petition that on 10.12.2019, the Registrar of SVNIT replied vaguely that advertisement is issued as per RR for non-teaching staff without dealing with grievance and after petitioner had made application on 26.11.2019 and last date of filing application was 27.11.2019, it was said by the Registrar to make application. On 04.01.2020, the petitioner appeared in

written test and on 04.01.2020, the result of written test was declared, petitioner declared as successful, figured at Sr.01. It is further the case of the petitioner in this petition that on 04.01.2020, the document verification was conducted, wherein, the petitioner wasn't informed that he is not qualified and on 05.01.2020, the next date, the petitioner was informed telephonically that show some document that you're having equivalent certificate, before finalizing list, said documents do not verify the equivalent status. Then back dated list was published. It is further the case of the petitioner in this petition that on 06.01.2020, the petitioner requested to the Registrar, SVNIT, via email that "though securing highest marks in written test and possessing all the qualification, name petitioner is not included in the list for interview." The same was replied by Registrar of SVNIT on 06.01.2020 stating that "you have failed to show necessary document that CA degree is equivalent to master degree". Hence, the present petition has been preferred.

4. Heard Mr. Harsh Raval, learned advocate for the petitioner and Ms. Megha Jani, learned advocate for the

respondent Nos. 1 and 2. Though served, none appears for the respondent Nos. 3 and 4.

5.1 Mr. Harsh Raval, learned advocate for the petitioner has submitted that the petitioner is having qualification of Chartered Accountant and B.Com. He has further submitted that SVNIT issued recruitment for the post of Deputy Registrar and Assistant Registrar. He has submitted that total three posts were advertised for the post of Assistant Registrar wherein two were for unreserved and one was reserved for OBC candidates. He has further submitted that the qualification for the post of Assistant Registrar, as mentioned in the advertisement is the master's degree in any discipline with at least 55% marks or its equivalent Grade in the CGPA/UGC point scale with good academic record from the recognized University/Institute. He has further submitted that the petitioner has made representation seeking clarification and stay against the recruitment and SVNIT replied to grievance stating that the recruitment is underway as per recruitment Rules for non-teaching staff of NITs based on the recommendation of oversight committee notified by MHRD.

5.2 He has further submitted that the petitioner has applied for the post of Assistant Registrar on 26.11.2019 and has appeared in written test and ranked at Sr.No.1 with 76.25 Marks. He has further submitted that thereafter on 04.01.2020, the petitioner was called for document verification. He has further submitted that even on the same date, despite showing the name in the list of inviting candidates for document verification, the petitioner was not called for actual interview. Thereafter, the petitioner addressed e-mail seeking reasons for rejection.

5.3 He has further submitted that SVNIT has responded e-mail of the petitioner stating that the petitioner was failed to show necessary documents that CA degree is equivalent to master's degree. Therefore, the petitioner preferred present writ petition on 16.01.2020. He has further submitted that by way of interim order, the Court has directed that the recruitment will be subject to outcome of this petition and SVNIT will be free to hold interview, if they wanted to do so. He has further submitted that SVNIT sought

clarification that SVNIT sought clarification from MHRD and the MHRD has responsed by giving clarification by letter dated 18.02.2020. MHRD conveyed that they have sought clarification from AIU (Association of Indian universities). He has further submitted that thereafter, University Grant Commission through Public Notice declared that the CA/CS/ICWA qualification be considered equivalent to PG Degree. He has further submitted that AIU declared that CA is to be considered equivalent for the purpose of registration in PH.D. and SVNIT is a member University of AIU (Association of India Universities). He has further submitted that the petitioner has filed Application under the RTI from AIU and Deptmental Secretary of AIU declared that the Regulatory Body i.e. UGC has issued a notification and the same is needed to be taken into reference by the letter from AIU dated 15.09.2021. He has further submitted that Malaviya National Institute of Technology invited the petitioner for interview for the post of Assi. Registrar on 15.07.2021. He has further submitted that various other NITs like Warangal, Jamshedpur, Jaipur, who have same recruitment rules of SVNIT have considered CA equivalent to master's degree. On of such

candidate got appointment in NIT Jaipur on 12.08.2021.

5.4 He has further submitted that condition put in the advertisement was master's degree or equivalent and further the respondent themselves have mentioned in the advertisement about "educational and other qualification required for direct recruit" and under that desirable, one of the qualification is chartered or cost accountant for the post of Assistant Registrar (finance and accounts). He has further submitted that when the UGC has notified that CA is equivalent to postgraduate degree, there is no reason for the Authority to disregard the same.

5.5 In support of his submissions, he has relied on the judgment of the Hon'ble Apex Court in the case of **Praveen Kumar C.P. Vs. Kerala Public Service Commission** reported in **2021 SCC OnLine SC 612**, more particularly, paragraphs 26 to 28 are relevant. He has also relied on the judgment of this Hon'ble Court dated 30.11.2016 rendered in **Special Civil Application No.13175 of 2016**, more particularly, paragraphs 6, 6.1 to 6.3 are relevant as well as the order dated 25.02.2022 passed in **Special Civil Application No.20526 of 2016**, more

particularly, paragraph 29 is relevant. In view of above decisions, he has submitted that clarification by the Authority should be considered as retrospectively and, therefore, the present petition deserves to be allowed.

6.1 *Per contra*, Ms. Megha Jani, learned advocate for the respondent Nos. 1 and 2 has strongly opposed the submissions made at the bar by learned advocate for the petition. She has referred to the affidavit-in-reply and has further submitted that the NIT (National Institute of Technology) is governed by the Nation Institute of Technology Act, 2007 and that for the recruitment, the recruitment rules of the 2019 are followed, which are framed by the Ministry of Human Resources Development (MHRD). She has further submitted that the petitioner has passed the written examination but when the was called for document verification, he failed to prove relevant document, he failed to produce relevant and age criteria, so was found ineligible for the post. She has further submitted that the petitioner has also filed an undertaking that in case, he fails to produced the documents for requisite qualification, he would take no objection, if the institute cancels his candidature. He has

unable to show that CA degree is equivalent to degree of masters. She has further contended that public notice of UGC dated 15.04.2021 cannot be applied retrospectively to the recruitment made in the year 2020. She has further contended that in 52nd, board of governors meeting, the board resolved to seek clarification (CA is equivalent to master degree) from MHRD and further resolved to keep recommendations of selection committee in a sealed envelope ad kept on hold till clarification is not received from MHRD. The institute sought clarification from MHRD vide its letter dated 14.01.2020. MHRD vide its letter 17.01.2020 sought clarification from AIU. AIU has also replied vide letter dated 06.02.2020 that the query raised by institutes would be placed before equivalence committee and the decision will be informed accordingly.

6.2 She has further contended that thereafter, the case of the petitioner was put in 53rd meeting where it was resolved that the appointment of Assistant registrar would be subject to outcome of Special Civil Applicaiton No.1214 of 2020 i.e. present petition. She has further contended that reliance has been placed by petitioner for

the list of universities who recognizes CA degree as equivalent to masters degree, but the same are entirely misplaced notion of the petitioner as the reference to advertisement of IIT, Patna is also misplaced as the recruitment rules of the year 2019 does not apply on II'Ts.

6.3 In support of her submissions, she has relied on the various judgments, which is as follows:

(i) **Prakash Chand Meena Vs. State of Rajasthan** reported in **(2015) 8 SCC 484**, more particularly, paragraphs 3, 8 and 9 are relevant.

(ii) **K. Manjusree Vs. State of A.P.** reported in **(2008) 3 SCC 512**, more particularly, paragraphs 27 and 33 are relevant.

(iii) **Ashok Kumar Sharma Vs. Chandra Shekhar** reported in **(1997) 4 SCC 512**, more particularly, paragraph 6 is relevant.

(iv) **Ashok Kumar Sonkar Vs. Union Of India** reported in **(2007) 4 SCC 54**, more particularly,

paragraphs 11, 14 to 16, and 20 are relevant.

(v) **Rakesh Kuamr Sharma Vs. State (NCT of Delhi)** reported in **(2013) 11 SCC 58**, more particularly, paragraphs 11 to 22 are relevant.

(vi) **Bharat Sanchar Nigam Ltd. And Others Vs. M/s TATA Communications Ltd. Etc.** reported in **2022 LiveLaw (SC) 792,** more particularly, para 30 is relevant.

(vii) Shree Sankaracharya University of Sanskrit and Others Vs. Dr. Manu & Another reported in **2023 LiveLaw (SC) 468**, more particularly, paragraphs 9 and 10 are relevant.

6.4 She has submitted that considering the same, such clarification cannot be applied retrospectively and more particularly, considering the fact that NIT is having its recruitment rules, which is framed in the year 2019, all the contentions raised by learned advocate for the petitioner are misconceived and, therefore, the present petition is required to be dismissed.

7.1 I have considered the rival submissions made at the bar by the respective parties. I have also perused the necessary materials available on the record. It transpires that there is no dispute about the fact that the petitioner is having qualification of Chartered Accountant and B.Com. Pursuant to the advertisement issued on 31.10.2019 by the SVNIT for the post of Deputy Registrar and Assistant Registrar, the petitioner has applied for the said post, thereafter appeared in the written examination; and after passing the written examination, the petitioner was called for document verification and at that point of time, it is found that the petitioner is having degree of Chartered Accountant, which cannot be considered as postgraduate degree. Now, the dispute is the qualification of the petitioner, which is not considered as postgraduate degree by the SVNIT and, therefore, the present position is filed.

7.2 Now, the present petition is required to be considered in narrow compass. Considering the rules of the NIT, which are the recruitment rules framed under the NIT Act, 2019, in absence of any specific material on

the record, can the respondent authority be directed to consider the case of the petitioner by considering the degree of Chartered Accountant as a postgraduate degree and accordingly consider the case of the petitioner as complying the necessary educational qualification? For that, considering the fact that though the UGC has clarified that CA degree can be considered but when there is specific rules of SVNIT, which is framed under the NIT Act, *prima facie*, though the contention raised by the petitioner sounds reasonable, however, considering the provisions of law, such contention is required to be considered accordingly.

7.3 It also transpires from the record that the petitioner has filed undertaking on 04.01.2020 that if the petitioner has failed to produce proof of required educational qualification and desired experience, then the SVNIT can cancel the candidature of the petitioner. Considering this aspect and considering the requirement at the time of filing up application form for the said post of Assistant Registrar, the petitioner was not having any postgraduate degree but the petitioner was have degree of Chartered Accountant and B.Com degree.

7.4 Thereafter, considering public notice issued by UGC on 15.04.2021, the UGC has clarified upon the request received from the Institute of Chartered Accountant of India that CA/CS/ICWA qualification be considered equivalent to postgraduate degree. This is required to be viewed by considering the fact that this clarification is subsequent to the advertisement given by the respondent-institute and also process is initiated by institute and thereafter, rejecting the candidature of the petitioner by the institute on the ground that the petitioner is not holding necessary and requisite qualification pursuant to the such advertisement. Therefore, whether such aspect should be considered retrospectively or prospectively regarding the consideration of the educational qualification of the petitioner about degree of Chartered Accountant and considering the clarification of UGC given by way of public notice in the year 2021?

7.5 Considering the same, it is relevant to refer the judgments cited at the bar by the learned advocate for the parties.

7.5.1 It is fruitful to refer the judgment dated 30.11.2016 cited at the bar by learned advocate for the petitioner rendered in **Special Civil Application No.13175 of 2016**, more particularly, paragraphs 6, 6.1 to 6.3 are relevant, which reads as under:

> *"6. Even if the aspect of applicability of Vivek Kantibhai Patel (supra) is left aside, for which both the sides made their arguments contentious, the fact situation obtaining in this case would entitle the petitioner for the relief. Therefore revisiting the facts which fall in the background is that when the petitioner had applied for the post pursuant to the advertisement, she was holding the degree. The degree was at that point of time was not treated as equivalent and acceptable, however before the recruitment process qua the petitioner could be completed and even before the petitioner could be called for interview, the State Government issued Resolution dated 14th June, 2016 in which the degree of the petitioner was held to be equivalent and the petitioner's candidature acquired eligibility which was otherwise lacking on the said count alone. The applicability of the Resolution dated 14th June, 2016 ought to have been in rem in asmuch as it generally recognise the aspect of equivalence of degree. It was a selective approach, therefore discriminatory and arbitrary, on part of the respondent-State to provide by further Circular that the beneficial effect of Resolution dated 14th June, 2016 would be for the candidates who had applied*

for particular advertisements, while not extending the same to one of the advertisements also issued in the interregnum, pursuant to which the petitioner had applied being advertisement No.43.

6.1 Even as equivalence is recognised which has lifted the debility with which the petitioner was attached for the purpose of her candidature, the interviews are still not announced and are awaited. Even then the petitioner is denied the benefit by not applying Resolution dated 14th June, 2016.

6.2 A situation akin in principle arose before the Apex Court in Punjab University Vs Subhash Chander [AIR 1984 SC 1415] wherein the student was pursuing studies of M.B.B.S. Course since 1965 and appeared in the final M.B.B.S. Examination in the year 1974. In the meantime, in the year 1970, a Regulation was amended whereby the percentage of grace marks was reduced for M.B.B.S. candidates. It was held that it was the amended Regulation which would apply in case of the petitioner as the same was in force at the time when occasion arose for the petitioner to be treated for the purpose of giving grace marks. The Supreme Court held that new Regulation as amended would apply. In the same way, there is no reason as to why equivalence prescription which is introduced in the interregnum before the petitioner is to be considered for the process of selection for interview, that she should not be denied the candidature.

6.3 This situation is peculiar in itself and cannot be equated with a case were eligibility gets changed or that a candidate acquires eligibility or requisite qualification after the last date of advertisement. It is by the act of the respondents themselves that the degree which was held by the petitioner was accepted as equivalent in the meantime. In the facts and circumstances of the case, it cannot be said that petitioner was not holding the degree. The degree holding by the petitioner was in the same discipline, however its equivalence was not being accepted by the Public Service Commission when the petitioner filled up the application form. The equivalence was recognised after filling up the form and before the candidature of the petitioner is further processed and interviews are hold. When the equivalence has now been accepted and the petitioner is to be the aspiring candidate on the basis of the recognised degree, she cannot be denied candidature. The petitioner could validly claim right to be considered and right to be called at the interview.

Considering the above, the aforesaid judgment is not applicable to the facts of the present case. Considering the fact that during the finalization of the process recruitment, the government has come out with the resolution by clarifying about the educational qualification. In the present case, when the candidature of the petitioner is already rejected and thereafter UGC

has clarified that degree of Chartered Accountant can be considered as equivalent degree.

7.5.2 Now considering the another judgment of the Hon'ble Apex Court, which is cited by learned advocate for the petitioner in the case of **Praveen Kumar C.P. (supra)**, more particularly, paragraphs 26 to 28 are relevant, which read as follows:

> *"26. Note (v) of Clause 7 of the employment notification in the case PK and Note (vi) of Clause 7 of the employment notification in the case of AD required disclosure of the equivalency orders. A plain reading of the two GOs clearly reflect that their degrees were equivalent to the requisite qualifications contained in the eligibility criteria. In the case of Aarya K. Babu (supra), the disputed subject was recognized subsequently and introduced as part of the eligibility criteria. The principle of equivalency was not the main reasoning on the basis of which the said case was decided. The word "equivalence" in its plain meaning implies something which is equal to another. In the field of academics, application of the principle of equivalency in relation to degrees in two subjects would mean that they had the same standing or status all along, unless the official instrument according equivalency specifies a date from which the respective subjects would be treated as such, in express terms or by implication.*

27. Whether a GO would have prospective effect or relate back to an earlier date is a question which would have to be decided on the basis of text and tenor of the respective orders. The GOs which declared appellants' degrees to be equivalent to those required as per the applicable notifications were not general orders but these two orders were person specific, relating to the two appellants. Once the GOs specifically declared that their B.Ed. degrees were equivalent to the designated subject which formed part of the employment notification, the GOs in substance have to be interpreted as clarificatory in nature and these cannot be construed to have had elevated the status or position of the degree they already had after the declaration was made in the GOs. The subject GOs only recognised an existing state of affairs so far as the nature of the degrees were concerned and did not create fresh value for the degrees which the appellants possessed. Though these equivalent orders were not in existence on the dates of issue of employment notifications, the GOs in substance recognize such status from the dates of obtaining such degrees. The GOs do not reveal any intervening circumstances which could be construed to imply that the respective degrees acquired the equivalent status because of such circumstances occurring subsequent to grant of their B.Ed. degrees. The aforesaid Notes to Clause 7 of the employment notifications postulated disclosure of the number and date of the orders on equivalence. But the GOs to which we have referred treat the equivalency to be operating on the dates of obtaining such degrees. Thus, the defect, if any, on

disclosure requirement, shall stand cured on issue of the University orders followed by the GOs. The GOs also specify the context in which these were issued and refer to the appellants being included in the list of KPSC. This being the case, we do not think treating the appellants' degrees as equivalent to those required under the applicable notifications by the GOs issued in the year 2019 would result in change in the rules of the game midway. At best, it can be termed as interpreting the rules when the game was on, figuratively speaking. Such a course would, in our opinion, be permissible. For this reason, we do not consider it necessary to deal with the different authorities cited on the principle of "change in the rule of the game midway". We have opined that the appellants' degrees in B.Ed. were equivalent to those required by the employment notifications and the equivalency orders were merely clarificatory in nature. For this reason, we do not think there was any fundamental breach of Notes (v) and (vi) of Clause 7 of the respective employment notifications in the cases of the appellants.

28. Once we hold so, we do not think relief can be denied to these two appellants on the ground that other similarly situated persons may not have had applied for the same posts and were being put to disadvantage. In the case of Aarya K. Babu (supra), that course was adopted by a coordinate Bench as it was a new subject which was added to a subsisting range of subjects in the qualification criteria. The principle of service jurisprudence that a candidate must possess the requisite qualification for a post

on the date of issue of employment notification cannot be applied in the appellants' cases, as in our view, they possessed equivalent qualifications when they applied for the posts. The GOs only confirmed the equivalency of their B.Ed. degrees. In our opinion, they shall be deemed to have had the equivalent qualification on the relevant date. As we have held that the respective GOs only clarified or confirmed an existing status of certain educational qualifications, in absence of specific instance of similarly situated but unspecified number of persons having not applied for the posts would be unfair to the ones who apply for the same and undergo three levels of litigations to establish that they had equivalent degrees."

Now, considering this judgment also, there is no specific rules enacted by the NIT in the year 2019 like in the present case and, hence, that judgment is not applicable to the facts of the present case.

7.5.3 It is also fruitful to refer the judgment dated 25.02.2022 cited at the bar by learned advocate for the petitioner passed in **Special Civil Application No.20526 of 2016**, more particularly, paragraph 29 is relevant, which read as follows:

"29. In view of above clarification made by the Government,

reliance was placed by the petitioner on the order of this Court passed in Special Civil Application No.12204/2015 and allied matters filed by similarly situated candidates claiming similar benefits except that their candidature was pursuant to different advertisements, wherein it is held as under:

> *"6. In such circumstances referred to above, I hold that the Government Resolution dated 14th June, 2016 issued by the State Government should be made applicable in the cases of the writ applicants and if they are covered by the Government Resolution so far as the equivalency of various graduate and postgraduate degree courses is concerned, then they may be considered for being appointed on the posts in question. Of course, it goes without saying that they should also fulfill the other requisite requirements in accordance with the advertisement."*

In view of the above, the Government has clarified something in that matter and the Court has considered by granting benefit. In the present case, even considering the fact that UGC has come out with clarification much later that the candidature is already rejected by the authority and no process was pending at the relevant point of time. Moreover considering the fact that the recruitment process is required to be governed by the

recruitment rules which are enacted under NIT Act, 2019. Therefore, such judgment is not applicable to the facts of the present case.

7.5.4 Furthermore, considering the judgments cited at the bar by learned advocate for the respondent Nos. 1 and 2.

(i) **Prakash Chand Meena (supra)**, more particularly, paragraphs 3, 8 and 9 are relevant, as under:

> *"3. A combined competitive examination for both the posts was held on 04.10.2009. The Commission, by letter issued on 04.12.2009, directed the candidates to submit their testimonials/documents by 04th January 2010. On 18.12.2009 a news item was published in a daily newspaper that the State Government had directed the Commission to treat such candidates also eligible for appointment to the post of PTI Gr.III who possess Diploma in Physical Education (D.P.Ed.) and/or Degree of Bachelor in Physical Education (B.P.Ed.) on the premise that these qualifications should be treated as higher than or equal to Certificate in Physical Education (C.P.Ed.). For this purpose, the State Government sent a letter to the Commission on 06.01.2010 and thereafter the Commission declared the result on 29.10.2010 wherein it declared such applicants also as successful for the post of PTI Gr.III who held the*

qualification of B.P.Ed. and had applied for appointment to the post of PTI Gr.II only.

8. Having heard the parties, we have also perused the written submissions filed on behalf of some of them and have perused the judgment of the learned Single Judge and the impugned judgment of the Division Bench. In our considered view, the issue noticed at the outset must be decided on the basis of settled law noticed by learned Single Bench that recruitment process must be completed as per terms and conditions in the advertisement and as per rules existing when the recruitment process began. In the present case, the Division Bench has gone to great lengths in examining the issue whether B.P.Ed. and D.P.Ed. qualifications are equivalent or superior to C.P.Ed. qualification but such exercise cannot help the cause of the respondents who had the option either to cancel the recruitment process if there existed good reasons for the same or to complete it as per terms of advertisement and as per rules. They chose to continue with the recruitment process and hence they cannot be permitted to depart from the qualification laid down in the advertisement as well as in the rules which were suitably amended only later in 2011. In such a situation, factual justifications cannot change the legal position that respondents acted against law and against the terms of advertisement in treating such applicants successful for appointment to the post of PTI Gr.III who held other qualifications but not the qualification of C.P.Ed. Such candidates had not even submitted separate OMR application form for appointment to the post of PTI

Gr.III which was essential as per the terms of advertisement.

9. The candidates who were aware of the advertisement and did not have the qualification of C.P.Ed. also had two options, either to apply only for PTI Gr.II if they had the necessary qualification for that post or to challenge the advertisement that it omitted to mention equivalent or higher qualification along with qualification of C.P.Ed. for the post of PTI Gr.III. Having not challenged the advertisement and having applied for the other post, they could not have subsequently claimed or be granted eligibility on the basis of equivalence clarified or declared subsequently by the State Government. In the matter of eligibility qualification, the equivalent qualification must be recognized as such in the recruitment rules or Government order existing on or before the initiation of recruitment process. In the C.A.@S.L.P.(C)Nos.22345-22346/13 present case, this process was initiated through advertisement inviting application which did not indicate that equivalent or higher qualification holders were eligible to apply nor the equivalent qualifications were reflected in the recruitment rules or Government Orders of the relevant time."

(ii) **K. Manjusree (supra)**, more particularly, paragraphs 27 and 33 are relevant, as under:

"27. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum m arks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them P. K. Ramachandra Iyer v. Union of India # 1984 (2) SCC 141, Umesh Chandra Shukla v. Union of India # 1985 (3) SCC 721, and Durgacharan Misra v. State of Orissa # 1987 (4) SCC 646.

33. The resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is

impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee want to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview."

(iii) **Ashok Kumar Sharma (supra)**, more particularly, paragraph 6 is relevant, as under:

"6. The Review petitions came up for final hearing on March 3, 1997. We heard the learned counsel for the

review petitioners, for the State of Jammu and Kashmir and for the 33 respondent So far as the first issue referred to in our order dated Ist September, 1995 is concerned, we are of the respectful opinion that majority judgment (rendered by the Dr. T.K. Thommen and V. Ramaswami, JJ) is unsustainable in law,. the proposition that where applications are called for prescribing a particular date as the last date for fling the applications, the eligibility of the candidates shall have to be judged with reference to that date and that dat e alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview would be allowed to appear for the interview, other similiarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their application ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority Judgement. This is also the proposition affirmed in Rekha Chaturvedi (Smt.) v. University of Rajasthan and others [1993 Suppl. (3) S.C.C 168]. The reasoning in

majority opinion that by allowing the 33 respondents to appear for the interview, the Recruiting Authority was able to get the bests talent available and that such course was in furtherence of public interest is, with respect, an impermissible Justification It is, in our considered opinion, a clear error of low and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have allowed to appear for interview."

(iv) **Ashok Kumar Sonkar (supra)**, more particularly, paragraphs 11, 14 to 16, and 20 are relevant, as under:

"11. The question as to what should be the cut-off date in absence of any date specified in this behalf either in the advertisement or in the reference is no longer res integra. It would be last date for filing application as would appear from the discussions made hereinafter.

14. A review application was filed which was admitted. The matter was again placed before a 3-Judge Bench of this Court in Ashok Kumar Sharma and Others v. Chander Shekhar and Another [(1997) 4 SCC 18]. One of the issues which fell for consideration of the Bench being Issue No. 1 reads as under :

"(1) Whether the view taken by the majority (Honble Dr Thommen and V. Ramaswami, JJ.) that

it is enough for a candidate to be qualified by the date of interview even if he was not qualified by the last date prescribed for receiving the applications, is correct in law and whether the majority was right in extending the principle of Rule 37 of the Public Service Commission Rules to the present case by analogy?"

15. It was held :

"So far as the first issue referred to in our Order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed

persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in Rekha Chaturvedi v. University of Rajasthan. The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.

The said decision is, therefore, an authority for the proposition that in absence of any cut-off date specified in the advertisement or in the rules, the last date for filing of an application shall be considered as such.

16. Indisputably, the appellant herein did not hold the requisite qualification as on the said cut-off date. He was, therefore, not eligible therefor.

20. Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application."

(v) **Rakesh Kuamr Sharma (supra)**, more particularly, paragraphs 11 to 22 are relevant, as under:

"11. There can be no dispute to the settled legal proposition that the selection process commences on the date when applications are invited. Any person eligible on the last date of submission of the application has a right to be considered against the said vacancy provided he fulfils the requisite qualification.

12. In U.P. Public Service Commission, U.P., Allahabad & Anr. v. Alpana, 1994(1) S.C.T. 701 : (1994) 2 SCC 723, this Court, after considering a large number of its earlier judgments, held that eligibility conditions should be examined as on last date for receipt of applications by the Commission. That too was a case where the result of a candidate was declared subsequent to the last date of

submission of the applications. This Court held that as the result does not relate back to the date of examination and eligibility of the candidate is to be considered on the last date of submission of applications, therefore, a candidate, whose result has not been declared upto the last date of submission of applications, would not be eligible.

13. A three Judge Bench of this Court, in Dr. M.V. Nair v. Union of India & Ors., 1993(2) S.C.T. 77 : (1993) 2 SCC 429, held as under: -

> *"9. ...It is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date."*
>
> *(Emphasis added)*

14. In Smt. Harpal Kaur Chahal v. Director, Punjab Instructions, Punjab & Anr., 1995 (Suppl) 4 SCC 706, this Court held:

> *"2. ...It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the applications, such of those candidates, who possessed of all the qualifications as on that date, alone are eligible to apply for and to be considered for recruitment according to Rules."*
>
> *(Emphasis added)*

15. This Court in Rekha Chaturvedi v. University of Rajasthan, 1993(2) S.C.T. 279 : 1993 Supp (3) SCC 168 held:

> *"10. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the*

absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. Reference in this connection may also be made to two recent decisions of this Court in A.P. Public Service Commission v. B. Sarat Chandra(1990) 2 SCC 669; and District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi (1990) 3 SCC 655."

(Emphasis added)

16. In Ashok Kumar Sharma v. Chander Shekhar, 1993(2) S.C.T. 208 : 1993 Supp (2) SCC 611 [hereinafter referred to as Ashok Kumar (1993)], the majority view was as under:

"15. The fact is that the appellants did pass the examination and were fully qualified for being selected prior to the date of interview. By allowing the appellants to sit for the interview and by their selection on the basis of their comparative merits, the recruiting authority was able to get the best talents available. It was certainly in the public interest that the interview was made as broad based as was possible on the basis of qualification. The reasoning of the learned Single Judge was thus based on sound principle with reference to comparatively superior merits. It was in the public interest that better

candidates who were fully qualified on the dates of selection were not rejected, notwithstanding that the results of the examination in which they had appeared had been delayed for no fault of theirs. The appellants were fully qualified on the dates of the interview and taking into account the generally followed principle of Rule 37 in the State of Jammu & Kashmir, we are of opinion that the technical view adopted by the learned Judges of the Division Bench was incorrect".

(Emphasis added)

However, the opinion of Justice R.M. Sahai had been that these 33 persons could not have been allowed to appear for the interview as they did not possess the requisite eligibility/qualification on the last date of submission of applications.

17. A three-Judge Bench of this Court in Ashok Kumar Sharma v. Chander Shekhar, 1997(2) S.C.T. 123 : (1997) 4 SCC 18 reconsidered and explained the judgment of Ashok Kumar Sharma (1993) (supra) observing:

"6. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date

cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment."

(Emphasis added)

The Court further explained that the majority view in Ashok Kumar Sharma (1993)(supra) was not correct, rather the dissenting view by Justice R.M. Sahai was correct as the Court held as under:

"6. The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered

opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview."

(Emphasis added)

18. It may also be pertinent to mention here that in the aforesaid case reference to Rekha Chaturvedi (supra) appears to have been made by a typographical error as the said judgment is by a two-Judge Bench of this Court. Infact the court wanted to make a reference to the case of Ashok Kumar Sharma (1993) (supra).

19. In Bhupinderpal Singh v. State of Punjab, 2000(2) S.C.T 826 : AIR 2000 Supreme Court 2011, this Court placing reliance on various earlier judgments of this Court held:

"13. ...The High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the

competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with."

(Emphasis added)

20. This Court lately in State of Gujarat v. Arvindkumar T. Tiwari, 2013(1) S.C.T. 117 : AIR 2012 Supreme Court 3281 held:

"14. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See Prit Singh v. S.K. Mangal, 1992(3) S.C.T. 738 : 1993 Supp (1) SCC 714 and Pramod Kumar v. U.P. Secondary Education Services Commission, 2008(2) S.C.T. 699 : (2008) 7 SCC 153.)"

(Emphasis added)

A similar view has been re-iterated by this Court in Pramod Kumar v. U.P. Secondary Education Services Commission, 2008(2) S.C.T. 699 : (2008) 7 SCC 153; and State of Orissa v. Mamta Mohanty, 2011(2) S.C.T. 718 ;

(2011) 3 SCC 436.

21. In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification, i.e., eligibility, character verification etc. Clause 11 of the letter of offer of appointment dated 23.2.2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court.

12 It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement."

(vi) **Bharat Sanchar Nigam Ltd. And Others (supra),** more particularly, para 30 is relevant, as under:

> *"30. The power to make retrospective legislations enables the Legislature to obliterate an amending Act completely and restore the law as it existed before the amending Act, but at the same time, administrative/executive orders or circulars, as the case may be, in the absence of any legislative competence cannot be made applicable with retrospective effect. Only law could be made retrospectively if it was expressly provided by the Legislature in the Statute. Keeping in mind the aforestated principles of law on the subject, we are of the view that applicability of the circular dated 12th June, 2012 to be effective retrospectively from 1 st April 2009, in revising the infrastructure charges, is not legally sustainable and to this extent, we are in agreement with the view expressed by the Tribunal under the impugned judgment."*

(vii) **Shree Sankaracharya University of Sanskrit and Others (supra)**, more particularly, paragraphs 9 and 10 are relevant, as under:

> *"9. The proposition of law that a clarificatory provision may be made applicable retrospectively is so well established that we do not wish to burden this judgment by referring*

to rulings in the same vein. However, it is necessary to dilate on the role of a clarification/explanation to a statute and how the same may be identified and distinguished from a substantive amendment.

9.1. An explanation/clarification may not expand or alter the scope of the original provision, vide Bihta Cooperative Development Cane Marketing Union Ltd. vs. Bank of Bihar, A.I.R. 1967 SC 389. Merely describing a provision as an "Explanation" or a "clarification" is not decisive of its true meaning and import. On this aspect, this Court in Virtual Soft Systems Ltd. vs. Commissioner of Income Tax, Delhi, (2007) 289 ITR 83 (SC) observed as under:

"Even if the statute does contain a statement to the effect that the amendment is declaratory or clarificatory, that is not the end of the matter. The Court will not regard itself as being bound by the said statement in the statute itself, but will proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is an amendment which is intended to change the law and which applies to future periods."

This position of the law has also been subscribed to in Union of India vs. Martin Lottery Agencies Ltd., (2009) 12 SCC 209 wherein it was stated that when a new concept of tax is introduced so as to widen the net, the same cannot be said to be only clarificatory or declaratory and therefore be made applicable retrospectively, even though such a tax

was introduced by way of an explanation to an existing provision. It was further held that even though an explanation begins with the expression "for removal of doubts," so long as there was no vagueness or ambiguity in the law prior to introduction of the explanation, the explanation could not be applied retrospectively by stating that it was only clarificatory.

9.2. From the aforesaid authorities, the following principles could be culled out:

i) If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.

ii) In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.

iii) An explanation/clarification may not expand or alter the scope of the original provision.

iv) Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyse

the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.

10. Applying the law as discussed hereinabove to the facts of the present case, we are of the view that the subsequent Government Order dated 29th March, 2001 cannot be declared as a clarification and therefore be made applicable retrospectively. The said order has substantively modified the Government Order dated 21st December, 1999 to the extent of stating that teachers who had already got the benefit of advance increments for having a Ph.D. degree, would not be eligible for advance increments at the time of their placement in the selection grade. As noted above, the law provides that a clarification must not have the effect of saddling any party with an unanticipated burden or withdrawing from any party an anticipated benefit. However, the Government Order dated 29th March, 2001 has restricted the eligibility of lecturers for advance increments at the time of placement in the selection grade, only to those who do not have a Ph.D. degree at the time of recruitment and subsequently acquire the same.

10.1. The purpose of the incentives in question seems to be twofold: First, to incentivize persons with advanced educational qualifications to apply for the post of lecturers. Second, in order to retain in the teaching profession, persons with advanced qualifications. In order to secure the first of the aforestated objectives, Clause 6.16 of the

Government Order dated 21st December, 1999 provided for increments that would accrue on recruitment. In order to secure the second of the aforesaid purposes, Clause 6.19 thereof provided for incentives that would accrue at the time of placement in the selection grade. Therefore, it could not be said that the original intention of the Government while issuing the order dated 21st December, 1999 was that a Lecturer would not be simultaneously eligible for the incentives under Clause 6.16 and 6.19.

10.2. Further, as evident from the tabular comparison presented hereinabove, the number of advance increments that would accrue in favour of a Lecturer who has a Ph.D. degree to his/her credit at the time of recruitment, was reduced by way of the Government Order dated 29th March, 2001 from six to four. Therefore, permitting retrospective application of the said order would result in withdrawing vested rights of lecturers who had a PhD. at the time of their recruitment and who were placed in the selection grade before 29th March, 2001 with four plus two advance increments.

10.3. Further, merely because the subsequent Government Order has been described as a clarification/explanation or is said to have been issued following a clarification that was sought in that regard, the Court is not bound to accept that the said order is only clarificatory in nature. On an analysis of the true nature and purport of the subsequent Government Order dated 29th March, 2001, we are of the view that it is not merely clarificatory, but is a substantial

amendment which seeks to withdraw the benefit of two advance increments in favour of a certain category of lecturers. The benefit withdrawn was not anticipated under the previously existing scheme. Therefore, such an amendment cannot be given retrospective effect.

7.6 At this stage, it would be fruitful to refer to the recent decision of the Hon'ble Apex Court in the case of **Sajid Khan versus L.Rahmathullah and others** reported in **AIR 2025 SC 1300**, more particularly paras : 18 to 21 thereof, which read as under.

"18. In circumstances where the appointing authority has not objected to the qualifications of the appellants and there is no apparent or glaring difference in the qualifications, we see no reason for courts to interfere and set-aside the appointments made after due consideration. It is the appointing authority which has to take the decision on whether the candidate possesses what is required by the post in cases of disputed equivalence. This Court has stated the same in categorical terms in its decision Anand Yadav v. State of U.P., (2021) 12 SCC 390. :

32. We may also notice another important aspect i.e. the employer ultimately being the best judge of

> *who should be appointed. The choice was of Respondent 2 who sought the assistance of an expert committee in view of the representation of some of the appellants. The eminence of the expert committee is apparent from its composition. That committee, after examination, opined in favour of the stand taken by the appellants, and Respondent 2 as employer decided to concur with the same and accepted the committee's opinion. It is really not for the appellants or the contesting respondent to contend how and in what manner a degree should be obtained, which would make them eligible for appointment by Respondent 2. (emphasis supplied)*

19. The recruiting authority has scrutinised the qualifications before deciding that they satisfy what is enumerated in the advertisement. It is not the case of the respondents that the authority in the present case has not applied its mind in scrutinising the appellants diplomas. In Mukul Kumar Tyagi v. State of U.P., (2020) 4 SCC 86. this Court had an occasion to consider the approach to be adopted by the recruiting agency/employer while considering the issue of equivalence of qualifications and directed as

under:

> *59. The equivalence of qualification as claimed by a candidate is matter of scrutiny by the recruiting agency/employer. It is the recruiting agency which has to be satisfied as to whether the claim of equivalence of qualification by a candidate is sustainable or not. The purpose and object of qualification is fixed by employer to suit or fulfil the objective of recruiting the best candidates for the job. It is the recruiting agency who is under obligation to scrutinise the qualifications of a candidate as to whether a candidate is eligible and entitled to participate in the selection. More so when the advertisement clearly contemplates that certificate concerning the qualification shall be scrutinised, it was the duty and obligation of the recruiting agency to scrutinise the qualification to find out the eligibility of the candidates. The self-certification or self-declaration by a candidate that his computer qualification is equivalent to CCC has neither been envisaged in the advertisement nor can be said to be*

fulfilling the eligibility condition. (emphasis supplied)

20. Similarly, in Maharashtra Public Service Commission v. Sandeep Shriram Warade, (2019) 6 SCC 362. it was held that :

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 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.*

21. Though there a number of decisions on this very principle, Mohd Shujat Ali v. Union of India, (1975) 3 SCC 76; Dr. B.L. Asawa v. State of Rajasthan, 1982 (2) SCC 55; Zahoor Ahmad Rather v. Sheikh Imtiyaz Ahmad, (2019) 2 SCC 404 . we will conclude with a recent decision of this Court in Union of India v Uzair Imran, 2023 SCC OnLine SC 1308 . emphasizing the restraint a court must exercise while determining equivalence between qualifications. The relevant portion is as under :

> *14. Normally, it is not the function of the court to determine equivalence of two qualifications and/or to scrutinise a particular certificate and say, on the basis of its appreciation thereof, that the holder thereof satisfies the eligibility criteria and, thus, is qualified*

> *for appointment. It is entirely the prerogative of the employer, after applications are received from interested candidates or names of registered candidates are sponsored by the Employment Exchanges for public employment, to decide whether any such candidate intending to participate in the selection process is eligible in terms of the statutorily prescribed rules for appointment and also as to whether he ought to be allowed to enter the zone of consideration, i.e., to participate in the selection process. It is only when evidence of a sterling quality is produced before the court which, without much argument or deep scrutiny, tilts the balance in favour of one party that the court could decide either way based on acceptance of such evidence. (emphasis supplied)"*

7.7 Under the circumstances, since the petitioner does not fulfill the basic educational qualification as prescribed in the advertisement in question and as conceded by them in the petition itself, this Court finds that the petitioner does not possess the requisite educational qualifications as prescribed in the advertisement in question by the Board and therefore,

the Board has rightly rejected the candidature of the petitioner. The petitioner is not qualified for the post in question as per the Advertisement.

7.8 Even otherwise, judicial review is not permitted in the matters of equivalence of qualification. At this stage, it would be fruitful to refer to the decision of the Hon'ble Apex Court in the case of **Unnikrishnan CV versus Union of India** reported in **(2023) 18 SCC 546,** more particularly para : 7 thereof, which reads as under.

> *"7. In Zahoor Ahmad Rather & Ors. v. Sheikh Imtiyaz Ahmad & Ors, (2019) 2 SCC 404 it was held that the State, as an employer, is entitled to prescribe qualifications as a condition of eligibility, after taking into consideration the nature of the job, the aptitude required for efficient discharge of duties, functionality of various qualifications, course content leading up to the acquisition of various qualifications, etc. Judicial review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the prescribed qualifications with any other given qualification. Equivalence of qualification is a matter for the State, as recruiting authority, to determine.*
>
> *(Emphasis supplied)"*

7.9 It would also be fruitful to refer to the decision of the Hon'ble Apex Court in the case of **Shifana P.S. versus The State of Kerala** reported in **2024 INSC 580**, more particularly para : 14 thereof, which reads as under.

> *"14. This Court in the case of Zahoor Ahmad Rather and Others v. Sheikh Imtiyaz Ahmad and Others, (2019) 2 SCC 404 held that judicial review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the prescribed qualifications with any other given qualification. Therefore, the equivalence of a qualification is not a matter that can be determined in the 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. (emphasis supplied) "*

8. Considering the above-mentioned judgments and facts of the present case, I am of the view that though there is clarification given by the UGC, but in the facts of the present case, such clarification cannot be applied retrospectively and also considering the fact that respondent authorities are governed by recruitment rules, which is governed by the NIT Act, 2019, all the other

instances cited by the petitioner in support of his submission are regarding the IIT's and are not applicable to the facts of the present case and, therefore, though the Court has all sympathy with the petitioner, the Court may not determine about equivalence of any qualification and cannot grant any relief to the petitioner in accordance with law. Therefore, this Court has no other option but to dismiss this petition as the petition is found meritless and it cannot be considered as violative of Articles 14 or 16 of the Constitution of India. No case is made out for exercising my jurisdiction under Article 226 of the Constitution of India. Accordingly, the present petition is required to be dismissed.

8. In view of the above discussions, the present petition is **dismissed** with no order as to costs. Rule stands discharged accordingly.

(SANDEEP N. BHATT,J)

DIWAKAR SHUKLA

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: DIWAKAR SHUKLA(HC01778), PRIVATE SECRETARY, at High Court of Gujarat on 14/08/2025 15:08:40