IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.12992 of 2013 (O&M)

Pramod Kaushal

... Petitioner

Versus

Punjab State Power Corporation Limited
and another ... Respondents

2. **CWP No.4723 of 2014 (O&M)**

Sunny Sandhir

... Petitioner

Versus

Punjab State Power Corporation Limited
and others ... Respondents

Date of Decision: 03.06.2016

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Naveen Batra, Advocate,
for the petitioner in CWP No.12992 of 2013.
for respondent No.3 in CWP No.4723 of 2014.

Mr. D.S. Patwalia, Sr. Advocate,
with Mr. Kannan Malik, Advocate,
for the petitioner in CWP No.4723 of 2014.

Mr. Gursimranjit Singh, Advocate,
for Mr. Amit Aggarwal, Advocate,
for the respondents in CWP No.12992 of 2013.
for respondents No.1 & 2 in CWP No.4723 of 2014.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

<u>RAJIV NARAIN RAINA, J.(Oral)</u>

This order will dispose of CWP No.12992 of 2013 (O&M) titled

Pramod Kaushal v. Punjab State Power Corporation Limited and another

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& CWP No.4723 of 2014 (O&M) titled *Sunny Sandhir v. Punjab State Power Corporation Limited and others* as they are both inter-linked since the causes of action and relief claimed are identical. They will be decided by common order as they ca\n conveniently be, but separated case by case.

CWP No.12992 of 2013 (O&M)

Despite being No.1 on merit the petitioner's case for appointment as Assistant Manager/IT Systems has not been processed beyond counselling and scrutiny of documents. At the time of scrutiny of documents it was discovered that the qualification which the petitioner holds has been obtained from AMIE, Calcutta and what the employer PSPCL is looking for were candidates who possessed a Full Time regular BE degree in terms of the advertisement (Annex P-2) which was published through Public Employment Notice No.CRA-276/2012 published in newspapers. The prescribed qualification reads as follows:-

> *"Full time regular BE/B.Tech/B.Sc. Engineering in Comp. Science/IT with a minimum 60% marks or equivalent degree recognized by AICTE or Full Time regular MCA with at least 60% marks or Full time regular Masters degree in IT with at least 60% marks."*

The AMIE degree does not qualify as Full Time regular MCA or Full Time regular BE/B.Tech/B.Sc. Engineering in Computer Science/IT.

PSPCL was conscious of the difference when it prescribed qualifications recognized by All India Council for Technical Education for the post of Junior Engineer/Auxiliary Plant Attendant/Assistant Junior Specialist/Supervisor-Instrumentation and the AMIE certificate would be insufficient essential qualification when obtained from the Institution of

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Engineers (India) Calcutta in the discipline mentioned at Sr. No.2 of the advertisement. The post of Assistant Manager/IT Systems falls at Sr. No.3 of the advertisement. When we match the qualification possessed by the petitioner with the advertised qualifications prescribed for the post it leaves no manner of doubt that the petitioner was not eligible for consideration for appointment to the post he applied for.

In the written statement filed by respondent-PSPCL it has been explained that the language of the eligibility criteria clearly indicates that a full time regular degree is required for eligibility for the post. A degree obtained through distance education cannot be considered equivalent to a degree obtained through a full time regular course. The petitioner holds the AMIE degree in Computer Science. Even though the degree is recognized by the Ministry of Human Resource Development yet PSPCL comments that for the purpose of direct recruitment it would not hold good since the specific requirements of the Corporation for the specific post as per the advertisement is a full time regular degree in Computer Science. The Corporation is right when it says that it is an independent State body and qualifications required for direct recruitment are prescribed by the Board of Directors of the Corporation and not by the State Government. The Corporation is within its right to lay down qualifications it considers best in its interest to prescribe. A full time regular course leading to a professional degree PSPCL asserts is suited to the workload in order to ensure better quality manpower and such policy does not warrant any interference by the Court in exercise of its writ jurisdiction. The statement made by the Corporation in para.3 of the preliminary objections is correct in law as

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prescription of educational qualifications is in the domain of experts and the Court has no role to play. None of the mandates in PSPCL law have been breached in this case. The decision not to consider the petitioner eligible for the post is within jurisdiction and is upheld.

The writ petition stands dismissed.

CWP No.4723 of 2014 (O&M)

As a natural result of the fallout of the dismissal of the above writ petition i.e. CWP No.12992 of 2013 is that it revives the claim of the petitioner for consideration for appointment against the vacancy remaining unfilled due to non-suiting the eligibility of the petitioner in the above writ petition for lack of possessing the essential educational qualification advertised even if Parmod Kaushal obtained merit position No.1. That alone would not bring him to the zone of consideration since merit becomes irrelevant to the case and is no longer relevant fact.

Applying the law in State of J&K v. Sat Pal, (2013) 11 SCC 737 Mr. D.S. Patwalia, learned Senior counsel presses his case that with the dismissal of the first petition, the petitioner in the second connected petition for whom he appears has a right of consideration for appointment since PSPCL has already counselled him but had kept his case pending to await outcome of the first writ petition. On the failure of the first writ petition, the petitioner has a clear right for appointment subject to fulfillment of the other conditions remaining by way completion of necessary formalities leading to appointment.

As a result of the dismissal of the first writ petition, this petition succeeds. The respondent-PSPCL would process the remaining formalities

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beyond counselling and then offer the petitioner appointment to the post of Assistant Manager (IT Systems). Needless to say that in view of the directions issued by the Supreme Court in *Sat Pal* case the petitioner would be entitled to seniority as per his inter se merit among the candidates who have been appointed to the two posts, one of which was earmarked for Ex-serviceman advertised for Assistant Manager (IT Systems). The petitioner would be entitled to benefits of increments on notional basis by assuming that the petitioner had joined service when the candidate just below him in merit was appointed.

The petitioners in both these petitions competed in the category of Ex-serviceman. The petitioner would take seniority from the date when the last of the two candidates in the ex-serviceman quota were appointed to service. The monetary benefits will accrue from today when the Court declared the rights of the parties. The petitioner would be entitled to all non-pecuniary benefits including seniority and increments etc. notionally. The period will be treated as regular service. The probation period, if any, after appointment when cleared successfully will relate back by fiction to the date from where appointment/seniority will reckon in terms of this order. The period will also be counted towards superannuation dues if and when the event arises in the future. This direction is so that the petitioner does not have to come back to court for matters settled by this order. The order be implemented without delay.

(RAJIV NARAIN RAINA)
JUDGE

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