



2024:DHC:6578



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 27.08.2024
Pronounced on: 30.08.2024

+ **W.P.(C) 11043/2019**

SHALLY GUPTA

.....Petitioner

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

versus

THE CHAIRMAN ALL INDIA TECHNICAL EDUCATION
COUNSEL

.....Respondent

Through: Mr. Anil Soni with Mr.
Devvrat Yadav, Advocates.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present writ petition under Article 226/227 of the Constitution of India has been filed on behalf of the petitioner seeking issuance of a writ of certiorari, mandamus or any other appropriate writ order or direction to the respondent i.e. The Chairman, All Indian Council for Technical Education [‘**AICTE**’] to grant 8 more marks to the petitioner on the basis of the AICTE Examination held in December, 2019 for the purpose of validation of Degree and to declare that the petitioner has passed the exam rounding off, or awarding grace mark to the petitioner in the AICTE



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Examination held in December 2018 for validation of Degree, wherein the petitioner had obtained 39.29% marks, while the passing marks were 40%.

2. The **case set out by the petitioner**, in brief, is that she has been working with Bharat Sanchar Nigam Limited (BSNL) as a Junior Engineer/Junior Telecom Officer. The petitioner states that she had obtained a B.Tech Degree from IASE University Gandhi Vidya Mandir, Sardarshahar, Rajasthan, affiliated to the Institute of Advanced Studies in Education (Deemed to be University), Rajasthan. It is stated that the Hon'ble Supreme Court, *vide* its judgment dated 03.11.2017 in case of ***Orissa Lift Irrigation Corporation Ltd. v. Rabi Shankar Patro & Others (2018) 1 SCC 468***, had directed the suspension of engineering degrees obtained through distance education mode from four deemed to be Universities, including the University from which petitioner had completed her B.Tech course, and further had instructed AICTE to conduct a validation examination, under the joint supervision of AICTE and University Grants Commission [***UGC***] for students who were enrolled in these universities during the academic sessions of 2001-2005. This examination, held twice in 2018, required qualifying marks of 168 out of total 420 marks i.e. 40% to be secured by a candidate. It is stated that the petitioner herein had appeared in the said examination in December 2018, however, she had scored 165 marks in the examinations, thus, narrowly missing the qualifying marks by 0.71% per cent. It is stated that despite her best efforts, the petitioner could not meet the required percentage, which places the



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status of her Degree in question. Therefore, the petitioner is before this Court, seeking rounding off marks to her score in the AICTE Examination held in December 2018.

3. **At the outset, learned counsel appearing on behalf of the petitioner** submits that he is not pressing the prayer with respect to an increase of 8 marks of the petitioner in the AICTE Examination on the ground that the answer key was incorrect. It is further submitted that the petitioner is only seeking rounding off her marks for the AICTE Examination held in December 2018.

4. In this regard, it is argued that many other candidates, who similarly failed to secure the minimum qualifying percentage of 40% in the validation examination conducted by the respondent AICTE, had approached various High Courts across the country and the Courts, to ensure equity and justice, had directed the respondent to award marks as grace marks to candidates who were just short of the passing percentage. It is submitted that following these directions, the respondent AICTE had awarded the necessary grace marks and declared fresh results for those candidates. It is stated that the petitioner herein is also seeking a similar relief, requesting that one mark be added to her score to round off her percentage from 39.29% to 40%, which will result in validating her B.Tech Degree. It is further submitted that though the petitioner had submitted a representation to the respondent AICTE on 09.04.2019 in this regard, the same was not decided by the respondent, compelling the petitioner to approach this Court. To buttress his arguments, learned counsel for the petitioner states that Hon'ble High Court of



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Telangana at Hyderabad, *vide* order dated 12.10.2022 in case of *S. Nithyanand v. AICTE & Ors. W.P. No. 22396/2021* was pleased to allow the prayer and direct to either add one mark or to round off 39.29% marks acquired by the petitioner therein to 40%. It is further stated that the High Court of Himachal Pradesh, *vide* its order dated 25.11.2019 in case of *Kanhya Lal Sharma v. AICTE CWP No. 1192/2019* was also pleased to allow the prayer of the petitioner to either add 3 marks or to round off 39.29% marks acquired by the petitioner to 40%. It is further stated that a similar view was taken by the Hon'ble High Court of Uttarakhand in its judgment dated 08.11.2020 passed in case of *Sudhir Mohan v. AICTE 2021 SCC Online Utt 1616*. Attention of this Court has also been drawn towards a similar order dated 03.08.2023 passed in case of *Manoj Kumar v. AICTE W.P. (C) 9628/2019* by the Coordinate Bench of this Court.

5. **Learned Standing Counsel appearing on behalf of respondent/AICTE**, opposes the relief sought in the present petition, however, at the same time, he does not dispute the fact that similarly placed petitioners have been granted the relief, as sought for by the present petitioner, by different High Courts across the country. It is therefore submitted that this Court may pass appropriate orders in the facts and circumstances of the case.

6. This Court has **heard** arguments advanced by learned counsel for the petitioner as well as learned Standing counsel for the respondent AICTE, and has perused the material available on record.

7. In the present case, the petitioner herein, had enrolled herself in B.Tech. Electrical Engineering course at IASE University Gandhi



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Vidya Mandir, Sardarshahar, Rajasthan, affiliated to the Institute of Advanced Studies in Education (Deemed to be University), Rajasthan. After successfully completing the course, she was awarded the degree of B.Tech. in 2007.

8. However, in the year 2018, the Hon'ble Supreme Court in case of ***Orissa Lift Irrigation Corporation Ltd. (supra)*** dealt with controversies regarding the validity of degrees granted by four deemed to be Universities offering courses through distance mode, and the retrospective approval by the UGC. The Hon'ble Supreme Court in the said case held that granting *ex post facto* approval to these degrees was incorrect and illegal. Given the lapse of time, inspection of the institutions was deemed impractical. However, to maintain confidence in the qualifications of the affected students, the Hon'ble Supreme Court directed that these students be given an opportunity to validate their degrees through an exam conducted under the joint supervision of AICTE and UGC. All engineering degrees granted during the 2001-2005 academic years were thus suspended until the students passed this exam. The Hon'ble Supreme Court had further directed that students be given until January 15, 2018, to opt to appear for the validation exam. Those who passed the exam within this timeframe would have all advantages and benefits of their degrees restored. However, it was also directed that if students did not pass the test or chose not to take it, their engineering degrees obtained through distance education would be revoked and canceled. The relevant portion of the directions issued by the Hon'ble Supreme Court read as under:



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“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 centers 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 earned. 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 practical 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



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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.”

9. It is further noted that the Hon’ble Supreme Court had directed to conduct a validation examination under the joint supervision of AICTE and UGC for the students who were enrolled in these Universities during the academic sessions of 2001-2005. Thus, AICTE had conducted the validation examination twice in the year 2018, i.e. in June and in December, wherein it was clarified that the minimum marks required to qualify the examination would be 168, out of 420 marks i.e. 40%. Since the petitioner herein had obtained her B.Tech. degree from one of the Deemed-to-be Universities which was considered in case of *Orissa Lift Irrigation Corporation Ltd. (supra)*, she was required to appear in the said examination. In 2018, AICTE had conducted the validation examination in June and December. In December 2018 examination, she had secured 165 marks i.e. 39.29%. However, she had failed to meet the required passing marks which were 40% of the total marks.



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10. This Court, however, notes that the controversy in question has not arisen before this Court for the first time in this case, and several similarly placed candidates have already been granted relief by the different High Courts across the country and the directions issued in those case have already been implemented by the respondent/AICTE and those candidates have been declared as qualified in the said examination.

11. This Court is also of the opinion that the primary object of conducting the validation examination in question, pursuant to the directions of the Hon'ble Supreme Court, was only to assess the basic ability of the candidates. The petitioner herein is already under employment for years and has sufficient long experience of working as an Engineer. Further, the AICTE's validation examination was conducted after about 11 years of her obtaining the B.Tech. Degree from the concerned Deemed to be University, and the petitioner was able to secure 39.29% as against the required percentage of 40% which was required to qualify the validation examination. It is not in dispute that the petitioner had appeared for the validation examination held in December, 2018 and had obtained 165 marks out of 420 marks. Thus, she had obtained 39.29% marks against the required percentage of 40%. Therefore, she is short of only one mark and 0.71% to be qualified for the said validation examination. Further, it is also not in dispute that there were no irregularities in the admission of the petitioner in the institute from where she had obtained the degree in question.



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12. Therefore, this Court is of the view that the petitioner herein had secured her degree more than 17 years ago and she has been working since then with various renowned companies. The petitioner is neither seeking promotion nor increment on the basis of this examination. Thus, this Court is of the opinion that it will be in the interest of justice, that when similarly placed petitioners have already been granted similar relief by four High Courts of India including this Court, and the respondent/AICTE has complied with the said directions of the High Courts and have declared such candidates to be qualified, there is no reason as to why same relief be denied to the present petitioner.

13. In view of the aforesaid and taking into consideration the peculiar facts and circumstances of the instant case, this Court finds it appropriate to direct respondent/AICTE to treat the petitioner as qualified in the AICTE validation examination held in December 2018, by extending the benefit of rounding off her marks from 39.29% to the required percentage of 40%.

14. In view of the above, the present petition along with pending application stands disposed of.

15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 30, 2024/at