

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7739 of 2020

Prof. (Dr.) Shlok Kumar Chakravarti S/o Late Mauzi Singh At present
resident of Gazzete Quarter No. 1, Government Polytechnic, Gulzarbag, P.S.-
Gulzarbag, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar Through Chief Secretary, Government of Bihar, Patna.
2. The Chairman Bihar Public Service Commission, Patna.
3. The Joint Secretary-cum- Examination Controller Bihar Public Service Commission, Patna.
4. The Principal Secretary Department of Science and Technology, Government of Bihar, Technology Bhawan, Vishweswaraiya Bhawan Campus, Patna- 800001.
5. The Director Department of Science and Technology, Government of Bihar, Patna.
6. The Additional Secretary Department of Science and Technology, Government of Bihar, Patna.
7. The Chairman All India Council for Technical Education, Nelson Mandela Marg, Vasant Kunj, New Delhi- 110070.
8. The Secretary All India Council for Technical Education, Nelson Mandela Marg, Vasant Kunj, New Delhi- 110070.
9. The Joint Secretary Department of Higher Education, 122-C, Shastri Bhavan, New Delhi-110001.

... .. Respondents

Appearance :

For the Petitioner:	Mr Rajendra Narayan, Senior Advocate Mr Bhola Prasad, Advocate
For the Respondent State:	Mr Anjani Kumar, A.A.G.-4 Mr. Alok Kumar Rahi, AC to AAG-4
For the BPSC:	Mr Sanjay Pandey, Advocate Mr Nishant Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 02-02-2022

Whether a Faculty from Humanities and Sciences can be
considered eligible for the post of Principal/Director of a Technical
Institute governed by All India Council of Technical Education



Act, 1987 and the Regulations framed thereunder is the core issue for determination in the present writ application.

2. The petitioner is a Lecturer in the subject of Physics at Government Polytechnic, Bhojpur. He holds M.Sc. Degree in Physics and PhD in the said subject. The Bihar Public Service Commission has issued Advertisement No. 13 of 2020 and 15 of 2020 for filling up posts of Principals in Government Polytechnics and Government Engineering Colleges, under the Department of Science and Technology, Government of Bihar.

3. The advertisement for the post of Principal for Polytechnic College (Advertisement No. 13 of 2020) lays down the following eligibility condition in terms of educational qualification: -

“First Class at Bachelor’s or Master’s level in the relevant discipline (Engineering/Technology related branch).”

4. The advertisement for the post of Principal in Government Engineering College (Advertisement No. 15 of 2020), on the other hand, lays down the following minimum educational qualification: -

“PhD. Degree and First Class or equivalent at either Bachelor's order Master's



level in the relevant Branch (Engineering/Technology related branch)

5. As has been noted above, the petitioner holds a qualification in Physics, a science subject, but does not qualify in terms of the advertisement, according to which, the qualification in Engineering/Technology is must to be eligible to be considered for the said post.

6. The petitioner has challenged the aforesaid two advertisements to the extent they lay down minimum educational qualification of Engineering and Technology related branch only. It is the petitioner's case that the said prescription in the advertisements is contrary to the provisions under **All India Council for Technical Education Regulations on Pay Scales, Service Conditions and Minimum Qualifications for Appointment of Teachers and Other Academic Staff such as Library and Physical Education Personnel in Technical Institutions and Measures for the Maintenance of Standards in Technical Education – (Diploma) Regulations, 2019** (hereinafter referred to as the 'AICTE (Diploma) Regulation, 2019') and the **All India Council for Technical Education Regulations on Pay Scales, Service Conditions and Minimum Qualifications for Appointment of Teachers and Other Academic Staff such as**



Library and Physical Education and Training & Placement Personnel in Technical Institutions and Measures for the Maintenance of Standards in Technical Education – (Diploma) Regulations, 2019 (hereinafter referred to as the ‘AICTE (Degree) Regulation, 2019’).

7. Regulation 4.7 of the AICTE (Diploma) Regulation, 2019, lays down the educational qualification for Principal through direct recruitment as under: -

“4.7(a) *Direct Recruitment*

PhD and First Class at either Bachelor's or Master's level in the relevant discipline with a minimum of 16 years of experience in Teaching/Research/Industry, out of which at least 3 years shall be post-PhD experience and 5 years of experience not below the level of HoD.

Or

First Class at Bachelor's or Master's level in the relevant discipline with a minimum of 20 years of experience in Teaching/Research/Industry, out of which 5 years of experience not below the level of HoD.”

8. Regulation 5.2(f) of AICTE (Degree) Regulation, 2019 prescribes qualification for direct recruitment of



Principal/Director of a technical institution governed by the said regulation as under: -

5.2(f) Qualifications for Direct Recruitment of Principal/Director

a. PhD degree and First Class or equivalent at either Bachelor's or Master's level in the relevant branch.

b. At least two successful Ph. D. guided as Supervisor/Co-Supervisor and minimum 8 research publications in SCI journals/UGC/AICTE approved list of journals.

c. Minimum 15 years of experience in teaching/research/industry, out of which at least 3 years shall be at the post equivalent to that of Professor.”

9. Based on the aforesaid prescription in respect of qualification under the two regulations, it is the petitioner's case that there had been no intention of the All India Council for Technical Education (AICTE) to reserve the post of Principal for the candidates belonging only to the engineering and technology-related branch. It is the petitioner's case that though PhD in engineering was prescribed as a requisite qualification for the post of Principal in the earlier All India Council for Technical Education Pay Scales, Service Conditions and Minimum Qualifications for the Appointment of Teachers and Other



Academic Staff in Technical Education – (Diploma) Regulations, 2010 (hereinafter referred to as the 'AICTE (Diploma) Regulation, 2010'), there is a conscious omission of such requirement in AICTE (Diploma) Regulation, 2019.

10. It is the petitioner's case that All India Council for Technical Education Pay Scales, Service Conditions and Minimum Qualifications for the Appointment of Teachers and Other Academic Staff in Technical Education – (Degree) Regulations, 2010 (hereinafter referred to as the 'AICTE (Degree) Regulation, 2010'), also did not limit the post of Principal only to the candidates for engineering/technology related branch. It is the petitioner's case that the expression 'relevant discipline' if construed only as engineering and technology within the meaning of regulation 4.7 of the AICTE (Diploma) Regulation, 2019, would create inconsistency and anomaly in the provisions of the said Regulation. Similarly, it is the petitioner's case that the expression 'relevant branch' in regulation 5.2(f) of AICTE (Degree) Regulation, 2019, cannot be confined to mean engineering/technology related branch only. It is the petitioner's further case that the State Government of Bihar has framed Bihar Engineering Education Service Rules, 2020 (Engineering Education Service Rules, 2020 in short) wherein qualification



prescribed for the post of Principal by direct recruitment in engineering colleges has been set out as 'PhD. degree and First Class or equivalent at either Bachelor's or Master's level in the relevant branch'.

11. Similarly, in the exercise of powers conferred by Article 309 of the Constitution of India, Bihar Polytechnic Education Service Rules, 2020, has been framed, which prescribes educational qualification as 'PhD and First Class at either Bachelor's or Master's level in the relevant discipline'. It is accordingly the petitioner's case that the statutory rules governing Polytechnic Education Service and Engineering Education Service framed in exercise of power under Article 309 of the Constitution of India do not mandate that a candidate must possess a requisite qualification only in the Engineering/Technology related branches. It is also the petitioner's case that though the requirement of qualification in Engineering/Technology for the post of Principal was specified in Bihar Polytechnic Education Service Rules, 2014, no such requirement is mandated under the new Rules, i.e., Polytechnic Education Service Rules.

12. The gist of the petitioner's case is that the relevant discipline or relevant branch occurring in AICTE (Diploma) Regulation, 2010, AICTE (Degree) Regulation, 2010, Bihar



Engineering Education Service Rules, 2020 and Bihar Polytechnic Education Service Rules, 2020, for a determination as to whether a person holds educational qualification for appointment as Principal of Engineering College or a Polytechnic cannot be confined to engineering and technical branch/discipline. It is the petitioner's case that other eminent technical institutions of India including the Indian Institute of Technology (I.I.T.) do not bar applicants of disciplines other than Engineering/Technology from being appointed to the post of Director/Head of Institution and they consider applications from applicants belonging to the discipline of Science, Math or Management.

13. It is the case of the State Government, on the other hand, that in the exercise of powers conferred under sub-section (1) of Section 23 read with Section 10(i) and (q) of All India Council for Technical Education Act, 1987, the AICTE has framed regulations in the name of All India Council for Technical Education (Clarifications on Certain Issues/Anomalies Pertaining to Qualifications, Pay-Scales, Service Conditions, Career Advancement Schemes (CAS) etc. for Teachers and Other Academic Staff of Technical Institutions (Degree/Diploma), 2016. The regulations came to be framed in the following background as



can be noticed from the object of said 2016 Clarification

Regulation: -

“II. General

AICTE has received several representations seeking clarifications on certain issues arising out of implementation of AICTE Regulations No.37-3/Legal/AICTE/2010 dated 05th March 2010 on revised Pay Scales, Service Conditions and Qualifications for the Teachers and Other Academic Staff in Technical Institutions (Degree & Diploma) Regulations, 2010 (hereinafter referred to as AICTE Regulations, 2010) and No. 37-3/Legal/AICTE/2012 dated 8th Nov. 2012 on Career Advancement Scheme for the Teachers and Other Academic Staff in Technical Institutions (Degree & Diploma) Regulations, 2012 (hereinafter referred to as AICTE Regulations, 2012). Some of the issues raised from the AICTE previous Notifications have also been included.”

14. Clarification No. 56 was apropos the question as to whether faculty from the Humanities and Sciences could be considered eligible for the post of Principal/Director of Technical Institutions, which has been clarified in negative. The clarification reads as under: -

“ 56. Whether, faculty from the Humanities - “No”



& Sciences to be considered eligible for the post of Principal/Director of the Technical Institutions”

15. It is no one's case that the said Clarification Regulation, 2016, which came into force on 04.01.2016, is not statutory.

16. It is noted, at this stage, that it is the petitioner's case in this regard that the said Clarification Regulation shall have no application to the advertisements in question as the said Clarification Regulation is referable to AICTE (Diploma) Regulation, 2010 and AICTE (Degree) Regulation, 2010.

17. The State of Bihar has placed reliance on Regulation 2.26(3) of the AICTE (Diploma) Regulation, 2019 and 3.4(ii) of AICTE (Degree) Regulation, 2019, to contend that in an institution where several programmes under technical education approved by the AICTE are running, the Principal/Director shall be from one of the programmes, preferably from a programme with maximum student strength. The aforesaid provision read as under: -

18. Regulation 2.26(3) of AICTE (Diploma) Regulation, 2019 :

“2.26(3) In an institution where several programmes under technical education approved by AICTE are running the Principal shall be from



one of the programmes preferably from a programme with maximum student strength.”

19. Regulation 3.4(ii) of AICTE (Degree) Regulation, 2019 :

“3.4(ii) In an institution where several programmes under technical education approved by AICTE are running, the Principal/Director shall be from one of the programmes preferably from a programme with maximum student strength.”

20. It is the case of the State of Bihar that Physics is a subject and is not a programme approved by the AICTE. It is their case that no Diploma Certificate/Degree is awarded based on the courses pursued in Polytechnic and Engineering Colleges in the subjects of Sciences and Humanities and, therefore, the decision of the State Government to confine the posts to the applicant holding qualification in Engineering and Technology cannot be said to be wholly unjustified and arbitrary requiring this Court's interference in exercise of the power of judicial review under Article 226 of the Constitution. It is their case that the State Government in the aforesaid Service Rules, framed under Article 309 of the Constitution of India, has simply adopted the qualification requirement for filling up of the posts as laid down by the AICTE



for the said posts in respective regulations. The State of Bihar is also relying on the Approval Process Handbook of 2021-22 of All India Council For Technical Education, Annexure-6 and 7 of which contains major disciplines, their corresponding courses and relevant/appropriate branch(es) of Under-graduate Degree and Diploma in Engineering Technology.

21. It is the case of the State of Bihar, thus, that the qualification, as prescribed in the advertisements, cannot be said to be in conflict with any statutory requirement.

22. Mr Rajendra Narayan, learned Senior Counsel appearing on behalf of the petitioner, has submitted that the Government Polytechnic Institutions and Government Engineering Colleges have been established with the objective of imparting knowledge in the fields of Sciences and Technology. According to him, giving preference to the candidates only from engineering and technology-related branch for appointment to the post of Principal is unfair and unjust. He has submitted that neither the AICTE (Diploma) Regulations, 2019 nor the AICTE (Degree) Regulations, 2019, lay down any additional requirement of qualification in engineering/technology related branch for being eligible to the post of Principal. Similarly, the service rules governing the appointment of Principal in Government



Polytechnic and Government Engineering Colleges do not lay down any such additional requirement by way of eligibility conditions. He has accordingly contended that the terms of the advertisement to the aforesaid extent is unsustainable and requires interference by this Court. He has placed reliance on a Division Bench decision of Delhi High Court in case *Dr Chaman Lal Bansal and Another vs. University of Delhi and Others*, reported in **2004 (75) DRJ 434**, to contend that as the petitioner holds Master degree in Physics, which is a subject taught in Polytechnic/Engineering Colleges, he can not be held to be ineligible to be appointed as Principal of the College. He has also relied on another Division Bench decision of Delhi High Court in case of *Government of NCT of Delhi and Others vs. K.K. Prasad*, reported in **2013 SCC OnLine Del 3594** to bolster his contention.

23. The Bihar Public Service Commission (BPSC) has filed an affidavit stating therein that the eligibility criteria in relation to educational qualification have been prescribed in terms of the requisition sent by the State Government to the BPSC for making recommendations against the post. It is the case of the Commission that the requirement of qualification in Engineering and Technology related branch has been mentioned in both the



advertisements published by the Commission as communicated to it by the State of Bihar.

24. Mr Anjani Kumar, learned Additional Advocate General No.3 representing the State respondents, has submitted that the requisition sent by the State Government to the BPSC prescribing eligibility condition for educational qualification in engineering/technology cannot be said to conflict with any of the statutory provisions, rather the same is in accord with the statutory requirement particularly AICTE (Diploma) Regulations, 2019 and AICTE (Degree) Regulations, 2019. He has reiterated the stand taken by the State of Bihar in one of its pleadings in this case that the subject Physics, in which the petitioner holds qualification, cannot be treated to be a relevant discipline or branch of such discipline.

25. He has submitted that since it is an undisputed fact that no degree/diploma is awarded in Physics based on the instructions imparted in the Polytechnic and Engineering Colleges in question in Physics and diploma/degree is awarded only in engineering and technology, the petitioner's qualification to acquire the post of Principal of Polytechnic/Engineering College cannot be said to be in relevant discipline or branch.



26. To consider rival submissions made on behalf of the parties in the background of undisputed relevant facts, it would be apposite to take note of Regulation 2.26(3) of the AICTE (Diploma) Regulations, 2019 and the *pari materia* Regulation 3.4(ii) of AICTE (Degree) Regulations, 2019, which prescribes that in an institution where several programmes under technical education approved by AICTE are running, the Principal shall be from one of the programmes, preferably from a programme with maximum student strength. The said provision has two connotations. Firstly, the Principal should be from one of the programmes running in an Institution. Further, preference has to be given to a person from a programme with maximum student strength. There is no averment in the writ petition that Physics is taught in either of the Technical Institutions in respect of which the advertisements have been issued as a programme, though the said Science subject may be taught as a subject of the programme. The qualification, as prescribed in the regulations with using expression 'relevant discipline' and in Regulation 4.7(a) of AICTE (Diploma) Regulations, 2019 and 'relevant branch' in Regulation 5.2(f) of the AICTE (Degree) Regulations, 2019, in the Court's opinion need to be read with the said Regulation 2.26(3) of AICTE



(Diploma) Regulations, 2019 and Regulation 3.4(ii) of AICTE (Degree) Regulations, 2019.

27. In my opinion, the requirement under Regulation 2.26(3) of AICTE (Diploma) Regulations, 2019, that the Principal shall be one of the programmes in an institution where several programmes under technical education approved by AICTE are running is a mandatory requirement. A candidate, who is not from one of the programmes run in an institution, can be said to be eligible to be considered for the position of Principal of a technical institution given the clear language used in Regulation 2.26(3) of the Regulation. The said provision envisages preference to be given from a programme with maximum student strength. The petitioner, who is a faculty in one of the technical institutions teaching Physics, in my opinion, cannot claim to be from one of the programmes run in the institution in the absence of any material to demonstrate that the subject Physics is taught as one of the programmes in the technology/engineering colleges in question.

28. I find force in the submission made by Mr Anjani Kumar, learned Additional Advocate General, on this aspect. Further, the State of Bihar has brought on record by way of Annexure-R/5 to the counter affidavit, a list of major disciplines,



their corresponding courses and relevant appropriate branch of under-graduate degree in engineering and technology to counter the petitioner's claim that Physics is one of the disciplines/branches. The said annexure contains a list of disciplines in which Physics does not figure. Corresponding courses have been mentioned to the said discipline. Physics does not figure as a course.

29. The word 'discipline' is defined by the Oxford English Dictionary as 'the branch of learning or scholarly instruction'.

30. Indeed, the Clarification Regulation, 2016, framed by the AICTE in the exercise of its statutory power deals with AICTE (Diploma) Regulations, 2019 and AICTE (Degree) Regulations, 2019, by answering in negative the query whether faculty from Humanities and Sciences were to be considered eligible for the post of Principal/Director of the Technical Institutes, the same cannot be completely overlooked to answer the issue raised in the present writ application because of framing of the subsequent regulations in 2019.

31. In my opinion, in view of clear stipulation in Regulation 2.26(3) of AICTE (Diploma) Regulations, 2019 and Regulation 3.4(ii) of AICTE (Degree) Regulations, 2019, a person



to be eligible for the post of Principal in a technical institution must be from one of the programmes being run in such technical institution. 'Technical Institution' has been defined under Section 2(h) of AICTE Act, 1987, as an Institute not being a University, which offers courses or programmes of technical education. 'Technical education' has been defined under Section 2(g) of the Act, which means, programmes of education, research and training in 'Engineering, Technology, Architecture, Town Planning, Management, Pharmacy and Applied Arts and Crafts and such other programmes or areas as the Central Government may in consultation with the Council by notification in official gazette declare. The definition of the word 'programme' in Regulation 2.26 of AICTE (Diploma) Regulations, 2019 can be safely derived from Section 2(g) of the Act, which defines 'technical education'.

32. The decision of the Delhi High Court in the case of *Dr Chaman Lal Bansal* (supra), is distinguishable. The petitioners, in that case, had challenged the selection of a person having qualification in Physics for the post of Principal of College of Vocational Studies. They contended that since the selected candidate did not have a master's degree in a relevant subject, he was not qualified under relevant Ordinance No. 24 of the University of Delhi. Rejecting the said plea, the Delhi High Court



held that the purpose of Principal of a College required to be possessing a master's degree in a relevant subject is the fact that the Principal of a College is required to, in addition to his administrative function, undertake teaching work in the College. On the other hand, the present case is governed by altogether different statutory provisions dealing with the technical education system in the country. Further, in the case of ***K.K. Prasad*** (supra), the Division Bench of Delhi High Court needed to deal with the question of grant of selection grade to a Lecturer working under the Government of NCT of Delhi. The said matter did not relate to selection for appointment to the post of Principal.

33. Given the aforesaid discussion, it is concluded that a person can be eligible to be appointed as Principal of a Technical Institution within the meaning of Section 2(h) of the Act only if he is from a programme being run in the said technical institution, by virtue of the provision under Regulation 2.26(3) of AICTE (Diploma) Regulation, 2019, and Regulation 3.4(ii) of AICTE (Degree) Regulation, 2019. No material has been placed before this Court that the subject Physics is run as a programme of education, research and training in the Government Polytechnics/ Government Engineering Colleges in question for which the advertisements have been issued.



34. In such view of the matter, the eligibility condition that an aspirant must possess a qualification in engineering/technology cannot be said to be contrary to the statutory provisions, rather they are in tune with the statutory requirements. The question posed at the outset is answered accordingly.

35. I accordingly do not find any merit in this writ application, which stands dismissed.

36. The interim order stands vacated.

37. Interlocutory applications stand disposed of.

38. There shall, however, be no order as to cost.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
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