

CWP No. 32475 of 2019 and other connected matters

2023:PHHC:120315

1

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(Sr. No. 203)**

(1)

**CWP No. 32475 of 2019
Date of Decision : 13.09.2023**

Vikas Goyal

...Petitioner

Versus

State of Haryana and others

...Respondents

(2)

CWP No. 30166 of 2018

Anil Kumar @ Anil Kumar Mann

...Petitioner

Versus

State of Haryana and another

...Respondents

(3)

CWP No. 23023 of 2021

Sukhvir Singh Hooda

...Petitioner

Versus

State of Haryana and another

...Respondents

(4)

CWP No. 9574 of 2019

Sukhvir Singh Hooda

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sunil K. Nehra, Advocate for the petitioner(s)
in CWP-32475-2019, CWP-23023-2021 &
CWP-9574-2019.

Mr. Sandeep Singh, Advocate for the petitioner(s)
in CWP-30166-2018.

Mr. Harish Rathee, Sr. Deputy Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

1. By this common order, four writ petitions, the details of which have been given in the heading, are being decided as all these petitions involve the same question of law on similar facts.

2. In the present petitions, the challenge is to the order passed by the Government by which the benefit of promotion to the petitioner(s) to the post of Sub Divisional Officer from the date the petitioner(s) became eligible, has been declined.

3. Certain facts needs to be mentioned herein for correct appreciation of the issue in hand.

4. For the purpose of the present order, the facts are being taken from CWP No. 32475 of 2019.

5. The petitioner initially passed his diploma in Civil Engineering from Government Polytechnic, Sirsa in the year 2006. Being eligible against the posts advertised by the Haryana Staff Selection Commission in the Cadre of Junior Engineers, the petitioner competed and was selected. Upon selection, vide order dated 18.10.2006 (Annexure P-2) the petitioner was duly appointed as a Junior Engineer.

While working on the post of Junior Engineer with the respondent-State, the petitioner enrolled himself for enhancing his academic qualification and through a Distance Education Mode, the petitioner got a degree of B. Tech (Civil) in 2008 from the Institute of Advance Studies in Education of Gandhi Vidya Mandir, Sardar Shehar, Rajasthan.

6. As per the rules governing the service, further promotion was to the post of Sub Divisional Officer. It may be noticed that for promotion to the post of Sub Divisional Engineer different quotas were provided for a degree holder and diploma holder and the experience required for promotion to the post of Sub Divisional Engineer, for a degree holder was also different than the one prescribed for a diploma holder.

7. The petitioner's degree was not taken into consideration as a valid qualification for promotion to the post of Sub Divisional Officer as the same had been obtained through the Distance Education Mode but the petitioner was considered eligible for promotion to the post of Sub Divisional Officer being a diploma holder and ultimately, petitioner got promotion as Sub Divisional Officer in the quota of diploma holder category on 09.10.2017.

8. Thereafter, a question arose before this Court as to whether, the technical degree acquired through Distance Education Mode is a valid degree or not and a Division Bench of this Court vide order dated 06.11.2012 passed in CWP No. 1640 of 2008 titled as ***Kartar Singh Vs. Union of India and others***, held that qualification of degree on a

technical side obtained through Distance Education Mode is not a valid qualification. Keeping in view the said judgment of Division Bench of this Court in ***Kartar Singh's case (supra)***, the degree obtained by the petitioner from the Distance Education Mode from a University in Rajasthan was not treated to be a valid degree.

9. The judgment of this Court in ***Kartar Singh's case (supra)*** was challenged before the Hon'ble Supreme Court of India and the question of law whether the degree on a technical side obtained through a Distance Education Mode is a valid degree or not was settled by the Hon'ble Supreme Court of India while passing order in Civil Appeal No. 17869-17870 of 2017 titled as ***Orissa Lift Irrigation Corp. Ltd. Vs. Rabi Sankar Patro & Others***, decided on 03.11.2017 holding that the degree obtained on the technical side through Distance Education Mode is not a valid degree. Despite the said observation, an exemption was carved out by the Hon'ble Supreme Court of India with regard to the candidates, who had obtained such kind of degrees between the Session 2001 to 2005.

10. As per the exception carved out, the candidates, who had got the degree on a technical side through Distance Mode, were required to undergo a screening test to be conducted by All India Counsel for the Technical Education, which screening test was to be cleared by the candidate concerned within two chances and in case, any candidate clears the said screening test, any benefit, which has already been extended to

the candidate concerned on the basis of the said degree, shall stand restored.

11. Thereafter, miscellaneous applications were filed for the conditions with regard to the exception granted to certain candidates, wherein, the Hon'ble Supreme Court of India vide order dated 22.01.2018 passed in M.A. No. 1795-1796 of 2017 in Civil Appeal Nos. 17869-17870 of 2017 titled as ***Orissa Lift Irrigation Corporation Ltd. Vs. Rabi Sankar Patro and others*** held that the exemption so as to retain the benefit of promotion, will only apply in case a candidate passes the screening test in the first attempt itself and not to the candidate, who passes the screening test in the second attempt. The candidates passing the screening test in the second attempt, were only to claim the benefit prospectively.

12. The petitioner was covered under the exception created by the Hon'ble Supreme Court of India as he cleared the said screening test in the first attempt after which, the degree obtained by the petitioner through a Distance Education Mode on a technical side became a valid degree.

13. After the degree obtained by the petitioner in the Engineering became a valid degree, the petitioner claimed the benefit of promotion on the basis of the said degree from the date he was entitled for i.e. retrospective effect in the quota of the degree holder to the post of Sub Divisional Engineer. The respondents vide impugned order dated 01.01.2019 had declined the said benefit to the petitioner on the ground

that the degree obtained through Distance Education Mode will only be considered a valid degree starting from the date, when the petitioner had cleared the screening test conducted by the All India Counsel for the Technical Education, hence, the degree obtained by the petitioner through Distance Mode cannot be treated as a valid degree from the date he obtained the same. The said order is under challenge in the present petition.

14. After being issued notice of motion, the respondents have filed the reply, wherein, the respondents have taken the same stand again that once the degree of the petitioner(s) became valid after passing the screening test, the same cannot be treated as a valid degree from the date when the said degree was obtained and the petitioner(s) can only be granted benefit of promotion in degree holder's quota prospectively and not from the retrospective effect and their claim for promotion as Sub Divisional Officer in the quota meant for the degree holders was rejected by the authorities concerned.

15. I have heard learned counsel for the parties and have gone through the record with their able assistance.

16. The only issue before this Court in the present petitions is that whether upon passing of the screening test in the first attempt, the degree obtained by the petitioner(s) through Distance mode will be treated a valid degree from the date, the same was obtained by the petitioner(s) or the said degree will be a valid degree only prospectively from the date of passing of the screening test.

17. The said question has already been answered by the Hon'ble Supreme Court of India while passing order in ***Orissa Lift Irrigation Corp. Ltd.(supra)***. The relevant paragraph 47 of the said judgment is as under :-

“47. The AICTE is directed to devise within one month from the date of this judgment modalities to conduct appropriate test/tests both in written examination as well as in practicals for the concerned students admitted during the academic sessions 2001-2005 covering all the concerned subjects. 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 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 concerned students and if they do not pass the test/tests their degrees shall stand recalled and cancelled. If a particular student does not wish to appear in the test/tests, the entire money deposited by such student towards tuition and other charges shall be refunded to that student by the concerned Deemed to be University within a month of the exercise of such option. The students be given time till 15th of January, 2018 to exercise such option. The entire expenditure for conducting the test/tests in respect of students who wish to undergo test/tests shall be recovered from the concerned Deemed to be Universities by 31.03.2018. If they clear the test/tests within the stipulated time, all the advantages or benefits shall be restored to the

concerned candidates. We make it clear at the cost of repetition that if the concerned candidates do not clear the test/tests within the time stipulated or choose not to appear at the test/tests, 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.”

18. A bare perusal of the above reproduction would show that the Hon’ble Supreme Court of India has held that where any benefit has already been extended on the basis of the degree, which qualification was obtained through a distance mode, upon passing of the screening test, the said benefit will stand restored meaning thereby that the said degree will be a valid degree from the date, the same was obtained and will not be treated as a valid degree from the prospective effect. Once the benefits already obtained by a candidate are being restored, the direction of the Hon’ble Supreme Court of India meant that the said degree will be a valid degree from the date the same was awarded to a particular candidate.

19. Further, the said view was clarified by the Hon’ble Supreme Court of India while passing order dated 22.01.2018 in ***Orissa Lift Irrigation Corp. Ltd.(supra)***. The relevant paragraph of the said judgment is as under :-

“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.”

20. A bare perusal of the said clarification would show that in case, a candidate passes the screening test to be held by the All India Counsel for the Technical Education in the first attempt, the benefit of the degree shall remain intact, meaning thereby that the degree will be

treated as a valid degree from the date the same was granted but the candidate, who passes the screening test in the second attempt, the degree will have a prospective effect.

21. It is not a disputed fact that all the petitioner(s) in their petitions have cleared the screening test in the first attempt itself.

22. Now, the question is whether, the opinion of the respondents that the degree obtained by the petitioner(s) will only have a prospective effect from the date of passing of the screening test is valid or not in the facts and circumstances of the present case. As per the undisputed factual position, all the petitioner(s) have passed the screening test held by the All India Counsel for the Technical Education in the first attempt itself. That being so, keeping in view the judgment dated 03.11.2017 of the Hon'ble Supreme Court of India, which has already been reproduced as well as the order dated 22.01.2018 clarifying the paragraph 47 of judgment dated 03.11.2017, which view has also been reproduced herein-above, the degree obtained by the petitioner(s) is to be treated as a valid degree from the date of inception and not from the date of passing of the screening test. The impugned order, which has been passed by the respondents, is without appreciating the direction given by the Hon'ble Supreme Court of India. Though, the degree will become only valid after the passing of the screening test in the first attempt but in case, a candidate passes the said screening test in the first attempt, the said degree is to be treated as a valid from the date of inception as only under

that circumstances, a candidate was made entitled to restore the benefit already entitled to him/her.

23. Once, a candidate is allowed to retain the benefit upon passing of the screening test in the first attempt by the Hon'ble Supreme Court of India, it is clear that candidate was granted the benefit of degree from the date same was granted, hence the same analogy is to be made applicable to a candidate, who though might not have been granted the benefit of such degree but has cleared the screening test in the first attempt so as to validate the degree, hence, the degrees, which were obtained by the petitioner(s) through distance education mode, became a valid degree from the date, they were awarded upon passing of the screening test in the first attempt and in the present cases, it is a conceded position that the petitioner(s) have passed the screening test in the first attempt itself, hence, the petitioner(s)' degrees are to be treated as valid degrees from the date, the same were awarded to them.

24. Keeping in view the fact and circumstances of the present case as well as the settled principle of law that the degrees of the petitioner(s) are to be treated as valid degrees from the date, the same were awarded, the respondents are under obligation to consider the claim of the petitioner(s) as to whether, keeping in view the facts and circumstances of each case, whether any of the petitioner(s) is entitled for promotion under the degree quota for the post of Sub Divisional Engineer retrospectively or not. The respondents by this order are directed that keeping in view the date when the petitioner(s) got the degrees in their

favour as well as keeping in view the service conditions i.e. the rules governing the service for promotion to the post of Sub Divisional Engineer, let the case of the petitioner(s) be considered for promotion under the quota of degree holders for the post of Sub Divisional Officers. In case, the petitioner(s) are found entitled for promotions under the degree quota, the same be granted to the petitioner(s) within a period of two months of the passing of this order and in case, the respondents are of the view that in the facts and circumstances of the case, no benefit is liable to be extended to the petitioners, detailed reasons be given for the said conclusion to be conveyed to the petitioner(s). In case, the petitioner(s) are aggrieved against the said decision of the Government in any manner, they can avail appropriate remedy for the redressal of their grievances.

25. Petitions are disposed of in above terms.

26. Any application, if pending in any of the petition, also stands disposed of.

September 13, 2023
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No