

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

**Civil Writ Petition No. 24938 of 2016 (O&M)
Pronounced On: 27.03.2019**

Jagjit Singh and another

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. R.K. Arora, Advocate
for the petitioners.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab
for official respondent Nos. 1 &2/State.

Mr. Tarun Vir Singh Lehal, Advocate
for respondent No. 3-UGC.

Mr. Nikhil Nayyar, Advocate
Mr. Rajat Khanna, Advocate and
Mr. Sai Vinod, Advocate
for respondent No. 4-Sikkim Manipal University.

JASWANT SINGH, J.

1. By instituting the instant petition under Article 226 of the Constitution of India, petitioners namely Jagjit Singh and Gurcharan Jaidka belonging to General Category, aspirants for the post of Clerk/Clerk-cum-Data Entry Operator have sought quashing of select/merit list dated 10.10.2016 (**Annexure P-4**) on the ground that petitioners are qualified Graduate Degree holders from Sikkim Manipal University which is duly recognized by University Grant Commission (for short 'UGC'), and have been wrongly considered ineligible having acquired their Graduate Degrees through Distant Education Mode, thus possessing invalid degrees. They

claim right of consideration based on their secured merit for appointment with effect from dates candidates junior in merit in their category have been appointed.

2. Respondent No. 2-Subordinate Service Selection Board, Punjab (for short 'Board') vide Advertisement No. 4 of 2015 dated 27.11.2015 (**Annexure P-1**), invited online applications for recruitment of 556 posts of Clerks and 58 posts of Clerk-cum-Data Entry Operator. The posts of Clerks were subsequently increased to 2715 through different corrigendum. The minimum qualification prescribed for selection and appointment to the post of Clerks/Clerks-cum-Data Entry Operators was as below:

Educational Qualification (Both for Sr. No. 1 & 2):-

(a) Graduation Degree from any recognized University/Institution as per the guidelines/instructions of the UGC.

(b) Punjabi passed up to Matriculation level.

(c) Possesses at least one hundred and twenty hours course with hands on experience in the use of Personal computer on Information Technology in office productivity applications or Desktop Publishing applications from Government recognized institution or a reputed institution, which is ISO 9001 certified.

OR

Possesses a Computer Information Technology Course Equivalent to 'O' level certificate of Department of Electronics Accreditation of Computer Course (DOEACC) of Government of India.

3. The petitioners applied online for the post of Clerk/Clerk-cum-Data Entry Operator in General Category. The Board accepted their applications and they appeared for Punjabi and English typing test

conducted from 23.05.2016 to 20.06.2016. The petitioners qualified the test and Board vide public notice dated 28.06.2016 published a provisional merit list. The Board vide notice dated 22.07.2016 declared counselling schedule which was conducted from 26.07.2016 to 19.08.2016. The petitioners appeared in the counselling in terms of category wise schedule, however, Board in final merit list declared on 10.10.2016 did not include name of the petitioners on the ground that they have acquired degree through Distance Education Mode with Examination Centre outside the Territorial Jurisdiction of the University.

4. Counsel for the petitioners submitted that the petitioners have acquired degree of Bachelor of Computer Application (BCA), from Sikkim Manipal University (for short 'SMU'), Gangtok, which is a State Private University established by Sikkim Manipal University of Health, Medical and Technological Sciences Act, 1995. Both the petitioners were enrolled through learning centre situated in the State of Punjab on 04.04.2008 and 09.10.2007 respectively and completed their degree on 28.12.2011 and 20.11.2010 respectively. SMU is recognised by UGC and all the courses run by University are approved by regulatory bodies like Medical Council of India (MCI), Nursing Council of India (NCI) and Indian Association of Physiotherapy. The petitioners took admission through a centre of the university in Punjab and exam in respect of degree was conducted by University in the examination centres established by University in Mohali (Punjab). They acquired degree from said university through distance education mode which is duly approved by UGC and all other regulatory bodies so Board has acted in an arbitrary manner while rejecting the candidature of petitioners.

5. Mr. Nikhil Nayyar, Mr. Rajat Khanna and Mr. Sai Vinod, Advocates appeared for respondent-Sikkim Manipal University and argued that SMU is a duly recognised University and Distance Education Council (DEC) established under Indira Gandhi National Open University Act, 1985 and had been granted *ex post facto* recognition for courses offered through distance education mode since 2001. The Hon'ble Sikkim High Court vide order dated 29.06.2015 (**Annexure P-11**) in Writ Petition (C) No. 8 of 2015 has clarified that students, who were enrolled prior to academic session 2011-12, having completed degree before or thereafter, stand protected and their degree is valid.

Despite affording sufficient opportunities to file reply, respondent No. 2-Board has not filed reply. Accordingly, their defence is ordered to be struck off.

6. Before dwelling into controversy involved, it would be apt to notice few **undisputed** facts and events, as furnished at the time of arguments, relating to establishment, status and approval of courses imparted by Universities including SMU through distance education mode as below:

01.03.95 Ministry for Human Resource Development ('MHRD') vide Notification No. 44 granted recognition/equivalence to degrees or qualifications obtained through distance education for the purpose of employment to posts and services under the Central Government.

15.11.95 Sikkim Manipal University ('SMU') was established by virtue of Sikkim Manipal University of Health, Medicine and Technological Sciences Act, 1995. SMU is a unique collaboration between the Government of Sikkim and the Manipal Education and Medical Group to improve educational opportunities and health services in Sikkim and North-East region.

28.08.01 Chairman of University Grants Commission ('UGC'), informed Sikkim Manipal University that it could **award degrees through Distance Education at their centres in different parts of the country.**

Feb' 04 The erstwhile Distance Education Council ('DEC'), established under Indira Gandhi National Open University Act, 1985 directed all Centres/Institutions/Directorates offering distance education to get their Degrees/Diplomas/Certificate (Programmes) recognized & approved by DEC and in accordance thereto, SMU submitted an application seeking recognition.

29.08.07 DEC granted *ex post facto* recognition to respondent-University for courses offered through distance mode since 2001.

- 29.08.07** DEC further granted provisional recognition to run courses for the academic year 2007-2008 i.e. Till 28.08.2008.
- 26.11.08** DEC extended provisional recognition for the academic year 2008-09.
- 15.10.09** DEC granted institutional recognition for three academic years i.e. 2009-10 to 2011-12.
- 06.11.09** DEC communicated an approved list of 26 courses permitted to be offered through distance mode.
- 10.03.10** DEC in its 35th Meeting discussed the issue of territorial jurisdiction for offering programmes through distance mode, and resolved **“distance education and online education cannot have the Territorial Jurisdiction and it was decided that in case of Central and State Universities, the Territorial Jurisdiction will be as per their Acts and Statutes for offering programmes through distance mode.”**
- 08.06.12** DEC in its 40th Meeting overturned its policy on ‘Territorial Jurisdiction’ resolved in 35th meeting. It was resolved that location of study centres of State Universities must be confined to the State Act and in any case not beyond the

territorial jurisdiction of the States.

10.07.12 Respondent-University i.e. SMU filed an application before the DEC seeking renewal of approval for distance programmes.

2013 Respondent-University i.e. SMU was constrained to file W.P.(C) No. 4 of 2013 before Sikkim High Court as the DEC failed to act on their application seeking continuation of recognition. Furthermore, the University also challenged validity of territorial policy of the DEC resolved during their 40th meeting.

22.02.13 Sikkim High Court was pleased to issue notice to DEC and further granted an ex-parte interim stay on operation of territorial policy dated 08.06.2012 resolved during 40th meeting.

04.05.2013 DEC was dissolved with immediate effect and thereafter entire regulatory mantle was shifted to the UGC.

23.08.13 UGC clarified that a Private University established under a State legislation shall operate ordinarily only within the territorial jurisdiction under its Act and in no case beyond the territory of the State of its

location.

07.11.13 Sikkim High Court confirmed grant of interim orders (dated 22.02.2013 & 19.07.2013) against all respondents until final disposal of the Writ Petition.

26.06.15 Sikkim High Court upheld validity of the territorial restrictions imposed by virtue of 40th meeting held by the DEC (IGNOU), however, protected the validity of degrees who have already undergone the programme prior to 2011-12.

29.06.15 Sikkim High Court [W.P.(C) No. 8 of 2015] further clarified that the students who were enrolled prior to the academic session 2011-12, having completed the degree before or thereafter, stood protected.

21.09.15 In a Special Leave Petition [S.L.P.(C) No. 26223 of 2015] filed by the UGC, Hon'ble Supreme Court upheld the Final Judgment passed by Sikkim High Court.

28.09.15 Sikkim High Court directed UGC to upload the Final Judgment dated 26.06.2016 and 29.06.2015 on their official website for wider publicity and public notice.

7. Having scrutinized above admitted sequel of events and hearing

arguments of counsel for the parties, especially the UGC and Sikkim

Manipal University, this Court finds that present petition deserves to be allowed.

The conceded position as emerges from record of the case is that the petitioners obtained bachelor degree in Computer Application through Distance Education Mode from SMU during the session 2008-11 and 2007-2010 respectively. As per judgment dated 29.06.2015 (**P-11**) of Sikkim High Court as upheld by Hon'ble Supreme Court vide order dated 21.09.2015 (**P-12**) students, who were enrolled in such courses prior to the academic session 2011-2012 and having completed degree before or thereafter, stand protected and their Degree(s) are valid. The said degree course was duly recognised by Distance Education Council vide its communication dated 06.11.2009.

8. The petitioners cleared Punjabi and English Typing Test and thereafter, appeared for counselling. At this stage no objection was raised by Board, however, name of petitioners were not included in the final merit list. The only ground of rejection of candidature of petitioners is that they have obtained degree through Distance Education Mode. From the afore-stated undisputed facts reproduced in Para 6 coupled with reply of respondent-SMU and judgment passed by Sikkim High Court, which has been upheld by Hon'ble Supreme Court, it is quite evident that students who were enrolled prior to Academic Session 2011-12 and have completed degree before or thereafter, stand protected and their degree(s) are valid. Both the petitioners were enrolled in the academic session of 2008-2011 and 2007-2010 respectively and they obtained Degree through distance education mode in the year of 2011 and 2010. It is established that the petitioners were enrolled prior to academic session 2011-12 and even completed their course

prior to 2011-12 and thus, would be fully protected by orders of Sikkim High Court/Supreme Court and their Degree(s) are valid. Therefore, the action of respondent-Board in treating the petitioners ineligible for appointment as Clerk/Data Entry Operator is declared illegal.

9. In view of aforesaid findings, the present petition deserves to be allowed and **accordingly allowed**. The **respondent-Board** is **directed** to consider the petitioners as eligible candidate and recommend their name for appointment as per secured merit in their category if falling within zone of advertised vacancies within two weeks from the date of receipt of certified copy of this order. The Punjab Government/Department concerned would issue an appointment letter within next four weeks subject to usual/standard terms and conditions, appointing the petitioners as Clerk/Data Entry Operator with effect from their junior in merit list were appointed. It is **further directed** that the petitioners would be entitled to consequential benefits like continuity of service, seniority etc. with effect from the date of such appointment, however, monetary benefits shall be on notional basis.

Since the main case has been decided, no orders are required to be passed in the pending miscellaneous application(s), if any, and the same stand(s) disposed of.

March 27th, 2019
'dk kamra'

(JASWANT SINGH)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No