

A GELUS RAM SAHU AND OTHERS

v.

DR. SURENDRA KUMAR SINGH AND OTHERS

(Civil Appeal No. 1667 of 2020)

B FEBRUARY 18, 2020

[S. A. BOBDE, CJI, B. R. GAVAI AND SURYA KANT, JJ.]

Service Law:

Appointment – Post of Principal – On facts, respondent no. 1

- C *applied for the post of principal along with appellant nos. 1 to 7 – However, only appellants declared successful – Writ petition by respondent no. 1 seeking declaration that Ph.D. is an essential qualification for post of principal at the Polytechnic colleges; sought quashing of the promotion order since none of the appellants possessed Ph.D. qualifications as also quashing of 2014 Rules – Allowed by the High Court – On appeal, held: As regards the Ph.D. qualifications, there is no inclination to read down the rules to omit the ‘in Engineering’ part and only selectively insist upon a ‘Ph.D’ – Hence, the only permissible way to read the AICTE criteria would be to lay emphasis on the phrase “or” and thus, interpret ‘Ph.D in Engineering’ as being discretionary upon the adopting institution/ State Government to specify either of the two criteria – Conclusion by the High Court that as 2016 AICTE Notification was clarificatory, it was applicable retrospectively which would remove any ambiguity created by the AICTE Regulations is erroneous – Except for the title, nothing contained therein indicates that the 2016 AICTE Notification was clarificatory in nature – Hence, in the absence of any omission in the 2010 AICTE Regulations, the 2016 AICTE Notification despite being generally clarificatory must be held to have reiterated the existing position of law – There is no retrospective alteration in the qualification prescribed for the post of Principal –*
- G *Appellants do not possess Ph.D., however, they satisfied the requirement of having fifteen years’ experience (of which at least three years was as HOD) under the 2014 Chhattisgarh Rules and were found suitable for promotion – They were also in possession of one of the eligibility criteria prescribed under the 2010 AICTE Regulations – Thus, the appellants’ appointments ought to remain*
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undisturbed – Judgment of the High Court is set aside – Pay Scales, Service conditions and Qualifications for the Teachers and other Academic Staff in Technical Institutions (Diploma) Regulations, 2010 – ‘Chhattisgarh Technical Education (Teaching cadre Polytechnic) (Gazetted) Service Recruitment Rules, 2014. A

Appointment – Illegal appointment from inception – Effect of – Held: An appointment which is erroneous or illegal from the very inception does not clothe the appointee with any indefeasible right and such appointment is always subject to correctional decisions – Appointment of a candidate who has erroneously secured public employment without fulfillment of minimum qualifications can always be annulled upon discovery of mistake. B C

Legislation: Clarificatory’ legislations – Connotation of – Held: Clarificatory’ legislations are an exception to the general rule of presuming prospective application of laws, unless given retrospective effect either expressly or by necessary implication – In order to attract this exception, mere mention in the title or in any provision that the legislation is ‘clarificatory’ would not suffice – Instead, it must substantively be proved that the law was in fact ‘clarificatory’ – If there exists no ambiguity, there arises no question of making use of a clarificatory notification. D

Allowing the appeals, the Court E

HELD: Is Ph.D mandatory for appointment to the post of ‘Principal’ under the 2010 AICTE Regulations?

1.1 Prerequisite criteria for appointment to the post of Principal in a Polytechnic College has been provided under the 2010 AICTE. [Para 13][840-E-F] F

1.2 A perusal of the qualification table makes it obvious that there can be multiple HODs for different departments (like Engineering, Architecture, Hotel Management, Pharmacy etc). In order to be HOD of any such Department, a prospective candidate needs to have both Master’s and Bachelor’s degrees in the relevant field. Whereas candidates with a Ph.D must have had 5 years of experience in the allied field, others without it must have worked for 10 years. Phrased differently, Ph.D is not mandatory for HOD, and instead results in a 5-year relaxation in G

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- A requisite work experience. In other words, Ph.D has been treated equivalent to 5 years teaching experience. [Para 15][805-E-G]
- 1.3 The interpretation as propounded by Respondent No. 1 would necessarily mean that there is no power with a State Government to make Ph.D optional, and that the higher of the
- B two alternate criteria specified under the 2010 AICTE Regulations would be binding on all. Such a plea is problematic on two counts. Firstly, it implies that Ph.D, specifically in 'Engineering' only, would be compulsory for all principals. This creates an inconsistency as such a restriction would be in conflict
- C with the nature of 'experience' specified by the AICTE, like recognition of Experience Certificate granted by the Council for Architecture, which undoubtedly shows that there can be candidates other than from the field of 'Engineering' eligible for appointment as Principal. Secondly, such a contention would be iniquitous in so far as it disenfranchises HODs from multiple
- D recognised departments from applying to the posts of Principal, and arbitrarily restricts the zone of consideration to Engineering HODs only. Such seems to be neither the intent of the 2010 AICTE Regulations nor is it supported by any cogent reasoning. [Para 16][805-G-H; 806-A-C]
- E 1.4 There is no inclination to read down the rules to omit the 'in Engineering' part and only selectively insist upon a 'Ph.D', for in the instant facts it would amount to crossing the fine line between interpretation and legislation. Hence, the only permissible way to read the AICTE criteria would be to lay emphasis on the phrase "or" and hence interpret 'Ph.D in Engineering' as being optional and it being discretionary upon the adopting institution/State Government to specify either of the two criteria. [Para 17][806-C-E]
- 1.5 It cannot be said that due weightage is not given to Ph.D degree while interpreting the 2010 AICTE Regulations. A candidate with Ph.D degree can become HOD with merely 5 years of work experience, whereas candidates without Ph.D need to work for 10 years. Although, requirement of experience for becoming Principal is 10 years uniformly, it comes with a stipulation that 3 years must have been spent as HOD or in an
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equivalent position. Thus, a candidate without Ph.D would compulsorily need 10 years' experience for HOD and would need to work further 3 years in that capacity, i.e. for minimum of 13 years' experience to become Principal. Those with a Ph.D on the other hand, can apply for principal-ship within 10 years, as they would have become eligible for HOD with 5 years experience, and could have completed the further 3 years term as HOD in the interregnum. Hence, hypothetically, there is a 5-year eligibility relaxation granted under AICTE Regulations to those with a Ph.D. The afore-stated advantage is only further exacerbated under the 2014 Chhattisgarh Rules, where those without a Ph.D need 15 years' experience and those with such higher degree, can be appointed within 10 years. Additionally, construction of 2010 AICTE Regulations this way, avoids conflict with the 2014 Chhattisgarh Rules. Even otherwise, given a choice between two interpretations, one which restricts the pool of applicants for public employment and another which enfranchises many, it would befit the spirit of Article 16 that the expansive interpretation is adopted. Such a recourse would both provide opportunities to a wider meritorious class, will increase competition and concomitantly ensure meritorious selections. [Para 20] [Paras 18-20][806-D-H; 808-F-H]

Does the 2016 AICTE Notification retrospectively 'clarify' eligibility conditions for appointment as 'Principal'?

2.1 The 2016 AICTE Notification has made a significant impact upon the High Court's determination of the instant dispute. The High Court held that the said Notification, clearly specified that Ph.D was compulsory for all Principals. As the notification was 'clarificatory', it was held applicable retrospectively which would remove any ambiguity created by the 2010 AICTE Regulations and consequently the appellants were ineligible to hold the posts of 'Principal'. After going through the contents of the 2016 AICTE Notification in its entirety, it is held that the conclusion drawn by the High Court is erroneous for a variety of reasons. At the very outset, no attempt appears to have been made to determine the nature of the 2016 AICTE Notification, as to whether it supplements an obvious omission in the 2010

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- A AICTE Regulations and most importantly its effect on those who have meanwhile acquired vested rights. [Paras 22, 24][809-A-G]

2.2 Clarificatory' legislations are an exception to the general rule of presuming prospective application of laws, unless given retrospective effect either expressly or by necessary implication.

- B In order to attract this exception, mere mention in the title or in any provision that the legislation is 'clarificatory' would not suffice. Instead, it must substantively be proved that the law was in fact 'clarificatory'. [Para 25][809-G-H; 810-A]

2.3 The instant case is one where except for the title, nothing

- C contained therein indicates that the 2016 AICTE Notification was clarificatory in nature. The said Notification is framed in a question-answer style and merely restates what has already been made explicit in the 2010 AICTE Regulations. There seems to be no intent to alter the position of law but instead only to simplify what

- D the AICTE had resolved through its original regulation. The 2016 AICTE Notification is a response to the doubts put forth to AICTE by the public. This is evident from the stand put forth by AICTE in its reply as well as during the course of hearing, namely, that there is no retrospective alteration in the qualification prescribed for the post of Principal. [Para 26][810-F-H]

- E 2.4 Even if the 2016 AICTE Notification was clarificatory, it must be demonstrated that there was an ambiguity in the criteria for appointment to the posts of Principal, which needed to be remedied. Clarificatory notifications are distinct from amendatory notifications, and the former ought not to be a surreptitious tool

- F of achieving the ends of the latter. If there exists no ambiguity, there arises no question of making use of a clarificatory notification. Hence, in the absence of any omission in the 2010 AICTE Regulations, the 2016 AICTE Notification despite being generally clarificatory must be held to have reiterated the existing position of law. [Para 27][811-A-C]

- G 2.5 There were no two interpretations possible, and hence Issue Nos. 48 and 64 of 2016 AICTE Notification have, in no uncertain terms, reprised the substance of 2010 AICTE Regulations. [Para 28][811-C-D]

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Whether retrospective changes in qualificatory A requirements can affect the existing appointments?

3.1 Having held that the 2016 AICTE Notification is only complementary to what the AICTE had laid down in 2010, even in a situation where eligibility conditions are clarified from an anterior date, it may not be prudent to affect the appointments which had been made on the basis of a possible understanding of the eligibility conditions. [Para 29][811-D-E] B

3.2 Vested rights cannot be impaired by enacting law with retrospective effect and that such statutory rules ought not to result in any discrimination or violation of constitutional rights. The said principle would apply with equal force on the outcome of judicial review also and any new meaning given to a set of Rules/Regulations by the court of law would not ordinarily unsettle the settled appointments or conferment of other service benefits. Nevertheless, this Court is fully conscious of the legal position that appointment of a candidate who has erroneously secured public employment without fulfillment of minimum qualifications can always be annulled upon discovery of mistake. An appointment which is erroneous or illegal from the very inception does not clothe the appointee with any indefeasible right and such appointment is always subject to correctional decisions. [Paras 30, 32][811-E-F; 812-D-F] C D E

3.3 There is no quarrel that the appellants do not possess Ph.D. However, they satisfied the requirement of having fifteen years' experience (of which at least three years was as HOD) under the 2014 Chhattisgarh Rules and were found suitable for promotion by the Departmental Promotion Committee on the basis of various other material. They have also been found in possession of one of the eligibility criteria prescribed under the 2010 AICTE Regulations. Thus, the appellants' appointments ought to remain undisturbed in any eventuality. [Para 33] [812-F-H] F G

3.4 It is not in dispute that the State Government had inducted appellant No. 1 in a Committee which submitted the draft service rules. It is, however, difficult to accept (nor has it been alleged) that the said appellant held a position through which H

- A he could influence the rule-making authority to exercise its powers under Proviso to Article 309 of the Constitution as per his wishes. He was holding too small a position that no inference of his dominance in the decision making process can be drawn. [Para 34][813-A-B]
- B 3.5 The judgment of the High Court is set aside and the writ petition filed by Respondent No. 1 challenging the promotion of appellants is dismissed. [Para 35][813-C]
- Ajith Kumar v. State of Kerala (2009) 3 KLJ 563 ; Virtual Soft Systems v. CIT (2007) 9 SCC 665 : [2007] 2 SCR 289 ; TR Kapur v. State of Haryana (1986) Supp SCC 584 : [1987] 1 SCR 584; K Ravindranath Pai v. State of Karnataka (1995) Supp 2 SCC 246 ; K Narayanan v. State of Karnataka (1994) Supp 1 SCC 44 ; Railway Board v. Rangadhamiah (1997) 6 SCC 623 : [1997] 3 Suppl. SCR 63 – referred to.*
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D Case Law Reference

(2009) 3 KLJ 563	referred to	Para 6
[2007] 2 SCR 289	referred to	Para 25
E [1987] 1 SCR 584	referred to	Para 30
(1995) 2 Suppl. SCC 246	referred to	Para 30
(1994) 1 Suppl. SCC 44	referred to	Para 30
[1997] 3 Suppl. SCR 63	referred to	Para 32

F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1667 of 2020.

From the Judgment and Order dated 28.09.2016 of the High Court of Chhattisgarh, Bilaspur in Writ Petition (S) No. 5617 of 2014.

G With
Civil Appeal No. 1668 of 2020.

Ajit Kumar Sinha, J.C. Gupta, S.P. Singh, Sr. Advs., Pranav Sachdeva, Ms. Neha Rathi, Sudesh Kumar Singh, Jatin Bhardwaj, Ashwarya Sinha, Ivan, Alok K Singh, Mrs. Priyanka Sinha, Ms. Shubhi

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Sharma, Vikrant Singh Bais, Tahul Parekah, Raunak Parekh, B.K. Pal, A
Harish Pandey, Dr. Harsh Pathak, Farrukh Rasheed, Siddharth Shukla,
Mohit Choubey, Advs. for the appearing parties.

The following Judgment of the Court was delivered:

JUDGMENT

1. Leave Granted.

2. The appellants are aggrieved by the order dated 28.09.2016 of the High Court of Chhattisgarh through which the writ petition filed by Surendra Kumar Singh (Respondent No. 1) seeking declaration of Ph.D. being an essential qualification for the post of Principal at the Polytechnic colleges was allowed and consequently appointment of the appellants were quashed for want of the said qualification. C

Facts

3. Respondent No. 1 started teaching as a lecturer of electrical engineering at the Govt Polytechnic College, Ambikapur on 10.11.1993 and was promoted as the Head of Department (hereinafter, "HOD") of electrical engineering at the Govt Polytechnic, Durg from 03.03.2009. He is presently working at Govt. Polytechnic, Kabirdham with additional responsibility of Principal-in-charge. Having completed three years of service as HOD on 01.01.2012, Respondent No. 1 applied for the post of Principal in response to the process of promotion initiated by the State of Chhattisgarh (Respondent No. 2) in 2014. Along with Respondent No. 1, numerous other serving HODs (including the seven appellants herein) too participated in the selection process. Whereas Appellants No. 1 to 7 were declared successful through notification dated 25.06.2014, the 1st respondent did not figure in the selection list. F

4. Respondent No. 1 being aggrieved approached the High Court, complaining that his fundamental rights stood violated as the promotion process was in contravention of the 'Pay Scales, Service conditions and Qualifications for the Teachers and other Academic Staff in Technical Institutions (Diploma) Regulations, 2010' (hereinafter, "2010 AICTE Regulations"). These regulations were framed by All India Council for Technical Education (Respondent No. 3, hereinafter "AICTE") in exercise of its powers conferred under the AICTE Act, 1987 which has been enacted by Parliament with reference to Entry 66 of the Union List contained in Schedule VII of the Constitution; and is thus binding on the State of Chhattisgarh (Respondent No. 2). The 'Chhattisgarh G

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- A Technical Education (Teaching cadre-Polytechnic) (Gazetted) Service Recruitment Rules, 2014' (hereinafter, "2014 Chhattisgarh Rules"), in so far as they allow candidates without Ph.D to be appointed as Principals, were contended to be illegal for being in contravention of the 2010 AICTE Regulations whereunder, according to respondent No. 1, Ph.D degree was a mandatory qualification for the post of Principal.
- B 5. Respondent No. 1 buttressed his superior claim highlighting that he had the requisite three-year HOD experience and there was no complaint or disciplinary enquiry pending against him. On the other hand, he urged that the appellants had been promoted though none of them was having Ph.D qualification. He further alleged several other irregularities in the selection process, including the below-specification ACR gradings possessed by certain candidates. Accordingly, Respondent No. 1 sought quashing of the 2014 Chhattisgarh Rules and the promotion order dated 25.06.2014; review of the proceedings conducted by the Departmental Promotion Committee and the grading awarded to him in
- C his Annual Confidential Reports of 2012 and 2013, and further sought resultant reconsideration of his case for promotion from HOD to Principal.
- D 6. The High Court viewed that the 2010 AICTE Regulations were binding, and relying upon a decision of the High Court of Kerala in *B Ajith Kumar v. State of Kerala*¹, it held that the State Government could not lower the qualification threshold. Further, the High Court interpreted the AICTE criteria to imply that Ph.D was mandatory for appointment/promotion as 'Principal' and any ambiguity which could plausibly have existed in the initial formulation of 2010 AICTE Regulations, had been clarified through the 'All India Council for Technical Education (clarifications on certain issues/anomalies pertaining to Qualifications, Pay Scales, Service Conditions, Career Advancement Schemes (CAS) etc. for Teachers and other Academic Staff of Technical Institutions Degree/Diploma), 2016' (hereinafter, "2016 AICTE Notification") which although published on 04.01.2016 would operate retrospectively being clarificatory in nature. Consequently, the High Court quashed the incongruous parts of 2014 Chhattisgarh Rules.
- E 7. The High Court further observed how Appellant No. 1 was Chairman of the very Committee which drafted the 2014 Chhattisgarh Rules, making him an interested party. Noting yet other infirmity regarding the date of publication of 2014 Chhattisgarh Rules in the official gazette,
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- H ¹ (2009) 3 KLJ 563

the High Court quashed the order promoting Appellant Nos. 1 to 7 to the posts of Principal of the Polytechnic Colleges. A

Contentions

8. The distressed appellants contend before us that there existed no ambiguity in the 2010 AICTE Regulations. These regulations clearly mention “or” between two sets of qualifications, one in which Ph.D was specified and the other without such prescription. It is submitted that the High Court could hence not have read it in a manner which converted “or” into “and”. It was further submitted that even if any ambiguity existed, it was not open for the AICTE to retrospectively introduce an eligibility condition in a manner which would expropriate the appellants of their vested rights. B

9. Highlighting how seven out of nine positions would remain vacant in case a Ph.D degree was mandated as an essential qualification for the posts of Principal in polytechnic colleges in Chhattisgarh, the appellants vociferously sought intervention of this Court. They further urged that having participated in the process of promotion, Respondent No. 1 had acquiesced to the interpretation and understanding of the Rules made by Respondent No. 2, and the former was now estopped from challenging the validity of the selection-process or of the 2014 Chhattisgarh Rules. C

10. Respondent No. 1, on the other hand, reiterated that the AICTE is a statutory body established by the Parliament through the All India Council for Technical Education Act, 1987, and thus enjoys complete supremacy and superintendence over determination of standards for technical education. All technical institutions across the country are obliged to adhere to the minimum standards laid down by AICTE. Supporting the High Court’s interpretation, he maintains that since the 2010 AICTE Regulations mandated ‘Ph.D in Engineering’ as one of the essential qualification for the post of Principal, the 2014 Chhattisgarh Rules were ultra vires for having impermissibly relaxed mandatory qualifications. The 1st Respondent adverts to certain other procedural irregularities in framing and publication of the 2014 Chhattisgarh Rules, and additionally alleges that Respondent No. 2 not only violated the Chhattisgarh Public Service Promotion Rules, 2003 but also arbitrarily altered the minimum grading requirement to favour certain candidates. E

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- A 11. Respondent No. 3 (AICTE) has submitted that it was not their case that candidates who had already been promoted to the posts of Principal despite not possessing Ph.D, should be removed. Drawing attention to various relevant provisions of the 2010 AICTE Regulations read with the 2016 AICTE Notification, learned counsel for AICTE urged that any interpretation by this Court holding Ph.D mandatory ought only be prospective in application, and not retrospective.

Analysis

12. The AICTE Act, 1987 has been enacted, as explained briefly in para 4 of this order with an explicit power to set up an Expert Body C to regulate the standards and norms in technical education and for establishment of institutions imparting such education. It is not a matter of dispute that AICTE is a creation of the said statute and the Regulations framed by it in exercise of the powers under the AICTE Act, 1987 carry the force of law. Indeed, it has been accepted by learned counsel for the D parties that the 2010 AICTE Regulations would be the governing law, holding the field, and would bind all parties, including the State of Chhattisgarh. The foremost question which thus arises for our consideration is whether the 2010 AICTE Regulations, in fact, make it mandatory for candidates vying for the post of Principal to possess a Ph.D degree?
- E (i) *Is Ph.D mandatory for appointment to the post of 'Principal' under the 2010 AICTE Regulations?*
13. The cause of the present controversy is not difficult to fathom. Prerequisite criteria for appointment to the post of Principal in a Polytechnic College has been provided under the 2010 AICTE Regulations F in a tabulated form, relevant parts of which are extracted below:

	Post	Qualifications	Experience
PRINCIPAL			
G		Qualification as above for the post of Head of Department and Ph.D in Engineering OR Qualification as above for the post of Head of Department	Minimum of 10 years relevant experience in teaching/research/industry out of which at least 3 years shall be at the level of head of department or equivalent. In case of Architecture, professional practice of 10 years as certified by the Council of Architecture shall also be considered valid."
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14. Since the above reproduced clause enables a ‘Head of Department’ to occupy the next higher post of Principal ‘with’ or ‘without’ Ph.D qualification, it is necessary to find out the eligibility conditions laid down for appointment of different Heads of Department. The relevant extracts of HOD criteria are thus illustratively reproduced hereunder:

Post	Qualifications	Experience
Head of Department		
Engineering / Technology	<p>Bachelor’s and Masters degree of appropriate branch in Engineering / Technology with First Class or equivalent either Bachelor’s or Master’s level</p> <p>OR</p> <p>Bachelor’s degree and Master’s degree of appropriate branch in Engineering / Technology with First Class or equivalent either Bachelor’s or Master’s level and</p> <p>Ph. D or equivalent, in appropriate discipline in Engineering / Technology</p>	<p>Minimum of 10 years relevant experience in teaching / research / industry.</p> <p>Minimum of 5 years relevant experience in teaching / research / industry</p>
NOTE: Since the qualifications and experience for the post of Heads of Pharmacy, Hotel Management & Catering Technology and Architecture Departments are also identical except that the qualification and experience must be only in the relevant subjects, the same have not been reproduced to avoid multiplicity.		

15. A perusal of the qualification table makes it obvious that there can be multiple HODs for different departments (like Engineering, Architecture, Hotel Management, Pharmacy etc). In order to be HOD of any such Department, a prospective candidate needs to have both Master’s and Bachelor’s degrees in the relevant field. Whereas candidates with a Ph.D must have had 5 years of experience in the allied field, others without it must have worked for 10 years. Phrased differently, Ph.D is not mandatory for HOD, and instead results in a 5-year relaxation in requisite work experience. In other words, Ph.D has been treated equivalent to 5 years teaching experience.

16. The interpretation as propounded by Respondent No. 1 would necessarily mean that there is no power with a State Government to make Ph.D optional, and that the higher of the two alternate criteria specified under the 2010 AICTE Regulations would be binding on all. We find such a plea is problematic on two counts. *Firstly*, it implies that

- A Ph.D, specifically in ‘Engineering’ only, would be compulsory for all principals. This creates an inconsistency as such a restriction would be in conflict with the nature of ‘experience’ specified by the AICTE, like recognition of Experience Certificate granted by the Council for Architecture, which undoubtedly shows that there can be candidates other than from the field of ‘Engineering’ eligible for appointment as Principal. *Secondly*, such a contention would be iniquitous in so far as it disenfranchises HODs from multiple recognised departments from applying to the posts of Principal, and arbitrarily restricts the zone of consideration to Engineering HODs only. Such seems to be neither the intent of the 2010 AICTE Regulations nor is it supported by any cogent reasoning.

- 17. We are also not inclined to read down the rules to omit the ‘in Engineering’ part and only selectively insist upon a ‘Ph.D’, for in the present facts it would amount to crossing the fine line between interpretation and legislation. Hence, the only permissible way to read
 - D the AICTE criteria would be to lay emphasis on the phrase “or” and hence interpret ‘Ph.D in Engineering’ as being optional and it being discretionary upon the adopting institution/State Government to specify either of the two criteria.

- 18. This does not mean that we have not given due weightage to
 - E Ph.D degree while interpreting the 2010 AICTE Regulations. A candidate with Ph.D degree can become HOD with merely 5 years of work experience, whereas candidates without Ph.D need to work for 10 years. Although, requirement of experience for becoming Principal is 10 years uniformly, it comes with a stipulation that 3 years must have been spent as HOD or in an equivalent position. Thus, a candidate without Ph.D would compulsorily need 10 years’ experience for HOD and would need to work further 3 years in that capacity, i.e. for minimum of 13 years’ experience to become Principal. Those with a Ph.D on the other hand, can apply for principal-ship within 10 years, as they would have become eligible for HOD with 5 years experience, and could have completed the
 - F further 3 years term as HOD in the interregnum. Hence, hypothetically, there is a 5-year eligibility relaxation granted under AICTE Regulations to those with a Ph.D.

- 19. The afore-stated advantage is only further exacerbated under the 2014 Chhattisgarh Rules, where those without a Ph.D need 15 years’ experience and those with such higher degree, can be appointed within 10 years. This can be well demonstrated from the following extracts of 2014 Chhattisgarh Rules:-

Sl. No.	Name of posts included in service	Minimum age limit	Maximum age limit	Prescribed educational education	Remarks
1	2	3	4	5	6
1	Principal	-	58 years	<p>(1) Bachelor and Master degree of appropriate branch in Engineering/ Technology from a recognized University/Institute with First Class or equivalent at either Bachelor's or Master's level.</p> <p>(2) Minimum of 15 years relevant experience in teaching/research/ industry out of which at least 03 years shall be at the level of head of department.</p> <p>OR</p> <p>(1) Bachelor and Master degree of appropriate branch of Engineering/ Technology from a recognized University /Institute with First Class or equivalent at either Bachelor's or Master's level and Ph.D or equivalent in appropriate discipline in Engineering/ Technology from a recognized University/Institute.</p> <p>(2) Minimum of 10 years relevant experience in teaching/research/ industry out of which at least 03 years shall be at the level of head of department or equivalent.</p>	A B C D E F G H

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HEAD OF DEPARTMENT

	1 Civil/Mechanical/Electrical/Electronics/ Information Technology/ Instrumentation/Metallurgy/Mining/Chemical/Computer Science and Engineering	- 58 years	Bachelor's and Master's degree of appropriate branch in Engineering/ Technology from a recognized University/Institute with First Class or equivalent at either Bachelor's or Master's level. OR Bachelor's and Master's degree of appropriate branch in Engineering/ Technology from a recognized University /Institute with First Class or equivalent at either Bachelor's or Master's level and Ph.D or equivalent in appropriate discipline in Engineering/ Technology from a recognized University/Institute.	Minimum of 10 years relevant experience in teaching/ research/ industry.
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	XXX	XXX	XXX	

- F 20. Additionally, construction of 2010 AICTE Regulations this way, avoids conflict with the 2014 Chhattisgarh Rules, as extracted above. Even otherwise, given a choice between two interpretations, one which restricts the pool of applicants for public employment and another which enfranchises many, it would befit the spirit of Article 16 that the expansive interpretation is adopted. Such a recourse would both provide opportunities to a wider meritorious class, will increase competition and concomitantly ensure meritorious selections.
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(ii) Does the 2016 AICTE Notification retrospectively ‘clarify’ eligibility conditions for appointment as ‘Principal’?

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21. The next question which logically arises is whether the notification issued by the AICTE in 2016 changes the eligibility conditions which are explicit in the 2010 AICTE Regulations, as discussed above. A

22. The 2016 AICTE Notification has made a significant impact upon the High Court's determination of the present dispute. The High Court has held that the said Notification, clearly specified through Issue No. 64 that Ph.D was compulsory for all Principals. As the notification was 'clarificatory', it was held applicable retrospectively which would remove any ambiguity created by the 2010 AICTE Regulations and consequently the appellants were ineligible to hold the posts of 'Principal'. The relied-upon Issue No. 64 reads as under: B

SI. No.	Issue	Clarification
64.	Whether Ph.D is an essential qualification for the Post of Principal in Diploma Level Technical Institutions.	Yes

23. The appellants as well as the AICTE have drawn our attention to Issue No. 48 in the same table of 2016 AICTE Notification which, they contend, depicts a contrary picture. The relevant part of the 2016 Notification which has not been noticed by the High Court reads as under: D

SI. No.	Issue	Clarification
48.	Whether a faculty of Engineering & Technology with minimum 10 years relevant experience in teaching/research out of which 3 years is in the same grade Pay (i.e. Rs.9000) at par with HOD is eligible for the post of Principal in Polytechnic.	Yes, provided the person also has an administrative experience of at least 3 years.

24. After going through the contents of the 2016 AICTE Notification in its entirety, we are of the opinion that the conclusion drawn by the High Court is erroneous for a variety of reasons. At the very outset, no attempt appears to have been made to determine the nature of the 2016 AICTE Notification, as to whether it supplements an obvious omission in the 2010 AICTE Regulations and most importantly its effect on those who have meanwhile acquired vested rights. G

25. 'Clarificatory' legislations are an exception to the general rule of presuming prospective application of laws, unless given retrospective effect either expressly or by necessary implication. In order to attract this exception, mere mention in the title or in any provision that the legislation is 'clarificatory' would not suffice. Instead, it must substantively H

- A be proved that the law was in fact ‘clarificatory’, as noted by this Court in *Virtual Soft Systems v. CIT*²:

“50. It may be noted that the amendment made to Section 271 by the Finance Act, 2002 only stated that the amended provision would come into force with effect from 1-4-2003.

- B The statute nowhere stated that the said amendment was either clarificatory or declaratory. On the contrary, the statute stated that the said amendment would come into effect on 1-4-2003 and therefore, would apply only to future periods and not to any period prior to 1-4-2003 or to any assessment year prior to Assessment Year 2004-2005.

- C It is the well-settled legal position that an amendment can be considered to be declaratory and clarificatory only if the statute itself expressly and unequivocally states that it is a declaratory and clarificatory provision. If there is no such clear statement in the statute itself, the amendment will not be considered to be merely declaratory or clarificatory.

- D 51. Even if the statute does contain a statement to the effect that the amendment is declaratory or clarificatory, that is not the end of the matter. The Court will not regard itself as being bound by the said statement made in the statute but will proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is an amendment which is intended to change the law and which applies to future periods.”

(emphasis supplied)

- E 26. The present case is one where except for the title, nothing contained therein indicates that the 2016 AICTE Notification was clarificatory in nature. The said Notification is framed in a question-answer style and merely restates what has already been made explicit in the 2010 AICTE Regulations. There seems to be no intent to alter the position of law but instead only to simplify what the AICTE had resolved through its original regulation. The 2016 AICTE Notification is a response to the doubts put forth to AICTE by the public. This is evident from the stand put forth by AICTE before us in its reply as well as during the course of hearing, namely, that there is no retrospective alteration in the qualification prescribed for the post of Principal.

H ² (2007) 9 SCC 665.

27. Even if the 2016 AICTE Notification was clarificatory, it must be demonstrated that there was an ambiguity in the criteria for appointment to the posts of Principal, which needed to be remedied. Clarificatory notifications are distinct from amendatory notifications, and the former ought not to be a surreptitious tool of achieving the ends of the latter. If there exists no ambiguity, there arises no question of making use of a clarificatory notification. Hence, in the absence of any omission in the 2010 AICTE Regulations, the 2016 AICTE Notification despite being generally clarificatory must be held to have reiterated the existing position of law.

28. As discussed earlier, there were no two interpretations possible, and hence Issue Nos. 48 and 64 of 2016 AICTE Notification have, in no uncertain terms, reprised the substance of 2010 AICTE Regulations.

(iii) Whether retrospective changes in qualificatory requirements can affect the existing appointments?

29. Having held that the 2016 AICTE Notification is only complementary to what the AICTE had laid down in 2010, we may hasten to add that even in a situation where eligibility conditions are clarified from an anterior date, it may not be prudent to affect the appointments which had been made on the basis of a possible understanding of the eligibility conditions.

30. This Court in a range of decisions including *TR Kapur v. State of Haryana*³, *K Ravindranath Pai v. State of Karnataka*⁴ and *K Narayanan v. State of Karnataka*⁵, has opined that vested rights cannot be impaired by enacting law with retrospective effect and that such statutory rules ought not to result in any discrimination or violation of constitutional rights.

31. The law on vested rights in service matters has exhaustively been elaborated in *Railway Board v. Rangadhamiah*,⁶ wherein it has been stated:

"20. It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion or pay scale, can be assailed as being violative

³ 1986 Supp SCC 584.

⁴ 1995 Supp (2) SCC 246.

⁵ 1994 Supp (1) SCC 44.

⁶ (1997) 6 SCC 623

- A *of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.*

xxx

- B 24. *In many of these decisions the expressions “vested rights” or “accrued rights” have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. ...”*
- C
- D
- E 32. The aforestated principle would apply with equal force on the outcome of judicial review also and any new meaning given to a set of Rules/Regulations by the court of law would not ordinarily unsettle the settled appointments or conferment of other service benefits. We are,
- F nevertheless, fully conscious of the legal position that appointment of a candidate who has erroneously secured public employment without fulfillment of minimum qualifications can always be annulled upon discovery of mistake. An appointment which is erroneous or illegal from the very inception does not clothe the appointee with any indefeasible right and such appointment is always subject to correctional decisions.
- G 33. There is no quarrel that the appellants herein do not possess Ph.D. However, they satisfied the requirement of having fifteen years' experience (of which at least three years was as HOD) under the 2014 Chhattisgarh Rules and were found suitable for promotion by the Departmental Promotion Committee on the basis of various other material. They have also been found in possession of one of the eligibility criteria prescribed under the 2010 AICTE Regulations. We are, thus, of the considered opinion that the appellants' appointments ought to remain undisturbed in any eventuality.
- H

34. This takes us to the last objection taken by the High Court regarding ‘conflict of interest’. It is not in dispute that the State Government had inducted Appellant No. 1 in a Committee which submitted the draft service rules. It is, however, difficult to accept (nor has it been alleged) that the said appellant held a position through which he could influence the rule-making authority to exercise its powers under Proviso to Article 309 of the Constitution as per his wishes. He was holding too small a position that no inference of his dominance in the decision making process can be drawn.

A

B

Conclusion

35. In the light of the above discussion, the appeals are allowed. The judgment of the High Court is set aside and the writ petition filed by Respondent No. 1 challenging the promotion of appellants is dismissed but without any order as to costs.

C

Nidhi Jain

Appeals allowed