IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CM No. 17147 of 2019 in/and
CWP No. 15803 of 2011 (O&M)
Date of Decision: 25.9.2020
(Heath through VC)

Surender Kumar Sharma and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vijay Pal, Advocate
for the petitioners.

Ms.Akshita Chauhan AAG, Punjab.

JAISHREE THAKUR, J.

CM No. 17147 of 2019

This is an application filed under Section 151 of the Code of Civil Proceudre for direction to the respondents to promote the applicants/petitioners to the post of Sub Divisoinal Engineer in the light of judgment passed by the Hon'ble Supreme Court dated 3.11.2017 and 22.1.2018 from the date the petitioners are entilted to. The writ petition stands admitted. However, keeping in view the controversy involved, with the consent of the parties, the writ petition itself is taken up for hearing.

Main case.

1. The writ petition was filed in the year 2011 to challenge non-inclusion of the names of the petitioners in the Departmental Promotion Commiteee (DPC) meeting which was scheduled to be held for promotion

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of Junior Engineers as Sub Divisional Officers/SDE in the Punjab Irrigation Department, State of Punjab on 29.08.2011.

2. In brief, the facts are that the petitioners were appointed as Junior Engineer (Civil) in the year 1981–1994 and working under the control of the Chief Engineer. The petitioners had obtained their degrees through Distance Education and having necessary qualifications and experience sought promotion to the next post as Sub Divisional Engineers. However, as their names were not included in the list prepared for candidates to be called for the Departmental Promotion Committee to be held on 29.08.2011, the petitioners filed the instant writ petition. The contention raised was that juniors were sought to be promoted ignoring the candidatures of the petitioners, despite the fact that the rules called for promotion on the basis of their seniority-cum-merit.

3. On the filing of the writ petition, the respondents put in an appearance and contested the claim made in the writ petition. The stand taken in the reply filed was that the petitioners had obtained their degrees through Distance Education, which University did not have the prior approval of the University Grants Commission, All India Council of Technical Education (AICTE), etc.. In the written statement, it was pleaded that a coordinate Bench in Civil Writ Petition No. 1640 of 2008 had issued directions not to promote candidates who had obtained a degree from an un-authorised institution and therefore, the petitioners who had obtained their degrees through Distance Education could not be considered for promotion despite being senior. Thereafter, by an order dated 8.5.2013 the respondents

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were directed to consider the claim of the petitioners in the DPC to be held on 3.12.2014 (earlier DPC to be held on 29.11.2011 had been adjourned) but not to declare the result and keep it in a sealed cover.

4. In the meantime, the question regarding recognition and validity of degrees obtained by candidates through Distance Education from JRN Rajasthan Vidyapeeth University, Udaipur and other such institutes came to be considered by the Supreme Court in the case of a **Orissa Lift Engineering Corporation Ltd Versus Rabi Sankar Patro, (2018) 1 SCC 550** wherein the Supreme Court directed the AICTE to devise modalities to conduct appropriate test/tests both in written examination as well as in practicals, while covering all the concerned subjects. Two chances were given to the concerned students and if they did not pass the test/tests their degrees shall stand recalled and cancelled. Pursuant to the said direction, the petitioners appeared and ***only*** petitioners No. 1 and 5 cleared the examinations which were held on 16.12.2018 and 19.12.2018. Since only two petitioners namely, Surender Kumar Sharma son of Sh. Kulbhushan Sharma and Narinder Goyal son of Sh. Charanji Lal, cleared the test, the writ petition filed survives only qua them and stands dismissed regarding the rest.

5. As already noticed above, by way of **CM No. 17147 of 2019,** a direction is sought to be issued to the respondents to promote petitioners No. 1 and 5 to the post of Sub Divisional Engineer from the date the petitioners are entitled to keeping in view the seniority list dated 27.4.2011 since the petitioners are successful in the examination held by AICTE—

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UGC. Reply to the said application has also been filed by way of affidavit of Chief Engineer (Canals) Water Resources Department, Punjab. It is submitted that petitioners were not going to be considered for DPC on account of the fact that they had degrees from Distance Education. But in terms of the interim order dated 8.5.2013, the petitioners were allowed to participate in the DPC held on 03.12.2014 and their result has been kept in a sealed cover. It is also an admitted position that in view of the directions passed by the Supreme Court of India in the case of **Orissa Lift Engineering Corporation Ltd (Supra),** the petitioners appeared in the examination held and only petitioners No. 1 and 5 have cleared the same and resultantly their degrees have been validated.

6. In such a situation, when the degree of petitioners No. 1 and 5 stands validated in terms of the judgement rendered in **Orissa Lift Engineering Corporation Ltd. (Supra),** there can be no cogent ground for denying them promotion on the ground that they had obtained their degrees through Distance Education. Consequently, the writ petition qua petitioners No. 1 and 5 stands allowed with a direction for the respondent Department to open the result of the DPC which was held on 3.12.2014 and declare the same. In case as the petitioners are found to be eligible, they shall be promoted from the date their juniors were promoted, along with all consequential benefits that would necessarily follow. Let the necessary exercise be completed within a period of four weeks from receipt of certified copy of this order.

7. The writ petition stands allowed accordingly qua petitioners

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No. 1 and 5 and is dismissed regarding the rest. All applications stand disposed off accordingly.

25.9.2020 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No

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