

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19891 of 2014
Date of Decision: 17.01.2019

Avtar Singh

... Petitioner

Versus

The Municipal Corporation, Chandigarh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sameer Sachdeva, Advocate
for the petitioner.

Ms. Deepali Puri, Advocate
for respondent Nos.1 to 4.

Mr. Yash Pal Sharma, Advocate for
Mr. Amar Ashok Pathak, Advocate
for respondent No.6.

ARUN MONGA, J. (ORAL)

The present writ petition has been filed, inter alia, seeking issuance of writ in the nature of *Mandamus* directing respondent No.3/Chief Engineer, Municipal Corporation, Chandigarh to appoint the petitioner as J.E.(Electrical) with all consequential benefit alongwith 12% interest w.e.f. 01.03.2010.

2. One of the lead contentions of the petitioner as stated in the writ petition is that respondent Nos.5 and 6 who have been appointed as JEs (Electrical) were not eligible for being appointed, inter alia, on the ground that respondent No.5 who was offered the appointment did not join in time and respondent No.6 does not hold a degree as recognized by AICTE.

3. The petitioner has, therefore, sought his appointment in the place of the appointments of respondent Nos.5 and 6 as JE(Electrical). Though no prayer for a writ of certiorari has been made seeking to quash the appointment of respondent Nos.5 and 6, yet a mandamus has been sought on the ground that their appointments are arbitrary, unlawful and unjust.

4. The respondent Nos.1 to 4 have filed a joint reply to the writ petition.

Wherein, on merits, stand has been taken that as far as the degree of respondent No.6 is concerned, a letter dated 08.02.2010 (Annexure R-1) was written to the Vice Chancellor of the University to confirm whether the degree of Bachelor of Science (Electrical) as submitted by respondent No.6 was recognized from the University Grants Commission and AICTE. Pursuant thereto, a response dated 18.03.2011 was received from the Registrar of the University, wherein it has been stated that respondent No.6 had indeed passed B.Sc. Engineering (Electrical) from the Baba Bhim Rao Ambedkar, Bihar University. And it is stated that the University is recognized by the Ministry of Human Resources Development and University Grants Commission, Delhi.

5. As regards respondent No.5 in Para-14 of the written statement, it has been stated that after issuance of appointment letter he joined his duty on 03.01.2011.

6. I have gone through the respective pleadings of the parties in the writ petition as also the record appended thereto and I have heard the rival contentions of respective learned counsels.

7. Learned counsel appearing for respondent Nos.1 to 4 as also the private respondent Nos.5 and 6 at the outset vehemently objected to the delay in filing the present writ petition. The posts in question were advertised on 04.11.2009 and pursuant thereto the selection culminated in the year 2010. Thereafter, successful candidates joined their duties on the post selected. The petitioner has admittedly filed the present writ petition in this Court on or about 17.09.2014 almost after a period of four years.

8. On merits, the learned counsels argued in terms of the stand taken by them in their pleadings that respondent No.5 having once joined the duties, who admittedly, was higher in merit and the recognition of his degree is also under not challenge, therefore, the claim of the petitioner does not survive. As far as respondent No.6, it is contended that his degree has been granted by the University which was originally established in the year 1952 by the State of Bihar. The same was later on named as Baba Bhim Rao Ambedkar, Bihar University in the year 1992. It throughout

has been under the control of State of Bihar. Thus, not only it is Government University, but is duly approved by UGC as also by the Ministry of Human Resources and Development and AICTE.

9. Per contra, learned counsel for the petitioner contends that the petitioner had sought an information under the RTI Act and the same was provided to him vide (Annexure P-30) dated 18.07.2014 whereby AICTE informed that the said University does not come under the purview of AICTE.

10. I am of the view that the controversy of AITCE affiliation cannot be gone into at this stage. Concededly, the petitioner has filed the present writ petition after a lapse of almost four years. Coupled with the fact that the advertisement dated 04.11.2009 (Annexure P-1) vide which the post of JE (Electrical) has advertised clearly envisaged the eligibility as Diploma in Civil Engineering from a recognized University Institute or equivalent. There is no mention of AITCE recognition in the advertisement.

11. The University from where respondent No.6 has graduated in B.Sc (Engineering) is clearly recognized not only by the Ministry of Human Resources Development and but also approved by UGC. It has also been noted already that it is a Government University, which has not been controverted. The question of AITCE recognition is left open to be decided in appropriate proceedings.

12. Equity is heavily loaded in favour of respondent Nos.5 and 6 in view of the fact that, indeed, in this case, after their selection in the year 2010, they have been working as such for the last 9 years. Respondent No.5, on the other hand, is concededly higher in merit than petitioner and even otherwise he joined his duty as per his appointment letter, therefore, the ground of non joining is not tenable.

11. With these observations, the present writ petition is dismissed with no order as to costs.

17.01.2019

rekha sharma

(ARUN MONGA)
JUDGE

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