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

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Judgment reserved on 30.11.2021
Judgment pronounced on 07.01.2022

+ **W.P.(C) 6026/2021 & CM APPLs. 19057-58/2021**

GOVT OF NCT OF DELHI & ORS. Petitioners
 Through: Ms Vibha Mahajan Seth, Advocate.

versus

DR AMIRA NISAR Respondent
 Through: Mr Sourabh Ahuja, Advocate.

CORAM:

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

RAJIV SHAKDHER, J.

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Preface:-

1. This writ petition is directed against the judgment dated 13.10.2020, read with the order dated 21.01.2021, passed by the Central Administrative Tribunal [in short, the “Tribunal”] in O.A. No.1119/2019 and M.A.



No.46/2021.

1.1. *Via* the impugned judgment, the Tribunal has allowed the original application ['O.A.'] preferred by the respondent.

1.2. The short issue which arises for consideration is whether the petitioners should take into account the past services rendered by the respondent with her previous employer.

1.3. From the point of view of the respondent, this aspect has attained criticality, as she has been denied the benefits envisaged under the Career Advancement Scheme [in short "CAS"]. The denial of benefits under CAS has resulted in the respondent not being granted senior scale.

Background:-

2. Before we proceed further, the following broad facts are required to be noticed :

2.1 The respondent was appointed as Lecturer (Electrical Engineering) [in short "Lecturer (EE)"] in BSF Polytechnic on 31.03.2000, pursuant to an advertisement issued on 8-14.05.1999 [in short "the 1999 advertisement"].

2.2. At the point in time, when the 1999 advertisement was issued by BSF Polytechnic, the notification dated 20.09.1989 [in short "the 1989 notification"] read with the Guidelines for Career Advancement of Lecturers in Polytechnics dated 10.09.1993, issued by All India Council for Teacher Education (AICTE), was in vogue.

2.3. It is pertinent to note that the qualifications prescribed under the 1989 notification prescribed were as follows:

<i>No.</i>	<i>Cadre</i>	<i>Qualification and Experience</i>
1.	<i>Lecturer</i>	<i>(i) 1st Class Bachelor's Degree in</i>



appropriate branch of engineering/ technology.

OR

M.Sc. 1st Class in appropriate branch of study for teaching posts and humanities and sciences.

(ii) Qualifying in All-India Examination (such as GATE or equivalent)

(iii) Selected through the prescribed selection procedure.

2.4 As against this, the 1999 advertisement prescribed the following [relevant] qualifications for the post of Lecturer (EE):-

“1. Lecturer (Electrical Engg.): 01 post (Rs 8000-275-13500) DA, HRA and CCA as per BSF Central Education Fund Rules

Educational qualifications:

Essential

B.E (Electrical) in 1st Class from a recognized University

Desirable

i) Qualifying in an All India Examination (such as GATE or equivalent)

ii) Competent to teach in both Hindi and English.

Age: Less than 40 years

Experience: *At least 3 years teaching experience in a recognized Polytechnic or Degree Engineering college in the field of Electrical Engg. ”*

3. At this juncture, it is pertinent to note that the respondent claims she was granted senior scale by her erstwhile employer i.e., BSF Education Society with the issuance of the order dated 31.01.2007.



3.1. We may note that this aspect is disputed by the petitioners. The petitioners claim that the respondent continued in the pay scale Rs.8000-13500/- till she resigned from BSF Polytechnic on 27.09.2010.

3.2. According to the petitioners, had the above-mentioned order dated 31.01.2007 been given, effect to, the respondent would have been upgraded to Rs.10, 000-15,200/- pay scale.

3.3. We may note that, on 30.12.1999, AICTE issued a notification [in short “the 1999 notification”], which, *inter alia*, provided in Clause 8.2(i) that a Lecturer will be eligible for placement as a Lecturer (Senior Scale) albeit via a process of selection, only upon completion of six years of service after regular appointment as a Lecturer. This period, according to the said provision, could be relaxed by two years for those who had obtained a PhD and by one year for those who had an M.Phil/M.E./M.Tech.

3.3(a) Apparently, it is in this background that, on 31.01.2007, the BSF Education Society issued an order for the grant of senior scale to the respondent.

3.4. Moving on with the narrative, it emerges that, on 05.03.2010, the AICTE issued yet another notification concerning pay scales, service conditions & qualifications for teachers and other academic staff in technical institutions [in short “the 2010 notification”].

3.5. As per the 2010 notification, a Lecturer possessing a Master’s degree would become eligible for the grant of senior scale, after having put in five years in service as a Lecturer. The petitioners claim that there were other conditions, which had to be fulfilled, which included completion of two AICTE approved refresher programmes, of not less than two weeks duration each and two TEQIP sponsored programmes of one week each. For this



purpose, the petitioners have placed reliance on Clause (a) (iv), (vii) and (xvi) of the said notification.

4. The respondent, as noticed above, resigned from the post of Lecturer (EE) in BSF Polytechnic and joined the department of Directorate of Training and Technical Education [in short, “DTTE”], on 28.09.2010.

4.1. The respondent was appointed to the same post which she held in BSF Polytechnic i.e., Lecturer (EE). At that point in time, the pay scale, which was offered to the respondent was Rs.8000-13,500/-; which was revised to Rs.15600-39100/- [according to the petitioners, as per the provisions of the 2010 notification; an aspect which is contested by the respondent].

4.2. Importantly, on 08.11.2012, AICTE issued a notification [in short, “the 2012 notification”] which brought into force regulations concerning CAS benefits for teachers and other academic staff working in technical institutions.

4.3. The procedure for the selection of eligible candidates, who were accorded benefits under CAS, was stipulated in the 2012 notification. In particular, Regulation 6 provided for counting past services for both direct recruitment and promotion under CAS. One of the conditions prescribed was that the essential qualifications for the post held should not be lower than the qualifications prescribed by AICTE; *inter alia*, for the post of Lecturer¹.

4.4. With little over one month i.e., on 14.12.2012, DTTE issued a circular, in consonance with the 2012 AICTE notification, allowing Lecturers to file representations, in case they were desirous of having their

¹ 6.1 (a) The essential qualifications of the post held were not lower than the qualifications prescribed by the AICTE for lecturer, Head of the Department, Workshop Superintendent as the case may be.



past service in polytechnics under DTTE, being counted.

4.5. The record shows that the respondent, on 12.08.2016, filled up a proforma for the grant of senior scale. The proforma, *inter alia*, adverted to the fact that the respondent was claiming the benefit from 28.09.2015, and that she had completed the requisite four short-term courses between 30.10.2012 and 12.09.2014. In all, the four short-term courses had spanned over six weeks.

4.6. Resultantly, vide order dated 06.07.2017, the respondent was granted senior scale, albeit, w.e.f. 28.09.2015.

4.7. Being aggrieved, the respondent approached the Tribunal, by way of an original application. The O.A. was numbered as O.A. No.236/2018. The said O.A. was disposed of on 18.01.2018, with a direction to the petitioners to decide the representations² submitted by the respondent.

5. It is on account of this order issued by the Tribunal on 18.01.2018, that the petitioners passed the order dated 09.08.2018. *Via* this order, the petitioners rejected the respondent's plea to count her past service for the grant of senior scale.

5.1. The petitioners' stance impelled the respondent to, once again, approach the Tribunal by way of another O.A. This O.A., as noticed above, was numbered as O.A.1119/2019. This time around, the Tribunal allowed the respondent's O.A., *via* judgment dated 13.10.2020.

5.2. The record also shows that the respondent approached the Tribunal, once again, for correcting the order dated 13.10.2020, via M.A. No.46/2021. The Tribunal disposed of this application on 21.01.2021, with the following

²Representation dated 31.12.2012, 09.03.2017 and 05.06.2017



operative directions:

“.....3.It is axiomatic that once the service rendered by the applicant in (BSF) Polytechnic, holds good for the benefit of selection grade, it shall hold good for other benefits also. We clarify accordingly and direct that the service rendered in (BSF) Polytechnic, shall be taken into account for the purpose of Senior Scale, Selection Grade and PB-4 also. We reiterate that the applicant shall not be entitled for the arrears.

The MA stands disposed of.”

6. The petitioners, being aggrieved, approached this court by way of the instant writ petition.

6.1. Notice in the writ petition was issued on 14.07.2021, wherein we had, broadly, etched out the contours of the case, obtaining between the parties. At that stage, Mr Sourabh Ahuja, learned counsel for the respondent, took the stand that the respondent does not wish to file a counter-affidavit in the matter and that he would argue the case based on the record available with the Tribunal.

6.2. It is in this background that arguments were heard in the matter. On behalf of the petitioners, submissions were advanced by Ms Vibha Mahajan Seth, while arguments on behalf of the respondent were advanced by Mr Ahuja.

Submissions on behalf of the petitioners:-

7. Ms Seth, broadly, advanced the following arguments:-

(i) That as per clause 6.1(a) of the 2012 AICTE notification, the previous regular service could be taken into account for grant of promotion under CAS only if the essential qualifications for the post held is not lower than



the qualifications prescribed by AICTE for the post of Lecturer.

(ii) The Tribunal committed an error in ascertaining as to whether or not the respondent had the essential qualifications for the post of Lecturer as prescribed by the AICTE, by taking into account the date on which she was appointed as Lecturer (EE) in BSF Polytechnic as against the date when the said post was advertised i.e., when the selection process was initiated. In other words, as to whether or not the respondent had the prescribed essential qualification should have been ascertained, as on 8-14.05.1999 i.e., the date of the advertisement, and not 31.03.2000, when she was appointed to the post of Lecturer (EE) in BSF Polytechnic. [See *State of Bihar & Ors. vs. Mithilesh Kumar* (2010) 13 SCC 467, paragraphs 14 and 15.]

(iii) The Tribunal committed an error in not noticing the relevant clauses provided in the 2010 notification i.e., clause (a)(iv), (a)(vii) & (a)(xvi). Therefore, the observations made in paragraph 6 of the impugned judgment, wherein it is observed that the respondent was entitled to the benefit of senior scale as she had completed six years of service, was erroneous, as it overlooked the fact that along with the said condition [which was provided in clause (a)(iv) of the 2010 notification], the respondent was required to fulfil other conditions, as indicated above, which were provided in clause (a)(vii) and (xvi).

(iv) Clause (a)(vii) of the 2010 notification provided that for upward movement i.e., grant of senior scale, a Lecturer had to fulfil other conditions laid down by the AICTE, while clause (a)(xvi) categorically required the respondent to complete two AICTE approved refresher programmes of not less than two weeks duration each and two TEQIP sponsored programmes of not less than one week each.



- (v) Even according to the respondent, she fulfilled this criterion i.e., of having completed the refresher programmes only on 12.09.2014. The respondent herself had indicated in the proforma for grant of senior scale [which was filed by her on 12.08.2016], that she was entitled to the said benefit only from 28.09.2015. Thus, even if one were to take the contents of the proforma filled by the respondent into account, and the fact that she fulfilled the condition prescribed in clause (a)(xvi) only on 12.09.2014, she would be entitled to benefit of senior scale only with effect from 12.09.2014.
- (vi) The Tribunal committed an error by observing in paragraph 9 of the impugned judgment that the senior scale benefits would accrue, retrospectively. Even if it is assumed for the sake of argument that the respondent's past service is to be taken into account for grant of benefits under CAS, the said benefits can only be extended from the date when the respondent was employed by the petitioners. [See **Registrar Karnataka University & Anr. vs. Dr. Prabhugauda & Anr**, 2021 (1) SCJ 84; paragraphs 16 and 18.]
- (vii) The respondent has not challenged the order dated 06.07.2017, whereby she was granted senior scale from 28.09.2015.
- (viii) Although the respondent was entitled to senior scale on 31.01.2007, at the point in time when she was employed by the BSF Polytechnic, she never took recourse to any legal remedy.
- (ix) Likewise, the respondent never raised a claim before the petitioners concerning the grant of CAS benefit, although she was appointed in the pay scale available at the entry-level i.e., Rs.15600-39100/-.
- (x) It is in these circumstances that the respondent abandoned/failed her right to claim the benefit of senior time scale with effect from 28.09.2010.

**Submissions on behalf of the respondent:-**

8. Mr Ahuja, on the other hand, in response to the argument advanced by Ms Seth that for grant of senior time scale, the essential qualifications provided for the post of lecturer in BSF Polytechnic could not have been lower than the qualifications prescribed by the AICTE, has drawn our attention to the following:-

- (i) Paragraph 4 of 1989 notification issued by the AICTE.
- (ii) The 1993 notification issued by the AICTE. Reference was made to the guidelines which provided for counting of previous services for placement of Lecturers in senior scale/selection grade—which were adopted by the petitioners, *vide* order dated 17.12.1998.
- (iii) It was highlighted by Mr Ahuja that AICTE, thereafter, *via* the 1999 notification, while stipulating guidelines for counting previous services for granting benefits under CAS, dropped the provision for attaining stipulated desirable qualification, that is, having to qualify an All-India examination such as GATE. The argument was that AICTE had at first relaxed the requirement of qualifying an All-India examination such as GATE, as is evident upon reading the 1989 notification, and thereafter, completely dropped such requirement, *via* the 1999 notification.
- (iv) Although the respondent fulfilled the requisite criteria for grant of benefit under CAS, the petitioners, for no valid reason, turned down the respondent's request, *vide* order dated 09.08.2018.
- (v) The Tribunal, thus, has rightly allowed the respondent's O.A. *vide* order dated 13.10.2020 and directed the petitioner to count the respondent's past service rendered in BSF Polytechnic for grant of Senior Scale, Selection



Grade-I and II, albeit, with a caveat that no arrears would be payable to the respondent.

(vi) The respondent's case is squarely covered by the judgment dated 30.03.2017 read with the order dated 19.05.2017, rendered by the Division Bench of this Court in W.P.(C) No.2080/2017 titled **GNCTD vs. S.V. Vageesha**. In this matter, a Division Bench of this Court rejected the department's objection that the respondent i.e., S.V. Vageesha is not entitled to CAS benefit as he did not possess GATE qualification, by observing that if this was so, then the person concerned would not have been eligible for appointment as a Lecturer in DTTE in 1995. The said judgment has been implemented by the petitioners not only in the **S.V. Vageesha** case but also *vis-a-vis* other lecturers, viz. Mr R.K. Chaddha, and Mr P Dastagiri. Therefore, the denial of relief to the respondent is violative of Articles 14, 16 and 21 of the Constitution of India.

(vii) The petitioners are setting up a new case before this Court that the respondent did not fulfil certain conditions, as adverted to above, which, according to them, disentitled her for grant of benefit under CAS. [See **Syed Yakooob vs K.S. Radhakrishnan & Others**, AIR 1964 SC 477 (paragraph 7) and **Mohinder Singh Gill & Anr. vs The Chief Election Commissioner, New Delhi & Ors.**, AIR 1978 SC 851].

Analysis and reasons:-

9. Having heard the learned counsel for the parties and perused the record, the following aspects emerge, qua which there can be a very little dispute.

(i) The respondent was appointed as Lecturer (EE) in BSF Polytechnic



on 31.03.2000, against the 1999 advertisement.

(ii) Thereafter, the respondent resigned from the post of Lecturer (EE) which she held in BSF Polytechnic and joined DTTE on 28.09.2010 in the very same post and pay-scale which applied to her while she was working with BSF Polytechnic. The pre-revised pay-scale which applied to the respondent in both, BSF Polytechnic and DTTE was Rs.8,000-Rs.13,500; this was revised to Rs.15,600-Rs.39,100.

(iii) The respondent filed representations with the petitioners on 31.12.2012, 09.03.2017 and 05.06.2017, wherein she, *inter alia*, requested the petitioners to count the previous/past service rendered by her as Lecturer (EE) in BSF Polytechnic, for grant of benefit under CAS. Since no decision was taken on these representations, the respondent approached the Tribunal by way of O.A.No.236/2018. This OA was disposed of on 18.01.2018, directing the petitioners to decide on the said representations within two months from the date of receipt of a copy of the order.

(iv) Consequent thereto, the petitioners passed the order dated 09.08.2018. *Via* this order, the respondent's representations were rejected, and, accordingly, a plea for counting past service for grant of benefit under CAS was rejected. It is this order i.e., order dated 09.08.2018, which was assailed by the respondent by approaching the Tribunal, once again. The action filed by the respondent was registered as O.A.No.1119/2019. This action was disposed of on 13.10.2020.

10. Therefore, according to us, what falls for consideration is the tenability of the order dated 09.08.2018. The impugned action of the petitioners will be sustained or set aside based on the reasons contained in the said order.



10.1. The reason why we emphasise this aspect, is because the petitioners before us have attempted to take recourse to objections, in support of their stand, which were not articulated in the order dated 09.08.2018.

11. The principal ground on which the petitioners declined the request to count respondent's past service rendered as Lecturer (EE) in BSF Polytechnic was that the qualification provided by BSF Polytechnic for appointment to the said post was lower than the qualification prescribed by the 1989 notification.

11.1. The argument advanced on behalf of the petitioners by Ms Seth was that, apart from the first-class bachelor degree that the respondent possessed, she was, in terms of the 1989 notification, required to qualify in an All-India Examination (such as GATE or equivalent).

11.2. Therefore, the submission of Ms Seth was that, since BSF Polytechnic in its 1999 advertisement had indicated that the requirement to qualify an All -India Examination (such as GATE or its equivalent) was a desirable qualification and not an essential qualification, the respondent's past service in BSF Polytechnic could not be counted to grant her benefit under CAS.

11.3. In support of this plea, Ms Seth also relies upon the AICTE notification dated 10.09.1993, which provided the guidelines for the grant of CAS benefits. In particular, emphasis was laid on paragraph (v) of the notes appended to the guidelines, which, *inter alia*, stated the following:

“All the existing staff who are eligible for grant of revised scales/benefits of Career Advancement, are excepted from the application of revised qualifications of AICTE circular dated 20.09.89 and such qualifications shall be applicable to new entrants recruited after 20.09.1989”

11.4. Besides this, reliance was also placed on Clause 6.1(a) of the 2012



notification, issued by the AICTE, which provided that to count past services; *inter alia*, for promotion under CAS, the essential qualifications for the post held (*qua* which past services were to be counted) could not be lower than the qualifications prescribed by AICTE for the post held.

11.5. The argument advanced on behalf of the petitioners, in our opinion, is flawed for the reason that it ignores the contents of paragraph 4 of the 1989 notification. For the sake of easy referral, the relevant portion of the said paragraph is extracted hereafter:

“.....4.It is proposed that recruitment at the level of lecturers will be from those who qualify through a qualifying examination, details of which shall be developed by the AICTE and intimated to the various State and institutions. Until this operational mechanism is developed, the existing procedures of reattachment will continue in relaxation of this recruitment.....”

11.6. Clearly, the prescription outlined in the earlier part of the 1989 notification for appointment to the post of Lecturer requiring the candidate to qualify, an All-India Examination such as GATE, was relaxed, and therefore, there can be no quarrel with the argument that the qualification for appointment to the post of Lecturer (EE), as provided in the 1999 advertisement issued by the BSF Polytechnic, was not lower than that, which was prescribed by AICTE in the 1989 notification.

11.7. It is important to note, at this juncture, that, although along with the written submissions, the respondent has placed on record a copy of Advertisement No.2, issued by the Union Public Services Commission (UPSC) on 23-29.01.1999, to demonstrate that the requirement of qualifying an All-India Examination (such as GATE) and obtaining a post-graduate degree was placed under the head of “desirable qualification” qua the post of



Lecturer (Mechanical Engineering), we did not allow Mr Ahuja to rely upon the same as it was not part of the record before the Tribunal.

11.7(a). However, even if one were to ignore this document, the position which emerges upon a close perusal of the 1989 notification, as discussed above, will not in any way get impacted.

11.8. The fact is that this position continued to obtain, as reflected in the 1999 notification. Clause 8.2 of the said notification, which deals with various aspects of promotion under CAS, *inter alia*, provided that for a Lecturer to be eligible for placement as a Lecturer senior scale, he or she would have to complete six years of service after regular appointment as Lecturer.

11.9. In effect, AICTE moved from the position of relaxing the rigour of desirable qualification [that required passing of an All-India Examination (such as GATE or equivalent)]to completely dropping the said criterion from the guidelines contained in the 1999 notification.

12. It is for this reason that Ms Seth contended that the respondent's eligibility for grant of benefit under CAS would have to be ascertained having regard to the notification which was in vogue in 1999, when the advertisement was issued by BSF Polytechnic for inviting applications for the post of Lecturer (EE).

12.1. In other words, Ms Seth argued that one could only look at the 1989 notification, and not the subsequent notification which was issued by AICTE on 30.12.1999, although, the said notification preceded the respondent's appointment as Lecturer (EE) in BSF Polytechnic.

12.2. As alluded to hereinabove, the respondent was appointed to the post of Lecturer (EE) in BSF Polytechnic on 31.03.2000. Since in our view, as



discussed above, AICTE via paragraph 4 of its 1989 notification had relaxed the condition of qualifying an All-India Examination (such as GATE or equivalent) for appointment to the post of Lecturer, this objection taken by Ms Seth need not detain us.

12.2(a) We have referred to the 1999 notification only to highlight the fact that AICTE was moving in the direction of doing away with the requirement of having to qualify, an All-India Examination (such as GATE or its equivalent) for appointment to the post of Lecturer.

13. The other objection which emerges upon a perusal of the order dated 09.08.2018 pertains to the respondent agreeing to be appointed in the same pay band in which she was placed while she was working as Lecturer (EE) in BSF Polytechnic.

13.1. The argument advanced on behalf of the petitioners was that even though after putting in six years of service as Lecturer in BSF Polytechnic[in terms of Clause 8.2(i) of the 1999 notification],the respondent was accorded senior scale only on 31.01.2007, and that too in a lower pay band i.e., the pay band in which she was placed in BSF Polytechnic, before being granted the senior scale.

13.2. We may note here that a close perusal of the order dated 09.08.2018 shows that before passing the said order, DTTE had received the service record of the respondent available with BSF Polytechnic. While analysing the record, the concerned officer, who passed the said order, *inter alia*, made the following observations :

“.....(i)At the time of her relieving from the BSF Polytechnic on 26.09.2010, she was in the Pay Band of Rs.15800-39100 + AGP of Rs.5400/- which is the entry level pay scale for the post of Lecturer (with BE/B.Tech. qualification) as per AICTE Norms



dated 05-03-2010 and not in senior Scale which reportedly was granted to her w.e.f. 01-01-2007. ...”

13.3. A perusal of the aforesaid extract would show that there was enough, and more indication that the respondent had perhaps been granted senior scale w.e.f. 01.01.2007.

13.4. Mr Ahuja, to buttress his submissions, has relied upon pay slips to demonstrate that the order dated 31.01.2007, whereby the respondent was granted senior scale in BSF Polytechnic, was given effect to.

13.5. In our view, the concerned officer should have probed the matter further and got the requisite information from BSF Polytechnic as to whether the order dated 31.01.2007 was given effect to; provided, according to him, it was a relevant factor in concluding as to whether or not the respondent's past service in BSF Polytechnic should or should not be counted.

13.6. That apart, even if we were to assume for a moment that the order dated 31.01.2007 was not implemented for whatever reason, the fact remains that there is nothing to demonstrate that the order dated 31.01.2007 whereby the respondent was granted senior scale by BSF Polytechnic, was effaced.

13.7. The submission advanced on behalf of the petitioners that because the respondent accepted the appointment as Lecturer (EE) in DTTE in the same pay band, in which she was placed while she was employed with BSF Polytechnic as Lecturer (EE), does not in our opinion in any way dilute the force of the submission advanced on behalf of the respondent that the services rendered by her in BSF Polytechnic in the post of Lecturer (EE) should be counted for grant of benefits under CAS.

13.8. In this context, it may be relevant to advert to DTTE's circular dated



14.12.2012. The relevant part of this circular is extracted hereafter:

“A letter has been received from Chairman of Screening Committee of counting of past service of Lecturers working in Polytechnics under DTTE. He has stated that the lecturers either eligible or claiming to be eligible have been sending their representation. As such, there will be no end of filing the representations.

Hence, it has been decided that if any lecturer claims to be eligible for getting the benefit of counting of past service and whose name has not been (sic) included in the enclosed list. He/she may send his/her representation through the concerned Principal with all requisite documents to the A.O. (E-I) by 31/12/2012, after which no representation will be entertained.”

13.9. Clearly, it is not disputed before us that BSF Polytechnic is affiliated to the Board of Technical Education, which is under the sway of DTTE, Government of NCT of Delhi, and that it is approved by AICTE. If that is the position, then, as per the aforesaid circular, it was incumbent upon the petitioners to count the respondent's past service rendered by her in BSF Polytechnic for grant of benefit under CAS, provided she otherwise fulfilled the requirements of the 2012 notification issued by AICTE.

14. As discussed above, the respondent did fulfil the eligibility criteria provided in the 1989 notification issued by AICTE for appointment to the post of Lecturer, which was in no way lower than the qualification provided by BSF Polytechnic for appointment to the post of Lecturer (EE).

15. We may also deal with the other objection contained in the order dated 09.08.2018; which is based on the judgment of Gauhati High Court rendered in the case of ***Sri Ajit Kumar Kakoti v. State of Assam & Ors.***, passed in WP(C) No. 2973/2006. In this judgment, reference is made to Clause 9.2(b) of the 1999 notification.



15.1. Clause 9.2 of the 1999 notification deals with the counting of service rendered outside the institution. The relevant paragraph of this notification read as follows :

“9.2 Counting of Service outside the Institution:

Previous continuous service, as a Lecturer or equivalent in college, national laboratory, or other scientific organizations such as CSIR, ICAR, DROD etc., or in any public sector industrial undertaking may be counted for placement of Lectures in senior scale/selection Grade provided that:

- a)*
- b) the qualifications for the posts were not lower than the qualifications prescribed by AICTE for the purpose of Lecturer.....”*

15.2. A careful reading of this clause would show that it only mandates that the qualification for the post held as Lecturer with the previous employer should not be such that they are lower than the qualifications for the post of Lecturer as prescribed by AICTE.

15.3. As discussed above, because of the provision contained in paragraph 4 of the 1989 notification, whereby the requirement to pass an All-India Examination (such as GATE) was relaxed, there was no difference in the qualifications prescribed by BSF Polytechnic for the post of Lecturer (EE) and that which was prescribed by AICTE for the post of Lecturer.

15.4. Therefore, the submission of the petitioners based on this objection cannot be sustained.

16. This also brings us to yet another objection, which is based on AICTE’s clarificatory notification dated 04.01.2016; an aspect which finds mention in the order dated 09.08.2018.

16.1. A careful perusal of the clarifications given qua issue nos. 33(c) and 44(b) would show that all that it suggests is that there would be no



relaxation in respect of paragraph 9.2(b) of 1999 notification, issued by the AICTE, for the purposes of counting past service under CAS. This clarification has to be read in the context of clarifications put out qua issue nos. 44(a) & (b).

16.2. As noticed above, via the 1999 notification, AICTE had dropped altogether the requirement of qualifying an All-India Examination (such as GATE or its equivalent); a requirement, which before the issuance of the said notification, had been relaxed under the provision contained in paragraph 4 of the 1989 notification.

16.3. Thus, insofar as the respondent was concerned, the qualifications prescribed by BSF Polytechnic for appointment to the post of Lecturer (EE) were equivalent to that which AICTE had prescribed and progressed, *via* the 1989 notification.

17. The other submission of Ms Seth articulated before us was that for being granted the benefit of CAS, the respondent was required to complete refresher course prescribed under Clause (a) (xvi) of the 2010 notification, and that since this requirement was fulfilled, even according to the respondent, only on 12.09.2014, she would not be eligible for grant of CAS benefit before 12.09.2014.

17.1. We may note that no such objection was taken by the petitioners in the order dated 09.08.2018. There appears to be a good reason for adopting this line, as all that the respondent required was, the decision as to whether or not the services rendered by her in BSF Polytechnic in the post of Lecturer (EE), for grant of benefits under CAS, should be counted. The petitioners had raised a red flag essentially on the ground that the qualifications provided by BSF Polytechnic for appointment to the post of



Lecturer (EE), was lower than that which AICTE provided for the said post.

17.1(a) The requirement concerning participation in refresher programmes and TEQIP sponsored programmes was not put forth as a ground for rejecting the respondent's plea for counting past service.

17.2. To our minds, the assertions made by the petitioners in this court cannot go beyond what is stated in the order dated 09.08.2018, whereby the respondent's plea for counting past service was declined. [See observations made in *Commissioner of Police, Bombay v. Gordhandas Bhanji*, 1952 SCR ³135, which was cited with approval also in *Mohinder Singh Gill v. Chief Election Commr.*, (1978) 1 SCC 405⁴.]

18. Before we conclude, we may indicate that we have reached the same conclusion as the Tribunal but for different reasons, which are set forth

³“13. An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

⁴“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16]* : “Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.” Orders are not like old wine becoming better as they grow older.”



hereinabove.

18.1. In this context, we may note that the argument advanced before us on behalf of the respondent, based on paragraph 4 of the 1989 notification, was squarely taken in paragraph 5.8 of the subject O.A., filed before the Tribunal.

Conclusion:-

19. Therefore, for the foregoing reasons, we are inclined to hold that the respondent will be entitled to the benefits under CAS. Resultantly, the writ petition will have to be dismissed.

19.1. It is ordered accordingly.

19.2. However, it is made clear that the respondent will not be entitled to any arrears.

19.3. The benefits under CAS will accrue to the respondent w.e.f. 28.09.2010 i.e., the date when she joined as Lecturer (EE) in DTTE. We may also indicate that Mr Ahuja, when queried, in the course of his submissions, did convey to us that the respondent would be satisfied if she is granted benefits under CAS, w.e.f. 28.09.2010.

19.4. Consequently, pending applications shall stand closed.

20. The case file shall stand consigned to record.

RAJIV SHAKDHER, J

TALWANT SINGH, J

JANUARY 07, 2022/pmc