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WP No. 8593 of 2013
Rakesh Singh Bhadoriya vs. Union of India and Ors.

Gwalior, Dated :03/09/2020

Shri Prashant Sharma, counsel for the petitioner.

Shri A.K. Jain, counsel for the respondents No. 2 and 3/ Indian Oil Corporation.

Heard finally through video conferencing.

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

7.(i) The order impugned annexure P/1 may kindly be quashed.

(ii) Respondents may kindly be directed to allot the distributorship of LPG to the petitioner.

Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case same may kindly be granted to the petitioner."

It is the case of the petitioner that the petitioner is an Ex-Army man who had suffered gunshot injuries while he was posted at the Border. An advertisement was issued by the respondents on 22/04/2011 for awarding the Distributorship of LPG at Mehgaon, District Bhind for G.P. Category. It is submitted that the petitioner is having a graduation certificate issued by the Indian Army and this certificate is duly recognized by the Association of Indian Universities and as per the notification issued by the Ministry of Personnel, Public Grievances and Pensions, the certificate issued by the Indian Army is having equivalence to graduation. There is a scheme with regard to allotment of oil products agency to the Defence Personnel. The

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petitioner was holding the post of Havaldar and had received a bullet injury while he was posted at the Border and the eligibility certificate has also been issued by the Directorate General Settlement. Copy of the battle casualty certificate has been filed as Annexure P11 and character certificate is Ex.P12. The application of the petitioner for allotment of Distributorship of LPG was rejected by the respondents by discarding his graduation certificate. Therefore, the petitioner filed a Writ Petition No.424/2012, which was allowed and the respondents were directed to reconsider the educational qualification of the petitioner. Thereafter, the petitioner made a representation but the same has been dismissed by the impugned order. Accordingly, this petition has been filed, contending *inter alia* that the graduation certificate issued by the Indian Army fulfills the educational qualification as laid down in the guidelines for allotment of LPG Distributorship. It is further submitted that the **Punjab & Haryana High Court** by its order dated **18th February, 2020** passed in the case of **Krishan Singh Yadav vs. Union of India and Ors. in CWP No.13263 of 2016 (O & M)** has held that the graduation certificate issued by the Indian Army is equivalent to Graduation/Degree awarded by any of the Universities incorporated by an Act of the Central or State Legislature in India or any other educational institutions established by an Act of Parliament or declared to be deemed as a

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University under the UGC Act, 1956, or possess an equivalent qualification recognized by the Ministry of HRD, Government of India and the present petition is duly covered by the said order.

Per contra, it is submitted by the counsel for the respondents/ Indian Oil Corporation that so far as graduation certificate issued by the Indian Army is concerned, it is valid for appointment on Class-C post and is not valid for allotment of LPG Distributorship because the graduation certificate issued by the Indian Army cannot be treated at par with the educational qualification degree awarded by any of the Universities or any other educational institutions established by an Act of Parliament or declared to be deemed as a University under the UGC Act, 1956 and further, the graduation certificate issued by the Indian Army has not been recognized by the Ministry of HRD, Government of India. It is further submitted that the **Division Bench of Allahabad High Court** by order dated **19/11/2014** passed in Writ-C No.60706 of 2014 [**Jai Vijay Singh vs. Union of India, through Secretary & Others**] has held that graduation certificate issued by the Indian Army cannot be treated as an embodiment of an educational qualification awarded either by a University or by any other educational institution or by an entity declared to be a deemed University. Therefore, the said certificate does not fulfil the minimum educational qualification as mentioned in the guidelines for allotment of LPG Distributorship. It is

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further submitted that when the Division Bench of Allahabad High Court has held that the graduation certificate issued by the Indian Army is not equivalent to the educational qualification as required for allotment of LPG Distributorship, then the Single Judge of Punjab & Haryana High Court should not have passed the judgment in the case of **Krishan Singh Yadav (supra)** which runs contrary to the judgment of Division Bench of Allahabad High Court because the judgment passed by the Division Bench of Allahabad High Court is binding on the Single Judge of another High Court and in the light of the judgment passed by the Supreme Court in the case of **National Insurance Company Limited vs. Pranay Sethi & Others** reported in **2018(2) MPLJ 344**, the Single Judge of Punjab & Haryana High Court should have referred the matter to a Larger Bench.

Heard the learned counsel for the parties.

This Court could not understand as to how a Single Judge of one High Court can refer the Judgment, passed by Division Bench of another High Court to a Larger Bench ? The Supreme Court in the case of **East India Commercial Company Limited, Calcutta & Another vs. The Collector of Customs, Calcutta**, reported in **AIR 1962 SC 1893** and it was held as under:-

"(14) It is also said that the decision of a High Court on a point of law is binding on all inferior Tribunals within its territorial jurisdiction. It is, therefore, contended that the Collector is bound by the decision of Sen. J., to which I

have earlier referred, that the breach of a condition of a licence is not a breach of the order under which the licence was issued and the condition imposed, As at present advised I am not prepared to subscribe to the view that the decision of a High Court is so binding. But it seems to me that the question does not arise, for even if the decision of the High Court was binding on the Collector, that would not affect his jurisdiction. All that it would establish is that the Collector would have, while exercising his jurisdiction, to hold that the breach of a condition of the licence is not a breach of an order. Its only effect would be that the appellants would not have to establish independently as a proposition of law that a breach of a condition of a licence is not the breach of an order under which it had been issued but might for that purpose rely on the judgment of Sen, J.

* * *

(29) As we have already noticed in the earlier stage of the judgment, the notice issued by the respondent charges the appellants thus:

"One of the conditions of the special licence was that the goods would be utilized for consumption as raw material or accessories in the factory of the licence-holder and no part thereof would be sold to other parties, but in contravention of that condition the appellants sold a part of the goods imported to a third party and as the goods had been caused to be issued by fraudulent misrepresentation, they were liable to be confiscated under s. 167(8) of the Sea Customs Act."

[Section 167 \(8\)](#) of the Sea Customs Act can be invoked only if an order issued under s. 3 of the Act was infringed during the course of the import or export. The division Bench of the High Court held that a contravention of a condition imposed by a licence issued under the Act is not an offence under s. 5 of the Act. This raises the question whether an administrative tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared. Under Art., 215, every High Court shall be a court of record and shall have all the powers of such a

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court including the power to punish for contempt of itself. Under Art. 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under Art. 227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercise jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the sub-ordinate courts can equally do so, for there is no specific, provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working: otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefor, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be in. valid and the proceedings themselves would be without jurisdiction."

Thus, it is clear that the judgment passed by the Highest Court of the State is binding on the subordinate courts/Tribunals/ authorities of the same State because of power of superintendence enjoyed by the Highest Court of the State. However, the judgment passed by one High Court is not binding on the another High Court although it may have a persuasive value.

The Supreme Court in the case of **Valliamma Champaka Pillai**

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vs. Sivathanu Pillai and Others, reported in (1979) 4 SCC 429 has held as under:-

"21. These erroneous decisions of the Travancore Court, at best, have a persuasive effect and not the force of binding precedents on the Madras High Court. There is nothing in the States Reorganization Act 1956 or any other law which exalts the ratio of those decisions to the status of a binding law nor could the ratio decidendi of those decisions be perpetuated by invoking the doctrine of stare decisis."

Thus, the contention of the petitioner that the Single Judge of Punjab & Haryana High Court should not have distinguished the judgment passed by the Division Bench of Allahabad High Court and should have referred the matter to the Larger Bench is *per se* misconceived and is hereby **rejected**.

Now, the only question for consideration is that whether the graduation certificate issued by the Indian Army can be treated at par with the graduation certificate issued by any University or not ?

Clause 7.1.ii. of the Guidelines for Selection on Regular LPG Distributorship, 2011 reads as under:-

7.1.ii. The applicant should

have minimum any one of the following educational qualification awarded by any of the Universities incorporated by an Act of the Central or State Legislature in India or any other educational institutions established by an Act of Parliament or declared to be deemed as a University under the UGC Act, 1956, or possess an equivalent qualification recognized by the Ministry of HRD, Government of India as on the date of application:-

- a) Graduation in any field.
- b) Chartered Accountant

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- c) Company Secretary
- d) Cost Accountant
- e) Diploma in Engineering. "

From the plain reading of aforesaid provisions, it is clear that if any candidate possesses an equivalent qualification recognized by the Ministry of HRD, Government of India, then he shall also be entitled for allotment of LPG Distributorship. In the present case, the petitioner was working as Havaldar in the Indian Army who sustained a bullet injury while he was posted at the Border. The Directorate General Resettlement has issued an eligibility certificate certifying that the petitioner is eligible for allotment of LPG Distributorship.

In the first round of litigation when the candidature of the petitioner was cancelled due to educational qualification, then he had approached this Court by filing a Writ Petition No.424/2012 which was disposed of by this Court with the following observations:-

"(6) Technically speaking, I find force in the argument of learned senior counsel Shri Jain that petitioner's case does not fall within the eligibility clause 7.1(ii) because the petitioner's certificate is not treated as equivalent by UGC or by the Ministry of HRD. However, in the considered opinion of this Court, the DOP&T is a model department and its circulars and general provisions are made applicable to Ministries of other departments. Considering this aspect, I deem it proper to remit the matter back for consideration by the Indian Oil Corporation.

(7) Accordingly, the petitioner shall submit a detailed representation along with aforesaid relevant documents and submit it before the respondents No. 2 and 3. In turn, the respondents No.2 and 3 shall reconsider the aspect dispassionately and shall decide whether the notification of DOP&T and Association of Indian Universities can make

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the petitioner eligible. After proper application of mind, the petitioner's case be decided by a reasoned order. The entire exercise be completed within 30 days."

If Clause 7.1.ii of the Guidelines for Selection on Regular LPG Distributorship, 2011 is read, then it is clear that any candidate who possesses an equivalent qualification recognized by the Ministry of HRD, Government of India as on the date of application, then he is also treated to be holding the educational qualification mentioned in sub-clauses(a) to (e) of Clause 7.1.ii of the Guidelines. Neither the petitioner nor the respondents have filed any circular/notification of the Ministry of HRD, Government of India, thereby recognizing the graduation certificate issued by the Indian Army. However, the petitioner has relied upon the judgment passed by Punjab & Haryana High Court in the case of **Krishan Singh Yadav (supra)**, in which it has been mentioned that the Ministry of Human Resources Development of the Government of India has issued a notification dated 31.04.1996 wherein it has been declared that qualifications recognized for the purpose of recruitment to superior posts and services under the Central Government whose equivalence does not exist otherwise, to be recognized qualifications for the purposes of employment under the Central Government for which graduation is a prescribed qualification.

Now, the only question for consideration is that whether the

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graduation certificate which has been issued by the Indian Army, has to be confined to the recruitment to Class-C post or it can be used for other purposes.

The respondents/Indian Oil Corporation has not pointed out as to why a special category of Defence Personnel has been created in the Guidelines for Selection on Regular LPG Distributorship. The basic purpose for creating a special category appears to be to provide avenues for grant of LPG Distributorship to the Ex-Army personnel who are covered by the definition of "Defence Personnel" as mentioned in the Guidelines. The Defence personnel would certainly include an Army-man holding the lowest post up-to the Highest post. It is not the case of the respondents that the minimum qualification for appointment to lowest post in the Army is graduation. Therefore, there are several posts for which the minimum qualification is less than graduation. Even for the Post of Sepoy in the Army, the minimum qualification is less than graduation. Every Army-man during his service period can be posted at the Border irrespective of the post which he might be holding and any Army-man may suffer disability on his duty. The counsel for the respondents could not point out the rationale behind distinction between an Army-man holding the graduate degree and an Army-man not holding the graduate degree issued by an University. Therefore, it is held that if the graduation

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certificate issued by Indian Army is confined to the recruitment to Class-C post, then it would frustrate the very purpose of creating the special category for allotment of LPG Distributorship under the Guidelines.

It is well-established principle of law that if an interpretation of provision leads to an absurdity or frustrates the mandate of Articles 14, 19 of the Constitutions of India, then it must be avoided. The Supreme Court in the case of **Corporation Bank vs. Saraswati Abharansala and Another**, reported in (2009) 1 SCC 540 has held as under :-

"24. The statute furthermore, it is trite, should be read in the manner so as to do justice to the parties. If it is to be held, without there being any statutory provision that those who have deposited the amount in time would be put to a disadvantageous position and those who were defaulters would be better placed, the same would give rise to an absurdity. Construction of the statute which leads to confusion must be avoided."

Therefore, it is held that the graduation certificate issued by the Indian Army cannot be confined to the recruitment of an Ex-Army-man on Class-C post only.

However, the notification dated 31.04.1996 issued by the Ministry of Human Resources Development of the Government of India is not on record.

Accordingly, the order dated 30/09/2013 (Annexure P1) issued by the respondents is hereby quashed.

The respondents are directed to reconsider the educational

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qualification of the petitioner in the light of notification dated 31/04/1996 issued by the Ministry of Human Resources Development of the Government of India. Let the entire exercise be completed within a period of **three months** from the date of receipt of certified copy of this order. While deciding the question of educational qualification of the petitioner, if the respondents come to a conclusion that the petitioner does not hold the minimum qualification as required under the Guidelines, then they are directed to pass a specific speaking order, pointing out as to why the notification dated 31.04.1996 issued by the Ministry of Human Resources Development, Government of India will not come to the rescue of the petitioner specifically when this Court has already held that the graduation certificate issued by the Indian Army cannot be confined to the recruitment to Class-C post only, but it applies for allotment of LPG Distributorship also and the Directorate General Resettlement has also issued the eligibility certificate, thereby certifying that the petitioner is eligible for allotment of LPG Distributorship.

With aforesaid observations, the petition is **finally disposed of.**

(G.S.Ahluwalia)
Judge