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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 35/2017**

MAHESH CHAND JOSHI

Through

..... Appellant

Mr. Barun Kumar Sinha and

Mrs. Pratibha Sinha, Advocates

versus

GAIL INDIA LTD

Through

..... Respondent

Mr. Sandeep Prabhakar and

Mr. Amit Kumar Advocates

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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03.08.2017

CM No.9208/2017

The present application has been filed by the application for taking on record the additional affidavit.

For the reasons stated in the application, the same is allowed. Additional documents are taken on record.

The application is disposed of.

LPA 35/2017

1. The appellant has preferred the present appeal assailing the judgment dated 05.12.2016 rendered by the learned Single Judge in W.P.(C) No.8150 of 2016. Learned Single Judge has dismissed the said writ petition preferred by the appellant. The appellant had preferred the said writ petition to seek quashing of the Inter Office Memo dated 26.09.2008 whereby the respondent has recognised the Master of Business Administration ('MBA') Post Graduate Programme obtained by Distance Education only if the same

was for the duration of three years and not of a lesser period. However, in respect of regular full time course, the duration prescribed was of two years. This prescription was laid down by the respondent vide another Office Memo dated 26.09.2008. So far as the same is relevant, it reads as follows:-

“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 incentives 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 recognized/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.”

2. The appellant obtained the MBA Post Graduate Degree of two years through Distance Education. Since he was not granted the incentive despite his having undergone the two years part time Distance Education Programme for MBA, he preferred the aforesaid writ petition. The premise on which the appellant stakes his claim was that vide a Notification No. F.No.DEC/Notification/40.5.1.4/2012 dated 01.11.2012 issued by the Distance Education Council, Indira Gandhi National Open University, the minimum duration for the PGDM/MBA Programmes offered through distance mode was prescribed as two years in uniformity with the similar programmes offered through regular modes. The learned Single Judge, however, did not accept the contention of the appellant. The reasoning adopted by the learned Single Judge in the impugned judgment reads as under:-

“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.”

3. The appellant underwent the two years MBA Programme through distance learning in the year 2013 to 2015. The appellant was, therefore, well aware of the Inter-Office Memo dated 26.09.2008. The submission of Mr.Barun Kumar Sinha, learned counsel for the appellant is, firstly, that the Distance Education Council vide a communication dated 26.03.2010 observed on the subject of recognition of Indira Gandhi National Open University Distance Education Programme that:-

“The Distance Education Council noted the acceptance of the compliance report submitted by the Punjab Technical University in response to the UGC-AICTE-DEC joint committee’s recommendations. The Council ratified the decision (item 35.06.vi) taken by the Chairman in accepting the compliance report and accorded recognition for a period of 3 academic years w.e.f. 2009-10 to 2011-2012 for all programmes through Distance Mode, as recommended by the joint committee. The University may offer the programmes following these provisions.”

4. He also places reliance on the communication No. F.No.UGC/DEB/2013 dated 14.10.2013 addressed by the University Grant Commission (‘UGC’) to all the Indian Universities (Deemed, State, Central Universities/Institutions of National importance) wherein the UGC observed that:-

“6. Accordingly, the Degrees/Diploma/Certificates awarded for programmes conducted by the ODL institutions, recognized by DEC (erstwhile) and UGC, in conformity with UGC Notification on specification of Degrees should be treated as equivalent to the corresponding awards of the Degree/Diploma/Certificate of the traditional Universities/institutions in the country”

5. The submission of Mr. Sinha, counsel for the appellant is that since two years MBA Programme through Distance Education is recognised as a valid Degree for all purposes, the respondent cannot insist on the obtainment of the said Degree through three years Distance Education Programme.

6. On the other hand, Mr. Prabhakar, counsel for the respondent points out that the UGC has itself clarified on repeated occasions that it is up to the employers to determine the acceptability of the Degree obtained by the candidate/employee. In this regard, he has placed reliance firstly on the Public Notice on Equivalency of Degrees issued by UGC on 19.07.2016

wherein the UGC has, *inter alia*, observed that

“Equivalence of degrees, diplomas, certificates etc. are not determined by the UGC. In the case of higher education, equivalence is decided by the University concerned and in cases of employment, promotion etc, equivalence is decided by the employing organization.”

7. He has also placed reliance on another communication dated 27.04.2016 issued by the UGC, Distance Education Bureau, on the subject “Checklist/parameters for checking the validity of qualification acquired through distance mode”. In this communication the UGC has clearly stated that “it is the prerogative of the concerned employer/university/institution to take a view in respect of qualification acquired through distance mode”. He further points out that the claim made by the appellant of obtaining the Degree through the Indian Institute of Materials Management, Mumbai, in collaboration with the Punjab Technical University, Jalandhar is doubtful, inasmuch as, the UGC has issued a communication dated 09.11.2016 stating that:-

“IIMM/Mumbai is a stand alone private Institute. It can conduct only Diploma, PG Diploma/Certificate level programmes. It is not authorised to offer any degree programme in collaboration with any university. In this regard, Public Notice issued by UGC No-27-1/2012 (CPP-II) dt. 27th June 2013 is enclosed for information. A further clarification issued on 19th July 2016 is also enclosed.”

8. Having heard learned counsel for both the parties and perused the record, we find that the Respondent Company had very specifically prescribed the minimum duration of Post Graduate Management Programme which would be recognised under the Incentive Scheme. The Inter Office Memorandum dated 26.09.2008 clearly provides that full time MBA courses

of 2 years duration and part time/ Distance Education MBA courses of 3 years only would be recognised for grant of incentive under the scheme and therefore we are of the view, that the Appellant who has admittedly undergone the distance education course of only two years, cannot contend that the said course, should be recognised as the requisite qualification for grant of incentive under the scheme.

9. In our view, once the requisite qualification for grant of incentive under the scheme was specifically provided, the reliance by the Appellant on the notification dated 01.11.2012 issued by the Distance Education Council to content that an MBA degree of 2 years duration obtained through distance education should be treated as equivalent to 2 years MBA degree obtained through regular mode, is wholly misplaced. Similarly, the reliance placed on the letter dated 14.10.2013 issued by U.G.C wherein it has been provided that all Degrees/Diplomas/Certificates awarded by the Open and Distance Learning Institutions recognised by Distance Education Council and UGC, should be treated as equivalent to the corresponding awards of the Degree/Diploma/Certificate of the traditional universities/institutes in the country, is also in our view, wholly misplaced.

10. The issue in the present case, is not whether a 2 years Distance Education MBA degree is being treated as equivalent to a 2 years Regular MBA degree by the University Grants Commission or by the Distance Education Council, but as to whether a 2 years MBA degree obtained through distance programme can be said to be meeting the criteria provided for in the Scheme by the Respondent/Employer.

11. We find merit in the submission of Mr. Prabhakar, the learned counsel for the Respondent that once the requisite qualifications were clearly

specified in the Inter Office Memorandum dated 26.09.2008, the parties was bound by the same and the Appellant cannot claim benefit of the Incentive Scheme, when he admittedly did not have the qualification of 3 years MBA degree obtained through distance education. We also find merit in the submission of the learned counsel for the Respondent that once the UGC itself has issued a public notice dated 19.07.2016 to the effect that equivalence of degrees, diplomas, certificates etc., are not determined by the U.G.C and in cases of employment, promotion etc., equivalence is decided by the employing organisation, it was for the Respondent to prescribe the requisite qualification. No reliance can be placed by the Appellant/ Employee on the notification/ Circulars issued by U.G.C or DEC to contend that that the Respondent/Employer should treat his 2 years Distance Education MBA degree as being equivalent to a 2 years Regular Course MBA degree.

12. In the above circumstances, we are of the considered view that there is no merit in the present petition and the same is accordingly dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

AUGUST 03, 2017

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