

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Writ Petition No. 26560 of 2017

Sandeep Kumar

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

AND

2. Civil Writ Petition No. 16209 of 2018 (O&M)

Gurinder Singh

... Petitioner(s)

Versus

State of Punjab and Another

... Respondent(s)

DATE OF DECISION: 20.04.2021

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vikas Singh, Advocate
for the petitioner (In CWP-26560-2017).

Mr. Jag Nahar Singh, Advocate
for the petitioner (In CWP-16209-2018).

Ms. Maloo Chahal, Deputy Advocate General,
Punjab, for the respondents.

Anil Kshetarpal, J.

By this order, Civil Writ Petition No. 26560 of 2017 and 16209 of 2018 shall stand disposed of. Learned counsel for the parties are *ad idem* that both these writ petitions can be conveniently disposed of by a common order.

2. In both these writ petitions, each of the petitioners was appointed on compassionate basis on 24.12.2015. The petitioners have

claimed that they possess the minimum academic qualification as they have

graduated from Eastern Institute of Integral Learning in Management University, Sikkim (for short “EIILM”). The petitioners were appointed subject to verification of their academic qualification. On verification, the respondents found that the graduation degree of the petitioners is not recognized by the University Grants Commission/Distance Educational Council. On the basis thereof, the services of the petitioners have been dispensed with.

3. In response to the notice of motion, a written statement has been filed contending that the petitioners are not eligible as they do not possess valid graduation degrees.

4. This Bench has heard learned counsel for the parties at length and with their able assistance, perused the paper books.

5. Learned counsels appearing for the petitioners contend that as per the Punjab Roadways (Ministerial) State Services Class-III Rules, 1977 (hereinafter referred to as “the 1977 Rules”), the minimum academic qualification required for being appointed to the post of Clerk is matric. They, hence, contend that even if the petitioners do not possess a recognized graduation degree, still their services cannot be dispensed with. They further contend that in view of the judgment passed by a Co-ordinate Bench in ***Karamjeet Kaur v. State of Punjab and Others 2019 (3) SCT 162***, since the petitioners got admission before the cut-off date i.e. 01.11.2012, therefore, their services cannot be dispensed with.

6. Per contra, Ms. Maloo Chahal, Deputy Advocate General, Punjab, has contended that the petitioners do not possess a valid graduation

appointment was subject to the verification of their academic testimonials.

7. Having heard learned counsel for the parties, this Bench is of the view that the matter is required to be remitted back to the respondents to pass a fresh order. Hence, it would not be appropriate to examine the contentions of learned counsel for the petitioners in detail. However, the brief reasons for remitting the matter back to the respondents are as under:

1) As regards the arguments of learned counsel that as per the 1977 Rules, the petitioners are not required to be graduate, it is appropriate to notice that in the appointment letter itself, it has been specifically stated that the services of the petitioners shall be governed by the 1977 Rules and the Punjab Civil Services (General and Common Conditions) Rules, 1994 (hereinafter referred to as “the 1994 Rules”). Still further, vide notification dated 10.02.2009, the 1994 Rules have been amended and Rule 15 thereof reads as under:

“15. Minimum Educational and other qualifications:

- (i) No person shall be given direct appointment to the post of Clerk under the Punjab Government unless he possesses the Bachelor’s Degree from a recognized University or Institution; and*
- (ii) Possesses atleast one hundred and twenty hours course with hands on experience in the use of Personal Computer or Information Technology in Office Productivity applications or Desktop Publishing applications from a Government recognised institution or a reputed institution*

which is ISO 9001 certified”.

Still further, Rule 20 of the 1994 Rules starts with a non-obstante clause and therefore, it has been given an overriding effect. Hence, there is no substance in the first contention of learned counsel for the petitioners.

2) As regards the second contention of learned counsel for the petitioners, it may be noted that a Co-ordinate Bench in ***Karamjeet Kaur*** (*supra*) has, after examining various aspects of the matter, held as under:

“52. Upon consideration of facts, developments and change in distance education policies over the time and the findings recorded under different heads from HEAD “A” To “G” following parameters/directions are issued:-

(i) In case of Deemed Universities and Private Institutions (other than Universities) the cut-off date with regard to territorial jurisdiction and study centre will be 29.3.2010, all admissions made prior to 29.3.2010 to obtain degrees awarded through use of study centres, off-campus centres of Deemed Universities and Private Institutions (other than Universities) will be valid, subject to the statutes/ MOA (Memorandum of Association) of University permitting opening up of Centres in the territory from which it was

operating or permits opening up of centres at any place where there are reasonable concentration of students (as permitted by UGC in 1985 Regulations, Annexure P-34).

(ii) In case of State Universities (both Government funded or Private funded) the cut-off date will be 1.11.2012 , therefore all admissions made prior to 1.11.2012 to obtain degrees awarded through use study centres/off campus centres of State Universities or Private Universities will be valid, subject to the statutes/ MOA of University permitting opening up of Centre in the territory from which it is operating or permits opening up of centres at any place where there are reasonable concentration of students (as permitted by UGC in 1985 Regulations, Annexure P-34).

(iii) The qualifications attained after the cut-off date mentioned above will stand de-recognised for all purposes. However as opening up of study centers was permitted after prior approval from UGC, it is clarified that even after the cut-off date if the qualification attained through distance education mode from Institutions (other than University) / Universities (Central University,

State University, Deemed University or Private University) is in consonance with the regulations/ notifications/policies of DEC/ UGC with regard to territorial jurisdiction and study centres prevailing at the relevant time and the study centre is approved by the UGC, then the qualification will be recognised and valid. This observation has been made due to lack of complete Information before this Court, as no list of approved study centres has been brought before this Hon'ble Court.

(iv) With regard to First degrees awarded by Universities [including Central Universities, State Universities, Private Universities, Deemed Universities] by way of Distance Education in the faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences are concerned, the same shall be valid in light of the 1985 regulations (Annexure P-34) permitting imparting education through distance mode via study centres, subject to being admitted in the University prior to the cut-off date mentioned above in para no. (i) & (ii) of parameters laid above, as the case may be.

(v) With regard to Post graduation degrees

awarded by way of distance education in non-technical field (such as Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences etc.) in cases where Institutional Recognition has been granted, if the qualification is in terms of MOA (Memorandum of Association) / Acts/ Statute of the University viz the field of specialization and the degree is notified under Section 22 of the UGC Act (List of degrees specified under Section 22 of UGC Act is on record as Annexure P38) the same shall stand validated, subject to being admitted in the University prior to the cut-off date mentioned above in para no. (i) & (ii) of parameters laid above, as the case may be.

(vi) With regard to post graduation degrees awarded by way of distance education in Non-Technical Field (such as Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences etc.) where programme wise recognition has been granted, only those qualifications will be valid which have been mentioned in the list of approved/recognised qualifications, subject to being admitted in the University prior to the cut-off date mentioned above in para no. (i) & (ii) of

parameters laid above, as the case may be.

(vii) The qualifications which have been held to be valid above be treated as at par with the degrees awarded by way of conventional mode/regular mode of education.

(viii) The State Government is directed to take necessary action in terms of the above findings within a period of 6 months from the date of receipt of certified copy of the order. The State government can verify the recognition list [whether University (Central, State, Deemed or Private) /Institution (other than University) had “Institutional Recognition”at particular time or “Programme-wise Recognition”] uploaded by the Distance Education Bureau, UGC on its website, which is also on record as Annexure P-57. Further the State government can also verify as to whether degree has been mentioned in the list of degree specified under Section 22 of UGC Act or not from the list uploaded on the website of UGC which is also on record as Annexure P-38. With regard to Memorandum of Association, Act and Statutes of the universities, the State government can obtain the same from the students whose cases are pending at the level of the government or from the

concerned universities or from the UGC.

(ix) The State government after completing the exercise in terms of Para No.(viii) hereinabove would start a portal/webpage/ website wherein information with regard to recognition of different types of degrees from various universities is uploaded, so that not only general public is aware with regard to recognition of degrees, but also uniformity & transparency can be maintained with regard to implementation of the aforesaid directions, in all the departments of the State Government right down till the field level.

For clarity an illustration is being given hereunder:-

To verify the qualification of a candidate who has attained qualification of M.A. through distance education mode from a University in Rajasthan having centre in Punjab, the state will firstly check the status of the University viz if the university is a Deemed University then cut-off date mentioned above in para no. (i) of parameters laid above will be applicable and in case of state universities and private universities cut-off date mentioned above in

para no. (ii) of parameters laid above will be applicable.

In case the candidate has got admission in the course after the cut-off date, the same shall be invalid, however if he was admitted in the course prior to the cutoff date in that case the state will then verify the statutes/MOA of the University and if the degree is in the field mentioned in the statutes/ MOA and is also mentioned in the list of degree specified under Section 22 of the UGC, then the qualification will be considered as valid subject to the territory from which University is operating is in consonance with the Acts/ Statutes / MOA of the University. As in the present Illustration if in the statutes/MOA of University field of Arts is mentioned and the degree of M.A. is also mentioned in the list of degree specified under Section 22 and in the Statute/ MOA of University it is mentioned that territorial jurisdiction of University is throughout the territory of India or that it can open centres where ever there are reasonable concentration of students, then the

*qualification attained from centre at Punjab
shall be considered as valid.*

*(x) In view to reduce litigation and hardship of
the candidates/ students liberty is being granted to
all the students/candidates who will be affected on
account of noncompliance of the aforesaid
directions, by the State Government, to adopt
appropriate recourse of law including filing of the
contempt petition.*

*(xi) It is clarified for all purposes, that the
candidates whose degree will stand invalidated in
view of the parameters mentioned above, all
benefits secured by such candidates/ employees
shall stand withdrawn, however if any monetary
benefit has been drawn such as salary etc. the
same shall not be recovered. In such cases the
employees /candidates will be at the liberty to take
appropriate action, as available under law, so as
to recover the amount paid towards tuition fees,
expenditure incurred, damages etc. etc. from the
University/ Institution concerned. The above said
direction is being given on the lines of directions,
in similar situation issued by the Hon'ble Supreme
Court of India in paragraph 53 (vii) of the
judgment reported as 2017 (4) SCT 683: 2017*

AIR (SC) 5179 titled as *Orissa Lift Irrigation Corp. Ltd V. Rabi Sankar Patro.*

However this Court considering the hardships to be faced by the employee for no fault of his and who on the basis of the above said qualification which is not in terms of the aforesaid parameters, had secured jobs (on regular basis/ permanent basis as per Recruitment Rules) and had settled in their life and have attained ample experience while performing the duties on the post which he/ she is holding for a substantial period of time, considers it appropriate that a one-time concession be granted to the effect, that the persons who are already in job on the basis of the qualification which might be invalidated on account of above said directions, be permitted to continue in job, but in the cases where the qualification if invalidated was essential qualification to hold the post, they shall not be granted any further benefits, viz promotion etc. etc. In the cases where qualification which does not fulfill the above said parameters is not an essential qualification and has been utilized only for securing higher marks at the time of selection, their case be treated separately as they fulfill the

requisite qualification in terms of the statutory rules governing the post, therefore they will be entitled for all further benefits subject to that even in case of promotion the qualification so invalidated is not an essential qualification.

Similarly in cases where an employee was recruited on temporary basis after due selection process based upon distance education degrees (now invalidated in view of the parameters laid above) but has been denied regularization of services on account of such distance education degrees despite otherwise being eligible, suitable for regularization, while other persons recruited along with such employee have been regularized in service, in such cases benefit of regularization be extended if the qualification (attained through distance education mode) so invalidated is not an essential qualification to hold the post in terms of statutory rules and is an additional qualification which may have been used for attaining additional marks at the time of initial selection. All benefits of service will be extended as have been granted to other employees recruited in the same selection or appointment made at the same time. However, if the qualification from distance education mode

(which now stands invalidated in view of above parameters) is essential qualification to hold the post, in that case NO benefit will be granted including benefit of regularization. It is so being laid down as temporary employee has no vested right to hold the post.

Note:-

(a) It is clarified that, in case where the respondent State did not consider any person for appointment by way of direct recruitment or by promotion on account of possessing qualification through distance education mode, but has been issued orders pursuant to interim orders issued by the Hon'ble Court or has been issued conditionally subject to outcome of any petition pending before the Hon'ble Court, in that case concession granted hereinabove will not be extended. The concession has been given on the rationale that there was complete disclosure on part of employee and state having found eligible, permitted employee to work for a considerable period, irrespective of holding a distance education degree.

(b) In a situation where the graduation or post-graduation has been attained through distance

*education mode and higher qualification has been attained through normal mode/conventional mode but his graduation or post-graduation degree attained through distance education mode stands invalidated in view of the aforesaid parameters, then the higher qualification attained on the basis of the degree so invalidated will also stand invalidated, as illegality at the original/foundation stage being a nullity cannot be cured by subsequent acquisition of valid higher degree based upon such invalid degree. It is well settled that in case of foundation being a nullity the whole edifice constructed thereupon has to fall. This view finds support from the law laid down by the Hon'ble Apex Court in the case of **M.P. State Coop. Bank Ltd., Bhopal v. Nanuram Yadav** 2007 (4) SCT 464 and by this Court in **Jagir Singh v. State of Haryana** reported as 2006 (7) SCT 386.*

(c) Needless to say, that in case where candidate has obtained a degree by attending the PCPs and has undertaken exams in the main campus or within the State where the University (as defined under Section 2 (f) and Section 3 of UGC Act) is situated, in that case their degree shall be valid, as no question of territorial

jurisdiction arises. This is subject to the University, having recognition to impart education in such field (at the time of institutional recognition, MOA/Statutes of University permits imparting education in such field and at the time of programme-wise recognition such course had been permitted) ”.

8. It is apparent from the perusal of the documents that EIILM University was set up by the State Act i.e. Eastern Institute for Integrated Learning in Management University Act, 2006 notified w.e.f. 17.04.2006. In view thereof, in ***Karamjeet Kaur*** (*supra*), certain directions have been issued governing such cases.

9. In view of the aforesaid facts, while setting aside the orders dispensing with the services of the petitioners, the respondents are directed to consider the entire matter once again and pass a speaking order after taking into consideration the judgment in ***Karamjeet Kaur*** (*supra*). Let this exercise be completed within a period of three months from the date of receipt of a certified copy of this order.

10. With the observations made above, both the writ petitions are partly allowed.

(Anil Kshetarpal)
Judge

April 20, 2021
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No