

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 3270 of 2018

**Arabinda Mishra
Versus
Coal India Limited & Ors.**

For the petitioner	:	Mr. Partha Ghosh Mr. Amal Kumar Datta Ms. Simran Sureka Mr. Debashis Das
For the respondents	:	Mr. Shiv Shankar Banerjee Mr. Uttam Kumar Halder Ms. Sanchita Barman Roy
Heard on	:	29.02.2024
Judgment on	:	29th February, 2024

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, questioning the order dated 19th January, 2017 issued by the General Manager (P&IR), Eastern Coalfields Limited, whereby, further clarification had been sought for from the university and on the failure of the university to provide such clarification, the selection process initiated pursuant to the decision dated 25th August, 2012 issued by the respondent no.6 would stand cancelled after expiry of six months.

2. The petitioner claims to be working as a ward boy in Central Hospital, Kalla, ECIL. According to the petitioner, the respondents had requested the petitioner to report for duty to Radiology Department of the Central Hospital, Kalla, ECIL with effect from 16th April, 2003. Since then, the petitioner in the year 2011 had decided to enhance his qualification by completing diploma in Radio Imaging Technology through distance course and had accordingly applied before his superior authority. On the basis of his application, the competent authority of the respondents having scrutinized his case had accorded permission by an office order dated 22nd June, 2011, to the petitioner for studying diploma course in Radio Imaging Technology at Periyar University at Salem, on the terms and conditions appearing on the said office order.
3. To morefully appreciate the same, the relevant conditions are extracted hereinbelow:-

“This above proposal was forwarded to the Competent Authority and the Competent Authority has accorded permission for studying the above mentioned course o the following terms and conditions:-

1. No TA/DA/Special Leave/financial benefit will be given to the above employee.
 2. Company’s work will not be hampered in any way.
 3. On acquiring the qualification your request for promotion can not be considered as per provision of cadre scheme.”
4. It is the petitioner’s case that he had since completed his diploma course in Radio Imaging Technology, whereupon the Periyar

University had awarded a diploma and had certified that the petitioner has qualified to receive the said diploma and was placed in first class, at the examination held in June, 2012.

5. In the interregnum, the respondent no. 6 had published an internal advertisement on 25th August, 2012 inviting applications from the departmental eligible employees for selection in the posts as identified and classified in the said advertisement. The posts which were advertised included X-ray Technicians/Radiographer in Technical & Supervisory grade (Group C), and the eligibility as per the cadre scheme was diploma in respective technology from recognized institute and 3 years experience in recognized institute / government hospital or in Group D.
6. According to the petitioner since, the petitioner was otherwise eligible for promotion to the post of Radiographer in Technical and Supervisory grade (Group C), the petitioner had applied and on the basis thereof, by an office order dated 30th May, 2014, the petitioner along with another candidate was advised to appear for written examination and viva voce for selection of X-Ray Technician/Radiographer, Lab. Tech and Pharmacists (T) in the office of the General Manager (P&IR), ECL, HQ, Sanctoria along with their original Identity Cards and educational certificates. The petitioner claims that although, the petitioner had appeared for the examination and was otherwise successful, his name was not published as a successful candidate. On the contrary, since the post

of Radiographer was being filled up by direct recruits, the petitioner was constrained to move a writ petition before this Court which was registered as WP No. 921 of 2014.

7. As would appear from the order dated 22nd September, 2014, the learned advocate appearing for the respondents having clarified that the posts of X-Ray Tech/Radiographer, Lab. Tech and Pharmacists which have been earmarked to be filled up from departmental candidates are not being filled up by candidates outside the establishment, a Coordinate Bench of this Court by recording such fact was, *inter alia*, pleased to hold that the said order will not prevent the respondents from filling up the posts from departmental candidate, subject to leave to be obtained from this Court.
8. The said writ application was finally disposed of by an order dated 20th December, 2016. The Coordinate Bench by the said order had directed the appropriate authority of the respondents to consider the matter and to take a decision on the claim of the petitioner to be appointed on promotion to the post as possessing the requisite qualification and having successfully participated in the prescribed selection process.
9. Pursuant to and in terms of the said order, the respondents had passed a reasoned order dated 19th January, 2017 which forms the subject matter of challenge in the present writ petition.
10. Mr. Ghosh, learned advocate appearing for the petitioner, submits that the petitioner had obtained a diploma in Radio Imaging

Technology from a university, which is recognized by the University Grants Commission. The respondents were all along aware that the petitioner intends to enhance his qualification from Periyar University. According to him, the respondents having permitted the petitioner to enhance his qualification from Periyar University, today cannot turn around and contend that since, the Periyar University is not recognized under the All India Council of Technical Education (AICTE), the diploma awarded to the petitioner is not worth, for the respondents to consider his candidature for promotion.

11. Mr. Ghosh submits that the Coordinate Bench of this Court by its order dated 20th December, 2016 having directed the respondents to consider the case of the petitioner by holding that the petitioner possesses requisite qualification for the said post, the respondents are otherwise estopped from questioning the qualification of the petitioner. By drawing attention of this Court to an RTI application dated 2nd February, 2017 issued by the Periyar University, he submits that Periyar University continues to be recognized under the University Grants Commission. The advertisement for promotion issued by the respondent no. 6 on 25th August, 2012 having not indicated that obtaining diploma from an institute recognized by AICTE as a pre requisite to participate in the selection process, the respondents today cannot be permitted to introduce further qualification or norms and fetter the petitioner's right to be entitled to promotion.

12. By placing a judgment of the Hon'ble Supreme Court delivered in the case of ***Bharathidasan University v. All-India Council for Technical Education and Others***, reported in **(2001) 8 SCC 676**, he submits that simply because Periyar University was not recognized by AICTE, the same does not necessarily mean that the University has no obligation or duty to conform to the standard and norms laid down by the AICTE or that the education imparted by the University falls short of the standards for grant of diploma.
13. It is submitted that the matter has been pending since the year 2012 and the petitioner has been discharging his functions as technician in the Central Hospital, Kalla. Unfortunately, when the same comes to the question of grant of promotion, the respondents have not taken any decision in this regard. Mr. Ghosh submits that unless specific direction is issued calling upon the respondents to finally decide and grant promotion, the petitioner shall suffer irreparable loss.
14. Mr. Banerjee, learned advocate representing the respondents on the other hand, submits that the petitioner obtained the diploma through distance mode. According to Mr. Banerjee, obtaining a diploma in technical education through distance mode is unheard of. Since the petitioner obtained the diploma in distance mode, the petitioner cannot be entitled to the benefit of the certificate issued by the Periyar University, Salem.

15. By drawing attention of this Court to the order passed by the respondent no.6 on 19th January, 2017, he submits that since, the respondents themselves were not aware whether the certificate had been issued by the Periyar University and whether the same was in distance mode or not, inter alia, including whether the same was recognized by the AICTE, the respondent no.6 vide its order dated 19th January, 2017 had directed that the Chief Manager (Personnel)/Recruitment, ECL, H.Q, write to the Periyar University giving a copy of the certificates submitted by the petitioner asking the University to clarify the following:-

1. *Whether the certificate has been issued by them;*
2. *Whether the particular course was recognized by UGC in Distance Mode;*
3. *Whether the said course on distance mode had the recognition of AICTE; and*
4. *Whether the particular study center was recognized by the Periyar University for the distance mode.*

16. By placing reliance on the syllabus and/or regulations of the Periyar Institute of Distance Education (PRIDE), issued by Periyar University, he submits that the University had started a course through distance education for granting diploma in Radio Imaging Technology, however, such course, according to Mr. Banerjee is contrary to the UGC guidelines and as such the Secretary of UGC by a communication in writing dated 28th April, 2016, taking cognizance of the fact that Periyar University had been offering programs through distance learning mode by flouting the norms, guidelines and directives issued by the UGC, had proceed not to

extend the recognition of the said University beyond the academic year 2014-15. Having regard to the aforesaid, he submits that if the petitioner is in a position to demonstrate that the petitioner had acquired the qualification through a regular mode, his case can certainly be considered. He submits since the recognition of the Periyer University has not been extended beyond the academic year 2014-15, no relief can be afforded to the petitioner.

17. Mr. Banerjee further submits that the matter requires elaborate enquiry as to whether the education imparted through distance education to the petitioner was on the basis of UGC norms and unless, the same is established the petitioner cannot be entitled to any relief. According to Mr. Banerjee, the University has not given clear reply and in absence of clear reply being offered, no relief can also be afforded to the petitioner.

18. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly in this case, I notice that the petitioner is an employee of the respondent no. 6. He is employed with the respondent no. 2 at the Central Hospital, Kalla. The petitioner had been appointed as a ward boy though, subsequently by an office order he had been directed to discharge his duties in the radiology department. Records reveal that the petitioner intended to enhance his qualification by obtaining a diploma in radio imaging technology through distance course and had accordingly applied before the respondents seeking permission

to enhance his qualification. The Competent Authority of the respondents on the basis of the application made by the petitioner had accorded permission to the petitioner for studying the course of Diploma in Radio Imaging Technology at Periyar University, Salem, on the terms and conditions as would appear in the office order dated 22nd June, 2011. The petitioner having successfully completed the said course was awarded a Diploma in Radio Imaging Technology by the Periyar University. The examination was held in 2012 and he stood first class.

19. In the interregnum, the respondents having invited applications through internal advertisement from eligible departmental candidates for selection to the post of X-Ray Technician and Radiographer in Technical and Supervisory grade (Group C) having requisite diploma in respective technology from recognized institute along with three years experience in recognized institute/Government Hospital or in Group D, the petitioner had applied and pursuant to an office order dated 30th May, 2014, had participated in the selection process. Since, according to the petitioner, the aforesaid post was being filled up through external candidates, the writ petitioner had appeared before this Court by filing a writ petition being WP No. 921 (W) of 2014. The said writ petition was finally disposed of by a judgment and order dated 20th December, 2016, passed by a Coordinate Bench of this Court, *inter alia*, observing as follows:-

“ In view of the submissions made on behalf of the respondents, the respondent no. 5 as submitted by Mr. Banerjee to be the appropriate authority, is directed to consider the matter and take a decision on the claim of the petitioner to be appointed on promotion to the said post as possessing the requisite qualification and having successfully participated in the prescribed selection process. The said respondent will deal with the matter and dispose of the same within a period of four weeks from communication of this order made and the result informed to the petitioner. The said respondent must also publish the result of the examination since the petitioner asserts that he was successful, being the only candidate.”

20. As would appear from the above, the Coordinate Bench of this Court was of the view, on the basis of the submissions made by the respondents that the petitioner otherwise had requisite qualification for the said post, and had accordingly directed the respondents to deal with the matter and dispose of the same within a period of four weeks from that date. Pursuant to the aforesaid, a reasoned order dated 19th January, 2017 appears to have been passed. From the aforesaid order, it appears that the respondents have raised certain contentions as regards, *inter alia*, the following:-

- (i) authenticity of the certificate,
- (ii) whether the course was recognized by UGC in distance mode,
- (iii) whether the said course on distance mode had the recognition of AICTE, and (iv) whether the particular study centre was recognized by the Periyar University for the distance mode.

21. Mr. Banerjee, learned Advocate for the respondents has candidly submitted that the petitioner had qualified both in the internal test and the interview. Unfortunately, by reasons of the query raised by the General Manager, Eastern Coalfields Limited in the said order as noted above, the promotion of the petitioner was not processed.
22. From the communication dated 22nd September, 2017, issued by the Chief Manager of the respondent company it would appear that the Periyar University had duly verified the certificate and the mark sheet and had affirmed its authenticity. Unfortunately, since the query raised by the respondents under serial numbers 2, 3 and 4 were not properly redressed, the petitioner's case was not processed further. Having regard to the aforesaid, it may be relevant to note that once, a Coordinate Bench of this Court had returned a finding that the petitioner possesses requisite qualification, it was no longer open to the respondents to question the same. Further, from the disclosure made by the respondents in Court today, it would appear that the recognition of Periyar University was not extended beyond the academic year of 2014-15. Admittedly, in this case, the petitioner had acquired his qualification in the year 2012. Having regard to the aforesaid, I am of the view that the respondents cannot be permitted to deny the right of the petitioner to be considered for promotion simply because the Periyar University did not properly answer to the queries made by the respondents as appearing from

the communication issued by the Chief Manager of the respondents dated 22nd September, 2017.

23. In view thereof, I direct the respondent no. 6 or any person in charge to forthwith consider the petitioner's case for promotion in the light of the observations made hereinabove, within eight weeks from the date of communication of this order.
24. With the aforesaid observation and directions, the writ petition stands disposed of. There will be no order as to costs.
25. Urgent photostat certified copy of this order be made available to the parties, upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)