

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Letters Patent Appeal No.69 of 2015 (O&M)
DATE OF DECISION: 28.01.2015

Tarsem Lal Garg

....Appellant

versus

State of Punjab and others

.....Respondents

CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Chetan Mittal, Senior Advocate with
Mr. Puneet Gupta, Advocate for the appellant

Mr. J.S. Maanipur, Advocate for the
caveator
..

S.J. VAZIFDAR, ACTING CHIEF JUSTICE (Oral) :

This is an appeal against the order and judgment of the learned single Judge dated 12.01.2015 issuing a notice of motion for 10.2.2015 but neither granting nor considering the application for interim reliefs staying the order impugned in the petition by which the appellant was reverted from the post of Superintending Engineer to the post of Executive Engineer (Civil).

2. As the matter is still pending before the learned Judge, we do not intend either dealing with the matter in detail or expressing our views conclusively on the merits of the case both on facts and on law. We are content to rest our judgment on the ground that a serious issue has been raised by the appellant.

In view thereof and in view of the fact that the appellant has been on the post, from which he has now been reverted, from 05.07.2010, the status-quo ought to be maintained till the matter is heard by the learned single Judge.

3. On 6.9.1982, the appellant joined respondent No.2 - Punjab State Agricultural Marketing Board (PSAMB) as a Draftsman. On 04.10.1989, he acquired the qualification of Associate Member of Institution of Engineers (India) (hereafter referred to as "AMIE"). He was promoted as an Assistant Engineer (Civil) [now known as Sub-Divisional Officer (Civil)] on 07.12.1989 from the quota of Junior Engineer/Draftsman-AMIE upon acquiring five years working experience as a Draftsman. On 12.8.1999, he was promoted as an Executive Engineer (Civil) with effect from 11.12.1998. On 05.07.2010, he was promoted to the present post of Superintending Engineer.

4. It is the appellant's eligibility for being considered for promotion to the post of Superintending Engineer that is in question. The Punjab State Agricultural Marketing Board (Class-I) Service Rules, 1988 are applicable. Rules 2 and 20 and Appendix-B under Rule-8 are relevant and read as under:-

"RULE 2 - DEFINITIONS: In these rules unless the context otherwise requires,-

(i) 'recognised university or institute' means,-

(i) Any university or institute incorporated by law in India;

(ii) In the case of degrees, diplomas or certificates obtained as a result of examinations held before the

15th August, 1947, the Punjab Sind or Dacca University; and

(iii) Any other university or institute which is recognised by the Government for the purposes of these rules."

"RULE 20 - INTERPRETATION: If any question arises as to the interpretation of these rules, the Government shall decide the same."

"Appendix 'B'
(See Rule 8)

Sr. No.	Designation of the post	Method of recruitment	Qualifications of recruitment		
			By direct appointment	By promotion	By transfer on deputation
1.	2.	3.	4.	5.	6.
5.	Superintending Engineer	(i) By promotion; (ii) By transfer on deputation		Degree in Engineering and should have an experience of working as an Executive Engineer in the Board for a minimum period of seven years.	From amongst the regular Superintending Engineers (Civil) working in the Departments of the Government of Punjab or in the State Government Undertaking who have an experience of working as such for a minimum period of one year."

5. Respondent No.4 - a private respondent has challenged the appellant's promotion to the post of Superintending Engineer on the ground that he does not have the required qualification. The respondents contend that the appellant's qualification of AMIE is not a degree in engineering which is required to be eligible for promotion to the post of Superintending Engineer.

6. Mr. Mittal, learned senior counsel appearing on behalf of the appellant relied on a letter dated 11.09.1964 from the Education Commissioner and Secretary to Government of Punjab, Education Department to all the heads of departments, Registrar,

Punjab High Court, Commissioners of Divisions, District & Sessions Judges and the Deputy Commissioners in the State on the subject: "Recognition of Technical/Professional Qualifications - Simplification of the procedure." Paragraph-2 of the letter reads as under:-

"2. The question of further simplifying the procedure has been considered by the State Govt. and with the approval of the State Board of Technical Education and the Punjab Public Service Commission, it has been decided that in case of Technical/professional qualifications recognized by the Govt. of India for purposes of employment to the services and post under the Central Govt., it is not necessary to issue formal orders to the recognition of such qualifications by the State Govt. and obtain approval of the Board/Commission in individual cases. Such qualifications will, in future, be considered to have been recognised by the State Government for the purposes of employment to the services and posts in the appropriate fields under them."

7. Mr. Mittal then relied on a communication of the year 1978 from the Government of India, Ministry of Education and Social Welfare which stated that a pass in Sections A&B of the Institution Examinations of the Institution of Engineers (India) is recognized by the Government of India at par with a Bachelor's Degree in the appropriate field of Engineering from a recognized Indian University for purpose of recruitment to superior posts and services under the Central Government.

8. The Financial Commissioner Development and Principal Secretary to Government of Punjab, Department of Agriculture by an order dated 23.5.2013 rejected the representation of one H.S.

Randhawa challenging the appellant's promotion as Superintending Engineer. It was observed that this Court had held that AMIE qualification can be considered for promotion but not for direct recruitment. The order analyses two orders passed by Division Benches of this Court dated 25.3.2010 and 06.11.2012 in LPA No.1378 of 2009 in CWP No.18830 of 2009 and in CWP No.1640 of 2008, respectively. It was observed in the first judgment that AMIE is not shown as one of the essential qualifications for direct recruits because AMIE can be obtained only by diploma holders while in service and AMIE is prescribed as one of the qualifications for the promotees keeping in view the fact that the Junior Engineers who possessed AMIE while in service shall have better promotion chances to the higher post. The case before us, however, is not for direct recruits but for promotees.

In the second judgment, it was held that AMIE has been declared equivalent to a degree course for the purposes of promotion and not for the purposes of direct recruitment. This judgment referred to the earlier judgment of the Division Bench dated 25.3.2010.

After referring to these two judgments, it was observed in the order that on the basis of AMIE qualification, promotions were also given to other employees. Accordingly, the order rejected the challenge to the appellant's promotion.

9. On behalf of the respondents, it was contended that the second Division Bench judgment considered the Punjab Service of Engineers (Civil Wing), Department of Public Works (B and R

Branch) Group 'A' Service Rules, 2005, which were different from the rules before us. The qualification for Superintending Engineer under those rules did specify the feeder post to be Executive Engineers who possess a degree in Engineering in Civil or a degree in AMIE from a recognized university or institution. It is true, therefore, that the qualification from the AMIE was specifically referred to. The reference, however, is also to "a degree" of AMIE. A question that may well arise is whether, therefore, the AMIE is to be considered to be a degree in engineering or not.

It is important to note that the decision of the Financial Commissioner Development and Principal Secretary to Government of Punjab dated 23.5.2013 has been challenged before a learned Single Judge in CWP No.25582 of 2013 titled as Harwinder Singh Randhawa vs. State of Punjab and others by the complainant in that case whose representation was decided by the order of the Financial Commissioner. That writ petition is pending in this Court.

10. This brings us to the judgment of a learned Single Judge of this Court dated 5.12.2014 in the case of Gurinder Singh Chahal vs. State of Punjab and others - CWP No.23675 of 2012 solely in view whereof the impugned order was passed. The appellant was not a party to these proceedings. The judgment, prima facie, is against the appellant. In view of the judgment in Gurinder Singh Chahal's case (supra) dated 5.12.2014, the respondent authorities by an order dated 8.1.2015, which is

impugned in the present writ petition, reverted the appellant from the post of Superintending Engineer to the post of Executive Engineer. It is clear from the order that it was passed only in view of the judgment in Gurinder Singh Chahal's case dated 5.12.2014. It is this order that has been challenged in the petition in the present case.

11. Had we come to the conclusion that the judgment in Gurinder Singh Chahal's case is clearly against the appellant and that the learned Single Judge would have no option but to follow it and dismiss the petition, we may well have admitted the appeal and decided all the issues especially the correctness of the judgment in Gurinder Singh Chahal's case as in that event to have the learned Single Judge decide the issue would have been a mere formality. We find, however, that the petition requires consideration at least at the notice of motion hearing stage despite the judgment in Gurinder Singh Chahal's case. It will be necessary for the learned Single Judge to consider whether or not the judgment applies to the present case. More important, it would be necessary for the learned Judge to consider whether the judgment in Gurinder Singh Chahal's case is binding on him in view of various other judgments which have not been noted in the case. One such case is the decision of a Division Bench of this Court in Dhan Raj vs. State of Haryana, 1994 (6) SLR 92. Although the judgment did not deal with the rules that are applicable to the case before us, it did deal with similar

provisions. One of the qualifications prescribed was a degree in Mechanical or Automobile Engineering from a recognized university. The Division Bench upheld the petitioner's contention that he had AMIE qualification obtained by him which was recognized by the Government of India and was equivalent to a Bachelor of Engineering. The petitioner in that case relied upon the letter issued by the Government of Haryana to all heads of departments informing them that the degrees and diplomas recognized by the Government of India are deemed to have been recognized by the Haryana Government. The respondents, on the other hand, relied upon the judgment in Som Dutt vs. State of Haryana and others, 1983(3) SLR 141, which was also followed by the learned Single Judge who delivered the judgment in Gurinder Singh Chahal's case. The Division Bench held as under:-

"7. We have heard learned counsel for the parties at a considerable length and perused the relevant matter referred to during the course of arguments. In fact, the facts are not in dispute i.e the petitioner possesses Certificate in A.M.I.E. from a recognised institution which certificate has been recognized at par with the Bachelor of Engineering degree in the appropriate field of an Indian University by the Government of India vide Annexure P-7. There is also no dispute between the parties that the Haryana Government too has recognised all such degrees and diplomas which have been recognised by the Government of India - Annexure P-6. Thus the sole question which needs some close scrutiny is as to whether a person who possesses qualification which has been taken to be an equivalent by the Government employer - to the one mentioned in the advertisement entitle such a person for consideration by the Commission for the post advertised. The word "Equivalent" as per Chambers English Dictionary, means "equal in value, power, meaning etc., interchangeable" of like combining value, a thing equivalent, an equivalent weight..." The advertisement is in the nature of an invitation calling upon persons possessing the requisite qualification to apply for the post if they are desirous. To

give a literal meaning to the stipulation as given in the advertisement that the degree in Mechanical or Automobile Engineering from a recognised university would almost amount to denial of an equal opportunity to persons who possessed an equivalent qualification to the one advertised. This perhaps was not intended by the employer - State of Haryana - (respondent No. 1). It is precisely for this reason that the Haryana Government has not come forward to contradict the assertion made by the petitioner. It is the Commission who has come up to contest. In view of the fact that the qualification possessed by the petitioner has not only been recognised by the Government of India to be an equivalent to any degree given by a University in India but has also been recognised by the State of Haryana and even on parity of reasoning, we are of the view that the petitioners possesses the requisite qualifications which is equivalent to the one mentioned in the advertisement Annexure P-1 and thus the petitioner has legitimate right to be considered on merit by the Commission. Since much emphasis was made by the learned counsel for the petitioner to the decision of this Court referred to above, it would be appropriate to make brief reference to the same. In the cited case, the prescribed qualification for the post was (i) Matric (Full) with English as one of the subjects; pass in 2 years JBT/Diploma in Education Training Course from the Haryana Education Department or equivalent qualification recognised by the Haryana Education Department. The petitioner who was interviewed by the Selection Committee was later on informed that his case could not be considered since he did not possess the minimum prescribed qualification of two years JBT Diploma from the Education Department. The petitioner challenged this on the ground that though he did not possess this qualification but, in fact, possess higher qualification than the one prescribed and so his claim could not be ignored in the eye of law. It is on these facts that the Court declared to interfere holding that it is not the function of the Govt. to determine as to whether a particular qualification is an exact equivalent or is higher or superior to the prescribed one. The facts of the present case are entirely different. As noticed above, Government of India has recognised the qualification possessed by the petitioner to be an equivalent to a degree course from any University of India and in turn Haryana Govt. decided to recognise all such certificates, diplomas and degrees which have been recognised by the Government of India. Thus, in the instant case, there was no ambiguity as to whether the qualification possessed by the petitioner is equivalent to the one advertised. The court in the instant case has merely to read Annexures P-6 and P-7 to come to the conclusion that the qualification possessed by the petitioner is equal to the one advertised i.e. no enquiry

is to be initiated by the Court on its own. In view of what has been stated above, we allow both the petitions and direct respondent No. 2 to call the petitioners for interview, preferably within a short time."

Prima facie, the judgment appears to support the appellant.

12. We wish to say no more than that the matter requires consideration. The various authorities on the subject would require to be analyzed. The effect of the communications of the Government of India and Government of Haryana, which we have referred to in detail, would require serious consideration. This is not a case of the Court determining equivalence but the court considering whether the authorities concerned and the Government of Haryana have considered the AMIE qualification to be equivalent to the degree in engineering which is a qualification for the post of Superintending Engineer by promotion. Added to the above are certain other important facts that require the grant of interim relief pending further orders in the writ petition before the learned Single Judge. The petitioner was promoted to the post on the basis of his qualification, namely, AMIE. He has, thus, occupied the post now for almost five years. The authorities have always proceeded on the basis that the qualification of AMIE was sufficient for being considered for promotion to the post of Superintending Engineer. Others have also been promoted to the post of Superintending Engineer on the basis of same qualification. Some of them have even retired as Chief Engineers i.e. next promotional post.

13. In the circumstances, the appeal is allowed by granting a stay of the order impugned in the present writ petition, namely, Civil Writ Petition No.385 of 2015. It is clarified that the learned Single Judge shall not be bound by the observations in this order and judgment for the same are only prima facie. There may well be further material that may have to be looked into.

There shall, however, be no order as to costs.

**(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE**

28.01.2015
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**(AUGUSTINE GEORGE MASIH)
JUDGE**

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Whether reportable: ~~Yes~~/No