

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

**CWP No.12299 of 2017 (O&M)
Date of decision: 21.08.2018**

Pardeep Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Malik, Senior Advocate,
with Mr. Sandeep Dhull, Advocate,
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

Ritu Bahri, J.

The petitioner is seeking a writ of certiorari for quashing the order dated 24.05.2017 (Annexure P-8), whereby his services have been terminated.

Respondent No.3 had advertised the post of Workshop Calculation & Science Instructor and the last date of submissions of application was 16.07.2012. Petitioner had applied for the said post. He was offered appointment on contract basis. He joined duty on 21.08.2012. From the date of appointment, service agreement was executed for six months and it was further extended after every six months. Last extension granted to him was dated 27.02.2017 (Annexure P-5). As per petitioner, he had passed his National Trade Certificate in the year 2006 (Annexure P-1). Thereafter, he passed his Apprentice Certificate (Annexure P-2). He also got diploma in Mechanical Engineering from Institute of Advance Studies in Education,

Deemed University, Gandhi Vidya Mandir Sardar Shahar, Rajasthan

(Annexure P-3). Apart from this, he had worked as Instructor from 18.07.2008 to 14.06.2012 in Aryan Institute of Technology, Rajpur Sadhaura. Copy of certificate, in this regard, has been annexed as Annexure P-4.

The petitioner was issued a show cause notice dated 15.05.2017 (Annexure P-6), to which, he submitted his reply dated 21.05.2017 (Annexure P-7). Ultimately, vide order dated 24.05.2017 (Annexure P-8), agreement dated 27.02.2017 has been cancelled and services of the petitioner have been terminated on the ground that the diploma possessed by him in Mechanical Trade through distance education mode has not been issued by any State Technical Education Board. The second ground of termination was that he had passed his diploma on 07.04.2012 and the experience certificate was issued on 14.06.2012. Hence, he had only two months' experience after possessing the said qualification.

Learned counsel for the petitioner has argued that the Institute of Advance Studies in Education of Gandhi Vidya Mandir, Sardar Shahr, Rajasthan is a Deemed University as per notification dated 25.06.2002 (Annexure P-9). The Center Government had issued a notification dated 10.06.2015 (Annexure P-10) that all degrees/diplomas awarded through Open and Distance Learning Mode of Education by the Universities established by an Act of Parliament or State Legislature, Institutions Deemed to be Universities under Section 3 of the University Grants Commission Act, 1956 stand automatically recognized. Even, vide notification dated 04.11.2015 (Annexure P-11), AICTE has taken a decision that all degrees/diplomas passed through Distance Mode from Deemed University shall be considered recognized. The Government of Haryana had

taken a decision, vide instructions dated 18.03.1975 (Annexure P-12) that all qualifications, which are recognized by the Government of India shall deemed to be recognized by the Government of Haryana.

The first question for consideration would be, “once the Central Government, vide notification dated 10.06.2015 (Annexure P-10), has given recognition to all the Technical Education Degrees/Diplomas awarded through Open and Distance Learning Mode of Education, can the respondents now terminate the services of the petitioner on the ground that the diploma in Mechanical Trade possessed by him through Distance Education, was not recognized as it had not been issued by the State Technical Educational Board.”

The stand taken by the respondents in the written statement is that vide letter dated 27.04.2017 (Annexure R-1), Haryana State Board of Technical Education, Panchkula has informed that the Board considers/grants equivalency only to such diploma courses, which are approved by AICTE. It is the policy of the AICTE not to recognize the diploma acquired through distance education mode. It is further submitted that keeping in view the above letter, termination order has been rightly passed.

A perusal of the letter dated 27.04.2017 (Annexure R-1) shows that approval is only granted to those diploma courses, which are approved by the AICTE. It has been the policy of the AICTE not to recognize the qualifications acquired through distance education mode at Diploma, Bachelors & Masters Level in the fields of Engineering Technology Architecture, Town Planning, Pharmacy, Hotel Management & Catering Technology, Applied Arts & Crafts & Post Graduate Diploma in

Management (PGDM).

The petitioner filed replication to the written statement. Along with the replication, he has placed on record copy of judgment passed by Hon'ble the Supreme Court in **Orissa Lift Irrigation Corporation Ltd. vs. Rabi Sankar Patro & others**, M.A. Nos. 1795-1796 of 2017 in Civil Appeal Nos.17869-17870 of 2017, decided on 22.01.2018 (Annexure P-15). In that case, Hon'ble the Supreme Court was considering validity of degrees in Engineering. It has been clarified that courses with respect to the diploma were not the subject matter of the judgment.

In the facts of the present case, letter dated 27.04.2017 (Annexure R-1) is very clear that the policy of AICTE is not to recognize the qualifications acquired through distance education mode at Diploma, Bachelors & Masters level. However, the diploma obtained by the petitioner has been recognized by the Central Government vide notification dated 10.06.2015 (Annexure P-10). This notification has also been accepted by the AICTE vide notification dated 04.11.2015 (Annexure P-11). Once the State of Haryana, as per instructions dated 18.03.1975 (Annexure P-12) have decided to recognize all the degrees which are recognized by the Government of India and even the AICTE, vide its letter dated 04.11.2015 (Annexure P-11), has accepted the notification dated 10.06.2015 (Annexure P-10) issued by the Government of India, services of the petitioner could not be terminated on the ground that the diploma acquired through Open and Distance Learning Mode from Gandhi Vidya Mandir, Sardar Shahr, Rajasthan (Annexure P-3) could not be treated a valid diploma as it had not been recognized by the State Technical Board.

So far as the experience of the petitioner is concerned, reference

at this, can be made to a judgment passed by Hon'ble the Supreme Court in **Buddhi Nath Chaudhary vs. Abahi Kumar**, 2001 (2) SCT 352. This was a case where an employee had been terminated on account of lack of experience. It has been held that, if there is any lack of experience at the time of appointment, after working on the post for a number of years, the employee had gained requisite experience. This could not be made a ground to terminate him from service, as it would lead to anomalous results. It has been further held as under:-

“6. The selected candidates, who have been appointed, are now in employment as Motor Vehicle Inspectors for over a decade. Now that they have worked in such posts for a long time, necessarily they would have acquired the requisite experience. Lack of experience, if any, at the time of recruitment is made good now. Therefore, the new exercise ordered by the High Court will only lead to anomalous results. Since we are disposing of these matters on equitable consideration, the learned counsel for the contesting respondents submitted that their cases for appointment should also be considered. It is not clear, whether there is any vacancy for the post of Motor Vehicle Inspectors. If that is so, unless any one or more of the selected candidates are displaced, the cases of the contesting respondents cannot be considered. We think that such adjustment is not feasible for practical reasons. We have extended equitable considerations to such selected candidates who have worked in the post for a long period, but the contesting respondents do not come in that class. The effect of our conclusion is that appointments made long back pursuant to a selection need not be disturbed. Such a view can be derived from several decisions of this Court including the decisions in ***Ram Sarup v. State of Haryana & Ors.*, 1979 (1) SCC 168; District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr. v. M. Tripura Sundari Devi**, 1990 (3) SCC 655; and ***H.C. Puttaswamy & Ors. v. The Hon'ble chief Justice of Karnataka High Court, Bangalore & Ors.*, 1991 Supp. (2) SCC 421**. Therefore, we must let the matters lie where they are.”

In the facts of the present case, the petitioner was appointed on contract basis on 21.08.2012. He worked for five years after joining and

ultimately, vide impugned order dated 24.05.2017 (Annexure P-8), his services were terminated. Meaning thereby, after acquiring diploma in 2011, he had worked for six years up till 24.05.2017 (date of termination). In this way, he has got the experience of six years. Accordingly, as per judgment passed in **Buddhi Nath Chaudhary's** case (supra), services of the petitioner could not be terminated.

Resultantly, this petition is allowed and the impugned order dated 24.05.2017 (Annexure P-8) terminating the services of the petitioner, is set aside. Petitioner be given all the consequential benefits with interest at the rate of 6% per annum.

21.08.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No