

W. P. (S). No. 1051 of 2013

[In the matter of an application under Article 226 of the Constitution of India]

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Mithilesh Kumar

... Petitioner

Versus

1. The State of Jharkhand through the Principal
Secretary, Science and Technology Department, Ranchi
 2. The Deputy Secretary, Science and Technology Department, Ranchi
 3. The Director, BIT Sindri, Dhanbad
 4. The Principal, BIT Sindri, Dhanbad
 5. The Jharkhand Public Service Commission
 6. The Examination Controller, Jharkhand Public Service Commission
- ... Respondents

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For the Petitioner : M/s. Rahul Kr., A.K. Mehta, Prabhat Singh

For Respondent no.5 : M/s. Rajesh Shankar, Abhay Prakash

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P R E S E N T

HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

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By Court

The petitioner has approached this Court seeking a direction upon the respondents for considering his candidature for appointment as Assistant Professor in Mechanical Engineering at BIT, Sindri.

2. The brief facts of the case are that, the petitioner has been working as Lecturer, Mechanical Department, BIT, Sindri since, 17.10.1994. An advertisement was issued on 22.06.2007 inviting applications for appointment on various posts including the post of Assistant Professor, for which, the petitioner also applied. Subsequently, a Corrigendum dated 17.08.2007 amending the necessary qualification for appointment on the post of Assistant

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Professor was issued. The petitioner appeared and he was selected. The name of the petitioner was recommended by the Jharkhand Public Service Commission vide letter dated 07.09.2011. However, the petitioner was not offered appointment and therefore, the petitioner has approached this Court by filing the present writ petition.

3. A counter-affidavit has been filed on behalf of the Jharkhand Public Service Commission stating as under:

6. *That it is stated that pursuant to advertisement no. 8/2007, interview of the candidates for the post of Assistant Professor in BIT, Sindri was conducted by the Commission in the period from 22.12.2010 to 24.12.2010 and as per decision of the Commission the names of the candidates were provisionally recommended post wise category wise for Mechanical Engineering faculty vide letter no. 1140 dated 16.08.2011 in which the name of the petitioner Shri Mithilesh Kumar figured at Sl. No.2.*

7. *That thereafter several representation were received in the office of the Commission from candidates possessing Ph.D degree who were not selected on the basis of marks given in the interview and evaluation of their academic career and evaluation of their academic career which was done on the basis of circular of Department of Personnel, Administrative Reforms and Rajbhasha Department, Govt. of Jharkhand which provides for taking out the average of percentage of marks obtained by a candidate from matriculation.*

8. *That on receipt of such representation the Commission in its meeting held on 29.08.2011 felt that for teaching posts some weightage ought to be given to the Ph.D degree and decided to give 10% weightage to the Ph.D degree holder.*

9. *That on the basis of such decision of the Commission as aforesaid, a revised list of the*

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recommended Candidates were sent to the Principal Secretary, Science and Technology Department, Govt. of Jharkhand vide letter no. 1287 dated 07.09.2011 in which the name of the petitioner finds place at Sl. No. 3."

4. The respondent-State of Jharkhand has also filed a counter-affidavit taking an objection that subsequent to advertisement and the corrigendum, the All India Council for Technical Education prescribed qualification for appointment on the post of Assistant Professor whereunder, holding a Ph.D degree for appointment on the post of Associate Professor (Assistant Professor) was made mandatory.

5. A plea has been taken by the State of Jharkhand that, since the qualification which was earlier prescribed by the All India Council for Technical Education was subsequently changed and modified by the All India Council for Technical Education, the name of the petitioner, who admittedly does not possess the said qualification, should not have been recommended by the Jharkhand Public Service Commission. Paragraph nos. 8 to 14 of the counter-affidavit are as under:

8. "That most humbly and respectfully it is stated and submitted that on the basis of this advertisement and the corrigendum issued, a candidate desirous of being appointed on the post of Assistant Professor was required to possess the qualification of Ph.D with First Class Degree at Bachelor's or Master's level in the appropriate branch under the head of experience it was stated that those candidates with First Class Degree at Master's level in the appropriate branch of engineering with five years experience in teaching could also apply. However, such candidates, if selected would have to complete Ph.D within seven years.

9. That most humbly and respectfully it is stated and submitted that however, before the appointment for the post of Assistant Professor and Professor could be made the AICTE issued fresh notification vide letter no. F.No. 37-3Legal/2010 dated 13.03.10 and a subsequent corrigendum issued on 14.05.10 bringing about certain changes in the eligibility criteria for the various posts.

10. That most humbly and respectfully it is stated and submitted that from a kind perusal of Annexure-A and A/1 to the counter affidavit, it shall appear that the post of lecturers was rechristened as Assistant Professor and accordingly the post of Assistant Professor was rechristened as Associate Professor.

11. That most humbly and respectfully it is stated and submitted that it shall further appear the liberty allowed to the Assistant Professor (in the changed scenario Associate Professors) to complete Ph.D. Degree within seven years of their appointment was done away with meaning thereby that a candidate desirous of being appointed on the post of Associate Professor must possess Ph.D. Degree on the date of his making an application for the said post.

12. That most humbly and respectfully it is stated and submitted that the said notification issued by the AICTE was adopted by the State of Jharkhand vide resolution taken vide memo no. 784 dated 31.03.12 with effect from 01.01.2006. By the said notification the teaching faculty was extended the benefit of pay revision and their salary was brought at par with the employees of the Central government. Clause-4 of the letter no. 784 dated 31.03.12 made it clear that by the said Circular all conditions applicable to the employees of the Central Government would be applicable, except the enhancement of age of retirement. It is also relevant to point out that the petitioners have been held entitled to benefit of pay revision from 01.01.2006 and also drawing salary on revised pay scale as per AICTE 6th Pay Rules. On the one hand the petitioner has accepted the revised provided in the letter no. 784 dated 31.03.12 on the other hand they are not ready to accept the changed eligibility criteria provided in the same letter for direct

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appointment on higher post.

13. That most humbly and respectfully it is stated and submitted that after the adoption of the recommendations of the AICTE the State Government was bound to make appointment in conformity with the recommendations of the AICTE.

14. That most humbly and respectfully it is stated and submitted that since during the pendency of the advertisement the eligibility criteria had under gone a change rendering the petitioner ineligible for the post of Associate Professor, he could not be appointed on the post of Associate Professor."

6. Heard counsel for the parties and perused the documents on record.

7. It is an admitted fact that the advertisement was issued on 22.06.2007 and the corrigendum was issued on 17.08.2007. The alternative qualification prescribed by the said advertisement for appointment on the post of Assistant Professor requires Master's Degree in First Class with five years' teaching experience however the candidate should acquire Ph.D degree in the next 7 years from the date of appointment. The All India Council for Technical Education also prescribed similar qualification for appointment on the post of Assistant Professor, which was mentioned in the advertisement. However, it appears that by a notification dated 05.03.2010 amended by notification dated 14.05.2010, a different qualification was prescribed by the All India Council for Technical Education whereunder, possessing Ph.D degree for appointment on the post of Associate Professor was made mandatory.

8. The learned counsel appearing for the petitioner has submitted that admittedly, at the time when the advertisement dated 22.06.2007 and the corrigendum dated 17.08.2007 were issued, the petitioner had the requisite qualification and the amended qualification which has been prescribed by the All India Council for Technical Education by notification dated 05.03.2010, was adopted by the State of Jharkhand by notification dated 31.03.2012 and therefore, the subsequent change in the educational qualification as prescribed by the All India Council for Technical Education, cannot be made applicable in the case of the petitioner and therefore, the respondent-State of Jharkhand has illegally denied the petitioner, appointment on the post of Assistant Professor, Mechanical Engineering at BIT, Sindri. Learned counsel appearing for the petitioner has relied on the decisions of Hon'ble Supreme Court in (1997) 6 SCC 623 and (2010) 13 SCC 467.

9. On the other hand, Mr Rajesh Shankar, learned counsel appearing for the respondents submitted that since the All India Council for Technical Education has prescribed a qualification which was prevalent at the time when the recommendation by the Jharkhand Public Service Commission was made in favour of the petitioner, the Jharkhand Public Service Commission should not have recommended the name of the petitioner in view of the specific qualification prescribed by the All India Council for Technical Education. He has further submitted that since the

petitioner does not possess the necessary qualification, he was not offered appointment on the post of Assistant Professor.

10. From the record, it would appear that the petitioner had the requisite qualification which was initially advertised by the Jharkhand Public Service Commission or which was mentioned in the corrigendum dated 17.08.2007. It has been settled by a catena of judgments of the Hon'ble Supreme Court that after the selection, a candidate would have vested right for consideration of his claim for appointment on the post for which his name has been recommended. It is also well settled that the criteria which was prevalent at the time, when the selection process started, cannot be changed to the disadvantage of the applicants. It is admitted in the present case that the norm of the All India Council for Technical Education was published on 05.03.2010 however, the said notification was adopted by the State of Jharkhand on 31.03.2012 and therefore, the said notification cannot be made applicable with retrospective effect, so as to deny the petitioner his claim for consideration for appointment on the post of Assistant Professor.

11. In "*Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others*", reported in (1997) 6 SCC 623, the Hon'ble Supreme Court has observed as under,

24. "In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The

said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon, B.S. Yadav and Raman Lal Keshav Lal Soni."

12. In "State of Bihar and others Vs. Mithilesh Kumar", reported in (2010) 13 SCC 467, the Hon'ble Supreme Court has observed as under,

19. *"Both the learned Single Judge as also the Division Bench rightly held that the change in the norms of recruitment could be applied prospectively and could not affect those who had been selected for being recommended for appointment after following the norms as were in place at the time when the selection process was commenced. The respondent had been selected for recommendation to be appointed as Assistant Instructor in accordance with the existing norms. Before he could be appointed or even considered for appointment, the norms of recruitment were altered to the prejudice of the respondent. The question is whether those altered norms will apply to the respondent.*

20. *The decisions which have been cited on behalf of the respondent have clearly explained the law with regard to the applicability of the rules which are amended and/or altered during the selection process. They all say in one voice that the norms or rules as existing on the date when the process of selection begins will control such selection and any alteration to such norms would not affect the continuing process, unless specifically the same were given retrospective effect."*


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13. In view of the aforesaid, the present writ petition is allowed. The respondents are directed to consider the case of the petitioner within a period of four weeks.

Sd/-
(Shree Chandrashekhar,J.)

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P.A. 
(7.11.2013)

JHARKHAND HIGH COURT, RANCHI
Dated :- 21st October, 2013
R.K. / A.E.R.

ent

herewith

J.

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vs P.S.

Asstt.