HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

TUESDAY ,THE TWENTY FIFTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HONOURABLE SMT JUSTICE RENUKA YARA

WRIT APPEAL NO: 290 OF 2012

Writ Appeal under clause 15 of the Letters Patent filed against order dated 16-02-2012 in W.P.No.2235 of 2011 on the file of the High Court.

Between:

1. The Air Ports Authority of India, Rep. by its Chairman Rajiv Gandhi Bhavan, New Delhi.
2. The Regional Executive Director, Airport Authority of India Southern Region, Chennai - 27.
3. The Air Port Director, Airport Authority of India Hyderabad Air Port, Begumpet, Hyderabad.

...APPELLANTS/RESPONDENTS

AND

Bhgyaraj .A, S/o. Anbarasan R/o. H.No. 1-23-352/1, RBI Colony, Bhoodevinagar, Alwal,

...RESPONDENT/WRIT PETITIONER

Counsel for the Appellant: Ms. DEEPTI ANAND VARIKUTI

Counsel for the Respondent: SRI P.B. VIJAY KUMAR

The Court made the following: JUDGMENT

THE HONOURABLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HONOURABLE SMT. JUSTICE RENUKA YARA

WRIT APPEAL No.290 OF 2012

JUDGMENT: *(Per Hon'ble The Acting Chief Justice)*

This intra-Court appeal assails order dated 16.02.2012 passed in W.P.No.2235 of 2011, whereby the Writ Petition filed by the respondent herein was allowed and he was treated to be eligible candidate for the purpose of submitting his application for the post of Junior Assistant [Fire Service (FS)].

Factual Backdrop:-

2. The respondent is possessing qualification of 10 + 3 year diploma from the State Board of Technical Education and Training in Mechanical. He submitted candidature for the post of Junior Assistant (FS) in the appellants' organization.

3. As per the advertisement, the appellants opined that the respondent did not possess the requisite educational/academic qualifications namely 10 + 2 or equivalent from recognized University/Board as on 13.08.2010. Hence, his candidature was not considered for recruitment.

4. The instant Writ Petition was filed by the Writ Petitioner/respondent herein seeking permission to allow him to participate in the selection process in the teeth of G.O.Ms.No.112,

dated 27.10.2001, issued by the State Government, which projected by contending that three years diploma course is equivalent to 10 + 2 or intermediate. Learned Single Judge while issuing notice granted *ex parte* interim relief to the respondent herein directing the appellants/employer to permit the respondent to appear for the written examination and consider his case at par with other candidates. In obedience of the Court order, the appellants permitted the respondent to participate in the written test and also permitted him to appear for training by virtue of interim relief granted in W.P.M.P.No.23667 of 2011.

5. After hearing the parties, the learned Single Judge by order dated 16.02.2012 allowed the Writ Petition and held that in view of G.O.Ms.No.112, dated 27.10.2001, the diploma of the respondent shall be treated as equivalent to intermediate.

Contention of the appellants:

6. Learned counsel for the appellants assailed the order of the learned Single Judge by contending that G.O.Ms.No.112, dated 27.10.2001 is issued by the State Government and is not binding on the appellants, who are a Public Sector Undertaking constituted under Airports Authority of India Act, 1994. A conjoint reading of Sections 10 and 41 of the said Act shows that

only the competent authority can fix conditions of appointment for its employees. The appellants' organization falls under Entry 29 List-I of Schedule VII of the Constitution. No reliance was placed in Writ Affidavit about any constitutional provision. The advertisement was crystal clear and the prescribed qualification does not include the qualification of diploma. G.O.Ms.No.112, dated 27.10.2001, on which reliance is placed, even otherwise talks about equivalence of qualification for the purpose of appointment on compassionate grounds.

7. Learned counsel for the appellants placed reliance on the judgments of Supreme Court in **Zahoor Ahmad Rather v. Sheikh Imtiyaz Ahmad**[1] and **Maharashtra Public Service Commission v. Sandeep Shriram Warade**[2], to bolster the contention that employer is the best judge to prescribe the qualifications and decide the aspect of equivalence. It is not within the province of the Courts to decide the question of equivalence and qualification etc,. Learned Single Judge overstepped the jurisdiction and erroneously relied on G.O.Ms.No.112, dated 27.10.2001, while allowing the Writ Petition.

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[1] (2019) 2 SCC 404
[2] (2019) 6 SCC 362

Contention of the respondent:-

8. Learned counsel for the respondent submits that in this Writ Appeal, the appellants/employer prayed for an interim relief and the said prayer made in W.A.M.P.No.568 of 2012 was dismissed on 22.03.2012 by this Court. This order declining interim relief was unsuccessfully challenged in SLP No.12217 of 2012, which came to be dismissed as withdrawn on 13.04.2012. In furtherance thereof, the respondent was appointed and working with the appellants satisfactorily.

9. Learned counsel for the respondent filed additional material papers and relied on certain documents. On a specific query from this Bench, learned counsel for the appellants submitted that no additional counter or response is required and these material papers can be looked into.

10. Learned counsel for the respondent apprised that respondent was appointed on 22.04.2013. Although, this order was made subject to the outcome of the present Writ Appeal, the fact remains that the respondent has already worked for more than 12 years by now.

11. Heavy reliance is placed on Advertisement No.1/SR/2013 for the same posts i.e., Junior Assistant (FR) issued in the next year

after the appointment of the respondent i.e., 2013. The qualification which was subject matter of discussion before the Writ Court reads thus:

II	Educational Qualification	I. A pass in 10+2 or equivalent from recognized University/Board as on 13/08/2010. II. Should possess valid heavy driving license as on 13/08/2010.
	Desirable	ITI/Sub-officer Course/Experience in any Fire Service/BTC Course from AAI Fire Training Establishment.

12. The qualifications in Advertisement No.1/SR/2013 for the same post reads thus:

Qualification	i) 10th Pass + 3 years' approved regular **Diploma in Mechanical/**Automobile/Fire with minimum 50% marks (OR) ii) 12th Pass (Regular Study) with 50% marks.

13. A comparative study of the above shows that the qualifications of the respondent i.e., Diploma in Mechanical became an essential qualification in the next advertisement. Thus, in this backdrop, it cannot be said that the respondent is not having requisite or equivalent qualification. If the qualification of the respondent was totally foreign to the requisite qualification, there was no occasion for the appellants to prescribe this qualification in the next advertisement i.e., Advertisement No.1/SR/2013. Furthermore, it is submitted that the respondent was further promoted to the post of Senior Assistant (FS) on

27.07.2018. Thereafter, he was promoted to the post of Junior Executive (Air Traffic Control) on 28.09.2018. Such promotions were earned by the respondent because of his sincere and dedicated services. The equity is in favour of the respondent. If the Writ Appeal is allowed, it would cause great prejudice and hardship to the respondent.

14. Lastly, learned counsel for the respondent placed reliance on the judgment of Supreme Court in **Sajid Khan v. L. Rahmathullah**[3] and recent order of Division Bench of this Court in W.P.No.10744 of 2023 and batch, dated 19.11.2024, to bolster the submission that the services of respondent may be saved.

15. The parties have confined their arguments to the extent indicated above. No other point is pressed.

FINDINGS:-

16. The qualification prescribed in the advertisement dated 27.08.2010 makes it clear that only candidates with 10 + 2 or equivalent were eligible to submit their candidatures. We find substance in the argument of the learned counsel for the appellants. In view of the judgment in **Zahoor Ahmad Rather** and **Maharashtra Public Service Commission** (both supra), it is

[3] 2025 SCC OnLine SC 376

within the domain/province of the employer to prescribe the qualifications. The employer is best suited to decide the nature of qualification and eligibility etc., considering the nature of job. The Courts have no expertise on this aspect and cannot sit over it. It is equally settled that decision on the question of equivalence is also within the domain/province of employer. We find no difficulty in accepting this contention and therefore, we have no cavil of doubt that when the respondent submitted his candidature based on three years diploma, he could not satisfy the eligibility/qualification as per the advertisement in question.

17. In our view, the executive instruction issued by the State Government was not binding on the appellants. More-so, when it was not relating to the appointment in general and was confined to compassionate appointment.

18. Interesting *conundrum* is whether while holding that the learned Single Judge was not justified in considering the State Government circular and directing to consider the appoint of the respondent, whether it will be proper at this stage to allow the appeal in *toto* and deprive the respondent from fruits of litigation. More-so, when petitioner has not only completed 12 years of service, he was promoted twice during this period. It cannot be

forgotten that the appellants unsuccessfully challenged the impugned order passed by this Court before the Supreme Court. In this backdrop, the *quagmire* is whether the services of the respondent can be saved.

19. The subsequent Advertisement No.1/SR/2013 shows that Diploma in Mechanical became the essential qualification for the same post. Thus, we find substance in the argument of the learned counsel for the respondent that it cannot be said that his qualification was totally extraneous/foreign to the requirement. Had it been so, the appellants would not have changed in the very next year, the qualifications by inserting the qualification which the respondent is having. Apart from this, the employee has been promoted twice by the appellants. Thus, we are of the opinion that in the *peculiar facts of this case,* at this stage, it will not be proper to disturb the appointment of the respondent. Thus, while holding that legally the stand taken by the appellants is correct, it will not be proper to take away the livelihood of the respondent after about 12 years. In **Tridip Kumar Dingal v. State of West Bengal**[4], the Supreme Court upon considering its several judgments opined that it would be inequitable if appointment of candidates working for more than 10 years is set aside. Hence,

[4] (2009) 1 SCC 768

appointments were not disturbed. Similar view was taken in **M.A.Hameed v. State of Andhra Pradesh**[5].

20. In, **Champalal Binani v. CIT**[6], it was held that the Court *may not strike down the illegal order although it would be lawful to do so.* In a given case, the High Court may refuse to extend the benefit of a discretionary relief to the applicant. Similar view is taken by Supreme Court in **M.P.Mittal** v. **State of Haryana**[7].

21. Following the aforesaid *dicta* we are inclined to save the appointment of the respondent. As a consequence, while holding that legal stand taken by the appellants is justifiable, no actual relief is due to the appellants in the *peculiar factual backdrop* of this matter. Accordingly, the Writ Appeal is **disposed of**. There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand closed.

SD/-K.SAILESHI
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Chairman, Air Ports Authority of India, Rajiv Gandhi Bhavan, New Delhi.
2. The Airport Authority of India ,Regional Executive Director, Southern Region, Chennai - 27.
3. The Air Port Director, Airport Authority of India Hyderabad Air Port, Begumpet, Hyderabad
4. One CC to Ms. DEEPTI ANAND VARIKUTI, Advocate [OPUC]
5. One CC to Ms.P. B. VIJAY KUMAR, Advocate [OPUC]
6. Two CD Copies

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[5] (2001) 9 SCC 261
[6] (1971) 3 SCC 201
[7] (1984) 4 SCC 371

HIGH COURT

DATED:25/03/2025



JUDGMENT

WA.No.290 of 2012

DISPOSING OF THE WRIT APPEAL WITHOUT COSTS

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