

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

CWP No.21489 of 2016

Date of Decision:-10.03.2017

Harbhupinder Singh

.....Petitioner.

Versus

State of Punjab and Ors.

.....Respondents.

CORAM:-HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. M.S. Joshi, Advocate for Petitioner.

Mz. Sudeepti Sharma, DAG, Punjab
for respondent Nos.1 & 4.

Mr. Anupam Singla, Advocate for
respondent Nos.2 & 3.

Ms. Jyoti Phogat, Advocate for
Mr. Anurag Goyal, Advocate for Kurukshetra
University.

JASWANT SINGH, J.(ORAL)

The petitioner possessing the Graduation Degree and a one Year Diploma in Computer Application competed for appointment as a Computer Teacher on contract basis, advertised on 27.10.2004 (**P.1**) by the Punjab Information and Communication Technology Educational Society (for short "PICTES")/respondent No.3. He was appointed on 15.3.2005 (**P.2**) on contract basis for a period of one year renewable from time to time, on consolidated salary of Rs.3500/- per month plus CPF. This appointment was renewed upto 31.3.2009 vide letters **P.3 and P.4**. Such contract

appointees were required to provide Computer Education in various Government Schools in a phased manner.

All the Computer Teachers, who did not have higher qualification in Computer Education, were given one year time to improve their qualifications till 30.11.2009 as per the Instructions of the Board of Governors vide memo dated 08.12.2008 **(P.5)**, which was required for getting their contract of engagement renewed, failing which, their respective contracts would have resulted into termination. Said period, concededly, was extended till 30.9.2010.

Since the petitioner had not submitted proof of his having acquired qualification, his services were terminated vide order dated 01.10.2010 after issuing a show cause notice dated 28.1.2010/Reminder dated 11.8.2010.

Thereafter, the petitioner filed a representation stating that he had already appeared in M.Sc (Computer Science) examination in May/June 2010 conducted by the Kurukshetra University, Kurukshetra, and the result was awaited. He was reinstated vide order dated 12.1.2011 **(P.6)**, as PICTES had taken a decision that those candidates, who could produce proof of sitting in examination by 30.9.2010, though their result was to be declared later, were also to be considered as fulfilling condition of acquisition of higher qualification by 30.9.2010.

It so transpires that the Government of Punjab vide memo dated 02.12.2010 **(P.7)** ordered the regularization of the services of Computer Teachers working on contract basis with PICTES w.e.f 01.7.2011 subject to fulfilments of certain laid down conditions. The Instructions were further modified vide letter dated 05.7.2011 **(P.8)**. When the case of the petitioner

for regularization, in terms of the Policies (**P.7 & P.8**) was considered, it came to the notice of the Authorities that the petitioner had not submitted proof of having passed his M.Sc (Computer Science) by the date, he was re-appointed/reinstated.

Upon issuance of show cause and grant of personal hearing, it emerged that in the examination of May 2010, the petitioner was required to re-appear in one subject which he undertook in December 2010. However, he also applied for re-evaluation of the result of the Exam held in May 2010 and on acceptance, he was declared to have passed May 2010 Exam but the DMC was issued on 23.4.2015. The petitioner in the interregnum period had also cleared his re-appear Exam in December 2010 and awarded a DMC showing his having cleared his M.Sc (Computer Science) Exam held in December 2010. The respondents by holding that the petitioner did not possess any proof/Certificate of passing M.Sc (Computer Science) by 12.1.2011 i.e the date of order of his reinstatement, proceeded to pass the impugned order dated 14.9.2016 (**P.16**) whereby his services were terminated.

Upon notice, a written statement has been filed wherein the aforesaid factual matrix is not disputed. The order of termination (**P.16**) is defended on the same lines as aforesaid that the proof of passing M.Sc (Computer Science) was not produced by 12.1.2011 as stated in the representation filed against his previous termination.

During the course of hearing, it was acknowledged that the petitioner has submitted two degrees and four DMCs, relating to his Post Graduate Degree of M.Sc in Computer Science granted by the Kurukshetra University, Kurukshetra, one relating to May 2010 Examination (granted on

re-evaluation) and the other of December 2010 Examination (granted after clearance of re-appear). Accordingly, vide order dated 02.12.2016, Kurukshetra University, Kurukshetra through its Registrar was ordered to be impleaded as respondent No.5 for the purpose of verification of the validity of the degrees submitted by the petitioner.

On the next date of hearing on 21.12.2016, Sh.Anurag Goel, counsel for the Kurukshetra University has submitted a report dated 16.12.2016, which is taken on record as Mark A, whereby on examination of the entire record, it was opined that both the degrees were genuine and valid and issued by the Kurukshetra University. It was submitted that on the option of the petitioner, the DMC of May 2010 Exam showing the marks obtained as 825 under Roll No.159946 has been finally treated as valid one, while cancelling the DMC relating to re-appear in Exam held in December 2010. Copy of the report was also forwarded to the contesting respondents, who have not disputed the genuineness of the report.

In the aforesaid changed circumstances, learned counsel for the petitioner submits that the petitioner is entitled to the benefit of decision of the Board of Governors, whereby the contractual appointees were required to upgrade their post qualification by 30.9.2010, so as to continue in service and thereafter entitled to consideration for regularization as there is nothing adverse against the petitioner. He submits that in the aforesaid facts, there is no misrepresentation on the part of the petitioner.

On the other hand, learned counsel for contesting respondents submits that the petitioner was required to submit a proof of upgradation of his qualification by the cut off date i.e 30.9.2010 or atleast by 12.1.2011 and on account of having failed to do so, he would not be entitled to any relief.

After hearing learned counsel for the parties, this Court is persuaded to accept the pleas raised on behalf of the petitioner.

It is not in dispute that as per the modified decision of the Board of Governors, the contractual employee could submit the proof of having undertaken the examination for upgradation of the qualification by 30.9.2010 and the result of which was awaited. It is also not in dispute that the petitioner had undertaken the examination of M.Sc (Computer Science) held in May 2010 by the Kurukshetra University and thus fulfils the requirement. The confusion has occurred because the petitioner undertook re-appear Examination in one subject in December 2010 and has also applied for re-evaluation of his result of May 2010 Examination.

Merely because the result of re-evaluation Examination was delayed for a considerable time, however, concededly was granted in favour of the petitioner would not operate against the cause of the petitioner. It is not disputed that the re-evaluation result would relate back to the original date of passing of the Examination i.e May 2010. The Kurukshetra University has also verified that all the Certificates submitted by the petitioner were genuine and valid, therefore, the approach adopted by the respondents is hyper-technical and liable to be rejected, especially in case of a Teacher against whom, concededly, nothing adverse is on record.

Keeping in view the aforesaid conspectus of the facts, the present petition is allowed and the impugned order of termination dated 14.9.2016 **(P.16)** is quashed with all consequential benefits i.e monetary, continuity of service and consideration for regularization. The entire exercise will be completed within a period of two months from the date of receipt of certified copy of this order, failing which, the petitioner shall be entitled to

award of interest at the rate of 9% per annum on the amount due from the date of accrual till the date of actual taken, however, the respondents would be free to recover the same from the guilty official respondents.

March 10, 2017
manoj

(JASWANT SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>