



[1]
2023:DHC:5905

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9628/2019**

Date of Decision: **03.08.2023**

IN THE MATTERS OF:

MANOJ KUMAR
S/O SH. PYARELAL
R/O P50A, VVIP ADDRESSES,
RAJNAGAR EXTENSION,
GHAZIABAD-201017

..... PETITIONER NO.1

SUBHASH CHANDRA DAS
S/O LATE SH. M.L.DAS
R/O QUARTER NO.-III/DS/71
DIM COLONY, KIRANDUL
DISTRICT - DANTEWADA,
CHHATISGARH - 494556.

..... PETITIONER NO.2

Through: Mr. Rahul Sharma, Ms. Shreya Sinha,
Mr. Amritesh Raj and Mr. Ayush
Bhatt, Advocates.

Versus

**ALL INDIA COUNCIL FOR TECHNICAL EDUCATION
(AICTE)**

NELSON MANDELA MARG

VASANT KUNJ, NEW DELHI-110070

.... RESPONDENT

Signature Not Verified
Digitally Signed By:PRIYA
Signing Date: 19.08.2023
13:10:53

Signature Not Verified
Digitally Signed
By: PURUSHAINDRA
KUMAR KAURAV

Through: Mr. Anil Soni, Standing Counsel for
AICTE with Mr.Prateek Rana and
Mr.Devvrat Yadav, Advocates.

+

W.P.(C) 817/2023

SH. BHAVESH SHELDIYA

AGED ABOUT 35 YEARS

S/O SH. DINESHBHAI PARSOTAMBHAI

R/O VILLAGE KARJALA

TAL- SAVAR KUNDLA, DISTRICT AMRELI

GUJARAT 364515

..... PETITIONER NO.1

SH. ARNAS MAJUMDER

THROUGH POWER OF ATTORNEY HOLDER

SH. KARTIC CHANDRA MAJUMDER

AGED ABOUT 75 YEARS

S/O KASHINATH MAJUMDER

R/O VILLAGE PABNA COLONY

PO CHAKDAH, DISTRICT NADIA

WEST BENGAL 741222

..... PETITIONER NO.2

SH. SANDEEP PANDEY

AGED ABOUT 39 YEARS

S/O SH. DEENANATH PANDEY

R/O A-204, VIDHI APARTMENT

LNDRAPRASTH COMPLEX

NEAR HANWMAN TEMPLE

NAVGLLAR ROAD, BHAYANDAR (EAST)

THANE, MAHARASHTRA 401105

..... PETITIONER NO.3

Through: Mr. Rahul Sharma, Ms. Shreya Sinha,
Mr. Amritesh Raj and Mr. Ayush
Bhatt, Advocates.

Versus

**ALL INDIA COUNCIL FOR TECHNICAL EDUCATION
(AICTE)**

NELSON MANDELA MARG,

VASANT KUNJ, NEW DELHI-110070

.... RESPONDENT

Through: Mr. Anil Soni, Standing Counsel for
AICTE.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. These are two writ petitions involving a common issue, therefore, they are being decided by this common order.
2. The petitioners in the instant cases are praying for consideration of marks obtained by them to be equivalent to 40%, while applying the principle of rounding off. The petitioners, in both the cases have obtained more than 39% marks as against the requirement of 40% marks as passing percentage to qualify All India Council for Technical Education examination (*hereinafter as 'AICTE' examination*) being conducted for validation of petitioners' degrees.
3. As per the facts of the present cases, the petitioners had successfully completed their under-graduate course from distance learning from their respective Universities which were amongst the listed deemed to be Universities and were duly granted *ex post facto* approval by the Universities

Grants Commission (*hereinafter as 'UGC'*). The petitioners were enrolled during Academic Year 2001-2005 and after completion of their respective courses, they were employed at different Government departments and other institutions. Admittedly, all the petitioners were granted benefits by their employer with respect to the concerned course.

4. On account of the emanation of certain controversies with respect to the entitlement of the deemed to be Universities operating the concerned courses through distance mode and their approval with retrospective effect by the UGC, the issue came to be considered by the Hon'ble Supreme Court in the case of ***Orissa Lift Irrigation Corporation Limited v. Rabi Sankar Patro and Ors***¹.

5. The Hon'ble Supreme Court, in the said case, found that the exercise of granting of *ex post facto* approval was incorrect and illegal. It was noted that the logical course in normal circumstances would have been not only to set aside such *ex post facto* approval but also to pass consequential directions to recall all the degrees granted in pursuance thereof. The Hon'ble Supreme Court, however, considered the matter with a sympathetic view so that the interest of those students, who were enrolled during the Academic Year 2001-2005, is protected.

6. It was found that on account of lapse of time, it was not possible to order any inspection of the concerned institutions, however, to maintain the confidence and assurance about the worthiness of the concerned students, the Hon'ble Supreme Court directed that an opportunity must be provided to the concerned students to have their ability tested by the competent authority. Accordingly, it was directed that all the degrees in engineering granted to

¹ (2018) 1 SCC 468

students who were enrolled during the Academic Year 2001-2005 in such institutions shall stand suspended till they pass such examination under the Joint Supervision of AICTE-UGC, as indicated in the said order.

7. The paragraph nos. 57 and 58 of the directions issued by the Hon'ble Supreme Court in the case of ***Orissa Lift Irrigation Corporation Limited (supra)*** read as under:

"57. Having found the entire exercise of grant of ex post facto approval to be incorrect and illegal, the logical course in normal circumstances would have been not only to set aside such ex post facto approvals but also to pass consequential directions to recall all the degrees granted in pursuance thereof in respect of courses leading to award of degrees in Engineering. However, since the 2004 UGC Guidelines themselves had given liberty to the deemed to be universities concerned to apply for ex post facto approval, the matter is required to be considered with some sympathy so that interest of those students who were enrolled during the academic sessions 2001-2005 is protected. Though we cannot wish away the fact that the deemed to be universities concerned flagrantly violated and entered into areas where they had no experience and started conducting courses through distance education system illegally, the overbearing interest of the students concerned persuades us not to resort to recall of all the degrees in Engineering granted in pursuance of the said ex post facto approval. However, the fact remains that the facilities available at the study centres concerned were never checked nor any inspections were conducted. It is not possible at this length of time to order any inspection. But there must be confidence and assurance about the worthiness of the students concerned. We, therefore, deem it appropriate to grant some chance to the students concerned to have their ability tested by authorities competent in that behalf. We, therefore, direct that all the degrees in Engineering granted to students who were enrolled during the academic years 2001 to 2005 shall stand suspended till they pass such examination under the joint supervision of AICTE-UGC in the manner indicated hereinafter. Further, every single advantage on the basis of that degree shall also stand suspended.

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 test(s) 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."

8. It is, thus, seen that the AICTE was directed to devise modalities to conduct appropriate test(s) within one month from the date of the judgment passed by the Hon'ble Supreme Court.

9. It was further directed that the students should be given time till 15.01.2018 to exercise the option of appearing in the examination with the direction that if they clear the test within the stipulated time period, all the advantages or benefits shall be restored to the candidates concerned and in case, the students do not clear the test during the stipulated time or choose not to appear in the test, their degrees in engineering through distance education, shall stand recalled and cancelled. It was also directed that any promotion or advancement in career on the basis of such degree shall also stand withdrawn except monetary benefits or advantages on that behalf which was already

availed. The directions passed by the Hon'ble Supreme Court in terms of paragraph no. 66 reads as under:

"66.1. The 1994 AICTE Regulations, do apply to deemed to be universities and the deemed to be universities in the present matter were not justified in introducing any new courses in technical education without the approval of AICTE.

66.2. Insofar as candidates enrolled during the academic sessions 2001-2005, in the present case the ex post facto approvals granted by UGC and their authorities concerned are set aside.

66.3. Consequent to aforesaid Direction II, all the degrees in Engineering awarded by deemed to be universities concerned stand suspended.

66.4. AICTE shall devise the modalities to conduct an appropriate test(s) as indicated in para 58 above. The option be given to the students concerned whose degrees stand suspended by 15-1-2018 to appear at the test(s) to be conducted in accordance with the directions in para 58 above. Students be given not more than two chances to clear test(s) and if they do not successfully clear the test(s) within the stipulated time, their degrees shall stand cancelled and all the advantages shall stand withdrawn as stated in paras 57 and 58 above. The entire expenditure for conducting the test(s) shall be recovered from the deemed to be universities concerned by 31-3-2018.

66.5. Those students who do not wish to exercise the option, shall be refunded entire money deposited by them towards tuition fee and other charges within one month of the exercise of such option. Needless to say, their degrees shall stand cancelled and all advantages/benefits shall stand withdrawn as mentioned in para 58.

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.

66.7. As regards students who were admitted after the academic sessions 2001-2005, their degrees in Engineering awarded by the deemed to be universities concerned through distance education mode stand recalled and be treated as cancelled. All benefits secured by such candidates shall stand withdrawn as indicated in para 59 above. However, the entire amount paid by such students to the deemed to be universities concerned towards tuition fees and other expenditure shall be returned by the deemed to be universities concerned by 31-5-2018, as indicated in para 59.

66.8. *By 31-5-2018 all the deemed to be universities concerned shall refund the sums indicated above in para 66.7 and an appropriate affidavit to that extent shall be filed with UGC within a week thereafter.*

66.9. *We direct CBI to carry out thorough investigation into the conduct of the officials concerned who dealt with the matters and went about granting permissions against the policy statement, as indicated in para 60 above and into the conduct of institutions who abused their position to advance their commercial interest illegally. Appropriate steps can thereafter be taken after culmination of such investigation.*

66.10. *UGC shall also consider whether the deemed to be university status enjoyed by JRN, AAI, IASE and VMRF calls for any withdrawal and conduct an inquiry in that behalf by 30-6-2018 as indicated above. If the moneys, as directed above, are not refunded to the students concerned, that factor shall be taken into account while conducting such exercise.*

66.11. *We restrain all deemed to be universities to carry on any courses in distance education mode from the academic session 2018-2019 onwards unless and until it is permissible to conduct such courses in distance education mode and specific permissions are granted by the statutory/regulatory authorities concerned in respect of each of those courses and unless the off-campus centres/study centres are individually inspected and found adequate by the statutory authorities concerned. The approvals have to be course specific.*

66.12. *UGC is further directed to take appropriate steps and implement Section 23 of the UGC Act and restrain deemed to be universities from using the word “university” within one month from today.*

66.13. *The Union of India may constitute a three-member Committee comprising of eminent persons who have held high positions in the field of education, investigation, administration or law at national level within one month. The Committee may examine the issues indicated above and suggest a road map for strengthening and setting up of oversight and regulatory mechanism in the relevant field of higher education and allied issues within six months. The Committee may also suggest oversight mechanism to regulate the deemed to be universities. The Union of India may examine the said report and take such action as may be considered appropriate within one month thereafter and file an affidavit in this Court of the action taken on or before 31-8-2018. The matter shall be placed for consideration of this aspect on 11-9-2018.”*

10. It is to be noted that admittedly, all the petitioners opted for appearing in the examination which was conducted by the respondent-AICTE. The relevant particulars including names of the petitioners, their year of enrollment in the concerned deemed to be Universities, the marks obtained by them, their percentage and the marks short of 40% are summarized in the following table:

Sr. no.	Particulars of petitioners	Year of enrolment and name of Deemed to be University	Marks obtained	Percentage	Short of
1	Sh. Manoj Kumar	B.Tech in Electronics from the Institute of Advanced Studies in Education University 2003-2007	167/ 420	39.76%	1 [0.24%]
2	Sh. Subhash Chandra Das	B.Tech. at the Institute of Advanced Studies in Education University 2003-2007	166/ 420	39.52%	2 [0.48%]
3	Sh. Bhavesh Sheladiya	Enrolled for pursuing B.Tech course in Aeronautical Engineering at NIAE, Dehradun 2004-2008	167/ 420	39.76%	1 [0.24%]
4	Sh. Arnas Majumder	Enrolled for Pursuing B.Tech course in Aeronautical Engineering at	166/ 420	39.52%	2 [0.48%]

		JNR Rajasthan Vidyapeeth, Rajasthan 2003-2007			
5	Sh. Sandeep Pandey	Enrolled for Pursuing B.Tech course in Aeronautical Engineering at JRN Rajasthan Vidyapeeth University in the year 2003 and passed out in 2007	164/ 420	39.05%	4 [0.95%]

11. It is, thus, clear from the above table that all the petitioners are short of less than one percent mark from the minimum requirement of 40%.

12. Learned counsel appearing on behalf of the petitioners submits that under similar circumstances, a candidate who was short of 0.71% marks, approached the High Court of Himachal Pradesh at Shimla, in CWP No.1192/2019 and the Division Bench of the High Court of Himachal Pradesh at Shimla, in terms of the decision dated 25.11.2019, allowed the petition and directed for rounding off 39.29% to 40%. He contended that under the peculiar circumstances, the petitioners be granted the benefit of rounding off. The aforesaid decision was challenged before the Hon'ble Supreme Court in SLP no.5199/2020 by the respondent-AICTE. The Hon'ble Supreme Court in terms of the order dated 28.07.2020, dismissed the said SLP, leaving all the questions open.

13. Learned counsel further submits that a similar issue was considered by the High Court of Uttarakhand at Nainital in terms of the decision dated

08.11.2021, where the marks secured by the candidate i.e., 39.76% were rounded off to 40%.

14. According to him, the High Court of State of Telangana at Hyderabad also, in terms of the decision dated 12.10.2022 accepted the prayer of the petitioner therein to round off 39.76% marks to 40%.

15. Learned counsel appearing on behalf of the petitioners also relies on a decision, with respect to LL.B. students, passed by this court in writ petition no. 12475/2009 dated 23.11.2010. He, therefore, submits that under the facts of the present cases, where all the petitioners who have secured employment several years back, they should not be made to suffer on account of a fraction of less than one percent mark.

16. He also submits that the decisions referred by him have already been implemented by the respondent-AICTE and the candidates, who were the petitioners before the courts, were declared as qualified in the said examination.

17. Learned counsel appearing on behalf of the respondent-AICTE, while relying on the counter-affidavit, states that the law is well-settled with respect to rounding off the marks. According to him, rounding off is not permissible in the absence of a specific rule. He, therefore, states that when the special examination was conducted and two opportunities were given, the petitioners should have proved their merit and having failed in the examination by not securing the passing percentage, this court should not interfere.

18. I have considered the submissions made by learned counsel for the parties and perused the record.

19. In the instant cases, the facts and circumstances are peculiar in nature. It is a case where the candidates had already completed their course and obtained employment under different employers and the eligibility criteria of their admission in their respective courses is not doubted. They did not lack any inherent qualification except for the reason of *ex post facto* approval to the deemed to be Universities to continue with distance learning courses and there is no irregularity in their admission as well.

20. The facts of the instant cases are unusual for the reason that the examination in question, where the petitioners are requesting for applicability of rounding off, is neither a competitive examination for securing admission in any course where the seats are limited nor a qualifying examination for a particular course.

21. The Hon'ble Supreme Court in the case of ***Orissa Lift Irrigation Corporation Limited (supra)*** was pleased to consider the possible hardship of conducting an examination to assess the merit of these candidates. It is also to be noted that the instant examination does not have any direct relevance with respect to the qualification or eligibility for the purpose of employment, at this stage, as the petitioners are already under employment.

22. It is, thus, seen that the primary objective of conducting the instant examination was to assess the ability of the candidates, as all the candidates attempting the examination had secured their degrees and more than a decade has already passed after the completion of their respective courses. It is to be noted that the petitioners are also employed for more than a decade and are working at different organisations.

23. The Hon'ble Supreme Court in the case of *Mridul Dhar v. Union of India*², undoubtedly, has held that for granting admission, the merit determined by the competitive examination shall not be tinkered by making a provision like grant of marks by mode of an interview or any other mode.

24. The Hon'ble Supreme Court in the case of *Orissa Public Service Commission & Anr. v. Rupashree Chowdhary & Anr.*³, which relates to Orissa Judicial Services Examination, 2019 for direct recruitment to fill up the vacancies for Civil Judges (Junior Division), took a view that when the rule itself emphasized minimum marks that had to be obtained by the candidates concerned, the High Court in that case committed an error in providing relaxation by allowing the rounding off from 44.93% marks to 45% marks.

25. Similarly, in the case of *Rajiv Gandhi University of Health Sciences, Bangalore v. G. Hemlatha and Ors.*⁴, relating to admission to the post graduate course in M.Sc. (Nursing), the Hon'ble Supreme Court declined to allow rounding off from 54.71% marks to 55% marks and held that the prescribed eligibility criteria cannot be diluted.

26. It is, thus, seen that the method of rounding off percentage of marks obtained in the examination for bringing a candidate into the field of choice for selection or admission, is generally not permissible. A similar view was taken by the High Court of Judicature, Punjab and Haryana, in the case of *Kuldip Singh, Legal Assistant, Punjab Financial Corporation v. State of Punjab & Ors.*⁵ and High Court of Bombay in the case of *Sau. Jahnvi Arun*

² (2005) 2 SCC 65

³ (2011) 8 SCC 108

⁴ (2012) 8 SCC 568

⁵ 1997 SCC OnLine P&H 649

*Navare v. Principal, Thane Municipal Council, Law College & Ors*⁶, wherein, the High Court was considering the prayer of rounding off relating to examination of 2nd Year L.L.B course.

27. The Hon'ble Supreme Court in the case of *State of M.P. v. Gopal D. Tirthani*⁷, held that the concept of minimum qualifying percentage cannot, therefore, be given a complete go-by and if at all there is a departure, it has to be minimal and that too only by approval of the experts. The reference can also be made to a decision passed by the High Court of Judicature at Punjab and Haryana in the case of *Naresh Kumar v. State of Haryana*⁸, the decision passed by the High Court of Rajasthan in the case of *Dr. Rajiv Mangal v. Rajasthan University of Health Sciences & Anr.*⁹, *Shivlal Sharma v. Raj Technical University & Ors.*¹⁰, the decision passed by the High Court of Gujarat in the case of *Harshaben Chatrabhuj Trivedi v. State of Gujarat & Ors.*¹¹ and the decision passed by the High Court of Madhya Pradesh in the case of *Anshuman Agrawal v. Central Board of Secondary Education.*¹²

28. However, it is also pertinent to note that the Hon'ble Supreme Court in the case of *State of UP and Anr. v. Pawan Kumar Tiwari and Ors.*¹³, while discussing the application of the principle of rounding off, has held as under:

“7. We do not find fault with any of the two reasonings adopted by the High Court. The rule of rounding off based on logic and common sense is: if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be ignored. 46.50 should have been rounded off to 47 and not to 46 as has been done. If 47 candidates would have been considered for selection in general

⁶ 2000 SCC OnLine Bom 306

⁷ (2003) 7 SCC 83

⁸ 2003 SCC OnLine P&H 1618

⁹ 2007 SCC OnLine Raj 48

¹⁰ 2009 SCC OnLine Raj 1002

¹¹ 2009 SCC OnLine Guj 3566

¹² 2009 SCC OnLine MP 479

¹³ (2005) 2 SCC 10

category, the respondent was sure to find a place in the list of selected meritorious candidates and hence entitled to appointment."

29. There can be no gainsaying that the present case requires consideration on the basis of the peculiar facts and circumstances existing herein. As it has been noted above, the petitioners, on the basis of the rounding off, would not get any advantage either of employment or of admission, as the concerned examination is only a case of test of ability. Therefore, it seems that there are no competing interests involved which would substantially jeopardize the interest of any party if the principle of rounding off is applied in the case of the petitioners.

30. In the case of **Anup Prakash Vyas v. University of Pune**¹⁴, the Division Bench of the High Court of Bombay held as under:

"10. We are unable to agree with Mr. Kulkarni's submission that the ratio of this judgment ought to be restricted only to cases of employment. The ratio of this judgment would apply to the present case. There is nothing in the judgment that warrants restricting it to cases of employment. The rule of rounding off was held to be based on logic and common sense. We do not read the observations as being limited to any particular kind of case. Rounding off, therefore, is a rule in the absence of anything to the contrary. If the rules or other provisions specifically provide otherwise, it would be a different matter. In the absence of such a provision, the rule of rounding off must be applied."

*[Emphasis
supplied]*

31. The Division Bench of the High Court of Himachal Pradesh at Shimla, in the case of **Kanhya Lal Sharma v. All India Council for Technical Education**¹⁵, allowed the rounding off from 39.29% to 40%. The relevant paragraphs of the said judgment are reproduced hereinafter as:

¹⁴ 2013 SCC OnLine Bom 243

¹⁵ 2019 SCC OnLine HP 2937

"3. We have heard learned counsel for the parties and have also gone through the record.

3(i) The mode and mechanism for conducting the examination directed by the Hon'ble Apex Court had to be devised by the respondent. The mechanism was so devised by it. According to learned Counsel for the respondent, for redressing various grievances/representations of various candidates, a meeting was convened by respondent No.1 on 18.09.2018, where-under, it was decided that pass marks will not be reduced from 40% and, there will not be any grace marks since the test contained multiple choice questions.

3(ii) From the facts and circumstances of the case, we find that the petitioner was appointed initially as Junior Engineer in the year 1997 and thereafter, he was promoted as Assistant Engineer on the basis of Degree in question in the year 2007. Presently, the petitioner is serving as Senior Executive Engineer w.e.f. 7.4.2017. He is short by 3 marks. i.e. 0.71% from qualifying marks and percentage. In case, deficiency of 3 marks i.e. 0.71% is not made good in case of the petitioner, then he is liable to be reverted to the post of Junior Engineer. This would be unjust in the circumstances of the case. On the basis of degree so conferred upon the petitioner, further promotions to the post of Assistant Engineer and to the post of Senior Executive Engineer have been granted to him. He has gained sufficiently long experience on these posts. In the qualifying test, conducted 1 years after petitioner obtained his degree, he was able to secure 39.29% against required 40%. Petitioner has been in service of State since 1997. Hon'ble Apex Court in Civil Appeal Nos. 73/74 of 2019 titled High Court of Hyderabad vs. P. Murali Mohana Reddy & Ors, etc. held as under:-

"21. We are, thus, faced with the situation where the respondents could not secure qualifying marks as per the judgment of this Court. However, a close scrutiny of the marks obtained by respondents would disclose that two candidates, namely, Sunitha Busireddy and S. Sarada Devi have secured 99.7 and 99.3 marks as against the required marks of 100. Insofar as Sunitha Busireddy is concerned, when the marks are rounded off, it has to be treated as 100 marks. Since, S. Sarada Devi is also short by only 0.7 marks, there is no reason not to round off her marks to 100 as well, going by the consideration that they have been working as ad-hoc judges for number of years and also the fact that it was only a qualifying examination for the purpose of regularization. Therefore, these two candidates/respondents have to be

treated as qualified the written test and interview when their marks area aggregated.”

4. *In view of the above observations of Hon'ble Supreme Court, the factual situation of the case requires granting of 3 marks to the petitioner so that he qualifies the test in question and does not lose the benefit of promotions as Assistant Engineer and Senior Executive Engineer given to him in the year 2007 and 2017, respectively and is not reverted to the post of Junior Engineer. Petitioner has served for more than 14 years on the promotional degree and gained experience.*

5. *In view of the aforesaid observations, the writ petition is allowed. Respondent is directed to either round off 39.29% marks secured by the petitioner to 40% or grant him 3 grace marks so that he is declared to have qualified the test in question. It is further clarified that the above direction is being issued in the peculiar factual position of the case and shall not be treated as precedent in any other case.*

32. The High Court of Uttarakhand in the case of ***Sudhir Mohan & Anr. v. All India Council for Technical Education***¹⁶, has held as under:-

2. *Since the B.Tech. degree awarded through distance mode by deemed to be university was declared to be invalid by Hon'ble Apex Court, therefore, pursuant to direction issued by Hon'ble Apex Court, petitioners appeared in a qualifying examination conducted by A.I.C.T.E. In December, 2018. Both the petitioners have scored 39.76 marks in the said qualifying examination, which is less than minimum pass marks of 40%.*

3. *In this writ petition, petitioners have prayed that they be declared pass in the qualifying examination by rounding off their marks.*

4. *Learned counsel for the petitioners has placed reliance upon a judgment rendered by Hon'ble Himachal Pradesh High Court in the case of Kanhya Lal Sharma v. All India Council for Technical Education, reported in 2019 SCC OnLine HP 2937.*

5. *Having regard to the facts and circumstances of the case, the writ petition is disposed of with liberty to petitioners to make representation(s) to Competent Authority in All India Council for Technical Education. If such representation(s) is made by the petitioners within two weeks from today, decision thereupon shall be taken within eight weeks from the date of receipt of representation(s) along with certified copy of this order.*

¹⁶2021 SCC OnLine Utt 1616

33. The High Court of Telangana at Hyderabad in W.P. no. 22396 of 2021 titled as *S. Nithyanand v. All India Council for Technical Education*, has held as under:-

5. ANALYSIS AND FINDING OF THE COURT:

i) As discussed *supra*, there is no dispute that the petitioner had appeared for the validation examination held in December 2018, conducted by 1 respondent. He got 167 marks against required marks of 168 marks, he got 39.76 percentage marks against required 40% marks. Thus, he has short of one Mark and 0.24% to get himself qualified in the said examination.

ii) Considering the similar facts and also relying on the principle laid down by the Apex Court in *Orissa Lift Irrigation Corporation Ltd. (supra)* and *Vijay Kumar and others vs. Kartar Singh and others*, a Division Bench of High Court of Himachal Pradesh at Shimla in C.W.P.No.1192 of 2019 dated 25.11.2019 in *Kanhya Lal Sharma vs. All India Council for Technical Education*, directed the respondents therein to either round off 39.29% marks secured by petitioner to 40% or granting 3 marks, so that he is declared to have qualified the test in question. In the said Judgment, it was also considered the fact that the petitioner therein got promoted as Assistant Engineer and passed Degree in the year 2007. The petitioner served as Senior Executive Engineer with effect from 07.04.2017.

6. The Division bench of high court of Himachal Pradesh has also relied on principle laid down by Honorable Apex Court in *High Court of Hyderabad vs. Murali Mohana Reddy & others* in Civil Appeal Nos. 73/74 of 2019. Wherein, it was held as follows.

"21. We are, thus, faced with the situation where the respondents could not secure qualifying marks as per the judgment of this Court. However, a close scrutiny of the marks obtained by respondents would disclose that two candidates, namely, Sunitha Busireddy and S. Sarada Devi have secured 99.7 and 99.3 marks as against the required marks of 100. Insofar as Sunitha Busireddy is treated as 100 marks. Since, S. Sarada Devi is also short by only 0.7 marks, there is no reason not to round off her marks to 100 as well. going by the consideration that they have been working as ad-hoc judges for number of years and also the fact that it was only a qualifying examination for the purpose of regularization. Therefore, these two candidates/respondents have to be

treated as qualified the written test and interview when their marks area aggregated."

iv) With the aforesaid observations, considering the principle laid down by the Hon'ble Apex Court in the aforesaid Judgments, it was directed the respondents to round off 39.29 marks secured by the petitioner therein to 40 marks or grant him 3 grace marks so that he is declared to have qualified the test in question.

v) Feeling aggrieved by the said Judgment, AICTE had filed vide SLP.No.5199 of 2020 and vide Judgment dated 28.7.2020, the Apex Court had dismissed the said SLP.

*vi) A similar view was taken by High Court of Uttarakhand at Nainital in its Judgment dated 08.11.2020 in W.P.(M/S).No.2580 of 2020 in the case of **Sudhir Mohan vs. All India Council for Technical Education.***

7. As stated above, the petitioner herein joined as Technician Apprentice on 18.7.1981 in ECIL, got confirmed as Scientific Assistant on 31.3.1983 and got promoted as Deputy General Manager. He has retired on 30.06.2021 on attaining the age of superannuation in the aforesaid capacity. He had acquired B.Tech CSE Degree course from Vinayaka Mission University, Salem, Tamilnadu. The Apex Court had directed all the Degrees in Engineering acquired through Distance Education Mode of the above said University to be suspended. In terms of the aforesaid directions, he had applied and appeared for validation examination thus, he is a retired employee. He is not seeking any promotion or increments etc., on the basis of the said examination or course. He wants to teach ITI, Diploma and Engineering students so that he will get immense pleasure. To do the same, he has to acquire B.Tech qualification. He has appeared for the aforesaid examination in December 2018 but he could not Succeed and he got one mark less and 0.24% less to get qualified. Any prejudice would be caused to the respondents there were be any loss to public exchequer since he is not asking promotion and increments

8. In view of the aforesaid discussion this is also a special case where direction can be given to the respondents either to add one mark or to round off 39.76 marks acquired by the petitioner to 40%

9. CONCLUSION

In view of the aforesaid discussion, this writ petition is disposed of, directing the respondents either to add one mark or round off 39.76%

marks secured by the petitioner to 40% so that he will be declared to have qualified the test in question i.e., validation examination

With the aforesaid direction, this writ petition is disposed of.

As a sequel, miscellaneous petitions, if any, pending in the writ petitions shall also stand closed."

34. It is, thus, seen that with respect to the same examination, almost under the same facts, three High Courts have already considered the rounding off of the respective candidates. The respondent-AICTE acting upon the directions given by the concerned High Courts has held the candidates to be qualified. Therefore, there is no reason to deny the same relief to the petitioners in the instant writ petitions.

35. It is also to be noted that even in the case of ***Kanhya Lal Sharma (supra)***, the decision of the High Court of Himachal Pradesh has not been interfered by the Hon'ble Supreme Court in SLP No.5199/2020, however, the question of law has been left open. The order dated 28.07.2020 passed by the Hon'ble Supreme Court reads as under:-

"In the peculiar facts and circumstances of the present case, we see no reason to exercise our jurisdiction under Article 136 of the Constitution of India and interfere in the matter. The Special Leave Petition is dismissed, leaving all the questions of law open.

Pending applications, if any, shall stand disposed of."

36. It is an undeniable fact that the petitioners are already under employment for more than a decade. There exists no allegation of commission of any fraud or suppression, on the part of the petitioners. Also, the respondent-AICTE has not indicated any rule regarding the said examination which bars the candidates from claiming the benefits of rounding off. The petitioners only seem to be the victim of mere

circumstances. Therefore, rounding off would ultimately come to their rescue to sustain the benefit which they had already obtained.

37. In view of the aforesaid and taking into consideration the peculiar facts and circumstances of the instant cases, this court finds it appropriate to direct respondent-AICTE to treat the petitioners as qualified while extending the benefit of rounding off their marks more than 39% to 40%.

38. Accordingly, the instant petitions stand allowed and disposed of.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 03, 2023/p/MJ