

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 1137 of 2018 (O&M)

Date of Decision: 23.1.2019

Mahesh Kumar Gupta

.....Petitioner

Versus

National Institute of Technology, Kurukshetra and othersRespondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Tribhuvan Dahiya, Advocate
for the petitioner.

Mr. A.S.Virk, Advocate
for respondents No. 1 and 2.

Mr. Anil Chawla, Advocate
for respondent No. 3-UIO.

A.B. CHAUDHARI, J (ORAL)

Heard. Rule returnable forthwith.

Heard learned counsel for the rival parties.

The petitioner has made the following prayer in the present
petition:-

“Issue a writ of certiorari quashing Clause 6 (a) (iii) [under Note 1] of Schedule 'E' of the First Statutes of the National Institutes of Technology as contained in the notification dated 21.7.2017 (P/4) and the consequent notification issued by the NIT dated 28.11.2017 (P/6), whereby the petitioner (who is working as Associate Professor in the pay band of Rs. 37400-67000 having AGP of Rs. 9,000/-) is required to undergo a selection process for being mapped (migrated)

into AGP of Rs. 9500/- for the post he is already holding in the same pay band. It is irrational and illegal since the petitioner is not been considered for promotion to a higher post and therefore cannot be made to undergo the selection process.”

The petitioner was appointed as Lecturer on 27.12.1996 in NIT (then Regional Engineering College). On 1.7.2004, the petitioner was granted senior scale of pay. Thereafter on 1.7.2007, he was granted selection grade. Eventually, 6th pay commission's recommendations came into force and on 31.12.2008, a notification was issued in which relevant clause 2(a)(xi), qua the petitioner, reads thus:-

“Readers/Lecturers (Selection Grade) in service at present shall continue to be designated as Lecturer (Selection Grade) or Readers, as the case may be, until they are placed in the Pay Band of Rs. 37,400-67000 and re-designated as Associate Professor in the manner described in (x) above.”

Vide order dated 29.7.2010, passed by National Institute of Technology Kurukshetra, at Serial No. 3, the petitioner's name appears and he was ordered to be re-designated with effect from 1.7.2010 as Associate Professor.

It is not in dispute that the petitioner did not acquire Ph.D. qualification. It is a well known fact that at the period UGC has been issuing notifications and orders in the matter of enhancement of qualifications. It is also well known that U.G.C has been protecting the employment of those who did not have the enhanced qualification indicated by UGC but by putting certain reasonable conditions. As stated earlier, the petitioner does not possess Ph.D. qualification and that is why the process of mapping into, was buttressed into service. It is also not in dispute that the petitioner's age

is above 50 years. It is in this context, we think that the learned counsel for the respondents are right in saying that sub clause (a) rather than sub clause (b) would apply in the case of the petitioner since he has crossed the age of 50 years. Clause 6 (a) (iii) of the notification, in relation to the petitioner, who has crossed the age of 50 years, in Schedule 'E' under statute 23 (5) (a) reads thus:-

“(6) The permanent faculty members who have put in more than ten years experience, but have not acquired Ph.D. Qualification as on the date of these notifications shall be mapped into four-tier flexible system as one time measure as per following norms:

(a) Permanent faculty with age fifty or above:

(i) The Assistant Professors with Academic Grade Pay of Rs. 7000 shall be mapped at the level of Assistant Professor with Academic Grade Pay of Rs. 8000, provided they have at least 10 credit points in their lifetime.

(ii) The Assistant Professors with Academic Grade Pay of Rs. 8000 shall be mapped at the level of Associate Professor with Academic Grade Pay of Rs. 9500, provided they have at least 25 credit points in their lifetime.

(iii) The Associate Professors with Academic Grade Pay of Rs. 9000 shall be mapped at the level of Associate Professor with Academic Grade Pay of Rs. 9500, provided they have at least 25 credit points in their lifetime.

Provided, they have been found suitable through a Selection Committee duly constituted under the Statutes.”

The real grievance that is conveyed by learned counsel for the petitioner is that the proviso to the said clause (6) provides for constitution

candidate is suitable or not for granting AGP of Rs. 9500/-. On this grievance, we have heard learned counsel for the rival parties for quite some time.

Learned counsel for the respondents submitted that the real reason for constitution of selection committee is to verify as to whether the candidate at this age of the petitioner, complies with the conditions laid down in the notification and in particular the candidates having at least 25 credit points in their lifetime. Except this, according to the learned counsel for the petitioners and as is clear from the notification itself, there is no other object of constitution of selection committee. To put in other words, the submission is that the selection committee is constituted formally to find out whether the said conditions and the ancillary conditions are satisfied or not and nothing beyond that. Upon reading of notification in entirety and upon hearing the learned counsel for the rival parties and the statement made by counsel for the respondent and upon perusal of the notification, we think that the submissions made by learned counsel for the respondents are correct. We are of the opinion that the petitioner who earned the experience as Associate Professor for about 10 years cannot be asked to have his merit tested by the selection committee. Thus, in our opinion, the process of finding out 25 credit points in their lifetime along with ancillary points by the selection committee, is in the nature of verification to achieve the object sought to be achieved. Not only that the respondents have also agreed to this interpretation which we have stated above.

In the above background, the counsel for the petitioner also states that the petitioner was only worried about facing the selection committee. But in view of the discussion made above and the statement

made by counsel for the respondents, we think the grievance of the petitioner does not survive. In the result, we make the following order:-

ORDER

- (i) CWP No. 1137 of 2018 is partly allowed.
- (ii) The petition is disposed of with the above clarification.
- (iii) Interim order stands vacated.
- (iv) The respondents are entitled to go ahead with the process they have started.

(A.B. CHAUDHARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

January 23, 2019

Gurpreet

Whether speaking/ reasoned: Yes/No
Whether Reportable: Yes/No