
(2010) 02 P&H CK 0143
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 7055 of 2009

Jaibir Singh Goyat

APPELLANT

Vs

Haryana Coop. Sugar Mills Ltd. and Another

RESPONDENT

Date of Decision : 24-02-2010

Acts Referred:

Constitution of India, 1950 — Article 227
University Grants Commission Act, 1956 — Section 3

Citation : (2010) 02 P&H CK 0143

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Neeraj Kumar, for the Appellant; Sandeep Singh, for Ramesh Chahal, for the Respondent

Final Decision : Allowed

Judgement

L.N. Mittal, J.—Plaintiff Jaibir Singh Goyat, having remained unsuccessful in both the courts below in securing temporary injunction, has knocked the door of this Court by way of instant revision petition under Article 227 of the Constitution of India.

2. Plaintiff was appointed as permanent Electrician in defendant No. 1 Sugar Mills vide letter dated 20.09.1995. He was promoted as Electrical Foreman vide letter dated 15.10.1996. The plaintiff claims that he holds diploma in Electrical Engineering with 71% marks from J. R. N. Rajasthan Vidya Peeth University, Rajasthan (in short - Rajasthan Vidya Peeth) through distance mode, duly approved by University Grants Commission (UGC) and Distance Education Council (DEC). He also possessed other qualifications for promotion to the post of Assistant Engineer (Electrical). He is also looking after the work of the said post. Jarnail Singh - Draftsman, having passed Mechanical Engineering from the same University, has been promoted as Assistant Engineer. However, the defendants have issued advertisement for direct recruitment to the post of Assistant Engineer (Electrical), although direct recruitment can be resorted to, only if no

suitable candidate is available for promotion to the said post. The plaintiff being eligible for promotion to the said post, the defendants cannot resort to direct recruitment. The plaintiff sought temporary injunction restraining the defendants from filling up one post of Assistant Engineer (Electrical), out of the three advertised posts.

3. Defendants, while admitting the factual position, inter alia pleaded that the diploma obtained by plaintiff from deemed University i.e. Rajasthan Vidya Peeth has not been approved by All India Council for Technical Education (in short - AICTE), as intimated by Director, Technical Education, Haryana and therefore, the plaintiff is not eligible for promotion to the post of Assistant Engineer (Electrical).

4. Learned Civil Judge (Junior Division), Rohtak, vide impugned order dated 11.08.2009 (Annexure P-2), upheld the aforesaid plea of defendants and dismissed the plaintiff's application for temporary injunction. Appeal preferred by the plaintiff against the said order has been dismissed by learned Additional District Judge, Rohtak, vide order dated 06.10.2009 (Annexure P-1). Feeling aggrieved, the plaintiff has preferred the instant revision petition.

5. I have heard learned Counsel for the parties and perused the case file.

6. Learned Counsel for the petitioner contended that as per minutes of third meeting of the Joint Committee of UGC, AICTE and DEC, held on 07.08.2007 (Annexure P-14), recognition was granted to Rajasthan Vidya Peeth up to the academic year 2007-08, whereas the petitioner passed the qualifying examination of diploma from the said Vidya Peeth in examination held in January 2007 and therefore, the diploma obtained by the petitioner from the said Vidya Peeth is duly recognized by AICTE as well.

7. Learned Counsel for the petitioner next contended that Jarnail Singh, having obtained diploma in Mechanical Engineering from the same Vidya Peeth, has been granted promotion.

8. Learned Counsel for the petitioner also contended that in view of Section 10(1) (k) of the AICTE Act, read with Section 2(4) in Section 23 of the said Act, running/conducting of courses and programmes in technology courses by University does not require prior approval of AICTE because definition of 'Technical institution' under AICTE Act does not include University, as held by Hon'ble Supreme Court in the case of Bharathidasan University and Anr. v. All India Council for Technical Education and Ors. reported as AIR 2001 Sc 2861. It is contended that Rajasthan Vidya Peeth is a deemed University established u/s 3 of the UGC Act, 1956, vide notification No. F.9-5/84-U-3 dated 12.01.1987 of the Government of India.

9. On the other hand, learned Counsel for the respondents contended that as per intimation given by Director, Technical Education (Haryana), diploma course of Rajasthan Vidya Peeth has not been recognized by AICTE.

10. I have carefully considered the rival contentions.

11. Ipse dixit of Director, Technical Education (Haryana) that diploma course of Rajasthan Vidya Peeth is not recognized by AICTE cannot be said to be final word on the subject. On the other hand, the said course has been recognized by UGC, AICTE and DEC in meeting of Joint Committee held on 07.08.2007. It would prima facie depict that diploma course of Rajasthan Vidya Peeth up to academic year 2007-08 stands recognized by AICTE and the petitioner passed diploma from Rajasthan Vidya Peeth in the year 2007. Consequently, prima facie, the diploma held by the plaintiff, cannot be discarded or ignored to determine his eligibility for the post of Assistant Engineer (Electrical).

12. In addition to the aforesaid, since Rajasthan Vidya Peeth is a deemed University established u/s 3 of the UGC Act, 1956, vide notification dated 12.01.1987 of the Government of India, as mentioned in the Marks" Statement Annexure P-7 issued by Rajasthan Vidya Peeth, prior approval of AICTE, for running course in technology by the said University, is not required in view of judgment of Hon"ble Supreme Court in the case of Bharathidasan University (supra).

13. Jarnail Singh, holding diploma from the same University i.e. Rajasthan Vidya Peeth (at page 72 of the paper-book, being part of Annexure P-16), has been promoted vide order Annexure P-16, holding him to be eligible. In view thereof also, the plaintiff cannot prima facie be held ineligible on the ground that the diploma obtained by him from Rajasthan Vidya Peeth is not recognized one.

14. For the reasons recorded herein above, I find that the plaintiff has made out a prima facie case that he is eligible for promotion to the post of Assistant Engineer (Electrical). Balance of convenience is, therefore, in favour of the petitioner and obviously, he would suffer irreparable loss and injury if temporary injunction asked for is not granted.

15. In view of the aforesaid, the instant revision petition is allowed and impugned orders i.e. order dated 11.08.2009 (Annexure P-2), passed by the trial court and order dated 06.10.2009 (Annexure P-1), passed by the appellate court, are set aside and application for temporary injunction moved by the plaintiff-petitioner is allowed and defendants are restrained from filling up one of the three posts of Assistant Engineer (Electrical), advertised by the defendants, till the final disposal of the suit. It is expressly made clear that nothing observed herein above shall be construed as an expression of opinion on the merits of the suit. The trial court is directed to decide the suit expeditiously.