LETTERS PATENT APPEAL

Before S. S. Sandhawalia and Harbans Lal JJ.

SANT LAL ETC.,—*Appellants.*

versus

THE STATE OF HARYANA ETC.,—*Respondents.*

Letters Patent Appeal No. 283 of 1975

October 10, 1977.

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 9 and 23(1) (e)—Prevention of Food Adulteration Rules 1955—Rule 8—Initial recruitment to a post—Higher qualifications than the minimum prescribed for eligibility—Whether can be specified for such recruitment. . . .

Held, that merit and suitability are invariably the twin requirements (amongst others) of Service Law for appointment to a post. It can never be said that the State or for that matter any other employer should be debarred from recruiting persons to a post having higher or better qualifications than those who satisfy the barest minimum for eligibility therefor. To hold otherwise would inevitably involve the placing of a premium on mediocrity and also a disincentive for higher qualifications whether academic or pertaining to experience. It is legitimate for an employer to incorporate a statement in the advertisement itself that persons with superior qualifications would be given preference and if that be so, there would be no magic in resorting to what patently would be an exercise in futility of requiring persons with obviously lower qualifications to apply when a plethora of persons with higher academic qualifications or experience may be available. Normally the administrator or the employer is the best judge of the qualifications and the experience required to discharge the functions of a particular post. Therefore, on principle there is no blemish in the salutary rule that the State may well be entitled to meaningfully limit the number of applicants and confine its area of choice to persons having qualifications higher than the minimum prescribed for eligibility. Again, where there is a prescription of minimum qualifications or the barest requirement for eligibility then plainly there can be no bar for the State to seek persons with higher qualifications than the lowest level laid by the rule makers. Rule 8 of the Prevention of Food Adulteration Rules, 1955 provides that a person shall not be qualified for appointment as Food Inspector unless he satisfies any one of the four qualifications laid therein. These appear to be the minimum qualifications or to put it in other words, the necessary pre-requisite for eligibility; the

rule does not in any way confer a indefeasible right on any person having the minimum qualifications to be considered for the post of a Food Inspector. The prescription herein is obviously the minimum qualifications laid down by the statute. (Paras 5, 6 and 7).

Letters Patent Appeal under Clause X of the Letters Patent against the judgment dated 16th April, 1975 passed in Civil Writ No. 604 of 1974 by Hon'ble Mr. Justice Prem Chand Jain.

Kuldip Singh, Advocate, *for the appellants/Petitioners.*

M. S. Jain, Advocate, for A. G.

J. L. Gupta, Advocate, *for respondents Nos. 2, 3, 6 and 7.*

JUDGMENT

S. S. Sandhawalia, J.

(1) Whether the State for the purposes of initial recruitment to a post can specify higher qualifications than the minimum prescribed therefor by the statute is the significant question which falls for determination in this Letters Patent Appeal.

(2) Section 9 of the Prevention of Food Adulteration Act, 1954, empowers the Central or State Government to appoint such persons as it thinks fit, having the prescribed qualifications to be Food Inspectors for such local areas as may be assigned to them by the respective Governments as the case may be. This appointment has to be by a notification in the Official Gazette. Section 23(1)(e) authorises the framing of rules by the Central Government after consultation with the Committee for defining the qualifications, powers and duties of Food Inspectors and Public Analysts. Rule 8 of the Prevention of Food Adulteration Rules, 1955, then lays down that a person shall not be qualified for appointment as Food Inspector, unless he satisfies the qualifications prescribed therein.

(3) The appellants, who have more than one year's experience as qualified Sanitary Inspectors and have received more than three months' training in food inspection and sampling work in recognized laboratories were working as Sanitary Inspectors and posted as such at different places in the State of Haryana. A vacancy arose for a post of Government Food Inspector in the Health Department and the

respondent-State then issued an advertisement (Annexure 'A' to the writ petition), whereby apart from other qualifications, a Graduate Sanitary Inspector having an experience as such for a minimum period of one year and having received three months' training in food inspection and sampling work in any of the specified laboratories, alone was qualified for applying for appointment to the post aforesaid. The appellants, who, as already noticed, were working as Sanitary Inspectors, were not graduates and hence, ceased to be eligible for the advertised post of the Food Inspector. In the interview that followed the advertisement, Respondents No. 4 to 7 were selected for appointment as Food Inspectors. Aggrieved petitioners then moved the writ petition, challenging the selection primarily on the ground that they could not be excluded from consideration as they satisfied the minimum qualifications prescribed in rule 8 above mentioned and that the respondent-State had no authority to specify a qualification higher than that prescribed under the rules. The learned Single Judge in a lucid and considered judgment repelled the stand of the appellant-writ petitioners.

(4) Inevitably, the argument has revolved around the provisions of rule 8, which, therefore, must be noticed in extenso:—

Rule 8. *Qualifications of Food Inspector*:—A person shall not be qualified for appointment as food inspector, unless, he—

(i) is a medical officer in charge of the health administration of a local area; or

(ii) is a Graduate or a Licentiate in Medicine, and has received at least one month's training in food inspection and sampling work approved for the purpose by the Central or the State Government ;

(iii) is a qualified Sanitary Inspector having an experience as such for a minimum period of one year and has received at least three months' training in food inspection and sampling work in any of the laboratories referred to in clause (1) of rule 6; or

(iv) is a Graduate in Science with Chemistry as one of the subjects or a graduate in Agriculture, Food Technology

or Dairy Technology, and has received at least three months' training in food inspection and sampling work in any of the laboratories referred to in clause (i) of rule 6:

Provided that a person who is a Food Inspector on the date of commencement of the Prevention of Food Adulteration (Amendment) Rules, 1968, may continue to hold office as such subject to the terms and conditions of service applicable to him, even though he does not fulfil the qualifications laid down in clauses (i) to (iv).

(5) Now, as noticed at the very outset the case here is one of initial recruitment. We must, therefore, confine ourselves to the issue directly arising for determination. We do not propose to enlarge the arena of controversy by reference to other hypothetical situations like that of promotion to higher rank of persons, already in public employment. Now first examining this issue on principle *de nors* any statutory provisions it must be borne in mind that merit and suitability are invariably the twin requirements (amongst others) of Service Law for appointment to a post. Can it ever be said that the State or for that matter any other employer should be debarred from recruiting persons to a post having higher or better qualifications than those which satisfy the barest minimum for eligibility therefor. The answer to this question must obviously be in the negative. To hold otherwise would inevitably involve the placing of a premium on mediocrity and almost a disincentive for higher qualifications whether academic or pertaining to experience. Indeed, Mr. Kuldip Singh, for the appellants, had to concede before us as he had done earlier before the learned Single Judge that preference might well be given by the respondent-State for purposes of selection of persons having qualifications higher than those prescribed by the rules. Equally, he had to concede that it would have been entirely legitimate for the respondent-State to incorporate a statement in the impugned advertisement itself that persons with superior qualifications would be given preference. Now if that be so, would there be any magic in resorting to what patently would be an exercise in futility of requiring persons with obviously lower qualifications to apply when a plethora of persons with higher academic qualification or experience may be available. It has to be borne in mind that normally the administrator or the employer

is the best judge of the qualifications and the experience required to discharge the functions of a particular post. Therefore, on principle one sees no blemish in the salutary rule that the State may well be entitled to meaningfully limit the number of applicants and confine its area of choice of persons having qualifications higher than the minimum prescribed for eligibility.

(6) To our mind, the touchstone for determining an issue of the present kind is again, inevitably to examine the real intent of the legislature in prescribing qualifications for a class of posts. Where this is obviously a prescription of minimum qualifications or the barest requirement for eligibility, then plainly there can be no bar for the respondent-State to seek persons with higher qualifications than the lowest level laid down by the rule makers. Ordinarily, the rationale underlying the prescription of qualifications in most statutes or rules is to prevent poor or unqualified persons to be appointed to a post in the public service which requires the performance of responsible duties. It could hardly be the intent of the legislature to either debar persons of higher qualifications or to deny them the preference which they by their industry or merit signified by superior qualifications may entail. Nor can one read into the prescription of minimum qualification requirement that every person having such qualification must be considered against that post despite the fact that others superior in merit to him are available and vie for the same. Of course, we are not saying that the maximum qualifications cannot be fixed by statute because the legislature may well have plenary powers to do so. All that is being indicated is that unless expressly otherwise provided the prescription of qualifications is ordinarily the minima for eligibility to the particular post and not the maxima therefor.

(7) Examining the relevant statutory provisions in the light of the aforesaid principle, it first deserves notice that section 9(1) of the Act empowers the Central or the State Government to appoint such persons as it thinks fit as Food Inspector who possess the prescribed qualifications. The discretion of determining the fitness of a person for holding the post once he has the prescribed qualifications is obviously vested in the employer-State. Section 23(1) (e) authorises the framing of rules for defining qualifications, powers and duties of Food Inspectors. Rule 8 framed in exercise of the said power is the primary provision and this in itself provides that a person shall not be qualified for appointment as Food Inspector unless he satisfies any one of the four qualifications laid down in the rule. These

of course appear to be the minimum qualifications or to put it in other words, the necessary pre-requisite for eligibility, the rule does not in any way seem to confer indefeasible right on any person having the minimum qualifications to be considered for the post of a Food Inspector. Considering all the relevant provisions together it appears to us that the prescription herein is again obviously the minimum qualification laid down by the Statute.

(8) It was then said on behalf of the appellants that the impugned advertisement in the present case either alters or amends the provisions of rule 8. We are unable to visualise any such result even remotely. Herein there is no executive instruction to override or modify the statutory provisions of rule 8 which remains intact and unaltered. The impugned advertisement invites applications from only those who in the first instance do satisfy the basic minimum qualifications provided by the said rules. Merely because a higher or additional qualification than the minimum prescribed is laid down would neither be an alteration or amendment of the statutory provisions, but appears to us as being patently in conformity therewith. Learned counsel for the appellants' reliance on *Joginder Singh Grewal* v. *The State of Punjab and others,* (1) *and State of Haryana and others* v. *Shamsher Jang Bahadur and others,* (2) appears to us as rather misplaced. These cases are on entirely different footing. They pertain to the alteration of the statutory qualifications by executive instruction with regard to the promotion of an employee already in public service. Obviously, such persons had made their entry into the service on the assumption of the qualifications prescribed by the rules. Therefore, the subsequent alteration of these qualifications by mere executive instruction for purposes of promotion would be invalid as being contrary to the rules and involve glaring hardship to all those who had entered service on their basis. Therefore, the present case of initial appointment or direct recruitment is distinguishable and radically different from the case of promotion of an employee in an existing service.

(9) It appears to us that principle apart precedent also is entirely tilted in favour of the respondent. Learned counsel for the appellants had frankly conceded his inability to cite any auhority on the point in the case of direct initial recruitment requiring a higher

(1) 1970 S.L.R. 892.
(2) 1972 S.L.R. 441.

qualification than the minimum prescribed for eligibility. On the other hand, the point is well covered by the decision in *Bipal Behari Lal etc.* v. *The State of Haryana etc.*, (3), wherein after distinguishing the case of Joginder Singh Grewal and others, it was observed:—

> "The present case is not the case of a promotion of the existing employees of the Government, but it is a case of direct recruitment to the posts in H.E.C. Class I. It is the right of the Government or the appointing authority to prescribe any qualifications not necessarily the minimum prescribed in the rules, when inviting applications for direct recruitment to the service provided that such qualification can be justified on the of the Service Rules. The appointing authority is not bound to prescribe the minimum qualifications only and then making selection of persons with higher qualifications on the ground that they are more suitable. All that the petitioners are asking for in the petition is that they should be given the right of making applications for the posts as they possess the minimum qualifications prescribed in rule 8 (5) and it will be open to the Public Service Commission or the Government to reject them on the ground that they do not possess sufficiently high qualifications to make them suitable for the post. In my opinion this will be futile formality for the Public Service Commission or the Government to go through. I have pointed out above, that it is open to the Government to select persons with higher academic qualification."

The Full Bench judgment in *Muni Lal Garg* v. *State of Rajasthan and others*, (4), again is directly in support of the proposition canvassed on behalf of the respondents. Whilst upholding the vires of Rajasthan Higher Judicial Service Rules, 1969, which laid down qualifications higher than the one prescribed in Article 233 (2), Constitution of India, their Lordships took the view that it was open to the rule making authority to prescribe more stringent qualifications for recruitment as District Judges than the minimum prescribed by the Constitution itself.

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(3) C.W. 1031 of 1969 decided on 30.11.69.

(4) AIR 1970 Rajasthan 164.

(10) For the reasons aforesaid, the appeal is without any merit and is hereby dismissed. Parties, are however, left to bear their own costs.

H.S.B.

APPELLATE CIVIL

Before M. R. Sharma and S. S. Sidhu, JJ.

BIMLA DEVI,—*Appellant.*

versus

SAT PAL SHARMA,—*Respondent.*

First Appeal from Order No. 49-M of 1977

October 12, 1977.

Hindu Marriage Act (XXV of 1955)—Sections 9, 21 and 23—Code of Civil Procedure (V of 1908)—Order 43 Rule 1(d)—High Court Rules and Orders (Punjab and Haryana) Volume V—Chapter 2-A Rule 9—Order refusing to set aside an ex-parte decree—Appeal against such order without depositing printing charges—Whether can be entertained—Appeal without filing certified copy of order—Whether maintainable.

Held, that so far as the cases under the Hindu Marriage Act, 1955 are concerned, Rule 9 of Chapter 2A of the High Court Rules and Orders (Punjab and Haryana) Volume V is of directory nature and it is open to the High Court to dispense with the deposit of typing charges by asking the party concerned to submit typed paper books or to condone the delay in making the deposit of the printing charges and the appeal cannot be dismissed on this score. (Para 4).

Held, that in section 21 of the Act, the important words are "as far as may be" and their use by the Legislature clearly implies that the penal provisions of the Civil Procedure Code shall not be applicable to the proceedings under the Act. It is not necessary for an aggrieved party to file a certified copy of the decree sheet alongwith the memorandum of appeal arising under the provisions of the Act. The provisions of Order 9 of the Code apply to the proceedings under the Act and this implies that if an ex-parte decree is passed, it is open to the trial Court to set it aside and also open to the appellate court to correct the error of the trial court if the matter is brought before it in appeal. (Para 6).