

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Special Appeal (Writ) No. 256/2023

In

S.B. Civil Writ Petition No. 382/2022

Narendra Saini S/o Bharat Singh Saini & Others

----Appellants

Versus

State of Rajasthan, Through Its Secretary, Department of
Transport, Secretariat, Jaipur. & Others

----Respondents

Connected with

1. D.B. Civil Special Appeal (Writ) No. 292/2023
2. D.B. Civil Special Appeal (Writ) No. 228/2023
3. D.B. Civil Special Appeal (Writ) No. 230/2023
4. D.B. Civil Special Appeal (Writ) No. 236/2023
5. D.B. Civil Special Appeal (Writ) No. 242/2023
6. D.B. Civil Special Appeal (Writ) No. 244/2023
7. D.B. Civil Special Appeal (Writ) No. 247/2023
8. D.B. Civil Special Appeal (Writ) No. 251/2023
9. D.B. Civil Special Appeal (Writ) No. 257/2023
10. D.B. Civil Special Appeal (Writ) No. 258/2023
11. D.B. Civil Special Appeal (Writ) No. 273/2023
12. D.B. Civil Special Appeal (Writ) No. 281/2023
13. D.B. Civil Special Appeal (Writ) No. 286/2023

For Appellant(s)	:	Mr. R.N. Mathur, Sr. Advocate with Mr. Shovit Jhajharia, Advocate Mr. Vigyan Shah, Advocate with Mr. Harendar Neel, Advocate Mr. Akshit Gupta, Advocate Mr. Yash Joshi, Advocate Mr. Pulkit Bhardwaj, Advocate Mr. Himanshu Jain, Advocate Mr. Devendra Sharma, Advocate for Mr. Bal Ram Vashisth, Advocate Mr. Ashutosh Chauhan, Advocate Mr. Manish Parihar, Advocate for Mr. Tanveer Ahamad, Advocate Mr. Ajatshatru Mina, Advocate
For Respondent(s)	:	Mr. S.S. Raghav, AAG with Mr. Anirudh Singh Raghav, Advocate Mr. A.K. Sharma, Sr. Advocate with

Mr. Rachit Sharma, Advocate
Dr. Ganesh Parihar, AAG with
Mr. Sameer Singh, Advocate
Mr. Govind Gupta, Advocate on behalf
of Mr. M.F. Baig, Advocate
Mr. Ashwini Jaiman, Advocate with
Mr. Daksh Pareek, Advocate &
Mr. Arjun Singh, Advocate

HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Judgment / Order

13/04/2023

Learned counsels for the appellants would pray for grant of stay of the impugned order of the learned Single Judge on the submissions that even though learned Single Judge recorded a finding that the degree in Automobile/Mechanical Engineering is a higher qualification as compared to diploma in Automobile/Mechanical Engineering, a wrong conclusion has been arrived at that the Service Selection Board has no competence to draw equivalence and no equivalence of qualification was drawn by the State as required under the Rules, ignoring State Government's letter dated 04.09.2015 issued by Joint Secretary, Department of Transport, Government of Rajasthan, wherein, it was clearly stated that for the purpose of appointment to the post of Inspector, holders of higher qualification of Automobile/Mechanical Engineering are also eligible. Learned counsels would also submit that the aforesaid equivalence was drawn much prior to the initiation of the process of recruitment because the advertisement was issued on 24.11.2021 only. Keeping in view the earlier order of 2015 passed by the State Government holding degree holders eligible, a corrigendum was

issued on 15.12.2021 and all those holding degree in Automobile/Mechanical Engineering were allowed to participate in the process, written examination was held on 12.02.2022 and result was declared on 06.04.2022. Learned counsels would further submit that out of seven writ petitions, except one writ petition, all other writ petitions were filed after declaration of result, therefore, at the instance of those who had participated in the process of selection, the eligibility criteria could not be challenged. It is also submitted that during the pendency of the writ petitions, learned Single Judge had passed an order directing the State to draw equivalence and in compliance of that direction, equivalence was drawn and order was passed. Therefore, such equivalence could not be set aside on the ground that it was drawn during the pendency of the process of recruitment changing the rules of games. According to the learned counsels for the appellants, without having challenged the order passed by the learned Single Judge directing the State to undertake the exercise of equivalence and without challenging the order of the State Government passed on 22.08.2022 drawing equivalence, in compliance of the order passed by the Court, the appellants were entitled to appropriate relief and the writ petitions were liable to be dismissed. It is next contended that if the impugned order is not stayed, the respondents may proceed to fill up all the posts from amongst those who are less qualified as compared to the appellants and in such a situation complications may arise as posts may not remain vacant to give appointment even though the appellants have secured higher position on merit and are better qualified as compared to writ petitioners.

Learned counsels for the appellants have relied upon the decisions in the cases of **S. Satyapal Reddy and Others Versus Govt. of A.P. and Others, (1994) 4 SCC 391, Jyoti K.K. & Others Versus Kerala Public Service Commission & Others (2010) 15 SCC 596 and Puneet Sharma and Others Versus Himachal Pradesh State Electricity Board Ltd. and Another, (2021) SCC Online SC 291.**

On the other hand, learned Senior Counsel appearing for the respondents/writ petitioners would argue that the view taken by the learned Single Judge is fully supported by the judgment of the Hon'ble Supreme Court in the case of **Zahoor Ahmad Rather and Others Versus Sheikh Imtiyaz Ahmad and Others, (2019) 2 SCC 404** which has distinguished the decision rendered in the case of **Jyoti K.K. & Others Versus Kerala Public Service Commission & Others (supra)**. His submission is that the rule provides for diploma as the eligibility qualification. Merely because the appellants are holding degree in the same discipline, they could not claim for inclusion in the process of selection because till the date of initiation of process of recruitment, the Central Government and State Government had not passed any order drawing equivalence for the purpose of eligibility. He would further submit that eligibility is required to be examined for the nature of duties and functions for the post of Inspector. Every higher qualification does not necessarily confer eligibility. He would further submit that the corrigendum dated 15.12.2021 could not be treated as drawal of equivalence by the Competent Authority i.e., State Government. It is further submitted that any decision taken during the pendency of the process of recruitment would

amount to changing the rules of games and, therefore, the decision taken that the degree holders are also eligible, would have only prospective application in next selection of process and not in the present continuing selection process. He would also contend that order passed in the year 2015 has not been passed by the Competent Authority as such decision is to be taken only by the Department of Personal and not by the Transport Department of the Government.

Learned Senior Counsel for the respondents has relied upon the decision in the case of **Zahoor Ahmad Rather and Others Versus Sheikh Imtiyaz Ahmad and Others (supra)**, Division Bench Judgment of Allahabad High Court in **Arvind Kumar Yadav and Others Versus State of U.P. and Others (Special Appeal No. 733 of 2022 and batch of appeals) decided on 23.03.2023** and distinguished the decision in **Puneet Sharma and Others Versus Himachal Pradesh State Electricity Board Ltd. and Another (supra)**.

We find that the learned Single Judge has allowed the writ petitions directing exclusion of degree holders in Automobile/Mechanical Engineering holding that though degree in Automobile/Mechanical Engineering is higher, it is not prescribed qualification in the advertisement and the rules, therefore, candidate possessed of degree in Automobile/Mechanical Engineering cannot be allowed to apply and participate in the process of recruitment for the post of Motor Vehicle Sub Inspector (MVSI). Moreover, it is also found that though the learned Single Judge itself had passed an order directing the State to draw equivalence, the same has not been taken into consideration while

deciding the issue, on the basis of that courts cannot draw equivalence. There is considerable force in the submissions of learned counsels for the appellants that issuance of corrigendum dated 15.12.2021 was essentially based on letter dated 04.09.2015 issued by Joint Secretary, Department of Transport, Government of Rajasthan, wherein, it was clearly provided that degree holders in the relevant subject would also be eligible and further taking into consideration the view of the Hon'ble Supreme Court in the case of **Jyoti K.K. & Others Versus Kerala Public Service Commission & Others (supra)**, we are of the view that it is necessary to protect the interests of all the parties and preserve status quo till final decision of the present appeals.

Accordingly, it is directed that the appeals be listed for final hearing in the 2nd week of July, 2023. Till then, posts of Motor Vehicle Sub Inspector (MVSI) for recruitment in the present cases shall not be filled up without the leave of the Court.

A copy of this order be placed on record of each appeal.

(ANIL KUMAR UPMAN),J

(MANINDRA MOHAN SHRIVASTAVA),ACTING CJ