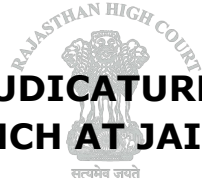




**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 15451/2024

Dr. Sabyasachi Swain son of Shri Upendranath Swain, aged about 33 Years, Assistant Professor, Malviya National Institute of Technology, Jaipur, resident of Plot No. 944/1799, Friends Colony, GGP, Rasulgah, Bhubaneswar, Dist. Khordha (Odisha).

----Petitioner

Versus

1. Malviya National Institute of Technology, through its Registrar, J.L.N. Marg, Jaipur (Rajasthan).
2. Union of India, through its Secretary, Department of Higher Education, Ministry of Education, Shastri Bhawan, New Delhi.

----Respondents

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For Petitioner(s) : Mr. Satyam Khandelwal  
For Respondent(s) : Mr. R.D. Rastogi, ASG  
Mr. Nathu Singh Chauhan  
Mr. Devesh Yadav  
Mr. Rajat Sharma

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**JUSTICE ANOOP KUMAR DHAND**

**Order**

**05/03/2025**

Reportable

1. By way of filing the instant writ petition, a challenge has been made to the impugned order dated 07.09.2024, issued by the respondent No. 1 by which the appointment of the petitioner on the post of Assistant Professor Grade-II has been cancelled. A prayer has been made in the writ petition for quashing and setting aside the impugned order with direction to the respondents to reinstate the petitioner back in service, with all consequential benefits.





2. Learned counsel for the petitioner submits that pursuant to the advertisement dated 10.12.2022, the petitioner participated in the process of selection for appointment on the post of Assistant Professor in Civil Engineering subject. Counsel submits that as per the terms and conditions of the advertisement, a candidate was required to possess the degree of Ph.D. in the relevant subject/discipline on the last date of submission of application form. Counsel submits that the last date of submission of hard copy of the application form was 19.01.2023, and prior to that the petitioner submitted his Ph.D. degree which was awarded on 28.12.2022 and the date of submission of defense for Ph.D. was 29.11.2022. Counsel submits that these dates were mentioned by the petitioner in his application form. Counsel submits that when the provisional list was released by the respondents, the name of the petitioner was not there, therefore, a grievance was raised by the petitioner before the respondents which was redressed and thereafter, the petitioner was allowed to participate in the process of selection and consequently, he was interviewed on 05.11.2023. Counsel submits that on the basis of the merit of the petitioner, he was offered provisional appointment on 15.12.2023, subject to verification of documents and then finally his provisional appointment was made absolute on 14.02.2024. Counsel submits that subsequently, a show cause notice was served upon the petitioner indicating therein that the petitioner has furnished incorrect dates with regard to award of Ph.D. degree. Counsel submits that reply to the aforesaid notice was served but the same was not considered and the order impugned was passed on





07.09.2024 by which the appointment of the petitioner has been cancelled.

3. Counsel submits that prior to joining in the Department, the petitioner was serving as a Scientist and he resigned from the said post and joined on the post in question while accepting the offer of appointment. Counsel submits that as per the Rules regarding recruitment issued by the Ministry of Human Resources Development, Government of India relaxation can be granted to those candidates who are having good number of publications in journals, of their respective fields. Counsel submits that under these circumstances, the requirement of Ph.D. degree may be waived. Counsel submits that as per clause 12 of the Procedure For Selection of Faculty in NIT System (Appendix-A1 of the NIT Rules), the applications submitted by the applicants can be considered even up to the date of interview. Counsel submits that in the instant case, the interview was conducted on 05.11.2023, while the Ph.D. degree was awarded to the petitioner on 06.04.2023. Counsel submits that there was no concealment on the part of the petitioner and after due verification of the documents, the provisional and final offer of appointments were issued in favour of the petitioner. Hence, under these circumstances, the impugned order dated 07.09.2024, is not sustainable in the eyes of law and is liable to be quashed and set aside.

4. Per contra, learned counsel for the respondents opposed the arguments raised by counsel for the petitioner and submitted that the advertisement in question was issued in pursuance of the





Recruitment Rules for Faculty of NITs. Counsel submits that as per Schedule-E attached to the aforesaid Rules, the essential qualification for getting appointment on the post of Assistant Professor is holding a Ph.D. degree. Counsel submits that even in the advertisement itself, it was mentioned that the candidates are required to possess the bare minimum qualification of Ph.D. in the relevant discipline on the last date of the submission of application forms. Counsel submits that the petitioner was well aware about the aforesaid provision, but even then he mis-represented himself before the respondents that he is possessing the requisite qualification i.e. Ph.D. and the same was awarded to him on 28.12.2022. Counsel submits that in fact, the Ph.D. degree was awarded to the petitioner on 06.04.2023 meaning thereby, the petitioner was not eligible to apply. Counsel submits that the petitioner has misled the authorities by submitting incorrect information and on the basis of the said incorrect information, the provisional appointment was offered on contract basis subject to the condition that in case, any false information is found against him, then his appointment would be cancelled without issuing any notice. Counsel submits that in the instant case, before passing the order impugned, a show cause notice and an opportunity of hearing was also provided and thereafter, the order impugned was passed which requires no interference of this Court. Counsel submits that as per the judgments passed by the Hon'ble Apex Court in the case of **State of Uttar Pradesh vs. Vijay Kumar Misra** reported in **(2017) 11 SCC 521** and **Rakesh Kumar Sharma vs. State (NCT of Delhi) & Ors.** reported in **(2013) 11**





**SCC 58.** Their Lordships of the Hon'ble Apex Court has categorically held that if a person is not in possession of the prescribed qualification, on the last date of submission of the application form or on the cut off date, as the case may be, such person cannot be treated eligible to participate in the process of selection. Counsel submits that in view of the submissions made hereinabove, the writ petition is liable to be rejected.

5. In rebuttal, learned counsel for the petitioner submitted that the petitioner was not granted temporary appointment. At the time of passing of the order impugned, the respondents have given reference of Statute No. 27(1) of the NIT Statutes 2009 in the order impugned which relates to temporary employees. Counsel submits that under these circumstances also, the order impugned is not sustainable in the eyes of law. Counsel submits that when the petitioner was not short listed to participate in the process of selection, he raised a grievance and after considering his grievance, the petitioner was allowed to participate in the process, whereby the respondents being well-versed with the fact that the petitioner was not in possession of the Ph.D. degree on the last date of the submission of application form. Counsel submits that looking to the procedure prevailing in different NITs, relaxation and waiver was granted to the petitioner and accordingly, the provisional and final appointments were offered to the petitioner, hence, under these circumstances, the respondents are bound by the Principle of Estoppel. Counsel submits that, now at this stage, the petitioner is not claiming any waiver which has





already been granted to him. Counsel submits that under these circumstances, the instant writ petition is liable to be allowed.

6. Heard and considered the submissions made at Bar and perused the material available on the record.

7. Perusal of the record indicates that for appointment on the post of Associate Professor and Assistant Professor in various disciplines, an advertisement was issued by the respondents, with certain terms and conditions to be fulfilled by the candidates seeking appointment on the aforesaid posts. As per the Clause 5 of the advertisement, the terms and conditions regarding minimum educational qualification and specialization required for appointment has been prescribed. The petitioner has applied for appointment on the post of Assistant Professor in Civil Engineering Subject. This fact is not in dispute that as per the terms and conditions of the advertisement, the eligibility of the candidate with regard to qualification was required to be considered on the closing date i.e. the last date of submission of application form. This fact is also not in dispute that 19.01.2023, was the last date fixed for receiving the hard copy of the application forms. This fact is not in dispute that the petitioner was not in possession of the requisite Ph.D. degree on the said day. The only fact in dispute is that at the time of submission of the application form, the petitioner has furnished the information in the online application form that Ph.D. degree was awarded to him on 28.12.2022 and his date of defense was 29.11.2022. The aforesaid fact was factually incorrect, in fact, the petitioner was awarded Ph.D. degree on 06.04.2023. It appears that this anomaly was pointed





out by the respondents and that is why the name of the petitioner was short listed for allowing him to participate in the process of selection. When the grievance was raised by the petitioner explaining certain dates and after taking into account the same, the petitioner was allowed to participate in the process of selection and thereafter, on the basis of the merit secured by the petitioner, a provisional appointment order was issued in favour of the petitioner which was confirmed and made final on a subsequent date. It appears that subsequently, a fact came into the notice of the respondents that the petitioner was not in possession of the requisite degree of Ph.D on the last date of submission of application form, hence, the order impugned dated 07.09.2024 was passed, cancelling the appointment of the petitioner.

8. Now the question remains for consideration of this Court is whether, under such circumstances, the petitioner is entitled to continue with his appointment?

9. It is settled proposition of law, as it has been held by the Hon'ble Apex Court in catena of judgments, that a person/candidate is supposed to possess the requisite eligibility/qualification on the last date of submission of application form and if such person lacks the required qualification, he is not entitled to participate in the process of selection. This view has been taken by the Hon'ble Apex Court in the case of **Vijay Kumar Misra (supra)**, and it has been held in para No.6, which reads as under:

“The position is fairly well settled that when a set of eligibility qualifications are prescribed under the rules and an applicant who does not possess the prescribed





qualification for the post at the submission of application or by the cut-off date, if any, prescribed under the rules or stated in the advertisement, is not eligible to be considered for such post. It is relevant to note here that in the rules or in the advertisement no power was vested in any authority to make any relaxation relating to the prescribed qualifications for the post. Therefore, the case of a candidate who did not come within the zone of consideration for the post could not be compared with a candidate who possessed the prescribed qualifications and was considered and appointed to the post. Therefore, the so-called confession made by the officer in the Court that persons having lower merit than the respondent have been appointed as SDI (Basic), having been based on a misconception is wholly irrelevant. The learned Single Judge clearly erred in relying on such a statement for issuing the direction for appointment of the respondent. The Division Bench was equally in error in confirming the judgment of the learned Single Judge. Thus the judgment of the learned Single Judge as confirmed by the Division Bench is unsustainable and has to be set aside.”

10. Prior to that the Apex Court in the case of **State of Gujarat & Ors. vs. Arvindkumar T. Tiwari & Anr.** reported in **2012 (9) SCC 545** has held that a person who does not possess the requisite qualification cannot even apply for recruitment for the reason i.e. appointment would be contrary to the statutory Rules and would therefore, be void in law. It has also been held that ineligibility for the post cannot be cured at any stage and appointing such person would amount to serious illegality. It has been held by the Apex Court that such person cannot approach the Court for any relief for the reason that he does not have the right, which can be enforced through the Court.

11. There can be no dispute to the settled legal proposition that the selection process commences on the date when applications are invited. Any person eligible on the last date of submission of





the application form has a right to be considered against the said vacancy, provided he fulfils the requisite qualification.

12. In **U.P. Public Service Commission v. Alpana**, reported in **(1994) 2 SCC 723**, the Hon'ble Apex Court, after considering a large number of its earlier judgments, held that eligibility conditions should be examined on the last date for receipt of application forms by the Commission. That too was a case where the result of a candidate was declared subsequent to the last date of submission of the application forms. The Court has held that as the result does not relate back to the date of examination and eligibility of the candidate is to be considered on the last date of submission of applications, therefore, a candidate, whose result has not been declared upto the last date of submission of application forms, would not be eligible.

13. A three-Judge Bench of the Hon'ble Apex Court in **M.V. Nair v. Union of India** reported in **(1993) 2 SCC 429** has held as under:-

"9. ... It is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date."

14. In **Harpal Kaur Chahal v. Director, Punjab Instructions** reported in **1995 Supp (4) SCC 706**, the Hon'ble Apex Court has held :

"2. ... It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the applications. Such of those candidates, who possessed of all the qualifications as on that date, alone are eligible to apply for and to be considered for recruitment according to the rules."





15. The Hon'ble Apex Court in **Rekha Chaturvedi v. University of Rajasthan** reported in **1993 Supp (3) SCC 168** has held :

"10. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence viz. even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. ... Reference in this connection may also be made to two recent decisions of this Court in A.P. Public Service Commission v. B. Sarat Chandra [(1990) 2 SCC 669 : 1990 SCC (L&S) 377 : (1990) 13 ATC 708] and Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi [(1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 14 ATC 766] ."

16. In the instant case, the petitioner did not possess the requisite qualification on the last date of submission of application form and even then he applied for the post in question posing that he possesses the said qualification on 28.12.2022 and on the basis





of the said facts furnished by the petitioner, provisional appointment was offered to him with the condition that the appointing authority would satisfy itself about authenticity of the certificates produced by the candidates and if after verification, it comes to the notice of the appointing authority that the claim of any candidate is found to be false, then his services can be terminated. It was also observed in the appointment order dated 15.12.2023 that in case, any declaration given or information furnished by the candidate is found to be incorrect, or if any information has been suppressed, then the authority reserves the right to withdraw the offer of appointment or even it may cancel the appointment, at any time without prejudice. In the instant case also, the order impugned has been passed finding that the petitioner was not in possession of the requisite qualification of Ph.D. on the last date of submission of the application form.

17. Now, the another question which remains for consideration of this Court is whether, the petitioner is entitled to claim any waiver in absence of having the requisite qualification of Ph.D. degree on the last date of submission of the application forms?

18. It needs to be noted here that like the petitioner, there could have been a large number of candidates who are not eligible, as per the requirement of the advertisement, since, they did not possess the requisite and required eligibility on the last date of submission of the application forms. Granting any relief to the petitioner would violate the doctrine of equality, which is the backbone of the fundamental rights enshrined in the Constitution of India. A large number of such candidates may not have applied





adhering to the statutory rules, terms and conditions of the advertisement and considering themselves to be ineligible. There is no obligation on the part of the Court to protect an illegal appointment, the extra-ordinary power of this Court cannot be utilized in such like matters and the same can be used only in appropriate cases to advance the cause of justice so that none can defeat the rights of others and create arbitrariness.

19. There cannot be any waiver or relaxation in the terms and conditions of the advertisement, unless the power of relaxation is duly reserved in the relevant Rules and/or in the advertisement. Even if, there is a power of relaxation provided in the Rules, the same would have to be indicated in the advertisement. When such power is exercised, there should be and must be wide publicity in the advertisement itself, so that the persons who are likely to be benefited, by exercise of such powers, may get the opportunity to apply and compete. This view has been taken by the Hon'ble Supreme Court in the case of **Sanjay Kr. Dixit Vs. State of UP** reported in **2019(7) SCC 373**.

20. The Hon'ble Apex Court in the case of **Bedanga Talukdar v. Saifudaullah Khan**, reported in **(2011) 12 SCC 85** has held in para 29 and 32 as under:-

"29. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously





maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.

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32. In the face of such conclusions, we have little hesitation in concluding that the conclusion recorded by the High Court is contrary to the facts and materials on the record. It is settled law that there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement. In the present case, no such rule has been brought to our notice. In such circumstances, the High Court could not have issued the impugned direction to consider the claim of Respondent 1 on the basis of identity card submitted after the selection process was over, with the publication of the select list."

21. Since there was no reference of relaxation in the Rules and/or in the advertisement, the other similarly situated persons, who were lacking eligibility due to non-possession of the required qualification of Ph.D. degree on the last date of submission of the application form, failed to apply in the selection process as they were treated as 'ineligible' to participate. Hence, at this stage, granting relaxation to the petitioner of any condition of the advertisement, without due publication, would be contrary to the





Right to Equality guaranteed under Articles 14 and 16 of the Constitution of India. In view of the discussions made hereinabove, this Court finds no merit and substance in the instant writ petition. Accordingly, the same is liable to be and is hereby rejected.

22. Interim order passed by this Court stands vacated.

23. Stay application as well as all pending application(s), if any, also stand dismissed.

(ANOOP KUMAR DHAND),J

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