

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

2. **RA-CW-101-2022 (O&M)
in CWP-525-2017
Decided on : 17.03.2023**

Jagdish Rai SinglaReview Applicant/Petitioner(s)
Versus

State of Haryana and othersRespondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sunil Hooda, Advocate for the applicant/petitioner (s).

Mr. Ankur Mittal, Addl. AG, Haryana with
Mr. Saurabh Mago, AAG, Haryana.

Mr. Viren Nehra, Advocate for
Mr. Sunil Nehra, Advocate for respondent No.8.

G.S. Sandhawal, J. (Oral)

Application for review has been filed of the order dated 12.05.2022, whereby the writ petition was dismissed by noticing that the issue was covered against the review applicant/petitioner in view of the judgment passed in **Orissa Lift Irrigation Corporation Ltd. Vs. Rabi Sankar Patro & others, 2017 (4) SCT 683** passed on 03.11.2017, since challenge was to quash the Haryana Services of Engineers Group-A, Public Works (Building & Roads), Department Act, 2010, wherein under Section 6 it has been provided that no degree obtained through correspondence or distance education mode from any university or technical institutional shall be considered for appointment by any mode of recruitment to the service.

2. Thereafter, the review application has been filed on the ground that the review applicant/petitioner was enrolled between 2001 to

2005 and had also passed the test conducted by the AICTE in December,

2018, whereby the validation was done of his Civil Engineering Degree awarded by Institute of Advanced Studies in Education, Rajasthan (IASE) (Annexure A-3). Thus, the review of the order was sought on the said ground.

3. An additional affidavit has also been filed today vide CM-3944-CWP-2023, wherein a plea has been taken that one similarly situated person namely Krishan Kumar was given the benefit of the said certificate, who had also passed the test in December, 2018 and, therefore, he is also similarly situated.

4. State has filed its reply, whereby it has been pointed out that the order of the Apex Court was clarified in a subsequent order dated 22.01.2018 passed in **Orissa Lift Irrigation Corporation Ltd. Vs. Rabi Sankar Patro & others, (2018) 2 SCC 298**. Relevant portion of the judgment whereby the Apex Court has restricted the benefit to be granted to the candidates who had passed the examination in the second round and did not pass in the first round is reproduced as under:-

“7. We now turn to the general submission advanced by all the learned counsel that the candidates after securing the degrees in Engineering through distance education mode, have advanced in career and that their ability was tested at various levels and as such requirement of passing the examination in terms of the judgment be dispensed with in their case. We cannot make any such exception. The infirmity in their degrees is basic and fundamental and cannot be wished away. At the same time, we find some force in their submission that if the suspension of their degrees and all advantages were to apply as indicated in the judgment, the concerned candidates may lose

their jobs and even if they were to successfully pass the test, restoration of their jobs and present position would pose some difficulty.

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.

8. Except for the directions given in the preceding paragraph i.e. paragraph 7 and the clarification as regards courses leading to

award of diplomas as mentioned hereinabove, we reject all the other submissions.

9. All applications, petitions and writ petitions stand disposed of in aforesaid terms.

No costs.”

5. It is also not disputed that the review applicant/petitioner has retired on 30.04.2018 from the post of SDE and, thus, earned his qualification subsequently, on the basis of which he seeks benefit of promotion. The qualifications obtained in December, 2018 have 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 in as much 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. It was also clarified that the persons who had never got the benefit of promotion on the basis of the said degrees

could not claim the same. This would be apparent from the subsequent decision of the Apex Court passed in **Ashok Kumar and others vs. Depinder Singh Dhesi and others, (2019) 8 SCC 280**, wherein a contempt petition was dismissed by making certain observations that the validation test was only to save appointments and not to give any right of promotion. Relevant paragraph of the said judgment reads as under:-

8. In spite of the conclusion that (a) courses leading to Degrees in Engineering could not be taught through Distance Education Mode without there being express guidelines issued by AICTE3 permitting such mode; and (b) the deemed to be Universities in question were not entitled to start courses in Engineering through Distance Education Mode without prior approval under the AICTE3, the facility of benefit as detailed in paragraphs 57 and 58 of the Judgment was extended to the students. Though the Degrees obtained through Distance Education Mode were prima facie not in accordance with law, the students enrolled during the academic sessions 2001-2005 were given two chances to prove their worth and it was directed that if they clear the test, they would continue to derive advantages flowing from such Degrees. It may be mentioned here that there could possibly be variety of advantages derived by the candidates on the basis of such Degrees awarded at least 10 years before the Judgment was pronounced. During this period some of the candidates might have progressed in career on the basis of such Degree, while some could possibly have acquired Post-Graduate qualifications such as M.Tech and M.B.A. on the strength of such Degrees. It was in this light, that the Court ruled that though from the date of the Judgment all the advantages and benefits flowing or arising from such Degrees would stand suspended, the benefits or advantages would get

revived after the candidates had cleared the examination, spoken of in said paragraphs 57 and 58. If any candidate either failed to clear the examination in two attempts or if he chose not to appear in the examination, the Degree would stand annulled completely disentitling the candidate to all the benefits and advantages flowing from such degrees.

9. Some candidates approached this Court submitting that if in terms of the Judgment the benefits or advantages were to be withdrawn and could be regranted or restored only after the candidates had cleared the examination, it may entail some prejudice to the candidates. Some of the candidates who had obtained Post-Graduate Degrees and were employed on the strength of such Degrees would be required to surrender such benefits; and even if they were to pass the examination in the first attempt, it may still require restoration of the benefits leading to situations of inconvenience and prejudice. It was, therefore, laid down by way of further concession in the Order that all the candidates who desired to appear in the upcoming examination could retain all the advantages and benefits till one month after declaration of the result of test or till 31.07.2018 whichever was later. The benefit of retaining the advantages was thus extended only till the first attempt. Those who could not clear the examination in first attempt or chose not to appear in the examination conducted in May/June, 2018 were not entitled to the concessions extended by the Order.

10. It was, therefore, clear that the candidates who, on the strength of such Degrees awarded through Distance Education Mode, had attained a particular level in their career or were enjoying certain benefits as on the date of the Judgment and if they pass the examination, those benefits would stand restored. If the candidates could clear the examination in the first attempt itself, there would not even be any break in continuous enjoyment of those benefits or facilities. The idea was, candidates should not stand deprived of the status that

they were enjoying as on the day of the Judgment provided the candidates could prove their worth and ability. But if, the concerned candidates 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. 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. 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.

11. In the present case serious objection has been raised on behalf of Department that the concerned candidates had enrolled themselves in courses leading to Degrees in Engineering through Distance Education Mode without express permission of the Department and/or the Department did not recognise the Degrees in Engineering awarded through Distance Education Mode or that the concerned candidates were not granted any study leave to pursue such courses. If the Degrees were so obtained in violation of the norms and parameters laid down by the concerned Department, the matter assumes completely different complexion. The directions issued by this Court in the Judgment and the 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 there was serious infirmity in the Degrees so obtained by the candidates, the matter ought to be sorted out either through representation or through properly instituted challenge in that behalf. 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 this Court. As is evident, the representations made by the Contempt Petitioner claimed conferral of certain status and benefits which they were not enjoying earlier. If there be any grievance on that front, the entitlement needs to be established in proceedings other than a Contempt Petition.”

6. In such circumstances, it has been squarely held against the review applicant/petitioner by the Apex Court by restricting right. Merely because one person namely Krishan Kumar has been granted the benefit, the review applicant/petitioner cannot claim it as a matter of right. It is settled principle that Article 14 does apply in the form of negative equality and if the benefit has been granted to some persons wrongly, it would not validate or give the others a cause of action as such to perpetuate an illegality which has happened on the principle of equality.

7. Resultantly, no case is made out to interfere in the order which is sought to be reviewed. Accordingly, the review application is dismissed. All pending civil miscellaneous application (s) if any also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

17.03.2023
Naveen

Whether speaking/reasoned :	✓Yes	No
Whether Reportable :	✓ Yes	No