



2025:DHC:621-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 12189/2021 & CM APPL. 38097/2021**

ASHOK KUMARPetitioner
Through: **Mr. Sourabh Ahuja, Adv.**

versus

GOVT OF NCT OF DELHI AND ORS.Respondents
Through: **Mrs. Avnish Ahlawat, SC with
Mr. Nitesh Kumar Singh, Ms. Laavanya
Kaushik, Ms. Aliza Alam and Mr. Mohnish
Sehrawat, Advs. for GNCTD
Mr. Yeeshu Jain, ASC with Ms. Jyoti Tyagi
and Ms. Kanika Tyagi, Advs. for R-1**

+ **W.P.(C) 12565/2021 & CM APPL. 39570/2021**

SHASHI SAINIPetitioner
Through: **Mr. Sourabh Ahuja, Adv.**

versus

GNCT OF DELHI AND ORSRespondents
Through: **Mrs. Avnish Ahlawat, SC with
Mr. Nitesh Kumar Singh, Ms. Laavanya
Kaushik, Ms. Aliza Alam and Mr. Mohnish
Sehrawat, Advs. for GNCTD**

+ **W.P.(C) 13036/2021 & CM APPL. 41097/2021**

SUSHMITA BISWASPetitioner
Through: **Mr. Sourabh Ahuja, Adv.**

versus

GNCT OF DELHI ORSRespondents
Through: **Mrs. Avnish Ahlawat, SC with
Mr. Nitesh Kumar Singh, Ms. Laavanya**



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Kaushik, Ms. Aliza Alam and Mr. Mohnish
Sehrawat, Advs. for GNCTD

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

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28.01.2025

C. HARI SHANKAR, J.

W.P.(C) 12189/2021, W.P.(C) 12565/2021 & W.P.(C) 13036/2021

The Issue in Controversy

1. The issue in controversy, in this case, relates to the entitlement of the petitioners to be appointed as Lecturers (Selection Grade) in the Department of Training and Technical Education¹, Government of National Capital Territory of Delhi². The dispute is only whether the educational qualifications possessed by the petitioners entitle them to such promotion. The Central Administrative Tribunal³, by judgment dated 21 June 2021, has held that they do not. Aggrieved thereby, the petitioners are before this Court.

Facts

2. As the ground on which the petitioners were found not to be

¹ "DTTE" hereinafter

² "GNCTD" hereinafter

³ "Tribunal" hereinafter



eligible for promotion as Lecturers (Selection Grade) is limited, it is not necessary to enter into the specifics of the respective petitioners. Suffice it to state that the petitioners had initially joined the services of the DTTE as Lecturers and were subsequently promoted as Lecturers (Senior Scale). After they had completed five years as Lecturers (Senior Scale), they claim themselves to be eligible for promotion as Lecturer (Selection Grade). The dates when the petitioners, in these writ petitions were appointed as Lecturers (Senior Scale) and would, therefore, have completed five years as Lecturers (Senior Scale) may be tabulated thus along with their respective educational qualifications:

WP (C) No.	Name of the Petitioner	Date of Promotion as Lecturer (Senior Scale)	Date of Completion of Five Years	Educational Qualifications
WP(C) 12189/2021	Ashok Kumar	11.08.2004	11.08.2009	• Two-years Diploma in Secretarial Practice (Hindi), • Bachelor of Arts (Pass) Degree, • PG in Hindi • M. Phil in Hindi.
WP(C) 12565/2021	Shashi Saini	18.01.2005	18.01.2010	• PG Degree in Economics • Bachelor of Education Degree.
WP(C) 13036/2021	Sushmita Biswas	24.02.2005	24.02.2010	• BA (Hons.) Degree in English,



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				• M.A Degree in English • M.Ed. (Master of Education).
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3. The All India Council for Teachers Education⁴, as the nodal body for specification of standards and qualifications in respect of technical education, issued, under cover of Circular dated 30 December 1999 addressed to Secretaries of all State Governments and Union Territories dealing with technical education, specifications regarding revision of pay scales and associated terms and conditions of service of, among others, teachers in diploma level technical institutions. There is no dispute about the fact that these stipulations and specifications apply to placement in the grade of Lecturer (Selection Grade) in the DTTE. Clause 8.3 of the said Circular reads thus:

“8.3 Lecturer (Selection Grade):

A Senior Lecturer/Lecturer (Senior Scale) who has a Master's Degree of 5 years experience as senior Lecturer of Lecturer (Senior Scale) and has consistently satisfactory performance appraisal reports will be eligible to be placed as Lecturer (Selection Grade), subject to the recommendation of the-Selection Committee.”

The aforesaid circular was approved by the Cabinet decision of the GNCTD on 12 December 2003.

4. The petitioners contend that, w.e.f. the dates indicated in the

⁴ “AICTE” hereinafter



table in para 2 *supra*, when they completed five years as Lecturer (Senior Scale), they had become eligible for placement as Lecturer (Selection Grade). They further contend that their performance appraisal reports, throughout their career from the time of initial posting as appointment as Lecturer, were more than satisfactory. Inasmuch as all the petitioners hold Master's degrees with five years' experience as Lecturer (Senior Scale), they press their entitlement for being placed as Lecturer (Selection Grade).

5. As such, the petitioners applied, in the prescribed proforma, for being granted Selection Grade and requested that their cases be placed before the concerned Screening Committee/Selection Committee for consideration.

6. When nothing transpired with respect to the request for being granted Selection Grade, the petitioners made inquiries, upon which they came to learn that, on their respective applications, the Screening/Selection Committee had entered a note stating that they required relaxation in the prescribed educational qualifications in order to be eligible for consideration for grant of Selection Grade. This note was predicated on the premise that a first class Master's degree was a necessary prerequisite for being placed as Lecturer (Selection Grade), whereas the petitioners did not have a first class Master's degree. The respondents relied, in this context, on a clarification issued by the AICTE on 18 October 2012 in which, in respect of the qualification for grant of Selection Grade to Lecturers as contained in para 8.3 of the AICTE notification dated 30 December



1999, it was “clarified” thus:

“a) In case of recommendations of 1999 and 1989 of AICTE, requirement for the grant of Selection grade was Post Graduate Degree in Engg. With rider that one should possess First class at PG level or UG level. It is also mention that in 1999 Guide lines, even though qualification for Selection Grade was not mentioned explicitly but it can be taken as Master’s Degree in reference to 1989 guidelines where qualifications for both HOD/Selection Grade were mentioned as the same. Therefore, whether lecturers with Second Class at UG and PG are eligible for grant of Selection Grade or not? (Reference Self Contained Note 1)

Clarification:

From the above it is clear that the candidates should possess First Class at PG or UG level for the grant of selection grade in engineering. Therefore, lecturers with 2nd class at UG and PG are not eligible for selection grade.”

7. Aggrieved by the rejection of their request for being granted Selection Grade on the above ground, the petitioners approached the Tribunal by way of OA 2789/2016⁵, OA 2790/2016⁶ and OA 2816/2016⁷.

8. These original applications, along with certain other original applications, came to be decided by the Tribunal by judgment dated 21 June 2021. The Tribunal has, ultimately, dismissed the petitioners’ OAs. The reasoning of the Tribunal is contained in the following paragraphs from the judgment:

“6. The applicants were selected and appointed as Lecturers in the subjects like English, Hindi, to work in the Government Polytechnics. The Council happens to be the controlling authority

⁵ Sushmita Biswas v GNCTD

⁶ Ashok Kumar v GNCTD

⁷ Shashi Saini v GNCTD



of all the Polytechnics and Institutions in the Technical Education. With a view to strengthen the teaching faculty and to provide better conditions of service to the Teachers, the Council issued guidelines on 24.02.2010. Two stages for upward movement viz., (a) from Lecturer to Senior Lecturer; and (b) from Senior Lecturer to Selection Grade, are provided for. The applicants were extended the benefit of STS. The dispute is about the denial of benefit of Selection Grade. Para 8.3 of the -guidelines of the year 1999, reads as under:

“8.3 Lecturer (Selection Grade):

A Senior Lecturer/Lecturer (Senior Scale) who has a Master's Degree of 5 years experience as senior Lecturer of Lecturer (Senior Scale) and has consistently satisfactory performance appraisal reports will be eligible to be placed as Lecturer (Selection Grade), subject to the recommendation of the-Selection Committee.”

7. From this, it is evident that the Senior Lecturers, with five years' standing in that post, and possessing Post Graduate Degree are entitled to be extended the benefit of Selection Grade. The cases of the applicants were examined for that at various stages. It was opined that the applicants do not have the 1st class either in Degree or Post Graduation, and accordingly, they are not entitled to the benefit. Ultimately, the matter received the attention of the Council itself. In its clarification, issued vide notification dated 04.01.2016, the Council, clarified as under :

Sl. No.	Issue	Clarification
43	Applicability of Master's degree as laid down in' AICTE notification 1999, Para 8.3 Lecturer (Selection Grade) to Humanities & Sciences for up-gradation to Lecturer (Selection Grade).	The qualification prescribed in Para 8.3 of AICTE notification 1999 (Diploma), does, not apply to the Humanities & Sciences for upward movement of Lecturer (Senior Scale) to Lecturer (Selection Grade) under CAS. M. Phil/Ph. D is essential qualification for upward movement to Lecturer (Selection Grade) in Humanities & Sciences.



8. From this it is evident that the conditions stipulated in the notification of 1999 are mostly for Lecturers, in Technical Subjects. The Council seems to have felt that they cannot stipulate the conditions for Lecturers who are not teaching the Technical Subjects. Obviously, by referring to the norms stipulated by the UGC or other similar Agencies, it was observed that the Lecturers in Humanities are entitled for Selection Grade, only to those who possess the degree of M.Phil or Ph.D.

9. We do not find any occasion or basis to deal with the validity or otherwise of the clarification given by the Council for two reasons. First, because the applicants did not seek any declaratory relief vis-a-vis the classification issued by the Council; and secondly, the Council, itself is not a party to this OA. Therefore, we have to take into account, the clarification issued by the Council in their notification dated 04.01.2016.

10. Arguments are advanced before us, to the effect that what is issued by the Council on 04.01.2016 is an amendment, and it would take effect prospectively. That issue cannot be dealt with by us in the absence of specific challenge, and in the absence of the Council, in these proceedings.”

9. Aggrieved by the aforesaid judgment of the Tribunal, the applicants before the Tribunal in the aforesaid OAs are before us in these writ petitions.

10. We have heard Mr. Ahuja, learned Counsel for the petitioners and Mr. N. K. Singh, learned Counsel for the respondents, at length.

11. Mr. Ahuja contends that, inasmuch as the petitioners possessed the requisite qualifications and experience as stipulated in para 8.3 of the AICTE circular dated 30 December 1999, they could not be treated as ineligible for being granted Selection Grade. It is submitted that the AICTE could not have modified these requirements by stipulating, at a later point of time, that the Master’s degree to be



possessed by the aspirant for the Selection Grade had necessarily to be first class or that it had to be in disciplines other than Humanities and Sciences. Besides, and without prejudice, it is submitted that enforcement of any such clarification dated 18 October 2012, even if permissible, could only be prospective from the date of the said clarification, and could not apply to the petitioners, who had become eligible for grant of Selection Grade much prior thereto.

12. Mr. Ahuja further places reliance on the judgment of a Division Bench of this Court in *GNCTD v K.K. Prasad*⁸.

13. Mr. Singh contends, *per contra*, that the GNCTD and the DTTE were bound by the clarification issued by the AICTE and could not, therefore, be faulted in refusing to grant Selection Grade to the petitioners. He has placed reliance on the All India Council for Technical Education (Pay Scales, Service Conditions and Qualifications for the Teachers and other Academic Staff in Technical Institutions (Diploma)) Regulations, 2010⁹, which was notified by Notification dated 5 March 2010 issued by the AICTE. He has drawn our attention to Clause (i) under the head “Applicability of the Schemes”, as contained in the 2010 Regulations, which reads as under:

“(i) This Scheme shall be applicable to teachers in Technical Institutions and other equivalent cadres of Library and for Physical Education Personnel in all the AICTE approved institutions. The implementation of the revised scales shall be subject to the acceptance of all the conditions mentioned in this letter as well as

⁸ 203 (2013) DLT 611 (DB)

⁹ “the 2010 Regulations” hereinafter



Regulations to be framed by the AICTE in this behalf.”

14. Mr. Singh has further drawn our attention to the stipulations in the aforesaid notification under the head “Faculty Norms” under the sub head “Minimum Qualifications and Experience for appointment of teaching Posts in Diploma Level Technical Institutions”, whereunder a first class Bachelor’s degree is stipulated as the requisite qualification for appointment as Lecturer.

15. Having cited, thereafter, the clarification dated 18 October 2012 of the AICTE, Mr. Singh finally places reliance on the Circular dated 4 January 2016 issued by the AICTE under the head “Clarifications on Certain Issues/Anomalies Pertaining to Qualifications, Pay Scales, Service Conditions, Career Advancement Schemes (CAS) etc. for Teachers and Other Academic Staff of Technical Institutions (Degree/Diploma)”, from which Mr. Singh cites Serial Nos. 10 and 43. Serial No. 43 has also been relied upon by the Tribunal and stands reproduced *supra*. Serial No. 10 of the said Annexure reads thus:

Sl. No.	Issue	Clarification
10	Clarity required in faculty norms notified vide AICTE Regulations, 2010 (Diploma) for Humanities & Sciences program.	The qualifications laid down under faculty norms in AICTE Regulations, 2010 for the post of Lecturer be read as under: “Master’s degree in appropriate subject of Humanities & Sciences with first class or equivalent at Bachelor’s or Master’s Level”.



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		Further, for their upward movement as a Lecturer (Selection Grade) under Career Advancement Scheme (CAS), Ph.D in relevant subject is an essential qualification.
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Analysis and Findings

16. We find ourselves unable to sustain the impugned judgement of the Tribunal.

AICTE Circular dated 30 December 1999

17. In the counter affidavit filed by the respondents before the Tribunal, the respondents have extracted the aforesaid qualification as contained in para 8.3 of the AICTE notification dated 30 December 1999. The counter affidavit proceeds to acknowledge thus:

“That Department of Training & Technical Education (DTTE) GNCTD is mandated under law to adopt the AICTE guidelines 1999 and thus the same was done vide order dated 12.12.2003 for implementation”

As such, the applicability of para 8.3 of the Circular dated 30 December 1999 is not in dispute.

Judgement in *K.K. Prasad*

18. The case is squarely covered by the judgement in *K.K. Prasad*. The only difference between that case and this is that the clarification



of the AICTE, in that case, was with respect to the disciplines in which the candidate was required to possess a Master's degree. The High Court, in that case, too, had taken into account the fact that para 8.3 of the Circular dated 30 December 1999 merely require the Lecturer (Selection Grade) to possess a Master's degree, without specifying the discipline in which the Master's degree was required to be possessed. The High Court, therefore, held that the AICTE could not, by means of a clarification, introduce a requirement of the Master's degree having to be in subjects, or specializations, in Humanities or Sciences. The relevant paragraphs from **K.K. Prasad** may be extracted thus:

“2. The respondents were recruited as Lecturers by the Government of NCT of Delhi in its Department of Training and Technical Education to teach in the vocational and other non-degree technical institutions. One of them Shri N.C. Goel is a Post Graduate degree holder in Physics and Shri K.K. Prasad is holding an M.Sc. degree in Mathematics. It is also a common ground that both of them, after putting in requisite service, were granted Senior Scale; Shri K.K. Prasad was granted the said scale on 16.01.2001 and Shri N.C. Goel on 30.06.2004. They sought for grant of Selection Grade Lecturers scale. At this stage, the Government of NCT of Delhi sought for clarification from AICTE. It is mentioned herein that the AICTE norms are embodied in its Notification of 30.12.1999 with regard to the grant of Senior Grade and Selection Grade for such posts. The clarification sought by the Government of NCT of Delhi was whether the posts of Lecturer (Selection Grade) in its Technical Institutions had to be filled amongst those who hold post graduate degree in engineering subjects.

3. The relevant part of the Notification dated 30.12.1999 reads as follows : -

“8.3 Lecturer (Selection Grade):

A Senior Lecturer/Lecturer (Senior Scale) who has a Master's degree and 5 years' experience as Senior Lecturer or Lecturer (Senior Scale), and has consistently satisfactory performance appraisal reports will be eligible to be placed



as Lecturer (Selection Grade), subject to the recommendation of the Selection Committee.”

After considering the record including the reply of the AICTE, the C.A.T. interpreted Clause 8.3 and held that the rules did not mention Masters in Engineering as a requisite qualification for the grant of Selection Grade to the post of Lecturer and consequently the respondents/applicants were entitled to the relief sought.

4. Mr. V.K. Tandon, learned counsel for the Government of NCT of Delhi relies upon the clarification issued by the AICTE dated 18.10.2012. He submits that a degree in any field other than engineering would not be equivalent to degree in engineering and technology except where specified by the statutory authority in the cases in reference. He submits that in view of this specific clarification, the applicants' claim could not have been granted by the C.A.T. which fell in error.

5. This Court has considered the submissions. *A bare reading of Clause 8.3 - which has been extracted above - itself manifests that what the rule making authorities required of the candidate to possess was mere Master's degree in the relevant discipline.* The Government of NCT of Delhi does not dispute that Lecturers in subjects or disciplines other than engineering topics are also deployed by it in the technical institutions which are the subject matter of these proceedings. Such being the case, the argument made today is rather strange if not entirely misconceived. The Government of NCT of Delhi now seems to be suggesting that even though for initial appointment as Lecturer in discipline of Math or Chemistry as the case may be and further grant of Lecturer in Senior Scale, the Post Graduation in the relevant discipline is sufficient, yet for some strange reasons, the very same incumbents have to necessarily possess some engineering post graduate degree in order to teach some general subjects (i.e. Physics, Maths, Chemistry etc.). The sheer untenability of such an argument has to be stated to be rejected. *As observed earlier, paragraph 8.3 is plain enough. The Court discern no merit in the clarification sought. All that the AICTE stated was that Master's degree in any field other than engineering cannot be treated as equivalent to engineering degree. That clarification, in the opinion of this Court, would not come in the way of the respondents/applicants' legitimate and justified claim for grant of Lecturer Selection Grade after the completion of five years' experience.*

6. In view of the above reasoning, the Court finds no infirmity in the impugned judgment and order. The W.P. (C) 5554/2013 and W.P.(C) 5681/2013 are, therefore, dismissed.”



19. A clarification can only clarify. It cannot modify. More specifically, a right which is available under the original dispensation cannot be divested by a clarification. If the clarification purports to do so, it is no longer a clarification, but a modification, or a modified dispensation, which can, in law, apply only prospectively, and cannot affect rights which stand vested prior to its issuance.

20. The ratio of **K.K. Prasad** would apply, *mutatis mutandis*, to the present case, and to the clarification of the AICTE dated 18 October 2012, on which the respondent places reliance. While the Circular dated 30 December 1999 rendered eligible *all* Lecturers (Senior Scale) with 5 years' service, possessing *any* Master's degree qualification, eligible for being promoted as Lecturer (Selection Grade), the "clarification" dated 18 October 2012 restricts the eligibility to Lecturers (Senior Scale) having Master's degrees with 1st class.

21. This was clearly impermissible. Such a substantive limitation could not have been introduced by way of a clarification.

22. Accordingly, the rights of the petitioner cannot be determined on the basis of the said clarification.

23. It is no doubt open to the AICTE to stipulate additional qualifications. However, any such stipulation would have to be prospective from the date of the concerned notification and could not be clarificatory and, therefore, retrospective in nature. Mr. Ahuja is



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correct in his submissions that the rights of the petitioners in these writ petitions for being granted the post of Lecturer (Selection Grade) crystallised on 11 August 2009, 18 January 2010 and 24 February 2010. The “clarification” issued much thereafter on 4 January 2016 could not, therefore, apply to the petitioners.

AICTE Notification dated 5 March 2010

24. Insofar as the AICTE notification dated 5 March 2010 is concerned, the reliance thereon by Mr. Singh has obviously to be characterised as misconceived. The clause to which Mr. Singh drew our attention refers to norms which apply to the minimum qualification and experience *for appointment to the teaching post of Lecturer in diploma level technical institutions*. The petitioners’ appointment to the teaching post of Lecturer (Selection Grade) was much prior to this notification and, therefore, this Notification has no application.

25. That apart, Mr. Ahuja has also pointed out to us that the Notification itself states, in para 1.3, that it would come into effect from the date of its publication in the official gazette. The Notification was published in the official gazette on 5 March 2010.

26. Besides the fact that the legality of the appointment of the petitioners as Lecturers (Selection Grade) is not even in issue, the said appointment having taken place much prior, in point of time, to 5 March 2010. Accordingly, the AICTE Notification dated 5 March



2010 has no application to the facts of the case.

Performance appraisal not an issue

27. It is nobody's case that the petitioners' performance appraisal reports were not satisfactory. Insofar as the remaining two qualifications are concerned, the petitioners possess them. There is no requirement. in para 8.3 of the notification dated 30 December 1999, stipulating that the Master's degree must be in first class or in any particular subject or discipline.

The sequitur

28. In the above view of the matter, we are of the opinion that the Tribunal was in error in relying on the AICTE "clarification" dated 4 January 2016 to the prejudice of the petitioners. Besides, the case stands fully covered by the judgment of the Division Bench of this Court in *K K Prasad*.

Conclusion

29. For the aforesaid reasons, the impugned judgment of the Tribunal stands quashed and set aside.

30. The petitioners would be entitled to the benefit of para 8.3 of Circular dated 30 December 1999 issued by the AICTE and to grant of Lecturer (Selection Grade) on the basis thereof.



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31. Inasmuch as the only ground on which the Screening Committee rejected the petitioners' entitlement was that they did not possess a first class Master's degree as required by the "clarification" dated 18 October 2012 issued by the AICTE, we do not deem it necessary to refer the matter back to the Screening Committee.

32. As such, the respondents are directed to issue requisite orders placing the petitioners as Lecturer (Selection Grade) with effect from the dates when each of them completed 5 years as Lecturer (Senior Scale). Let all consequential benefits be disbursed by the respondents within a period of four weeks from today.

33. These writ petitions stand allowed in the aforesaid terms.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 28, 2025

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Click here to check corrigendum, if any