

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-35743-2019 (O&M)

Reserved on 05.12.2023

Pronounced on 19.02.2024

Yashpal

... Petitioner

VS.

MD, HVPNL, Panchkula & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Ms. Rupinder Kaur Thind, Advocate
Mr. Vijay Pal, Advocate
for the petitioners

Mr. BR Mahajan, Sr.Advocate with
Ms. Shubhra Singh, Advocate for the respondents

Sandeep Moudgil, J.

(1). This order shall dispose of CWP Nos.35743, 25925, 32397, 2019 as common questions of law are involved. For the sake of order, CWP-35743-2019 is treated as the lead case.

(2). The petitioner-Yashpal, who joined the respondent-Nigam as Junior Engineer Electrical in the year 2004, has preferred this writ petition invoking Article 226 of the Constitution seeking a mandamus for direction to the respondents to grant him promotion and other consequential benefits by refixing the seniority list under 12.5% quota for the post of AE w.e.f. December, 2006/2008, respectively by considering his B-Tech degree in Electrical Engineering from Janardhan Rai Nagar Rajasthan Vidyapeeth University, Udaipur, Rajasthan in the year 2008 which gained validation after the petitioner successfully qualified by passing AICTE UGC special examination conducted during December, 16 to 19, 2018.

(3). The factual matrix of the case are that the petitioner joined as Junior Engineer Electrical in the year 2004 at 132 KV Sub Station Gohana. In the meantime, the petitioner passed the B.Tech. in Electrical Engineering in the year 2008 (Annexure P1) from the Janardhan Rai Nagar Rajasthan Vidyapeeth University, Udaipur, Rajasthan (in short, the University). Persons junior to the petitioner were promoted on 03.03.2010 as per the ranking list issued on 11.08.2009, however, the petitioner was declined to be considered for promotion on the ground that the qualification obtained by him from the deemed university, was not considered as a 'valid qualification' being not approved by AICTE. The petitioner approached this Court in CWP-4233-2010 (Dilbagh Singh & Ors. Vs. HVPNL) and CWP-16136-2009 (Rohtash Kanwar & Ors. Vs. HVPNL), which were allowed by this Court vide orders dated 17.11.2010 and 11.08.2010 (Annexures P3 & P4, respectively) by observing that since degrees granted by the Deemed Universities have already been held to be recognized qualifications by this Court CWP-1405-2009 decided on 13.01.2010, the claim of the writ petitioners for promotion be considered treating their qualification to be recognized, within 3 months.

(4). The respondent-Nigam preferred LPA in this Court challenging the order dated 17.11.2010 and the Division Bench, vide judgment dated 06.11.2012, allowed the said LPA by directing the State Government to consider the approval of the qualification obtained by the petitioner.

(5). The petitioner and other aggrieved persons filed SLP(Civil) No.35793-35796/2012 which was accepted by the Supreme Court vide order

dated 03.11.2017 passed in **Civil Appeal Nos.17869-17870/2017 (Orissa Lift Irrigation Corp.Ltd. vs. Rabi Sankar Patro & Ors.)** wherein the AICTE was directed to devise, within one month, the modalities to conduct appropriate test/tests both in written examination as well as in the practicals for the students admitted during the academic sessions 2001-2005 covering all the concerned subjects. The Supreme Court further directed that if an appearing candidate clears the test within the stipulated time, all the advantages or benefits, shall be restored to the concerned candidate and degrees shall stand revived.

(6). Thereafter the petitioners appearing in AICTE UGC combined special test held on 16.12.2018 to 19.12.2018 at NIT Kurukshetra and successfully cleared that exam and as such, the degree awarded by the said University stood validated in terms of the Apex Court judgment in **Orissa Lift Irrigation Corp.Ltd.** case.

(7). The petitioner moved a representation on 25.02.2019 & 19.03.2019 (Annexure P7) before the Superintending Engineer Admn-II, HVPNL with a prayer to grant him promotion to the post of AE w.e.f. December, 2006/2008 since he has cleared the test within the stipulated time in compliance to the Supreme Court judgment (cited supra) and as such, the petitioner is entitled for restoration of all the advantages/benefits in view of validation/revival of his degree. The petitioner even supplied the documents/original certificates sought by the respondents, on 16.04.2019, in spite thereof, the no decision was taken by the respondents and as such, the petitioner filed CWP No.12189 of 2019 which was disposed of vide order

dated 09.05.2019 with a direction to the respondents to decide the representation dated 25.02.2019.

(8). However, the claim of the petitioner for inclusion of his name in the ranking list of engineering subordinates under 12.5% quota on re-validation of his degree and consequential promotion was rejected vide impugned order dated 19.07.2019 (Annexure P11) on the ground that the matter regarding the standards of examination is *sub judice*/pending before this Court in CWP-5683-2019 (Salaudeen vs. State of Haryana & Ors.) and CWP-29619-2018 (Sanjay Kumar & Ors. Vs. State of Haryana & Ors.). In the impugned order, a reference was also made to the order dated 01.11.2018 passed in CWP-28211-2018 wherein process of promotion was stayed on the ground that the AICTE while conducting the test of degreeholder of session 2001-2005 from four deemed universities had diluted the criteria and changed the modalities in violation of the Supreme Court dictum in **Orissa Lift Irrigation Corp.Ltd.** Hence this writ petition.

(9). Learned counsel for the petitioner contended that the ranking list of JE/Civil as on 01.01.2018 under degree holder quota has been revised and benefits have already been given to one Sanjeev Kumar JE/Civil who has also studied from distance mode. It is further averred that the respondents have not given effect to direction (vi) of the Supreme Court decision in **Orissa Lift Irrigation Corp.Ltd.** which directs that if an employee clears the test/tests within the stipulated time, all the advantages/benefits shall be restored to him and his degree shall stand validated.

(10). It is then submitted that the seniority list of AEs has been prepared showing persons junior to the petitioner have been promoted on

03.03.2010 and the HVPNL has already prepared revised seniority list of JE/Civil on 01.01.2018 under degree holders quota which is 12.5% in Electrical in the Nigam at present but no order qua the petitioner has been passed so far despite his having successfully qualified the special test conducted by the AICTE.

(11). Notice of motion was issued on 10.12.2019 and pursuant thereto, the respondent-Nigam has filed its comprehensive reply dated 18.02.2021 through Munish Bhalla, Under Secretary, HR-III, HVPNL, Panchkula.

(12). In preliminary submission, it is primarily submitted that the petitioner has no right to promotion at all w.e.f. 2006/2008 as the Supreme Court in **Contempt Petition (C) No.408-409 of 2019 in Civil Appeal Nos.17869-17870 of 2017 (Ashok Kumar & Ors. Vs. Depinder Singh Dhesi & Ors.)** has specifically directed that the validation of degree only restore benefit which are already being enjoyed on the date of judgment and not to claim benefit of retrospective promotion. He submits that as per the information supplied by the JNRV University, the petitioner had been enrolled for the session July, 2005.

(13). It is averred that this Court vide judgment dated 16.03.2016 passed in CWP-21172-2013 filed by Virender Kumar and others, directed the respondents to consider the case of the petitioners for promotion in view of the seniority list and ranking list by giving preference to the seniority of the petitioners and not the date of acquiring qualification of AMIE/BE. The said decision was challenged in LPA-111-2017 by the HVPNL and in LPA-1636-2017 by the private persons, which were decided by Division Bench vide

order dated 09.08.2018 passed in **LPA-1515-2015 (Sukhdev Singh & Ores. Vs. HPGCL & Ors.)** observing as under:-

- i) *For the purpose of accelerated 12½ % promotion to the post of Assistant Engineer as per amended Regulation 9(1)(b)(ii) of Punjab State Electricity Board Service of Engineers (Civil) Recruitment Regulations, 1965, as applicable to Haryana State Electricity Board, service of 5 years has to be counted from the date when Engineering Subordinate acquires A.M.I.E./B.E. Qualification.*
- ii) *The ranking list shall be prepared for every year as on 1st January of every year in terms of clause 2 of Guidelines dated 20.10.1993 (Annexure P6).*
- iii) *The promotions shall be made strictly in accordance with the said ranking list.*
- iv) *The department shall prepare such list within 3 months from the date of receipt of a certified copy of the order and the follow up action shall be taken by undoing the wrong promotions made and making promotions in terms of finding recorded above.*
- v) *Order dated 16.3.2016 and 30.5.2016 passed by Single Bench are set aside and order dated 22.7.2015 is upheld with above noted modifications.*
- vi) *All the contrary orders, guidelines or instructions so far as contrary to this judgment are quashed.*

(14). Learned senior counsel for the respondents submitted that the case of the petitioner is also to be decided in the same terms, as reproduced above, together with all others who were party to the aforesaid writ petitions and appeals. However, the review applications preferred against LPA-1515-2015 and LPA-111-2017 are still pending.

(15). It is further submitted that respondent-Nigam had filed LPA-275-2019 wherein it was averred that the ranking list in accordance with the

decision in Parveen Gera's case cannot be implemented as that case related to civil cadre and not the electrical cadre. The said LPA was withdrawn.

(16). Replication has also been filed by the petitioners in CWP-25925-2019 countering the averments made by the respondents to be baseless. It is averred that reference made to the contempt petition No.408-409 of 20019 is different from the present case as that contempt petition was filed by those who had enrolled themselves in courses leading to degrees in Engineering through distance education mode without express permission of the department whereas the petitioner(s) had duly taken permission from the Department. The Supreme court further observed that *"if the degree stood restored in terms of the directions in the judgment and order, the candidates would certainly be eligible to such entitlements as are available in accordance with law"*.

(17). Heard learned counsel for the parties and gone through the record.

(18). The impugned order dated 19.07.2019 (Annexure P11) passed by the respondent-Nigam has been passed vide which the representation moved by the Anil Kumar including the present petition, on 25.02.2019, reference was made to CWP No.5683 of 2019 (Salaudeen vs. State of Haryana & Ors.) and CWP No.29619 of 2018 (Sanjay Kumar & Ors. Vs. State of Haryana & Ors.) wherein the prayer was made to quash the Public Notice and subsequent results issued by the respondent-authorities which amounted to reducing the standards of qualification of Engineering by changing the criteria even after conducting the examination on 03.06.2018.

(19). This Court vide order dated 01.11.2018 passed in CWP No.28211 of 2018, the process of promotion from the post of Junior Engineer/Assistant Additional Engineer to the rank of Assistant Engineer/Sub Divisional Officer was stayed. It was in this backdrop that the respondent-Nigam, while deciding the petitioner's representation observed as follows:-

“Thus, as the matter regarding the standards of examination is sub-judice/pending before the Hon'ble Punjab & Haryana High Court, Chandigarh, the claim of the petitioners (Shri Anil Kumar and Shri Muninder Kumar) for inclusion of their name in the ranking list of engineering subordinates under 12.5% quota on re-validation of their degrees and promotion thereof, cannot be considered at this stage.”

(20). It would not be out of place to mention here that the CWP No.5683 of 2019 was ordered to be tagged with CWP No.28211 of 2018 and CWP No.29619 of 2018 was ordered to be tagged with CWP No.22411 of 2018. However, while **CWP No.28211 of 2018 (Jatinder Singh & Ors. Vs. State of Punjab & Ors.)** has been decided by this Court, the other writ petitions, i.e. CWP No. 5683 of 2019; CWP No.29619 of 2018 and CWP No.22411 of 2018 are still pending adjudication.

(21). Since the main case i.e. **CWP No.28211 of 2018 (Jatinder Singh & Ors. Vs. State of Punjab & Ors.)** with which **CWP No.5683 of 2019 (Salaudeen vs. State of Haryana & Ors.)** was ordered to be tagged, being identical in nature, stands decided by a Coordinate Bench vide order dated 07.01.2020, it would be necessary to deal with and examine the reasoning assigned for adjudication of the present writ petition.

(22). The writ-petitioners in **Jatinder Singh & Ors.'s** case, assailed the criteria and modalities adopted by the 3rd respondent/All India Council for

Technical Education while conducting a validation test and declaration of result thereof, in respect of candidates who had obtained the B.Tech Degree between the years 2001 to 2005 by way of distance education mode. In the said case, the Coordinate Bench held that after conduct of the examination between 3rd of June 2018 to 12th of June 2018, the modalities/yardstick could not be altered as the same would clearly amount to changing the rules of the game after the game had been played. The AICTE even filed LPA No.474 of 2020 and various other appeals and review applications and the Division Bench vide judgment dated 28.09.2022 dismissed the said LPAs.

(23). In my considered opinion, the action of the respondents in relying upon the CWP No. 28211 of 2018 and other connected writ petitions, in the facts of the present case, is totally ill-founded and baseless. As is evident from the perusal of the judgment of Coordinate Bench passed in CWP No.28211 of 2018 (Jatinder Singh & Ors. Vs. State of Punjab & Ors.), it can be said that in Jatinder Singh's case or for that matter in Salaudeen's case, the issue was with regard to change/alteration of modalities framed and issued vide public notice dated 25.01.2018, after the conduct of the examination on 03.06.2018 to 12.06.2018, whereas in the present case, the petitioner had appeared in the AICTE UGC special examination conducted during December, 16 to 19, 2018.

(24). The question of change/alteration of the modalities has been challenged by the candidates who had appeared in special examination conducted in June, 2018 and as such, the same cannot be imposed on those candidates who had appeared in the special examination conducted subsequently in December, 2018. It is nowhere the case of the petitioner, in

the present batch of writ petitions, that there is any change/dilution of the criteria/modalities in so far as the question papers/answer key/result of special examination conducted in December, 2018, is concerned. Therefore, there is parity and distinction in the facts of the present case as compared to those writ petitions, referred to in the impugned order.

(25). Coming back to the issue raised in the present writ petition, the petitioner was inducted in service in 2004. He passed out his B.Tech in Electrical Engineering in the year 2008 from the JRN University and as such, his case for promotion to the post of Assistant Engineer was processed on 11.08.2009 and was asked to supply his original certificate of degree but was not promoted on the ground that the B.Tech. degree of the petitioner is not duly approved by AICTE. Then started the chain of litigation which ultimately granted an opportunity to the petitioner to appear in the special examination which he appeared in the combined test held on 16.12.2018 to 19.12.2018. The petitioner qualified the same but the respondent-Nigam has declined to consider him for promotion from due date.

(26). Learned counsel for the petitioner has also heavily relied upon the clarification dated 19.09.2022 issued by AICTE wherein it has been clarified that qualifications acquired through distance education mode in the field of management, computer applications, intelligence & Data Science in the Engineering and Technology domain, logistics and travel & tourism are recognized.

(27). The Supreme Court, in **MA Nos. 1795 -1796 of 2017 in Civil Appeal no. 17869-17870 of 2017 titled as Orissa Lift Irrigation Corp. Ltd. Vs Rabi Sankar Patro & others** which was filed by those candidates who

underwent independent selection undertaken by Union Public Service Commission and entered certain services as direct recruits and have presently either been engaged in the same service or have advanced in career on the basis of such selection by UPSC, while clarifying **Orissa Lift Irrigation Corporation Ltd.** held as under:-

“We, therefore, as a one-time relaxation in favour of those candidates who were enrolled during the academic years 2001-2005 and who, in terms of the judgment, are eligible to appear at the test to be conducted by AICTE, direct:-

a] All such candidates, who wish to appear at the forthcoming test to be conducted by AICTE in May-June 2018 and who exercise option to appear at the test in terms of the judgment, can retain the degrees in question and all the advantages flowing therefrom till one month after the declaration of the result of such test or till 31.07.2018 whichever is earlier.

b] This facility is given as one-time exception so that those who have the ability and can pass the test in the first attempt itself, should not be put to inconvenience. If the candidates pass in such first attempt, they would be entitled to retain all the advantages. But if they fail or choose not to appear, the directions in the judgment shall apply, in that the degrees and all advantages shall stand suspended and withdrawn. At the cost of repetition, it is made clear that no more such chances or exceptions will be given or made. They will undoubtedly be entitled to appear on the second occasion in terms of the judgment but this exception shall not apply for such second attempt.

c] We direct AICTE to conduct the test in May-June 2018 and declare the result well in time, in terms of our directions in the judgment and this Order. AICTE shall

however extend the time to exercise the option to appear at the test suitably.”

(28). A bare perusal of the above reproduced clarificatory stipulation of the Apex Court would shows that the facility of retention of degrees and all the advantages flowing therefrom, till one month, after the declaration of the result of such test, was given as ‘one-time exception’ only, so that those who have the ability and could pass the test in the ‘first attempt’ itself, are not put to any inconvenience. It is clearly mentioned that if a candidate passes the special test, in such ‘first attempt’, he would be ‘entitled to retain all the advantages’ and if the candidate ‘fails or choose not to appear’, ‘the degrees and all advantages would stand suspended’ and withdrawn and that no more chance or exception will be given or made. It has also been provided that those candidate who fail to choose not to appear in the first attempt, will be entitled to appear on the second occasion in terms of the judgment ‘but the exception of retaining all the advantages, shall not apply for such second attempt’.

(29). Admittedly, the petitioner had cleared the subject examination conducted by the AICTE, during December 16 to 19, 2018 i.e. apparently, in the second attempt, in terms of the directions issued vide order dated 22.01.2018. Thereafter, the petitioner were awarded the Electrical Engineering Degrees by the JRN Rajasthan Vidyapeeth, Rajasthan. The candidates could undoubtedly be entitled to appear on the above-said second session in terms of the judgment but this exception was not applicable for 2nd attempt.

(30). The qualification obtained in December, 2018 has also been restricted by the Apex Court, as noticed above, that the person who cleared

the examination in the second attempt will not be given the benefit and advantages of the said degree. It is, thus, apparent that the Apex Court has restricted the right to the recognition of the decree which is to be applied very strictly, as on an earlier occasion *inasmuch* as even the Central Bureau of Investigation had been directed to carry out investigation regarding the conducting of such examinations by correspondence. The exception had thus been given to those who had passed the examination in the first attempt and they would not be put to inconvenience and they would be entitled to retain all the advantages. For the ones who failed, the second portion of the order dated 22.01.2018 would come into force. The directions were thus only a protection granted to the persons who had taken advantage, on an earlier occasion, by getting promotions and it was a one-time exception. Relief was, thus, limited to the persons who had passed the test in the first attempt and not extended to the persons who had cleared the test subsequently.

(31). The Supreme Court in **Ashok Kumar and others vs. Depinder Singh Dhesi and others, (2019) 8 SCC 280** held that the benefit of retaining the advantages was extended only till the first attempt and those candidates who could not clear the examination in first attempt or chose not to appear in the examination conducted in May/June, 2018 were held to be not entitled to the concessions extended by the Order.

(32). While taking cognizance of the fact that the candidates should not stand deprived of the status which they were enjoying as on the day of the judgment in **Orissa Lift Irrigation Corporation Ltd.** provided the candidates could prove their worth and ability, the Supreme Court in **Ashok Kumar and others's** case (supra) further held that if, a candidate had not attained any

particular status, as on the date when the judgment was passed, the width of the directions was not to confer any additional advantage which was not even enjoyed as on the date. The Supreme Court cautioned that it was not the idea to hold the candidates to be entitled to certain additional benefits which the candidates were, as a matter of fact, not even enjoying on the date of the judgment and held that if the degrees stood restored in terms of the directions in the Judgment and the Order, the candidates would certainly be eligible to such entitlements as are available in accordance with law, but “restoration” would only be of those benefits, which they were enjoying as on the date of the judgment. In short, the intent was to restore *status quo ante* and not to confer any additional advantage by the judgment and the order.

(33). In the present case, the Ranking List of Engineering Subordinates possessing AMIE/BE/B.Tech qualification in Electrical Engineer as it stood on 28.02.2009, for promotion to the post of Assistant Engineer, was prepared. In the said List, the name of the petitioners were not entered as their Engineering Degrees were not considered to be valid. Their degrees stood validated during December, 2018 in compliance to Supreme Court directions in **Orissa Lift Irrigation Corporation Ltd.'s** (supra). It is crystal clear that as on the date of judgment/clarification in **Orissa Lift Irrigation Corporation Ltd.'s** (supra), there was no benefit/advantage which can be said to have been taken away from the petitioners. *Albeit*, the claim of the petitioners for promotion arose only after the passing of the Special Test in December, 2018 which validated their Degrees for being considered for further promotion.

(34). The directions issued by the Supreme court, referred to above, were never directed to confer such advantages which the candidates were otherwise not enjoying, ‘on the date when the Judgment and clarificatory Order’ were passed. If the promotion was not granted and was not being enjoyed as on the day when the judgment was passed, there was no violation of any direction issued by the Supreme Court by the respondent-Nigam.

(35). In view of the foregoing reasons and observations made, this writ petition is devoid of any merit and hence dismissed.

19.02.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No