

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 2670/2001

Date of Decision:20.05.2010

Ajay Kumar Uttam

Vs.

State of J&K and ors.

CORAM:

Mr. Justice J.P.Singh, Judge.

Appearing counsel:

For the Petitioner (s) : Mrs. Surinder Kour, Advocate

For the Respondent(s) : M/s S.K.Shukla & Nitin Bhasin,
Advocates.

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| i) | Whether approved for reporting
in Press/Journal/Media | : | Yes/No |
| ii) | Whether to be reported
in Digest/Journal | : | Yes/No |
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Petitioner had applied seeking consideration for selection against the post of Drawing Instructor in the pay scale of 5000-8000 notified vide Advertisement Notice No. 04 of 1999 dated 27.12.1999 by the Jammu and Kashmir Services Selection Board, Jammu minimum qualification wherefor was indicated as 3 years Diploma/2 years Draftsmanship in any Branch of Engineering.

He participated in the selection process, but could not find place in the Select List. He has filed this Petition questioning the selection of respondent Nos. 7 to 17 on various grounds.

At the time of consideration of the Writ Petition, his learned counsel restricted the petitioner's challenge to the selection of the respondents on the sole ground that they were

ineligible to compete for the posts because the qualification of Bachelor of Engineering, possessed by them was neither the prescribed qualification nor otherwise equivalent to the prescribed qualification of 3 years Diploma/2 years Draftsmanship in any Branch of Engineering.

Reliance is placed on *P.M.Latha & another versus State of Kerala & others*, reported as (2003) 3 SCC, 541.

Per contra, M/s Shukla & Nitin Bhasin, Advocates, submitted that Degree of Bachelor in Engineering, being a higher qualification in the field, to the one prescribed by the Board in Notification No. 04 of 1999, the respondents' selection by the Board was justified and that the respondents were not in any way ineligible to compete for the post merely because they possessed qualification higher than the one prescribed in the Notification. Learned counsel rely on the judgment delivered by this Court in *S.Gurmeet Singh and another versus State of J&K and others* decided on 13.12.2007.

I have considered the submissions of learned counsel for the parties and gone through the judgments referred to by learned counsel for the parties.

In the case referred to by the petitioner's learned counsel, Hon'ble Supreme Court of India has held B.Ed Degree Holders ineligible to compete for the notified posts of teachers in Primary School on the ground that Trained Teachers' Certificate was given to Teachers specially trained to teach small children in

Primary Classes whereas for B.Ed Degree Holders, the training imparted is to teach students of Classes above Primary.

The reasoning given by the Supreme Court for holding that those holding the B.Ed Degree did not possess the requisite qualification of Trained Teachers' Certificate which had been notified as requisite qualification for the posts of Primary Teachers may not be applicable to the facts of the present case, in view of the reasons which were adopted by this Court in S.Gurmeet Singh's case in holding that Degree in Engineering is a higher qualification to that of Diploma in Engineering relying on the judgment delivered by Hon'ble Supreme Court of India in *Jyoti K.K. & others versus Kerala Public Service Commission & others*, reported as JT 2002 (Suppl.1) SC 85, where the Hon'ble Supreme Court of India had observed as follows:-

"It is no doubt true, as stated by the High Court that when a qualification has been set out under the relevant rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. If a person has acquired higher qualifications in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case, it may not be necessary to seek far. Under the relevant rules, for the post of assistant engineer, degree in electrical engineering of Kerala University or other equivalent to qualification recognized or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is prescribed for the lower post, namely, the post of sub-engineer. In that view of the matter the qualification of degree in electrical engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post. In the event the government is of the view that only diploma holders should have applied to post of sub-engineers but not all those who possess higher qualifications, either this rule should have excluded in respect of candidates who possess higher qualifications or the position should have been made clear that degree holder shall not be eligible to apply for such post. When that position is not clear but on the other hand rules do not

disqualify *per se* the holders of higher qualifications in the same faculty, it becomes clear that the rule could be understood in an appropriate manner as stated above. In that view of the matter, the order of the High Court cannot be sustained.....”.

The reasoning adopted by the Court in S.Gurmeet Singh’s case in holding Degree in Engineering equivalent to that of Diploma in Engineering is as follows:-

“11. Although the Corrigendum issued by the Board providing for 10 additional points to those possessing Degree in Automobile Engineering/Mechanical Engineering, clearly demonstrates that the Board had treated Degree in Engineering in the relevant discipline as a qualification, higher to that of Diploma in Engineering, yet the question arising in the case, as to whether Degree in Engineering is a higher qualification may need deeper insight on the issue.

12. In order to ensure proper planning and coordinated development of the Technical education system throughout the country, the promotion of qualitative improvement of such education in relation to planned qualitative growth and for the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith, the Parliament of India, has enacted the All India Council for Technical Education Act, 1987, providing for the constitution of a Council by the name of All India Council for Technical Education. Looking to the powers and functions of the Council, as provided in the Act, it is abundantly clear that it is only the Technical Council constituted under the Act which governs inter alia, the programme of education, research and training in Engineering, Technology, Architecture etc., And the Technical Institutions imparting such education, meaning thereby that the Rules, Regulations and Notifications issued by All India Council for Technical Education, are guiding factors to determine the quality and the higher/lower status of the Degrees/Diplomas which the Technical Institutions governed by All India Council for Technical Education Act, 1987, issue in this respect.

13. During the course of hearing of these petitions, it was brought to my notice that the All India Council for Technical Education has been issuing various Notifications, which would demonstrate that the Council has been treating Degree in Engineering to be a higher qualification to that of Diploma in Engineering and it was precisely for this reason that it had treated those possessing Diploma in Engineering, eligible to have lateral entry in the second year of the Degree course of Engineering. One of such Notifications issued under Section 23 (1) of the All India Council for Technical Education Act, 1987 and published in Government Gazette Notification dated July 11, 1992, refers to the guidelines for lateral admission of the Diploma holders to the degree courses. Yet another Notification on the similar lines stands issued by All India Council for Technical Education on 12.1.2007, few paragraphs whereof are being quoted hereunder to appreciate the status of Diploma holders viz-a-viz Degree holders in the discipline of engineering. These paragraphs reads thus:

“No. F. 37-3/Legal/2007:- In exercise of the powers conferred by Sub-section (1) of section 23 read with section 10(b), (o) & (v) of the All India Council for Technical Education Act, 1987 (52 of 1987), following Regulations are hereby notified by the Council:

- (1) Short title and commencement:
- (a) These Regulations may be called the All India Council for Technical Education (AICTE) admission of students in Degree Engineering Programmes through lateral entry Regulations 2007.
- (b) They shall come into force w.e.f. the date of publication in the Official Gazette of India.
- (4) Applicability:

These Regulations shall be applicable to:

(a) All technical institutions of Govt., Govt. Aided and Private (Self financing) conducting courses/programs in the fields of technical, training and research in Engineering, Technology including MCA, Architecture, Town Planning Management, Pharmacy, Hotel Management & Catering Technology, Applied Arts & Crafts and such other programs and areas as are notified by the council from time to time.

(b) Universities including Deemed to be Universities of Government, Government Aided and Private (Self financing) conducting course/programs in the fields of technical education, training and research in Engineering, Technology including MCA, Architecture, Town Planning, Management, Pharmacy, Hotel Management & Catering Technology, Applied Arts & Crafts and such other programs and areas as are notified by the Council from time to time.

5. Requirement:-

Under section 10(o) of AICTE Act, it shall be the duty of the Council to take all such steps as it may think fit for ensuring coordinated and integrated development of technical and management education and maintenance of standards and for the purposes of performing the functions under this Act, the Council may provide guidelines for admission of students to technical institutions and Universities imparting technical education.

6.1 ADMISSION OF DIPLOMA HOLDERS INTO SECOND YEAR DEGREE ENGINEERING PROGRAMMES THROUGH LATERAL ENTRY

6.1(a) Admission of Diploma Holders

Although engineering diploma programmes are conceived as terminal in nature, some flexibility has to be built in to enable the meritorious amongst diploma holders to obtain Engineering degrees. There is evidence of diploma holders pursuing an Engineering programme having performed well not only in their academic careers but also in their jobs.

6.2(b) Eligibility:

For being to seek lateral entry to an Engineering degree programme at the second year/third semester level, a candidate must have passed the Degree in Science (B.Sc.), with Mathematics as a subject and with a minimum of 60 percent marks in the aggregate. Only candidates fulfilling these conditions would be eligible for appearing in the entrance test meant for selection of B.Sc., graduates for Lateral entry to an Engineering degree programme. The selection of candidates will be based on an entrance test, the merit ranking in the test being the basis of admission."

14. Perusal of clause 6.2(b), in particular, and other above quoted clauses of the latest Notification, referred to hereinabove, and Notification issued by All India Council for Technical Education, New Delhi, prior thereto clearly demonstrates that the All India Council for Technical Education, has been treating Degree in Engineering as a higher qualification to that of Diploma in Engineering and it is because of this reason of their treating Degree as higher qualification to Diploma in Engineering, that the Technical Council had contemplated providing chance to meritorious diploma holders to have lateral entry to the four years Degree course of Engineering. Although Diploma in Engineering is a terminal programme in technical education and in some service rules is the minimum prescribed qualification for non-gazetted posts, yet All India Council for Technical Education, has treated it equivalent to some extent only to the second year of the four years Degree course of Engineering by considering only those meritorious students of the terminal course of Diploma in Engineering with 60% marks eligible to compete in the entrance examination prescribed for getting lateral entry in the second year of the four years Degree Course in Engineering.

15. The Notifications issued by the All India Council for Technical Education thus indicate that the Council treats Degree in Engineering as a mark of distinction conferred upon a student for proficiency in Engineering and the proficiency so considered is of a far higher degree than that of Diploma in Engineering.

A Degree conferred by a University, going by definition of the expression in various Dictionaries, is a proof of the fact that a person had studied a course of a particular higher level and had successfully passed the examination certifying his proficiency in the said subject of study to such level.

The State Government too has been treating persons having title of Degree in a particular subject to have attained higher level of proficiency in the concerned subject than that of a Diploma holder which may be gathered from various statutory rules framed by the State Government for its various services under Section 124 of the Constitution of Jammu and Kashmir.

16. In view of All India Council's treating Degree in Engineering to be a higher qualification to that of Diploma in Engineering, and the above discussion on the subject, it may be concluded that Degree in Engineering is a higher qualification to that of Diploma of Engineering. The petitioners, who are holders of Degree in Automobile Engineering/Mechanical Engineering, have thus to be treated as persons holding higher qualification in the concerned discipline of Engineering than that of the Diploma holders in the relevant discipline, the minimum qualification prescribed for the posts of Motor Vehicle Inspectors. These graduates in Engineering shall be accordingly deemed to have undergone the course of Diploma in Engineering in the relevant discipline too, and cannot, thus be treated to be ineligible to compete for the posts of Motor Vehicle Inspectors merely because they hold qualification higher than the minimum prescribed qualification of Diploma in Automobile/Mechanical Engineering."

The judgment relied upon by the petitioner's counsel, which proceeds on the premise that the qualification of B.Ed. was not equivalent to the qualification of Trained Teachers' Certificate, in that, they had not been trained to teach small children for whose selection the employer had, in its wisdom and according to its needs prescribed Trained Teachers' Certificate as the only qualification for making selection of the teachers for the primary classes, is thus, clearly distinguishable from the facts of the present case, where Degree holders in Engineering do not suffer from any such disqualification which had been noticed by Hon'ble Supreme Court of India in case of those holding the qualification of B.Ed. Degree.

For all what has been said above and in view of the reasoning adopted in S. Gurmeet Singh's case, petitioner's plea that selection of the respondents was bad in law, in that, they

were ineligible to compete for the post, qualification wherefor was notified as 3 years Diploma/2 years Draftsmanship in any Branch of Engineering, therefore, fails and is, accordingly, rejected.

This Writ Petition is, accordingly, found without merit, hence dismissed.

(J. P. Singh)
Judge

JAMMU
20.05.2010
Pawan Chopra