

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.801 OF 2017
WITH
INTERIM APPLICATION (ST) NO.18752 OF 2021
IN
WRIT PETITION NO.801 OF 2017**

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1 Shri Govind Sakli Epili
s/o. Sakli Dahanu Epili
Age – 40 yrs., Chargeman (T), Ordnance
Factory, Ambarnath, Pin : 421 502

2 Shri Deepak Harichandra Gawale
s/o. Harichandra Babu Gawale
Age – 32 yrs., Working as : Chairgeman
(T), Ordnance Factory, Ambarnath,
r/o. Flat No.02, Rushab Appt, B Wing,
Heramb Coop Society, Gandhar Nagar,
Khadakpada, Kalyan (W)
Dist. Thane, Pin – 421301

..... Petitioners

Versus

1 Union of India
Through the Secretary,
Ministry of Defence,
South Block, New Delhi – 110001

2 The Director General
Ordnance Factories,
Ordnance Factory Board,
10A, Shahid Khudiram Bose Road,
Kokatta 700 001

3 The General Manager,
Ordnance Factory,
Ambernath,
Dist. Thane, Pin 421502

..... Respondents

**WITH
WRIT PETITION (ST) NO.1766 OF 2017
WITH
INTERIM APPLICATION (ST) NO.18756 OF 2021
IN
WRIT PETITION (ST) NO.1766 OF 2017**

- 1 Shri Yogesh Patil s/o. Dinkar Patil
Working as Chargeman (Tech) at
Ordnance Factory, Bhandara r/o.
Ordnance Factory, Jawahar Estate,
Bhandara – 441 906
- 2 Shri Jagdish Narnaware s/o.
Dnyaneshwar Narnaware, Working as
Chargeman (Tech) at Ordnance Factory,
Bhandara r/o. Ordnance Factory,
Jawahar Estate,
Bhandara – 441 906
- 3 Shri Prafulla Take s/o. Laxmanrao Take
Working as Chargeman (Tech) at
Ordnance Factory, Bhandara r/o.
Ordnance Factory, Jawahar Estate,
Bhandara – 441 906
- 4 Shri Nitesh Gadge, s/o Suresh Gadge,
Working as Chargeman (Tech) at
Ordnance Factory, Bhandrara r/o.
Ordnance Factory, Jawahar Estate,
Bhandara – 441 906
- 5 Shri Anil Naranje, s/o Sukhdeo Naranje,
Working as Chargeman (Tech) at
Ordnance Factory, Bhandrara r/o.
Ordnance Factory, Jawahar Estate,
Bhandara – 441 906
- 6 Shri Nilesh Thote, s/o. Punjaram Thote,
Working as Chargeman (Tech) at
Ordnance Factory, Bhandrara r/o.

Ordnance Factory, Jawahar Estate,
Bhandara – 441 906

- 7 Shri Sushilkumar Deshmukh, s/o.
Vasanta Deshmukh,
Working as Chargeman (Tech) at
Ordnance Factory, Bhandara r/o.
Ordnance Factory, Jawahar Estate,
Bhandara – 441 906
- 8 Shri Dinesh Barai, s/o. Sopan Barai,
Working as Chargeman (Tech) at
Ordnance Factory, Bhandara r/o.
Ordnance Factory, Jawahar Estate,
Bhandara – 441 906
- 9 Shri Deoraj Dhurve, s/o. Chandrabhan
Dhurve,
Working as Chargeman (Tech) at
Ordnance Factory, Bhandara r/o.
Ordnance Factory, Jawahar Estate,
Bhandara – 441 906
- 10 Shri Ashok Kumar Ramteke,
Residing at 5-A, Type-III, Sector 4,
State Area, Ordnance Factory,
Chandrapur – 442 501
- 11 Shri Amit Tiwari, s/o. Ravishankar
Tiwari,
Residing at 18-A, Type-III, Sector 4,
State Area, Ordnance Factory,
Chandrapur – 442 501

..... Petitioners

Versus

- 1 Union of India
Through the Secretary,
Ministry of Defence,
South Block, New Delhi – 110001

- 2 The Director General
Ordnance Factories,
Ordnance Factory Board,
10A, Shahid Khudiram Bose Road,
Kokatta 700 001
 - 3 The General Manager,
Ordnance Factory,
Ambernath,
Dist. Thane, Pin 421502
 - 4 The General Manager,
Ordnance Factory,
Chandrapur, Pin – 442 501
- Respondents

**WITH
WRIT PETITION (ST) NO.1769 OF 2017
WITH
INTERIM APPLICATION (ST) NO.18759 OF 2021
IN
WRIT PETITION (ST) NO.1769 OF 2017**

- 1 Shri Vishal Kanaskar, S/o Vinod
Kanaskar, Working as Chargeman
(Tech.) Ammunition Factory, Khadki,
Pune 411 003, R/o C-803, Pride
Ashiyana, Porwal Road, Lohegaon,
Pune 411 047.
 - 2 Shri Prashant Vamane, S/o Sidharudh
Vamane, Working as Chargeman
(Tech.) Ammunition Factory, Khadki,
Pune 411 003, R/o 15/4, 'H' Type,
Rangehills, Khadki, Pune 411 020.
 - 3 Shri Vijaykumar Gautam, S/o
Satyadhari Gautam, Working as
Chargeman (Tech.) Ammunition
Factory, Khadki, Pune 411 003,
R/o Type 'I' Bldg. No.2/11,
Rangehills, Khadki, Pune 411 020
- Petitioners

Versus

- 1 Union of India
Through the Secretary,
Ministry of Defence,
South Block, New Delhi – 110001
 - 2 The Director General
Ordnance Factories,
Ordnance Factory Board,
10A, Shahid Khudiram Bose Road,
Kokatta 700 001
 - 3 The General Manager,
Ordnance Factory,
Ambernath,
Dist. Thane, Pin 421502
- Respondents

Mr. Vishal P. Shirke for the Petitioners in all Petitions.
Mr. Advait Shethna with Ms. Neeta Masurkar, Mr. Ashok Varma
and Poushali Roychoudhary for the Respondent – Union of India
in all Petitions.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : FEBRUARY 5, 2024

JUDGMENT (PER : CHIEF JUSTICE)

1. Heard Mr. Vishal P. Shirke, learned counsel representing the
Petitioners and Mr. Advait Sethna, learned Counsel representing
the Respondents – Union of India and perused the records
available before us on these petitions.

2. Since all the three petitions raise common question of facts and law, the same are being decided by the common judgment which follows :

CHALLENGE :

3. By instituting these petitions, the Petitioners assail the judgment and order dated 2nd January 2017 passed by the Mumbai Bench of Central Administrative Tribunal (hereinafter referred to as the "**Tribunal**") whereby the Original Applications filed by the Petitioners challenging their reversion from the post of Chargeman (Technical) have been dismissed.

FACTS IN BRIEF :

4. Since the facts as narrated and culled out from the pleadings available on record are similar in these petitions, Writ Petition No.801 of 2017 shall be treated to be the leading Writ Petition and facts of the said case shall be narrated for convenience.

5. All the Petitioners are working in different Ordnance Factories under the Ministry of Defence, Government of India. Recruitment Rules of Group-C Supervisory and Non-Gazetted

Cadre in the Ordnance Factories are governed by the Recruitment Rules framed by the Government of India in exercise of powers conferred upon it under proviso to Article 309 of the Constitution of India known as the “Indian Ordnance Factories Group-C Supervisory and Non-Gazetted Cadre (Recruitment and Conditions of Service) Rules, 1989” (hereinafter referred to as the **“Recruitment Rules, 1989”**). Rule 4 of the Recruitment Rules, 1989 provides for method of appointment, age limit, qualification etc. It also provides that other matters connected therewith shall be as specified in columns 5 to 14 of the Schedule appended to the Rules. According to the Schedule, as it existed prior to its amendment, educational and other qualification required for direct recruitment to the post of Chargeman (Technical) was, recognized 3 years Diploma or equivalent in Engineering / Technology / Draftsmanship with 5 years’ experience in relevant technical field or B.Sc. with Physics Chemistry and Maths with 5 years’ experience where diploma for any category cannot be identified by Ordnance Factory Board (OFB).

6. The said Recruitment Rules, 1989 were amended on 28th November 1994, whereby it was provided that 25% posts shall be filled-in by direct recruitment, 25% by Limited Departmental

Competitive Examination (hereinafter referred to as the "**LDCE**") from amongst the incumbents working as skilled workers with 2 years' experience in the grade and 50% posts are to be filled-in by way of promotion.

7. The amendment in the Recruitment Rules notified on 28th November 1994 further provides that for LDCE, educational qualification prescribed for direct recruitment shall also be one of the requisites. The Recruitment Rules were again amended by promulgating Indian Ordnance Factories Group-C Supervisory and Non-Gazetted Cadre (Recruitment and Conditions of Service) Amendment Rules, 2003 which were notified by the Ministry of Defence on 27th May 2003. By this 2003 Amendment, the Schedule was amended and for the post of Chargeman (Technical) the educational qualification prescribed for direct recruitment was altered and thus the candidate for being recruited to the post of Chargeman (Technical) was required to possess 3 years' Diploma or equivalent qualification certificate in the respective field duly affiliated by the All India Council for Technical Education (hereinafter referred to as the "**AICTE**"). Though by amending the Recruitment Rules in the year 2003 the qualification for diploma duly affiliated by AICTE was prescribed for direct

recruitment, however, the said qualification is applicable for recruitment through LDCE as well by virtue of the amendment introduced in the Recruitment Rules vide Notification dated 28th November 1994. Thus, if the Recruitment Rules as amended vide amendment introduced on 28th November 1994 and 27th May 2003 are read together, the requisite educational qualification for LDCE is 3 years' diploma in engineering / technology / draftsmanship which is duly affiliated by AICTE.

8. In tune with the aforementioned requisite educational qualification, a circular was issued by the General Manager of the Ordnance Factory on 13th April 2010 inviting applications for filling of the post of Chargeman (Technical) through LDCE. Clause 1(ii) of the said Circular dated 13th April 2010 prescribed the eligibility for recruitment through LDCE to the post of Chargeman (Technical), according to which, the candidate ought to have possessed 3 years' Diploma in the respective field duly affiliated by AICTE.

9. The Petitioners, pursuant to the such circular, appeared in the LDCE and having been declared successful, were appointed / promoted to the post of Chargeman (Technical). The appointment

/ promotion order issued to the Petitioners No.1 and 2 in Writ Petition No.801 of 2017 are available at Pages 159 and 161, respectively. Petitioner No.1 was confirmed on the post of Chargeman (Technical) after successful completion of probation period on 6th March 2010, whereas, Petitioner No.2 was confirmed on the said post on 27th November 2013. Some of the Petitioners have since been promoted even to the next higher post of Junior Works Manager. Petitioner No.1 was promoted as Junior Works Manager vide order dated 30th November 2017.

10. It appears that some complaint was received regarding certain irregularities said to have occurred in the appointment / promotion of the Petitioners and other like employees on the post of Chargeman (Technical) to the effect that these Petitioners were possessed of Diploma qualification which was not approved by the AICTE and hence they did not fulfil the minimum requisite qualification for being recruited to the post of Chargeman (Technical). On the said complaint, some vigilance investigation is said to have been conducted, whereupon, the Director General of Ordnance Factories issued an order on 10th October 2014 directing all the Ordnance Factories to take immediate necessary action for identifying all appointments made on the post of

Chargeman (Technical) from amongst the personnel having Diploma qualification to their credit which was not approved by the AICTE. The said Circular dated 10th October 2014 issued by the Director General of Ordnance Factories also required that such incumbents appointed / promoted to the post of Chargeman (Technical) may be reverted to their parent post. Circular dated 10th October 2014 was reiterated by issuing another circular dated 21st/24th October 2014. Pursuant to the said Circular dated 10th October 2014 as reiterated vide circular dated 21st / 24th October 2014 in some cases, the orders were issued reverting the Petitioners to their parent post.

11. Taking exception to the Circular dated 10th October 2014 issued by the Director General of Ordnance Factories and their respective reversion orders, Original Applications were instituted before the Tribunal which have been dismissed by the impugned order dated 2nd January 2017. It is this order passed by the Tribunal, which is under challenge in these petitions.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

12. It has been argued on behalf of the Petitioners that insistence of the Respondents on Diploma qualification approved

by AICTE is unreasonable, as under law, a University or an Institution deemed to be University within the meaning of Section 3 of the University Grants Commission Act, 1956 (hereinafter referred to as the "**UGC Act**") is empowered to confer degree / Diploma in engineering without seeking approval from the AICTE. It has been stated further that the Petitioners were duly conferred with Diploma in engineering in the requisite field by Rajasthan Vidyapeeth, Udaipur (later known as Janardan Rai Nagar Rajasthan Vidyapeeth, Udaypur, Rajasthan (hereinafter referred to as the "**University**") which is a deemed University within the meaning of the said phrase appearing in Section 3 of the UGC Act and as such their reversion on the sole ground that the qualification of Diploma was not approved by AICTE, is not sustainable. It is the submission of the Petitioners that the University was declared as an institution to be a Deemed University by the Department of Education, Ministry of Human Resource Development vide Notification dated 12th January 1987 published in the gazette of India and under law such University is empowered to confer Diploma qualification and accordingly, the Petitioners were holding legally recognized Diploma to their credit.

13. Drawing our attention to a Notification dated 7th April 2006

issued by the Ministry of Human Resource Development, Government of India, it has been argued that as per the said Notification, it is not a pre-requisite for an Institution notified as a "Deemed to be University" to obtain the approval of AICTE to commence any programme in technical education leading to an award, including degrees in disciplines covered under the AICTE Act 1987. The relevant extract of the said Notification is extracted hereunder:

"It is not a pre-requisite for an institution notified as a 'Deemed to be University' to obtain the approval of the AICTE, to start any programme in technical or management education leading to an award, including degrees in disciplines covered under the AICTE Act, 1987. However, institutions notified as 'Deemed to be University' are required to ensure the maintenance of the minimum standards prescribed by the AICTE for various courses that come under the jurisdiction of the said Council. It is expected that the institutions notified as 'Deemed to be University' maintain their standards of education higher than the minimum prescribed by the AICTE."

14. Further submission is that the Ministry of Human Resource Development, Department of Secondary and Higher Education had earlier written a letter dated 7th February 2004 to the Vice Chancellor of the University stating therein that all the degrees / Diplomas awarded by the Universities established by an Act of Parliament or State Legislature, Institutions deemed to be Universities under Section 3 of the UGC Act and the Institutions

of National importance declared as such under an Act of Parliament, stand automatically recognized for the purposes of employment under the Central Government and no formal orders recognizing such degrees / Diplomas are necessary to be issued. The said letter dated 7th February 2004 is also extracted hereunder:

*"No.F-23-1/2003-TS.III
Government of India
Ministry of Human Resource Development
Department of Secondary and Higher Education*

New Delhi, the 7th February 2004

To,

*The Vice-Chancellor,
Janardan Rai Nagar,
Rajasthan Vidyapeeth (Deemed) University,
Pratapnagar, Udaipur – 313001 (Rajasthan)*

Subject : Recognition of courses conducted by University through Academic Centres / study centers / Off Campus Centres – Regarding.

Sir,

I am directed to refer to your letter No.RVU/VC/2003-2004/7972 dated 10.2.2004 on the subject mentioned above and to say that all degrees/Diplomas awarded by the Universities established by an Act of Parliament for State Legislature, Institutions deemed to be Universities under Section 3 of the U.G.C. Act 1956 and Institutions of National Importance declared under an Act of Parliament, stand automatically recognized for purposes of employment under the Central Government. No formal orders recognizing such degrees/Diplomas are necessary to be issued.

A copy of this Department's OM No.F.18-27/70-T-2 dated 20.11.1970 along with its enclosures is enclosed for reference.

*Yours faithfully,
Sd/-
(B.K.Ray)
Desk Officer
[Tel:23070177](tel:23070177)"*

15. Learned Counsel for the Petitioners has also drawn our attention to yet another letter dated 4th November 2004 issued by the AICTE to JNTU College of Engineering, Kukatpally, Hyderabad, whereby it was informed to the said College of Engineering that no 3 years Diploma course through distance education mode is approved by the AICTE. The letter further informs that it is not mandatory for the Universities and Deemed Universities to take prior approval from the AICTE to start any technical education programme (regular / distance education).

16. Further submission on behalf of the Petitioners is that in terms of the provisions contained in Section 22 of the UGC Act right of conferring or granting degrees can be exercised only by the Universities established or incorporated by or under a Central Act or a State Enactment or an Institution deemed to be University under Section 3 or an Institution which is specially empowered by

an Act of Parliament to confer or grant degrees. In the light of the provision of Section 22 of the UGC Act, learned Counsel for the Petitioners submits that since indisputably, the University which had conferred the Diploma qualification to the Petitioners, is a deemed University within the meaning of Section 3 of the UGC Act, as such, legally it is empowered to confer the Diploma qualification in terms of Section 22 of the UGC Act and hence the legality and the validity of the Diploma awarded by this University cannot be doubted. The submission, thus, is that once the Petitioners are possessed of a validly awarded Diploma in engineering in the requisite branch, denial of their right to be considered for appointment / promotion to the post of Chargeman (Technical) through LDCE is absolutely arbitrary and hence the sole reason for reversion of the Petitioners from the post of Chargeman (Technical) given by the Respondents is untenable.

17. He has also argued that some of the Petitioners are not only still working on the post of Chargeman (Technical) but have also been promoted to the further higher post of Junior Works Manager and thus, reverting them at this point of time will be wholly iniquitous.

18. In the light of these submissions, it has been argued that the Tribunal, by passing the impugned judgment and order, has completely ignored these aspects of the matter, which renders the impugned judgment liable to be set aside. The prayer, thus, is that the Writ Petitions be allowed and apart from quashing the impugned judgment and order passed by the Tribunal, the reversion order as also the circular letter dated 21st/24th October 2014 be quashed.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

19. *Per contra*, Mr. Advait Sethna, learned Counsel representing the Respondents has vehemently argued that the grounds taken by the Petitioners in these petitions are not tenable for the reason that any deviation from the provisions contained in the Recruitment Rules will be impermissible. He has further stated that even if the Diploma awarded to the Petitioners by the University in these cases are legal and valid and even if it is presumed that the University which has granted Diploma to the Petitioners was lawfully competent to do so, requirement of the requisite educational qualification of Diploma in engineering duly approved by the AICTE, as prescribed by the Recruitment Rules, cannot be dispensed with. It has been argued further that the

Petitioners, in fact, admittedly do not have to their credit the Diploma qualification duly approved by the AICTE, which as per the Recruitment Rules framed under Article 309 of the Constitution of India, is the requirement and hence the Petitioners, at the time of their appointment / promotion to the post of Chargeman (Technical) were not having the requisite qualification and therefore no fault can be found in the circular / letter dated 21st/24th October 2014 and consequential reversion of the Petitioners to their parent post.

20. At this juncture, we may note that the circular / letter dated 10th October 2014 was subsequently withdrawn by means of letter dated 21st October 2014 issued by the Director General Ordnance Factories, however, the circular / letter dated 10th October 2014 was reiterated by the Director General Ordnance Factories by means of another circular dated 21st / 24th October 2014. Contents of both these letters viz. letter dated 10th October 2014 and 21st / 24th October 2014 are verbatim the same with the only change that the letter dated 10th October 2014 does not mention the name of the University, whereas, in the subsequent letter dated 21st / 24th October 2014 appears the name of the University. It is in this light that a prayer for quashing the letter dated 21st /

24th October 2014 is also sought by the Petitioners.

21. The submission further by Mr.Sethna is that the letter dated 21st / 24th October 2014 only reiterates the contents of the letter dated 10th October 2014, wherein it is rightly stated that the Diploma qualification not approved by the AICTE was not the requisite qualification for appointment / promotion through LDCE.

22. The emphasis of arguments advanced by Mr. Sethna is that the letters cited by the learned Counsel for the Petitioners dated 7th April 2006, 7th February 2004 and 4th November 2004 issued by the Ministry of Human Resource Development and AICTE, respectively, do not amount to changing the qualification as prescribed in the Recruitment Rules; rather the said letters only state that for a valid Diploma to be conferred by a Deemed University, approval of AICTE is not required. His submission, however, as noted above, is that even if the Diploma granted by a Deemed University is legal and valid, unless there is a corresponding change in the Recruitment Rules dispensing with a requirement of such Diploma having been approved by AICTE, it cannot be said that the Petitioners were possessing requisite educational qualification. In this view, the submission is that in

absence of the Petitioners fulfilling the educational qualification in terms of the Recruitment Rules, their appointment / promotion to the post of Chargeman (Technical) was wholly illegal and the same cannot be sustained. On the basis of these arguments, it has been urged by Mr. Sethna that there is no irregularity, much less any illegality, in the circular / letters dated 10th October 2014 and 21st / 24th October 2014 and the consequential reversion of the Petitioners so as to call for any interference by this Court in these petitions.

DISCUSSION:

23. Admittedly, the Petitioners, though are possessed of qualification of Diploma, however, such Diploma is not approved / recognized by the AICTE. As to whether the University in this case was competent to award Diploma in engineering under law is not the issue which needs consideration in these petitions. The issue which has emerged for consideration of the Court is as to whether the Petitioners fulfill the requirement of minimum educational qualification as prescribed in the Recruitment Rules.

24. The prescription in the Recruitment Rules as amended vide Notifications dated 28th November 1994 and 27th May 2003

(published in the Official Gazette on 14th June 2003) provide the educational qualification for appointment / promotion to the post of Chageman (Technical) through LDCE which is 3 years Diploma in respective field duly approved by AICTE. It is not the case of the Respondents that the Diploma granted to the Petitioners by the University is unlawful or that the University was not competent or empowered to confer the Diploma qualification. The case of the Respondents is that unless there was a change in the Recruitment Rules framed under Article 309 of the Constitution of India, dispensing with the requirement of Diploma qualification approved by the AICTE, the Petitioners cannot be said to be possessed of the requisite educational qualification.

25. We find substance in the submission made by the learned Counsel representing the Respondents. It is one thing that a deemed University or any other University within the meaning of Section 2(f) of the UGC Act is legally empowered to run a course and accordingly confer Diploma qualification on the candidates attending such course, however, it is another issue, as to what exactly is the requirement under the Recruitment Rules. As to what qualification and experience etc. is required to be possessed by a candidate for seeking employment with the Government is

the sole prerogative and domain of the employer (in this case the Government of India). The proviso appended to Article 309 of the Constitution of India vests the authority with the President of India, in case of services under the Central Government, to frame rules regulating recruitment and conditions of services of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature. Admittedly, the Central Legislature has not framed any Recruitment Rules for regulating the service conditions, which will include the recruitment and appointment as well, for the post of Chargeman (Technical) in Ordnance Factories. Thus, so far as regulating the recruitment and conditions of services in the instant case is concerned, the field is fully covered by the Recruitment Rules, 1989 as amended from time to time. The Hon'ble Supreme Court in the case of ***R. Prabha Devi and Ors. Vs. Government of India***¹ has clearly laid down that the rule making authority is competent to frame rules laying down eligibility condition for promotion to higher post. The said judgment further states that when qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied, if a person can be

¹ **1988(2) SCC 233**

considered for appointment. The said principle finds its enunciation in paragraph 15 of the judgment in the case of **R. Prabha Devi and Ors. (supra)**, the relevant portion of which is extracted hereinbelow:

"15. The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority....."

26. As far as the reliance placed by learned Counsel for the Petitioners on the letter dated 7th April 2006 issued by the Ministry of Human Resource Development, Government of India is concerned, we may only observe that the said letter / notification only states that it is not a pre-requisite for an institution notified as a 'Deemed to be University' to obtain the approval of the AICTE to start any programme of technical or management education leading to an award, including degrees in disciplines covered under the AICTE Act, 1987. According to the said Notification, in our considered opinion, if an Institution which is "deemed to be University" confers Diploma which is not approved by AICTE, such Diploma will be valid, however, unless the Recruitment Rules framed under Article 309 of the Constitution of India specifically

spell out qualification of Diploma without approval of AICTE, any person possessing Diploma without approval of the AICTE cannot be held to be eligible for participation in recruitment / appointment process.

27. Reliance placed by the learned Counsel for the Petitioners on the circular dated 7th February 2004 issued by the Ministry of Human Resource Development is also of no avail to the Petitioners for the reason that even if in the said letter the Central Government declares that a degree / Diploma awarded by an Institution which is a "Deemed University" under Section 3 of the UGC Act, stands automatically recognized for the purpose of employment in the Central Government, unless such declaration is given effect to or translated or drafted into the Recruitment Rules framed under Article 309 of the Constitution of India, such Diploma holders cannot be said to be possessing requisite qualification for appointment / recruitment to the post of Chargeman (Technical) in the Ordnance Factories.

28. A reference by the learned Counsel for the Petitioners has also been made to the letter dated 4th November 2004 issued by the AICTE which only depicts that it is not mandatory for the

deemed Universities to take prior approval from AICTE to start any technical programme (regular / distance education). Under law, the said requirement of seeking approval from AICTE for a University or an Institution which is deemed to be University, to start any educational programme may not be there, however, such non-requirement of approval from AICTE will only mean that Diploma or degree awarded by a University or Institution which is "Deemed to be University" may be valid. However, such empowerment of a University of "Deemed University" will not mean that Diploma holders, without approval from AICTE shall be eligible for seeking their appointment / promotion to the post of Chargeman (Technical) unless Recruitment Rules so provide.

29. Thus, so far as the validity of the Diploma being possessed by the Petitioners is concerned, there may not be any dispute (however, as observed above, such issue does not arise for our consideration in these cases) but the fact remains that if any candidate possesses such Diploma not approved by the AICTE, is permitted to be held eligible for appointment / promotion to the post of Chargeman (Technical), it will be contrary to the prescription available in the Recruitment Rules, which in our considered opinion, will be wholly impermissible.

30. We may also notice that the prescription of having qualification of Diploma approved by the AICTE in the Recruitment Rules has not been challenged by the Petitioners. In absence of any such challenge, the Petitioners cannot be permitted to insist for any deviation from the statutory prescriptions regarding requisite qualification as available in the Recruitment Rules.

31. Mr. Sethna, though, has additionally placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Orissa Lift Irrigation Corporation Limited Vs. Rabi Sankar Patro and Ors.***², and also the subsequent order³ in the said case where legal position regarding Degrees granted by University was clarified by the Hon'ble Supreme Court, however, since the question as to whether the Diploma granted by the University to the Petitioners of these cases was valid or not, does not arise in these matters, we refrain from making any observation on the said submission made by Mr. Sethna in this regard.

² **2018 (1) SCC 468**

³ **2018 (2) SCC 298**

CONCLUSION:

32. For the discussion made and the reasons given above, we are of the opinion that the Petitioners do not fulfil requisite educational qualification of having Diploma to their credit approved by AICTE in terms of the requirement of the Recruitment Rules as amended from time to time. We are also of the opinion that without there being any corresponding change in the Recruitment Rules in consonance with the Notification dated 7th April 2006 and the letter dated 7th February 2004 of the Ministry of Human Resource Development, Government of India, the prescription in the Recruitment Rules has to be strictly followed as the Recruitment Rules have statutory force having been framed under the proviso to Article 309 of the Constitution of India which are binding on all concerned. We may only reiterate the well established legal principle that no dilution or alteration by the Court is legally permissible in the Recruitment Rules framed by the Government of India under Article 309 of the Constitution of India and accordingly, insistence of the Petitioners that they having possessed with Diploma awarded to them by the University, are having requisite educational qualification, is not sustainable in the eyes of law. In our view, the impugned

judgment and order passed by the Tribunal does not suffer from any illegality; neither is there any illegality in the circular dated 21st / 24th October 2014 and the consequential orders reverting the Petitioners to their parent post.

ORDER:

33. The Writ Petitions are, thus, dismissed

34. While dismissing the Writ Petitions, we are conscious of the fact that the Petitioners have been allowed to work and perform their duties of the post of Chargeman (Technical) and some of them have been promoted to the next higher post of Junior Works Manager, however, such continuance and promotion to the next higher post has been allowed on the basis of the interim orders passed, initially by the Tribunal and later by this Court in these Petitions. It is also noticed that the promotion of some of the Petitioners to the next higher post was made subject to final outcome of these Writ Petitions. Hence, in these facts, continuance of the Petitioners or their promotion to the next higher post will not confer any right of continuing on the post of Chargeman (Technical) or on the next higher post of Junior Works Manager, however, since they have discharged their duties and

functions on these posts, it will be highly iniquitous to make recovery of the difference of salary which the Petitioners might have drawn during pendency of the Original Applications before the Tribunal and these Writ Petitions before this Court. Thus, no recovery of difference of salary from the Petitioners shall be made by the Respondents.

35. Having been appointed / promoted through the mode of LDCE, the Petitioners may not have been considered for promotion under the 50% quota for promotees and hence we also direct that they shall be considered for promotion to the post of Chargeman (Technical) within 50% quota for promotees, in accordance with the Rules and their eligibility and in case they are found fit and suitable for promotion under the promotee quota, they shall be entitled to be given promotion from the date an incumbent junior to the Petitioners was promoted.

36. Further promotion(s) of the Petitioners shall follow on the basis of their eligibility and suitability.

37. There will be no order as to costs.

38. All pending Interim Applications are disposed of.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)