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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement reserved on: 28.10.2021
% Judgement pronounced on :02.06.2022

+ **W.P.(C) 9106/2020 & CM APPL. 29391/2020**

GOVT. OF NCT OF DELHI & ORS. Petitioners
Through: Mrs Avnish Ahlawat, Standing
Counsel.

versus

DR. K. K. PRASAD & ANR. Respondents
Through: Mr Sourabh Ahuja, Advocate for
Respondent no.1.
Mr Naresh Kaushik with Mr Anand
Singh and Abhishek Verma,
Advocates for UPSC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE TALWANT SINGH

TALWANT SINGH, J.:

1. The petitioners have filed the present writ petition challenging the impugned judgment dated 06.11.2019 in OA 1214/2016 and order dated 21.10.2020 passed by the Central Administrative Tribunal (CAT), Principal Bench, New Delhi in CP No. 95/2020.

2. It has been prayed that these orders are perverse and the same may be quashed. The brief history, as per the petitioners is that the respondent no.1 i.e., Mr K.K. Prasad was appointed as a Lecturer (Mathematics) in the year 1995. There were no recruitment rules (RRs) for the post of Head of Department (HOD) (Humanities & Sciences) at that point in time. For



the first time, in 1999, the RRs for the post of HOD (Science and Humanities) were framed prescribing the pay scale of Rs. 12,000-18300/-. The appointment was to be made on the basis of selection by merit and not by seniority.

3. On 27.09.2003, the Government of NCT of Delhi (GNCTD) i.e., petitioner no.1, adopted the All India Council for Technical Education (AICTE) Guidelines, 1999 in which it was mentioned that the recruitment to all cadre posts shall be strictly based on merit by open selection through open advertisement at the national level. The office order, in this behalf, was issued on 12.12.2003. On 14.01.2010, one Mr Ravi Dutt Sharma, was promoted to the post of HOD (Science and Humanities). In the meantime, AICTE came up with Regulation dated 05.03.2010 under which Faculty Norms have been prescribed for direct recruitment for different cadres of Diploma Level Technical Institutions. There was no mention of the post of HOD (Science and Humanities) under Faculty Norms in these regulations.

4. Thereafter, all the cadre posts were to be filled by direct recruitment. In the meantime, the Hon'ble Supreme Court passed final order in Civil Appeal (CA) 4026/2003 on 30.03.2010 in the matter of **Govt. of NCT of Delhi & Anr. vs. Sanjeev Lochan Gupta & Ors.**, by which the impugned judgment of the Division Bench of this Court dated 16.03.2002 was upheld. The net crux of the said judgment is that the directions issued by AICTE are to be strictly complied with. As per the notification, the post of HOD (Science & Humanities) could not be filled up, since AICTE Faculty Norms have not provided for any such post.

5. Further, it is the case of the petitioners that the respondent No. 1



completed his Ph.D only after the implementation of the AICTE Regulation dated 05.03.2010 and the judgment of the Hon'ble Supreme Court in the matter of *Sanjeev Lochan Gupta & Ors* (supra). Respondent no. 1 was granted promotion as a Lecturer (Selection Grade) under the Career Advancement Scheme (CAS) in the pay scale of Rs. 37,400-67,000+ with AGP of Rs. 9,000/- which was equivalent to the pay scale of HOD, if recruited directly.

6. Respondent no. 1 filed OA No.2449/2015 before CAT, seeking directions to the present petitioners to prepare year wise panel for the post of HOD (Science & Humanities) w.e.f. 2011 in terms of extant instructions and thereafter year wise DPC be conducted and his name be considered for regular promotion to the post of HOD (Science & Humanities).

7. On 13.07.2015, CAT disposed OA No. 2449/2015 with directions to the petitioners to consider the representation of the respondent no.1 dated 18.05.2015 and pass an appropriate, reasoned and speaking order within 90 days. On 04.01.2016, AICTE issued a corrigendum and included the cadre of HOD (Science & Humanities) and the said post was to be filled up through direct recruitment as per AICTE norms. On 05.01.2016, petitioner no. 4 passed a speaking order, mentioning therein, that the process of considering promotion to the post of HOD (Science & Humanities) had been initiated and requisite information was called from different polytechnics regarding the eligible candidates and after receipt of the said information, the matter regarding promotion to the post of HOD (Science & Humanities) would be taken up in due course and claim of the respondent no.1 would be examined in accordance with the rules in force



at that time. After compilation of the list of all eligible candidates, the matter would be referred to UPSC for conducting DPC meeting. This was only a proposal and not a decision. The contempt petition filed by the respondent bearing CP No. 725/2015 was accordingly closed on 15.02.2016.

8. Respondent no.1 filed OA 1214/2016 on 28.03.2016 seeking directions to the petitioners to conduct DPC for the post of HOD (Science & Humanities) w.e.f. 2011 immediately and to promote him to the said post, if he is found fit by DPC. Petitioners filed a detailed counter-affidavit, stating that as per the AICTE Guidelines, the cadre of HOD posts is to be filled through direct recruitment. The respondent no.1 was already promoted as a Lecturer (Selection Grade) under CAS which is equivalent to HOD. Moreover, as per AICTE Regulations, 2010, there was no cadre of HOD (Science & Humanities) and it is only on 04.01.2016 that a clarification has been received regarding the post of HOD (Science & Humanities) and accordingly a proposal has been moved for amendment of RRs for the said post for recruitment through UPSC and case of the respondent will be considered in accordance with the said Rules. In and about 25.01.2017, an additional affidavit was filed by the present petitioners as per the directions of CAT, mentioning that if AICTE norms are not followed then it would lead to non-compliance of the directions passed in the matter of *Sanjeev Lochan Gupta & Ors.* (supra) and it was further clarified that qualifications prescribed by AICTE are statutory in nature and binding on all Technical Institutions of State Government and self-financed Technical Institutions. On 01.03.2019, AICTE again issued Regulations, wherein it was reiterated that the



recruitment to the post of HOD has to be done through direct recruitment.

9. It is further mentioned in the writ petition that the learned CAT allowed the OA filed by respondent no.1 on 06.11.2019 and directed the petitioners to consider the case of the respondent no.1 for promotion to the post of HOD (Science & Humanities) along with other eligible candidates and complete the said exercise within a period of 3 months. It was ordered that the promotion was to be prospective in nature and it has to be on the same parameters as in the case of Shri Ravi Dutt Sharma. As per petitioners, in the AICTE norms, there was no posts of HOD (Science & Humanities) and Shri Ravi Dutt Sharma was promoted before the Regulation came into effect on 05.03.2010. Respondent no.1 filed CP 95/2020 before CAT in which he filed an MA for early hearing of the matter. On 29.07.2020, Mr Sarpreet Singh Gill, Director considered the case of the respondent no.1 and passed a detailed order pointing out that the respondent no.1 cannot be considered for promotion to the post of HOD w.e.f. 2011 on the parameters of Shri Ravi Dutt Sharma as he was promoted to HOD before 05.03.2010, when the post of HOD was put in the direct recruitment category and thereafter the post of HOD (Science & Humanities) was deleted. Moreover, the respondent no.1 had acquired the necessary qualification of Ph.D. only in November, 2011, which is after the implementation of the AICTE Regulation of 2010. In August, 2020, a compliance affidavit was filed by the petitioners mentioning the above-mentioned facts.

10. On 21.10.2020, the learned CAT passed an order, *prima facie* holding that Shri Sarpreet Singh Gill has committed contempt of Court in passing the impugned order dated 29.07.2020 and he has overruled the



order passed in OA by CAT on 06.11.2009 and has decided the matter contrary to the specific directions issued by the CAT.

11. The case of the petitioners is that vide order dated 06.11.2019, CAT had only directed for consideration of the case of the respondent no.1 for promotion to the post of HOD (Science & Humanities) and after 2010 Regulations of AICTE, since the post was not in existence and respondent no.1 attained the qualification of Ph.D. only in November, 2011, his case could not be considered under 2010 Regulation. There was no parity with the case of Shri Ravi Dutt Sharma, as he was promoted in January, 2010, before 2010 Regulations were notified on 05.03.2010. In these circumstances, the present writ petition has been filed.

12. The case of the present respondent no.1 before learned CAT was that he was appointed as Lecturer (Mathematics) through UPSC on 16.01.1995 and he possessed an M.Sc. (Mathematics) at that time. He completed his Ph.D. on 30.11.2011 and he fulfilled the essential qualification required for promotion to the post of HOD (Science & Humanities) as he had the Ph.D. degree as well as 5 years' experience in teaching. Since no process was initiated for promotion to the post of HOD, he filed an RTI application dated 02.07.2014 and in response thereto, it was revealed that 4 posts of HOD were lying vacant in various Polytechnics run by the present petitioners. Respondent no.1 submitted the representation dated 18.05.2015, submitting therein that he was eligible for regular promotion to the post of HOD (Science & Humanities) as per the RRs and he was also in the zone of consideration. Respondent no.1., *via* the aforementioned representation, submitted that 4 posts were lying vacant, so he requested that DPC for regular promotion for the said



post may kindly be conducted and his name be considered for the said post. In case he is found fit, he may be promoted to HOD with all consequential benefits.

13. The respondent no.1 also sent a reminder dated 19.06.2015 and 01.07.2015 but to no avail. Respondent no.1 approached CAT by filing OA No. 2449/2015, which was disposed of on 13.07.2015 directing the present petitioners to consider the representation of the respondent no.1 dated 18.05.2015 and pass a reasoned and speaking order. Since the present petitioners did not comply with the said order, respondent no.1 filed CP No. 725/2015, in which copy of an order dated 05.01.2016 was filed by the present petitioners mentioning therein that information regarding the eligible candidates was being obtained, and after receiving the relevant information the matter would be sent to UPSC for conducting DPC for the post of HOD (Science & Humanities).

14. The CAT took note of the order dated 05.01.2016 and directed the present petitioners to take steps within a reasonable period and closed the CP vide order dated 15.02.2016. Even thereafter no steps were taken for more than 4 months, so the present respondent no.1 was compelled to file an OA again before learned CAT, which was disposed of *vide* impugned judgment dated 06.11.2019. The relevant portion of the impugned judgment dated 06.11.2019 passed in OA 1214/2016 is reproduced hereunder:-

“10. Therefore, the OA is allowed. Respondents are directed to consider the case of the applicant, for promotion to the post of HoD Science and Humanities, along with other eligible candidates and complete the exercise, within a period of three months, from the date of receipt of a certified copy of this order. We make it clear that appointment, if made, shall



be prospective in nature and shall be on the same parameters, as in the case of Shri Ravi Dutt Sharma.”

15. But the said order was not complied with, so the present respondent preferred CP No. 95/2020, in which an order dated 21.10.2020 was passed as under:-

“We are prima-facie convinced that Sri Sarpreet Singh Gil respondent no. 2 herein, has committed Contempt of Court in passing the impugned order dated 29.07.2020.

2. For all practical purposes, he has overruled the order passed in the OA and proceeded to decide the matter contrary to the specific directions issued in the order in the OA. We direct him to explain as to why necessary steps be not taken against him, as provided for, under law.

3. It shall be the duty of the Delhi administration to ensure that the order is served upon the concerned officer.

4. Post on 19.11.2020.”

16. The writ petition was taken up for hearing for the first time on 18.11.2020. Notice was issued, learned counsel for respondent no.1 stated that the Contempt Petition no. 95/2020 will not be pressed further in the meantime.

17. In order dated 20.07.2021, the relevant facts were noted down as under:-

“4. We may indicate that, the record has revealed the following facts, which are necessary for adjudicating the dispute that has arisen for our consideration in the instant case.

4.1. It appears that respondent no.1 was appointed as a Lecturer(Mathematics) in Polytechnic, under the aegis of the Department of Training and Technical Education, New Delhi, on 16.01.1995. Respondent no.1, it appears, was accorded Ph.D. in Mathematics, on 30.11.2011.



4.2. It is the claim of respondent no. 1 that, in 2011, four posts for appointment as HOD (Science and Humanities) fell vacant, and that, despite representation, his case was not considered.

4.3. Because of non-consideration of his case for the post of HOD (Science and Humanities), respondent no. 1 approached the Tribunal, via OA No. 2449/2015. This OA was disposed of on 13.07.2015. The Tribunal, vide order dated 13.07.2021, called upon the writ petitioners to pass a reasoned order, after considering the representation made by respondent no. 1, in that behalf. This exercise was to be carried out by the writ petitioners, within 90 days from the receipt of a copy of the Tribunal's order dated 13.07.2015.

4.4. Since, the necessary measures, as noticed above, were not taken, respondent no. 1 filed a contempt petition i.e. C.P. No.725/2015. In the said contempt petition, the writ petitioner appears to have taken a stand that the petitioner's case had been sent to respondent no. 2/UPSC for the purposes of convening a meeting of the Departmental Promotion Committee. Based on this stand, the said contempt petition was closed on 15.02.2016.

4.5. It appears that, although, while closing the aforementioned contempt petition, the Tribunal had observed that the aforesaid process should be completed within a reasonable time, the writ petitioners failed to abide by that direction.

5. Resultantly, respondent no. 1 approached the Tribunal once again, via OA No. 1214/2016.

5.1. This time around, the writ petitioners took the stand that they had amended the Recruitment Rules (in short 'RRs') on the lines of the guidelines issued by All India Council for Technical Education (AICTE). According to the writ petitioners, the RRs that were amended on 19.09.2017, provided for appointment to the post of HOD, only by way of direct recruitment.

5.2. The Tribunal, after considering the case of both sides, ruled in favour of respondent no. 1, as indicated above. While doing so, the Tribunal relied upon the decision dated



30.04.2019, passed in OA No. 3146/2015. The Tribunal also, as alluded to above, noted that the writ petitioners had granted relief to, one, Mr. Ravi Dutt Sharma, and appointed him as HOD (Science and Humanities), vide order dated 14.01.2010.

6. Given the foregoing, according to us, prima facie, the core issue, which arises for consideration, is: whether the amended RRs would apply to respondent no. 1, for considering his plea, for appointment to the post of HOD (Science and Humanities)?”

18. No counter affidavit was filed by respondent no.1. However, respondent no.2 had filed a short affidavit mentioning therein that no process for filling up the post of HOD (Science & Humanities) was initiated by the present petitioners, in line with the stand taken in its order dated 05.01.2016. On 23.07.2021, learned counsel for the respondent pointed out that 4 other employees were promoted HOD in the meantime namely (i) Ravi Dutt Sharma, (ii) A.V. Patil, (iii) Lokpal Singh Negi and (iv) A.K. Chaudhary. The petitioners were directed to place promotion orders of these persons on record. The direction was complied with by the petitioners. Written submissions were filed and thereafter both sides have addressed oral arguments.

19. There is no dispute that as per the RRs notified by the present petitioners in the year 1999 for the post of HOD (Science & Humanities), the present respondent no.1 was eligible to be considered for the said post, which was to be filled by way of selection from amongst the lecturers who were in the consideration zone. However, AICTE issued certain directions on 30.12.1999, wherein they had prescribed the minimum qualifications, experience and mode of selection for the faculty in the Institutions imparting Technical Education. The said letter of AICTE



dated 30.12.1999 was in challenge before CAT in OA No. 519/2000 titled *Sanjiv Lochan Gupta vs The Govt. of NCT of Delhi & Anr.* Vide judgment dated 20.02.2001, the Tribunal held that recommendations of AICTE of 1999 have not been accepted by the GNCTD and the said recommendations were recommendatory in nature and, therefore, the advertisement issued by GNCTD for filling up of certain posts of lecturer as per the earlier prescribed qualification cannot be wrong. The applicants in the said OA filed a writ petition before this Court, which was decided by a Division Bench on 16.03.2002 being W.P.(C) 1613/2001. Vide the said judgment, the Division Bench of this Court came to a conclusion that directions issued by AICTE shall be binding and accordingly, the GNCTD was directed to strictly comply with the directions of AICTE contained in 1999 notification. *Via* the aforesaid order, the Division Bench allowed the writ petition filed by the respondent and the order dated 20.02.2001 of the Tribunal was set aside.

20. GNCTD challenged the final order by filing Civil Appeal No.4026/2003 before the Hon'ble Supreme Court. The matter was duly heard and vide order dated 30.03.2010, the Hon'ble Supreme Court, after going through the final order dated 16.03.2002 of the Division Bench of this Court, dismissed the appeal filed by the GNCTD. The effect of dismissal of the appeal filed by GNCTD is that the directions issued by AICTE in 1999 are held to be binding in nature and GNCTD is bound to comply with the same.

21. The case of the petitioners is that said guidelines were adopted on 27.09.2003 and the said guidelines prescribed that recruitment to all cadre posts shall strictly be based on merit by open selection through open



advertisement at the national level. The said four categories of cadre are (i) Lecturer (ii) Senior Lecturer, (iii) Head of Department (iv) Principal/Director.

22. The question which arises here for consideration is that if the directions of AICTE of 1999 are binding in nature as held by this Court on 16.03.2002, then under what circumstances, one Mr Ravi Dutt Sharma was promoted to the post of HOD (Science & Humanities).

23. The probable answer lies in the order dated 28.02.2003 passed by the Hon'ble Supreme Court in the SLP filed by GNCTD [which was subsequently converted to Civil Appeal No.4026/2003] where status quo as on that date was ordered to be maintained regarding the said regulations.

24. The further case of the petitioners is that AICTE came up with regulations dated 05.03.2010, while exercising its power under sub-section (1) of Section 23 read with Section 10 (i) and (v) of the All India Council for Technical Education Act, 1987 and framed the said regulations, which were duly gazetted on 13.03.2010, in which it was specifically provided that the post of Head of Department (HOD) was to be filled through direct recruitment. Moreover, the said notification only provided for the post of HOD in the cadre of Engineering/Technology, Pharmacy, Hotel Management and Catering Technology and Architecture and no post was prescribed as HOD (Science & Humanities). The second limb of argument on behalf of the petitioners is that the recommendations of AICTE dated 30.12.1999 were not in the form of Regulations under Section 23 (1) of AICTE Act 1987 and stand of Government was that the same were recommendatory in nature and not mandatory. The



Government accepted the said recommendations in 2003 but RRs were not amended.

25. It was argued on behalf of the petitioners that on 01.07.2005, AICTE clarified that for directly recruited teachers, the advancement in career was provided only by two modes i.e., either by selection when post is advertised through direct recruitment or by promotion through CAS in a time bound manner as per the well-defined norms and guidelines laid down by AICTE. It appears that the GNCTD kept on applying the old RRs for filling the posts of HOD till 14.01.2010; as the copies of the appointment letters placed on record show that Shri Lok Pal Singh Negi, Shri A.V. Patil and Shri A.K. Chaudhary were promoted as HOD (Civil) as per the existing RRs on 19.03.2008 and one Shri Ravi Dutt Sharma was promoted as HOD (Science & Humanities) on 14.01.2010. The only saving grace for the GNCTD can be found in the *status-quo* order passed by the Hon'ble Supreme Court dated 28.02.2003 in which *status-quo* was ordered in the matter of ***Govt. of NCT of Delhi & Anr. vs. Sanjeev Lochan Gupta & Ors.*** The stand of GNCTD is that the situation changed in March, 2010, when two events happened. The first event was that on 05.03.2010, AICTE issued statutory regulations under Section 23 (1) of AICTE Act, 1987, wherein the post of HOD (Science & Humanities) was removed and the post of HOD in other departments was to be filled by direct recruitment. The second event which happened in March, 2010 was that the Hon'ble Supreme Court in the matter of ***Govt. of NCT & Anr. vs. Sanjiv Lochan Gupta & Ors.*** in Civil Appeal 4026/2003 upheld the judgment of the High Court in W.P.(C) 1613/2001 by holding that the directions of AICTE as contained in notification dated 30.12.1999 shall



prevail. So, the stand of the GNCTD is that till 05.03.2010, although it was following the recommendations of the AICTE, which were issued on 30.12.1999 but the RRs were not modified and the promotions were done under the existing RRs, which provided for selection by merit from amongst candidates already in service falling in the zone of consideration. Further, after 05.03.2010 and subsequent to the judgment of Supreme Court dated 30.03.2010, the only source of recruitment for the post of HOD in Technical Institutions at Diploma level remains to be direct recruitment through open advertisement and no promotion from amongst the existing lecturers can be done.

26. Another important aspect, which is, to be noticed at this stage is that the Regulations notified on 05.03.2010 did not provide for the post of HOD (Science & Humanities). It is the admitted case of the respondent that he acquired the necessary qualification for being considered for the post of HOD (Science & Humanities) only on 30.11.2011. Prior thereto, on 12.07.2010, the Cabinet of GNCTD approved the implementation of the AICTE Regulation 2010. Hence, when respondent no.1 attained the requisite qualification, the said post was not there in the said Regulations. It took AICTE more than 6 years to realise its mistake and a clarification was issued on 04.01.2016, wherein the conditions for filling up the post of HOD (Science & Humanities) were notified in line with AICTE notification dated 05.03.2010. On 19.09.2017, GNCTD notified the amended RRs for the post of HOD (Science & Humanities) providing for filling up of this post by open competition in line with AICTE Regulations. On 01.03.2019, AICTE issued a Regulation for implementation of the 7th Pay Commission, again reiterating that the Head



of Department should be appointed through direct recruitment. Even in cases where the advertisement had been already published, the institutes/employers were required to publish corrigendum and the applications were directed to be processed in terms of the said regulations.

27. Further stand of GNCTD is that in terms of the order dated 05.03.2010, GNCTD was to approach UPSC for considering the case of promotion to the post of HOD (Science & Humanities). Vide said order, the work conduct/and vigilance clearance of all the eligible lecturers was sought. The matter was under process and it was to be further processed after the finalization of the RRs for the post of HOD (Science & Humanities); so the file was not immediately sent to UPSC. There was a conscious decision not to fill up the post till amendment of the recruitment rules and there was no vested right in any individual to be considered under the unamended rules. The post of HOD (Science & Humanities) was removed by AICTE regulation dated 05.03.2010, so the candidature of the present respondent No. 1 could not be considered. The AICTE directions were to prevail as ruled by High Court, and affirmed by the Supreme Court in the matter of *Govt. of NCT & Anr. vs. Sanjiv Lochan Gupta & Ors.*

28. The submission of respondent no.1 is that the Tribunal's directions issued vide order dated 15.02.2016, passed in contempt petition, directed the GNCTD to follow up with UPSC for convening DPC for promoting respondent no.1 to the post of HOD (Science & Humanities) in terms of letter dated 05.01.2016 within a reasonable time and same had to be adhered to. As per respondent no.1, the rule of *res judicata* prevents the parties to litigate the same question over and over again even though the



determination may be wrong but the proceedings have attained finality, so the parties are bound by the said decision. Any issue which was raised in the earlier litigation is not open to be litigated again and no party can go back on the statement made in the Court. The stand taken by the present petitioners before CAT had resulted in the final adjudication of the grievances of the respondent no.1, so now it is not open to the petitioners to take a U turn and approach this Court, contrary to its stand before CAT. The further case of the respondent No. 1 is that now the petitioners do not intend to implement the order dated 05.01.2016, on the ground that AICTE recommendations of 1999 permit appointment to the post of HOD (Science & Humanities) only by way of direct recruitment but the petitioners had promoted Mr A.V. Patil, Mr Lokpal Singh Negi, Mr A.K. Chaudhary, Mr Ravi Dutt Sharma and others vide order dated 19.03.2008, 14.01.2010, 31.05.2001, 19.05.2011, and 10.12.2013 respectively to the post of respective HODs by promotion, which amounts to discrimination and selective approach of the petitioners. Respondent no.1 had a substantive legitimate expectation of his promotion to the post of HOD (Science & Humanities) and the Government cannot resile from its stand taken before CAT. Moreover, any subsequent development and changed legal position cannot be raised as a ground to avoid implementation of the order which has attained finality. The RRs for the post of HOD (Science & Humanities) were amended only on 19.09.2017 and the earlier method of recruitment by way of promotion has been eliminated forever. The said act of the Government is hit by Article 16 of the Constitution of India. The further stand of the present petitioners in their counter reply before CAT in OA 1214/2016, was that they were in the process of amending the



RRs for the post of HOD (Science & Humanities) and as and when the amended RRs were notified, the matter for promotion will be considered in accordance with the law. The government did not conduct DPC for the post of HOD (Science & Humanities) despite the order dated 15.02.2016 of the CAT. The DPCs need not be delayed on the ground that RRs for the post of HOD are being amended. Moreover, for vacancies are to be filled in accordance with the RRs in force on the date of vacancy, unless the rules made subsequently have been given retrospective effect. The vacancies which have occurred prior to the amendment of the rules would be governed by the said rules and not by the amended rules.

29. It is further stand of the Respondent No. 1 that in the order dated 05.01.2016, it was mentioned that the process for promotion for the post of HOD in terms of RRs dated 21.02.2000 had been initiated and the matter was referred to UPSC for conducting DPC. Thereafter, the Government cannot change its stand and say that since it was an incumbent change in the RRs, so they will consider the candidature of respondent no.1 in terms of the amended RRs. The Government had started the process of selection under the un-amended Rules, so it has to select the HOD in terms of the same rules. Shifting of stands is not permissible for any party, as such, the present petition is not maintainable.

30. Certain dates and events are important for deciding the present writ petition. The RRs for the first time for the post of Head of Department (Science & Humanities) were framed in the pay scale of Rs. 12,000-18,000/- in 1999. Respondent no.1 in the present case has joined the service on 16.01.1995 as Lecturer (Mathematics). The qualification prescribed in 1999 RRs for appointment as Head of Department (Science



& Humanities) was Ph.D. in Physics, Chemistry, Mathematics or English from a recognised university and five years' experience in teaching/profession and/or research. This was a merit-based selection post and not an automatic promotion post.

31. On 30.12.1999, AICTE came up with its recommendations of revised pay scales and the said pay scales were subject to implementing the revised qualifications and recruitment procedures in the said recommendations. The post of Head of the Department was to be filled by direct recruitment as per AICTE's recommendations.

32. On 01.07.2005, clarification was issued by AICTE wherein it was mentioned that the career of a teacher will start through direct recruitment on an open post through advertisement. Thereafter, it may advance through two routes either by selection through direct recruitment to an advertised open post or promotion through CAS in a time-bound manner.

33. The understanding of the GNCTD/petitioner no.1 throughout was that the guidelines laid down by AICTE on 30.12.1999 were only recommendations and they were not binding. The GNCTD/petitioner no.1 kept on promoting the lecturers as HOD from time to time, which included Shri Lokpal Singh Negi (Civil), (ii) A.V. Patil (Civil), and (iii) A.K. Chaudhary (Civil), who were promoted on 19.03.2008 as per the existing RRs without taking into consideration AICTE guidelines dated 30.12.1999.

34. In 2009, the present respondent no.1 was granted CAS scale in the grade pay of Rs. 9,000/- in PB-IV at the level of HOD and he has accepted the same. It appears that the respondent no.1 was aware that his career progression was only through CAS mode and not otherwise. The



last promotion made as HOD (Science & Humanities) was of Shri Ravi Dutt Sharma on 14.01.2010.

35. It is important to note that a litigation was initiated by one Shri Sanjiv Lochan Gupta along with other persons against the present petitioners and respondent no.2 in respect of the recruitment to the post of lecturers in the technical institutions run by the present petitioners. However, when the post was advertised by the GNCTD/petitioner no.1, instead of mentioning the qualifications as per the AICTE regulations dated 31.12.1999, the Government had stuck to its old rules. The difference between the two is that as per the AICTE recommendations, the requisite qualification to apply is a first class degree whereas RRs provide for a degree simpliciter in the appropriate branch of Engineering as being essential qualification for being appointed as Lecturer. The OA bearing no. 519/2000 filed by Sanjiv Lochan Gupta and Ors was dismissed by CAT on 20.02.2001. The CAT refused to apply the AICTE notification on the ground that the same was not accepted by the Government and the RRs do not provide for first class bachelor's degree, hence in the eyes of CAT, the AICTE regulations dated 30.12.1999 are only recommendatory in nature and same were not binding.

36. Mr Sanjeev Lochan Gupta, along with others, challenged the order of CAT dated 20.02.2001 before this Court and a coordinate bench of this court held that the said recommendations dated 30.12.1999 of AICTE are mandatory in nature and as a result, the judgment of the CAT was set-aside and GNCTD/petitioner no.1 was directed to strictly comply with the directions of the AICTE. This judgment was pronounced on 16.03.2002. GNCTD/petitioner no.1, challenged this judgment by filing SLP (Civil)



17529/2002, which has taken up for hearing on 28.02.2003 and status-quo was ordered to be maintained.

37. The GNCTD/petitioner no.1 on the strength of this stay, kept on considering the letter dated 30.12.1999 of AICTE only as a recommendation and did not amend the RRs and kept on promoting its staff in Technical Institutes on the basis of existing RRs of 1999.

38. However, in March 2010, two new developments took place; firstly, AICTE issued statutory regulations on 05.03.2010 under Section 23 (1) of AICTE Act, 1987 for applying the recommendations of 6th CPC. These regulations reiterated that the initial direct recruitment will be for the post of lecturer, HOD and Principal. However, in the recommendations dated 05.03.2010, the post of HOD (Science & Humanities) was removed under Faculty Norms; meaning thereby that from 05.03.2010 onwards, there was no post of HOD (Science & Humanities) in any Technical Institutions in the country where Diploma Course were being taught.

39. The second development which occurred in March, 2010 is that the SLP pending before the Hon'ble Supreme Court titled *Govt. of NCT of Delhi & Anr. vs. Sanjeev Lochan Gupta & Ors.*, (which was converted to Civil Appeal no. 4026/2003), was finally heard and disposed of by observing therein that there was no merit in the appeal and the said civil appeal was dismissed accordingly. The net effect of the dismissal of this appeal pending before the Hon'ble Supreme Court since 2003 was that the order passed by a coordinate bench of this court dated 16.03.2002 in the matter of *Sanjiv Lochan Gupta & Ors vs. Govt. of NCT of Delhi & Ors* became final and binding on one and all. It was held that AICTE



recommendations of 1999 were mandatory in nature and the Government was to comply with the same. It is pertinent to note that the said recommendations were replaced by recommendations dated 05.03.2010 which reiterated the same position, i.e., Head of Department was to be recruited directly apart from direct recruitment for the post of lecturer and the Principal. Another development, as noted above, is that no post of HOD (Science & Humanities) was provided in the AICTE statutory regulation dated 05.03.2010.

40. The present respondent no.1 completed his Ph.D. on 30.11.2011 and laid his claim for the post of HOD (Science & Humanities). As noted above, from 05.03.2010 onwards there was no post of HOD (Science & Humanities) notified by AICTE in Faculty Norms, so, there was no question of promoting any lecturer or directly appointing anybody for the said post after 05.03.2010.

41. Respondent no.1 submitted a representation, dated 18.05.2015 requesting the present petitioners for holding DPC and to consider respondent no.1 along with others for the regular promotion to the post of Head of Department (Science & Humanities) and if he were to be found fit, to appoint him on regular basis w.e.f. 30.11.2011 and grant him all consequential benefits i.e., seniority, promotion, arrears etc. No order was passed by the petitioners. Hence, respondent no.1 filed OA No. 2499/2015 before CAT, which was disposed of on 13.07.2015 without going into the merits by directing the GNCTD to consider the representation dated 18.05.2015 of the present respondent no.1 and to pass an appropriate, reasoned and speaking order in accordance with law within 90 days. No such order was passed within 90 days, so the present



respondent no.1 moved CP No. 725/2015 in OA No. 2499/2015. The GNCTD/petitioner no.1 issued a circular dated 10.11.2015 mentioning therein that the matter regarding promotion to the post of HOD was under process and the same would be processed after finalization of RRs for the post of HOD (Science & Humanities) and in the meantime, the work conduct/integrity report and vigilance clearance of eligible lecturers in the field of Science & Humanities had been called for. An order was passed on 05.01.2016 by GNCTD/petitioner no.1 in response to the directions given by CAT in OA No. 2499/2015 dated 13.07.2015 mentioning therein that the process for promotion to the post of HOD (Science & Humanities) has been initiated and vide circular dated 10.11.2015 the vigilance clearance and work and conduct reports have been called for and the claim of respondent no.1 would be examined in accordance with the law in compliance at the time and in conjunction with others in the seniority list and after compilation of list of the eligible candidates, the matter would be referred to UPSC for conducting DPC, since it is a Group 'A' post.

42. On 06.01.2016, AICTE published certain clarifications on issues/anomalies pertaining to the qualifications/pay scales, service conditions etc for teachers and other staff member. Although, the said notification was dated 04.01.2016 but it was published in the Gazette of India on 06.01.2016. In these clarifications, at point no.13, AICTE has defined the qualification/eligibility condition for the post of HOD (Humanities & Science) (Diploma); meaning thereby that the post of HOD (Humanities & Science) (Diploma) has been re-introduced. It is to be kept in mind that the mode of recruitment has not changed and the earlier notification of AICTE (published on 05.03.2010) is to prevail;



which provided that the mode of recruitment prescribed was ‘direct recruitment’ and not by promotion/selection from amongst the existing lecturers. A copy of the order dated 05.01.2016 was submitted before CAT in CP No.725/2015, which was considered on 15.02.2016 and on the basis of the said letter, the CP was closed. However, the GNCTD/petitioner no.1 was directed to take follow up steps in the matter within a reasonable period.

43. Since, as per respondent no.1, no positive steps were taken despite the assurance given by the Government in the contempt petition, the present respondent no.1 filed the OA No. 1214/2016 before CAT for implementation of its earlier directions. CAT disposed of the said OA vide order dated 06.11.2019, which is under challenge before this Court. In the final order, the GNCTD/petitioner no.1 has been directed to consider the case of present respondent no.1 for the post of HOD (Science & Humanities) along with other eligible candidates and complete the exercise within a period of 3 months. The said order was based on the following premises:

- (a) The GNCTD/petitioner no.1 had amended RRs only on 19.09.2017 and the cardinal principle is that whenever the rules are amended, the vacancies existing before the amendment will be filled in accordance with the earlier rules.
- (b) The argument of GNCTD/petitioner no.1 that the norm stipulated by GNCTD/petitioner no.1 did not provide for promotion for the post of HOD was demolished on the basis that one Mr. Ravi Dutt Sharma was promoted on 14.01.2010 as HOD (Science & Humanities).



44. In our considered view, the first ground relied by CAT to allow the OA, that since RRs were amended only on 19.09.2017, so the existing posts of HOD (Science & Humanities) were to be filled through existing rules of 1999 i.e., by way of selection based on merit from amongst the lecturers is flawed because it not only violates the 2010 notification of AICTE but side by side the same is also in violation of the judgment of the Supreme Court in the matter of *Sanjeev Lochan Gupta*, wherein a civil appeal filed by the government against an order passed by this Court declaring the AICTE regulation of December, 1999 as mandatory was dismissed. The regulations of March, 2010 were issued by AICTE in the meantime.

45. In the said judgment, it has been mentioned in detail that the said regulations of AICTE shall prevail, irrespective of the RRs framed by the State Government. That is the spirit of the judgment passed by the Hon'ble Supreme Court, which is not only applicable to Technical Institutions granting Diploma but even to Medical Institutes, where rules framed by Medical Council of India to prevail against the rules framed by different State Governments regarding qualifications and recruitment of staff etc. Hence, the amendment dated 19.09.2017 in RRs is not the triggering point for recruitment to the post of HOD. The triggering point was the 1999 regulations of AICTE, followed by 2010 regulations of AICTE under Section 23 (1) of AICTE Act.

46. The second ground on which the judgment of the CAT is based is that in the case of Ravi Dutt Sharma, the promotion was made on 14.01.2010, although it was argued that the 2010 regulation of AICTE did not provide for promotion to the post of HOD (Science & Humanities).



This again is a flawed view taken by the CAT because the AICTE regulations were notified in the first week of March, 2010 and the judgment of the Supreme Court on the matter came in the last week of March, 2010 and prior thereto the GNCTD/petitioner no.1 was under the *bona fide* impression that the letter dated 30.12.1999 of AICTE was only a recommendation, which was not binding on the State Government. The notification dated 05.03.2010 followed by the judgment of the Hon'ble Supreme Court in the matter of *Sanjiv Lochan Gupta* (supra) dated 30.03.2010 took note of the changed eligibilities for recruitment to the post of HOD (Science & Humanities) and it is to be filled only on the basis of direct recruitment and not by promotion from the pool of lecturers already serving in the Institutes run by GNCTD/petitioner no.1.

47. The learned counsel for respondent no.1 has relied upon a number of judgments in support of his argument that till the RRs are amended, the recruitment/promotion is to be done only through the existing rules. The said judgments are not applicable to the facts of this case as we are of the opinion that AICTE regulations are mandatory in nature and whether the RRs are amended or not, the said regulation of AICTE shall prevail in the matter of recruitment and promotion.

48. The next argument addressed by the counsel for the appellant is that the judgment in the matter of *Sanjiv Lochan Gupta* (supra) was explained by the subsequent judgment of the coordinate bench of this Court in W.P.(C) No.10640/2009 dated 06.08.2010. We have gone through the said judgment. It relates to fixation of pay scales of Librarians and Physical Education Teachers and the coordinate bench has nowhere discussed the matter of *Sanjeev Lochan Gupta*. Moreover, it was nowhere



held that AICTE recommendations are not binding. The bench relied on para 2-3 of the notification dated 30.12.1999, regarding the discretion to be exercised by the State Government for fixing lower pay scale, which was to be exercised after taking permission from AICTE, and it was held that it was not complied with. The said coordinate bench has only granted permission to GNCTD/petitioner no.1 to fix and implement the pay scales of Physical Education Teachers subject to obtaining permission from AICTE.

49. The learned counsel for respondent no.1 has also gone to the extent of relying upon principle of reasonable expectation, as well as equality with other lecturers. He has also raised the issue of estoppel. If GNCTD/petitioner no.1 has taken a wrong stand while facing contempt, that cannot be a ground for over-riding the direction issued by AICTE. Moreover, the promotion granted to other HODs in the intervening period from 1999 to 2010 is not in issue before this Court, therefore, we refrain from commenting on merit of the said cases. It is to be noted that after 2010, the promotions to the post of HOD were granted only on the basis of the directions issued by CAT in the matter of Vinod Kr. Verma (Electrical Engineer) and P.K. Bagga (Electrical Engineer), who were/are parties in OA No.2753/2009. No other promotion was made to the post of HOD by selection on the basis of merit amongst the lecturers. The said promotions, as mentioned earlier, are not under challenge before us. The stand taken before us (which was also the stand taken by the GNCTD/petitioner no.1 before CAT), is that AICTE regulations are supreme but till March, 2010, Delhi Government was taking a contradictory stand that the said regulations were only recommendations



and not mandatory in nature. There was no post of HOD (Science and Humanities) from March, 2010 till 2016 in the AICTE Regulations and as soon as the clarification came in 2016 regarding existence of post of HOD (Science and Humanities), the RRs have been accordingly amended in relation to the post of HOD (Science & Humanities), leaving no scope for the present respondent no.1 to be considered for promotion. There is no financial loss to the present respondent no.1, who is already drawing equivalent salary to the scale of HOD (Science & Humanities).

50. We find that the order dated 29.07.2020 passed by the GNCTD/petitioner no.1 takes care of these issues and was passed in the right context. There is no scope for initiating any contempt proceedings or to call for an official of GNCTD/petitioner no.1 to be present in Court, holding that *prima-facie*, the directions of the CAT issued vide order dated 06.11.2019 had been flouted or the said order passed by the GNCTD/petitioner no.1 has over-ruled the order of the CAT.

51. In view of the above, the writ petition is allowed. The impugned judgment dated 06.11.2019 passed by the CAT in OA 1214/2016 is hereby set aside. As a consequence, the CP No. 95/2020 has become infructuous on the board of CAT. The same is disposed of.

TALWANT SINGH, J.

RAJIV SHAKDHER, J.

JUNE 02, 2022

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