

*Before M.M.Kumar & Gurdev Singh, JJ.*

**PURAN CHAND AND OTHERS,—Petitioners**

*versus*

**STATE OF HARYANA AND OTHERS,—Respondents**

**C.W.P. No.1046 of 1995**

7th July, 2011

*Constitution of India - Art. 14, 16, 226 & 309 - Haryana Primary Education (Group-C) District Cadre Service Rules, 1994 - Appendix 'B' - Punjab Education Service Class-III (School Cadre) Rules, 1955 - Petitioners applied for appointment to direct recruitment posts of Junior Basic Trained Teacher - Appendix 'B' provides that in case of non-availability of JBT Teacher, candidates having higher qualification such as BA, B.Ed. or B.Sc., B.Ed could be considered - Challenge to consideration of candidates with higher qualifications - Contention repelled, relying on Full Bench in CWP 451 of 2008, "Manjit Singh Vs. State of Punjab" - Even otherwise, since candidates did not hold requisite qualification on cut-off date, they did not have locus standi to challenge constitutional validity of Appendix 'B' - Whether Appendix 'B' violates Art. 14 & 16 of Constitution and whether petitioner had locus standi to challenge constitutional validity of Appendix 'B'.*

*Held*, That it is well settled that if a person lacks qualification to be eligible for appointment to a post then he is not permitted to challenge the selection process because in such a situation no effective relief could be granted to him. Accordingly, he would not have any locus standi. In Jeet Singh and another v. State of Punjab, 1979 (1) SLR 604, the question fell for consideration of Hon'ble the Supreme Court. Even otherwise, a Full Bench of this Court in the case of Manjit Singh v. State of Punjab and others (C.W.P. No. 451 of 2008, decided on 5.2.2010) has now taken the view that higher qualification of B.A. B.Sc. or B.Ed. for appointment to the post of Junior Basic Training Teachers is no bar (C.f. Full Bench judgment in the case of Som Dutt v. State of Punjab, 1983 (3) SLR 141).

(Para 10)

None, *for the petitioners.*

R.K.S. Brar, Addl. AG, Haryana, *for the respondents.*

**M.M. KUMAR, J.**

(1) In this petition filed under Article 226 of the Constitution, the short prayer made is that Note (ii) in Appendix 'B' of the Haryana Primary Education (Group-C) District Cadre Service Rules, 1994 (for brevity, 'the Rules') may be declared ultra vires of Articles 14 and 16 of the Constitution because it permits the candidate with higher qualification such as B.A., B.Sc. and B.Ed. to be considered for appointment to the post of Junior Basic Trained Teachers. A consequential prayer has also been made for quashing advertisement dated 22.12.1994 (P-3), which stipulate in accordance with Note (ii) that if adequate number of candidates possessing the qualification of J.B.T. Teachers were not available then the posts could be filled CWP No. 1046 of 1995 (O&M) up from those who have qualification of B.A., B.Ed. or B.Sc. B.Ed. The aforesaid clause reads as under:-

“2) xxx xxx xxx

Note:- (i) xxx xxx xxx

- (ii) In case of non-availability of Junior Basic Trained Teachers the candidates having higher qualifications such as B.A. B.Ed. or B.Sc. B.Ed. or its equivalent may be considered for the posts of Junior Basic Trained teachers but on selection such persons shall have no right to claim the benefit of any higher pay scales or salary other than the pay scales of Junior Basic Trained Teachers as the Government may fix from time to time simply on the basis of higher qualification. In case any Basic Trained Teacher acquired higher qualification including B.A. B.Ed. or B.Sc. B.Ed. or its equivalent after selection or joining the service he or she shall not be allowed any higher pay scales or salary simply on the basis of acquisition of such qualification. The letter No. 5056-F.R.-II/ 57/5600, dated 23rd July, 1957 issued by the Finance Department of composite State of Punjab shall have no effect whatsoever.”

(2) Brief facts of the case are that the petitioners joined the course of Diploma in Education (Two-Year Course), which is popularly known as J.B.T. Course, in the Government run institutes. At the time of filing of the writ petition in the year 1995, the petitioners passed the Part-I examination of the said course and were pursuing their final year of J.B.T. course, which was to be completed by the end of May 1995.

(3) The petitioners have claimed that earlier the conditions of service of Junior Basic Trained Teachers in the Education Department, Haryana were governed by the rules known as 'the Punjab Education Service Class-III (School Cadre) Rules, 1955. Under the said rules, the prescribed qualification for the post of Junior Basic Trained Teachers was as under:

- “(i) Matric (Full) with English as one of the subjects.
- (ii) Pass in two years J.B.T./Diploma in Education Training Course from the Haryana Education Department or equivalent qualification recognised by the Haryana Education Department.”

(4) The petitioners have further claimed that by the end of 1994 Session of J.B.T. course, there were about 1200 J.B.T. trained candidates available whereas there were more than 3900 posts of Junior Basic Trained Teachers were lying vacant. The petitioners further anticipated that after completion of their course, approximately 1700 more J.B.T. trained candidates were to be available.

(5) On 16.9.1994, the State of Haryana under proviso to Article 309 of the Constitution framed 'the Rules'. Rule 7 of 'the Rules' prescribes that no person would be appointed to any post in Service unless he is in possession of qualifications and experience specified in column 3 of Appendix B of the Rules in the case of direct recruitment and those specified in column 4 of the said Appendix in the case of appointment other than by direct recruitment. The relevant entry of Appendix-B reads thus:

## “APPENDIX-B

Sr. No.	Designation of posts	Academic qualification and experience, if any, for direct recruitment.	Academic qualification and experience, if any, for appointment other than by direct recruitment
1	2	3	4
1.	Junior Basic Trained Teachers	(i) Matriculation from the Board of School Education, Haryana or its equivalent as recognised by the Board of School Education, Haryana, and  (ii) Passed two years Junior Basic Training Course or Diploma in Education Training Course from Haryana Education Department or its equivalent recognised by the Haryana Government.  (iii) Knowledge of Hindi upto Matric standard.	xxx    xxx

## Note-

- (i) Preference will be given to candidates who possess knowledge of Urdu upto Middle Standard for such posts of Junior Basic Trained Teachers who may be required to teach Urdu or in Urdu.
- (ii) In case of non-availability of Junior Basic Trained Teachers the candidates having higher qualifications such as B.A. or B.Sc. B.Ed., may be considered for the posts of Junior Basic Trained Teachers but on selection such persons shall have no right to

claim the benefit of any higher pay scales or salary other than the pay scales of Junior Basic Trained Teachers as the Government may fix from time to time simply on the basis of higher qualifications. In case any basic Trained Teacher requires higher qualification including B.A. or B.Sc. B.Ed. after selection or joining the service, he or she shall not be allowed any higher pay scales or salary simply on the basis of acquisition of such qualifications. The letter No. 5056-FR-II/57/5600, dated 23rd July, 1957, issued by the Finance Department of composite State of Punjab shall have no effect whatsoever.

Note : Professional Training Diploma Certificate awarded by any State Board or University other than Haryana Education Department will be recognised only if these Diploma or Certificates have been recognised by the Haryana Government.”

(6) On 22.12.1994, the Subordinate Services Selection Board, Haryana, issued an advertisement inviting applications for filling up 5160 posts of J.B.T. Teachers (School Cadre) in the pay scale of 1200-2040. The last date for receipt of application was 6.1.1995. As noticed in the opening para of the judgment it has been stipulated in the said advertisement that that if adequate number of candidates possessing the qualification of J.B.T. were not available then the posts could be filled up from those who have qualification of B.A., B.Ed. or B.Sc. B.Ed. (P-3).

(7) In the backdrop of aforementioned factual position, the petitioners have filed the instant petition with the grievance that by virtue of Note (ii) in Appendix-B, against the post of Junior Basic Trained Teachers, an attempt has been made to equate two unequals as equal. However, it is an admitted fact that on the cut-off date i.e. 6.1.1995, the petitioners were not having the minimum academic qualification of passing of two years Junior Basic Training Course or Diploma in Education Training Course from Haryana Education Department or its equivalent recognised by the State of Haryana.

(8) In the written statement filed by the respondents, a preliminary objection has been raised that the petitioners did not have locus standi to challenge the constitutional validity of Note (ii) because they are yet to acquire the qualification of J.B.T. course in order to become eligible for

appointment. It is specifically pleaded that the petitioners lacked requisite qualification on the cut-off date i.e. 6.1.1995, which was the last date of receipt of application form. They were still undergoing Junior Basic Training course. Therefore, they cannot feel aggrieved and no relief could be given to them.

(9) The case was called out yesterday i.e. 6.7.2011 and we deferred the hearing for today. Again no one has put in appearance on behalf of the petitioners. However, for the respondents Mr. R.K.S. Brar, learned Additional Advocate General, Haryana, has appeared and we have heard the learned State counsel.

(10) It is well settled that if a person lacks qualification to be eligible for appointment to a post then he is not permitted to challenge the selection process because in such a situation no effective relief could be granted to him. Accordingly, he would not have any *locus standi*. In **Jeet Singh and another versus State of Punjab (1)**, the question fell for consideration of Hon'ble the Supreme Court. In para 8 of the judgment it has been held that those petitioners lacked locus standi to file a petition because they were not qualified for promotion and they did not have any right for promotion prior to the selected candidate nor they could succeed in their claim. Similar principles have been echoed in the case of **R.K. Jain versus Union of India (2)**. In that case challenge was made to the appointment of the President of CGAT. Initially he was appointed as Judicial Member in 1982 and in 1991 he was given appointment as Senior Vice-President of CGAT. Thereafter, in pursuance of directions issued by Hon'ble the Supreme Court he was appointed as President of CGAT. His appointment was challenged on the ground that as per the convention a sitting or retired Judge of Hon'ble the Supreme Court is appointed as President of CGAT in consultation with Chief Justice of India and the aforesaid convention has been totally disregarded. It has been held by Hon'ble the Supreme Court that a third party, which was not even a candidate, has no locus standi to challenge the appointment of any person. Accordingly, we are of the view that the writ petition cannot be maintained by those who are yet to acquire the qualification of J.B.T. and become eligible for appointment to the post of Junior Basic Training teachers by the last date fixed for receipt of applications.

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(1) 1979 (1) SLR 604

(2) (1993) 4 SCC 119

Therefore, the writ petition is liable to be dismissed on this short ground. Even otherwise, a Full Bench of this Court in the case of Manjit Singh v. State of Punjab and others (C.W.P. No. 451 of 2008, decided on 5.2.2010) has now taken the view that higher qualification of B.A. B.Sc. or B.Ed. for appointment to the post of Junior Basic Training Teachers is no bar (C.f. Full Bench judgment in the case of Som Dutt v. State of Punjab, 1983 (3) SLR 141). It is further appropriate to mention that vide notification dated 28.2.2003, 'the Rules' have been amended and Note (ii) from Appendix 'B' has been deleted.

(11) For all the reasons mentioned above, this petition fails and the same is dismissed.

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*P.S. Bajwa*

*Before K. Kannan, J.*

**NATIONAL INSURANCE COMPANY LTD.,  
CHANDIGARH,—Appellant**

*versus*

**PRANAY SETH AND OTHERS,—Respondents**

**FAO No.3086 of 2011**

20th April, 2011

***Motor Vehicles Act, 1988 - S.166 & 149 - Defence of Insurance Company of violation of terms of insurance policy - Genuineness of driving licence - Normal test - Whether there has been any breach or violation of terms of policy by insured himself - Bonafides of the owner (insured) material - He ought to have some reason to suspect the genuineness of the driving licence - There was evidence about the bonafides of belief that licence was genuine - Insurance company's appeal dismissed.***

*Held*, That there were also occasions when the licence was checked by police at many nakas and the inference, therefore, was that no one ever suspected the genuineness of the licence. When we are allowing for an insurer to take a defence of violation of terms of policy, we normally test it on the light of whether there had been any breach of violation of terms of policy by the insured himself. It is the bona fides of the owner that is