

2023:PHHC:115505

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CWP-19080-2023 (O&M)
Date of Decision:- 02.09.2023

Kashmir Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Harinder Sharma, Advocate, for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 30.5.2023 (Annexure P-15) passed by respondent No.3, vide which his claim for promotion as Sub Divisional Engineer w.e.f. the year 2007 has been rejected.
2. The petitioner had been appointed as Junior Engineer in Department of PWD (B&R), Punjab in the year 1986. In the year 2004 he sought permission from the competent authority for improving his qualification and took admission in B. Tech (Civil), Degree Course in Institute of Advanced Studies in Education University (IASE), Gandhi Vidya Mandir Sardarshahr (Rajasthan) through distant mode of education and ultimately was conferred the B. Tech (Civil) degree in the year 2007. Upon completion of 16 years of service as Junior

Engineer, he was designated as Assistant Engineer w.e.f. 26.9.2002 vide order dated 08.06.2012.

3. It is the case of the petitioner that in the revised tentative seniority list of Junior Engineers, his seniority ranked at Sr. No.90. The relevant extract from letter dated 19.12.2011 (Annexure P-4) indicating the placement of the petitioner in the revised seniority list is reproduced hereunder:

Sr. No.	Name Sarv/Sh.	Father's Name Sarv/Sh.	Date of Birth	Date of Joining	Qualification	Category	Remarks
1 to 89	xx	xx	xx	xx	xx	xx	xx
90	Kashmir Singh	Charn Dass	08.09.1965	26.09.1986	B. Tech. Sardarsha hr Rajasthan 06/2007	S.C.	Case for promotion to SDE post may be considered as and when DPC is held, but the result be kept in sealed cover till further orders.
91 to 172	xx	xx	xx	xx	xx	xx	xx

4. A perusal of the aforesaid extract indicates that the case of promotion of the petitioner to the post of SDE was to be considered as and when DPC is held and his result was ordered to be kept in a sealed cover.
5. A question having arisen regarding the validity of the degrees acquired through distance education learning mode, Hon'ble the Supreme Court while taking note of certain irregularities, but while ensuring that the employees who had obtained such degrees are given a fair chance to prove themselves,

issued certain directions in its judgment dated 3.11.2017 rendered in Orissa Lift Irrigation Corporation Ltd. Vs. Rabi Sankar Patro and others (2018) 1 SCC 468. The relevant extract of which is reproduced hereunder:

“58. AICTE is directed to devise within one month from the date of this judgment modalities to conduct appropriate test(s) both in written examination as well as in practicals for the students concerned admitted during the academic sessions 2001-2005 covering all the subjects concerned. It is entirely left to the discretion of AICTE to come out with such modalities as it may think appropriate and the tests in that behalf shall be conducted in the National Institutes of Technology in the respective States wherever the students are located. The choice may be given to the students to appear at the examination which ideally should be conducted during May-June 2018 or on such dates as AICTE may determine. Not more than two chances be given to the students concerned and if they do not pass the test(s) their degrees shall stand recalled and cancelled. If a particular student does not wish to appear in the test(s), the entire money deposited by such student towards tuition and other charges shall be refunded to that student by the deemed to be university concerned within a month of the exercise of such option. The students be given time till 15-1-2018 to exercise such option. The entire expenditure for conducting the test(s) in respect of students who wish to undergo test(s) shall be recovered from the deemed to be universities concerned by 31-3-2018. If they clear the test(s) within the stipulated time, all the advantages or benefits shall be restored to the candidates concerned. We make it clear at the cost of repetition that if the candidates concerned do not clear the tests) within the time stipulated or choose not to appear at the test(s), their degrees in Engineering through distance education shall stand recalled and cancelled. It goes without saying that any promotion or advancement in career on the basis of such degree shall also stand withdrawn, however, any monetary benefits or advantages in that behalf shall not be recovered from them.

.....

66.6. 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.”

6. Subsequently, some clarifications were issued by Hon’ble Supreme Court vide its order dated 22.1.2018, the relevant extract of which is reproduced hereunder:

“7. 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.”

7. Learned counsel for the petitioner has drawn the attention of this Court to the concluding para of impugned order dated 30.5.2023 (Annexure P-15) which reads as under:

“As per the aforesaid judgment, the degree of Shri Kashmir Singh has been considered a valid degree but as he has passed the examination conducted by the AICTE in the second chance, therefore, his degree is to be treated valid from the date of passing this test. As the degree of this employee stands valid from December 2018, therefore, promotion to this official in the quota of Degree Holder cannot be granted from the year 2007.”

8. Learned counsel for the petitioner submits that by virtue of judgment of Hon’ble Supreme Court dated 3.11.2017 as well as order dated 22.1.2018 clarifying the same, he was entitled to be granted promotion w.e.f. 2007 when his result had been kept in sealed cover inasmuch as the judgment clearly mandates that all such benefits are to be restored to the employees upon clearing the special examination which had been conducted pursuant to judgment dated 3.11.2017 (Annexure P-7) and that since the petitioner had cleared the special examination, it has to be deemed that the degree obtained by him was valid at all times and the benefits which became due to him have to be conferred to him from the date when the same actually became due.
9. It has been submitted that the impugned order has been passed by the respondents by misinterpreting the import of judgment dated 03.11.2017 of Hon’ble Supreme Court and order dated 22.1.2018. Learned counsel while referring to the concluding paragraph of the impugned order dated 30.5.2023 (Annexure P-15) has submitted that the authorities have declined promotion w.e.f. 2007 to him on the premises that the petitioner had passed the test in

the second chance whereas the judgment as well as order do not carve about any such distinction and that the distinction drawn in the clarificatory order dated 22.1.2018 only pertains to a relief in the nature of an interim relief which was extended to the candidates till declaration of the result of the first test. It has thus been submitted that the impugned order be set aside and the petitioner be granted promotion w.e.f. 2007 particularly since his case at one point of time was under consideration, but had been kept in a sealed cover.

10. This Court has considered the rival submissions.
11. A perusal of judgment dated 22.1.2018 indeed shows that the candidates who had taken admissions in degree courses during the year 2001 to 2005 were afforded a chance to prove themselves and a special test was ordered to be conducted by AICTE and the candidates were to be given two chances to clear the same and in case they were able to clear the same during the said two chances, the advantages/benefits extended to them were to be “restored”.
12. The petitioner having cleared the test in the second chance was certainly entitled to restoration of the benefits which had been extended to him. However, it is admittedly the case of the petitioner that he had been promoted as Junior Engineer only in the year 2019 and that previously his case was kept in sealed cover. Rather in letter 19.12.2011 (Annexure P-4) it is specifically mentioned that his case will be considered only in the next DPC.
13. Upon advance notice having been issued to State, Mr. Inderpreet Singh Kang, AAG, Punjab, has put in appearance and has informed that as a matter of fact it was only in the year 2019 that DPC was held i.e. after passing of the judgment by Hon’ble Supreme Court.

14. The petitioner having been promoted vide order dated 4.12.2019 (Annexure P-10) as Sub Divisional Engineer for the first time and not having been promoted as such prior thereto, there is no question of restoration of any such benefit from an earlier date since no such benefit had been extended earlier. It is also apposite to refer to a relevant paragraph from order dated 13.8.2019 (Annexure P-11) passed in Contempt Petition Nos.408-409 of 2019 arising out of *Orissa Lift Irrigation Corporation's case (Supra)* which sheds some light as to what benefit was to be extended to the employees. The relevant extract from para No.10 of COCP (Annexure P-11) is reproduced hereunder:

“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.”

15. The aforesaid extract leaves no manner of doubt that it is only the advantage or benefit which already stood extended which was to be restored and that benefit which had not been earlier granted was not to be granted retrospectively. The factum of the petitioner’s case having been kept in sealed cover cannot be said to be extension of any kind of benefit. It was only in the year 2019 that the petitioner was promoted as SDE and not before 04.12.2019. As such, this Court does not find any ground for issuance of any directions as prayed for so as to promote petitioner w.e.f. 2007.
16. The petition is sans merit and the same is hereby dismissed.

02.09.2023

mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No