IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

&

THE HONOURABLE MR. JUSTICE K.HARIPAL

WEDNESDAY, THE 09TH DAY OF DECEMBER 2020 / 18TH AGRAHAYANA, 1942

WA.No.1526 OF 2020

AGAINST THE JUDGMENT DATED 28.09.2020 IN WP(C) 14888/2020 OF HIGH COURT OF KERALA

APPELLANTS/RESPONENTS:

1 COCHIN PORT TRUST
REPRESENTED BY ITS SECRETARY,
WELLINGDON ISLAND,COCHIN-682009.

2 CHAIRMAN,
COCHIN PORT TRUST,WELLINGDON ISLAND,
COCHIN-682009.

3 SECRETARY,COCHIN PORT TRUST,
WELLINGDON ISLAND,COCHIN-682009.

BY ADVS.
SRI.E.K.NANDAKUMAR (SR.)
SRI.M.GOPIKRISHNAN NAMBIAR
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SRI.PAULOSE C. ABRAHAM
SRI.RAJA KANNAN

RESPONDENT/PETITIONER:

SRINATH S.S.,
AGED 59 YEARS
STAFF NO.667,SAFETY OFFICER,MECHANICAL ENGINEERING DEPARTMENT,COCHIN PORT TRUST,WELLINGDON ISLAND,
COCHIN-682009.

R1 BY ADV. SRI.N.SUKUMARAN (SR.)
R1 BY ADV. SRI.S.SHYAM
R1 BY ADV. SRI.VINAY KUMAR VARMA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 09.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Ravikumar, J.

This intra court appeal is directed against the judgment dated 28.09.2020 in W.P(C) No.14888/2020. The respondents therein are the appellants. The respondent herein filed the aforementioned writ petition seeking quashment of Exts.P6 and P7 orders passed by the appellants as also issuance of a writ of mandamus commanding respondents 1 and 2 therein/appellants 1 and 2 herein to permit him to continue in the post of Safety Officer. The appellants/respondents therein resisted the claim and contention of the respondent herein. After hearing the learned counsel on both sides, the writ petition was virtually allowed by setting aside Exts.P6 and P7 orders. A consequential direction was issued to the appellants/the respondents therein to promote the respondent herein as Safety Officer and to grant him all attendant benefits, after following due procedure in accordance with law. For the aforesaid purpose, two months' time from the date of receipt of a copy of the judgment was granted. It is feeling aggrieved by the said judgment that the captioned

appeal has been preferred.

2. Heard the learned counsel for the appellants as also the learned counsel appearing for the respondent.

3. A perusal of Exts.P6 and P7 would reveal that the respondent herein, who entered the service of the 1st respondent as early as on 16.01.1997 and was given promotion as Safety Officer in the year 2017, was reverted on the ground of absence of approval of the AICTE for the qualification secured by him from Annamalai University through distance education. The reversion on the aforesaid ground was effected as per Ext.P7 order dated 20.07.2020. A scanning of the impugned judgment would reveal that the learned Single Judge had considered the ingenuity in the aforesaid action as also the correctness of the said resolution, in the light of the binding decision on the issue involved. The learned Single Judge evidently took note of the fact that the vacancy in the post of Safety Officer against which the petitioner was promoted had occurred consequent to the retirement of one Mr. R.S. Ajay Kumar, was also having only the same qualification which the writ petitioner/the respondent possesses. In other words, he was also having only a Diploma in Industrial Safety from Annamalai University. With

the said qualification, as a matter of fact, he was promoted and was permitted to continue as Safety Officer till his retirement viz., for about 12 years. The fact that the respondent – writ petitioner possesses Diploma in Industrial Safety awarded by Annamalai University through distance education is not in dispute. Thus it is obvious that the sole ground on which he was ordered to be reverted and in fact, reverted was the non-approval of the said course by AICTE. In the aforesaid circumstances, the learned single Judge considered the question whether approval of the qualification by the AICTE is required for promotion, in the light of various decisions of the Apex Court. The judgment would reveal that an order of the Apex Court in **Mukul Kumar Sharma and others v. All India Council for Technical Education and others** in W.P(C) No.382 of 2018 dated 30.07.2018 was relied on by the learned Single Judge. It would reveal that, relying on an earlier decision of the Apex Court dated 10.04.2018 in **Jawaharlal Nehru Technological University v. The Chairman and Managing Director, Transmission Corporation of Telengana Ltd. & Ors.** (Civil Appeal Nos.3697-3698/2018) the said order was rendered. Taking into account the fact that as per the judgment in the said Civil Appeal it was declared that in

the case of a University, set up under a state statute, it would be sufficient that the AICTE norms were followed while granting decree or diploma in Engineering. In other words, it was made clear in **Mukul Kumar Sharma**'s case that in such circumstances, the approval by the AICTE for the said course is unnecessary. Earlier, the Apex Court also took the same view in **Bharathidasan University and another v. All India Council for Technical Education and others** reported in **[(2001) 8 SCC 676]**. In this appeal, the finding based on the aforesaid decisions is challenged by the appellants relying on the decision of the Hon'ble Apex Court in **Orissa Lift Irrigation Corporation Ltd. and others v. Rabi Sankar Patro and others** reported in **[2018 (1) SCC 544]**.

4. When the matter is taken up for consideration, the learned counsel for the appellants fairly conceded that a scrutiny of **Rabi Sankar**'s case (supra) would reveal that virtually the dictum laid down by the Apex Court in **Bharathidasan University**'s case (supra) still holds the field. It is further submitted by the learned counsel that the decision in **Rabi Sankar**'s case (supra) is relied on only to highlight and emphasize the importance of the role of AICTE in the matter of grant of degrees in Engineering. In the light of the aforesaid decisions, there can

be no doubt with respect to the position that, in the case of a degree or diploma granted by the University, which is a creature of a statute, a further approval for the said course by AICTE is unnecessary as declared by the Apex Court in **Bharathidasan University**'s case and reiterated in **Jawaharlal Nehru Technological University**'s case as also in **Mukul Kumar Sharma**'s case and in such circumstances what is required is adherence to the AICTE norms by the University concerned in the matter of conduct of the course. The fact that Annamalai University is a statutory University is not disputed and the said fact was duly taken note of by the learned Single Judge. That fact is not at all disputed in this appeal. When the fact is that Annamalai University is set up under a statute, in the light of the dictum laid down by the Apex Court in **Bharathidasan University**'s case and the subsequent decisions (supra), it can only be held that AICTE approval for the aforesaid course is unnecessary. In other words, finding of the learned Single Judge in that regard requires no interference.

5. Apart from the aforesaid contention, in this appeal the learned counsel attempted to get sustained the impugned Ext.P7 order by taking up a contention that the diploma held by the petitioner is not

recognised by the Central Government. But the fact is that it is not the ground on which the respondent herein was reverted from the post of Safety Officer under Ext.P7. In other words, Ext.P7 did not reveal any such reason as a ground for reversion. The learned counsel submitted that though the said reason was not assigned in Ext.P7, such a contention was specifically taken in the writ proceedings and the said fact is discernible from paragraph 8 of the impugned judgment. He further submitted that though it was referred to therein, there is no discussion and decision in the impugned judgment. It is also the contention of the learned counsel for the appellants that the said contention is available to be raised in the light of the relevant provision governing promotion to the post of Safety Officer. In that regard, the learned counsel drew our attention to Ext.P8. It is the regulation dealing with the qualification and eligibility conditions for various posts including the post of Safety Officer under the first appellant. The relevant portion of the same reads thus:- “Diploma or higher qualification in Industrial Safety or equivalent recognised by the Central Government.” The learned counsel attempted to construe the said provision in such a manner as one mandating that in the case of

diploma, in the case of higher qualification in Industrial Safety as also any equivalent qualification, in order to be taken as a qualification prescribed, the qualification as the case may be, should be one recognised by the Central Government.

6. We are afraid, such a contention, as aforesaid, is not available in the light of the afore-extracted relevant provision under Ext.P8 Regulations. A bare perusal of the same would reveal that virtually one could earn eligibility for being promoted as Safety Officer, if he or she possesses the diploma in Industrial Safety or higher qualification in Industrial Safety as also by possessing a qualification which is recognised by the Central Government as equivalent to the diploma or higher qualification in Industrial Safety. This alone can be the interpretation to that provision as equivalency could be considered only with reference to any specific, prescribed qualification viz., in this case Diploma or higher qualification than Diploma in Industrial Safety. That apart, it is to be noted that the punctuation “,” (comma) is not appearing in the said provision after the word 'equivalent' so as to make the condition 'recognised by the Central Government' applicable to Diploma or higher qualification in Industrial Safety. In other words, the

aforesaid regulation would reveal that the requirement of 'recognition by the Central Government' as a condition is made applicable only in respect of any qualification other than Diploma in Industrial Safety or higher qualification in Industrial Safety. That is to say that the qualification possessed by a person seeking promotion other than a Diploma or a higher qualification in Industrial Safety, should be a qualification recognised by the Central Government as equivalent either to the Diploma or to the higher qualification in Industrial Safety. As long as the words “recognised by the Central Government” are not used conjunctively, or whereas used only disjunctively in the said relevant regulation, the appellants are not justified in construing the prescribed qualification in the manner as contended. When that be the position obtained from the relevant regulation in Ext.P8, dealing with the eligibility for promotion to the post of Safety Officer under the first appellant, we have no hesitation to hold that the said contention is only to be rejected. The upshot of the discussions is that there is absolutely no merit in the challenge against the judgment of the learned Single Judge by the appellants. In the circumstances, this appeal must fail.

7. When we are about to part with the judgment, the learned

counsel for the appellants submitted that the time limit of two months for implementation of the direction fixed as per the impugned judgment has already expired and hence, further time for compliance may be granted. In the light of the aforesaid submission, for complying with the direction in the impugned judgment, we grant a month's time from the date of receipt of a copy of the judgment in this appeal. Subject to the above this appeal is dismissed.

Sd/-
C.T. RAVIKUMAR
JUDGE

Sd/-
K.HARIPAL
JUDGE

okb/09.12.2020

//True copy// P.S. to Judge