

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

**CWP No. 24042 of 2017 (O&M)
DATE OF DECISION : 09.04.2019**

KAMAL KUMAR GADI

...Petitioner

VERSUS

UNION OF INDIA AND ANOTHER

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Petitioner/applicant in person.

Mr. R. S. Longia, Senior Panel Counsel,
for respondent-Union of India.

ARUN MONGA, J. (ORAL)

1. The present writ petition has been filed, *inter-alia*, for issuance of a writ in the nature of mandamus, directing the respondents to issue Certificate of Degree in Civil Engineering to the petitioner, as per notification No. F.18-19/75/T-2 dated 26.05.1977 (Annexure P-3) issued by the respondent-Union of India.

2. At the very outset, learned counsel for respondent-Union of India submits that reliance placed by the petitioner on so called notification, *ibid*, is totally misplaced as no such notification exists. He further submits that the said notification was held fictitious by this Court in a judgment dated 22.12.2017 rendered in CWP No. 16224 of 2016 (Annexure R-5). The relevant of said judgment is extracted herein below :

" *Learned counsel for the Union of India has very fairly stated that there is a huge lapse on the part of the Government machinery in so much as, for 40 years a particular benefit has been given to many persons without their being any authorization for the same. He has rejected the contention that because of the change of the Ministry the notification may have gone missing because as per him a notification is not a piece of paper which is just signed by one person. He has drawn the attention of the Court to the affidavit of the Secretary, wherein the Secretary has categorically averred that neither the Central Record Unit section of the Ministry nor the department of Publication (which is the repository of the gazette notifications published by the Government of India) have any record of this notification. Consequently the possibility that the notification actually existed but was mis-placed would not exist.*

In the circumstances, the controversy before this Court lies within a very narrow compass viz. whether in the absence of any decision by a competent authority to grant this benefit the private respondents can claim that their promotions/seniority should be maintained.

*In my considered opinion, in view of the affidavit of the Secretary, Ministry of Human Resource Development referred to above it has to be held that the benefit of treating the private respondents as degree holders was wrongly granted. In **Union of India and another Vs. Narendra Singh, 2008(2) SCT 359** the Supreme Court held as follows :-*

"28. It is true that the mistake was of the Department and the respondent was promoted though he was not eligible and

*qualified. But, we cannot countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following due process of law. In **Indian Council of Agricultural Research & Anr. v. T.K. Suryanarayan & Ors., 1997 (4) SCT 156: (1997) 6 SCC 766**, it was held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore Statutory Rules."*

Resultantly, it has to be held that the benefits given to the private respondents can be withdrawn.

Learned senior counsel for the private respondents then argued that the decision of the Central Administrative Tribunal to which reference was made earlier has been challenged before this Court and a Division Bench has issued notice and prayed that the present case be either heard alongwith the said writ petition or be adjourned to await the decision of the Division Bench.

In my opinion, there is a glaring difference between that case and this case because in the present case for the first time the unequivocal stand of the Union of India has emerged that in fact there was no notification dated 26.05.1977. Before the Tribunal the stand of the Union of India was not so direct or unequivocal. In the circumstances, this prayer can not be accepted."

3. It is contended that in view of the aforesaid judgment (Annexure R-5) passed by this Court is based on the observations of Hon'ble Supreme Court, the reliance placed by the petitioner on notification dated 26.05.1977 (Annexure P-3) is totally misplaced and no relief can be granted on that basis.

4. Confronted with this situation, the petitioner argues that regardless of notification dated 26.05.1977 (Annexure P-3), he is entitled to grant of relief sought by him on the basis of Gazette Notification (Annexure P-17), as also the later letter dated 19.02.1979 (Annexure P-19), issued by Union of India stating that a Sergeant, holding diploma with 10 years of experience in technical branch, is to be considered as equivalent to having degree in the relevant field for the purpose of his promotion. Placing reliance on the same, learned counsel for the petitioner submits that he is entitled to be treated on parity with an army man or a sergeant with Indian Force since he served in Military Engineering Services which also comes under the Ministry of Defence.

5. Per contra, learned counsel for the respondent-Union of India submits that he would seek instructions qua the said submission of the petitioner.

6. Be that as it may, the petitioner submits that he would be satisfied if instead of issuance of a Certificate certifying him to be a Degree Holder, simpliciter work experience certificate is issued to him by the respondents.

7. In view of the aforesaid, the writ petition is disposed of with a direction to the respondents to pass appropriate orders regarding issuance of work experience to the petitioner, in accordance with law.

(ARUN MONGA)
JUDGE

APRIL 09, 2019
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Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No