

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

1. **LPA No.1613 of 2018 (O&M)**
Reserved on 12.07.2022
Date of Decision: 26.07.2022

VAISH EDUCATION SOCIETY ROHTAK AND ANOTHER

.....Appellants

V/s.

GIRIRAJ SINGLA AND OTHERS

.....Respondents

2. **LPA No.1623 of 2018 (O&M)**

VAISH EDUCATION SOCIETY ROHTAK AND ANOTHER

.....Appellants

V/s.

RAVI GARG AND OTHERS

.....Respondents

3. **LPA No.1635 of 2018 (O&M)**

VAISH EDUCATION SOCIETY ROHTAK AND ANOTHER

.....Appellants

V/s.

NARENDER SHARMA AND OTHERS

.....Respondents

4. **LPA No.1636 of 2018 (O&M)**

VAISH EDUCATION SOCIETY ROHTAK AND ANOTHER

.....Appellants

V/s.

GOURVE GOYAL AND OTHERS

.....Respondents

CORAM: **HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO**
HON'BLE MR. JUSTICE HARMINDER SINGH MADAAAN

Present: Mr. Avinash Kumar, Advocate for
Mr. Kuldeep Tewari, Advocate for the appellants.

Mr. Aalok Jagga, Advocate, and
Mr. Harkirat S. Jagdev, Advocate
for respondents (in LPA Nos. 1613 and 1623 of 2018)

Mr. Sunil Nehra, Advocate,
for respondent No.1 (in LPA No.1635 of 2018).

None for the respondents (in LPA No. 1636 of 2018).

M.S. RAMACHANDRA RAO, J.

Since common questions arise and the appellants are one and the same, these appeals are being disposed of by this common order

In all these Appeals, common order dt. 07.08.2018 passed by the learned single Judge of this Court in CWP No. 21296 of 2015, CWP No.15297 of 2017, CWP No. 21298 of 2015, CWP No. 21297 of 2015 are challenged.

The appellant No.1 is the Vaish Education Society, Rohtak which runs appellant No.2-Vaish College of Engineering, Rohtak which has the approval from the All India Council for Technical Education (for short “AICTE”) and is affiliated by respondent No.2-Maharishi Dayanand University, Rohtak.

The appellant No.2 issued an advertisement in July 2010 for filling up post of Professors, Associate Professors, Assistant Professors in the Departments of Electronics and Communicate Engineering, Computer Science Engineering, Electrical Engineering, Information Technology, Mechanical Engineering, Physics, Chemistry, Mathematics, English and MCA. As per the said advertisement, qualifications and experience were required to be possessed as per the AICTE norms, and pay scales would be as per the AICTE norms, and DA and other allowances as per the Haryana Government Rules.

Pursuant to the said advertisement, the respective respondents No.1 in LPA Nos. 1613, 1623 and 1636 of 2018 were appointed on *ad hoc* basis as (i) Lecturers on 27.08.2010 in the departments of Computer Science and Engineering, (ii) as Assistant Professor in the department of Electrical

Engineering on *ad hoc* basis on 03.08.2010, and (iii) as Lecturer in Mechanical Engineering

The respondent No.1 in LPA No.1635 of 2018 as Lecturer in Mechanical Engineering on 18.08.2008 on *regular* basis, subject to the approval of respondent No.2-University.

Notices were issued on 22.07.2013 to respondent No.1 in LPA No.1613 of 2018, on 31.05.2013 to respondent No.1 in LPA No.1623 of 2018, on 31.05.2020 and to respondent No.1 in LPA No.1635 and on 31.05.2013 in LPA No. 1636 of 2018 alleging that they had taken the M.Tech examination while working on *ad hoc/regular* in the appellant No.2-College and this was a 'dubious' means. *No other allegation was made in the show cause notice.*

The explanation was submitted by the respective respondents No.1 in all the LPAs denying the said allegations.

An enquiry was conducted and the enquiry reports were submitted against the respective respondents No.1 on 27.06.213 holding them guilty of the charge and the respective respondents No.1 had pursued their regular M.Tech course in other Institutions while being employed in the appellant No.2-College on *ad hoc/regular* basis.

Separate orders of termination of services of the respective respondents No.1 were passed on 22.07.2013 by appellant No.2-College.

Aggrieved thereby, the respective respondents No.1 filed Appeals before respondent No.3-Educational Tribunal, Rohtak.

Vide separate orders dt.10.09.2015, the said Tribunal dismissed all the Appeals.

The impugned common order of the learned Single Judge

The respective respondents No.1 challenged the orders of respondent No.3-Tribunal in CWPs No.21296 of 2015, 15279 of 2017, 21297 of 2015 and 21298 of 2015 before this Court.

By a common order dt. 07.08.2018, all the above Writ Petitions were allowed by the learned Single Judge.

In the impugned order, the learned Single Judge held that any orders terminating the services of the respective respondents No.1, cannot be taken by appellant No.2-College alone, and that approval of the Director is mandatorily required to be obtained under Sec.7 of the Haryana Affiliated Colleges (Security of Service) Act, 1979 , and such approval was not taken by the appellants.

Learned Single Judge also held that the ground of the respective respondents No.1, not obtaining prior permission for pursuing further studies, cannot be accepted since there is sufficient indication on the record that Management/the appellants was fully aware that respective respondents No.1 were pursuing further studies while teaching in their College.

Learned Single Judge also observed that the order of dismissal/termination passed by the appellants against the respective respondents No.1 has to be sustained only on the ground mentioned therein, and cannot be supplemented by the fresh reasons in the shape of affidavit or otherwise.

Challenging the same, these Appeals have been filed.

Consideration by the Court

Counsel for the appellants sought to contend that as per Section 3 of the Haryana Affiliated Colleges (Security of Employees) Act, 1979 (for short “the Act”), minimum qualification for recruitment of various classes of employees shall be such as may be laid down by the University concerned; and that was why an advertisement was issued stating clearly that ‘qualifications and experience should be as per the AICTE norms’: and AICTE prescribes the qualification for Assistant Professor as B.E./ B.Tech and M.E./ M.Tech in relevant subject, and respective respondents No.1 in LPA No.1613, 1623, 1635 and 1636 of 2018 did not possess the same; and as per the Rule 6 of the Haryana Affiliated Colleges (Security of Services) Rules, 2006 (for short “the Rules”), no person shall be appointed to any post in the service unless he is in possession of qualification and experience as prescribe by the UGC/University/ State Government, as the case may be.

We do not agree with this plea for the following reasons:

A.) No doubt, at the time of appointment on *ad hoc* basis of respondent No.1 in LPA No.1613, 1623 and 1636 of 2018, they may have possessed the ME/M.Tech qualification. Admittedly, they were pursuing the M.Tech course and were at the fag end , and knowing fully this fact, the *ad hoc* appointment was given.

But admittedly, thereafter on 26.09.2012, even *regular* appointment was given by the Chairman of the appellants-Society to respondent No.1 in these three cases/Appeals *after* they secured the M.Tech degree in 2011-12, and after they informed the said fact to the Principal of the appellant No.2-College.

Therefore, once they were *regularly* appointed to their respective positions in 2011-12 *after* they secured M.Tech Degree by passing in the examination, it is not open to the appellants to harp on their appointment in 2010 on *ad hoc* basis and initiate disciplinary action against them on that basis i.e., that at that time when they secured the *ad hoc* appointment, they did not possess the M.Tech degree.

B) Rule 16 of the Haryana Affiliated Colleges (Security of Service Rules, 2006 states:

“ Appearance in examination:

No employee shall, except with the permission of the Principal of the College and in the case of Principal, the Managing Committee, appear in any examination.”

In fact in the application made by respondent No.1 in LPA No.1613 of 2018 for seeking employment in the appellants-College, he had specifically stated that he was *currently* pursuing M.Tech in third semester, and in the letter dt.27.08.2010 giving *ad hoc* appointment to the said respondent No.1, the Chairman of the appellant No.2-College stated that ‘*as and when the said respondent No.1 submitted the M.Tech degree, his designation would be changed from that of a Lecturer in Computer Science and Engineering to that of an Assistant Professor*’.

Similar is the case of respondent No.1 in LPA No.1636 of 2018, and he was issued appointment letter on 27.8.2010 on *ad hoc* basis as Lecturer in Mechanical Engineering by the Chairman of the appellant-College specifically mentioning that ‘*as and when he submits the M.Tech degree, his designation would be changed as Assistant Professor*’.

These facts indicate that there was implied permission granted under the said Rule to the respective respondents No.1 in the LPAs. 1613,1623 and 1636 of 2018 from the Principal of appellant No.2 to appear in the M.Tech examination while working on adhoc basis in the Appellant no.2 college. So the appellants cannot contend that there was no permission taken by them and they had obtained the M.Tech degree by dubious means and on that basis their services as regular employees ought to be terminated.

It is also not in dispute that respondent No.2-University had issued a letter on 07.01.2008 stating that for appointments made by the affiliated Colleges, its approval is not required, and the AICTE faculty norms clearly indicate that if a person secures M.Tech degree within five years, he can be appointed, which indicates that there was deemed permission to pursue the M.Tech course itself.

Also Sec.7 of the Haryana Affiliated Colleges (Security of Service) Act. 1979 states :

"7. Procedure to be observed before dismissal, removal, reduction in rank or withholding of annual increment of pay with cumulative effect - *(1) No employee shall be dismissed, removed, reduced in rank or no annual increment or increments of pay of any employee shall be withheld with cumulative effect after an enquiry in which he has been informed of the charge against him and given a reasonable opportunity of being heard in respect of those charges: Provided that this section shall not apply where an employee is dismissed, removed, reduced in rank or where the annual increment or increments of pay of any employee is or are withheld with cumulative effect on the ground of conduct which has led to his conviction on a criminal charge.*

(2) The penalty of dismissal, removal from service, reduction in rank and withholding of annual increment or increments of pay with cumulative effect shall not be imposed unless the same is approved by the Director.

(3) Where after the enquiry is referred to in sub-section (1) it is proposed to impose the penalty of dismissal, removal from service, reduction in rank or withholding of annual increment or increments of pay with cumulative effect, the proposal along with the relevant record shall be referred to the Director and the employee concerned shall be informed.

(4) The employee may, within a period of thirty days of the receipt of the intimation referred to in sub-section (3), make a representation against the proposed penalty to the Director who may. After examining the record and giving the parties an opportunity of being heard, by an order in writing, approve the proposed penalty or reduce it or refuse to approve it, if the proposal is found to be mala fide or by way of victimisation or not warranted by the facts and circumstances of the case]. (emphasis supplied)

Thus the above provision requires a reference of a proposal for dismissal of any employee to be made to Director; and unless the Director approves it, it will not be valid.

Admittedly this procedure was not followed by the appellants in cases of all 4 respondents no. 1 in all these 4 LPAs. This finding recorded by the learned Single Judge is not shown to be erroneous by the appellants.

Also as pointed out by the learned Single Judge, the initial appointment of the respective respondent nos. 1 in all these appeals is not to an aided post though the appellant No.2 is an aided institution.

As regards the respondent No.1 in LPA No.1635 of 2018 is concerned, it is the contention of the appellants that he was appointed on *regular basis* as a Lecturer in Mechanical Engineering on 18.08.2008 by the Chairman, but there was no process of selection through a properly constituted selection committee; that the Selection Committee should comprise of (a) Chairperson of the Governing Body of the College or his/her nominee to be the Chairperson of the Selection Committee,

(b) Principal of the concerned College, (c) one Senior Teacher/Head of Department having not less than service of 10 years as Teacher, (d) two nominees of the Vice Chancellor of the affiliating-University of whom one should be subject expert, (e) a Director's nominee and (f) two subject experts not connected with the College to be nominated by the Chairperson of the Governing Body out of panel of names approved by the Vice Chancellor; that this method is prescribed in Rule 7 (b) of the Rules; and that in the Selection Committee, which was constituted at the time of appointment of the respondent no.1 in L.PA.No.1635 of 2018, there was no proper quorum, as nominees of the Vice Chancellor were not there and only nominees of the President were present; and therefore the appointment is not valid.

Counsel for the respondents No.1, however, contended that the qualifications prescribed by the AICTE for the post of Lecturer was that *"a person should possess a first class Master's Degree in appropriate branch of Engineering and Technology (no minimum experience required) or must possess first class Bachelor's Degree in the appropriate branch of Engineering/Technology or equivalent have a valid GAT score with minimum 75 percentile and should complete M.Tech/M.E. within five years, failing which increments would be stopped pending Postgraduate Degrees earned"*; and that respondent No.1 in LPA No. 1635 of 2018 was eligible as per the advertisement and AICTE norms applied as he had both B.Tech Degree and GATE score of 85 percentile in March 2007 and 89.8% in March 2008. It is also contended that the Selection Committee was constituted as per the **TMA Pai Foundation** Vs **State of Karnataka** interim policy guidelines issued by the AICTE as well as the respondent No.2-University,

and outside experts called from Panipat, Kurukshetra and Ambala participated in the selection along with members of the Managing Committee and in all they were 8 members in the Selection Committee. It is stated that respondent No.1 pursued regular M.Tech with permission of the appellants without any hindrance in discharge of his duty as a Lecturer between the period August 2009 and May 2011. According to him, it is for the appellants to satisfy this Court why such a selection committee was not constituted as it was in the hands of the appellants to ensure that there is compliance with Rule 7 (b) of the Rules and the respondent No.1 has no control over it.

It is also contended that in the Show Cause Notice dt.31.05.2013, issued to the respondent No.1 by the appellants, the only ground raised was that respondent No.1 simultaneously, pursued his M.Tech while being employed in appellant no.2 college, and obtained a degree by dubious means and the appellants cannot be allowed to support the order of termination on a ground which is not raised in the show cause notice i.e. *that Selection Committee was not properly constituted.*

In this LPA No.1635 of 2018 also, new grounds are raised by the appellants such as (i) respondent No.1 is guilty of misleading and intentionally suppressing material facts by stating that the appointment is not by proper selection procedure and by the Chairman alone, (ii) that respondent No.1 is guilty of perjury etc.

We agree with the contentions raised by counsel for respondent No.1 in PA No.1635 of 2018 that grounds which are not mentioned in the Show Cause Notice cannot be pressed into service by the appellant to sustain the order of termination of the respondent No.1 in LPA

1635 of 2018 from service. It is not permissible for the appellants to raise new grounds in the appeal which are not contained in the Show Cause Notice issued by the appellants.

It is also not in dispute that several other persons who were appointed pursuant to the recommendations of the same Selection Committee which selected respondent No.1, were regularly appointed and continued, but the appellants have let them all be but targeted the respondent No.1 only. It is obvious for the oblique reasons, the appellants terminated the services of respondent No.1 in LPA No.1635 of 2018, and are pursuing this litigation.

For all the aforesaid reasons, we find no merit in these appeals, and therefore, the same are dismissed.

Consequently, Pending application(s), if any, also stands dismissed.

No costs.

July 26, 2022
Ess Kay

[M.S. RAMACHANDRA RAO]
JUDGE

[HARMINDER SINGH MADAAN]
JUDGE

<i>Whether Reportable</i>	:	<i>Yes/No</i>
<i>Whether speaking / reasoned</i>	:	<i>Yes/No</i>