
(2020) 08 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16367, 9122, 18604 Of 2019(O&M)

Satish Kumar Kakkar

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 07-08-2020

Acts Referred:

Citation : (2020) 08 P&H CK 0032

Hon'ble Judges : Anil Kshetarpal, J

Bench : Single Bench

Advocate : Puneet Jindal, Tajinder Singh, Shreenath A Khemka, Sumit Singh, Vivek Sethi, Sharan Sethi

Final Decision : Disposed Of

Judgement

Anil Kshetarpal, J

By this judgment, Civil Writ Petition No. 16367, 9122 and 18604 of 2019, involving the identical questions, shall stand decided. Learned counsel for the parties are also ad idem that all three writ petitions can be conveniently disposed of by a common judgment.

The Central Electricity Authority in exercise of its power under the Electricity Act, 2003, framed 'The Central Electricity Authority (Measures

Relating to Safety and Electric Supply) Regulations, 2010 (hereinafter referred to as 'the 2010 Regulations'), which came into force from

24.09.2010 . These Regulations were subsequently amended on 13.4.2015. In order to achieve the goal of 'ease of doing business', a provision

was made to authorize the appropriate Government to certify Chartered Electrical Safety Engineer (hereinafter referred to as CESE) to assist the

owner or supplier or consumer of electrical installation for the purpose of self

certification under Regulation 30 and 43 of the 2010 regulations.

Pursuant to the aforesaid Regulations, the office of the Chief Electrical Inspector, Haryana issued a public notice inviting applications for authorization

of the CESE(s) in State of Haryana while prescribing the following eligibility conditions for getting empaneled and entitling them to work as the

CESE(s):-

â??(i) He/she should possess a degree in electrical engineering or a qualification which is equivalent to it from a University established or

incorporated by or under a Central or State Act or an institution recognized by the University Grants Commission under the University

Grants Commissions Act, 1956 and approved by the AICTE.

(ii) He/she has at least five years of practical experience in construction, operation and maintenance of the electrical installations.

(iii) He/she holds a valid Electrical Supervisor Competency Certificate issued by any State Licensing Board.

(iv) He/she has attained the age of 26 years but has not completed 64 years age on the closing date for submission of applicationâ??.

On receipt of the applications, 209 qualified persons were empaneled and hence, authorized to practice as the CESE(s) including the writ petitioners.

On 1.3.2018, the 2010 Regulations were again amended. In accordance with the Regulation 5(a) of the amended Regulations, the Central Electricity

Authority issued guidelines on 26.6.2018 enumerating the procedure to be followed for authorizing the CESE(s). In the aforesaid guidelines, while

prescribing the minimum qualifications of the CESE(s), a provision was made for enabling the concerned Government to conduct a qualification

test/interview before authorizing a CESE to practice as such. The amended guidelines prescribing the minimum eligibility requirements are extracted

as under:-

â??3. Qualification of Chartered Electrical Safety Engineer:

(a) The Chartered Electrical Safety Engineers shall be an Electrical Engineering degree holder or equivalent degree with at least five years

of experience in operation and maintenance of electrical installations and also should have the knowledge of the words related to

observance of electrical safety regulations or an Electrical Engineering Diploma holder with at least 10 years of experience in operation

and maintenance of electrical installations and also should have the knowledge of the works related to observance of electrical safety

regulations.

(b) He/ She shall qualify the prescribe test/ interview conducted by Electrical Inspectorate Department of the concerned Government, after

paying the requisite fees. The procedure for the test/interview shall be decided by the respective Government.

(c) He/She shall have the knowledge of Central Electricity Authority (Measures relating to Safety and Electric Supply), Regulations, 2010

(as amended) and other relevant Act and Regulation related to electricity supply in the respective State Government.

(d) Retired Chief Electrical Inspector/ Electrical Inspector who were already notified by Appropriate Government would be eligible for

CESE. However, State Government would have the responsibility to take the decision on exemption for test/interview for retired Chief

Electrical Inspector/Electrical Inspector.

(e) The Chartered Electrical Safety Engineers shall not hold any post in Govt./ Semi Govt./PSUs or associated with any organizations which

directly or indirectly influence the working of CESE.

(f) He/ She shall for all the time in his possession have the basic testing equipments (some basic testing equipment given in Annexure-I) as

may be prescribed by the office of the Chief Electrical Inspector/Electrical Inspector for testing of the electrical installationsâ??.

The writ petitioners, as noted above, were practising as the CESE(s) authorized by the Chief Electrical Inspector in the year 2016. Their grievances

are that these amended guidelines cannot be made applicable to the existing CESE(s) and they have a right to continue to practice as such upto the

age of 65 years without appearing in eligibility test as prescribed under the amended guidelines. In these circumstances and in the considered view of

this Court, the following questions arise:-

1. Whether a certified professional, authorized to practice as a professional in a specialized field, can claim a right to continue to practice without

undergoing and clearing the test subsequentlyprescribed by the authorization agency ?

or

Can a Govt. agency having power to authorize or to certify a professional to practice in a specialized field subsequently prescribe a mandatory test for those who intend to continue practice as professionals in that specialized field?

2. Whether subsequent prescription of maximum age of 62 years to sit/participate in the mandatory eligibility test, for existing certified professionals resulting in their disqualification to practice, is arbitrary once the maximum age for practice is upto 65 years?

or

Whether an existing/certified authorized professional entitled to practice in a specialized field upto the age of 65 years can be debarred from writing in a subsequent prescribed test merely on the ground that he is now beyond the age of 62 years?

At the outset, it is important to note that subsequent to the amendment of the 2010 Regulations, a test was held by the Panjab University on the

directions of the State of Haryana on 07.07.2019, however, none of the aspirants qualified the same. In this situation, State of Haryana has issued a

circular dated 28.8.2019 notifying that now there are no CESE(s) so the owner may get his electric installation tested/inspected through his own

eligible engineer who fulfills the qualification and experience as per Regulation 5 (a) of the Central Electricity Authority (Measures Relating to Safety

and Electric Supply) Amended Regulation, 2018 (hereinafter referred to as the 2018 Regulations). The authorization of the existing CESE(s)

has been cancelled with immediate effect.

This Court has heard learned counsel for the parties at length and with their able assistance, gone through the pleadings and the documents.

Learned senior counsel for the writ petitioners, appearing in Civil Writ Petition No. 16367 of 2019, has submitted that the amendment brought in the

year 2018 amending the 2010 Regulations is prospective and therefore, these Regulations are applicable to new applicants only. He further submitted

that the vested right of the writ petitioners cannot be taken away by a subsequent amendment which is prospective. There is no provision for the

existing CESE(s) in the guidelines and therefore, the amended 2010 Regulations are not applicable to the existing CESE(s). He further submitted that

in the absence of any enabling power in the Statute, the subordinate legislation could not be made effective from retrospective date.

Mr. Shreenath A Khemka, Advocate, who appeared for the petitioners in Civil Writ Petition No. 9122 of 2019, has submitted that once the State

Government has certified/authorized the CESE(s) to practice upto the age of 65 years, the permission granted could not be recalled/cancelled by

incorporating an amendment in the 2010 Regulations. The authorization could only be revoked consequent upon a misconduct and that also after giving

an opportunity of being heard. The amendment to the regulations cannot be made applicable to the existing CESE(s) in view of the 'doctrine of

promissory estoppel' because the writ petitioners abandoned their existing employment to practice as the CESE(s). He further submitted that in the

year 2016, the authorizations were not made in vacuum but were issued under the policy instructions wherein the eligibility criteria was mutatis

mutandis to that of the 2018 Central Guidelines.

On the other hand, Mr. Sharan Sethi, learned Additional Advocate General, Haryana, has defended the action of the State of Haryana on the ground

that it has acted as per the Guidelines issued by the Central Electricity Authority. The writ petitioners do not have any vested right. These guidelines

have been amended so as to ensure that only professionals with good knowledge, work as the CESE(s) because it concerns safety of the human

beings and the premises.

Before examining the arguments of learned counsel for the parties, it would be appropriate to notice the right of the writ petitioners to continue

practice as the CESE(s). The writ petitioners are Electrical Engineers. They were empanelled as the CESE(s). The State Government is not required

to pay any amount to such empaneled engineers. The CESE(s) neither hold any post nor the office. They are to be paid by the consumer who engages

them for inspection of his/her premises. There was no assurance from the State Government or its agency with respect to the quantum of the work or

the income a CESE would be able to earn. Thus, the writ petitioners were empaneled/listed/recognized as professionals who could inspect the

premises of the consumer and certify safety of the electrical instruments and installations.

The first argument of learned senior counsel with respect to applicability of the new guidelines with retrospective effect cannot be accepted because

the writ petitioners have not been declared ineligible from the period anterior to

the amended Regulations and the new Guidelines. These have been made applicable from the time the new guidelines came into force. On careful reading of the new guidelines issued in the year 2018, it is apparent that these regulations/guidelines are not only applicable to the new applicants but also to the existing CESE(s). Reference in this regard can be made to clause (d). The writ petitioners have not been appointed on a post or office. The writ petitioners cannot claim themselves that they are in service of the respondent-State. The respondents have only made a provision directing the new as well as the existing Electrical Engineers who are interested to practice as CESE(s) to undergo a test to check and verify their up-to-date technical knowledge and also to examine as to whether the person who is interested to practice as a CESE is keeping himself abreast with the latest development in the concerned field or not. This Court does not find that the amended Regulations are being made applicable with retrospective effect.

As noticed in the facts that when the test was conducted by the Panjab University on 07.07.2019, none of the applicants could sail through. A

consumer engages a CESE(s) to check the safety of the electrical installations. If the concerned engineer does not keep him up-to-date, the safety of

the consumer and the public at large would stand compromised. The CESE(s) have been empaneled to help the office of the Chief Electrical

Inspector in inspection of the electrical installations. In fact, the Chief Electrical Inspector has delegated its function of inspection of the premises to

the CESE(s). This is for the benefit of the public at large. However, the writ petitioners have failed to show that there was any illegality in directing

such engineers to undergo a test so as to rule out the possibility of incompetent individual to practice as such.

Although learned counsel for the writ petitioners has submitted that the writ petitioners have a vested right, however, failed to draw attention of this

Court to any such provision. Merely because CESE(s) were permitted to practice upto the age of 65 does not create any vested right in their favour.

As previously noticed, the writ petitioners have only been empanelled with no assurance or guarantee with respect to quantum of the work or the remuneration.

The next argument of the learned counsel for the writ petitioners that the new guidelines do not make a provision for the existing CESE(s) is factually

incorrect because on careful reading of the regulations, it is apparent that the regulatory authority has made a provision for the existing CESE(s) i.e.

clause (d) which is extracted above. Thus, it cannot be said that the new guidelines are not applicable to the existing CESE(s).

The next argument of learned counsel for the writ petitioners with regard to the retrospectivity of the subordinate legislation without enabling power in

the Statute need not to be examined because the subordinate legislation is not found to be retrospective.

In CWP 16367-2019 learned senior counsel has relied upon judgment passed in J.S.Yadav Vs. State of Uttar Pradesh and another (2011) 6 SCC 570

in support of his submission. The Hon'ble Supreme Court in the aforesaid case was examining removal of the appellant as a member of Human Rights

Commission. The appellant was appointed as a member of the Commission on 29.6.2006 for a period of 5 years i.e till 30.6.2011 whereas the

amendment in the Act came into force w.e.f 23.11.2006. The Hon'ble Supreme Court after examining the meaning of the word 'vested' in paras 20

to 22 which are extracted as under, held that the vested right of the petitioner has been taken away.

20. 'vested' is defined in Black's Law Dictionary (6th Edn.) at p. 1563, as:

'Vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to

be defeated by a condition precedent.'

Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present

interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute

vested rights. In Webster's Comprehensive Dictionary (International Edn.) at p. 1397, 'vested' is defined as:

'[L]aw held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interests.'

(See Bibi Sayeeda v. State of Bihar [(1996) 9 SCC 516 : AIR 1996 SC 1936] at SCC p. 527, para 17.)

21. The word 'vested' is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the

long usage the said word 'vest' has also acquired a meaning as 'an absolute or indefeasible right'. It had a 'legitimate' or 'settled

expectation' to obtain right to enjoy the property, etc. Such 'settled expectation' can be rendered impossible of fulfilment due to change in law

by the legislature. Besides this, such a 'settled expectation' or the so-called 'vested right' cannot be countenanced against public interest and

convenience which are sought to be served by amendment of the law. (Vide Howrah Municipal Corpn. v. Ganges Rope Co. Ltd. [(2004) 1 SCC 663]

)

22. Thus, 'vested right' is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested

right can be taken away only if the law specifically or by necessary implication provides for such a course.

In J.S.Yadav's case (supra), the appellant was appointed as a member of the Commission. In the present case, the petitioners have never been

appointed either to a post or to an office. Therefore, the aforesaid judgment would have no applicability.

Learned senior counsel has also relied upon an interim order passed by the Division Bench in CWP No.18143 of 2018. Ultimately, the aforesaid writ

petition was dismissed as infructuous because the State Govt. withdrew the requirement of State Eligibility Test in Computer Application. In these

circumstances, there is no final judgment of the Division Bench.

Learned counsel has further relied upon a Five Judge Bench Judgment in Keshav Lal Jetha Lal vs. Mohan Lal Bhagwan AIR 1968 SC 1336 which

was followed in Jaimal and Company vs. Commissioner (2016) 15 SCC 125. Both these judgments are with respect to retrospectivity. In the present

case, it has been found as a matter of fact that the subordinate legislation or the guidelines issued are not retrospective.

It may be noted here that the Hon'ble Supreme Court in State of Uttar Pradesh vs. Ramesh Chandra Sharma and others (1995) 6 SCC 527 after

explaining its previous judgment in Kumari Shrilekha Vidyarthi etc. Vs. State of UP and others (1991) 1 SCC 212 have held that if an Advocate is

engaged by the Govt. for a term, such engagement is not an appointment on a post in Govt. service. Therefore, there is no automatic renewal of his

term upto the age of superannuation. Still further, a three Judge Bench in 'State

of U.P. Vs. Hirendra Pal and others' (2011) 5 SCC 305 went on to hold that the contractual professional engagement of the Advocates is not an appointment and therefore, reduction in the criteria of maximum age of an Advocate to be engaged from 62 years to 60 years, could be reduced by the Govt. unilaterally.

Now let us examine the arguments of Mr. Khemka. As regards his first argument that once the permission has been granted, the same could not be recalled/revoked upto the age of 65 years except as provided under the 2016 Regulations, does not stand close scrutiny. The permission has neither been recalled or revoked. As per the new Regulations and Guidelines, the existing CESE(s) have been directed to undergo a test so as to verify that whether they are keeping themselves abreast with the latest development or not. The new Regulations do not result in revoking the permission already granted.

The next argument of the learned counsel that the new Regulations requiring existing CESE(s) to undergo the test is in the violation of the direction to promissory estoppel, is also found to be without substance. In the year 2016, no promise is proved to have been made to the existing CESE(s) including the writ petitioners. On the application submitted by the Electrical Engineers, they were only enlisted without any further promise of remuneration or quantum of work. Therefore, the doctrine of promissory estoppel cannot be invoked. Still further, the pleading with regard to promissory estoppel are laconic and insufficient. The writ petitioners, in one para, have pleaded that they have left their jobs to apply for empanelment.

However, no details thereof have been given. Before invoking the doctrine of promissory estoppel, it is mandatory for the party to plead and establish by disclosing sufficient details as to how they have changed their position or have acted on the promise made by the respondents. In fact, no promise on the part of the respondents can be deduced from the Regulations, Guidelines and Public Notice.

The last argument of learned counsel also does not have any substance because the new regulations are applicable to the existing CESE(s) and this Court does not find that such provision is either arbitrary or is not in public interest.

There is another aspect of the matter which needs certain discussion. The

CESE(s), as per the regulations issued in the year 2016 as well as in the year 2018, provide that such CESE(s) are entitled to work as such upto the age of 65 years. However, the respondent-Haryana State has now debarred the new as well as the existing CESE(s) to apply if they have crossed the age of 62 years. This Court is examining its correctness only in the context of the existing CESE(s). If the existing CESE(s) has crossed the age of 62, when the new regulations/guidelines came into force, he is debarred from applying. The respondents have tried to justify such a provision by stating that the initial permission is granted for a period of three years. However, the existing CESE(s) already have the permission to practice. Thus, debarring such a person from participating in the test, the moment he crosses the age of 62 is arbitrary and illegal. The empanelled engineer still has three more years to go. Merely because the existing CESE(s) has crossed the age of 62 years when the amended Regulations have come into force would not be sufficient to debar him from appearing in the test. If such an existing Electrical Engineer is willing to participate in the test and establish his knowledge and capacity to work, there is no reason as to why he should be debarred particularly when life expectancy has increased and the respondents are not assuring any quantum of work or the remuneration to them.

Keeping in view the aforesaid discussion, the writ petitions are disposed of with the direction that the prescription of minimum age of 62 years for the existing CESE(s) to apply and participate in the test is declared arbitrary and illegal as the object sought to be achieved by making such provision is not found to be in accordance with law.