

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

CWP No.12081 of 2017 (O&M)  
Date of Decision : 21.05.2019.

Ajmer Singh.

...Petitioner

Versus

State of Haryana and others.

....Respondents

**Coram : Hon'ble Mr. Justice B.S.Walia**

Present: Mr. Amar Singh Tewatia, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

\*\*\*

**B.S.Walia, J. (Oral),**

1. Prayer in the writ petition is for the issuance of a writ in the nature of Mandamus for directing the respondents to accept the joining report of the petitioner (Annexure P/5) dated 19.08.2009, submitted pursuant to issuance of appointment letter (Annexure P/4) dated 18.08.2009 which was not accepted in view of the instructions of the Chief Secretary to the Government of Haryana, dated 21.05.2009 (Annexure P/9), clarifying that the All India Council for Technical Education had not given approval to any University/Institution to offer UG, PG Degree Programmes and Diploma Programmes in Engineering/Technical through Distance Education mode till 22.12.2008 consequentially no UG/PG Degree and Diploma in Engineering/Technology obtained through Distance Education mode was valid for initial appointment and promotion.

CWP No.12081 of 2017 (O&M)

2. Prayer is for the acceptance of joining report in the light of order (Annexure P/14) dated 29.03.2017 based on order of Hon'ble the Supreme Court Annexure P/12 dated 14.12.2012, whereby the degrees of Krishan Kumar and Narender Kumar Vaid were treated at par with that of Harbhajan Singh and K.C. Kamboj for the purpose of appointment.

3. Brief facts of the case leading to the filing of the writ petition are that the petitioner acquired degree of B.Tech (Civil) from IASE Deemed University, Sardarshar, Rajasthan, in the year 2007, where after he was conferred degree of M.Tech. in Civil Engineering (Soil Mechanics and Foundation Engineering) in the year 2013 from the National Institute of Technology, Kurukshetra.

4. The Haryana Staff Selection Commission (hereinafter referred to as 'the Commission') advertised 29 posts of Assistant Engineer (Civil) vide advertisement No.2/2008 dated 14.03.2008. It is the admitted stand of the parties that requisite qualification for applying for the aforesaid post was degree in civil engineering of a recognized University or one of the other qualification in civil engineering as specified in Appendix-B of the Haryana Services of Engineers, Class-II PWD (Irrigation Branch) Rules, 1970. The petitioner applied for the said post and pursuant to selection process carried out by the Commission, was declared successful vide order Annexure P/3 and eventually was issued appointment letter for the post of Assistant Engineer in the Irrigation Department vide Annexure P/4 dated 18.08.2009.

5. The petitioner submitted a joining report Annexure P/5 on 19.08.2009 but was not allowed to join, instead the matter was referred to

CWP No.12081 of 2017 (O&M)

the Government to take a decision whether the appointment was to be cancelled or treated valid in consultation with the Commission and Director Technical Education Board, Haryana, in view of the petitioner having acquired the qualifying degree from the Institute of Advance Studies in Education of Gandhi Vidya Mandir, Sardar Shahr, Rajasthan through distance education mode, and the said University not being recognized by the AICTE/UGC in terms of instructions issued by the Chief Secretary to the Government of Haryana dated 21.05.2009, as per which, no UG/PG Degree and Diploma in Engineering/Technology obtained through distance education mode was valid for initial appointment and promotion.

6. That in the circumstances, the petitioner filed representation Annexure P/6 dated 22.09.2009, for being allowed to join duty. However, no action was taken on the same. Thereupon the petitioner filed CWP No.19334 of 2009, which was disposed of vide order dated 21.01.2010 with a direction to the respondents to decide the representation within a period of one month. The representation of the petitioner was rejected vide order Annexure P/8 dated 03.03.2010 *inter-alia* on the ground that the petitioner did not possess a recognized degree which was a prerequisite for appointment to the post of Assistant Engineer in view of the degree possessed by the petitioner being through distance education mode which was not recognized by the AICTE.

7. The petitioner challenged order of rejection dated 03.03.2010 by filing CWP No.4883 of 2010 which was ordered to be heard along with CWP No.1640 of 2008 i.e. case titled as Kartar Singh vs. Union of India and others. Kartar Singh's case as well as the writ petition filed by the

CWP No.12081 of 2017 (O&M)

petitioner were dismissed vide order dated 06.11.2012, by holding that the degree obtained through distance education mode from deemed universities was not valid so as to entitle a candidate for initial appointment and promotion. The petitioner did not challenge the dismissal of the writ petition filed by him. However, Kartar Singh and others whose writ petitions were dismissed vide order dated 06.11.2012 by the Division Bench of this Court, filed SLP No.35793-35796 of 2012, in which, interim orders were issued vide Annexure P/11 dated 07.12.2012 that no adverse action be taken against the students whose degrees had been declared illegal by the order of the High Court. Likewise, vide Annexure P/12 dated 14.12.2012, it was ordered that students whose degrees and diplomas had been declared null and void in the impugned order may apply for employment and appointment if the cut-off dates were going to expire before 21.01.2013. Petitioner has placed reliance on aforementioned orders as also on Annexure P/13 i.e. clarification issued by the Ministry of Human Resources Development (Department of Higher Education) dated 10.07.2015 that qualification awarded through distance education mode by a University established by an Act of Parliament or State Legislature, Institutions Deemed to be Universities under Section 3 of the University Grants Commission Act, 1956 and Institutions of National Importance declared under an Act of Parliament stood automatically recognized for the purpose of employment to posts and service under the Central Government provided the same had been approved by the University Grants Commission.

CWP No.12081 of 2017 (O&M)

8. The SLP filed by Kartar Singh and others was dismissed and the order passed by the Division Bench of this Court in CWP No.1640 of 2008 dated 06.11.2012 was upheld. However, Hon'ble the Supreme Court while deciding Civil Appeal No.17879-17870 of 2017, arising out of SLP (C) Nos.19807-19808 of 2012 titled Orissa Lift Irrigation Corp. Ltd. vs. Rabi Sankar Patro and others, and some other cases i.e. including the SLP filed by Kartar Singh decided on 03.11.2017, gave an option to the students to appear in a test to be conducted by the AICTE and in case the students cleared the test in two chances within stipulated time, all the advantages or benefits of the diploma/degree were to stand fully revived. Relevant extract of the decision in Orissa Lift Irrigation Corp. Ltd.'s case (supra) is reproduced 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.*

*53. Accordingly we direct:*

*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.*

*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.*

*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.*

9. The petitioner acquiesced in the dismissal of CWP No.4883/2010 filed by him (which was dismissed along with Kartar

CWP No.12081 of 2017 (O&M)

Singh's case i.e. CWP No.1640 of 2008 on 06.11.2012) and did not file SLP yet on the basis of interim orders of Hon'ble the Supreme Court, Annexure P/11 and P/12 dated 07.12.2012 and 14.12.2012, the petitioner filed the instant writ petition in May, 2017 for being allowed to join duty in view of appointment letter Annexure P/4 dated 18.08.2009.

10. Learned counsel for the petitioner contends that once similarly situated students were allowed to join, then there was no reason to deny similar relief to the petitioner.

11. The aforementioned plea has been vehemently opposed by learned Sr. DAG, on the ground that the degree which the petitioner possessed and on the basis of which he was offered appointment was not a recognized degree, since the same was acquired through distance education mode and was not recognized by the AICTE. Moreover, prayer for being allowed to join duty was rejected vide order Annexure P/8 dated 03.03.2010. The order of rejection was passed on the ground that the petitioner did not possess the requisite qualification for being appointed to the post of Assistant Engineer in view of the degree possessed by the petitioner not being recognized. The petitioner challenged order of rejection Annexure P/8 dated 03.03.2010 by way of CWP No.4883 of 2010, which was ordered to be heard along with CWP No.1640 of 2008 in case titled as Kartar Singh vs. Union of India and others. The aforesaid writ petitions were dismissed vide order dated 06.11.2012 by the Division Bench of this Court. The petitioner did not challenge the dismissal of the writ petition. However, some writ petitions filed by similarly situated candidates were not decided along with CWP No.1640 of 2008 and came

CWP No.12081 of 2017 (O&M)

to be decided in the year 2017 vide Annexure P/16 dated 08.05.2017 and the petitioners therein were allowed to join in terms of interim orders passed by Hon'ble the Supreme Court in Kartar Singh's case. Hon'ble the Supreme Court decided Kartar Singh's SLP along with other connected case namely Orissa Lift Irrigation Corp. Ltd.'s case (supra) on 03.11.2017 by holding that the deemed university could not offer any technical course especially degrees in engineering through open distance learning mode without the approval of the AICTE and UGC. The candidates who had been admitted in the year 2001 to 2005 were given one opportunity to clear a test to be conducted by the AICTE in two chances and in the eventuality of the candidate clearing the test, all the advantages or benefits of the diploma/degree were to stand fully revived.

12. The petitioner although qualified the written test conducted by the AICTE in the first attempt in accordance with the directions given in Orissa Lift Irrigation Corp. Ltd.'s case (supra), but the same would not give a right to the petitioner to claim being allowed to join service because the claim of the petitioner for being allowed to join duty pertains to the year 2009, for which the petitioner filed CWP No.19334 of 2010, wherein directions were issued to the respondents to decide the representation of the petitioner. Pursuant to the directions, the representation filed by the petitioner was dismissed by the respondents vide order dated 03.03.2010 while making reference to the instructions issued by the Chief Secretary to the Government of Haryana, dated 21.05.2009. The said rejection order was challenged by way of CWP No.4883 of 2010, which was clubbed for hearing with CWP No.1640 of 2008, titled as Kartar Singh vs. Union of

CWP No.12081 of 2017 (O&M)

India and others. The said writ petition was dismissed on 06.11.2012. However, the petitioner did not challenge the dismissal of his writ petition. It is only on the basis of interim orders dated 07.12.2012 and 15.12.2012 Annexures P/11 and P/12 respectively that the petitioner woke up from his slumber and filed the present writ petition in May, 2017 claiming relief after a lapse of five years from the date of passing of interim order's by Hon'ble the Supreme Court in the case of those who were vigilant and had challenged the dismissal of their writ petitions. The petitioner did not approach Hon'ble the Supreme Court against the dismissal of his writ petition in the year 2012 nor for that matter took recourse to any proceedings in terms of the interim orders dated 07.12.2012 and 14.12.2012, passed by Hon'ble the Supreme Court in the SLP filed by Kartar Singh and others and filed the instant writ petition only after a lapse of close to five years in May, 2017.

13. The petitioner's case is that of a fence sitter and not having approached Hon'ble the Supreme Court nor for that matter having initiated any proceedings in terms of order of Hon'ble the Supreme Court dated 7.12.2012 and 14.12.2012, the petitioner is not entitled to seek relief by way of the present writ petition. The writ petition filed by the petitioner is hit by delay and laches as also on account of the petitioner having adopted the position of a fence sitter.

14. Accordingly finding no merit in the writ petition, the same is dismissed.

21.05.2019

rajesh.k.khurana

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No

**(B.S.Walia)**  
**Judge**