



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.4292 of 2019

Ms. Durgawati, D/o Shri Chowaram Verma, aged about 23 years, R/o Village Udela (Shiv Nagar), Maszid Chowk, Post Hathbandh, Tahsil Simga, District Balodabazar-Bhatapara (C.G.)  
---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, School Education Department, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur (C.G.)
2. Director, Directorate Public Instructions, Chhattisgarh, Indiravati Bhawan, Atal Nagar, District Raipur (C.G.)
3. Controller, Chhattisgarh Professional Examination Board, Raipur, North Block, Sector 19, Atal Nagar, District Raipur (C.G.)
4. Pandit Ravi Shankar Shukla University, through the Registrar, Pandit Ravi Shankar Shukla University, Raipur (C.G.)  
---- Respondents

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For Petitioner: Mr. R.S. Patel, Advocate.  
For Respondents No.1 & 2 / State: -  
Mr. Amrito Das, Additional Advocate General.  
For Respondent No.3: None present.  
For Respondent No.4: Mr. Neeraj Choubey, Advocate.  
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**Hon'ble Shri Sanjay K. Agrawal and  
Hon'ble Shri Arvind Singh Chandel, JJ.**

Order On Board  
(14/06/2023)

**Sanjay K. Agrawal, J.**

1. By way of this petition, the petitioner has prayed for declaring Rule 8(II) Schedule-III Column (5) As per Annexure-I (ii), S.No.6 Subject Mathematics Subject Group of the Chhattisgarh School Education Services (Educational and Administrative Cadre) Recruitment and Promotion Rules, 2019 (for short, 'the Rules of



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2019'), as unconstitutional and ultra vires to the provisions of the Constitution of India.

2. It is the case of the petitioner that respondent No.4 University has by amendment / revising its ordinance permitted the combination of subjects – Mathematics, Physics & Geography as one of the combinations to get bachelor degree in Mathematics and therefore the aforesaid rule is unconstitutional and liable to be declared ultra vires, as the petitioner who has passed graduation with Mathematics group with Geography as one of the subjects could not compete for the post of Teacher and as such it be declared unconstitutional. Further, a prayer has been made to respondents No.1 & 2 / State to correct / add Geography subject in the Mathematics group in the advertisement for appointment of Teacher, in the interest of justice.

3. Return has been filed on behalf of the State stating inter alia that inclusion / exclusion of a particular subject for consideration for appointment to a particular post (specifically for the job of teaching) is the prerogative of the State Government or the employer. The employer has all the right to choose, in its own wisdom, to permit the candidate qualified in particular subjects or group of subjects to particular or be eligible for recruitment in a particular post. The grievance of the petitioner is that she opted for this particular combination, however, in the advertisement issued in light of the rules not permitting the candidates having passed graduation with Mathematics and Geography subjects,





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she could not participate in the selection process of Teacher. It has been further stated in the return that permission of combination of subjects – Mathematics, Physics & Geography by the University for perusing the study and taking a degree, is a facility provided to the students perusing the degree in Science. It is also the stand of the State that the syllabus as well as ordinance would indicate that there are as many as 35 combinations of subjects (out of many subjects) which have been permitted to be perused for the studies for graduation in Science. This is mere a facility provided by the University for students, but, in no circumstances, a candidate who chooses one particular combination among so many combination of subjects, can compel the employer or the recruitment agency to incorporate that particular combination of subjects as one of the essential qualifications for recruitment to a particular post / Teacher. It has also been submitted in the return that the Teacher (Mathematics) is basically required to teach the Mathematics subject in Science group in the school and that is why the combination of Mathematics with some other subjects has been incorporated in the rules as well as in the advertisement for appointment to the post of Teacher (Mathematics). The subject of Geography so far as education at the school level is concerned, is still categorized and classified as a subject under the discipline of Humanities / Arts. As such, the writ petition deserves to be dismissed.

4. Mr. R.S. Patel, learned counsel appearing for the petitioner,





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would submit that though the petitioner has passed graduation examination in Mathematics subject with Geography as one of the subjects and thereafter, advertisement has been issued on 9/10-3-2019 in which in light of the Rules of 2019 and in view of the Rule under challenge, she could not appear for examination for the post of Teacher, as such, the Rule being contrary to law, deserves to be declared ultra vires.

5. Mr. Amrito Das, learned Additional Advocate General appearing for the State / respondents No.1 & 2, would support the impugned rule and submit that prescription of qualification is the prerogative of the State Government or the employer, the petitioner has no say in that and the Rule under challenge is in accordance with law, it is neither said to be violative of the constitutional provisions nor it is contrary to law and therefore it is being not convenient to the petitioner and she could not appear in the examination, the Rule is not liable to be declared ultra vires.

6. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

7. The Rule under challenge is Rule 8(II) Schedule-III Column (5) As per Annexure-I (ii), S.No.6 Subject Mathematics Subject Group of the Rules of 2019, which prescribes minimum educational qualifications and experience and which states as under: -





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**“8. Condition of eligibility for direct recruitment.-**In order to be eligible for direct recruitment/ selection/ limited departmental examination, a candidate must satisfy the following conditions, namely: -

- (I) xxx xxx xxx  
 xxx xxx xxx  
 xxx xxx xxx

**(II) Educational qualifications and experience –**The candidate must possess the educational qualifications and experience as prescribed for the service as shown in column (5) of Schedule III. For Preliminary education, the prescribed qualification will be applicable as per provisions of Right to Free and Compulsory Education Act, 2009;

- (III) xxx xxx xxx

## SCHEDULE-III

(See rule 8)

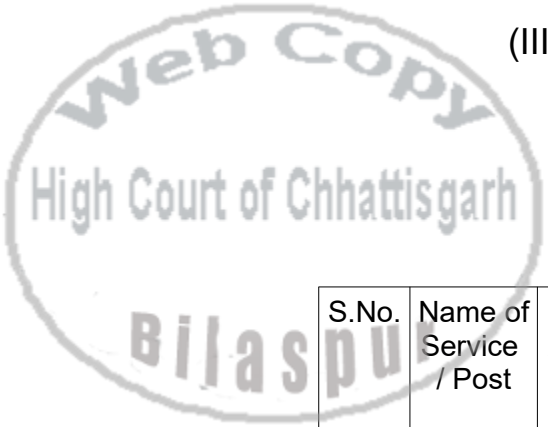
S.No.	Name of Service / Post	Minimum Age Limit	Maximum Age Limit	Minimum Educational / Technical Qualifications	Name of the Members of Selection Committee	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
3.	Teacher	21 years	35 years	As per Annexure-I (ii)	(1) Joint Director (Divisional Office) – <b>Chairman</b> (2) District Education Officer – <b>Member</b> (3) Principal, DIET – <b>Member</b> (4) Deputy director (Divisional Office) – <b>Member Secretary</b> (5) Block Education Officer – <b>Member</b>	

## ANNEXURE-I

(Minimum Qualification)

**(ii) Teacher**

(a) Graduation and 2 Year Diploma in Elementary Education (by what ever name known)





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OR

Graduation with at least 50% marks and 1 Year Bachelor in Education (B.Ed.)

OR

Graduation with at least 45% marks and 1-year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition, Norms and Procedure) Regulations issued from time to time in this regard.

OR

Higher Secondary or its equivalent with at least 50% marks and 4 years B.A./B.Sc.Ed. or B.A.Ed./B.Sc.Ed.

OR

Graduation with at least 50% marks and 1 year B.Ed. (Special Education)

And

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

The subjects of the bachelor's degree above will be as follows: -

S.No.	Subject	Subject Group
(1)	(2)	(3)
6.	Mathematics	With two of the following subjects, with math. Physics / Chemistry / Electronics / Computer Science / Statistics, Military Science / Groundnut Science (as per Hindi version of the Rules, it is भू-गर्भ विज्ञान).

8. A careful perusal of the aforesaid Rule would show that minimum qualification for Teacher has been prescribed under Schedule-III (Rule 8) and under S.No.3, for the post of Teacher, minimum educational qualification is prescribed as per Annexure-I (ii), which has been extracted herein-above and for the subject of





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Mathematics, Subject Group should be two of the following subjects i.e. Mathematics Physics / Chemistry / Electronics / Computer Science / Statistics, Military Science / Geophysics. As such, Geography has not been included as one of the subject categories of the Subject Group with Mathematics. It is well settled law that inclusion / exclusion of a particular subject for consideration for appointment to a particular post (specifically for the job of teaching) is the prerogative of the State Government or the employer and the employer has all the right to choose, in its own wisdom and to permit the candidate qualified in particular subjects or group of subjects to participate or be eligible for recruitment in a particular post.

9. At this stage, it would be appropriate to notice the judgment of the Supreme Court in the matter of **Maharashtra Public Service Commission Through its Secretary v. Sandeep Shriram Warade and others**<sup>1</sup> in which it has been held that essential qualifications for appointment to post, it is for employer to decide according to needs and nature of work. It has been observed in paragraph 9 of the report as under:

“9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential

1 (2019) 6 SCC 362



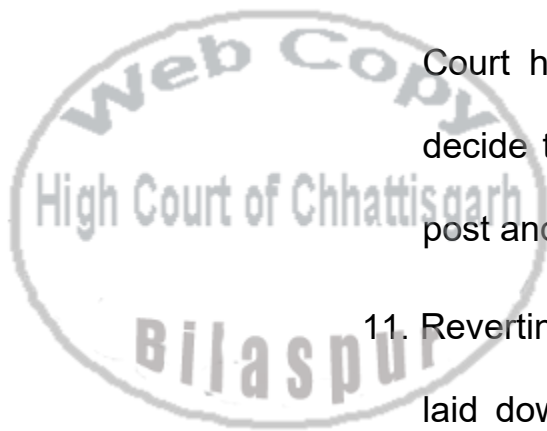
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eligibility by an interpretive rewriting of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.”

10. In the matter of **Chief Manager, Punjab National Bank and another v. Anit Kumar Das**<sup>2</sup>, their Lordships of the Supreme

Court have held that it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the courts to consider and assess.

11. Reverting to the facts of the case in light of the principles of law laid down in the above stated judgments, it is quite vivid that prescription of educational qualification for a post is the sole prerogative of the employer and merely because a candidate is not having that qualification for the said post and he / she is finding difficult to appear in the selection process for the particular post for want of desired educational qualification, the educational qualification so prescribed in the relevant rules cannot be struck down unless it is manifestly arbitrary or discriminatory or violative to the provisions of the Constitution of India. Merely because the petitioner has persuaded B.Ed. in Mathematics Group with subjects Physics, Mathematics and







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Geography and Geography has not been included as one of the subject categories of the Subject Group with Mathematics and the same has not been prescribed in the Rules of 2019, the said Rule i.e. Rule 8(II) Schedule-III Column (5) As per Annexure-I (ii), S.No.6 Subject Mathematics Subject Group of the Rules of 2019 cannot be struck down. More particularly, the petitioner has failed to demonstrate that the impugned rule is either violative of the provisions of the Constitution of India or violative of Article 14/16 of the Constitution of India or it suffers from manifest arbitrariness and it has not been shown to be discriminatory.

12. In that view of the matter, we do not find any merit in the writ petition, it deserves to be and is accordingly dismissed. No order as to cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge

Sd/-  
(Arvind Singh Chandel)  
Judge



Head Note

Inclusion / exclusion of a particular subject for consideration for appointment to a particular post is the prerogative of employer.

किसी विशिष्ट पद पर नियुक्ति के लिए विचार किए जाने हेतु किसी विशिष्ट विषय का समावेशन / अपवर्जन नियोक्ता का विशेषाधिकार है।

