

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

Date of decision : 17.12.2018

(I) CWP-8941-2012 (O&M)

Shukal Chand and another

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

(II) CWP-9099-2012 (O&M)

Balkar Singh and others

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

(III) CWP-21575-2015 (O&M)

Davinder Pal Singh and others

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: None for the petitioner(s)
in CWP Nos.8941 and 9099 of 2012.

Mr. D.K. Sihag, Advocate,
for Mr. Surmukh Singh, Advocate,
for the petitioner(s) in CWP-21575-2015.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

Mr. Tarun Vir Singh Lehal, Advocate,
for the UGC.

JITENDRA CHAUHAN, J.

Three writ petitions, captioned above, are being disposed of by this common judgment as the questions of law and facts involved therein are the same.

In CWP Nos.8941 and 9099 of 2012, the petitioners are seeking promotion to the post of Junior Engineer (Civil) on regular basis being diploma-holder and fully eligible under Rules 8 and 9 of the Punjab Department of Public Works (Building and Road) Junior Engineers Class III Services Rules 1993, with effect from the date their juniors were promoted as such. In CWP No.21575 of 2015, the petitioners are praying for setting aside the proceedings of the Departmental Promotion Committee meeting held on 16.09.2015 for promotion to the post of SDE from JE Cadre on account of the fact that the cases of the petitioners were not considered on the ground that the petitioners had obtained B.Tech Degree through distance learning mode from Thapar University, Patiala resulting into promotion of the employees junior to the petitioners.

However, for brevity, the facts are being derived from CWP-8941-2012.

Undisputed facts of the present case are that the petitioners were appointed on various posts as Road Inspector, Work Munshi, Mistry and Surveyor and their services were regularized on different dates. It is pleaded case of the petitioners that they have passed the departmental examination and are entitled to further promotion for the post of Junior

Engineer (Civil) in the of the 1993 Rules. Reference is made to Rules 8 and 9 of the 1993 Rules which provide that 6% post are reserved for diploma-holders from the categories of Work Inspector, Work Munshi, Mistry and Surveyor, who are eligible for promotion as Junior Engineer against the promotion quota posts.

The respondent-State of Punjab has contested the instant petitions primarily on the ground that the diplomas on the basis of which the relief is being sought, have been acquired by the petitioners through distance learning mode and thus, cannot be considered to be valid. Reliance in this regard has been placed on the ratio of law laid down by Hon'ble the Supreme Court in ***Orissa Lift Irrigation Corp.Ltd. vs Rabi Sankar Patro (2018) 1 SCC 468.***

Heard.

It is to be noticed that Rule 8 of the 1993 Rules provides for 6% reservation of posts for diploma-holders from amongst Work Inspector, Work Munshi, Mistri and Surveyor. The petitioners have claimed benefits of said reservation on the strength of diplomas obtained by them from the IASE Deemed University, Gandhi Vidya Mandir, Sardar Shahar, Rajasthan. The controversy with regard to the validity of a diploma or degree in technical education obtained through distance learning mode has been put to rest by Hon'ble the Supreme Court in Orissa Lift Irrigation's case (supra), wherein, it has been laid down as under:-

“46. Having found the entire exercise of grant of ex-post-facto approval to be incorrect and illegal, the logical course in normal circumstances

would have been not only to set aside such ex-post-facto approvals but also to pass consequential directions to recall all the degrees granted in pursuance thereof in respect of Courses leading to award of degrees in Engineering. However, since 2004 UGC Guidelines themselves had given liberty to the concerned Deemed to be Universities to apply for ex-post-facto approval, the matter is required to be considered with some sympathy so that interest of those students who were enrolled during the academic sessions 2001- 2005 is protected. Though we cannot wish away the fact that the concerned Deemed to be Universities flagrantly violated and entered into areas where they had no experience and started conducting courses through distance education system illegally, the over bearing interest of the concerned students persuades us not to resort to recall of all the degrees in Engineering granted in pursuance of said ex-post-facto approval. However, the fact remains that the facilities available at the concerned Study Centres were never checked nor any inspections were conducted. It is not possible at this length of time to order any inspection. But there must be confidence and assurance about the worthiness of the concerned students. We, therefore, deem it appropriate to grant some chance to the concerned students to have their ability tested by authorities competent in that behalf. We, therefore, direct that all the degrees in Engineering granted to students who were enrolled during the academic years 2001 to 2005 shall stand suspended till they pass such examination under the joint supervision of AICTE-UGC in the manner indicated hereinafter. Further, every single advantage on the basis of that

degree shall also stand suspended.

47. The AICTE is directed to devise within one month from the date of this judgment modalities to conduct appropriate test/tests both in written examination as well as in practicals for the concerned students admitted during the academic sessions 2001-2005 covering all the concerned subjects. It is entirely left to the discretion of AICTE to come out with such modalities as it may think appropriate and the tests in that behalf shall be conducted in the National Institutes of Technology in respective States wherever the students are located. The choice may be given to the students to appear at the examination which ideally should be conducted during May- June, 2018 or on such dates as AICTE may determine. Not more than two chances be given to the concerned students and if they do not pass the test/tests their degrees shall stand recalled and cancelled. If a particular student does not wish to appear in the test/tests, the entire money deposited by such student towards tuition and other charges shall be refunded to that student by the concerned Deemed to be University within a month of the exercise of such option. The students be given time till 15th of January, 2018 to exercise such option. The entire expenditure for conducting the test/tests in respect of students who wish to undergo test/tests shall be recovered from the concerned Deemed to be Universities by 31.03.2018. If they clear the test/tests within the stipulated time, all the advantages or benefits shall be restored to the concerned candidates. We make it clear at the cost of repetition that if the concerned candidates do not clear the test/tests within the time stipulated or choose not to appear at the

test/tests, their degrees in Engineering through distance education shall stand recalled and cancelled. It goes without saying that any promotion or advancement in career on the basis of such degree shall also stand withdrawn, however any monetary benefits or advantages in that behalf shall not be recovered from them.

48. As regards the students who were admitted after the ex-post-facto approval granted in favour of such Deemed to be Universities, in our view, there was no sanction whatsoever for their admission. The Policy Statements as well as warnings issued from time to time were absolutely clear. The students were admitted on the strength either provisional recognition or on the strength of interim orders passed by the High Court. We therefore, declare that in respect of students admitted after the academic sessions of 2001-2005, the degrees in Engineering awarded by the concerned Deemed to be Universities through Distance Education Mode shall stand recalled and be treated as cancelled. Any benefit which a candidate has secured as a result of such degrees in Engineering in the nature of promotion or advancement in career shall also stand recalled. However, if any monetary benefit was derived by such candidates that monetary benefit or advantage will not be recovered by the concerned departments or employers. We, further direct that the entire amount paid by such students to the concerned Deemed to be Universities towards tuition fee and all other expenditure for such courses through distance education learning shall be returned by the concerned Deemed to be Universities to the respective students. This direction

shall be complied with by the concerned Deemed to be Universities scrupulously and the amounts shall be returned by 31st of May, 2018 and an appropriate affidavit to that extent shall be filed with UGC within a week thereafter.

49. to 52. XXX XXX XXX XXX XXX XXX XXX

53. Accordingly we direct:

***I** 1994 AICTE Regulations, do apply to Deemed to be Universities and the Deemed to be Universities in the present matter were not justified in introducing any new courses in Technical Education without the approval of AICTE.*

***II** Insofar as candidates enrolled during the Academic Sessions 2001-2005, in the present case the ex post facto approvals granted by UGC and their concerned authorities are set aside.*

***III** Consequent to aforesaid direction No.II, all the degrees in Engineering awarded by concerned Deemed to be Universities stand suspended.*

***IV** The AICTE shall devise the modalities to conduct an appropriate test/tests as indicated in Para 47 above. The option be given to the concerned students whose degrees stand suspended by 15.01.2018 to appear at the test/tests to be conducted in accordance with the directions in Para 47 above. Students be given not more than two chances to clear test/tests and if they do not successfully clear the test/tests within the stipulated time, their degrees shall stand cancelled and all the advantages shall stand withdrawn as stated in Paras 46 and 47 above. The entire expenditure for conducting the test/tests shall be recovered from the concerned Deemed to be Universities by 31.03.2018.*

***V** Those students who do not wish to exercise the option, shall be refunded entire money deposited by them towards tuition fee and other charges within one month of the exercise of such option. Needless to say their degrees shall stand cancelled and all advantages/benefits shall stand withdrawn as mentioned in Para 47.*

VI If the students clear the test/tests within the stipulated time, all the advantages/benefits shall be restored to them and their degrees will stand revived fully.

VII As regards students who were admitted after the Academic Sessions 2001-2005, their degrees in Engineering awarded by the concerned Deemed to be Universities through distance education mode stand recalled and be treated as cancelled. All benefits secured by such candidates shall stand withdrawn as indicated in Para 48 above. However, the entire amount paid by such students to the concerned Deemed to be Universities towards tuition fees and other expenditure shall be returned by the concerned Deemed to be Universities by 31.05.2018, as indicated in Para 48.

VIII By 31.05.2018 all the concerned Deemed to be Universities shall refund the sums indicated above in VII and an appropriate affidavit to that extent shall be filed with UGC within a week thereafter.

IX We direct the CBI to carry out thorough investigation into the conduct of the concerned officials who dealt with the matters and went about the granting permissions against the policy statement, as indicated in Para 49 above and into the conduct of institutions who abused their position to advance their commercial interest illegally. Appropriate steps can thereafter be taken after culmination of such investigation.

X The UGC shall also consider whether the Deemed to be University status enjoyed by JRN, AAI, IASE and VMRF calls for any withdrawal and conduct an inquiry in that behalf by 30.06.2018 as indicated above. If the moneys, as directed above are not refunded to the concerned students that factor shall be taken into account while conducting such exercise.

XI We restrain all Deemed to be Universities to carry on any courses in distance education mode from the Academic Session 2018- 2019 onwards unless and until it is permissible to conduct such courses in distance education mode and specific permissions are granted by the concerned statutory/regulatory authorities in respect of each

of those courses and unless the off-campus Centres/Study Centres are individually inspected and found adequate by the concerned Statutory Authorities. The approvals have to be course specific.

XII The UGC is further directed to take appropriate steps and implement Section 23 of the UGC Act and restrain Deemed to be Universities from using the word 'University' within one month from today.

XIII The Union of India may constitute a three members Committee comprising of eminent persons who have held high positions in the field of education, investigation, administration or law at national level within one month. The Committee may examine the issues indicated above and suggest a road map for strengthening and setting up of oversight and regulatory mechanism in the relevant field of higher education and allied issues within six months. The Committee may also suggest oversight mechanism to regulate the Deemed to be Universities. The Union of India may examine the said report and take such action as may be considered appropriate within one month thereafter and file an affidavit in this Court of the action taken on or before August 31, 2018. The matter shall be placed for consideration of this aspect on 11.09.2018.

A perusal of the above clearly shows that the technical degrees/diplomas obtained through distance learning mode being not valid, the petitioners cannot claim any benefit on the basis of such degrees/diplomas.

In view of the above, this Court is of the considered opinion that the instant petitions are devoid of any merit and the same are, hereby, dismissed.

A photocopy of this judgment be placed on the files of the

CWP-8941-2012
CWP-9099-2012
CWP-21575-2015

connected cases.

17.12.2018
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No