Reportable

HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

D.B. Civil Writ Petition No. 9076/2023
CNR: RJHC010442842023 | URN: CW / 19124U / 2023

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1. Dr. Digvijay Singh Panwar S/o Shri Mahipal Singh Panwar, Aged About 32 Years, R/o Ward No. 6, Rajput Colony, Mandav, Tehsil Sagwara, District Dungarpur (Raj.).
2. Dr. Mohd. Raashid Khan S/o Shri Abdul Rauf Khan, Aged About 39 Years, R/o 85-C, Jawahar Colony, Jhalawar (Raj.).
3. Dr. Rakesh Sharma S/o Shri Mangilal Sharma, Aged About 40 Years, R/o Rinwa Niwas, Near Jhanwar School, Naya Bas, Sujangarh, District Churu (Raj.).

----Petitioners

Versus

1. The State Of Rajasthan, Through Its Principal Secretary, Medical And Health Services, Secretariat, Jaipur.
2. Principal Secretary, Department Of Personnel, Secretariat, Jaipur.
3. The Director, State Institute Of Health And Family Welfare (SIHFW), Jhlana Doongi Colony, Ghat Ki Guni, Jaipur.
4. The Director (Non-Gazetted), Medical And Health Services, Health Bhawan, Jaipur.
5. Rajasthan Para Medical Council, Through Its Registrar, C-7(A), Sultan House, SJS Highway, Banipark, Jaipur 302016.
6. The Chief Medical And Health Officer, Chittorgarh.
7. The Chief Medical And Health Officer, Kota.
8. The Chief Medical And Health Officer, Bhilwara.

----Respondents

For Petitioner(s) : Mr. Deepesh Beniwal
Mr. Yashpal Khileree

For Respondent(s) : Mr. N.S. Rajpurohit, AAG with
Ms. Aditi Sharma, AAAG
Mr. Rajat Arora
Ms. Kanchan Jodha

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HON'BLE MR. JUSTICE VINIT KUMAR MATHUR
HON'BLE MR. JUSTICE SANDEEP SHAH

Judgment

17/11/2026

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Per Mr. Vinit Kumar Mathur, J.

1. Heard learned counsel for the parties.

2. The present civil writ petition has been filed with the following prayer:-

> *"It is, therefore, most humbly and respectfully prayed that the record of the case may kindly be called for and this petition for writ may kindly be allowed and by an appropriate writ, order and directions:-*
>
> *a) Be pleased to declare the Note appended to Clause (क) (1) mentioned in the Advertisement dated 13.06.2023 (Annex.7) i.e. the incumbent should have registered with Rajasthan Paramedical Council, Jaipur being contrary to the provisions of the Rajasthan Medical and Health Subordinate Service Rules, 1965 and illegal and without any material and same deserves to be quashed and set aside;*
>
> *b) It may be declared that the persons holding the higher qualification i.e. BDS is entitled for appointment on the post of Dental technician against the vacancies advertised vide advertisement dated 13.06.2023 (Annex.7);*
>
> *c) The non-inclusion of higher qualification of B.D.S in the requisite qualification for the post of Dental technician under Group-A VI [(Para Medical Cadre (Medical)] in the Notification dated 06.02.201 Annex.10 be declared as illegal and unconstitutional and accordingly be included in the Notification dated 06.02.2013 Annex.11 as well as advertisement dated 13.06.2023 (Annex.7) forthwith;*
>
> *d) The respondents no.6 to 8 may kindly be directed to issue experience certificate per the order dated 25.04.2023 forthwith and thereafter the same may kindly be taken into consideration for awarding the bonus marks to the petitioners in the selection process pursuant to advertisement dated 13.06.2023 (Annex.7) with all consequential benefits:*

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e) The petitioners be declared qualified and eligible to participate in the selection process for the post of Dental Technician pursuant to advertisement dated 13.06.2023 (Annex.7);

f) the respondents may kindly be directed to accept the application form of the petitioners on hard copy/ off-line against the post of Dental Technician notify vide advertisement dated 13.06.2023 Annex.7 and consider their candidature for appointment on the post as per respective merit with all consequential benefits;

g) any other writ, order, directions as this Hon'ble Court deems just, fit and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioners: AND

h) cost of this writ petition be awarded in favour of the petitioners."

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3. Learned counsel for the petitioners vehemently submits that the petitioner possesses the qualification of Bachelor of Dental Surgery (BDS) and in pursuance of the advertisement issued by the State Government on 08.03.2018 for appointment to the post of Dental Hygienist, he was appointed vide order dated 21.08.2018. Learned counsel submits that the qualifications prescribed in the said advertisement for the post of Dental Hygienist included Bachelor of Dental Surgery (BDS) or Senior Secondary in science subject with diploma in Dental Technician/ Dental hygienist/ Dental Mechanic Course and Registered with State Dental Council. Learned counsel further submits that the petitioners have been performing their duties as Dental Hygienist in the respondent department for last five years. However, the respondents subsequently advertised the post of Dental Technician under the Rajasthan Medical and Health Subordinate Service Rules, 1965, wherein the prescribed qualification is Secondary or its equivalent along with a two-year certificate course in Dental

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Hygienist/Dental Mechanic recognised by the Dental Council of India or an institution recognised by the Government. Learned counsel submits that the qualification of Bachelor of Dental Surgery (BDS) has conspicuously been omitted from the eligibility criteria prescribed for the post of Dental Technician. Learned counsel submits that the nature of duties performed by a Dental Technician and a Dental Hygienist is almost identical and, since the petitioner has been satisfactorily discharging his duties in the respondent department, exclusion of the BDS qualification would deprive him of the opportunity to compete for the post of Dental Technician. He, therefore, prays that the Rules of 1965 be suitably amended by including Bachelor of Dental Surgery (BDS) as one of the eligible qualifications for the post of Dental Technician advertised by the respondents vide advertisement dated 13.06.2023.

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4. Learned counsel for the respondents vehemently submits that the Rules of 1965 do not envisage a Bachelor of Dental Surgery (BDS) degree as an eligible qualification for appointment to the post of Dental Technician. Therefore, there is no question of including the said qualification at this stage merely on the ground that it has been prescribed as one of the requisite qualifications under the Rajasthan Contractual Hiring to Civil Posts Rules, 2020. Learned counsel submits that both sets of Rules operate in distinct and separate spheres and, therefore, cannot be construed as being interconnected. He further submits that the Rules of 2022 were promulgated for a specific purpose, as expressly stipulated in the Notification dated 11.01.2022, and their applicability is confined to the limited purpose envisaged therein. Accordingly, the

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said Rules cannot be equated with the substantive recruitment rules governing appointment to the post of Dental Technician, pursuant to the advertisement dated 13.06.2023. Learned counsel, therefore, submits that the relief sought in the writ petition is wholly unfounded and prays that the writ petition may be dismissed.

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5. We have considered the submissions made by learned counsel for the parties and note that the petitioners hold the qualification of Bachelor of Dental Surgery (BDS). They were appointed on a contractual basis pursuant to the advertisement issued by the respondent Department on 08.03.2018. The qualifications prescribed for the post of Dental Hygienist under the said advertisement included a Bachelor of Dental Surgery degree. Accordingly, upon being found suitable, the petitioners were appointed on a contractual basis vide order dated 21.08.2018. It is, therefore, not in dispute that the petitioners possess a degree in Bachelor of Dental Surgery and have been discharging the duties of a Dental Hygienist.

5.1. However, vide advertisement dated 13.06.2023, the respondents advertised the post of Dental Technician, which is governed by the Rajasthan Medical & Health Subordinate Service Rules, 1965 (hereinafter referred to as 'the Rules of 1965'). By way of Rajasthan Medical & Health Subordinate Service (Amendment) Rules, 2013, notified by the Department of Personnel on 06.02.2013 in exercise of the powers under the proviso to Article 309 of the Constitution of India, the post of Dental Technician is to be filled 100% by direct recruitment, and the qualification prescribed for it is ***"Secondary or its***

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equivalent with 2 years certificate course of dental hygienist/dental mechanic recognized by Dental Council of India or from Institute recognized by Government". A degree in Bachelor of Dental Surgery finds no place in the prescribed qualification. Consequently, the petitioners' candidature has rightly not been considered by the Department for the post of Dental Technician.

5.2 We further note that the posts of Dental Hygienist and Dental Technician are distinct posts, governed by separate eligibility criteria and qualifications prescribed for the respective posts. The contention of learned counsel for the petitioners that, since they possess a degree in Bachelor of Dental Surgery and have been performing the duties of a Dental Hygienist, their qualification ought to be considered for the post of Dental Technician advertised on 13.06.2023, is devoid of merit and deserves to be rejected. The petitioners further contend that BDS is a higher qualification than the two-year certificate course and that a candidate possessing a higher qualification can always be considered. We are unable to accept this contention.

6. The Supreme court in ***State of Jammu & Kashmir v. Triloki Nath Khosa, (1974) 1 SCC 19; Mohammad Shujat Ali v. Union of India, (1975) 3 SCC 76*** has held that the prescription of qualifications for a post is a matter within the domain of the employer or the rule-making authority, who is best placed to assess the requirements of the post. It is well settled that a classification of employees on the basis of educational qualifications is a valid classification and does not offend Articles 14 and 16 of the Constitution.

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6.1 Also, in the case of ***Yogesh Kumar v. Government of NCT of Delhi, (2003) 3 SCC 548; Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596,*** the Apex Court has held that a higher qualification is not, by that fact alone, an equivalent of or a substitute for the qualification prescribed by the Rules. Whether a particular qualification is to be treated as equivalent to or in place of the prescribed qualification is likewise a matter for the rule-making authority and not for the Court. Furthermore, in ***Zahoor Ahmad Rather v. Sheikh Imtiyaz Ahmad, (2019) 2 SCC 404; Maharashtra Public Service Commission v. Sandeep Shriram Warade, (2019) 6 SCC 362,*** it was held that the Court cannot add to or substitute the essential qualification prescribed under statutory rules, nor sit in appeal over the eligibility criteria fixed by the employer.

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6.2 In this regard, the decision of the Hon'ble Supreme Court in ***Jomon K.K. v. Shajimon P. & Ors., 2025 SCC OnLine SC 711***, decided on 02.04.2025, is also relevant. In paragraph 36, the Hon'ble Supreme Court has observed as follows:

> *"36. We hasten to add that whether or not the action of the employer to exclude an aspirant from the process of selection (on the ground that either he is over qualified for a particular post or has qualifications which, being over and above what is ordained by statutory rules or rules framed under the proviso to Rule 309 of the Constitution, does not match the qualification specifically required) is justified has to be decided considering the rules governing the selection, the qualifications prescribed, the nature of duty to be performed, the nature of service to be rendered and a host of other factors. It has to be remembered that, at times, the employer's need to have the right people at the right place, and not always the higher qualified, has to be conceded. We know of decisions holding that over-qualification cannot be a disqualification since such an*

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approach amounts to discouraging the acquisition of qualifications on the one hand and on the other, such an approach could be seen as arbitrary, discriminatory and not in national interest. However, this principle cannot be put in a straitjacket imposing rigid or inflexible rules or norms. Lack of public employment opportunities in sufficient numbers may force even a Master degree holder to apply for the job of a peon but, if he is appointed upon his application being favourably considered, what happens to the aspirants who have not had the means of pursuing study beyond the 12th standard? Do they remain unemployed for ever, if all or majority of the posts of peon are filled up by such degree holders? What happens if the Master degree holder, in pursuit of greener pastures, leaves the post of Peon for a better and secured higher job commensurate with his qualifications after a couple of years? Does it not, in such a case, burden the public exchequer by requiring the employer to initiate a fresh selection process? Is not the State, as a model employer, obliged to ensure that the posts of peon are filled up only by those having the basic qualification, and not by over qualified candidates, for sub-serving the common good? Does not the State have the obligation to strive to ensure that all citizens have adequate means of livelihood? These are questions which no Court can afford to ignore. We end by saying that each case that comes before the Court has to be decided on its own peculiar facts and the problem that it presents for resolution and that there can be no universally accepted rule that every time, a higher qualified candidate is to be preferred to a candidate who matches the essential qualification required for the post."

6.3 The aforesaid principle has been recently reiterated and applied by the Hon'ble Supreme Court in ***General Manager (HR) & Anr. v. K. Poovarasan, 2026 INSC 581,*** decided on ***19.05.2026 (arising out of SLP(C) No. 6845 of 2026)***, wherein, after reproducing the above observations of ***Jomon K.K. (supra)***, the Hon'ble Supreme Court observed in paragraphs 9 and 10 as follows:

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> *"9. … Public employment must be made available to all eligible candidates in accordance with the prescribed qualifications. …*
>
> *10. … The rationale behind prescribing an upper limit of qualification is both reasonable and equitable, namely, to provide employment opportunities to persons who, owing to circumstances of life, could not pursue higher education. The State, as a model employer, is justified in reserving certain categories of posts for such persons so that they are not compelled to compete with more highly qualified candidates against whom they would ordinarily stand little chance of selection. Such a policy has consistently been upheld by the Courts. Thus, when the post was specifically intended for candidates possessing lower educational qualifications, permitting a person with higher qualifications to secure such employment would necessarily result in depriving a genuinely eligible and deserving candidate of the opportunity."*

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6.4 Though the facts of ***K. Poovarasan (supra)*** were different, the principle that the employer may confine a post to candidates holding the prescribed qualification, and that a higher qualification does not by itself make a candidate eligible, applies with equal force in the present case also. The post of Dental Technician has been deliberately kept by the rule-making authority for holders of a two-year certificate course in dental hygiene or dental mechanics and not for holders of BDS.

6.5 The aforesaid position has also been reiterated by a Division Bench of this Court in ***Ramesh Chandra v. State of Rajasthan & Ors., D.B. Special Appeal Writ No. 446/2020***, decided on 09.11.2020, wherein, while considering a challenge to the eligibility qualifications prescribed for recruitment to the post of Community Health Officer, this Court observed in paragraphs 9 to 11 as follows:

> *"9. It is well settled that the eligibility qualification for recruitment to any post is in exclusive domain of the employer*

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and the Court cannot add qualification by determining the equivalence thereof. 10. As observed by the learned Single Judge while relying upon the decision of the Supreme Court in Mukul Tyagi's case (supra), the eligibility qualification is an exclusive domain of appointing authority and the self certification by the candidate of equivalence is not envisaged. The Court cannot be the forum for declaring any particular qualification as equivalent to the qualification prescribed.

11. In Zahoor Ahmad Rather's case (supra), the Supreme Court observed that the prescription of qualification for a post is a matter of recruitment policy. The State as employer is entitled to prescribe the qualification as a condition of eligibility. It is no part of the role or function of the judicial review to expand upon the ambit of the prescribed qualification. Similarly, the equivalence of qualification is not a matter which can be determined in exercise of power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State as recruiting authority, to determine. (emphasis supplied)."

The Division Bench further held in paragraph 12 that the question of treating a qualification not included in the prescribed eligibility criteria as equivalent to the qualification prescribed for recruitment does not arise.

6.6 Applying the aforesaid principles to the facts of the present case, it is evident that the petitioners' possession of a BDS degree, though a higher qualification, does not ipso facto entitle them to be considered eligible for appointment to the post of Dental Technician when the statutory Rules prescribe a specific qualification for the said post. The petitioners cannot claim consideration for the said post merely on the basis that they possess a BDS degree, which was accepted as a qualification for appointment to the distinct post of Dental Hygienist. The eligibility has to be examined with reference to the qualifications prescribed under the applicable Rules, the nature of duties attached to the

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post and the requirements of the service. The determination of equivalence between the two qualifications lies within the domain of the rule-making or recruiting authority, and this Court, in exercise of its jurisdiction, cannot expand the prescribed eligibility criteria by incorporating a qualification which finds no place in the applicable statutory Rules. We are, therefore, not persuaded to accept the petitioners' contention that the qualification of Bachelor of Dental Surgery should also be incorporated into the eligibility criteria prescribed for the post of Dental Technician under the Rules of 1965. The fact that the State chose to treat BDS as a qualification for the post for appointment of Dental Hygienist on contractual basis in the advertisement dated 08.03.2018 cannot be extended to a different post governed by different Rules, in which no such provision exists.

7. We also note that extending the benefit of contractual employment to the petitioners in terms of the Rules of 2022 framed by the State Government on 11.01.2022 would not advance their case. The said Rules have been framed with the specific object of providing a framework for contractual services in the respondent Departments in respect of posts which are not covered by, or envisaged/encadred under, any other service Rules. The benefit extended to the petitioners under the Rules of 2022 cannot, therefore, automatically be construed as incorporating the qualification of Bachelor of Dental Surgery into the eligibility criteria prescribed under the Rules of 1965 for a different post, i.e., Dental Technician.

8. In view of the discussion made hereinabove, the petitioners prayer for inclusion of the educational qualification of Bachelor of

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Dental Surgery as one of the prescribed qualifications for the post of Dental Technician cannot be acceded to.

9. Consequently, the writ petition, being devoid of force, is dismissed.

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(SANDEEP SHAH),J (VINIT KUMAR MATHUR),J

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