

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
Neutral Citation No. 2024:PHHC:042623-DB**

(108) **LPA-121-2024 (O&M)**
Decided on : 01.04.2024

State of Haryana and anotherAppellant(s)

Versus

Rajeev KumarRespondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI**

Present:- Mr. Deepak Balyan, Addl. AG, Haryana &
Ms. Shruti Jain Goyal, Sr. DAG, Haryana.

Mr. Sanjiv Gupta, Advocate for the respondent.

G.S. Sandhawalia, Acting Chief Justice (Oral)

CM-286-LPA-2024

Application for condonation of delay of 14 days in filing the appeal, is allowed, in view of the averments made in the application, duly supported by affidavit of the official. Delay of 14 days in filing the appeal is condoned.

CM stands disposed of.

LPA-121-2024 (O&M)

Consideration in the present letters patent appeal is sought of the judgment of the learned Single Judge passed in **CWP-558-2015 'Rajeev Kumar Vs. State of Haryana and another'**, whereby the writ petition filed by the respondent was allowed on 03.10.2023. The Learned Single Judge has allowed the writ petition and directed that the writ petitioner be allowed to join to the post of Assistant Engineer (Civil) pursuant to offer of appointment dated 31.07.2014 (Annexure P-7) within

four weeks from receiving of a certified copy of the order. All consequential benefits including seniority in the order of merit determined by the Commission, except arrears of salary were also granted.

2. Counsel for the State has pointed out that in paragraph No.6, the Learned Single Judge has recorded the factum of the enrolment of the writ petitioner as a student of B.Tech in Civil Engineering (Lateral Entry) in the academic session 2004-2005 and, thus, gave the benefit of the judgment of the Apex Court in **Orissa Lift Irrigation Corporation Limited Vs. Rabi Sankar Patro, (2018) 1 SCC 468**. Thus, the reasoning of the Learned Single Judge was that the degree stood restored in view of the subsequent judgment passed in **Ashok Kumar and others Vs. Depinder Singh Dhesi and others, (2019) 8 SCC 280**.

3. On 15.01.2024, the Coordinate Bench had directed the respondent to file an affidavit stating that whether he was enrolled in the year 2004-2005. Vide **CM-796-LPA-2024**, the affidavit was taken on record. A perusal of the said affidavit would go on to show that certificate dated 29.07.2022 (Annexure A-1) issued by the Directorate of Distance Education, Janardhan Rai Nagar, Rajasthan Vidyapeeth had been placed on record, in support of the fact that the writ petitioner was enrolled in the academic session 2004-2005 and was a bonafide student of B.Tech in Civil Engineering (Lateral Entry) and was entitled for the benefit of the judgment of the Apex Court and he has qualified the AICTE-UGC Special Examination conducted during June, 03 to 06, 2018.

4. Counsel for the State has also pointed out that before the Learned Single Judge Annexure P-8 had been placed on record, since the writ petition had been filed in the year 2015 and the said enrolment

number was of 2005. It is, accordingly, contended that if that was so, the benefit could not have been granted and, therefore, reliance upon Annexure A-1 without any specific pleading and without giving the State an opportunity to rebut the said document could not have been avoided by the writ petitioner. It is, thus, submitted that due procedure has not been followed as the writ petition was never amended and the said document had never been placed on record. It is, accordingly, submitted that the Learned Single Judge should have given the opportunity to the State to meet the oral argument, which had been raised at the time of the decision of the case, since the judgment was dictated in open Court.

5. Keeping in view the above, we are of the considered opinion that there is merit in this aspect. The counsel for the writ petitioner/respondent is not in a position to deny the fact that the writ petition was not based on the document Annexure A-1, which itself was issued on 29.07.2022 much after filing of the writ petition. The written statement was also dated 01.12.2017. Therefore, an opportunity should be granted to the State to rebut the said document, since reliance had been placed on the same on the basis of the observations of the Apex Court, which itself talk about the benefit to be given to the students who were admitted during the academic session 2001 to 2005.

6. Resultantly, we allow the present letters patent appeal by setting aside the judgment dated 03.10.2023 and matter is remanded to the Learned Single Judge for a fresh decision. It is open to the writ petitioner to amend his writ petition to bring the necessary documents on record and amend his pleadings and give a chance to the State to rebut the same.

7. Both the parties are directed to appear before the Learned Single Judge on 30.04.2024.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

01.04.2024
Naveen

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	√Yes	No
Whether Reportable :	Yes	√No