

In the Court of Commissioner for Persons with Disabilities
25, D, Mata Sundari Road, Near Guru Nanak Eye Centre, New Delhi-2
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[Vested with power of Civil Court under the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995]

Case No. 4(564)/2013-Wel./CD/1733-35

Dated: 20.11.14

In the matter of :

Sh.Kamal Kant Agarwal

Room No.210 ECE Department
Electrical Block, IGDTUW Campus
Old GGSIP University Campus
Kashmere Gate, Delhi-110006.

..... **Petitioner**

Versus

Sh.S.K.Jha

Registrar

Guru Gobind Singh Indraprastha University
Sector-16, Dwarka
New Delhi-110078.

Sh.S.N.Jha

Registrar

Indira Gandhi Delhi Technical University for Women
(IGDTUW)
Old GGSIP University Campus
Kashmere Gate, Delhi-110006.

..... **Respondents**

ORDER

1. A representation was received from Sh.Kamal Kant Aggarwal on 26.12.13 relating to his grievances with the Indira Gandhi Delhi Technical University for Women and Guru Gobind Singh Indraprastha University Delhi for not adding the acquired qualification in his service book etc. After receipt of the representation comments were sought from both the Universities and since no comments were received after reminders a hearing was fixed.
2. During the course of the hearing replies were filed on behalf of the Universities with replication from the petitioner. Briefly stated facts of the case are that the petitioner had applied for permission (NOC) from the University (Guru Gobind Singh Indraprastha University) in 2008 for pursuing a course for B.Tech under Distance

Learning Programme from Thapar University Patiala after discussing the matter with the Principal Indira Gandhi Delhi Technical University for Women who had assured him that he would try to grant the requisite NOC. However since no reply was received from the University the petitioner applied and was admitted in the said course after depositing an amount of Rs.27,000/- as fee. After three months of the date of admission the petitioner received a reply from the University stating that NOC cannot be granted to the petitioner as he had not completed three years of service in the University. The petitioner had deposited Rs.27,000/- and therefore it was not possible for him to withdraw his admission from the University. After completing the course he requested for adding the acquired degree in his qualification in his service book which was not allowed as he had pursued the course without taking NOC from the University.

3. During the course of the hearing the representative of the University filed their response stating therein that **Quote** "a circular was issued in 2007 having the force of Regulation for the employees working on regular basis to pursue higher studies. The circular was issued after recommendations made by a Committee constituted by the Vice Chancellor which inter alia laid down the guidelines for granting such permission. As per these guidelines the length of service of the employee may be the main factor; he/she should have served at least for three years on a regular basis in the University and that permission for higher studies may be granted grade wise. The guidelines further provided that only one third of the regular employees may be given such permission on the basis of their seniority in service. That the Government is competent to frame rules and regulation with respect to conditions of service pertaining to its employees. The passing of the Acts and the framing of these rules are however made subject to the provisions of the Constitution of India. Article 309 deals with the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or a State. Article 310 deals with the tenure of the office of members of service. The Hon'ble Supreme Court in State of Madhya Pradesh Vs Shardul Singh reported in (1970) 3 SCR 302 has held that the expression Conditions of Service means all those conditions which relate to the holding of a post by a person right from the time of his appointment until his retirement and even beyond it in matters like pensions etc. As the making of such laws and the framing of such rules are subject to the provisions of the Constitution if any such Act or rule violates any of the provisions of the Constitution it would be

void. Thus as held in *Moti Ram Deka Vs General Manager North East Frontier Railway* reported in AIR 1964 SC 600 if any such Act or rule trespasses upon the rights guaranteed to Government servants by Art 311 it would be void. Similarly such Act and rules cannot abridge or restrict the pleasure of the President or the Governor of the State exercisable under Art 310 (1) further than what the Constitution has expressly done. The guidelines set out in circular dated 4.4.2007 are based on reasonable classification and do not discriminate any class of employees. That the provision contained in the Constitution does not guarantee any fundamental right to those employees who do not abide by any rules/regulations/guidelines framed in connection with conditions of service. The Circular dated 4.4.2007 therefore does not offend any provision of the Constitution and thus the action taken by the University cannot be termed as violative of any constitutional right of any class of employees. The Commissioner for Persons with Disabilities is vested with power under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, Rule 62 of the Act stipulates that the Commissioner may on his own motion or on an application made by any aggrieved person or otherwise look into complaints with respect to matter relating to (a) deprivation of rights of person with disabilities (b) non implementation of laws, rules, bye laws, regulations, executive order, guidelines or instructions made is issued by the appropriate governments and the local authorities for the welfare and protection of rights of persons with disabilities and take up the matter with the appropriate authorities and that the Commissioner is not vested with the power to test the vires and constitutionality of any Rules/Regulation concerning conditions of service which are based on reasonable classification which is permitted under Article 14 of the Constitution itself. That from the foregoing it reveals that the complainant desires to get benefit for his own wrong i.e acquiring academic qualification without getting approval/NOC from his employer which is mandatory and then getting it added in his service book. The University has in no way gone wrong or acted against the existing rules in not acceding to the request of the complainant. If such un-authorization practices adopted by erring employees are recognized it is feared that administrative structure will be demolished. There would be indiscipline every where and the employer-employees relationship will be jeopardized." **Unquote**

4. On receipt of the reply of the University the petitioner was requested to file his replication. The petitioner in his replication filed on 30.9.14 has stated that the case

referred by the University relates to only recruitment and conditions of service of persons serving and does not deal with the violation of fundamental rights which has been done by the University by framing the Rules whereby employees could pursue higher education with three years restriction. All the cases referred by the respondent in their replies relate to termination of service, dismissal and removal and do not relate to fundamental rights and therefore not relevant in this case. The Petitioner further stated **Quote** "Also it is clearly stated in article 309 of the Constitution that Recruitment and conditions of service of persons serving the Union or a State subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union and for the Governor of a State or such person as he may direct in the case of services and posts in connection with affairs of the State to make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under and Act of the appropriate Legislature under this article and any rules so made shall have effect subject to the provisions of any such Act. In the case of Ms.Mohini Jain Vs State of Karnataka and Ors 1992 AIR 1858, 1992 SCR (3) 658 the Hon'ble Supreme Court had declared right to education as fundamental right under Article 21 of the Constitution and held that the dignity of man is inviolable. It is the duty of the State to respect and protect the same. It is primarily the education which brings forth the dignity of a man. The framers of the Constitution were aware that more than seventy per cent of the people whom they were giving the Constitution of India were illiterate. They were also hopeful that within a period of ten years illiteracy would be wiped out from the country. It was with that hope that Articles 41 and 45 were brought in Chapter IV of the Constitution. An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him. Article 41 in Chapter IV of the Constitution recognizes an individual's right to education. It says that the State shall within the limits of its economic capacity and development make effective provision for securing the right to education. Although a citizen cannot enforce the directive principles contained in Chapter IV of the Constitution but these were not intended to be mere pious declarations. Without making right to education under Article 41 of the Constitution

a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate. The right to education therefore is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens. The educational institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society. Every citizen has a right to education under the Constitution. The State may discharge its obligation through state owned or state recognized educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfil its obligation under the Constitution. The students are given admission to the educational institutions whether state-owned or state recognised in recognition of their right to education under the Constitution. Charging capitation fee in consideration of admission to education institutions is a patent denial of a citizen's right to education under the Constitution. Article 13 in the Constitution of India clearly states that Laws inconsistent with or in derogation of the fundamental rights. (1) All laws in force in the territory of India immediately before the commencement of this Constitution in so far as they are inconsistent with the provisions of this Part shall to the extent of such inconsistency be void. (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall to the extent of the contravention be void. (3) In this article unless the context otherwise requires law includes any Ordinance, order, bye law, rule , regulation, notification, custom or usages having in the territory of India the force of law; laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and nor previously repealed notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. (4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368 Right of Equality..... Fundamental right given by the Constitution are absolute and no one can violate it. The contention of the respondent that the employees are not entitled to enjoy fundamental right given by the Constitution is totally an act of misinterpretation. Hon'ble Supreme Court in its various judgement held that no one can be deprived of this right except according to the procedure prescribed by law. Only the Parliament of India are empowered to curtail such right

and no one whether an individual or an organization are vested with this power to curtail fundamental right given by the Constitution of India. The rule framed by the University was against the Constitution and violates the fundamental right of employees to pursue education. Also that rule was not applicable on the teaching staff of the University which is also violation of Article 14 and 16 of the Constitution of India. Further NOC under this rules issued without any equality. Employees who do not complete three years of service given NOC to pursue higher education. Further as per the Constitution of India and Rules of Government it is the duty of state or organization to provide assistant and better opportunities to weaker section of Society i.e SC/ST and Persons with Disabilities. The Universities while making such rules do not think about the weaker section of Society and invariably apply these rules to all. There was no flexibility adapted to granting NOCs to employee related to PWD category. In the matter of Geetaben Ratilal Patel Vs District Primary Education on 2 July 2013 the Hon'ble Supreme Court upheld the power of the Commissioner for Persons with Disabilities under Section 62 of the Persons with Disabilities Act 1995 and ruled that The power of the Commissioner to look into the complaints with respect to the matters relating to deprivation of rights as provided under Section 62 of the Act is not an empty formality and the Commissioner is required to apply his mind on the question raised by the complainant to find out the truth behind the complaint. If so necessary the Commissioner may suo moto inquire into the matter and/or after giving notice hearing the concerned parties and going through the records may decide the complaint. If it comes to the notice of the Commissioner that a person with disability has been deprived of his rights or that the authorities have flouted any law, rule, guideline, instruction etc issued by the appropriate Government or local authorities, the Commissioner is required to take up the matter with the appropriate authority to ensure restoration of rights of such disabled person and/or to implement the law, rule, guideline, instruction if not followed. Having regard to the fact that we have upheld the order passed by the Commissioner we direct the authorities to reinstate the appellant in service immediately and to pay her regular salary every month. The appellant shall be entitled to arrears of salary w.e.f 1.2.2008 which the respondent shall pay within three months else the appellant shall become entitled to interest at the rate of 6% per annum with effect from 1.2.2008 till the actual payment. The contentions raised by respondent are totally denied..... I am not trying to take any benefit of anything. I am claiming only what is my right and what I

am entitled for to pursue higher qualification and to advance myself is not a crime. I have never pursued any qualification without giving intimation and asked for permission from the employer. If my intention was not ill I never apply for NOC. It was the respondent who acted wrongly and in biased manner. The University by the way of making of such rules tried to curtail the future growth of the employees. No administrative structure may be demolished when an employee who is serving in an organization with full dedication wants to upgrade his qualification and his future growth. The growth of employee is also the growth of organization. The acts of the University are against the spirit of the Constitution of India and Rules framed by the government of India." **Unquote.** The petitioner prayed for directing the University to add the acquired qualification in his service book and also grant NOC for pursuing LLB from Delhi University and also for outside employment.

5. I have perused the representation of the petitioner and the replies filed by both the parties. I have also carefully studied the related judicial orders of the Hon'ble High Court and Hon'ble Supreme Court of India. A perusal of the reply of the respondent University reveals the view of the University that the guidelines issued on 4.4.2007 do not contravene any provision of the Constitution as the guidelines are based on reasonable classification and do not discriminate any class of employees and that the Constitution does not guarantee any fundamental right to those employees who do not abide by any rules/regulation/guidelines framed in connection with the condition of services. The requirement of taking NOC from the employer is to ensure that any activity or conduct of the employer should not come in the way of performance of his/her duties. The employee should perform his duties without engaging himself elsewhere during duty hours. The instructions of the Ministry of Home Affairs Government of India in this regard are **Quote** "(1) Joining of Educational Institutions by government servants outside normal office hours : It has been brought to the notice of this Ministry on behalf of Government servants belonging to Scheduled Castes/Scheduled Tribes that certain Ministries/Departments do not permit members of their staff belonging to these communities to join educational institutions outside the normal office hours. 2. As the Ministries are aware it was proposed in this Ministry's OM No.25/27/52-Estt. dated the 3rd May 1952 (not reproduced) to issue general instruction on the subject. the replies received to that OM however revealed that while some Departments found that efficiency was suffering on account of government servants attending a regular course of study for University Degree even

outside office hours a great majority of the Ministries was able to permit their employees to pursue such studies without detriment to official duties and that no serious problems had been created in most of the Departments by Government servants joining educational institutions. It was therefore not considered necessary to issue any specific instruction on the subject. Ordinarily there can be no objection to the pursuit of knowledge by Government servants in their leisure hours. But this must be subject to the condition that such pursuit does in no way detract from their efficiency. Where ever found necessary the administrative authorities may require that Government servants under their control should take prior permission before joining educational institutions or courses of studies for University Degrees as the joining of educational institutions involves advance commitment about attendance at specific hours and absence from duty during periods of examinations. Ordinarily permission is to be granted but with a view to summarily dealing with cases where it is noticed that the government servant has been neglecting his duties for the sake of his studies a condition may be attached saying that the permission may be withdrawn at any moment without assigning any reason. This will of course be without prejudice to any other departmental action being taken where mere withdrawal of the permission is not considered adequate. 3. Government servants belonging to the Scheduled Castes/Scheduled Tribes may be allowed to take full advantage of the educational facilities subject to the policy stated above. 4. These instructions have been issued with the concurrence of the Comptroller and Auditor General in so far as persons serving under him are concerned. [MHA OM No.130/54-Ests.(A) dated 26.2.1955]. (1A) Period of tenure of the official should be taken into account while granting permission : It is clarified for information and compliance by the Ministry of Finance etc that while taking into account the various administrative considerations in deciding upon a request for permission to attend courses of study outside office hours the period of tenure of the government servant concerned should also be taken into account so that in the ordinary course occasions do not arise to ask for extension of tenure to cover the period of the course attended by him which may continue beyond the expiry of the tenure. Should a case of permission to a tenure officer to join an educational course the completion of which would require the extension of tenure of the officer concerned come up for consideration this Department may please be consulted before the permission is granted. [MHA OM No.11013/4/77-Ests (A) dated the 21st May 1977]" Unquote. It may be seen that the intention of the government is

to help in the development /progress of an individual while ensuring at the same time that the duties assigned to the employee are not compromised on any account. There is a provision of executing a bond when the money spent on the training of the employee is borne by the concerned department that the employee would not leave the assignment for a specified period after training and in case he/she does leave the employee deposits an amount as determined by the department. Even in such cases the instructions of the government are **Quote** "III. 1. Instances have come to the notice of the Government where the employees of the Public Enterprises who get selected for All India Services or for Central/State Government services through competitive examinations held by the Union Public Service Commission/State Public Service Commissions or for services under Semi-Government Organization/Public Enterprises on the basis of tests/interviews, have been called upon to pay varying amounts to get themselves released from the bonds executed by them at the time of undergoing higher scientific/technical training at the cost of Public Enterprises. Barriers like this have not only hampered the prospects of bright candidates but have also inhibited the mobility of employees between the Public Enterprises on the one hand and the Central/State Government and other Semi-Government Organizations on the other. 2. According to the extant instructions issued by the Government in 1966, if a Central government servant leaves his job for taking up employment under a State Government/Public Sector Undertaking owned wholly or partly by the Central Government or by a State Government or under Quasi-Government Organization the terms of any bond committing him to serve the Government for a stipulated period, which might have been executed by him need not be enforced, although a fresh bond should be taken from such a Government servant to ensure that he serves the new employer State Government/Public Sector Undertaking/Quasi-Government Organization for an appropriate period to be determined in each case by the erstwhile Ministry/Department, taking into account the amount spent by them on their training. 3. The question whether the terms of the bond executed by the employees of the Public Enterprises who have received scientific/technical training at the cost of Public Enterprises should be enforced or not in cases where they join Central Government/State Government services or take up employment under Quasi-Government Organizations/Public Enterprises either on the basis of competitive examinations/tests/interviews organized by those Organizations or otherwise has been under consideration for some time. It has been decided that the enforcement of bond

should not be insisted upon in the case of an employee of a Public Enterprise who joins the Central Government/State Government, Quasi-Government Organizations or another Public Enterprise subject to the condition that a fresh bond is taken to ensure that the employee serves the new employer for the balance of the original bond period. [B.P.E (M.F.) O.M No. BPE/GL-017/77/MAN/2(11)/75 BPE (GM-I) dated the 13th June 1977]" **Unquote**. It may therefore be seen that the Government of India views such pursuits of knowledge from the point of view of personal growth of the employee even when a bond had been executed between the employee and the employer. The Hon'ble Supreme Court of India in the case of Justice Sunanda Bhandare Foundation Vs UOI Writ petition (Civil) No.116 of 1998 has also observed as follows **Quote** "Be that as it may the beneficial provisions of the 1995 Act cannot be allowed to remain only on paper for years and thereby defeating the very purpose of such law and legislative policy. The Union, States, Union Territories and all those upon whom obligation has been cast under the 1995 Act have to effectively implement it. As a matter of fact, the role of the governments in the matter such as this has to be proactive. In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic. A little concern for this class who are differently abled can do wonders in their life and help them stand on their own and not remain on mercy of others. A Welfare State, that India is must accord its best and special attention to a section of our society which comprises of differently abled citizens. This is true equality and effective conferment of equal opportunity" **Unquote**. The imposition of such a condition in the guidelines is therefore uncalled for particularly in the case of disabled persons.

6. After careful consideration of all the relevant papers/documents/instructions/orders of the Hon'ble High Court I am of the view that the condition imposed by the University for not allowing the petitioner (a disabled person) to pursue higher education without completing three years of service in the University is unconstitutional as employees cannot be deprived of acquiring higher education to improve their prospects in life. It is not clear as to on what basis such a condition was imposed which in a way means not allowing the citizens to prosper on their own merit and is therefore totally restrictive. The fact that such permissions (NOC) were granted to other similarly placed employees of the University and that there is no such condition laid down for the teaching staff amounts to discrimination and violation of the Right of Equality as

enshrined in the Constitution of India. It is therefore desirable that the acquired genuine degree should be added in the qualification in the service book and he should also be allowed to pursue other courses for advancement of his career etc with a condition that the work of the University will not in any way be neglected by the concerned employee.

7. Ordered accordingly

Given under my hand and the seal of the Court this 20th day of November 2014.



20-264
20/11/14

(K.S. Mehra)
Commissioner

Court of Commissioner (Disabilities)
National Capital Territory of Delhi
Room No. - 1
25-D, Mata Sundari Road, New Delhi-02