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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 5617 of 2014**

Judgment Reserved on: 04.08.2016

Judgment delivered on: 28 .09.2016

Dr. Surendra Kumar Singh S/o Shri Rajmangal Singh, aged about 49 years,
 Posted as HOD Electrical Engineering (cum in-charge Principal) Govt.
 Polytechnic Karbirdham, District Kabirdham, Chhattisgarh.

---- **Petitioner****Versus**

1. State of Chhattisgarh, through the Secretary, Department of Technical Education and Manpower Planning Mahanadi Bhawan Mantralaya, New Raipur, Chhattisgarh.
2. All India Council for Technical Education (A statutory body of Govt. of India) through the Member Secretary, 7th Floor, Chanderlok Building, Janpath, New Delhi 100 001
3. Chhattisgarh Public Service Commission, Through Secretary, CG PSC Shanker Nagar, Raipur, Chhattisgarh.
4. Director, Directorate of Technical Education, 3rd Floor, Indravati Bhavan, New Raipur, Chhattisgarh.
5. Shri Gelus Ram Sahu, Principal, On Deputation at Chhattisgarh Swami Vivekanand Technical University, Sector-8, Bhilai, Chhattisgarh.
6. Smt. Usha Jain, Principal, Govt. Polytechnic Khairagarh, District Rajnandgaon, Chhattisgarh
7. Shri Prakash Kumar Pandey, Principal, Udai Prasad Udai Govt. Polytechnic Durg, Chhattisgarh
8. Shri Kajal Rai, Principal, Govt. Polytechnic Sukma, District Sukma, Chhattisgarh
9. Shri R.J.Pandey, Principal, Govt. Polytechnic Korea, District Korea, Chhattisgarh.

10. Shri Ahswani Kumar Khairwar, Principal, Govt. Polytechnic Ramanujganj, District Ramanujganj, Chhattisgarh

11. Shri Amitabh Dubey, Principal, Govt. Polytechnic Jagdalpur, District Jagdalpur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri B.P.Singh, Advocate.
For Respondent No. 1 & 4/:	:	Shri Prafull N Bharat, Additional Advocate General.
State		
For Respondent No. 2	:	Shri Sandeep Dubey, Advocate.
For Respondent No. 3	:	Shri Rajendra Tripathi, Advocate.
For Respondent No. 5 to 7 and 9 to 11	:	Shri Mayank Chandrakar, Advocate.
For Respondent No. 8	:	Shri Arvind Shrivastava, Advocate.
For Intervenor	:	Ms. Sharmila Singhai, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

C A V Judgment

Per Deepak Gupta, Chief Justice

1. The short question which arises for decision in this case is whether one of the essential qualifications for being appointed as Principal at Government Polytechnic College is Ph.D as laid down by All India Council for Technical Education (for short 'the AICTE'). The ancillary question is whether the rules framed by the Chhattisgarh Government wherein Ph.D is not an essential qualification are violative of the regulations laid down by the AICTE.

2. At the outset, we may mention that it is not disputed by any of the parties that the AICTE regulations will have binding effect because we are dealing with Polytechnic College which awards diplomas. These Polytechnic Colleges impart technical education and therefore the regulations framed and the

guidelines issued by the AICTE are binding. This legal position is not disputed before us.

3. The Respondents No. 5 to 11 (hereinafter referred to as 'the private Respondents') have been appointed as Principal of various Polytechnic Colleges in the State. The private Respondents are non-Ph.D candidates. The Petitioner who is serving in the Department and has Ph.D submits that the appointment of non-Ph.D candidates is violative of AICTE regulations. The Intervenor has also supported the case of the Petitioner.

4. The contention of learned counsel for the Petitioner is that the Chhattisgarh Technical Education (Teaching Cadre-Polytechnics) (Gazetted) Service Recruitment Rules, 2014 (hereinafter called 'the Chhattisgarh Rules') insofar as they are contrary to the AICTE regulations are illegal and cannot be implemented. It is also contended that the Chhattisgarh Rules were framed by a committee in which Shri Gelus Ram Sahu-Respondent No. 5 who is a beneficiary under the rules was himself a member and therefore, the rules should be held to be invalid. Lastly, it is submitted that these rules though purported to have been issued on 13.05.2014 were never published till 25.06.2014 when the impugned order of promotion was passed.

5. To appreciate the rival contentions of the parties, we may first make reference to the AICTE regulations of the year 2010. We are concerned with the posts of Head of the Department in Engineering/Technology and the post of Principal. The qualifications for these posts read as follows:

"FACULTY NORMS
Minimum Qualification and Experience for appointment of teaching
Posts in Diploma Level Technical Institutions

Post	Qualifications	Experience
xxx	xxx	xxx
Head of Department		
Engineering/ Technology	Bachelor's and Master's degree of appropriate branch in Engineering / Technology with First Class or equivalent either Bachelor's or Master's level OR Bachelor's degree and Master's degree of appropriate branch in Engineering / Technology with First Class or equivalent either Bachelor's or Master's level and Ph.D or equivalent in appropriate discipline in Engineering / Technology.	Minimum of 10 years relevant experience in teaching/ research/ industry. Minimum of 5 years relevant experience in teaching / research / industry.
xxx	xxx	xxx
Principal		
	Qualification as above for the post of Head of Department and Ph.D in engineering OR Qualification as above for the post of Head of Department.	Minimum of 10 years relevant experience in teaching/ Research / Industry out of which at least 3 years shall be at the level of head of department or equivalent. In case of Architecture, professional practice of 10 years as certified by the Council of Architecture shall also be considered valid."

6. As far as Head of the Department is concerned, the rules provide two essential qualifications. Firstly, that the candidate should have both Bachelor's and Master's degree in the appropriate Branch in Engineering/Technology and should have secured first class or equivalent at either Bachelor's level or Master's level. In case of a person holding this qualification, minimum of 10 years of relevant experience in teaching/research/industry was required. After the word 'or' the second category of persons is given, who in addition to the qualification mentioned above, should also hold Ph.D or equivalent in appropriate discipline in Engineering/Technology. Therefore, they are more highly qualified persons who not only have Bachelor's and Master's degree, they also have first class degree in one of the two courses and lastly, the candidate is also a Doctorate or holds equivalent degree in appropriate discipline. In such cases, experience of only five years is required to be promoted as Head of the Department. Therefore, for being appointed as Head of the Department, non-Ph.D candidates otherwise eligible should have at least 10 years experience and those who also hold Ph.D require experience of only five years.

7. For the post of Principal, the words used are "qualification for the post of Head of Department" and "Ph.D in Engineering". If this had been the only condition, there would have been no problem. However, after this, the word 'or' has been used and it has been mentioned that "qualification as above for the post of Head of Department." This has created the problem. The Petitioner urges that the qualification of Ph.D. in engineering is an essential qualification

whereas according to the State/Respondents, an option has been given either to have Ph.D. in engineering or qualification as above for the post of Head of Department.

8. The Chhattisgarh Rules which have been framed, provide the following qualifications for the post of Principal:

"SCHEDULE-IV
(See rule 14 and 15)

Serial No.	Name of Service/ Post from which promotion will be made	Minimum period of experience for eligibility of promotion	Name of Post to which promotion will be made	Prescribed Educational qualification and experience	Name of members of the Departmental Promotion Committee
(1)	(2)	(3)	(4)	(5)	(6)
1	Head of Department (Engineering / Technical)	3 years	Principal	(1) Bachelor's degree and Master's degree of appropriate branch in Engineering/ Technology from a recognized University/ Institute with First Class or equivalent at either Bachelor's or Master's level. (2) Minimum of 15 years relevant experience in teaching / research/ industry out of which at least 03 years shall be at the level of head of department or equivalent. In case of Architecture professional practice of 15	1. Chairman of Public Service Commission or member nominated by the Chairman- Chairman 2. Secretary In-charge Technical Education, Public Employment and Science and Technology - Member 3. Director of Technical Education - Member

				years as certified by the Council of Architecture shall also be considered valid. OR (1) Bachelor's degree and Master's degree of appropriate branch of Engineering / Technology from a recognized University/ Institute with First Class or equivalent at either Bachelor's or Master's level and Ph.D or equivalent in appropriate discipline in Engineering/ Technology from a recognized University / Institute. (2) Minimum of 10 years relevant experience in teaching/research/ industry out of which at least 03 years shall be at the level of head of department or equivalent. In case of promotion from the post of HOD Architecture professional practice of 10 years as certified by the Council of Architecture shall also be considered valid.	
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9. These rules provide that in case of those candidates who hold Bachelor's degree and Master's degree but are not Ph.D, they should have at least 15 years experience in teaching/research/industry out of which at least three years should be at the level of Head of Department and in case of those who also have Ph.D., experience required is 10 years instead of 15 years. The Petitioner submits that this rule is violative of AICTE regulations which provide Ph.D as the minimum qualification. The Petitioner has also relied upon a notification dated 04.01.2016 published in the gazette of India on 06.01.2016 wherein various clarifications were issued by the AICTE. It appears that due to the ambiguous language of the minimum qualifications for the post of Principal used earlier, a number of States had sought clarification from the AICTE whether Ph.D is an essential qualification for the post of Principal in Diploma Level Technical Institutions. The answer of the AICTE as mentioned in the gazette notification is that Ph.D is an essential qualification. The relevant portion of the notification reads as follows:

"Sl.No.	Issue	Clarification
xxx	xxx	xxx
64	Whether Ph.D is an essential qualification for the Post of Principal in Diploma Level Technical Institutions	Yes
xxx	xxx	xxx"

10. The Petitioner relying upon the aforesaid notification alleges that since the notification is a clarificatory notification, it will have retrospective effect.

11. On the other hand, learned counsel for the State and the private Respondents submit that this notification cannot affect those promotions which

have been made prior to 06.01.2016 and cannot be given retrospective effect.

12. When we go through the original regulations of the AICTE, it is apparent that in the first part of the regulations, AICTE has very clearly laid down that minimum qualifications for the post of Principal are the same as that of Head of Department and Ph.D. in Engineering. However, after the word 'or' "qualification as above for the above post of Head of Department" have been used. There is no doubt that this could be interpreted either way. It however appears to us that the intention was to make Ph.D. an essential qualification. As pointed out earlier, for the post of Head of Department as per the regulations of the AICTE, both non-Ph.D. candidates and Ph.D. holders were eligible to be appointed. The only difference was that for the non-Ph.D. candidates, minimum experience was 10 years and for those having Ph.D., the experience required was only five years. If the intention of the AICTE is only to retain the qualification of Head of Department, the only words which were required to be used under the heading of qualification were "same as for the Head of Department". However, the AICTE used the word 'qualification as above for the post of Head of Department and Ph.D in Engineering'. This clearly showed the intention of the AICTE was that Ph.D would be an essential qualification for being appointed as Principal.

13. The Kerala High Court, in Dr. B. Ajith Kumar, Assistant Professor v. The State of Kerala & Others in Writ Petition (C) No. 4468 of 2005 (F), decided on 06.10.2009, clearly held that the State Government cannot frame rules providing lower qualifications than those stipulated by the All India Council of

Technical Education for filling up the posts in Technical Institutions. This judgment of the Kerala High Court has been upheld by the Apex Court.

14. However, as pointed out above, there was some anomaly or confusion because of the ambiguity of the language and the phrase used. This ambiguity has been set at rest by the notification issued by the AICTE on 04.01.2016, published in the Gazette of India on 06.01.2016 in which it has been made amply clear that Ph.D is an essential qualification for the post of Principal in Diploma Level Technical Institutions.

15. The regulations have not been amended and only clarification has been given in this regard. The amendments which are clarificatory in nature are normally retrospective. They only clarify the ambiguity if any which has existed. They do not lay down any fresh rules or regulations but only clear all the doubts.

16. Learned counsel for the parties have relied upon number of judgments in this regard. The Respondents relied upon the judgment of the Apex Court in *A.A.Calton v. The Director of Education & Another* (AIR 1983 SC 1143) wherein it was held that the amendments made after commencement of the selection process cannot be retrospective. The Respondents also relied upon a judgment of the Apex Court in *P. Mahendran & Others v. State of Karnataka & Others* {(1990) 1 SCC 411} wherein the Apex Court held that if a rule is expressed in a language which is fairly capable of either interpretation, it ought to be construed as prospective only. Reliance has also been placed on *Zile Singh v. State of Haryana & Others* {(2004) 8 SCC 1}. In our opinion, this

judgment is not relevant to the facts of the present case. Similarly, the judgments rendered by the Apex Court in *Commissioner of Income Tax-I, Ahmedabad v. Gold Coin Health Food Private Limited* {(2008) 9 SCC 622} and *Commissioner of Income Tax (Central)-I New Delhi v. Vatika Township Private Limited* {(2015) 1 SCC 1} are not relevant because interpretation of taxation statutes has to be done in a different manner.

17. As far as the present case is concerned, the notification dated 04.01.2016 published in the Gazette of India on 06.01.2016 are not fresh rules or regulations. They are only clarifications as is apparent from the notification itself. Therefore, the AICTE issued this notification with a view to clarify certain issues and anomalies pertaining to pay scale, service conditions etc. One of the service conditions for which clarification was sought was whether Ph.D was an essential qualification for the post of Principal. Since this notification is only clarificatory in nature, we are of the considered view that it will have retrospective effect and shall be deemed to be in operation since the year 2010 when the original regulations were enforced.

18. Since we have held that the regulations are only clarificatory in nature and have retrospective effect, the Chhattisgarh rules insofar as they make non-Ph.D candidates eligible for being promoted as Principal, is violative of AICTE regulations and is accordingly quashed. Schedule IV of the Chhattisgarh Rules is accordingly read down and it is held that only second part of the prescribed educational qualification and experience i.e. holders of Bachelor's and Master's degree with first class in one of them and holders of

Ph.D or equivalent in appropriate discipline in Engineering/Technology with 10 years relevant experience in teaching/research/industry out of which at least 3 years shall be at the level of Head of Department or equivalent, alone shall be eligible for promotion as Principals.

19. The first part of prescribed educational qualification and experience of Schedule IV i.e. (1) bachelor's degree and master's degree of appropriate branch in Engineering/Technology from a recognized University/Institute with First Class or equivalent at either Bachelor's or Master's level; (2) minimum of 15 years relevant experience in teaching/research/industry out of which at least 3 years shall be at the level of head of department or equivalent, is quashed and held to be violative of AICTE regulations.

20. Another disturbing aspect of the matter is that when the Chhattisgarh Rules were being framed, Respondent No. 5-Gelus Ram Sahu who was then working as Head of Department was made as Chairman of the Service Rules Recruitment Committee. He himself was a non-Ph.D candidate and was an aspirant for the post of Principal. He should not have been made Chairman of the rule making committee where he made himself eligible for promotion in violation of the AICTE regulations. Even if there was some doubt with regard to AICTE regulations, the committee framing the rules should have sought clarification from the AICTE whether Ph.D is an essential qualification or not. Respondent No. 5 should also have disassociated himself from becoming part of the committee which was to frame the rules for a post for which he himself was an aspirant. Therefore, this shows malafide.

21. Another very disturbing aspect of the matter is that the Chhattisgarh Rules are stated to have been published on 13.05.2014. A letter was written by Shri S.K.Tiwari, Under Secretary, Technical Education, to the Deputy Director, Government Printing Press praying that some notification dated 12.05.2014 be published in the Gazette on 13.05.2014. The rules which have been produced before us ostensibly show that they were published in the Gazette on 13.05.2014. However, as pointed out by learned counsel for the Petitioner and the Intervenor that the letter dated 13.05.2014 sent by Shri S.K.Tiwari was received in the Government Press only on 15.05.2014. If the letter was received on 15.05.2014, it could not have been published on 13.05.2014. Though, this point has been specifically taken by the Petitioner and the Intervenor, no reply has been filed by the State. From the record, it is more than apparent that after printing, the communication of the Gazette was sent to the Department for the first time on 25.07.2014 vide delivery memo No. P-15/733 dated 21.07.2014. Therefore, we fail to understand how could the departmental promotion committee which met in May, 2014 have taken notice of these rules. The rules themselves provide that they will come into force from the date of their publication. As pointed out earlier, though the rules are purported to have been published on 13.05.2014 in the Gazette, from the information received from the Government Press, it is apparent that these rules were not received in the Government Press till 15.05.2014. Therefore, the question of the rules being published on 13.05.2014 does not arise. There is no other material placed before us to show what was the date on which these rules were actually published in the Gazette but one thing is clear that

these rules were sent to the concerned Department from the Printing Press only on 21.07.2014. We cannot approve such a practice. In any event, we have already held that the clarificatory notification dated 04.01.2016 published in the Gazette of India on 06.01.2016 will only clarify the regulations of 2010 and makes it clear that Ph.D is one of the essential qualifications for being appointed to the post of Principal.

22. In view of the above discussion, the writ petition is allowed. The Chhattisgarh Technical Education (Teaching Cadre-Polytechnics) (Gazetted) Service Recruitment Rules, 2014 insofar as they make non-Ph.D candidates eligible to be appointed as Principal are held to be ultra vires the AICTE regulations and are set aside. Consequently, the promotions of Respondents No. 5 to 11 are also quashed. The Respondent-Department is directed to initiate fresh process of selection of Principals by only considering those persons who have Ph.D. This process be started within one month from the date of this order and be completed within two months thereafter.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE