

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16481 of 2017

1. Pappu Kr. Pankaj S/o Gopal Prasad (Roll No. 109391) respondent of village- Naser, P.O. Gurua, P.S. Gurua, District- Gaya.
2. Md. Ajaj Akhtar, (Roll No. 101333), S/O Md. Fahim Akhtar, At +P.O.- Basopatti, District- Madhubani, Pin 847225, (Course- MHRM)
3. Alok Kumar S/o Pratap Narain (Roll No. 114699), resident of Mohalla- New Etwarpur, Lalu Path, P.O. Kurthaul, Via- Punpun, District- Patna.
4. Sumit Prabhakar S/o Vinod Prasad (Roll No. 101223) resident of E-16, peoples Cooperative Colony, P.O. Kankarbagh. At & District- Patna
5. Raj Kumar, (Roll 113615) Son of (Late) R.S. Yadav Ram Govind Enclave, Punai Chak, P.O. Shastri Nagar, At and District- Patna.
6. Manoj Singh S/o Bindeshwari Singh (Roll No. 107641) resident of at village -Deoria, P.O. Pahleza, P.S. Dehri on son, District- Rohtas.
7. Md. Nazaruddin S/o Dil Mohammad, (Roll No. 105300) resident of village & P.O. Mohanpur, P.S. Basantpur, District- Siwan.
8. Shamsay Alam, S/o Md. Idris, (Roll No. 113316) resident of village Sandali, P.O. Barauli, P.S. Barauli, District- Gopalganj.
9. Neelmani Jaiswal, S/o Ram Baboo Chaudhary (Roll No. 100217) resident of village- Rustampur Market, District- Darbhanga.
10. Nishant Kumar (Roll No. 108728), Son of Sri Prahalad Pandey, resident of village Tilka Manjhi, P.S. Tilka Manjhi, At and District- Bhagalpur.
11. Abhishek Kumar, aged about 27 years, son of Tarak Nath Mahto, resident of village- Bhagwanpur, P.O. Bhagalpur, P.S. Sadar, District- Muzaffarpur.
12. Kanchaneswar Srivastava (Roll No. 106389) Son of Late B.P. Srivastava, residetn of in the house of Late Shivbachchan Lal, Street No. 10A, Santoshi Maa Path, Mohalla Gaurakhani, At + P.O. Sasaram, District- Rohtas.
13. Rajan Kr. Giri, (Roll No. 114032), Son of Sri Baliram Giri, resiednt of village & P.O. Dindayalpur, P.s. G.B. Nagar, Tarwara, At & District-Siwan.
14. Shashi Ranjan Kumar (Roll No. 102867) Son of Vishnudeo Prasad, Resident of Saidpur, P.O. & P.S. Katrisarai, Bilari, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The Bihar State Food and Civil Supplies Corporation Limited, through its Managing Director, Daroga Roy Path, Patna.
3. Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Daroga Rai Path, Patna.
4. The Nodal Officer, Bihar State Food and Civil Supplies Corporation Ltd., Daroga Rai Path, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 4458 of 2017



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Avinash Kumar, S/o Shiv Ram Singh, R/o House No.21, Road 10 East Patel
Nagar, PO- GPO , P.S.- Shastri Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The State of Bihar Principal Secretary, Food and Consumer Protection
Department, Government of Bihar, Patna.
3. The Bihar State Food and Civil Supplies Corporation Limited through its
Managing Director, Daroga Rai Path, Patna.
4. Managing Director, Bihar State Food and Civil Supplies Corporation Daroga
Rai Path, Patna.
5. The Nodal Officer, Bihar State Food and Civil Supplies Corporation Daroga
Rai Path, Patna.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 16481 of 2017)

For the Petitioner/s	:	Mr. Binod Kumar Kanth, Sr. Advocate
	:	Mr. Mukul Kumar, Advocate
For the BPSC	:	Mr. Anjani Kumar, Sr. Advocate
	:	Mr. Shailendra Kumar Singh, Advocate

(In Civil Writ Jurisdiction Case No. 4458 of 2017)

For the Petitioner/s	:	Mr. Binod Kumar Kanth, Sr. Advocate
	:	Mr. Mukul Kumar, Advocate
For the BPSC	:	Mr. Anjani Kumar, Sr. Advocate
	:	Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 05-11-2018

Heard the parties.

2. This writ petition has been filed under Article 226 of
the Constitution of India for issuance of writ of mandamus upon
respondent-authorities to appoint petitioners on the post of
Assistant Manager in Bihar State Food and Civil Supplies
Corporation as they are eligible and qualified for appointment
on the aforesaid post in terms of advertisement and have been



selected after being successful in written examination and interview as well as quashing the orders passed by respondent No. 3 (Managing Director, Bihar State, Food and Civil Supplies Corporation Limited, Patna) by which their case pursuant to order dated 24.03.2017 passed by this Court in C.W.J.C. No. 17093 of 2016 and analogous case has been rejected on non-est, erroneous and flimsy ground as contained in Annexure-1 series and Annexure-2 in CWJC No. 16481 of 2017 and Annexure-1 in CWJC No. 4458 of 2017.

3. Briefly stated the facts of the case is that on 13.08.2015 respondent-corporation issued an advertisement inviting online applications for appointment on 407 posts of Assistant Manager. The required educational qualification was mentioned as MBA/PGDM from a recognized University/Institutions approved by All Indian Council for Technical Education (AICTE).

4. All petitioners applied online against the advertisement and received their admit card for their written test. The written test was held on 03.01.2016 and on 16.01.2016 the result of written test was published in which all the petitioners alongwith other candidates were declared successful and were called for interview and verification of their documents.



5. Petitioners alongwith others appeared in the counselling along with required documents. All candidates were required to submit their documents to the Nodal Officer. Petitioners were informed in writing that decision regarding their eligibility has been kept pending for the reasons mentioned in their respective undertaking. Petitioners were required to submit the certificate of equivalence of their degree/diploma which were subject to verification. Petitioners submitted the documents and notifications with regard to their eligibility for the said post.

6. In June-2016 a set of candidates having degree/diploma with nomenclature in specific branch of MBA/PGDBM were selected and they were instructed to report for joining on 29.06.2016. Petitioners were placed in another list which was pending for re-verification of their degrees/diplomas and were directed to be present on 08.07.2016 with certificates in original for re-verification. Petitioners appeared on 08.07.016 with required documents in original.

7. A committee was constituted of five officers including the Managing Director of the Corporation in order to examine the eligibility of degree/diploma of petitioners and similarly placed other candidates and a report dated 30.08.2016



was prepared by said Committee in which cases of 77 candidates who were having similar qualification was considered by the said Committee and they were divided into three categories:-

(i) Category No. 1 candidates (1 to 12) were the candidates who had degree/diploma in MBA with specialization and Committee found that MBA with specialization was acceptable and they were eligible for appointment.

(ii) Category No. 2 (13 to 44) candidates were the candidates who possessed degree/diploma in management with change in nomenclature as PGDM whereas eligibility was PGDBM but on the basis of letter issued by AICTE dated 01.07.2016 that the nomenclature of degree/diploma has been changed from PGDBM to PGDM from 2008 and accordingly candidates coming in Category-2 were also found to be eligible for appointment.

(iii) Third category candidates (45 to 77) were the candidates who were possessing the degree/diploma in post graduate management with nomenclature other than PGDBM/PGDM and claiming their appointment on the basis of equivalence and petitioners were also put in this category. The Committee had also recommended to take decision with respect



to their appointment on equivalence of their degree/diploma being equivalent to MBA/PGDM.

8. The candidates of first and second category were appointed, however, no decision regarding candidates of third category which included petitioners was taken.

9. Petitioners being aggrieved by their non-appointment filed writ petitions being CWJC No. 17093 of 2016, CWJC No. 17507 of 2016 and CWJC No. 17869 of 2016 in which a counter affidavit was filed by the respondents from which petitioners could know that their case has been rejected by the Corporation and case was heard by a Single Bench of this Court and was disposed of by order dated 24.03.2017 with a direction to Managing Director of the Corporation to reconsider the case of petitioners afresh in the light of observations made in the order, which has been enclosed as Annexure-26 to this petition.

The relevant part of the order reads as follows:-

"The discussion above in reference to the qualifications held by these petitioners confirm that these courses have been treated akin to a MBA degree or a Diploma in Business Management.

As I have already expressed since the respondent Corporation themselves have accepted the certification by the Banaras Hindu University as to the equivalence of a course on the basis of restructuring and have offered appointment on that post, the certification received by these petitioners through their University/Institution well deserves a consideration. In my opinion, it is the substance of a course which is to be a guiding factor for such



consideration even if there may be a variance in the nomenclature of the course but a mere difference in nomenclature, cannot be a foundation nor can form any basis for exclusion of a candidate from consideration rather it is the utility aspect of the matter and whether the course attended by the applicant satisfies the requirement of the post on which this applicants are to be appointed, which normally should be a guiding factor. The choice is entirely with the Corporation and since demonstrably they have deviated in the matter by opening up to the other qualification(s) as well which are at variance with the advertisement, either by referring to the restructuring order or the certification by the concerned University as relied upon by Mr. Sahay in reference to Annexure H/1 and H/2 to C.W.J.C.no17093 of 2016 as well as Annexure-4 to the second writ petition, a similar certification possessed by these petitioners obtained from the institutions attended by these petitioners, would also require a similar consideration before a final decision is taken by the Corporation on the issue.

As I have already indicated at the outset it is the discretion of the employer alone as to the utility of the person concerned based on the qualification possessed by him which has to be the determining factor and in my opinion the authorities of the Corporation need not get swayed by the nomenclature of the qualification so long as the qualification possessed by any candidate satisfies their requirements.

In the circumstances so discussed I deem it proper to dispose of the writ petition with the direction to the Managing Director of the corporation to consider the case of these petitioners afresh and in the light of the observation made hereinabove and pass appropriate orders in accordance with law preferably within six weeks from the date of receipt/production of a copy of this order."

10. It has been contended on behalf of petitioners by the learned Senior counsel that the order passed by the Authority



pursuant to Annexure-26 has been passed in a mechanical and cryptic manner without considering the observation and direction made by this Court as contained in Annexure-26, operative part of which has been referred above.

11. In support of his submission learned Senior counsel has relied upon the judgment of Apex Court in the case of **A.P.S.R.T.C. and Ors. vs. G. Srinivas Reddy and Ors.** since reported in **(2006) 3 SCC 674**, in which the Apex Court has considered that if a case is remanded to the concerned Authority with certain observation then said Authority is bound to consider said observation and the order to be passed afresh, has to be taken into account the observation made in the said order. The judgment of the Apex Court in this regard reads as follows:-

"Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to 'consider' the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to 'consider' the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the court."

12. (i) Petitioner Nos. 1 to 4 are holders of MHRM (Master of Human Resource Management) from L. N. Mishra



Institute of Economic Development and Social Change, Patna. It is an autonomous institution under Magadh University and is recognized by AICTE. The Registrar of Magadh University, Bodh Gaya has certified that the degree of petitioners are equivalent to MBA of Magadh University, Bodh Gaya as contained in Annexure-18/2.

(ii) Petitioner no. 5 is holder of MHRM from Institute of Management and Technology, Ghaziabad and after undergoing two years course under Distance Education Programme, which is approved by AICTE and College is affiliated to Vidyasagar University, West Bengal.

(iii) Petitioner Nos. 6, 7 and 8 are holders of Master Degree in PMIR (Personnel Management and Industrial Relations) from Patna University after undergoing two year full time regular course. The Head of the department of Personnel Management and Industrial Relations, Patna University has certified that degree is equivalent to MBA with specialization in personnel management and Industrial Relation (HRDM) as contained in Annexure-18/5.

(iv) Petitioner no. 9 is holder of M.A. Degree in PMIR (Personnel Management and Industrial Relation) from Allagappa University through Distance Mode after undergoing



two years course which is a recognized University. University has granted certificate that degree of petitioner is equivalent to MBA degree as enclosed in Annexure-18/6.

(v) Petitioner no. 10 is a holder of two years PGDR (Post Graduate Diploma in Rural Management) from institute of Rural Management, Anand (IRMA) which is an AICTE approved institution. It is one of the most reputed institution established by Central Government.

(vi) Petitioner No. 11 is holder of two years PGDFM(Post Graduate Diploma in Forestry Management) from IIFM, Bhopal after undergoing two years full time regular course. The institute is approved by AICTE and has been established by the Central Government.

(vii) Petitioner no. 12 is holder of three years PGPM (Post Graduate Programme in Management) through distance mode from the Institute of Management and Technology, Ghaziabad with specialization in two branches of Finance and Human Resource. The institute is approved by UGC and is a Deemed University under Section 3 of UGC Act.

(viii) Petitioner no. 13 is holder of two years PGDBA (Post Graduate Diploma in Business Administration) with specialization in finance through Distance Mode from



SYMBIOSIS Centre of distance learning.

(ix) Petitioner no. 14 is holder of PGDIM (Post Graduate Diploma in Industrial Management) from National Institute of Industrial Training after undergoing two years full time regular course duly approved by AICTE. The institute is Government Institute.

(x) Sole petitioner in CWJC NO. 4458 of 2007 is having degree of Master of Arts in Personnel Management and Industrial Relation, lateral entry from Alagappa University.

13. The respondent-authority in its order impugned has observed that educational qualification for the post is MBA/PGDBM and in the Advertisement there is no eligibility prescribed that candidates having equivalent degree/diploma are also eligible and can apply as a result of which many candidates having equivalent degree/diploma could not have applied and accepting degree/diploma of petitioners which they claim to be equivalent to PGDBM is against natural justice and fair play. The reasoning given in the impugned order is without any foundation and was not taken as a ground in previous litigation. As a matter of fact, undertaking was taken from petitioners that if their certificates will be found to be equivalent to MBA they will be appointed. The respondents are estopped from taking



this plea for the first time in the impugned order.

14. AICTE recognized only two types of management courses which is MBA and PGDM and there is no other course of management recognized by AICTE or are being taught in management institute/College but as such no one has come forward with a complaint/grievance that he was having a degree/diploma in management which is equivalent to MBA/PGDM and has been deprived to apply in absence of any such condition. The respondent-Authority has also not referred to any such complaint/grievance made by any candidate as such reason assigned is imaginary. All those having MBA or PGDBM degree/diploma who were interested in their appointment have applied although many like petitioners are having said degree/diploma with different nomenclature which was the lis in previous as well as present writ petition.

15. AICTE permits educational institutions/colleges to impart two years management course in their institution/college after being recognized by AICTE in which students can take admission as students in MBA course of two years duration or PGDM course also of two years duration and after passing the examination, the University grants certificate of MBA. The difference between the two courses having two years duration is



that in one course all branches of management are taught whereas in another course a specific branch of management is taught. The respondents have appointed candidates having MBA/PGDM in all branches of management as well as candidates having specialization in any specific branch of management. Such decision dated 30.08.2016 taken by the Committee is reflected in its report/proceeding as contained in Annexure-20.

16. MBA is equivalent to PGDM. Delhi High Court in its judgment dated 10.03.2014 as contained in Annexure-24 where similar issue was involved has held that MBA is equivalent to PGDM. In the case before Delhi High Court the eligibility was MBA whereas petitioner was having the degree/certificate of PGDM and the High Court decided the issue in favour of petitioner holding that his PGDM is equivalent to MBA and even though PGDM as eligibility was not in the Advertisement but since the degree of petitioner is equivalent to MBA his petition was allowed and he was granted promotion on the basis of degree of PGDM. This Court is in full agreement with the view expressed by Delhi High Court. Para-9 of the judgment is quoted hereinbelow:-

“In these circumstances, the only conclusion, which I can arrive at, is, that the PGDM awarded to the petitioner by the said Institute is equivalent to a MBA



degree awarded by an Indian University. There being no dispute about the fact that the petitioner had obtained more marks in the OBC category than, the last candidate, who was appointed to the aforementioned post in the Generalist stream; the petitioner's writ petition would have to be allowed. It is ordered accordingly."

17. The degree/diploma are provided by Universities under the guidelines of UGC and not by AICTE. Different Universities grant PGDM certificate in different formats and different nomenclature but all such degrees are post graduate degree/diploma in Management and their cannot be any distinction made between the two.

18. The eligibility/educational qualification for the Advertised post was MBA/PGDBM. As far as MBA is concerned there is no dispute that all the University, College and Institution grants MBA degree but as far as post graduate degree/diploma is concerned College/Institution grant post graduate degree/diploma in management with different nomenclature but as a matter of fact all such certificates are post graduate degree/diploma in management. In the Advertisement it has not been stated that eligibility is PGDBM and the certificate should also have nomenclature as post graduate degree/diploma in management. There cannot any difference in the meaning of post graduate degree or master's degree. If eligibility is post graduate degree then a candidate cannot be



denied appointment that he holds a masters degree as post graduate degree and master degree are same and are synonymous.

19. The respondent-authority has not considered that degree/diploma is provided by the University from which the institution/college of management is affiliated. MBA is Universal degree and all Universities grant/confer MBA degree to the students passing from the college/institution but same institutions of management also provide post graduate management degree in particular branch of management but different Universities grant post graduate degree/diploma to the students of particular branch of management in different format/nomenclature but all those degree/diploma are post graduate degree/diploma in management.

20. The respondent-authority while rejecting the case of petitioner by order as impugned has committed grave error while holding that in the institutions from which petitioners have obtained their management degree in said institution MBA is also taught and as such the courses of study of both in same institution cannot be same as such petitioners are not eligible for appointment which is preposterous. MBA or PGDBM courses of study are different. All management institutes/colleges teach



both courses of management as such both courses of study cannot be same. In one courses of study of management all branches of management such as Human Resource Management, Financial Management, Marketing Management, Personnel Management others are taught whereas in another courses of study of management only specific branch of management as detailed above are taught.

21. Petitioners have also enclosed as Annexure-21 i.e. resolution adopted by AICTE in the year 2006-07 for standardization of nomenclature of programme in management institutes recognized by AICTE according to which it was accepted that every two year full time regular general management programme will be referred to as PGDM and every two year full time sector/function focused Management Programme will be referred as PGDM (Finance), PGDM (Marketing) extra, which also supports the case of petitioners that AICTE had made efforts for similar nomenclature for post graduate degree/diploma in management in all Institutions/Colleges/Universities which suggest that all post graduate management course imparted in different institutions/colleges are similar.

22. There cannot be any quarrel with the proposition that



appointment has to be made strictly as per terms and conditions of Advertisement and there cannot be any relaxation or deviation from said terms and conditions as has been held by this Court that the certificates of petitioners are post graduate degree/diploma in management and they are eligible and their case is not based upon equivalence of certificate rather their certificate is similar to PGDM having different nomenclature.

23. Besides above many candidates who have been appointed who do not have the eligibility as stated by respondent-authority as MBA and PGDBM but have been appointed for the reasons best known to the respondent-authority. The petitioners are being subjected to hostile discrimination as candidates having no degree/diploma with nomenclature as PGDM have been appointed whereas petitioners are being denied appointment for the reasons that their degree/diploma nomenclature is not PGDM. The previous writ court (Annexure-26) has dealt in detail and has also specified the number with name of such candidates and therefore had directed to reconsider the case of petitioners but respondent-authority without taking any note of observation and finding by this Court passed in said writ petition has rejected the case of petitioners on non-est, erroneous, arbitrary and flimsy



grounds. The relevant part of the order is being quoted hereinbelow:-

"What has been canvassed before this Court is that the Corporation cannot have a differential attitude and if it sticks to the Boards Resolution present at Annexure-C to the counter affidavit filed in C.W.J.C.No.17093 of 2016 then all such persons whose nomenclature of the course attended, is in deviation to the qualification prescribed, cannot be offered appointment and if the Corporation deviated therefrom then such deviation should be purposeful enough to consider all such cases who are on the same footing. The stand taken by the Corporation is, that they have stuck to the qualification prescribed in the advertisement and even though some of the persons appointed have a different nomenclature, those courses have been restructured to come within the prescribed qualification.

For the purpose of satisfying themselves as regarding nomenclature of the courses attended by the applicant, the counsel for the Corporation has relied upon a communication of the Banaras Hindu University at Annexure-H/1 and Gazette publication dated 5.7.2014 at Annexure-H/2 in C.W.J.C. No. 17093 of 2016. In other words, a communication by the University as regarding the change in the nomenclature of the course and/or the restructuring Notification itself dated 5.7.2014 has been considered by the Corporation to satisfy themselves."

24. The case of petitioners is further strengthened by Annexure-C of counter affidavit filed by respondents which is gazette notification of University Grants Commission of specification of degrees in which the Commission has directed the Universities to restructure their nomenclature of degrees in which at serial No. 37 is in respect of MHRD/MHROD, to restructure it as MBA/M.Com (Human Resource Development).



Universities are bound by the guidelines and directions issued by UGC and even specification of degrees are also provided by UGC to Universities and accordingly they restructure the format and nomenclature and for this reason also the case of petitioners are bound to be allowed. Some universities as per direction of UGC have restructured the format/nomenclature of degree/diploma granted by them. However, some are yet to follow for which petitioners cannot be made to suffer.

25. On the basis of Gazette Notification as contained in Annexure-C of the counter affidavit, respondents have appointed candidate at Serial No. 47 (Category-III) and candidate at Serial No. 48 (Category-III) but similar benefit has not been granted to petitioner nos. 1 to 5 where their degree/diploma has also been restructured as MBA (Human Resource Management) in the said notification.

26. Respondents have also not disclosed as to how candidate at Serial No. 43 (IInd category) was appointed having undergone 15 months course although eligibility was two years. Candidate at serial No. 44 (IInd Category) was appointed having certificate with different nomenclature from IGNOU i.e. PGDIM/PGDHRM.

27. Candidates at Serial NO. 45 (IIIrd Category) had



given certificate of PGDBA but produced certificate of PGDM at the time of appointment from same institute for the same session year without any verification as to which was the genuine certificate. However, similar benefit was not granted to petitioners who were pursuing management course from a prestigious and reputed institutions affiliated with Magadh University and Patna University and Allagappa University as well as management institutes established by Central Government.

28. In case of petitioner no. 1 to 4 the Registrar of the Magadh University has certified that degree/diploma of petitioner nos. 1 to 4 are equivalent to MBA and as such there was no reason to reject the claim of petitioner nos. 1 to 4 as they satisfied the eligibility. In the Gazette notification (Annexure-C) also degree has been restructured as MBA (HRM) as such there was no reason for their non appointment. This is equally applicable in case of petitioner no. 5 also.

29. In case of petitioner no. 6, 7, 8 and 9, the head of the department of Personnel Management and Industrial Relation, Patna University and Allagappa University has certified that the degree is equivalent to MBA with specialization in Personnel Management and Industrial Relation also known as Human



Resource Development Management, as such there was no reason for the respondents to deny them appointment on the post of Assistant Manager.

30. One of the additional ground taken by respondents in rejecting the case of petitioner no. 10 is that ambit of Rural Management is different from Business Administration or Business Management, however, Md. Aftab Alam having qualification of PGDM in Rural Marketing has been appointed whereas petitioners degree is from one of the most reputed and prestigious management institute which is also a Government institute imparting Rural Management Course as such on said ground his case cannot be rejected.

31. Petitioner no. 11 is holder of two years PGDFM from Indian Institute of Forest Management, Bhopal which is a two years full time course and is recognized by AICTE and one of the most prestigious institution of management of Central Government. Additional ground has been taken by the Authority that the ambit of Forest Management is different from Business Administration or Business Management. However, respondents have appointed Aditya Kumar Narayan, who is PGDM in Agri Business Management, as such he cannot reject the claim of petitioner no. 11 on such ground.



32. Petitioner no. 12 is holder of three years PGPM (Post Graduate Programme in Management) through distance mode from the Institute of Management and Technology, Ghaziabad with specialization in two branches of Finance and Human Resource. The institute is approved by UGC and is a Deemed University under Section 3 of UGC Act.

33. Petitioner no. 13 is holder of two years PGDBA (Post Graduate Diploma in Business Administration) with specialization in finance through Distance Mode from SYMBIOSIS Centre of distance learning.

34. Similarly, case of petitioner no. 14, additional ground for rejection of his case is that he is holder of post graduate Diploma in Industrial Management and ambit of same is different from Business Administration or Business Management. However, respondents have appointed Navin Kumar having MBA (Industry Integrated) as such they cannot take such plea against petitioner.

35. The respondents have also appointed many candidates having MBA in Hospitality and Tourism Management, MBA in Foreign Trade and other field of Management which is not within the ambit of Business Management or Business Administration, as such respondents



are precluded to reject the case of some of the petitioners on said ground.

36. An undertaking was taken from the petitioners that their degree/diploma are being examined by the Committee with respect to their equivalence with certificate of MBA/PGDM and as such subsequently they cannot take a plea that even though the degree/diploma possessed by petitioner have been certified by the University to be equivalent to MBA, they cannot be appointed. They are estopped taking such plea when they had not taken such plea during earlier course of litigation.

37. Moreover, the selection was not made on the basis of marks obtained in PGDM/MBA. Selection was made on the basis of written test conducted by combined competitive examination and merit list was prepared on the basis of marks obtained by candidates in written test and interview. Petitioners appeared in written test and interview and thereafter selected as such at this stage the issue of eligibility of petitioners cannot be raised. Out of total 407 advertised vacancy only 291 candidates have been appointed, as such many posts are still lying vacant. Learned counsel for the petitioners has relied upon the judgment of Apex Court in the case of *Shri Krishnan vs. The Kurukshetra University* since reported in *AIR 1976 SC 376*, in



para 6 (part) of said judgment is quoted hereinafter:-

“The last part of this statute clearly shows that the university could withdraw the certificate if the applicant had failed to attend the prescribed course of lectures. But this could be done only before the examination. It is, therefore, manifest that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the university to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear. It was, however, submitted by Mr Nandy, learned Counsel for the respondent that the names of the candidates who were short of percentage were displayed on the notice board of the college and the appellant was fully aware of the same and yet he did not draw the attention of the university authorities when he applied for admission to appear in LL.B. Part II examination. Thus the appellant was guilty of committing serious fraud and was not entitled to any indulgence from this Court.”

38. After hearing the parties and considering the materials available on record this Court finds that the rejection of case/claim of petitioners on the ground mentioned in the order as contained in Annexure-1 series and Annexure-2 in CWJC No. 16481 of 2017 and Annexure-1 in CWJC No. 4458 of 2017 is based upon *non est* ground and as such the order is not sustainable and is accordingly quashed. Petitioners are directed to be appointed within one month from the date of receipt/production of a copy of this order. Petitioners will be entitled for seniority and continuity of service but in facts and circumstances of present case petitioners are not entitled for any back wages.



39. The writ petition stands allowed.

(S. Kumar, J)

veena/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	29.11.2018
Transmission Date	N.A.

