

Md Abul Kalam Vs. Science and Technology

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Court : Jharkhand

Decided On : Aug-26-2015

Appellant : Md Abul Kalam

Respondent : Science and Technology

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 2192 of 2013
--- Md. Abul Kalam --- --- --- Petitioner Versus 1. The State of Jharkhand through the Secretary, Science and Technology Department 2. The Secretary, All India Council for Technical Education (AICTE) 3. Director, B.I.T., Sindri 4. Secretary, Jharkhand Public Service Commission--- --- --- Respondents --- CORAM: The Honble Mr. Justice Aparesh Kumar Singh For the Petitioner: M/s M.S.Anwar, Sr.Advocate, Sarju Prasad, Gaurav Advocate For the Resp-State: Mr. Dhananjay Kr. Dubey, Sr. SC-I For the Resp-JPSC: Mr. Rajesh Shankar and Mr. Abhay Prakash, Advocates For the Resp-BIT: Mr. Mrinal Kanti Roy, Advocate --- 09/26.08.2015 Heard counsel for the parties.

2. The petitioner herein serving as a Lecturer in J.S.S. Academy of Technical Education, Noida, made an application for being considered for appointment to the post of Assistant Professor in the stream of Electrical Engineering on the strength of qualification prescribed under Advertisement No. 08/2007 dated 22.06.2007 and corrigendum issued on 28.07.2007 (Annexure-1 &

2) by the respondent-JPSC. He is said to have held Master in Technology qualification and five years of teaching experience at the time of application. Petitioner succeeded in the recruitment process and was recommended by the JPSC for appointment to the post of Assistant Professor in Electrical Engineering on 07.09.2011 (Annexure-3). The State Government issued a notification of appointment of several persons on 18.03.2013 (Annexure-5) where petitioner's name was at serial no.

15. He was appointed as an Assistant Professor (Ex-Lecturer).

3. Petitioner became aggrieved against the notification of his appointment as according to him, he should have been appointed to the post of Associate Professor in Engineering & Technology in the revised scale of Rs. 37,400-67,000 with a minimum Grade Pay of Rs. 9,000. The ground to support such a prayer is that All India Council for Technical Education (hereinafter to be referred as 'AICTE') vide notification dated 05.03.2010, as adopted by the Government of Jharkhand on 31.03.2012, has re-designated the post of Assistant Professor as Associate Professor with change in pay structure as well. Petitioner should have been therefore considered for the post of Associate Professor as few other persons who were appointed by the same notification dated 18.03.2013, have been appointed as Associate Professor. The reason for distinction in the case of the petitioner, as explained by the respondent Department, is that those persons had the qualification of Ph.D as laid down under the AICTE notification of 2010 and adopted by the State Government as well. Petitioner claims to have obtained the qualification of Ph.D on 07.05.2014 during the pendency of the writ application.

4. Issue involved in the present writ application is whether the petitioner who was having a qualification of Master in Technology in first class with five years of teaching experience under the Advertisement of 2007 while applying for the post of Assistant Professor, would claim appointment as Associate Professor in view of change in designation of the said post pursuant to AICTE notification and the State Government adoption on 31.03.2012.

5. In a matter relating to the appointment to the post of Assistant Professor in the same institution under the same Advertisement of 2007, learned Single Judge of

this Court in the case of Mithilesh Kumar vs. The State of Jharkhand through the Principal Secretary, Science and Technology Department & others) in WPS No. 1051/2013 dated 21.10.2013 as upheld by the learned Division Bench of this Court in LPA No. 151/2014 dated 16.06.2015 preferred by the State of Jharkhand, has taken a view that the change in the qualification prescribed by the AICTE, as adopted by the respondent Government, could not operate retrospectively to deny appointment to the said person who had fulfilled the criteria under the Advertisement of 2007, as rules of the game could not be changed retrospectively once it has started.

6. Petitioner in the present case also applied for the post of Assistant 3. Professor and in view of the ratio rendered by the learned Division Bench relying upon the judgment rendered by the Apex Court in the case of State of Bihar and others vs. Mithilesh Kumar [(2010) 13 SCC467, case of the petitioner has to be considered on the basis of qualification prescribed under the Advertisement of 2007 for the post for which he applied. The AICTE notification could not operate retrospectively to deny his claim. That obviously has not been done either in his case as he has been appointed on the post of Assistant Professor. AICTE Regulations, as has also been held in the case of Mithilesh Kumar (Supra) by the learned Division Bench, would operate prospectively. AICTE Regulations laying down the eligibility criteria for appointment on the teaching post operate uniformly throughout the country in all technical institution. The post of Assistant Professor have been re-designated as Associate Professor, but also with a condition that the candidate should have a qualification of Ph.D for being appointed as such to the said post. Petitioner can also be not permitted to improve his case on the basis of same AICTE Notification which has not only prescribed the change in designation but also change in minimum eligibility qualification for being appointed on re-designated post. If conditions incorporated in the AICTE Regulation, as adopted by the respondent State, are to operate prospectively, then petitioner can be considered for the post of Associate Professor only upon satisfaction of the condition of eligibility qualification prescribed therein. Petitioner is said to have completed Ph.D qualification on 07.05.2014 Therefore, the decision of the respondent State to appoint him on the post of Assistant Professor through notification dated 18.03.2013, cannot be said to suffer from any error, illegality or

arbitrariness.

7. Respondents however are required to consider the claim of the petitioner for being re-designated as Associate Professor on the strength of his claim that he has obtained the qualification of Ph.D on 07.05.2014, of course in accordance with law and in terms of the AICTE Regulation adopted by the Government of Jharkhand. Respondents would take a decision in view of the observations made hereinabove in relation to appointment of the petitioner within a period of six weeks from the date of receipt of a copy of this order.

7. The writ petition stands disposed of in the aforesaid manner. I.A. No. 6116/2014 also stands disposed of. (Aparesh Kumar Singh, J) Ranjeet/

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