

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

Date of decision: 5.12.2019

1. LPA No. 1482 of 2018 (O&M)
Dr. Ashwani and others .. Appellants
vs
Union of India and others .. Respondents
2. LPA No. 1493 of 2018 (O&M)
Dr. Ram Kumar Tittal and others .. Appellants
vs
Union of India and others .. Respondents

**Coram: Hon'ble Mr. Justice Ravi Shanker Jha, Chief Justice.
Hon'ble Mr. Justice Rajiv Sharma**

Present Mr. Anurag Goyal and Ms. Supriya Arora, Advocates,
for the appellants.

Mr. Amarjit Singh Virk, Advocate, for respondent no. 2-
National Institute of Technology, Kurukshetra
in LPA No. 1482 of 2018 and for respondent nos. 2 to 6
in LPA No. 1493 of 2018.

Mr. Puneet Jindal, Senior Advocate with
Mr. Raghav Kakkar, Advocate, for respondent nos. 3 to 6
in LPA No. 1482 of 2018.

Mr. Namit Gautam, Advocate, for respondent nos. 7 and 8
in LPA No. 1493 of 2018.

Ravi Shanker Jha, Chief Justice

This appeal has been filed by the appellants being aggrieved by the order passed by the learned Single Judge dated 17.9.2018 in CWP No. 18805 of 2018 and connected matter. Since both the Letters Patent Appeals arise out of the same order and involve adjudication of common question and issue, these are heard and decided together.

The controversy involved in the present appeals relates to the process of promotion initiated by the respondent authorities for making

promotion from the post of Assistant Professor to the post of Associate Professor in the National Institute of Technology, Kurukshetra. In all 36 posts have been advertised for being filled up vide advertisement dated 10.1.2018. Learned Single Judge by the impugned order has disposed of the writ petitions by issuing the following directions:-

“(1) To consider all the candidates, who have applied for the post of Associate Professors in response to the advertisement No. 3/2018 (Annexure P/7) and decide their eligibility strictly in accordance with the advertisement and clarifications issued by MHRD on different dates regarding eligibility of the candidates and evaluating the Credit Points and to complete the selection process.

(2). It is made clear that the petitioners will be well within their rights to challenge the final list, if aggrieved and the appointments so made by the NIT shall be subject to the points raised in the writ petition.”

Learned counsel appearing for the appellants submits that the appellants had filed CWP No. 9240 of 2018 challenging the implementation of letters dated 6.10.2017 and 30.11.2017 by which the authorities had relaxed the necessary qualification for promotion on the post of Associate Professor on the ground that they were in violation of the provisions of the National Institute of Technology Act, 2007 (for short, 'the Act of 2007') as well as the National Institute of Technology (Amendment) Statute 2017 and the Schedule notified under Schedule-E of the said Statute.

Learned counsel for the appellants submits that the said issue has not been adverted to by the learned Single Judge and by treating the impugned letters as one time relaxation, the process of promotion has been permitted to be completed.

Learned counsel for the appellants submits that the Statute duly notified by the authorities prescribed the necessary qualification for promotion on the post of Associate Professor to be six years after completion of Ph.D of which at least three years at the level of Assistant Professor with Academic Grade Pay of ₹ 8,000/- or nine years total working experience, of which three years should be after Ph.D with at least three years at the level of Assistant Professor with Academic Grade Pay of ₹ 8,000/-. It is submitted that the authorities totally ignoring the aforesaid qualifications mentioned in the Statute have relaxed the eligibility qualification prescribed therein. It is submitted that as per the impugned communication dated 6.10.2017 a one time relaxation has been provided by relaxing the qualification to six years after Ph.D at the level of Assistant Professor and nine years of total working experience with Ph.D at the level of Assistant Professor.

Learned counsel for the appellants submits that the letter dated 6.10.2017 is in contravention of the Statue notified by the authorities as well as being in violation of provisions of the Act of 2007, deserves to be quashed.

Learned counsel for the appellants submits that the authorities had no power to relax the Statue prescribing qualification by issuing the executive order or letter.

Learned counsel for the appellants submits that this aspect has not been dealt with by the learned Single Judge, hence, this appeal.

Learned counsel appearing for the Institute has opposed the submissions of the appellants and submitted that one time relaxation in qualification was provided for in view of the recommendations of an

anomaly committee after examining various issues and anomalies in the new recruitment rules. It is submitted that the said one time relaxation in qualification has also been approved by the Board of Governors of the Institute on 9.2.2018 vide Annexure R-2/4 and Annexure R-2/5. It is submitted that in such circumstances the Board of Governors being the competent authority has approved the relaxation as one time measure and therefore no fault can be found with the relaxation in the qualification made by the authorities and implemented by the Institute.

Learned counsel for respondent nos. 3 to 6 submits that the original 1st Statute framed under Section 26 of the Act of 2007 was amended vide Gazette Notification dated 21.7.2017 in exercise of powers conferred under Section 26(3) and Section 26(4) of the Act of 2007 with the prior approval of the Visitor. It is submitted that pursuant to the aforesaid amendment made in Clause 23 of the 1st Statute, the rules as approved by the Council or the Central Government have been made applicable for the purposes of appointment in the Institute. It is submitted that in the instant case, the impugned letter dated 6.10.2017 relaxing the qualification has been issued by the Central Government with the approval of the Chairperson of the Council in accordance with the provisions contained in Section 32(2)(b) of the Act of 2007. It is submitted that in such circumstances it is evident that the letter dated 6.10.2017 has the force of Statute and in fact amounts to amendment in the Statute in terms of the substituted and amended Clause 23(3) of the 1st Statute. It is submitted that the letter dated 6.10.2017 having the force of law in terms of the provisions of the 1st Statute as amended vide notification dated 21.7.2017 has rightly been directed to be implemented for the purposes of making promotion on

the post of Associate Professor.

We have heard learned counsel for the parties at length.

To appreciate the issues involved in the appeals, it is necessary to examine the provisions of the Act of 2007, specifically those relating to the notification and the provisions of the Statute. Section 26 of the Act of 2007 reads as under:-

- “26. (1) The first Statutes of each Institute shall be framed by the Central Government with the prior approval of the Visitor and a copy of the same shall be laid as soon as may be before each House of Parliament.
- (2) The Board may, from time to time, make new or additional Statutes or may amend or repeal the Statues in the manner provided in this section.
- (3) Every new Statute or addition to the Statutes or any amendment or repeal of Statues shall require the previous approval of the Visitor who may grant assent or withhold assent or remit it to the Board for consideration.
- (4) A new Statute or a Statute amending or repealing an existing Statute shall have no validity unless it has been assented to by the Visitor.”

The rule making power under the Act of 2007 vests with the Central Government and Section 32 (2)(b) of the Act of 2007 is in the following terms:-

- “32. (1) xx xx xx
- (2)(a) xx xx xx
- (b) to lay down policy regarding cadres, methods of recruitment and conditions of service of employees, institution of scholarships and freeships, levying of fees and other matters of common interest;”

From a bare perusal of the aforesaid provisions, it is evident that the 1st Statute, which was framed and notified by the Central

Government can be amended from time to time by the Board under Section 26(2) of the Act of 2007. Section 26 (3) of the Act of 2007 mandates that every addition, amendment or repeal of Statute shall require previous approval of the Visitor. Section 26(4) of the Act 2007 mandates that a new Statute or a Statute amending or repealing an existing Statute shall have no validity unless it has been assented to by the Visitor.

As stated in the preceding paragraphs and as contained in the amendment made in the 1st Statute vide notification dated 21.7.2017, it is clear that the qualification and other terms and conditions of appointment of academic staff whether by direct or promotion mode shall be as specified in Schedule-E and shall be made as per the Selection Committee specified therein. It is evident and clear from a bare perusal of amended provisions of Statute 23(5), Clause (a). Entry 4 in Schedule-E makes it further clear that for appointment on the post of Associate Professor either essential qualification of six years after Ph.D of which at least three years at the level of Assistant Professor with Academic Grade Pay of ₹ 8,000/- or nine years total working experience, of which three years should be after Ph.D, with at least three years at the level of Assistant Professor with Academic Grade Pay of ₹ 8,000/-.

It is evident from the record that nothing has been placed before this Court that the provisions of Schedule-E of the 1st Statute have been amended, modified or repealed under Section 26 of the Act of 2007. From a perusal of the impugned letter dated 6.10.2017, it is evident that the competent authority has given approval for relaxing the aforesaid qualification to six years after Ph.D at the level of Assistant Professor and nine years of total working experience with Ph.D at the level of Assistant

Professor. Paragraphs 5 and 6 of this letter require the recommendations of the Anomaly Committee to be adopted by the Board of Governors of the Institution and also clarifies that the aforesaid one time relaxation contained in the letter dated 6.10.2017 has been in accordance with the provisions of Section 32(2)(b) of the Act of 2007.

A perusal of the record indicates that the Board of Governors of the respondent-institute in its meeting held on 23.1.2018 has approved and adopted the recommendations contained in the letter dated 6.10.2017, as communicated / informed vide letter dated 9.2.2018, Annexures R-2/4 and R-2/5. Admittedly, there is nothing on record to indicate that Schedule-E, Entry-4 of the 1st Statute has been amended under Section 26 of the Act of 2007 after prior approval of the Visitor, which is mandatory under Sections 26(3) and 26(4) of the Act of 2007.

Apart from the above, as per paragraph 6 of the letter dated 6.10.2017, it is evident that one time relaxation approved by the competent authority has been issued under Section 32(2)(b) of the Act of 2007 which relates to and confer powers on the council constituted under the Act of 2007 to lay down a policy regarding cadres, methods of recruitment and conditions of service of employees, institution of scholarships and freeships, levying of fees and other matters of common interest. A bare reading of Section 32 of the Act of 2007 makes it clear that it does not relate to empowering the Council to amend the Statute which power has been specifically conferred on the Board under Section 26 of the Act of 2007 and which can be exercised after prior and previous approval of the Visitor. In fact, the provisions of Section 26 of the Act of 2007 are mandatory and also provide consequences of non-approval by the Visitor by clarifying and

specifying that no Statute without the approval of the Visitor would be valid under Section 26(4) of the Act of 2007 unless approved by the Visitor.

From the analysis of the above, it is evident that the 1st Statute as it stands today specifically Schedule-E, provides that the necessary qualification for appointment on the post of Associate Professor would be six years after Ph.D of which at least three years at the level of Assistant Professor with Academic Grade Pay of ₹ 8,000/- or nine years total working experience, of which three years should be after Ph.D with at least three years at the level of Assistant Professor with Academic Grade Pay of ₹ 8,000/-.

Apparently, no amendment under Section 26 of the Act of 2007 has been made in the Statute and while the Board of Governors of the respondent-institute has adopted the recommendations of the Anomaly Committee contained in letter dated 6.10.2017, the aforesaid adoption/ amendment/ modification in the Statute has neither been previously approved by the Visitor nor has been forwarded to the Visitor for approval. Admittedly, there is no approval by the Visitor to the relaxation of qualification contained in letter dated 6.10.2017.

In view of the aforesaid facts and circumstances, we are of the considered opinion that the authorities were required to comply with the statutory provisions contained in the Act of 2007 and enforce the eligibility qualification/ essential requirement, as mentioned in the Statute and that the authorities could not have implemented the relaxation in qualification contained in letter dated 6.10.2017 without amending the statutory provisions of the 1st Statute in accordance with the procedure prescribed in the Act of 2007.

Accordingly, the appeals filed by the appellants to the extent that the appellants have challenged the letter dated 6.10.2017 relaxing the academic/ experience qualification contained in the Statute are hereby allowed and the letter is quashed. It is, however, made clear that this Court has not entered into the controversy raised by the rival parties regarding their individual eligibility in accordance with the qualification prescribed, which may be looked into and decided by the Selection Committee while undertaking the procedure.

The order passed by the learned Single Judge is set aside. The appeals are allowed to the extent indicated above and are disposed of with the direction to the authorities to take up the steps for appointment on the posts of Associate Professor in accordance with the provisions of the Statute, as it stands today. It is clarified that the authorities would proceed to make appointments in terms of the advertisement no. 3/2018 dated 10.1.2018 without applying the relaxation in qualification as contained in letter dated 6.10.2017.

(Ravi Shanker Jha)
Chief Justice

5.12.2019
vs

(Rajiv Sharma)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No