

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : 22.12.2017

1. CWP No.16224 of 2016 (O&M)

Salaudeen and others Petitioners

Versus

H.V.P.N.L. and others Respondents

2. RA-CW-347 of 2016 in/and
CWP No.10974 of 2012 (O&M)

Ram Chander Petitioner

Versus

Haryana Power Generation Corporation Limited
and others Respondents

3. CWP No.12545 of 2012 (O&M)

Sundeep Singh Petitioner

Versus

Haryana Vidyut Prasaran Nigam Limited and others
..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Sanjay Kaushal, Senior Advocate with
Mr. Lalit Rishi, Advocate
for the petitioners (CWP No.16224 of 2016)
and (CWP No.12545 of 2012).

Mr. B.S.Rathee, Advocate
for the petitioner (CWP No.10974 of 2012) and
for the respondents (CWP No.16224 of 2016).

Mr. Parveen Chauhan, Advocate and
Mr. G.D.S.Wasu, Advocate
for the review applicants-respondents-HPGCL
(RA-CWP-347-2016 in CWP No.10974-2012).

Mr. V.K.Jindal, Senior Advocate with
Mr. Janya Sirohi, Advocate and
for the private respondents.

Mr. Praveen Chander Goyal, Advocate and
Ms. Aarti Goyal, Advocate
for respondent No.22 (CWP No.16224-2016).

AJAY TEWARI, J.

These three cases deal with the same issues and are consequently being decided by this judgment. Facts are taken from CWP No.16224 of 2016.

On 12.12.2017 the following order was passed :-

“CM-17944-2017

This is an application for placing on record counter affidavit alongwith Annexure & exemption from filing certified/typed copy of Annexure R-6/1 to R-6/7.

For the reasons recorded in the application, the same is allowed and abovesaid documents are taken on record.

Main case

In this petition the petitioner has challenged the grant of certain benefits to the private respondents. The private respondents were all ex-servicemen who had sought that their educational qualification of diploma plus 10 years experience entitled them to be considered as degree holders. At that time this was claimed on the basis of what was stated to be a notification dated 26.5.1977 issued by Government of India. In an unrelated case the Central Administrative Tribunal had declared that notification to be fictitious and it is on this ground that this petition is partly laid. During the pendency of this petition affidavit dated 21.11.2017 of the Secretary to the Ministry of Human Resource Development, Government of

India has been placed on record wherein he has unequivocally stated that no such notification was issued by the Government of India, Ministry of Human Resource Development which was the concerned Ministry or in fact any other department. Today, it has been agreed before me that in fact no notification was ever issued. Learned Senior Counsel appearing on behalf of the private respondents has argued that this fact by itself could not be solely determinative because the fact of the matter is that various office memoranda were issued wherein this decision was taken and now for the past more than 45 years this benefit has been granted to ex-servicemen across the board and there may be hundreds, if not thousands of such persons who have been given this benefit and in these circumstances to withdraw it from the private respondents at this stage would be extremely unfair.

To my mind, the issue is the legal effect of a Notification by the Government viz-a-viz an Office Memorandum. Can it be said that to make a binding policy decision which has to be communicated to the population at large the Government has to issue a notification in the official Gazette and office memoranda cannot have that legal effect. Learned counsel appearing on behalf of private respondents prays for a short adjournment to research this issue and to clear this controversy.

Adjourned to 20.12.2017.

A photocopy of this order be placed on the file of connected case(s)."

At the very outset today learned senior counsel for the respondent-Mr. Jindal has accepted that in the counter affidavit filed on behalf of respondent No.6 dated 11.12.2017 the word 'notification' has been wrongly mentioned to describe the document dated 26.05.1977 and has prayed that wherever the document dated 26.05.1977 is described as a notification it be read as Office Memorandum. On taking up the matter

today it has also not been disputed that the document which was being treated as an 'Office Memorandum' was in fact an unsigned document and therefore, would not qualify even to be termed as an Office Memorandum.

The case of the petitioners is that the private respondents had applied for service for appointment as Junior Engineer in the year 2004-2005. At that time they had the qualification of diploma and 10 years experience. They however, did not claim to be Degree holders and were appointed as Diploma holders. Six years later when the case of promotion to the post of Assistant Engineer was to be considered the Rules provided for a quota of 12 ½% to persons who held a degree or an equivalent qualification. At that stage the private respondents started claiming that in view of their diploma and their 10 years experience they were entitled to be considered as degree holders in view of the notification dated 26.05.1977 but as per the last affidavit (referred to in the previous order) in fact, no such notification has ever been issued. Consequently the private respondents were not entitled to the benefit. The contention of the learned senior counsel appearing for the petitioners is that by this fraudulent action the private respondents have stolen a march over the petitioners and consequently not only are they required to relinquish that benefit they are also liable to be proceeded against.

On the other hand learned senior counsel appearing for the private respondents has raised following points :-

- (i) It is his contention that for the last 40 years not only the Union of India in all its departments but even all the State Governments in all their departments have recognized and accepted this benefit which was given to ex-Servicemen.

(iii) He has further argued that when the official respondents did not accept the claim of the private respondents even though it was verified by them, they filed CWP No.7955 of 2010 (and others) which were allowed after contest and that order was upheld by the Supreme Court and it was only thereafter that the official respondents granted the benefit to the private respondents. As far as the private respondents are concerned they are not guilty of any malfeasance since even the writ petition filed by them was allowed on the basis of earlier writ petitions.

(iv) The third argument raised by learned counsel is even as per the latest affidavit the CRU has only stated that they have never received the file.

(v) Learned counsel has further argued that the Ministry of Human Resource Development, Government of India came into existence only in the year 1985 and prior to that these issues were within the jurisdiction of the Ministry of Education and Social Welfare and there is a possibility that the notification has been mis-placed. He has also argued that on two earlier occasions the Government of India had stated that the notification was existing.

Learned counsel for the petitioners has argued that in the face of the unequivocal affidavit now filed by no less than the Secretary of Ministry of Human Resource Development on 21.11.2017 these hypothetical arguments raised by the counsel for the private respondents can not prevail.

Learned counsel for the Union of India has very fairly stated that there is a huge lapse on the part of the Government machinery in so much as, for 40 years a particular benefit has been given to many persons without their being any authorization for the same. He has rejected the contention that because of the change of the Ministry the notification may

have gone missing because as per him a notification is not a piece of paper which is just signed by one person. He has drawn the attention of the Court to the affidavit of the Secretary, wherein the Secretary has categorically averred that neither the Central Record Unit section of the Ministry nor the department of Publication (which is the repository of the gazette notifications published by the Government of India) have any record of this notification. Consequently the possibility that the notification actually existed but was mis-placed would not exist.

In the circumstances, the controversy before this Court lies within a very narrow campus viz. whether in the absence of any decision by a competent authority to grant this benefit the private respondents can claim that their promotions/seniority should be maintained.

In my considered opinion, in view of the affidavit of the Secretary, Ministry of Human Resource Development referred to above it has to be held that the benefit of treating the private respondents as degree holders was wrongly granted. In **Union of India and another Vs. Narendra Singh, 2008(2) SCT 359** the Supreme Court held as follows :-

*“28. It is true that the mistake was of the Department and the respondent was promoted though he was not eligible and qualified. But, we cannot countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following due process of law. In **Indian Council of Agricultural Research & Anr. v. T.K. Suryanarayan & Ors., 1997 (4) SCT 156: (1997) 6 SCC 766**, it was held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore Statutory Rules.”*

Resultantly, it has to be held that the benefits given to the private respondents can be withdrawn.

Learned senior counsel for the private respondents then argued that the decision of the Central Administrative Tribunal to which reference was made earlier has been challenged before this Court and a Division Bench has issued notice and prayed that the present case be either heard alongwith the said writ petition or be adjourned to await the decision of the Division Bench.

In my opinion, there is a glaring difference between that case and this case because in the present case for the first time the unequivocal stand of the Union of India has emerged that in fact there was no notification dated 26.05.1977. Before the Tribunal the stand of the Union of India was not so direct or unequivocal. In the circumstances, this prayer can not be accepted.

Accordingly, the petitions bearing CWP Nos.16224 of 2016 and 12545 of 2012 are allowed and the impugned seniority list dated is quashed. Official respondents are directed to re-frame the seniority list after withdrawing the benefit granted to the private respondents. Let the necessary exercise be completed within six months.

RA-CW-347 of 2016 in CWP No.10974 of 2012 is allowed. The order dated 18.03.2015 is recalled and the writ petition is dismissed in terms of the order passed in CWP No.16224 of 2016.

Since the main cases have been decided, the pending civil miscellaneous applications, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

22.12.2017
pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No

