
(2019) 08 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 260 Of 2019 (O&M)

State Of Haryana And Others

APPELLANT

Vs

Prem Chand And Others

RESPONDENT

Date of Decision : 05-08-2019

Acts Referred:

University Grants Commission Act And Rules & Regulations Under The Act, 1956 —
Section 23

Citation : (2019) 08 P&H CK 0009

Hon'ble Judges : Krishna Murari, CJ;Arun Palli, J

Bench : Division Bench

Advocate : B.R.Mahajan, Deepak Balyan, R.K.Malik, Sunil Hooda

Final Decision : Allowed

Judgement

Krishna Murari, CJ

1. This intra-court appeal under Clause X of the Letters Patent has been filed by the State of Haryana laying a challenge to the judgment and order dated 08.08.2018 passed by the learned Single Judge in Civil Writ Petition No. 11789 of 2010 whereby the claim of respondents-petitioners No.1,3, 5 and 7 for promotion to higher posts along with all advantages and benefits have been allowed in the light of the directions issued by the Hon'ble Apex Court in the case of Orissa Life Irrigation Corporation Ltd. v. Rabi Sankar Patro and others (2018) 1 Supreme Court Cases 468, and with respect of rest of the respondents, it has been directed that proceedings qua them shall go on.

2. Facts giving rise to the dispute in brief can be summarized as under:-

All the respondents-petitioners joined as Junior Engineers in Public Health Engineering Department of the State of Haryana on different dates between the period 1995 to 2007. Respondent No.8 joined as Head Draftsman on 19.07.1995. During the course of their employment, all the respondents-petitioners obtained higher qualification of B.Tech. from Janardhan Rai Nagar Rajasthan Vidyapeeth

University.

All of them submitted their certificates of degree of B.Tech. before respondent No.2 for consideration of their claim for grant of benefit of increments and promotion as Sub Divisional Engineers. The claim of the respondents-petitioners was turned down by the appellants on the ground that the qualification of B.Tech. degree obtained from Janardhan Rai Nagar Rajasthan Vidyapeeth University is not recognized.

3. Based upon certain alleged policy decision of the Haryana Government that all the Junior Engineers who have rendered five years regular service and acquired the degree in Engineering shall be granted the benefit of two advance increments and also the policy decision said to have been taken on 02.11.1999 that the qualification awarded by recognized universities shall be deemed to be recognized by the State of Haryana, filed the writ petition challenging the decision of the State Government to reject their claim on the ground that the degree was not from a recognized university. Reliance in the writ petition was also placed on the decisions of the Division Benches of this Court holding that the degree awarded by Janardhan Rai Nagar Rajasthan Vidyapeeth University is recognized as the said university is a deemed to be university duly recognized by the University Grants Commission.

4. During the pendency of the writ petition, respondents-petitioners No.1,3, 5 and 7 filed a Civil Miscellaneous Application with the prayer that in view of the decision of the Hon'ble Supreme Court in the case of Orissa Lift Irrigation Corporation Ltd. v. Rabi Sankar Patro and others (supra) since they appeared in the examination conducted in the month of May-2018 by All India Council for Technical Education and have qualified the same, their degree(s) will be deemed to be validly issued and they will be entitled to restoration of all the benefits including that of promotion.

5. Learned counsel for the appellants vehemently contended that the said application was disposed of by the learned Single Judge on the first date of hearing by relying upon para-57 of the said judgment holding that the degree(s) of respondents-petitioners No.1,3,5 and 7 will be treated as valid in service matters including promotion etc. and accordingly issued a direction for their promotion from due dates. With respect to rest of the respondents-petitioners, it was directed that if the employees clear the test/tests within the stipulated time, all the advantages/benefits shall be restored to them and their degrees will stand revived fully.

6. Aggrieved by the aforesaid order, the instant Letters Patent Appeal has been preferred.

7. It is contended on behalf of the appellants that the learned Single Judge erred in allowing the petition qua respondents-petitioners No.1,3, 5 and 7 on the basis of the directions contained in paragraph-57 of the judgment of the Supreme Court rendered in Orissa Lift Irrigation Corporation Ltd. v. Rabi Sankar Patro and

others (supra) inasmuch as the Hon'ble Apex Court had confined the benefit of validating the degree(s) only to such employees who obtained B.E./B.Tech. and AMIE degree(s) etc. during the academic sessions 2001-2005 that is between the academic sessions 2001-02, 2002-03, 2003-04 and 2004-2005. It is also submitted that no evidence has been produced by any of the respondents-petitioners either in the writ petition or even in the Civil Miscellaneous Application to demonstrate that they were enrolled to obtain the educational qualification of degree of B.E./B.Tech & AMIE either from Janardhan Rai Nagar Rajasthan Vidyapeeth University or other deemed to be universities during the above said academic years only.

8. Learned counsel for the appellants also vehemently submitted that the learned Single Judge has erred in taking into consideration only paragraph-58 of the judgment in Orissa Lift Irrigation Corporation Ltd. v. Rabi Sankar Patro and others (supra) ignoring the observations made in paragraphs 57, 66, 67 and 68 of the judgment.

9. The issue before the Hon'ble Apex Court for consideration in above noted case was in respect of validity of a B.Tech. degree obtained while in service from a deemed university through distance education mode. Orissa High Court while holding the degree to be valid had allowed the writ petition filed by such degree holders claiming promotion to higher posts which was under challenge before the Apex Court.

10. The same issue came up for consideration before the Punjab and Haryana High Court in a Public Interest Litigation Civil Writ Petition No. 1640 of 2008 Kartar Singh v. Union of India 2012 SCC Online P&H 21066. This Court held the degree(s) to be illegal by making the following observation:-

"In terms of the directions of the Commission, it was necessary for the Deemed to be Universities to seek approval from AICTE. In view of the above, we hold that the Deemed to be Universities have started courses in technical education in violation of the guidelines, instructions, circulars and regulations framed by the Commission not only when they started such courses but also in establishing Study Centres outside their territorial limits and in subjects for which they were not granted Deemed to be university status. Therefore, degrees awarded by such Deemed to be Universities is an illegal act and such illegality cannot be removed or cured by the actions of either the Commission or DEC."

11. The declaration invalidating the degree(s) obtained through Distance Education mode by this Court was subject matter of challenge before the Hon'ble Apex Court. Similarly, the contrary view taken by the Orissa High Court was also challenged by the Orissa Lift Irrigation Corporation Ltd. before the Apex Court. Since the issues raised in two matters were common, they were clubbed together and were decided by the common judgment.

12. After due deliberation Hon'ble Apex Court accepted the view taken by the High Court of Punjab and Haryana High Court in the case of Kartar Singh v.

Union of India (supra) and set aside the decision of the High Court of Orissa. The Apex Court was of the view that entire exercise of grant of ex post facto approval to the deemed universities to conduct such courses was incorrect and illegal and directions ought to be issued to recall all the degrees granted in pursuance thereof. However, taking a sympathetic view in the matter since 2004 UGC Guidelines themselves gave liberty to the deemed to be universities concerned to apply for ex post facto approval observed in paragraphs 57, 58 and 59 as under:-

"57. Having found the entire exercise of grant of ex post facto approval to be incorrect and illegal, the logical course in normal circumstances would have been not only to set aside such ex post facto approvals but also to pass consequential directions to recall all the degrees granted in pursuance thereof in respect of courses leading to award of degrees in Engineering. However, since the 2004 UGC Guidelines themselves had given liberty to the deemed to be universities concerned to apply for ex post facto approval, the matter is required to be considered with some sympathy so that interest of those students who were enrolled during the academic sessions 2001-2005 is protected. Though we cannot wish away the fact that the deemed to be universities concerned flagrantly violated and entered into areas where they had no experience and started conducting courses through distance education system illegally, the overbearing interest of the students concerned persuades us not to resort to recall of all the degrees in Engineering granted in pursuance of the said ex post facto approval. However, the fact remains that the facilities available at the study centres concerned were never checked nor any inspections were conducted. It is not possible at this length of time to order any inspection. But there must be confidence and assurance about the worthiness of the students concerned. We, therefore, deem it appropriate to grant some chance to the students concerned to have their ability tested by authorities competent in that behalf. We, therefore, direct that all the degrees in Engineering granted to students who were enrolled during the academic years 2001 to 2005 shall stand suspended till they pass such examination under the joint supervision of AICTE-UGC in the manner indicated hereinafter. Further, every single advantage on the basis of that degree shall also stand suspended.

58. AICTE is directed to devise within one month from the date of this judgment modalities to conduct appropriate test(s) both in written examination as well as in practicals for the students concerned admitted during the academic sessions 2001-2005 covering all the subjects concerned. It is entirely left to the discretion of AICTE to come out with such modalities as it may think appropriate and the tests in that behalf shall be conducted in the National Institutes of Technology in the respective States wherever the students are located. The choice may be given to the students to appear at the examination which ideally should be conducted during May-June 2018 or on such dates as AICTE may determine. Not more than two chances be given to the students concerned and if they do not pass the test(s) their degrees shall stand recalled and cancelled. If a particular student does not wish to appear in the test(s), the entire money deposited by

such student towards tuition and other charges shall be refunded to that student by the deemed to be university concerned within a month of the exercise of such option. The students be given time till 15-1-2018 to exercise such option. The entire expenditure for conducting the test(s) in respect of students who wish to undergo test(s) shall be recovered from the deemed to be universities concerned by 31-3-2018. If they clear the test(s) within the stipulated time, all the advantages or benefits shall be restored to the candidates concerned. We make it clear at the cost of repetition that if the candidates concerned do not clear the test(s) within the time stipulated or choose not to appear at the test(s), their degrees in Engineering through distance education shall stand recalled and cancelled. It goes without saying that any promotion or advancement in career on the basis of such degree shall also stand withdrawn, however, any monetary benefits or advantages in that behalf shall not be recovered from them.

59. As regards the students who were admitted after the ex post facto approval granted in favour of such deemed to be universities, in our view, there was no sanction whatsoever for their admission. The policy statements as well as warnings issued from time to time were absolutely clear. The students were admitted on the strength either of provisional recognition or on the strength of interim orders passed by the High Court. We therefore, declare that in respect of students admitted after the academic sessions of 2001-2005, the degrees in Engineering awarded by the deemed to be universities concerned through distance education mode shall stand recalled and be treated as cancelled. Any benefit which a candidate has secured as a result of such degrees in Engineering in the nature of promotion or advancement in career shall also stand recalled. However, if any monetary benefit was derived by such candidates that monetary benefit or advantage will not be recovered by the departments or employers concerned. We, further direct that the entire amount paid by such students to the deemed to be universities concerned towards tuition fee and all other expenditure for such courses through distance education learning shall be returned by the deemed to be universities concerned to the respective students. This direction shall be complied with by the deemed to be universities concerned scrupulously and the amounts shall be returned by 31-5-2018 and an appropriate affidavit to that extent shall be filed with UGC within a week thereafter."

The aforesaid observations of the Apex Court have been concluded in paragraph-66 of the judgment which read as under:-

"66. Accordingly, we direct:

66.1. The 1994 AICTE Regulations, do apply to deemed to be universities and the deemed to be universities in the present matter were not justified in introducing any new courses in technical education without the approval of AICTE.

66.2. Insofar as candidates enrolled during the academic sessions 2001-2005, in the present case the ex post facto approvals granted by UGC and their

authorities concerned are set aside.

66.3. Consequent to aforesaid Direction II, all the degrees in Engineering awarded by deemed to be universities concerned stand suspended.

66.4. AICTE shall devise the modalities to conduct an appropriate test(s) as indicated in para 58 above. The option be given to the students concerned whose degrees stand suspended by 15-1-2018 to appear at the test(s) to be conducted in accordance with the directions in para 58 above. Students be given not more than two chances to clear test(s) and if they do not successfully clear the test(s) within the stipulated time, their degrees shall stand cancelled and all the advantages shall stand withdrawn as stated in paras 57 and 58 above. The entire expenditure for conducting the test(s) shall be recovered from the deemed to be universities concerned by 31-3-2018.

66.5. Those students who do not wish to exercise the option, shall be refunded entire money deposited by them towards tuition fee and other charges within one month of the exercise of such option. Needless to say, their degrees shall stand cancelled and all advantages/benefits shall stand withdrawn as mentioned in para 58.

66.6. If the students clear the test(s) within the stipulated time, all the advantages/benefits shall be restored to them and their degrees will stand revived fully.

66.7. As regards students who were admitted after the academic sessions 2001-2005, their degrees in Engineering awarded by the deemed to be universities concerned through distance education mode stand recalled and be treated as cancelled. All benefits secured by such candidates shall stand withdrawn as indicated in para 59 above. However, the entire amount paid by such students to the deemed to be universities concerned towards tuition fees and other expenditure shall be returned by the deemed to be universities concerned by 31-5-2018, as indicated in para 59.

66.8. By 31-5-2018 all the deemed to be universities concerned shall refund the sums indicated above in para 66.7 and an appropriate affidavit to that extent shall be filed with UGC within a week thereafter.

66.9. We direct CBI to carry out thorough investigation into the conduct of the officials concerned who dealt with the matters and went about granting permissions against the policy statement, as indicated in para 60 above and into the conduct of institutions who abused their position to advance their commercial interest illegally. Appropriate steps can thereafter be taken after culmination of such investigation.

66.10. UGC shall also consider whether the deemed to be university status enjoyed by JRN, AAI, IASE and VMRF calls for any withdrawal and conduct an inquiry in that behalf by 30-6-2018 as indicated above. If the moneys, as directed above, are not refunded to the students concerned, that factor shall be

taken into account while conducting such exercise.

66.11. We restrain all deemed to be universities to carry on any courses in distance education mode from the academic session 2018-2019 onwards unless and until it is permissible to conduct such courses in distance education mode and specific permissions are granted by the statutory/regulatory authorities concerned in respect of each of those courses and unless the off-campus centres/study centres are individually inspected and found adequate by the statutory authorities concerned. The approvals have to be course specific.

66.12. UGC is further directed to take appropriate steps and implement Section 23 of the UGC Act and restrain deemed to be universities from using the word "university" within one month from today.

66.13. The Union of India may constitute a three-member Committee comprising of eminent persons who have held high positions in the field of education, investigation, administration or law at national level within one month. The Committee may examine the issues indicated above and suggest a road map for strengthening and setting up of oversight and regulatory mechanism in the relevant field of higher education and allied issues within six months. The Committee may also suggest oversight mechanism to regulate the deemed to be universities. The Union of India may examine the said report and take such action as may be considered appropriate within one month thereafter and file an affidavit in this Court of the action taken on or before 31-8-2018. The matter shall be placed for consideration of this aspect on 11-9-2018."

13. Subsequently, various clarification applications were filed before the Apex Court in the matter. The issue was clarified vide order dated 22.01.2018 in Misc. Applications No. 1795-1796 of 2017 in Civil Appeal Nos. 17869-17870 of 2017 as under:-

"25. We now turn to the general submission advanced by all the learned counsel that the candidates after securing the degrees in Engineering through distance education mode, have advanced in career and that their ability was tested at various levels and as such requirement of passing the examination in terms of the judgment be dispensed with in their case. We cannot make any such exception. The infirmity in their degrees is basic and fundamental and cannot be wished away. At the same time, we find some force in their submission that if the suspension of their degrees and all advantages were to apply as indicated in the judgment, the candidates concerned may lose their jobs and even if they were to successfully pass the test, restoration of their jobs and present position would pose some difficulty.

26. 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:

26.1. 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 31-7-2018 whichever is earlier.

26.2. 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.

26.3. 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."

14. A perusal of the aforesaid clearly goes to show that one time relaxation was given in favour of those candidates only who enrolled during the academic years 2001-2005 with the deemed to be Universities for various courses in Engineering through Distance Education mode and who in terms of the judgment were eligible to appear in the tests to be conducted by the AICTE. Thus the recognition was granted only to such candidates who were enrolled during the academic years 2001-05 with the deemed to be universities.

15. From a combined reading of the directions given by the Apex Court in the judgment in Orissa Lift Irrigation Corporation Ltd. v. Rabi Sankar Patro and others (supra) and the clarification order dated 22.01.2018 it becomes apparent that the Hon'ble Apex Court had directed that the candidates who were enrolled during the academic sessions 2001-05 and exercised option to appear at the test to be conducted by the AICTE in terms of the judgment can retain the degrees in question and all the advantages flowing there from till one month after the declaration of the result of such test or till 31.07.2018 whichever is earlier and that if the benefits are withdrawn from them after 31.07.2018, then all such benefits and advantages will be restored to them on passing the examination in first or second chances as the case may be.

16. On analysis of the factual averments in the pleadings, we find that there is not even an averment much less any documentary evidence on record to establish that any of the respondents-petitioners were enrolled during the academic sessions 2001-05. On the contrary it has been categorically pleaded in the appeal by the appellants that respondent-petitioner No.1 acquired B.Tech. degree from Janardhan Rai Nagar Rajasthan Vidyapeeth University on 25.04.2009. Similarly, respondent- petitioner No.3 obtained degree from the

same university on 20.06.2017. Respondent-petitioner No.3 obtained degree on 20.06.2009 and respondent-petitioner No.7 was issued degree on 15.04.2010. A categorical averment has also been made in the appeal that none of the respondents-petitioners were enrolled and obtained degrees within the parameters prescribed by the Hon'ble Apex Court that is between the academic sessions 2001-05.

17. In the absence of any evidence muchless an averment to establish the fact that respondents-petitioners enrolled themselves with the university in question during the academic sessions 2001-05, they are not at all entitled to any benefit to be extended by the judgment of the Hon'ble Apex Court.

18. A perusal of the judgment of the learned Single Judge clearly goes to show that this aspect of the matter was not taken into consideration and thus the judgment suffers from a legal infirmity and is not liable to be sustained and stands set aside.

19. Accordingly, the appeal stands allowed.