

*Before Hemant Gupta & Rajiv Narain Raina, JJ.*

**INDERJIT SINGH AND ANOTHER—Petitioners**

*versus*

**STATE OF PUNJAB AND OTHERS—Respondents**

**CWP No. 17324 of 2012**

September 5, 2012

*Constitution of India, 1950 - Art. 14, 16, 226 & 309 - Punjab Animal Husbandry (Non-Ministerial) Class-III Service Rules, 1992 - Rl. 5, Appendix B Entry 6 - Validity of Entry 6 challenged - Whether Diploma or Certificate in Radiography is appropriate for post of Operation Room Technician in the department or should have been a Certificate Course in Operation Theatre Technology as the minimum qualification - Petitioners were not considered as they did not hold qualification as laid down in the Rules and in the advertisement - Petition dismissed and it was held that statutory rules made in exercise of delegated legislative power cannot be attacked on the ground of mala fides, bias - Presumption of minimum qualification cannot be said to infringe any fundamental rights of petitioners under the Constitution.*

*Held*, that it seems to us odious to compare the post of 'Operation Room Technician' in the Department of Animal Husbandry with the post of 'Operation Theatre Assistant' in the Department of Health and Family Welfare, Punjab and to draw a parallel between the two and equate them as identical. There must be some special significance between the words 'Room' and 'Theatre' employed by the two departments one which deals with human beings while the other animals. The post of Operation Theatre Assistant in the Health Department is to be filled up from amongst competitors holding the Diploma in Operation Theatre Technique. If the respondent - Animal Husbandry Department requires Operation Room Technicians capable of performing duties of a Radiographer, it cannot be said that the minimum qualification of Diploma or Certificate in Radiography would be arbitrary, unreasonable or perverse. It is settled that statutory rules made in exercise of delegated legislative power cannot be attacked on the ground of mala

fides, bias etc. It is long settled that classification of posts and prescription of eligibility conditions and minimum qualifications required for a particular post are purely executive functions which the Court is chary to involve itself in since it is no time and tested expert in the field of cadre control. We do not think that prescription of minimum qualification under Entry 6 Appendix 'B' read with Rule 5 of the Rules infringes any fundamental right of the petitioners under Articles 14 & 16 of the Constitution.

(Para 7)

Petition dismissed.

Amandeep Singh Cheema, Advocate, *for the petitioners.*

**RAJIV NARAIN RAINA, J.**

(1) Challenge in this petition is laid to the validity of Entry 6, Appendix B of the Punjab Animal Husbandry, (Non-Ministerial) Class III Service Rules, 1992 framed under proviso to Article 309 of the Constitution and promulgated by notification published in the Punjab Govt. Gazette (Extraordinary) on 05.03.1992. Rule 5 deals with the method of appointment, educational qualification and experience. Sub-Rule (1) of Rule 5 lays down that appointment to the service shall be made in the manner specified in Appendix 'B'.

(2) The designation of the post falling at Entry 6 is Operation Room Technician (ORT). The post is required to be filled by direct appointment and the qualifications laid down are as follows:-

*"(i) Matric with Physics and Chemistry or 10 + 2 with Physics and Chemistry, and*

*(ii) Two years Diploma or certificate in Radiography from a Government or recognized institute."*

(3) The question raised is whether a Diploma or Certificate in Radiography is appropriate for the post of Operation Room Technician in the Animal Husbandry department or ought to have been a Certificate Course in Operation Theatre Technology possessed by the petitioners as the minimum qualification.

(4) A few facts would be necessary to set out to what the court is called upon to decide in the challenge laid to the vires of Entry 6, Appendix B of the rules in prescribing the minimum qualification from the Radiography line. The Department of Animal Husbandry and Fisheries, Punjab sent a requisition to the Subordinate Services Selection Board, Punjab (for short the Board) for filling up *inter alia* 5 posts of Operation Room Technician consisting of 3 posts for general category and 2 for members of the Scheduled Caste. Taking cognizance of the requisition, the recruiting agency issued Advertisement No.5 of 2011 calling applications for filling up 5 categories of posts in the Department of Animal Husbandry, Punjab including that of Operation Room Technician. The petitioners' claim to possess proof of passing the Certificate Course in Operation Theatre Technology from Adesh College of Paramedical Sciences, Muktsar, an institute recognized by the Government of Punjab and affiliated to the Baba Farid University of Medical Sciences, Faridkot. The certificate has been obtained after qualifying the 10+2 examination. They claim to have applied for the post advertised in September 2011 for the reserved (petitioner No 1) and general category (petitioner No 2) respectively. Though there is absence of any averment in the writ petition with respect to consideration or nonconsideration of the applications made to the Board but in the synopsis prefacing the petition, it has been mentioned that petitioners are not being considered for the post since they do not hold the qualification laid down in the rules and in the advertisement for the post of Operation Room Technician.

(5) In challenge to the rule, it is argued that the duties and responsibilities of the post of Operation Room Technician is to sterilize the operation room, equipments, dressing material at the time of operation whereas the work of a Radiographer involves taking X-Ray etc. It is further submitted that two posts of Radiographer stand advertised in the same Advertisement No.5 of 2011 (P-3) for which also qualification of diploma certificate in Radiography is required.

(6) The learned counsel for the petitioners contends that the posts of Radiographer and Operation Room Technician are different and, therefore, cannot have the same minimum recruitment qualification. It has been pleaded that a clerical mistake has occurred in framing the rules which has not being corrected so far. It is further pleaded on the strength of Service Rules framed by the Government of Punjab in the Department of Health and Family

Welfare called the Punjab Health and Family Welfare Technical (Group 'C') Service Rules, 2007 notified on 11.06.2007 that there is a similar post of Operation Theater Assistant (OTA) for which Diploma in Operation Theater Technique as the minimum required qualification.

(7) We have heard the learned counsel for the petitioners in his challenge to the minimum qualification laid down for the post of Operation Room Technician. The prescribed qualification for the post under the rule is two years Diploma or Certificate in Radiography cannot be wished away as a clerical mistake in framing rules. If the Animal Husbandry Department in its wisdom has created the post of Operation Room Technician it is the best judge of its own technical needs and in the exercise of that power if it has deemed it fit to prescribe a Diploma or Certificate course in Radiography, it is beyond the pale of judicial review and it would not be possible for Court to intervene in the matter. It seems to us odious to compare the post of 'Operation Room Technician' in the Department of Animal Husbandry with the post of 'Operation Theatre Assistant' in the Department of Health and Family Welfare, Punjab and to draw a parallel between the two and equate them as identical. There must be some special significance between the words 'Room' and 'Theatre' employed by the two departments one which deals with human beings while the other animals. It is however not possible to discern the difference in the skeletal facts that make up the writ petition. However, that fact remains that the two posts have not been equated by the Punjab Government to be filled up on the strength of the same minimum qualifications. The post of Operation Theatre Assistant in the Health Department is to be filled up from amongst competitors holding the Diploma in Operation Theatre Technique. If the respondent – Animal Husbandry Department requires Operation Room Technicians capable of performing duties of a Radiographer, it cannot be said that the minimum qualification of Diploma or Certificate in Radiography would be arbitrary, unreasonable or perverse. It is settled that statutory rules made in exercise of delegated legislative power cannot be attacked on the ground of mala fides, bias etc. It is long settled that classification of posts and prescription of eligibility conditions and minimum qualifications required for a particular post are purely executive functions which the Court is chary to involve itself in since it is no time and tested expert in the field of cadre control. Nothing was ever put better in such a context than that fools rush in where angels fear

to tread. We do not think that prescription of minimum qualification under Entry 6 Appendix 'B' read with Rule 5 of the Rules infringes any fundamental right of the petitioners under Articles 14 & 16 of the Constitution. They have earned a degree and are free to search a rule to fit it with in some other department when an employment demand is published.

(8) For the foregoing reasons, the writ petition is found without any merit and is dismissed.