



**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR**

ORDER

(1) S.B. Civil Writ Petition No.12836/2014.
Shweta Khaiwal Vs. State of Rajasthan & ors.

(2) S.B. Civil Writ Petition No.14129/2014.
Subhash Chandra Siyag & Ors. Vs. State of Rajasthan & ors.

(3) S.B. Civil Writ Petition No.2975/2015.
Kiran Chandel Vs. State of Rajasthan & ors.

(4) S.B. Civil Writ Petition No.2977/2015.
Mukesh Kumar Verma Vs. State of Rajasthan & ors.

(5) S.B. Civil Writ Petition No.2978/2015.
Shalini Mahawar Vs. State of Rajasthan & ors.

(6) S.B. Civil Writ Petition No.2980/2015.
Kamlesh Meena Vs. State of Rajasthan & ors.

(7) S.B. Civil Writ Petition No.2981/2015.
Seema Sharma Vs. State of Rajasthan & ors.

(8) S.B. Civil Writ Petition No.2979/2015
Maya Meena Vs. State of Rajasthan & ors.

(9) S.B. Civil Writ Petition No.478/2015
Afsana Khan & Anr. Vs. State of Rajasthan & ors.

(10) S.B. Civil Writ Petition No.552/2015
Pinky Swarnkar Vs. State of Rajasthan & ors.

Date of Order :: 19th May, 2016

PRESENT

HON'BLE MR. JUSTICE VEERENDR SINGH SIRADHANA

Mr. Laxmi Kant Sharma, for petitioners.
Mr. S.N. Kumawat)
Mr. Sanjay Kumar Sharma, Govt. Counsel), for the State-
respondents.

BY THE COURT

This batch of writ applications projects a controversy,
identical on law and facts, and therefore, the matters have been



taken up together for final adjudication by this common order, with the consent of the learned counsel for the parties.

2. At the very outset, the learned counsel for the petitioners made a request to permit the petitioners to address a representation in the backdrop of the adjudication by a co-ordinate Bench of this Court at Principal Seat, Jodhpur, in S.B. Civil Writ Petition No. 34/2015 (**Smt. Manju Chhaba Vs. The State of Rajasthan & anr.**), decided on 10th September, 2015, affirmed by the Division Bench in D.B. Special Appeal (W) No. 127/2016 (**Rajasthan Public Service Commission, Ajmer Vs. Smt. Manju Chhaba & Ors**), decided on 4th April, 2016. Learned counsel for the respondent-RPSC (for short, 'respondent-Commission'), strongly resisted the request and vehemently asserted that the case of **Smt. Manju Chhaba** (supra), has been decided without taking into consideration the law declared by the Hon'ble Apex Court of the land in the case of **Rakesh Kumar Sharma Vs. Govt. Of NCT of Delhi & ors., (2013) 11 SCC 58**.

3. Briefly, the essential skeletal materials facts necessary for appreciation of the controversy raised in the instant batch of writ applications are that the petitioners participated in the recruitment process in response to an advertisement dated 2.8.2013, inviting applications from eligible candidates for appointment to the post of Teacher Gr.II in different subjects. The Competitive Examinations-2013, were conducted under the Rajasthan Educational Sub-ordinate Service Rules, 1971 (for short, Rules of 1971) w.e.f. 21st



to 25th February, 2014.

4. Learned counsel for the petitioner, Mr. Laxmi Kant Sharma, reiterating the pleaded facts and grounds of the writ applications vehemently argued that the advertisement itself made a contemplation to the effect that the candidates, pursuing studies in the final year, were eligible to participate in the recruitment process; however, they were required to furnish proof of required essential educational qualifications, acquired prior to the date of examinations. The advertisement further clarified that the relaxation was admissible to the candidates, who had sought admission to participate in the final year examination of the required essential educational qualifications, prior to the last date of filing of the application.

5. According to learned counsel, no doubt that the petitioners acquired the degree of B.Ed. in different subjects after 21/25th February, 2014 i.e. the last date while the respondent-Commission concluded the Competitive Examination-2013, in response to advertisement dated 2.8.2013.

6. Learned counsel contended that the adjudication by a coordinate Bench of this Court in the case of **Manju Chhaba** (supra) is with reference to the same recruitment process, and therefore, the petitioners are entitled to the same relief. Furthermore, the opinion of the learned Single Judge has been affirmed by the Division Bench as would be evident from the order dated 4.4.2016, declining the intra-court appeal against the opinion of the learned



Single Judge in the case of **Manju Chhaba** (supra). Therefore, the writ applications deserve to be allowed.

7. In response to notice of the writ application, the State-respondents and respondent-Commission have filed their counter-affidavits. It is pleaded on behalf of the respondents that the petitioners were not in possession of the required essential educational qualification of B.Ed. Examination, on the date prior to the Examinations-2013, conducted by respondent-Commission, as per the terms and conditions of the advertisement dated 2.8.2013.

8. Mr. S.N. Kumawat, learned counsel appearing for the respondent-Commission, asserted that the opinion of the learned Single Judge in the case of **Manju Chhaba** (supra), is *per inquirium* for the opinion of the Hon'ble Supreme Court in the case of Rakesh Kumar (supra), was not brought to the notice of the Hon'ble Judge which specifically declared the law in no uncertain terms that eligibility conditions should be examined on the last date for the receipt of applications by the participating candidates/petitioners. In the instant case at hand, the petitioners did not acquire the requisite educational qualification on the date prior to the examinations-2013, conducted by the respondent-Commission, in accordance with the stipulation made in the advertisement; the petitioners, therefore, are not entitled to any relief.

9. Learned counsel for the respondent-Commission has also invited the attention of this Court to the opinion of a co-ordinate Bench of this Court in **S.B. Civil Writ Petition No. 181/2015;**



Neha Choudhary Vs. State of Raj. & ors., decided on 24th March, 2015, wherein while adjudicating upon the same issue with reference to the same recruitment process, the co-ordinate Bench declined any interference and dismissed the writ petition. Reliance has also been placed on the opinion of Full Bench in the case of **R.P.S.C., Ajmer Vs. Abhijeet Singh Yadav**; 2011 WLC (Raj.) UC 295.

10. I have heard the learned counsel for the parties and with their assistance perused the materials available on record as well as gave my thoughtful consideration to the rival submissions at Bar.

11. Indisputably, the petitioners did not acquire the required educational qualification of B.Ed. on or before 21 and/or 25th February, 2014; the last date(s), the respondent-Commission commenced and concluded the Competitive Examinations-2013, for recruitment to posts of Teacher Gr.II involved herein. Mere fact of permitting the petitioners to participate in the recruitment process in view of 'admit card' issued, would not vest the petitioners with any legal right unless they were eligible, in accordance with relevant recruitment rules. Moreover, the 'admit card' itself contemplated conditions to the effect that the petitioners were admitted provisionally to the recruitment process subject to eligibility.

12. A glance of the NOTE in the advertisement dated 2nd August, 2013, would reveal that a condition was specifically stipulated to



the effect that the candidates who have appeared or are appearing in the Final Year Examination of the concerned course, the requisite qualification for the post, shall be eligible to apply for the post but he/she shall have to submit the proof of having acquired the requisite qualification before the concerned authority prior to writing the written examination that may be conducted by the respondent/RPSC.

13. From the facts and materials available on record, it appears that the petitioners appeared for the Final Year Examination of Course of B.Ed in the year 2014 for which the result was declared in the month of June/ September, 2014. For the written examinations-2013, conducted by respondent RPSC for the posts involved herein in pursuance to the advertisement dated 2nd August, 2013 w.e.f. 21 to 25th February, 2014; the petitioners were adjudged as ineligible as they did not acquire the essential educational qualification before the date of commencement of the competitive examinations-2013, in terms of the condition stipulated therein.

14. At this juncture, it would be relevant to take note of the condition incorporated under the NOTE in the advertisement dated 2nd August, 2013, which reads thus:

"नूतन :- परन्तु तेषां यह विषय क उपर विचारणीय है कि आवेदन करने वाले उम्मीदवारों को 21 फरवरी 2014 से 25 फरवरी 2014 तक के दिनों में ही लिखित परीक्षा देनी होगी। यदि उम्मीदवारों को 21 फरवरी 2014 के बाद ही लिखित परीक्षा देनी पड़ेगी तो वे अयोग्य माने जाएंगे।"



15. Thus, it is evident that the NOTE in the advertisement, contemplated the condition in consonance with the Rules of 1971, which mandates that a candidate should be in possession of the essential qualification prior to the date of examinations. The last cut off date being 20th February, 2014, for the examinations-2013, commenced w.e.f. 21st February, 2014, while the petitioners acquired the qualification of B.Ed. much later than the cut off date of 20th February, 2014; therefore, the action of the respondents cannot be faulted.

16. A Coordinate Bench of this Court in the case of Neha Choudhary (supra), while considering somewhat similar challenge with reference to the same advertisement and recruitment process, observed thus:

"3. It is sought to be submitted by the learned counsel Mr. Pradeep Kalwania for the petitioner that the said proviso to the condition laying down eligibility criteria was not in consonance with Rule 17 of the Rajasthan Subordinate Services (Recruitment and other Service Conditions) Rules, 2001, inasmuch as though the advertisement in question was silent about the interview, the petitioner was called for the verification of documents after the clearance of the written examination, and hence the same should be treated as interview. According to him, as per the said Rule, if the selection was to be made on the basis of the written examination as well as interview, the candidate was required to submit the proof of the requisite education qualification, on or before the date of interview and in the instant case, therefore the date of interview be treated as the date on which the candidate should have possessed the requisite qualification and not on the date of written examination conducted by the RPSC. The said submission of the learned counsel cannot be accepted. As transpiring from the advertisement – Annexure-3 itself, scheme of examination was only by way of written examination, and not by written examination



and interview, and therefore even as per the said Rule, the candidate was required to submit the proof of the requisite educational qualification before appearing in the written examination. There being no inconsistency in the condition mentioned in the advertisement and the said Rule relied upon by the learned counsel, it could not be said that the said condition was illegal or arbitrary. Admittedly the petitioner had not possessed the requisite qualification on the date of written examination conducted by the RPSC.

4. It is also pertinent to note that as per the settled legal position, the eligibility criteria should be examined as on the date mentioned in the advertisement itself. It is also pertinent to note that the petitioner has challenged the said condition in the advertisement, after having participated in the selection process, and after the said selection process was over, which is also not permissible.

5. In that view of the matter, the petition being devoid of merits deserves to be dismissed and is accordingly dismissed. By this order, the stay application also stands dismissed."

17. From the facts and materials available on record, it is evident that the opinion of the larger bench in the case of Abhijeet Singh Yadav (supra) as well as the order passed by this Court in the case of Neha Choudhary (supra); were not brought to the notice of the Coordinate Bench at Principal Seat, Jodhpur, while adjudicating upon the case of Smt. Manju Chhaba (supra).

18. In the case of Abhijeet Singh Yadav (supra) the following question fell for consideration of the larger bench:

"Whether as per the educational qualifications mentioned in Clause 13 of the advertisement, the driving licence and experience should be possessed by the candidate on the last date of filing the application or on or before the date of interview?"

19. Taking note of the amendment vide a notification amending various Service Rules in the year 1999, amending only educational



qualification, reads thus:

"2. Amendment--In the existing rule as mentioned in Column Number 3 against each of the **Service** Rules as mentioned in Column Number 2 of the Schedule appended herewith, the following proviso shall be added, namely:

Provided that the person who has appeared or is appearing in the final year examination of the course which is the requisite educational qualification for the post as mentioned in the rules or schedule for direct recruitment, shall be eligible to apply for the post but he/she shall have to submit proof of having acquired the requisite educational qualification to the appropriate selection agency:--

(i) before appearing in the main examination, where selection is made through two stages of written examination and interview;

(ii) before appearing in interview where selection is made through written examination and interview;

(iii) before appearing in the written examination or interview where selection is made through only written examination or only interview, as the case may be."

20. The aforesaid amendment was made in the Service Rules which includes Rules of 1971. In view of the aforesaid amendment, the candidate appearing for final examination of the requisite qualification for the post, was eligible to apply for the post but was required to submit proof of having acquired the requisite educational qualification at the time prescribed under the amended Rule 2 (i) (ii) and (iii).

21. On a consideration of the law declared by the Hon'ble Apex Court of the land, the larger bench answered the reference as per clause (13) of the advertisement, which was *pari materia* to the NOTE in the advertisement dated 2nd August, 2013 involved herein; holding that the driving licence and experience were required to be possessed by the candidates on the last date of



submission of the application forms and not on or before the date of interview.

22. Thus, in the instant case at hand, the participating candidates, including the petitioners, were required to furnish the proof of acquiring the requisite educational qualification before the date of commencement of written examinations-2013, which were conducted by the respondent-RPSC w.e.f. 21st February, 2014.

23. In the case of **Pubjab Land Development and Reclamation Corporation Ltd. Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others**: (1990)3 SCC 682, a Constitution Bench of the Hon'ble Supreme Court while dealing with the question of *per incuriam* and explaining its meaning held thus:

"40. We now deal with the question of per incuriam by reason of allegedly not following the Constitution Bench decision. The Latin expression per incuriam means through inadvertence. A decision can be said generally to be given per incuriam when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of this Court. It can not be doubted that Article [141](#) embodies, as a rule of law, the doctrine of precedents on which our judicial system is based. In *Bengal Immunity Company Ltd. v. State of Bihar*; [1955]2SCR603, it was held that the words of Article [141](#), "binding on all courts within the territory of India", though wide enough to include the Supreme Court, do not include the Supreme Court itself and it is not bound by its own judgments but is free to reconsider them in appropriate cases. This is necessary for proper development of law and justice. May be for the same reason before judgments were given in the House of Lords in *Re-Dawson's Settlement Lloyds arrangements Bank Ltd. v. Dawson and Ors.* 1966 1 WLR 1234, on July 26, 1966 Lord Gardiner, L.C. made the following statement on behalf of himself and the Lords of Appeal in Ordinary:

"Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application of individual cases. It provides at least some, degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a



basis for orderly development of legal rules. Their Lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so. In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the special need for certainty as to the criminal law."

41. Though the above announcement was not made in the course of judicial proceeding it shows that it is open to House of Lords to depart from the doctrine of precedent when considered justified. Section [212](#) of the Government of India Act, 1935 and Article [141](#) of the Constitution of India were enacted to make the law declared by the Supreme Court binding on all courts in the country excluding, as is now being interpreted, the Supreme Court itself. The doctrine of ratio decidendi has also to be interpreted in the same line. In England a decision is said to be given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of co-ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords. It has been said that the decision of the House of Lords mentioned above, refers to a decision subsequent to that of the Court of Appeal. However, "a prior decision of the House of Lords inconsistent with the decision of the Court of Appeal, but which was not cited to the Court of Appeal will make the later decision of the Court of Appeal of no value as given per incuriam." But if the prior decision had been cited to the Court of Appeal and that court had misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the House to rectify the mistake. In Halsbury's Laws of England 4th Ed. Vol.10 para 745 it has been said:

"While former decisions of the House are normally binding upon it, the House will depart from one of its own previous decisions when it appears right in the interests of justice and of the proper development of the law to do so. Cases where the House may reconsider its own previous decisions are those involving broad issues of justice or public policy and questions of legal principle. Only in rare cases will the House reconsider questions of construction of statutes or other documents. The House is not bound to



follow a previous case merely because it is indistinguishable on the facts.”

43. As regards the judgments of the Supreme Court allegedly rendered in ignorance of a relevant constitutional provision or other statutory provisions on the subjects covered by them, it is true that the Supreme Court may not be said to "declare the law" on those subjects if the relevant provisions were not really present to its mind. But in this case Sections [25G](#) and [25H](#) were not directly attracted and even if they could be said to have been attracted in laying down the major premise, they were to be interpreted consistently with the subject or context. The problem of judgment per incuriam when actually arises, should present to difficulty as this Court can lay down the law afresh, if two or more of its earlier judgments cannot stand together. The question however is whether in the case there is in fact a Judgment per incuriam. This raises the question of ratio decidendi in Hariprasad and Anakapalla's cases on the one hand and the subsequent decisions taking the contrary view on the other.”

24. In the case of **State of U.P. and Anr. Vs. Synthetics and Chemicals Ltd. and Anr.:** (1991) 4 SCC 139, the Hon'ble Supreme Court observed thus:

“4. 'Incuria literally means 'carelessness'. In practice per incuriam appears to mean per ignoratum.' English Courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, in ignoratum of a statute or other binding authority'. 1944 1KB 718 Young v. Bristol Aeroplane Ltd. Same has been accepted, approved and adopted by this Court while interpreting Article [141](#) of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubey 1961 (2) SCR 558 this Court while pointing out the procedure to be followed when conflicting decisions are placed before a Bench extracted a passage from Halsbury Laws of England incorporating one of the exceptions when the decision of an Appellate Court is not binding.

5. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English Courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. A decision passed sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind' (Salmond



12th Edition). In *Lancaster Motor Company (London) Ltd. v. Bremith Ltd.* 1941 1KB 675, the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in *Municipal Corporation of Delhi v. Gurnam Kaur*: AIR 1989 SC 38. The Bench held that, 'precedents sub-silentio and without argument are of no moment'. The Courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In *Shama Rao v. State of Pondicherry* AIR 1967 SC 1680 it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down there-in'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

25. Thus, from a glance of the law declared by the Hon'ble Supreme Court, it is evident that a prior decision on identical facts and law binds the Court on the same points of law in a latter case. Therefore, in exceptional circumstances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, the principle of per incuriam may apply as has been observed by the Supreme Court in the case of **M/s. Fuerst Day Lawson Ltd. vs. Jindal Exports Ltd.:** (2001) 6 SCC 356, which reads thus:

19. In **Mamleshwar Prasad and Another vs. Kanhaiya Lal (Dead) through L.Rs.:** [1975]3SCR834 : [1975]3SCR834 reflecting on the principle of judgment per incuriam, in paras 7 & 8, this Court had stated thus:-

"7. Certainty of the law, consistency of rulings and comity of courts - all flowering from the same principle - converge to the conclusion that a decision once rendered must later bind like cases.



We do not intend to detract from the rule that, in exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission. No such situation presents itself here and we do not embark on the principle of judgment per incuriam.

8. Finally it remains to be noticed that a prior decision of this Court on identical facts and law binds the Court on the same points in a later case. Here we have a decision admittedly rendered on facts and law, indistinguishably identical, and that ruling must bind."

23. A prior decision of this court on identical facts and law binds the Court on the same points of law in a latter case. This is not an exceptional case by inadvertence or oversight of any judgment or statutory provisions running counter to the reason and result reached. Unless it is a glaring case of obtrusive omission, it is not desirable to depend on the principle of judgment 'per incuriam'. It is also not shown that some part of the decision based on a reasoning which was demonstrably wrong, hence the principle of per incuriam cannot be applied. It cannot also be said that while deciding Thyssen, the promulgation of the first Ordinance, which was effective from 25.1.1996, or subsequent Ordinances were not kept in mind more so when the judgment of Gujarat High Court in **Western Shipbreaking Corporation** (supra) old clearly state in para 3 of the said judgment thus:-

"8. We now come to the arbitration and Conciliation Ordinance, 1996 which was promulgated on 16.1.1996 and brought into force with effect from 25.1.1996. The second Ordinance, 1996 was also promulgated on 26.3.1991 as a supplement to main Ordinance giving retrospective effect from 25.1.1996. The Ordinance received assent of the President on 16.8.1996 giving the retrospective effect from 25.1.1996. Thus the Ordinance has now become an Act. All the provisions of the Ordinance as well as Act are same. Therefore, the use of word "The Ordinance" shall also mean the Act and vice versa."

It appears in the portion extracted above there is a mistake as to the date of promulgation of the second Ordinance as 26.6.1991. But the correct date is 26.3.1996."



26. In the case of Rakesh Kumar Sharma (supra), a pre-requisite qualification for the post was B.Ed., for the appellant (Rakesh Kumar Sharma) had appeared in B.Ed. examination prior to submission of the application for appointment to the post of TGT (Sanskrit) and the result was declared on 28th January, 2008. While participating in the examination/recruitment process he made a representation that he had acquired the requisite eligibility. The appointment letter dated 19.6.2009 was issued with the stipulation of being temporary and on provisional basis for two years and further subject to verification of character, antecedents and educational qualification etc. The Appellant (Rakesh Kumar Sharma) did not acquire the pre-requisite qualification of B.Ed. before the last date of submission of application form being 29.10.2007 as the result was declared on 28.01.2008. He was served with a show cause notice dated 21.9.2010 as to why his services should not be terminated for the B. Ed. degree was awarded much after the cut-off date i.e. 29.10.2007. Upholding the termination of services; the Hon'ble Supreme Court held thus:

11. There can be no dispute to the settled legal proposition that the selection process commences on the date when applications are invited. Any person eligible on the last date of submission of the application has a right to be considered against the said vacancy provided he fulfils the requisite qualification.

12. In *U.P. Public Service Commission, U.P., Allahabad and Anr. v. Alpana*: (1994) 2 SCC 723, this Court, after considering a large number of its earlier judgments, held that eligibility conditions should be examined as on last date for receipt of applications by the Commission. That too was a case where the result of a candidate was declared subsequent to the last date of submission of the applications. This Court held that as the result does not relate back to the date of examination and eligibility of the candidate is to be considered on the last date of submission of applications, therefore, a candidate, whose result has not been declared upto the last date of submission of applications, would not



be eligible.

13. A three Judge Bench of this Court, in *Dr. M.V. Nair v. Union of India and Ors.*, : (1993) 2 SCC 429, held as under:

It is well settled that suitability and eligibility have to be considered *with reference to the last date for receiving the applications*, unless, of course, the notification calling for applications itself specifies such a date."

(Emphasis added)

14. In *Smt. Harpal Kaur Chahal v. Director, Punjab Instructions, Punjab and Anr.*, : 1995 (Suppl) 4 SCC 706, this Court held:

"It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the applications, such of those candidates, *who possessed of all the qualifications as on that date, alone are eligible to apply* for and to be considered for recruitment according to Rules.

(Emphasis added)

15. This Court in *Rekha Chaturvedi v. University of Rajasthan*, : 1993 Supp (3) SCC 168 held:

"The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, *the only certain date for the scrutiny of the qualifications will be the last date for making the applications*. Reference in this connection may also be made to two recent decisions of this Court in *A.P. Public Service Commission v. B. Surat Chandra* : (1990) 2 SCC 669; and *District Collector and Chairman. Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* : (1990) 3



RAJASTHAN HIGH COURT



SCC 655.

(Emphasis added)

16. In Ashok **Kumar Sharma** v. Chander Shekhar, : 1993 Supp (2) SCC 611 [hereinafter referred to as Ashok **Kumar** (1993), the majority view was as under:

The fact is that the Appellants did pass the examination and were fully qualified for being selected prior to the date of interview. By allowing the Appellants to sit for the interview and by their selection on the basis of their comparative merits, the recruiting authority was able to get the best talents available. It was certainly in the public interest that the interview was made as broad based as was possible on the basis of qualification. The reasoning of the learned Single Judge was thus based on sound principle with reference to comparatively superior merits. It was in the public interest that better candidates who were *fully qualified on the dates of selection* were not rejected, notwithstanding that the *results of the examination in which they had appeared had been delayed for no fault of theirs*. *The Appellants were fully qualified on the dates of the interview* and taking into account the generally followed principle of Rule 37 in the **State** of Jammu & Kashmir, we are of opinion that *the technical view adopted by the learned Judges of the Division Bench was incorrect*.

(Emphasis added)

However, the opinion of Justice R.M. Sahai had been that these 33 persons could not have been allowed to appear for the interview as they did not possess the requisite eligibility/qualification on the last date of submission of applications.

17. A three-Judge Bench of this Court in Ashok **Kumar Sharma** v. Chander Shekhar : (1997) 4 SCC 18 reconsidered and explained the judgment of Ashok **Kumar Sharma** (1993) (supra) observing:

The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated



on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment.

(Emphasis added)

The Court further explained that the majority view in Ashok **Kumar Sharma** (1993) (supra) was not correct, rather the dissenting view by Justice R.M. Sahai was correct as the Court held as under:

“The reasoning in the majority opinion that by allowing the 33 Respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 Respondents could not have been allowed to appear for the interview.

(Emphasis added)

18. It may also be pertinent to mention here that in the aforesaid case reference to Rekha Chaturvedi (supra) appears to have been made by a typographical error as the said judgment is by a two-Judge Bench of this Court. Infact the court wanted to make a reference to the case of Ashok **Kumar Sharma** (1993) (supra).

19. In Bhupinderpal Singh v. **State** of Punjab: AIR 2000 SC 2011, this Court placing reliance on various earlier judgments of this Court held:

The High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied *by reference to the last date appointed by which the applications have to be received by the competent authority*. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with.

(Emphasis added)

20. This Court lately in **State** of Gujarat v. Arvind **Kumar** T. Tiwari : AIR 2012 SC 3281 held:

A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that *his appointment would be contrary to the statutory rules, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage* and appointing such a person would amount to serious illegality and not mere irregularity. Such a



person cannot approach the court for any relief for the reason that *he does not have a right which can be enforced through court.* (Sec Prit Singh v. S.K. Mangal: 1993 Supp (1) SCC 714 and Pramod **Kumar** v. U.P. Secondary Education Services Commission: (2008) 7 SCC 153.)

(Emphasis added)

A similar view has been re-iterated by this Court in Pramod **Kumar** v. U.P. Secondary Education Services Commission, : (2008) 7 SCC 153; and **State** of Orissa v. Mamta Mohanty : (2011) 3 SCC 436.

21. In the instant case, the Appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification, i.e., eligibility, character verification etc. Clause 11 of the letter of offer of appointment dated 23.2.2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court."

27. Admittedly, the petitioners participated with the recruitment process well aware of the condition incorporated under the NOTE which contemplated that the participating candidates shall be in possession of the requisite qualification on the date of written examination-2013, that may be conducted by the respondent-RPSC. The petitioners acquired the B.Ed. Degree much later to the written examination-2013, conducted by respondent-RPSC in pursuance of advertisement dated 2nd August, 2013, which commenced w.e.f. 21st February, 2014 and concluded on 25th February, 2014.

28. In the case of **T. Jayakumar vs. A. Gopu and Anr.:(2008)** 9 SCC 403, the Hon'ble Supreme Court held that if a candidate is called for interview that alone does not mean that candidate cannot be held ineligible for selection at a later stage when the



defect in the application form comes to light for interview does not operate as estoppel. Much less in the instant case at hand, the petitioners did not acquire the required educational qualification of B.Ed. prior to the date which was specifically stipulated in the advertisement dated 2nd August, 2013, in response to which the petitioners participated in the recruitment process.

29. In the case of Rakesh Kumar Sharma (supra), wherein the petitioner was allowed to participate in the selection process as he made a representation to the effect that he had acquired the requisite eligibility and the appointment order was issued with the condition that the appointment was temporary on provisional basis for two years and further subject to verification of character, antecedents and educational qualification etc; the appointment was cancelled for Rakesh Kumar Sharma did not acquire the B.Ed degree prior to the cut-off date i.e. 29.10.2007 for the B.Ed. degree awarded to him was only on 28.1.2008. The action in terminating the services of Rakesh Kumar Sharma was upheld by the Hon'ble Supreme Court.

30. On a survey of earlier opinions, including the opinion of three Judge Bench in the case of **State of Punjab Vs. Surinder Kumar & ors.**:(1999) 2 SCC 498; the Hon'ble Supreme Court in the case of Rakesh Kumar Sharma (supra), held thus:

"21. In the instant case, the Appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the



verification of educational qualification, i.e., eligibility, character verification etc. Clause 11 of the letter of offer of appointment dated 23.2.2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court.

22. It also needs to be noted that like the present Appellant there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the Appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement.

23. There is no obligation on the court to protect an illegal appointment. Extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance."

31. The claim of the petitioners is also liable to be declined for the reason that the petitioners participated in the recruitment process, well ware of the fact that the educational qualification was to be acquired before the date of written examination that was to be conducted by respondent-RPSC, in pursuance of the advertisement dated 2nd August, 2013. Thus, the petitioners



having participated in the recruitment process without any demur, they are estopped from challenging the selection criteria as has been held by the Hon'ble Supreme Court of the land in the case of ***Dhananjay Malik Vs. State of Uttranchal***: (2008) 4 SCC 171.

32. From the facts and materials available on record, it is not in dispute that the petitioners did not acquire the degree of B.Ed. prior to the date of examination conducted by the respondent-Commission for the recruitment process initiated in pursuance of advertisement dtd 2.8.2013. Thus, the petitioners were not in possession of the required essential educational qualifications in terms of the advertisement before the cut off date i.e. 20th February, 2014, for the B.Ed. Degrees were awarded to the petitioners in the month of June/September, 2014.

33. For the reasons and discussions hereinabove, the writ applications are devoid of any substance and lack in merit, and therefore, desere to be dismissed.

34. Ordered accordingly.

35. However, in the facts and circumstances, there shall be no order as to costs.

36. A copy of this order be placed in each of the file.

सत्यमेव जयते

(VEERENDR SINGH SIRADHANA), J.

bm gandhi
Item No. 133-139

All corrections made in the judgment/order have been incorporated in the judgment/order being e-mailed Brij Mohan Gandhi P.S.