

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

CWP No. 15829 of 2020

DATE OF DECISION : 22.03.2021

Kamal Saluja

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Shreenath A. Khemka, Advocate, and
Mr. Ganesh A. Khemka, Advocate,
for the petitioner.

Mr. Manoj Kumar Taya, AAG, Haryana.

Mr. Ravi Sharma, Advocate
for AICTE- respondent No.3.

ARUN MONGA, J. (ORAL)

Grievance of the petitioner herein, working in the Guest Faculty as Assistant Professor at the relevant time, is qua order dated 17.09.2020 (Annexure P-12) , whereby his name was removed from the empanelled list of Guest Faculty in Computer Science and Engineering.

2. The ostensible reason for removing him from the panel of Guest Faculty was lack of requisite qualifications as per All India Council for Technical Education (hereinafter referred to as "AICTE") Regulations 2010 (Annexure R-2). As per Clause II of the notification dated 28.04.2017 issued by AICTE "Incumbent faculty recruited in the past based on their qualification acquired will continue to be eligible in the departments they were recruited to."

3. The dispute is with regard to interpretation of the qualifications as aforesaid, which is B.Tech and M.Tech in the relevant branch, which is Computer Science in the present case. Concededly, as per the petitioner's own case, he is B.Tech in Instrumentation and Control Engineering followed by M.Tech in Computer Science and Engineering by virtue of which he was initially on the panel of Guest Faculty. As it turned out later, in order to remove certain ambiguity and doubts created by the word "and" after B.Tech and before M.Tech and as to whether both BE/B.Tech and ME/M.Tech ought to be in Computer Science or it was either BE/B.Tech or it was merely for ME/M.Tech alone, AICTE issued a notification dated 28.04.2017 (Annexure P-4) clarifying that all those persons who have been inducted in the faculty by virtue of Computer Science degree, either in B.Tech or M.Tech prior to issue of said notification, as long as they were carrying both i.e B.Tech and M.Tech, would be given one time benefit of continuation. However, it was made clear that prior to 28.04.2017 i.e the date of notification, the degree in Computer Science had to be both in B.Tech as well as M. Tech. In the return filed by AICTE, following stand has been taken in support of the notification dated 28.04.2017 (Annexure P-4).

"2. That the eligibility of incumbent at the time of his initial recruitment is to be assessed, as per Regulations issued by the answering respondents from time to time. Since the petitioner has been working as Assistant Professor (Computer Science) w.e.f 2012 as stated, as such his case will come under the saving clause of AICTE notification dated 28.04.2017 (Annexure P-4), which prescribed that 'incumbent faculty recruited in the past based on their qualification acquired will continue to be eligible in the departments they were recruited

to.’ Moreover the aforesaid notification has come into force w.e.f the date of its publication in the official gazette.

3. That the notification dated 28.04.2017 (Annexure P-4) shall prevail over the State Government Notification in so far as it comes in conflict with the above regulation of the answering respondent. The denial of benefit of saving clause to the petitioner by making him ineligible amounts to rendering the above clause in effective and to that extent the State Government Notification is certainly repugnant to the aforesaid notification of the answering respondent, as such the State Notification is void to the extent of its repugnancy.”

4. A perusal of the aforesaid leaves no manner of doubt that indeed, there seems to have been cases where Assistant Professors were inducted in the faculty despite their having not done Computer Science both in B.Tech and M.Tech. However, AICTE later on realized that the requisite qualification was perhaps not happily awarded and therefore, the same needed clarification though the clarification has been made prospective and gave its one time benefit to those who had been inducted in faculty in the past, so that they do not suffer for no fault of theirs. It was perhaps the State who did not accord the benefit of this saving clause to the petitioner, as the notification was not correctly applied to the case by the employer/Selection Committee.

5. Whereas respondents No.1 and 2 in their return have resisted the stand taken by the AICTE on the ground that even on the date of petitioner being inducted in the faculty, as per requisite qualification at that time, the petitioner was not eligible.

6. Having perused the eligibility conditions at relevant time contained at Annexures R-2, R-3 and R-4, the same has to be read along with notification dated 28.04.2017 (Annexure P-4).

7. Perusal of the Annexures R-2, R-3 and R-4 specifying the qualification and saving clause show that they are similarly worded as notification dated 28.4.2017 (Annexure P-4). Other than the change of year, there is no change in it. In any case, it is the same very saving clause which created ambiguity resulting in issuance of new Notification dated 29.05.2014 (Annexure P-13). As regards prescribing the qualification, since AICTE is domain expert, the interpretation rendered by AICTE favouring the petitioner to be given precedence over that of respondents No.1 and 2 against the petitioner. Reference may also be made to Apex Court judgment in **“Parshvanath Charitable Trust and others V. All India Council for Technical Education & Others” (2013) 3 Supreme Court Cases 385**, wherein it has been held as under :

“17. The Provisions of the All India Council for Technical Education Act, 1987 are intended to improve the technical education system throughout the country. The various authorities under the AICTE Act have been given exclusive responsibility to coordinate and determine the standards of higher education. It is a general power given to evaluate, harmonise and secure proper relationship to any project of national importance. Such coordinated action in higher education with proper standard is of paramount importance to the national progress.

18. The provisions of the AICTE Act, including its Preamble, make it abundantly clear that AICTE has been established under the Act for coordinated and integrated development of

the technical education system at all levels throughout the country and is enjoined to promote qualitative promotion of such education in relation to planned quantitative growth. AICTE is required to regulate and ensure proper maintenance of norms and standards in technical education system. AICTE is to further resolve suitable performance appraisal system for technical institutions and universities incorporating norms and mechanisms in enforcing their accountability. It is required to provide guidelines for admission of students and has the power to withhold or discontinue grants to such technical institutions where norms and standards laid down by it and directions given by it from time to time are not followed. The duty and responsibility cast on AICTE implies that the norms and standards to be set should be such as would prevent isolated development of education in the country.”

8. As an upshot of the aforesaid position and discussion, the writ petition is allowed to the limited extent that the petitioner's removal from the panel of Guest Faculty is set aside with consequential benefits. It is, however, made clear that this order by itself will not confer any right on the petitioner for fresh induction as Assistant Professor in Guest Faculty of Computer Science and the petition is allowed to the limited extent only since in view of the interpretation of notification dated 28.04.2017 (Annexure P-4), vide which he is held entitled to benefit of eligibility of empanelment in Guest Faculty for having degree of computer Science in M.Tech.

9. Disposed of in above terms.

MARCH 22, 2021
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No