

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1228-2020 (O&M)
Reserved on 17.07.2023
Pronounced on 19.10.2023

Satyawan Nain & Ors.

... Petitioners

VS.

UHBVNL & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Amit Jhanji, Sr. Advocate with
Ms. Praneet Kaur, Advocate for the petitioners

Mr. Parveen Chauhan, Advocate for
Mr. GS Wasu, Advocate for respondent No.2

Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing the order dated 01.01.2020 (Annexure P14) whereby the claim of the petitioners for promotion to the post of Assistant Engineers under Rule 9(1)(b)(ii) of the PSEB Service of Engineers (Electrical) Recruitment Regulations, 1965 (as followed by the respondent-Nigam) has been declined and persons junior to the petitioners have been promoted, by treating the Degrees in Electrical Engineering of the petitioners to be valid only from the date of passing of the ability test in terms of the Supreme Court judgment in **Orissa Lift Irrigation Corporation Ltd. vs. Rabi Sankar Patrol & Ors. 2017 (4) SCT 683.**

(2). The petitioners joined their services in the respondent-Nigam in 1997 as ALM and were promoted as Junior Engineers in the year 2004. During the period of service in the year 2007-08, the petitioners qualified B.Tech in Electrical Engineering through Distance Education from JRN Rajasthan

Vidyapeeth University. As per Regulation 9(1)(b)(ii) of the 1965 Rules, *ibid*, 12.5% quota was provided for promotion to the post of Assistant Engineer (Electrical) from amongst Engineering Subordinates of general cadre possessing AMIE/BE qualification and having three years service as such. Accordingly, a Ranking List dated 08.01.2013 (Annexure P2) was prepared, in terms of the Rules *ibid*, however, petitioners' names were not entered in the said list as their engineering degree was not taken into consideration despite the fact they had been promoted in the year 2004 and completed 3 years service in the year 2007 and possessed the Engineering Degree in the year 2007.

(3). After many rounds of litigation launched by both the parties, the Chairman-cum-Managing Director, UHBVNL & DHBVNL decided the representation filed by the petitioners by passing the impugned order dated 01.01.2020 (Annexure P14), *inter alia*, observing as under:-

“Thus, the claim of the petitioners is hereby considered in the light of factual and legal position as mentioned herein above. It has been clarified by the Hon'ble Supreme Court of India in judgment dated 22.01.2018 in MA nos. 1795-1796 of 2017 in Civil Appeal no. 17889-17870 of 2017 titled as Orissa Lift Irrigation Corp. Ltd. Vs Rabi Sankar Patro & others, that the candidates who passed the exam conducted by the AICTE in second attempt shall become eligible for further consideration only from the date on which they passed the said examination i.e. from the date when their degree stood validated...”

xxxx xxxx xxxx

“A perusal of certificates for validation of degree of the petitioners shows that they appeared in the exam conducted by AICTE during December 16 to 19, 2018, in compliance of the directions issued by the Hon'ble Supreme Court of India in above cited appeal and qualified the exam in second attempt...”

xxxx xxxx xxxx

“Keeping in view the above, the claim of the petitioners is hereby partly accepted with regard to validation of degree; their names will be inserted in the ranking list of JE as per eligibility...”

(4). Mr. Amit Jhanji, learned senior counsel for the petitioners contended that the Supreme Court in **Orissa Lift Irrigation Corporation Ltd.’s** case (supra) protected the students who were enrolled during the academic sessions 2001-2005 by permitting them to appear in a special test to be conducted by AICTE/UGC in May-June, 2018. It is nowhere mentioned by the Apex Court in its judgments dated 03.11.2017 and 22.01.2018 that if the candidates passed the examination conducted by the AICTE in the 2nd attempt, the candidate shall become eligible for further consideration only, prospectively, from the date of passing the examination. The respondent-Nigam itself is adding words to the verdict of the Supreme Court inasmuch as the Supreme Court unequivocally, in para 53(VI) of the judgment, specified that *“If the students clear the test/tests within the stipulated time, all the advantages/benefits shall be restored to them and their degrees will stand revived fully”*.

(5). Learned counsel further referred **Contempt Petition (C) Nos.408-409 of 2019 in Civil Appeal Nos. 17869 -17870 of 2017 "Ashok Kumar and others versus Depinder Singh Dhesi and others"** to contend that the Supreme court has also held that if the degrees stood restored in terms of the directions in the judgment and the order, the candidates would certainly be eligible to such entitlements as are available in accordance with law. Meaning thereby, the degrees of the petitioners stood restored after passing the examination within the stipulated period as prescribed in **Orissa Lift Irrigation Corporation Ltd.’s**

case (supra). Thus, the petitioners are fully entitled for all the benefits as available in accordance with law as per the entitlements.

(6). It is further the submission made by learned counsel for the petitioners that if the intention of the Supreme Court was to validate the degrees from the future date i.e. prospectively, then the benefit of restoration could not be granted to the candidates, who were enrolled during the sessions 2001-2005, which was obtained on the basis of their degrees which were validated after passing the examination in the year 2018. Thus, it is clear that if the benefit of restoration has been granted by the Supreme Court on the basis of the degree, then the intention of the Supreme Court was to grant the benefit w.e.f. the date the students obtained their degrees. The respondent-Nigam has totally misunderstood and misread the judgment and as such, their action is liable to set at naught.

(7). Notice of motion was issued on 06.02.2020 and thereafter, the respondent No.2 has filed its short reply on 08.03.2022 wherein, after giving factual matrix of the case and rules involved as well as the various Supreme Court judgments pertaining to the issue in hand, the respondents have categorically averred that the petitioners are not entitled for restoration of any benefit as neither they were ever granted any benefit on account of degree held by them nor were they eligible for any benefit since their degrees were validated in 2nd attempt of test conducted by AICTE.

(8). Mr. Parveen Chauhan, Advocate vehemently argued that the exception provided by the Supreme Court in judgment dated 22.01.2018 (Annexure R2) has to be read for those candidates who, in terms of the judgment appeared and qualified the special test in their first attempt i.e. in

May-June 2018. The said exception is not available to the candidates who passed their examination in 2nd attempt as in that case, their degree stood validated and that too not retrospectively.

(9). Heard learned counsel for the parties and gone through the record.

(10). Issue as regards validity of educational qualifications and B.Tech Degrees obtained through Distance Education mode from four deemed to be Universities i.e. Institute of Advance Study in Education (IASE), Sardarshahar Rajasthan;(ii) JRN Rajasthan Vidyapeeth, Udaipur, Rajasthan; (iii) Allahabad Agricultural Research Institute, Allahabad; (iv) Vinayaka Mission Research Foundation, Salem, Tamil Nadu, during the session 2001 to 2005 came to be raised before this Court in **CWP No.1640 of 2008 (Kartar Singh Vs. Union of India and others)** alleging that these Deemed Universities had set-up “study centres” in violation of the regulations framed by the UGC and that such study centres completely lacked infrastructure and facilities for courses in engineering and that the programmes through distance education mode were illegal and without approval. The writ petition was allowed by a Division Bench of this Court vide judgment dated 06.11.2012.

(11). The High Court of Orissa, however, took a different view in Writ Petition No.3848 of 2010 titled Rabi Sankar Patro Vs. Orissa Lift Irrigation Corporation Ltd. Two Sets of appeals were preferred before the Apex Court i.e. one from **Kartar Singh’s** case (supra) and second from **Rabi Sankar Patro’s** case (supra). Both the appeals were clubbed together and were decided by the Apex Court on 03.11.2017 vide judgment in **Orissa Lift Irrigation Corporation Limited Vs. Rabi Sankar Patro and others, (2018) 1 ACC, 468**. The view taken in **Kartar Singh’s** case (supra) was upheld and it was held that the Deemed

Universities had been conducting the Distance Education courses through off-campus Study Centres without the approval of the University Grants Commission and the All India Council of Technical Education. It was further held that the action of conferring degrees through distance education mode was without jurisdiction. Even the ex-post facto approval granted by Distance Education Council (DEC) was completely illegal. However, taking a sympathetic view, the Supreme Court directed that AICTE to devise within one month from the date of judgment modalities to conduct appropriate test/tests both in theory as well as in practicals for the concerned students admitted during the academic session 2001-05, covering all the concerned subjects enabling the students to appear in the examination to be conducted ideally during May-June 2019. Not more than two chances were to be afforded to the concerned students and if they were not to pass the test/tests their degrees were to stand recalled and cancelled. In the eventuality of the concerned candidate clearing the test/tests all the advantages or benefits were to be restored.

(12). The said judgment (cited *supra*) dated 03.11.2017 (Annexure R1) passed by the Supreme Court was further clarified vide judgment dated 22.01.2018 (Annexure R-2) passed in **MA Nos. 1795 -1796 of 2017 in Civil Appeal no. 17869-17870 of 2017 titled as Orissa Lift Irrigation Corp. Ltd. Vs Rabi Sankar Patro & others** which was filed by those candidates who underwent independent selection undertaken by Union Public Service Commission and entered certain services as direct recruits and have presently either been engaged in the same service or have advanced in career on the basis of such selection by UPSC. The operative part of the same is reproduced hereunder:-

“We, therefore, as a one-time relaxation in favour of those candidates who were enrolled during the academic years 2001-2005 and who, in terms of the judgment, are eligible to appear at the test to be conducted by AICTE, direct:-

a] All such candidates, who wish to appear at the forthcoming test to be conducted by AICTE in May-June 2018 and who exercise option to appear at the test in terms of the judgment, can retain the degrees in question and all the advantages flowing therefrom till one month after the declaration of the result of such test or till 31.07.2018 whichever is earlier.

b] This facility is given as one-time exception so that those who have the ability and can pass the test in the first attempt itself, should not be put to inconvenience. If the candidates pass in such first attempt, they would be entitled to retain all the advantages. But if they fail or choose not to appear, the directions in the judgment shall apply, in that the degrees and all advantages shall stand suspended and withdrawn. At the cost of repetition, it is made clear that no more such chances or exceptions will be given or made. They will undoubtedly be entitled to appear on the second occasion in terms of the judgment but this exception shall not apply for such second attempt.

c] We direct AICTE to conduct the test in May-June 2018 and declare the result well in time, in terms of our directions in the judgment and this Order. AICTE shall however extend the time to exercise the option to appear at the test suitably.”

(13). A bare perusal of the above reproduced clarificatory stipulation of the Apex Court would show that the facility of retention of degrees and all the advantages flowing therefrom, till one month, after the declaration of the result of such test, was given as ‘one-time exception’ only, so that those who have the

ability and could pass the test in the 'first attempt' itself, are not put to any inconvenience. It is clearly mentioned that if a candidate passes the special test, in such 'first attempt', he would be 'entitled to retain all the advantages' and if the candidate 'fails or choose not to appear', 'the degrees and all advantages would stand suspended' and withdrawn and that no more chance or exception will be given or made. It has also been provided that those candidate who fail to choose not to appear in the first attempt, will be entitled to appear on the second occasion in terms of the judgment 'but the exception of retaining all the advantages, shall not apply for such second attempt'.

(14). Admittedly, the petitioners had cleared the subject examination conducted by the AICTE, during December 16 to 19, 2018 i.e. in **second attempt**, in terms of the directions issued vide order dated 22.01.2018. Thereafter, the petitioners were awarded the Electrical Engineering Degrees by the JRN Rajasthan Vidyapeeth, Rajasthan. The candidates could undoubtedly be entitled to appear on the above-said second session in terms of the judgment but this exception was not applicable for 2nd attempt.

(15). The qualification obtained in December, 2018 has also been restricted by the Apex Court, as noticed above, that the person who cleared the examination in the second attempt will not be given the benefit and advantages of the said degree. It is, thus, apparent that the Apex Court has restricted the right to the recognition of the decree which is to be applied very strictly, as on an earlier occasion *inasmuch* as even the Central Bureau of Investigation had been directed to carry out investigation regarding the conducting of such examinations by correspondence. The exception had thus been given to those who had passed the examination in the first attempt and they would not be put

to inconvenience and they would be entitled to retain all the advantages. For the ones who failed, the second portion of the order dated 22.01.2018 would come into force. The directions were thus only a protection granted to the persons who had taken advantage, on an earlier occasion, by getting promotions and it was a one-time exception. Relief was, thus, limited to the persons who had passed the test in the first attempt and not extended to the persons who had cleared the test subsequently.

(16). The reliance placed by the petitioners on Clause 66.6 of the Apex Court judgment which provides that “*if the students clear the test(s) within the stipulated time, all the advantages/benefits shall be restored to them and their degrees will stand revived fully*” is also misconceived and is a result of misinterpretation and artificial construction of the intentment of the Court, as a whole. The petitioners cannot draw benefit of the stray sentence or a casual remark in the judgment and the same has to be read in entirety. The Supreme Court in **Ashok Kumar and others vs. Depinder Singh Dhesi and others, (2019) 8 SCC 280** clarified the said part of the judgment, in so many words, to hold that the benefit of retaining the advantages was extended only till the first attempt and those candidates who could not clear the examination in first attempt or chose not to appear in the examination conducted in May/June, 2018 were held to be not entitled to the concessions extended by the Order. The term “stipulated time” referred to in para 66.6 of the judgment (cited supra), has to be read in conjunction and sync with the observations made in para 26.2 of the clarificatory order dated 22.01.2018 in MA Nos.1795-1796-2017, wherein the Supreme Court avowedly clarified that if the candidates passed in such first attempt, they would be entitled to retain all the benefits, but if they fail or

choose not to appear, the directions in the said judgment shall apply, in that degrees and all the advantages shall stand suspended and withdrawn, is also made. That is for the candidates, who do not wish to go for the second attempt and give up on their failure in the first attempt. It is also made clear that the candidates who fail in the first attempt will undoubtedly be entitled to appear on the second occasion in terms of the judgment, but this exception will not apply for such second attempt. The exception is with regard to the withdrawal of all the advantages during the period in which the candidates take the two attempts, which were permitted to be taken by virtue of the judgment of the Supreme Court in clarified judgment.

(17). The basic rules of interpreting Court judgments are the same as those of construing other documents. The only difference is that the Judges are presumed to know the tendency of parties concerned to interpret the language in the judgments differently to suit their purposes and the consequent importance that the words have to be chosen very carefully so as not to give room for controversy. The principle is that if the language in a judgment is plain and unambiguous and can be reasonably interpreted in only one way it has to be understood in that sense, and any involved principle of artificial construction has to be avoided. Further, if there be any doubt about the decision, the entire judgment has to be considered, and a stray sentence or a casual remark cannot be treated as a decision. The intention behind an opinion is that the interpretation can in no way go beyond the limits of the judgment, fixed in advance by the parties themselves in their submissions.

(18). Further, in **Ashok Kumar and others's** case (supra), while taking cognizance of the fact that the candidates should not stand deprived of the status

which they were enjoying as on the day of the judgment in **Orissa Lift Irrigation Corporation Ltd.** provided the candidates could prove their worth and ability, the Supreme Court further held that if, a candidate had not attained any particular status, as on the date when the Judgment was passed, the width of the directions was not to confer any additional advantage which was not even enjoyed as on the date. The Supreme Court cautioned that it was not the idea to hold the candidates to be entitled to certain additional benefits which the candidates were, as a matter of fact, not even enjoying on the date of the judgment and held that if the degrees stood restored in terms of the directions in the Judgment and the Order, the candidates would certainly be eligible to such entitlements as are available in accordance with law, but “restoration” would only be of those benefits, which they were enjoying as on the date of the Judgment. In short, the intent was to restore status quo ante and not to confer any additional advantage by the Judgment and the Order.

(19). In the present case, the Ranking List of Engineering Subordinates possessing AMIE/BE qualification in Electrical Engineer as it stood on 01.01.2008, for promotion to the post of Assistant Engineer, was prepared on 08.01.2013. In the said List, petitioners’ names were not entered as their Engineering Degrees were not taken to be valid and hence their claim was rejected as this Court in **Kartar Singh’s** case (supra) had declared their degrees as invalid. Their degrees stood validated during December, 2018 in compliance to Supreme Court directions in **Orissa Lift Irrigation Corporation Ltd.’s** (supra). It is crystal clear that as on the date of judgment/clarification in **Orissa Lift Irrigation Corporation Ltd.’s** (supra), there was no benefit/advantage which can be said to have been taken away from the petitioners. *Albeit*, the

claim of the petitioners for promotion arose only after the passing of the Special Test in December, 2018 which validated their Degrees for being considered for further promotion.

(20). The directions issued by the Supreme court, referred to above, were never directed to confer such advantages which the candidates were otherwise not enjoying, ‘on the date when the Judgment and clarificatory Order’ were passed. If the promotion was not granted and was not being enjoyed as on the day when the judgment was passed, there was no violation of any direction issued by the Supreme Court by the respondent-Nigam.

(21). In view of the foregoing reasons and observations made, this Court does not find any illegality in the order dated 01.01.2020 (Annexure P14) passed by the respondent-Nigam.

(22). Accordingly, this writ petition is dismissed.

19.10.2023
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No