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**(2010) 09 CHH CK 0009**  
**In the Chhattisgarh High Court**  
**Case No : Writ Petition S. No. 5977 of 2009**

|                                                        |            |
|--------------------------------------------------------|------------|
| Raman Mehar, Devendra Nath Sirsant and Shivanand Kamde | APPELLANT  |
| Vs                                                     |            |
| State of Chhattisgarh                                  | RESPONDENT |

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**Date of Decision :** 23-09-2010

**Acts Referred:**

All India Council for Technical Education Act, 1987 — Section 10, 23

**Citation :** (2010) 09 CHH CK 0009

**Hon'ble Judges :** R.N. Chandrakar, J;Dhirendra Mishra, J

**Bench :** Full Bench

**Final Decision :** Dismissed

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## Judgement

Dhirendra Mishra, J.—The Petitioners are presently working as Lecturer (Selection Grade) in Polytechnic College since 1999-2000. They have experience of working as regular lecturer of 21 years and they have work experience as lecturer (Selection Grade) of 8 years.

2. The Petitioners have filed this petition for declaring the Chhattisgarh Technical Education (Gazetted) Service (Teaching Cadre-Polytechnic) Recruitment Rules, 2005 (for short "the Rules, 2005") to the extent of providing eligibility criteria for promotion to the post of Principal ultra vires Sections 10 & 23 of All India Council For Technical Education Act, 1987 (for short "the Act, 1987") and notification dated 30th December, 1999.

3. Contention of the Petitioners is that All India Council for Technical Education (for short "AICTE") is vested with statutory authority for planning, formulation and the maintenance of norms and standards, accreditation, funding of priority areas, monitoring and evaluation, maintaining parity of certificates and awards and ensuring the co-ordinated and integrated development of technical and management education. Section 10 of the Act of 1987 deals with Functions of the Council whereas Section 23 confers power to make regulations.

4. AICTE vide its notification dated 30th December, 1999 notified revision of Pay

Scales and associated terms and conditions of service of teachers, librarians and physical education personnel for diploma level technical institutions (Annexure-P/5). Appendix B appended with the notification of Annexure-P/5 deals with Qualifications & Experience For The Teaching Posts In Diploma Level Technical Institutions (Engineering/Technology Programmes). The qualification and experience for the post of Principal has been prescribed at S. No. 4 of Appendix B which provides that a candidate should have 15 years experience in teaching out of which at-least 5 years shall be at the level of Head of Department or equivalent. However, the Respondent has illegally and arbitrarily without following the mandatory guidelines/notifications and conditions of the AICTE deleted the word "equivalent" while prescribing the eligibility for promotion to the post of Principal and to that extent eligibility criteria prescribed in Schedule IV for promotion to the post of Principal under the Rules, 2005 is ultra vires. The Government is required to amend its rules, regulations and bye-laws as per guidelines provided by the AICTE and they are obliged to make selection of Principal, Teachers and other staff according to the qualification & experience prescribed by the AICTE as is evident from communication of Annexure-P/7 sent by the AICTE to the Principal Secretary, Technical Education of the State of Chhattisgarh.

5. It was also argued that the Petitioners were appointed when the Chhattisgarh Technical Education (Gazetted) Service Recruitment Rules, 1990 was in force in which for the purpose of promotion to the post of Principal, Polytechnic College, teaching experience of 15 years out of which 5 years as HOD or equivalent has been prescribed.

6. On the other hand, learned Counsel for the State argued that the provisions contained in the Act of 1987 are regulatory and not mandatory in nature. AICTE vide its memo dated 3rd January, 2003 addressed to all the Secretaries of the States of India and Union Territories forwarded clarification on AICTE notification on revised pay scales and service conditions for teacher of Technical Institutes. Para-21 of the above clarification which is relevant for the purpose of this petition reads as under:

Taking local conditions into consideration, the State Government can implement modified Pay Scales and Service Conditions (including tier structure) other than those prescribed in the notification, in the Diploma Level Technical Institutes. However, they need to get these Pay Scales and Service Conditions approved by AICTE.

7. It was further argued that the State has the power to frame the laws for improving quality of technical education by virtue of Entry 25 of List 3 (Concurrent List) of Schedule VII of the Constitution of India. The Central Government/Union also holds the field by virtue of Entry 64 to 66 in list 1 of Schedule VII. The State cannot make any provision/regulation contrary to the field occupied by the Union of India. In the present case, the rules framed by the State Government are neither contrary to the directives of the Central AICTE

Authority nor it in any manner encroach upon the directives. Therefore, the rules cannot be held ultra vires the Act of 1987 or notification of Annexure-P/5 issued by the AICTE.

8. We have heard learned Counsel for the parties.

9. From perusal of the statement of objects and reasons of the Act of 1987, it is clear that AICTE is vested with the powers to regulate and maintain standards of technical education in the country. AICTE vide its notification dated 30th December, 1999 formulated revision of Pay Scales and Service Conditions for Diploma Level Technical Institutions in the country based on recommendations of the Central 5th Pay Commission. The recommendations of the AICTE were sent to the Government of India for approval. The Government of India, after examination of the recommendations, circulated the same to all the State Governments and Union Territory Administrations for information and appropriate action. Appendix B of Annexure-P/5 prescribes Qualifications & Experience For the Teaching Posts In Diploma Level Technical Institutions (Engineering/Technology Programme). The qualification for promotion on the post of Principal is given at S. No. 4 according to which 15 years experience in teaching out of which at least 5 years shall be at the level of Head of Department or equivalent whereas, under Schedule 4 framed under Rule 14 and 15 of the Rules, 2005 for promotion on the post of Principal of Polytechnic, the eligibility criteria prescribed is 8 years as HOD (Engineering/Technology).

10. From comparison of eligibility criteria prescribed under the Rules, 2005 and the Act of 1987 for the post of Principal, it is clear that by framing the impugned rules prescribing the eligibility criteria for promotion on the post of Principal, Polytechnic, the State Government has not compromised with the minimum qualification/experience prescribed under the Act of 1987. On the contrary, higher standard i.e. 8 years experience as HOD has been prescribed.

11. It is settled law that change of eligibility condition for promotion/recruitment is a policy decision and the same cannot be interfered with by the Court. See Basic Education Board, U.P. Vs. Upendra Rai and Others, ; Union of India (UOI) and Others Vs. Deo Narain and Others, .

12. On the basis of aforesaid discussion, we are of the opinion that challenge to the constitutional validity of the Rules, 2005 whereby for promotion on the post of Principal, Polytechnic College, 15 years teaching experience out of which 5 years experience as HOD prescribed in Schedule 4 framed under Rules 14 and 15 of the Rules, 2005 cannot be declared ultra vires on the grounds taken by the Petitioners.

13. In the result, the instant petition has no merit, the same deserves to be and is accordingly dismissed.