

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) No.8150/2016 and C.M. No.45042/2016 (for taking**
on record additional affidavit)

% **5th December, 2016**

SH. MAHESH CHANDRA JOSHI Petitioner
Through: Mr. Barun Kumar Sinha, Advocate
with Ms. Pratibha Sinha, Advocate.

versus

GAIL INDIA LTD. Respondent
Through: Mr. Sandeep Prabhakar, Advocate
with Mr. Amit Kumar, Advocate and
Mr. Vikas Mehta, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks directions against his employer/respondent/Gail India Ltd. to quash the inter office memo dated 26.9.2008 as per which the respondent only recognizes an MBA post-graduate course/program, obtained by distance education, if the same is of three years and not of a lesser period. Petitioner is having an MBA post-graduate degree of two years through distance education. The posts in

question in the present case would be the posts in the E-4 level and above in the respondent company.

2. The impugned inter-office memo dated 26.9.2008 reads as under:

GAIL (INDIA) LIMITED

CORPORATE HR DEPARTMENT

INTER OFFICE MEMO

No. CO/HR/Pol/P-32

26th September 2008

From:

Corporate HR- Policy & Emp. Relations
Group New Delhi

To:

HR Incharges of Work Centres/
Zonal Offices

“Subject : Recognition of MBA courses under incentive scheme for acquiring higher qualification and existing promotion scheme

In terms of the extant rules, employees who acquire higher/additional qualifications are extended monetary incentive under the scheme for acquiring higher qualification as well as the benefit of additional marks under the existing promotion scheme. The basic intent of these incentive is to motivate employees to acquire professional qualifications that qualitatively improve their performance at work. However, for purposes of eligibility under these schemes, it is necessary that the various technical and management programmes are recognised/approved by University Grant Commission (UGC), Distance Education Council (DEC), IGNOU and All India Council for Technical Education (AICTE).

Over the period of time, it is seen that there has been mushrooming of Institutions which have been extending Management programmes on full-time/part-time/distance education basis of varied durations. In this regard, several issues have been raised at Corporate Office and queries have also been received from Work Centres regarding minimum duration of a management programme for the purpose of allowing

incentive under scheme for acquiring higher qualification and additional marks under existing promotion scheme.

The issue has been examined by Corporate HR Department. With the emergence of different formats of management degrees and programmes, it is becoming difficult to treat the various courses at par and evolve benchmarks for ascertaining the veracity of the same. It has thus become necessary to undertake a comprehensive review on the issue, in consultation with concerned Technical bodies/authorities. Pending the review action and consolidation of recommendations thereon, it is clarified that the minimum duration of Post Graduate Management programmes being pursued from various Universities/Institutes, subject to requisite approvals from various statutory bodies viz. UGC, AICTE and DEC, will be as under:

Full-time courses - 2 years

Part time/distance education courses - 3 years

This issues with the approval of Competent Authority. HR Incharges may kindly take note of the above while processing employee requests on the subject and apprise the employees accordingly. Individual cases, already settled for the purpose of grant of higher qualification incentive, will however not be reopened.

sd/-

(Ram Shanker)

Chief Manager (HR)

26.09.08

Copy to

1. HODs at Corporate Office
2. OICs of Work Centres/Zonal Offices
3. General Manager (HRD), Corporate Office
4. DGM (HR-Employee Services and Administration, Corporate Office
5. Notice Boards” (underlining added)

2. On behalf of the petitioner, it is argued that the two years distance education course of post-graduate management program done by

the petitioner is duly recognized by the competent authorities and the necessary statutory bodies, and therefore, the respondent cannot arbitrarily require a three years course for the post graduate management program for appointments to posts of E-4 level and above.

3. In my opinion, the argument urged on behalf of the petitioner is misconceived because it is upon the employer to decide the nature of qualifications and the eligibility criteria required for appointment to a post; whether by direct recruitment or by promotion. Unless the requirements/eligibility criteria fixed by the respondent is violative of any law or is so grossly arbitrary that this Court should quash it under Article 14 of the Constitution of India, Courts will not substitute its own view for the requirements of an employer for a particular post. After all a three year course in post graduation will either have more subjects or there will be a more in depth study and range in the same subjects as compared to a two year course and therefore there is a valid rationale for requiring a three year course instead of a two year course. It is not in issue that at a relevant point of time there were both types of courses i.e two years courses and three years courses for post graduate management program, and therefore, once it is not as if there was only a two years post graduate management program and thus the petitioner therefore could have only done a two years program

and is therefore illegally being excluded, there cannot be said to exist any illegality or any arbitrariness in the respondent requiring that a post graduate management program of distance education will be recognized by the respondent for the purposes of appointment to E-4 level and above only if the same is a three years program with respect to distance education courses.

4. A somewhat similar issue came up before this Court in the case of ***Gautam Kumar and Anr. Vs. Oil and Natural Gas Corporation Ltd. and Anr.*** in W.P.(C) No.1600/2013 decided on 18.11.2013. The issue in this case was that the petitioners had a diploma in their favour which was given equivalence to a degree course by the competent authorities, but, the employer for appointment required that the diploma would not be sufficient, and what was required was a degree. It was held by this Court that it is for the employer to decide the eligibility criteria, and once the eligibility criteria is uniformly applied, Courts cannot substitute its own view for the requirements of an employer for appointment to a particular post.

5. The relevant paras of the judgment in the case of ***Gautam Kumar and Anr. (supra)*** are paras 1 to 3, and which paras read as under:-

“1. By this writ petition, the petitioners, who were having Post Graduate Diploma in Management (PGDM) and were aspirants to the posts of Graduate Trainees (Finance & Accounts) in terms of advertisement no.3 of 2012(R&P) issued for the recruitment for the year 2012 by the respondent no.1, seek the relief of being considered for appointment. The limited issue before this Court is whether having a Post Graduate Diploma in Management (PGDM) is a

qualification which is acceptable as per the subject advertisement for being appointed as a Graduate Trainee (Finance & Accounts).

2. Let me therefore at this stage reproduce the relevant portion of the advertisement with regard to appointment of Graduate Trainees (Finance & Accounts) and the same reads as under:-

A. DETAILS OF DISCIPLINES AND MINIMUM ESSENTIAL QUALIFICATIONS

Sl. No.	Discipline	Posts						Minimum Essential Qualification (Refer point B also)
		Gen	OBC	SC	ST	PWD	Total	
-	-							
16.	Finance & Accounts	23	10	-	1	*(HH)	34	Graduate Degree with ICWA/CA or MBA with specialization in Finance with minimum 60% marks

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GENERAL INSTRUCTIONS

(a) The courses offered by Institutions/Universities through the regular mode should be approved/recognized by Association of Indian Universities (AIU)/UGC/AICTE. And in case of distance education courses the same should be recognized by the joint committee of DEC, UGC and AICTE.

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3. A reading of the aforesaid requirement shows that the requirement which is stated to be a valid qualification as per the respondent No.1/employer is a degree in ICWA/CA or MBA. Therefore, it is only a degree which is required as a qualification for appointment and not a diploma. It cannot be, and it was not disputed on behalf of the petitioners, that it is the employer which decides what are the qualifications which are required for appointment to the post and the Courts cannot substitute their views for that of appointing authority to decide what should be the qualifications for appointments unless of course there is ex facie violation of Article 14 or any gross arbitrariness apparent on the face. Since the requirement is only of an MBA and not PGDM, I cannot hold that PGDM should be treated equivalent to MBA.”

6. In view of the above, I do not find any merit in the petition because the respondent/employer is entitled to apply a principle and criteria for appointment, and which principle and criteria if is universally applied, this Court will then not interfere by substituting its view for that of the employer.

7. Dismissed.

DECEMBER 05, 2016
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VALMIKI J. MEHTA, J

