

Shri Gian Chand vs.govt. Of Nct of Delhi & Ors.

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Court : Delhi

Decided On : Jan-17-2019

Appellant : Shri Gian Chand

Respondent : Govt. Of Nct of Delhi & Ors.

Advocate for Def. : Ms. Rashmi Chopra, Ms. Asiya, Mr. Anil Soni, Mr. Abhinav Tyagi

Advocate for Pet/Ap. : Mr. T.P. Singh

Judgement :

\$~ * + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

17. 01.2019 % W.P.(C.) No.9897/2016 & CM APPL. 39377/2016 SHRI GIAN CHAND

... Petitioner

Through: Mr. T.P. Singh, Adv. versus GOVT. OF NCT OF DELHI & ORS.
.....Respondents Through: Ms. Rashmi Chopra and Ms. Asiya, Advs. Mr. Anil Soni, Standing Counsel, AICTE with Mr. Abhinav Tyagi, Adv. for R-4. CORAM: HON'BLE MR. JUSTICE VIPIN SANGHI HON'BLE MR. JUSTICE A.K.CHAWLA A.K.CHAWLA, J.

(ORAL) 1.

... Petitioner

is aggrieved of the order dated 29.02.2016 passed by the Central Administrative Tribunal, Principal Bench in short 'CAT', whereby, an OA filed by the petitioner, in effect, seeking directions to the respondents to grant him pay scale of `3700-5700 (revised `12000-18000) with consequential benefits, came to be dismissed.

2. Concisely, the relevant facts are that the petitioner, on selection, was appointed as Workshop Superintendent with the respondent Nos. 2 and 3 on W.P.(C.) No.9897/2016 Page 1 of 7 for issued guidelines 27.03.1980 in the pay scale of `2200-4000 (pre-revised) following the procedure laid down for such selection. It emerges from the record that he was so appointed having qualification of Diploma in Mechanical Engineering. It also emerges from the record that on 20.09.1989, All India Council for Technical Education, in short 'AICTE', which is a National Expert Body and inter alia advises the Central and the State Governments for ensuring the co-ordinated development of technical education in accordance with approved standards, career advancement and recommended revision of pay scales of teachers of polytechnics inter alia of Head of Department (Lecturer - Selection Grade). It also prescribed the detailed qualifications and experience, and, thereunder, for the post of the Head of the Department (Lecturer Selection Grade), the essential qualification prescribed was that of First class Masters' degree in Engineering/Technology/Technical Education or Ph.D. degree in appropriate branch for teaching posts in Humanities and Sciences. In continuation thereof, AICTE then also issued guidelines for career advancement of lecturers in polytechnics, and, inter alia, specified that the revised scale of pay circulated by it on 20.09.1989, was to be applicable w.e.f. 1986 to all the existing teaching staff such as Principal, Head of Department, Sr. Lecturers and Lecturers, who were appointed by the Competent Authority and that, the existing staff, who were eligible for grant of revised pay scales/benefits of career advancement, were exempt from the essentiality of the revised qualifications under the circular dated 20.09.1989, clarifying further that such qualifications were to be applicable only to the new entrants recruited after 20.09.1989. Qualifications again came to be W.P.(C.) No.9897/2016 Page 2 of 7 revised on 30.12.1999 for all such posts including that of the Head of Department, for the new entrants. The revised qualification now prescribed for the post of Head of Department was of Masters' degree in appropriate branch of engineering/technology with First class at Master's

or Bachelor's level or Ph.D. with First Class Master's degree in appropriate branch in Humanities and Science. It appears that at some stage, around the year 2000, the petitioner made a representation for upgradation of the post of Workshop Superintendent, but, that was rejected by the respondents. On that, the petitioner filed OA No.647/2001 before CAT and that came to be disposed of with the directions to give benefit of pay scale of `3700-5700 (revised `12000-18000) to the petitioner from the same date as given to the rank of Head of Department alongwith arrears (provided, the petitioner fulfills the essential qualifications prescribed for the post of Head of Department (Lecturer and Selection Grade). This order of CAT was quashed by the concurrent Bench of this court in WP(C) No.4895/2002 and the matter remitted back to CAT for a fresh hearing. This resulted into disposal of the OA6472001 afresh, with CAT directing the Competent Authority to consider the plea of the petitioner in the light of the recommendations of AICTE.

... RESPONDENTS

rejected the plea of the petitioner afresh vide its communication dated 11.05.2012. It resulted into filing of a fresh OA No.3383/2012 by the petitioner and that came to be dismissed vide the impugned order. the appointment 3. Whether as Workshop Superintendent on 27.03.1980 with the qualification of Diploma in Mechanical Engineering could be treated to be at par with the post of Head of the petitioner W.P.(C.) No.9897/2016 Page 3 of 7 of Department in respect whereof, AICTE issued its guidelines on 20.09.1989 revised on 30.12.1999, is the moot question for consideration before this court.

... Petitioner

seeks to equate the post of Workshop Superintendent with 4. that of Head of Department seeking strength from the communication bearing No.F. No.1/CD/Poly dated 30.06.1998 purportedly issued by AICTE addressed to the Ministry of Human Resource Development, Department of Education, Govt. of India and the ratio of the judgment of the Co-ordinate Bench of CAT at Calcutta in O.A No.412 of 1994. At the onset, we observe that the qualifications prescribed for the post 5. of Workshop Superintendent and that of the Head of Department are at much variance and the communication dated 30.06.1998 is only in the nature of a

proposal sent by AICTE to the Ministry of Human Resource, which never culminated into its being, which is sought to be contended by the petitioner. Relevant portion of the said communication reads, as under :

".....

..... According to Norms & Standard for polytechnics

1) (Diploma Programme) "formulated by E.C. and published by AICTE in 1990 the status of workshop Superintendent was explained as given below. The Workshop Superintendent is the Head of all the workshops is responsible to the Principal in all matters concerned with the workshop Instructions, proper utilisation of men, materials, and machines and polytechnic and in the W.P.(C.) No.9897/2016 Page 4 of 7 maintenance in workshops and services to various department. He will be in the cadre of the Head of the Department. (ii) These Norms & Standard for polytechnic institutions were later revised in 1995, after the approval by the Council "Norms & Standards" published by AICTE in 1995 states that :

"The Training and placement officer and workshop superintendent will be equal in cadre to the Head of the Department."

Keeping in view the above factual position, Council is of the view that workshop Superintendent in Dr. B.R. Ambedkar Government Polytechnic Port Blair is entitled to get pay scale equal to pay scale of H.O.D. in Polytechnics prevailing in Union Territory of Andman & Nikobar Island."

A bare perusal of the above-said proposal would show that this proposal, even if it would have been accepted to be given effect to, related to one solitary post of H.O.D. in polytechnics in the Union Territory of Andman & Nikobar Island only. It ipso facto would not have had effect, as far as the case of the petitioner was concerned. Be that as it may, even such proposal is not shown to have enured to the benefit of the petitioner. In the given factual conspectus, we do not see any merit in the plea of the petitioner placing reliance in the communication F. No.1/CD/Poly dated 30.06.1998. recommendations made to the It is not the case of the petitioner that any authority, much less 6. AICTE, has ever declared the post

of Workshop Superintendent to be equivalent to the post of Head of Department. The guidelines of AICTE W.P.(C.) No.9897/2016 Page 5 of 7 dated 20.09.1989 revised on 30.12.1999 inter alia lay down the qualifications for new recruitments, though, exempting the applicability of such qualifications to the posts of Lecturer; Sr. Lecturer; Head of Department; and, the Principal, only. These guidelines, firstly, are non- statutory. In any event, they could have their applicability only to such posts as have come to be notified thereunder. Teaching posts have their specific qualifications and the exemption is only to such class of employees, who are the teachers. Even the post of the Head of Department is a post of teacher inasmuch as it is for Lecturer - Selection Grade only. These posts therefore, are a class apart from the other posts in the various departments of the respondents. Therefore, in our considered opinion, drawing of comparison amongst the two posts of Workshop Superintendent and the Teachers, which is a class apart and for which the subject guidelines came to be issued by AICTE, cannot be reckoned to be equal in all respects, irrespective of the other factors like the duties and the responsibilities. Then, even if it is assumed that the functions, duties and the responsibilities of both the posts of Workshop Superintendent and the H.O.D. (Lecturer -Selection Grade) are alike, the petitioner has to make out a case for himself in that regard separately and independently, and cannot draw any benefit under the subject guidelines of AICTE of 20.09.1989 revised on 30.12.1999. It does not require any elaboration that the subject of upgradation of pay or post, is a subject, which falls within the domain of the executive, which, amongst other factors, looks into the aspects of financial implications and in such matters, the judicial intervention is least desirable. In the said context, CAT has placed reliance upon the judgments of the apex Courts in paragraph W.P.(C.) No.9897/2016 Page 6 of 7 No.26 and we have no reason to differ therewith. For the foregoing reasons, we do not see any merit in the petition and 7. the same is dismissed. No order as to costs. A.K.CHAWLA, J.

VIPIN SANGHI, J.

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