

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CWP No.4154 of 2012

Date of Decision: 05.09.2016

Jagdeep Singh Mangat

....Petitioner

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Ramesh Sharma, Advocate
for the petitioner.

Mr. Avinit Avasthi, A.A.G., Punjab
for the respondent-State.

Mr. J.S. Ahluwalia, Advocate
for respondents No.3 and 4.

Mr. V.D. Sharma, Advocate
for respondent No.5.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of *certiorari* for quashing of letter dated 01.11.2010 (Annexure P-14), whereby, the claim of the petitioner for promotion to the post of lecturer Workshop Practice has been rejected. A further prayer has also been made for quashing of letter dated 13.05.2010 as well as letter dated 07.05.2010 (Annexures P-12 and P-13, respectively) issued by the respondents, whereby, respondent No.5 has been promoted to the post of Foreman Instructor and also for issuance of a direction to the respondents to promote the petitioner to the post of Lecturer Workshop Practice by considering his qualification of B.Tech. (Mechanical/Production in Engineering).

Briefly, the facts of the case as made out in the present petition are that the petitioner was initially appointed as Workshop Instructor in the Institution of respondents No.3 and 4 in the year, 1995. He joined his duty on 20.10.1995. Respondent no.5 was also appointed as Workshop Instructor. Earlier the promotions were to be made from the post of Workshop Instructor to the post of Foreman Instructor but in the meeting held in the year 2003, the post of Foreman Instructor was re-designated as Lecturer Workshop Practice.

Thereafter, on acquiring higher qualification, petitioner filed a representation for claiming his promotion but his representation was rejected by the respondent authorities which is a subject matter of challenge in the present petition. Respondent No.5 was promoted. Petitioner has challenged the order of promotion of respondent No.5.

Learned counsel for the petitioner submits that the claim of the petitioner has wrongly been rejected, whereas, he was entitled for promotion on the basis of higher qualification which was acquired after getting permission from the respondent department. Learned counsel also submits that respondent No.5 was not possessing qualification of Lecturer Workshop Practice and without taking into consideration his qualification, he has been promoted. Learned counsel also submits that the claim of the petitioner has been rejected on the ground that as per College Bye-Laws 4.3, the petitioner cannot be promoted to the post of Lecturer Workshop Practice as respondent No.5 has been promoted. It is also the argument of learned counsel for the petitioner that respondent No.5 is the only diploma holder, whereas, the petitioner is having qualification of B.Tech. Mechanical/Production Engineering degree. Out of total four posts of

Lecturer Workshop Practice, one post was filled up by promoting respondent No.5 as Foreman Instructor, whereas, the said post has been re-designated as Lecturer Workshop Instructor. Out of three posts, one post was filled up by direct appointment and the remaining two posts are still lying vacant. At the end, learned counsel for the petitioner submits that respondent No.5 has been promoted in spite of not having the requisite qualification and the impugned order of rejection in not promoting the petitioner being illegal, arbitrary and unconstitutional, is liable to be quashed.

Mr. Avinit Avasthi, Assistant Advocate General, Punjab, appearing on behalf of respondents No.1 and 2 submits that All India Council of Technical Education had issued notification in the year 1996 regarding revision of pay scale. Subsequently, a clarification was issued, wherein, it was mentioned that a decision can be taken by the concerned State Government as some of the categories were left out. In pursuant thereto, the Principals of Government Promoted Engineering Colleges including respondent No.4 had decided to redesign these posts in the meeting held on 27.04.2003. The post of Foreman Instructor was redesigned as Lecturer (Workshop Practice). The qualification for the said post was B.E. Ist Class in Mechanical/Production Engineering or its equivalent with five years relevant experience in teaching workshop technology and repair or workshop machinery/Mechanical Engineering equivalent. For promotion from Workshop Instructor to Foreman Instructor, the employee should have three years' diploma in Mechanical/Production Engineering with eight years' experience as Workshop Instructor in the College Workshop. By considering that qualification, respondent No.5 was promoted from the post

of Workshop Instructor to the post of Foreman Instructor against 25% quota of the posts of Foreman Instructor reserved for promotion as per College Byelaws. Learned counsel for respondents No.1 and 2-State also submits that the Principal of the College did not allow respondent No.5 to join as the post of Foreman Instructor did not exist in the College as it was re-designed as Lecturer (Workshop Practice). Accordingly, the order dated 01.12.2008 was cancelled on 27.05.2009. On moving of representation by respondent No.5, the Government decided to reconsider the matter. Learned counsel also submits that as per approved policy of the respondent-College, the promotion of Workshop Instructor could be made as Foreman Instructor and as such, Workshop Instructor working in the College could be promoted against the approved post of Foreman Instructor and accordingly, earlier order dated 01.12.2008 was reinstated and respondent No.5 was promoted.

Mr. J.S. Ahluwalia, learned counsel appearing on behalf of respondents No.3 and 4 has also reiterated the arguments raised by learned counsel for the respondent-State. Learned counsel also submits that respondent No.5 has been promoted as per promotion policy and Rules 4.2 and 4.3(a) of the College Byelaws as the promotion to the post of Foreman Workshop was to be made on the basis of seniority-cum-merit. Respondent no.5 was senior to the petitioner. The seniority list of Workshop Instructors dated 20.12.2006 was challenged in **CWP No.1162 of 2007**. As per Punjab Government letter dated 07.05.2010, the promotion order of respondent No.5 was restored as Foreman Instructor. The petitioner joined the College on 20.10.1995, whereas, respondent No.5 joined the College on 17.10.1995. Petitioner is not senior to respondent No.5. Learned counsel also submits

that as per rule applicable to the case of the petitioner as well as respondent No.5, the promotion quota is fixed as 25% of the existing posts and 75% quota is to be made by direct recruitment. The petitioner was having option to apply for the post when it was advertised for direct recruitment on the basis of qualification and experience but he did not avail the opportunity. Respondent no.5 has been promoted on the basis of merit-cum-seniority.

Mr. V.D. Sharma, learned counsel appearing on behalf of respondent No.5 submits that the petitioner is claiming his right on the basis of degree of B.Tech, which was obtained through correspondence from deemed university and the same cannot be considered as a valid degree as per AICTE notification. He also submits that the present petition has been filed after a delay of more than three years and hence, the same is liable to be dismissed on the ground of delay itself. It is also the argument of learned counsel for respondent No.5 that the post of Workshop Instructor has been redesigned and not re-designated as Lecturer Workshop Practice. As per public notice issued by All India Counsel for Technical Education, the qualification acquired through distance education. Mode of degree and diploma are not recognized as per byelaws. The degree of B.Tech. was not required for promotion to the post of Foreman Instructor. Learned counsel also submits that the post was redesigned as Lecturer (Workshop Practice) just to remove the recurring problem of the fixation of revised pay scale in the year 2003. A notification was also issued in the year 1996 but some of the categories were left out. On clarification, it was pointed out that the decision can be taken by the concerned State Government. As per said decision, respondent No.4 redesigned these posts in the meeting held on 27.04.2003 and the post of Foreman Instructor was redesigned as Lecturer

(Workshop Practice). Qualification required for the said post is 1st Class degree of B.E in Mechanical/Production Engineering or its equivalent with five years' relevant experience in teaching workshop technology. Respondent no.5 was promoted against 25% quota of the posts of Foreman Instructor as per the College Byelaws. Subsequently, he was not allowed to join his duties by the respondent Principal. Order dated 01.12.2008 was cancelled by the State Government. Thereafter again, it was reconsidered and earlier order dated 01.12.2008 was recalled. Hence, petitioner cannot be senior to respondent No.5.

Heard the arguments of learned counsel for the parties and have also perused the impugned order as well as other documents available on the file.

Admittedly, the petitioner was appointed as Workshop Instructor (sheet metal shop) and joined the respondent-College on 20.10.1995. Similarly, respondent No.5 was also appointed as Workshop Instructor (Welding shop) in the College and joined on 17.10.1995. It is also not disputed that the post of Workshop Instructor was redesigned and not re-designated as Lecturer Workshop Practice. Respondent no.5 was considered for promotion on the basis of his qualification and experience in view of Rules 4.2 and 4.3, which are reproduced as under :-

“4.2 Appointments

The appointments by promotion shall be made on the basis of seniority-cum-merit as per the procedure prescribed by the Punjab Government for its employees. The appointment by direct recruitment shall be made strictly on merit.

4.3 Manner of appointment

a) The posts in the scale with initial pay of ₹ 2200/- and

shall be filled up by direct appointment and promotion in the ratio of 3:1.

b) All other posts will be filled up by direct appointment and promotion on 50:50 basis.”

The petitioner is claiming his right for promotion only on the basis of qualification acquired by him during service through distance education. A public notice was got issued by All India Council for Technical Education, wherein, it was mentioned that as per Government of India's Gazette Notification dated 01.03.1995 issued by Ministry of Human Resources Development (Department of Education), the qualifications acquired by individuals through distance education mode are recognized for the purpose of employment to posts and services under the Central Government, provided, these have been approved by Distance Education Council (DEC) – Indira Gandhi National Open University (IGNOU), New Delhi and by All India Council for Technical Education (AICTE), New Delhi. The technical education programmes fall under the purview of AICTE. It was mentioned that AICTE had not recognized the qualifications acquired through distance education in the fields of Engineering, Technology including MCA, Architecture, Town Planning, Management, Pharmacy, Hotel Management and Catering Technology, Applied Arts and Crafts and Post Graduate Diploma in Management. Even it was held in Division Bench judgment of this Court in ***Kartar Singh vs Union of India 2012(4) SCT 741*** that the degree obtained from deemed university is not a valid degree.

The qualification for promotion from the post of Workshop Instructor to Foreman Instructor is that the employee should have three years' diploma in Mechanical/Production Engineering with eight years'

experience as Workshop Instructor in the college workshop. Respondent no.5 was promoted from the post of Workshop Instructor by respondent No.1 as per the policy approved by the Finance Committee of the college against 25% quota of the posts of Foreman Instructor as per the college Bye-laws. Although, respondent No.5 was not allowed to join his duties as the post of Foreman Instructor was not existing in the college as it was redesigned as Lecturer (Workshop Practice). Thereafter, respondent no.5 made a representation, which was reconsidered and the earlier order dated 01.12.2008 was recalled/restored and the promotion was made on the basis of seniority-cum-merit.

Petitioner is claiming his right over the promoted post only on the basis of his higher qualification, whereas, the promotion was to be made on the basis of seniority-cum-merit. Respondent no.5 was admittedly senior to the petitioner on the basis of date of joining of his duty but he was neither eligible for promotion to the post of Foreman Instructor nor his B.Tech. degree obtained through distance education was approved from All India Counsel for Technical Education. Moreover, said degree has also been held invalid by Hon'ble the Division Bench of this Court in **Kartar Singh's** case (supra).

There is no merit in the contentions raised by learned counsel for the petitioner and hence, the petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

05.09.2016
gurpreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes