

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. Date of decision-11.09.2019
CWP-22303-2015(O&M)

Kamal Krishan

...Petitioner

Vs.

Punjab Subordinate Service Selection Board and others

...Respondents

2. CWP-6496-2017(O&M)

Harvinder Singh

...Petitioner

Vs.

State of Punjab and others

...Respondents

3. CWP-20639-2017(O&M)

Kuldeep Singh

...Petitioner

Vs.

Subordinate Services Selection Board and others

...Respondents

4. CWP-22221-2014(O&M)

Kawalpreet Kaur

...Petitioner

Vs.

State of Punjab and others

...Respondents

5. CWP-23239-2014(O&M)

Dharminder Singh

...Petitioner

Vs.

State of Punjab and others

...Respondents

6. CWP-23345-2014(O&M)

Kuljeet Singh

...Petitioner

Vs.

State of Punjab and others

...Respondents

7. CWP-11014-2015(O&M)

Jatinder Kapoor

...Petitioner

Vs.

State of Punjab and others

...Respondents

8. CWP-15645-2012(O&M)

Dharam Singh

...Petitioner

Vs.

The State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

**Present: Mr. Vipin Mahajan, Advocate for the petitioner(s)
in CWP-22303-2015.**

**Mr. Jugam Arora, Advocate for
Mr. R.K. Arora, Advocate for the petitioner(s)
in CWP-6496-2017.**

Ms. Bhupinder Kaur , Advocate for
Mr. Kapil Kakkar, Advocate for the petitioner(s)
in CWP-20639-2017

Mr. Vikas Chatrath, Advocate
for the petitioner(s) in CWP-22221-2014.

Mr. Vivek Sharma, Advocate
for the petitioner(s) in CWPs-23239 & 23345 of 2014

Mr. Sukhdev Kamboj, Advocate
for the petitioner(s) in CWP-11014-2015

Mr. Gurpreet Singh, Advocate for
Mr. Saurabh Arora, Advocate
for the petitioner(s) in CWP-15645-2013.

Ms. Gunkirat Kaur, A.A.G., Punjab.

Mr. Tarun Vir Singh Lehal, Advocate
for respondent No.2 in CWP-22303-2015 & 20639-2017
for respondent No.3 in CWP-6496-2017 & CWP-11014-2015
respondent No.4 in CWP-22221-2014

Mr. R.S. Randhawa, Advocate
for respondent No.4 (in CWP-11014-2015).

JITENDRA CHAUHAN, J.

The above noted batch of 8 writ petitions is being disposed of by this single judgment as common questions of law and facts are involved therein. However, the facts are being derived from CWP No.22303 of 2015, for brevity.

Through the instant civil writ petition, petitioner has sought quashing of order dated 16.03.2015 (Annexure P-9) and direction to the respondents to consider and appoint him on the post of Clerk in pursuance to advertisement No.2/2013 (Annexure P-1).

Learned counsel for the respondent-UGC states that upto date list of the Universities, stands reflected on the website.

A Co-ordinate Bench of this Court in **Karamjeet Kaur vs. State of Punjab and another 2019(3) SCT 162** has observed in paragraph No.52 as under:-

52. Upon consideration of facts, developments and change in distance education policies over the time and the findings recorded under different heads from HEAD “A” To “G” following parameters/directions are issued:-

(i) In case of Deemed Universities and Private Institutions (other than Universities) the cut-off date with regard to territorial jurisdiction and study centre will be 29.3.2010, all admissions made prior to 29.3.2010 to obtain degrees awarded through use of study centres, off-campus centres of Deemed Universities and Private Institutions (other than Universities) will be valid, subject to the statutes/ MOA (Memorandum of Association) of University permitting opening up of Centres in the territory from which it was operating or permits opening up of centres at any place where there are reasonable concentration of students (as permitted by UGC in 1985 Regulations, Annexure P-34).

(ii) In case of State Universities (both Government funded or Private funded) the cut-off date will be 1.11.2012 , therefore all admissions made prior to 1.11.2012 to obtain degrees awarded through use study centres/off campus centres of State Universities or Private Universities will be valid, subject to the statutes/ MOA of University permitting opening up of Centre in the territory from which it is operating or permits opening up of centres at any place where there are reasonable concentration of students (as permitted by UGC in 1985 Regulations, Annexure P-34).

(iii) The qualifications attained after the cut-off date mentioned above will stand de-recognized for all purposes. However as opening up of study centers was permitted after prior approval from UGC, it is clarified that even after the cut-off date if the qualification attained through distance education mode from Institutions (other than University) / Universities (Central University, State University,

Deemed University or Private University) is in consonance with the regulations/ notifications/policies of DEC/ UGC with regard to territorial jurisdiction and study centres prevailing at the relevant time and the study centre is approved by the UGC, then the qualification will be recognized and valid. This observation has been made due to lack of complete Information before this Court, as no list of approved study centres has been brought before this Hon'ble Court.

(iv) With regard to First degrees awarded by Universities [including Central Universities, State Universities, Private Universities, Deemed Universities] by way of Distance Education in the faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences are concerned, the same shall be valid in light of the 1985 regulations (Annexure P-34) permitting imparting education though distance mode via study centres, subject to being admitted in the University prior to the cut-off date mentioned above in para no. (i) & (ii) of parameters laid above, as the case may be.

(v) With regard to Post graduation degrees awarded by way of distance education in non-technical field (such as Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences etc.) in cases where Institutional Recognition has been granted, if the qualification is in terms of MOA (Memorandum of Association) / Acts/ Statute of the University viz the field of specialization and the degree is notified under Section 22 of the UGC Act (List of degrees specified under Section 22 of UGC Act is on record as Annexure P-38) the same shall stand validated, subject to being admitted in the University prior to the cut-off date mentioned above in para no. (i) & (ii) of parameters laid above, as the case may be.

(vi) With regard to post graduation degrees awarded by way of distance education in Non-Technical Field (such as Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences etc.) where programme wise recognition has been granted, only those qualifications will be valid which have been mentioned in the list of approved/recognised qualifications, subject to being admitted in the University prior to the cut-off date mentioned above

in para no. (i) & (ii) of parameters laid above, as the case may be.

(vii) The qualifications which have been held to be valid above be treated as at par with the degrees awarded by way of conventional mode/ regular mode of education.

(viii) The State Government is directed to take necessary action in terms of the above findings within a period of 6 months from the date of receipt of certified copy of the order. The State government can verify the recognition list [whether University (Central, State, Deemed or Private) /Institution (other than University) had “Institutional Recognition” at particular time or “Programme-wise Recognition”] uploaded by the Distance Education Bureau, UGC on its website, which is also on record as Annexure P-57. Further the State government can also verify as to whether degree has been mentioned in the list of degree specified under Section 22 of UGC Act or not from the list uploaded on the website of UGC which is also on record as Annexure P-38. With regard to Memorandum of Association, Act and Statutes of the universities, the State government can obtain the same from the students whose cases are pending at the level of the government or from the concerned universities or from the UGC.

(ix) The State government after completing the exercise in terms of Para No.(viii) hereinabove would start a portal/webpage/ website wherein information with regard to recognition of different types of degrees from various universities is uploaded, so that not only general public is aware with regard to recognition of degrees, but also uniformity & transparency can be maintained with regard to implementation of the aforesaid directions, in all the departments of the State Government right down till the field level.

For clarity an illustration is being given hereunder:-

To verify the qualification of a candidate who has attained qualification of M.A. through distance education mode from a University in Rajasthan having centre in Punjab, the state will firstly

check the status of the University viz if the university is a Deemed University then cut-off date mentioned above in para no. (i) of parameters laid above will be applicable and in case of state universities and private universities cut-off date mentioned above in para no. (ii) of parameters laid above will be applicable.

In case the candidate has got admission in the course after the cut-off date, the same shall be invalid, however if he was admitted in the course prior to the cutoff date in that case the state will then verify the statutes/MOA of the University and if the degree is in the field mentioned in the statutes/ MOA and is also mentioned in the list of degree specified under Section 22 of the UGC, then the qualification will be considered as valid subject to the territory from which University is operating is in consonance with the Acts/ Statutes / MOA of the University. As in the present Illustration if in the statutes/MOA of University field of Arts is mentioned and the degree of M.A. is also mentioned in the list of degree specified under Section 22 and in the Statute/MOA of University it is mentioned that territorial jurisdiction of University is throughout the territory of India or that it can open centres where ever there are reasonable concentration of students, then the qualification attained from centre at Punjab shall be considered as valid.

(x) In view to reduce litigation and hardship of the candidates/ students liberty is being granted to all the students/candidates who will be affected on account of noncompliance of the aforesaid directions, by the State Government, to adopt appropriate recourse of law including filing of the contempt petition.

(xi) It is clarified for all purposes, that the candidates whose degree will stand invalidated in view of the parameters mentioned above, all benefits secured by such candidates/employees shall stand withdrawn, however if any monetary benefit has been drawn such as salary etc. the same shall not be recovered. In such cases the employees /candidates will be at the liberty to take appropriate action, as available under law, so as to recover the amount paid towards tuition fees, expenditure incurred, damages etc. etc. from

the University/Institution concerned. The above said direction is being given on the lines of directions, in similar situation issued by the Hon'ble Supreme Court of India in paragraph 53 (vii) of the judgment reported as 2017 (4) SCT 683: 2017 AIR (SC) 5179 titled as Orissa Lift Irrigation Corp. Ltd V. Rabi Sankar Patro.

However this Court considering the hardships to be faced by the employee for no fault of his and who on the basis of the above said qualification which is not in terms of the aforesaid parameters, had secured jobs (on regular basis/permanent basis as per Recruitment Rules) and had settled in their life and have attained ample experience while performing the duties on the post which he/she is holding for a substantial period of time, considers it appropriate that a one-time concession be granted to the effect, that the persons who are already in job on the basis of the qualification which might be invalidated on account of above said directions, be permitted to continue in job, but in the cases where the qualification if invalidated was essential qualification to hold the post, they shall not be granted any further benefits, viz promotion etc. etc. In the cases where qualification which does not fulfill the above said parameters is not an essential qualification and has been utilized only for securing higher marks at the time of selection, their case be treated separately as they fulfill the requisite qualification in terms of the statutory rules governing the post, therefore they will be entitled for all further benefits subject to that even in case of promotion the qualification so invalidated is not an essential qualification.

Similarly in cases where an employee was recruited on temporary basis after due selection process based upon distance education degrees (now invalidated in view of the parameters laid above) but has been denied regularization of services on account of such distance education degrees despite otherwise being eligible, suitable for regularization, while other persons recruited along with such employee have been regularized in service, in such cases benefit of regularization be extended if the qualification (attained through distance education mode) so invalidated is not an essential

qualification to hold the post in terms of statutory rules and is an additional qualification which may have been used for attaining additional marks at the time of initial selection. All benefits of service will be extended as have been granted to other employees recruited in the same selection or appointment made at the same time. However, if the qualification from distance education mode (which now stands invalidated in view of above parameters) is essential qualification to hold the post, in that case NO benefit will be granted including benefit of regularization. It is so being laid down as temporary employee has no vested right to hold the post.

Note:-

(a) It is clarified that, in case where the respondent State did not consider any person for appointment by way of direct recruitment or by promotion on account of possessing qualification through distance education mode, but has been issued orders pursuant to interim orders issued by the Hon'ble Court or has been issued conditionally subject to outcome of any petition pending before the Hon'ble Court, in that case concession granted hereinabove will not be extended. The concession has been given on the rationale that there was complete disclosure on part of employee and state having found eligible, permitted employee to work for a considerable period, irrespective of holding a distance education degree.

*(b) In a situation where the graduation or post-graduation has been attained through distance education mode and higher qualification has been attained through normal mode/conventional mode but his graduation or postgraduation degree attained through distance education mode stands invalidated in view of the aforesaid parameters, then the higher qualification attained on the basis of the degree so invalidated will also stand invalidated, as illegality at the original/ foundation stage being a nullity cannot be cured by subsequent acquisition of valid higher degree based upon such invalid degree. It is well settled that in case of foundation being a nullity the whole edifice constructed thereupon has to fall. This view finds support from the law laid down by the Hon'ble Apex Court in the case of **M.P. State Coop. Bank Ltd., Bhopal v. Nanuram Yadav***

2007 (4) SCT 464 and by this Court in Jagir Singh v. State of Haryana reported as 2006 (7) SCT 386.

(c) Needless to say, that in case where candidate has obtained a degree by attending the PCPs and has undertaken exams in the main campus or within the State where the University (as defined under Section 2 (f) and Section 3 of UGC Act) is situated, in that case their degree shall be valid, as no question of territorial jurisdiction arises. This is subject to the University, having recognition to impart education in such field (at the time of institutional recognition, MOA/Statutes of University permits imparting education in such field and at the time of programme-wise recognition such course had been permitted).

Considering that the finality has been accorded to the issue in question and no LPA as on today has been filed either by the State of Haryana or by the State of Punjab, therefore, the petitions are disposed of in terms of law laid down in **Karamjeet Kaur's case (supra)** and on examination the claim of the petitioner(s) is found to be made out, the necessary benefit be allowed to him without any further delay. In case on consideration, the competent authority reaches to the conclusion that case of the petitioners is not covered by the ratio of law laid down in **Karamjeet Kaur's case (supra)**, the authorities shall pass a detailed speaking order.

However, the petitioners are at liberty to lay challenge to the same, if so advised.

(JITENDRA CHAUHAN)
JUDGE

11.09.2019

ps-I

Whether speaking/reasoned : Yes No

Whether Reportable : Yes No