

(2001) 05 CAL CK 0045

Calcutta High Court

Case No: F.M.A.T. No. 3846 of 1998, W.P. No"s. 3036 (W) and 3116 (W) of 1999

Utpal Man With Partha Basu and
Kamal Krishna Dutta

APPELLANT

Vs

Jyotirmoy Sen and State of West
Bengal

RESPONDENT

Date of Decision: May 9, 2001

Citation: 105 CWN 1201

Hon'ble Judges: Ashok Kumar Mathur, C.J; Girish Chandra Gupta, J

Bench: Division Bench

Advocate: Amal Baran Chatterjee and Nirmal Mondal, for the Appellant; Asish Kr. Sanyal, Ms. Shyamali Banerjee, U.C. Das and S. Banerjee, for the Respondent

Final Decision: Dismissed

Judgement

Ashok Kumar Mathur, C.J.

This is an appeal directed against the order passed by the learned Single Judge dated 18th September, 1998 whereby the learned Single Judge has allowed the writ petition and set aside the order of the District Inspector of Schools for recasting the original panel. The learned Single Judge further directed that the District Inspector of Schools to approve the panel originally prepared pursuant to the interview held on 15th May, 1997 in which the petitioner figured as No. 1 and sent to the District Inspector of Schools concerned for approval on 29th May, 1997. It was further observed that in view of the revival of the panel it should be approved by the District Inspector of Schools by 31st October, 1998 and the school authorities should also issue appointment to the first empanelled candidate, namely, the petitioner within 15 days. It was also pointed out so far as the private respondent No. 7, who has been working in the school in place of the writ petitioner, he cannot continue. However, if there is any vacancy in the language group in the same school, the same shall be filled up by the school authorities forthwith and will allow the respondent No. 7 to appear at the interview and this case should be considered on priority basis.

taking into consideration the facts and circumstances of this case, and if a panel is prepared the name of the respondent No. 7 should be included and the district inspector of Schools shall approve the said panel. It was also pointed out that another post in language group was originally reserved for Scheduled Tribe which was filled up, the person has left his job and automatically the post has fallen vacant under the general category. It was ordered that this post too should be filled up and the School Service Commission shall not stand in the way of filling up of the above posts. On account of this, the respondent No. 7 was dislodged from the service, therefore, he was driven to file the present appeal. The petitioner filed this writ petition challenging the order dated 11th August, 1997 (Annexure "F") issued by the District Inspector of Schools (Secondary Education), Bankura whereby his name was not approved for appointment to the post of Assistant Teacher (English) and approved the name of respondent No. 7, Utpal Man, who was second in the panel. It is alleged that the post was lying vacant in the Latiaboni Anchal High School, P.O. Durlavpur, District Bankura and permission was accorded by the District Inspector of Schools for filling up this vacancy of the Assistant Teacher of English in the said school. The petitioner's name was sent by the Employment Exchange and he appeared at the interview before the Selection Committee along with other candidates. A panel was prepared by the Selection Committee and the name of the petitioner appeared first in the panel, the panel was forwarded by the school for approval to the District Inspector of Schools. The petitioner, subsequently, came to know that the District Inspector of Schools has approved the name of respondent No. 7, Utpal Man, who was second in the panel and has been appointed as Assistant Teacher in English of Latiaboni Anchal High School, Bankura. Thereafter, the petitioner made necessary inquiries and found that the name of the petitioner was not approved by the District Inspector of Schools and a person appearing in the second position has been approved. Therefore, accordingly, appointment has been issued. Aggrieved against this order the petitioner filed a writ petition being W. P. No. 19693(W) of 1997. The question arose in that writ petition was whether the B. Ed. Degree obtained by the petitioner from the Annamalai University, Madras through correspondence course is recognized or not. Therefore, the District Inspector of Schools directed the school authorities to recast the panel and the school authorities recasted the panel and, accordingly, the same was approved and appointment of respondent No. 7 followed. The learned Single Judge after considering the matter came to the conclusion that the B. Ed. Degree obtained through correspondence course from Annamalai University is recognized by the Government of West Bengal which is equivalent to B. T./B. Ed. Degree and the approved teachers who have obtained this degree has been granted higher pay and other benefits as are admissible to them. Therefore, the learned Single Judge held that there is no reason to deprive any person of the benefit of appointment on the basis of such B.Ed, degree obtained from Annamalai University. In this connection, learned Single Judge referred to a decision given in the case of Mucha Mondal vs. State of West Bengal reported in 1996(1) CLJ 306. In that case, the M. A. Degree

through correspondence course from the Himachal Pradesh University came up for consideration and the learned Single Judge held that since Himachal Pradesh University has been established under the Himachal Pradesh University Act, 1970 and the same has been recognized by the University Grants Commission (UGC), therefore, the degree granted by the Himachal Pradesh University is recognized and on the same reasoning the learned Single Judge has held that the B. Ed. Degree granted by the Annamalai University is also recognizable and the rejection of the candidature of the petitioner by the District Inspector of Schools was wrong and, accordingly, the learned Single Judge issued the aforesaid directions.

2. Aggrieved against this order, the present appeal has been filed by the appellant/respondent No. 7 whose appointment has been set aside by the learned Single Judge.-

3. A similar question arose before this court earlier and there was a conflict of opinion between two learned Single Judges, therefore, a reference was made before a Larger Bench and the Division Bench consisting of Hon"ble Mr. Justice Tarun Chatterjee and the Hon"ble Mr. Justice Talukdar disposed of this matter (W. P. No. 1050(W) of 1999 with W. P. No. 2748 (W) of 1999) and held that the B. Ed. Degree obtained through Annamalai University is equivalent to B. T./B. Ed. Degree of a recognized University, Their Lordships have referred to both the conflicting judgments, one which was relied by the learned Single Judge that is Mucha Mondal vs. State of West Bengal (supra), and Tapas Kumar Das vs. State of West Bengal reported in 1996(2) CLJ 467. Their Lordships after considering both these conflicting decisions relied on a Circular of the Government of West Bengal dated 10th September, 1991 [G.O. No. (sic) whereby the Government of West Bengal has recognized the (sic), Degree from Annamalai University through correspondence course and released yearly increments in time scale and other benefits admissible to B.Ed./B.T. degree holders. Therefore, Their Lordships held that in view of the Circular when a person obtains this degree from Annamalai University is eligible for higher emoluments and there is no reason to deny the benefit of the appointment on the basis of this degree and they treated this degree equivalent to B. Ed./B.T. It was also observed that the subsequent notification dated 10th September, 1994 whereby degrees by correspondence awarded by University was not recognized was set aside by the learned Single Judge in Mucha Mondal's case (supra). Therefore, accordingly, the learned Single Judge answered the reference. In this view of the matter, the view taken by the learned Single Judge (Justice N. K. Mitra, as His Lordship then was) does not call for interference as a Larger Bench of this Court has already answered the question in favour of the writ petitioner. However, for abundant precaution we called upon the Government Counsel to seek instruction from the Government that whether any other notification on the subject was issued or not. He on instruction informed that there was none.

4. Now coming to the writ petitions which have been referred by the learned Single Judge, namely, W. P. No. 3036(W) of 1999 and W. P. No. 3116(W) of 1999, in both these writ petitions, the question was whether the degrees obtained from Himachal Pradesh University through correspondence course is recognized or not for appointment in the State of West Bengal. It may be relevant to mention here that this question was agitated before the learned Single Judge first in Kalidas Gangopadhyay vs. State of West Bengal reported in 1996(2) CLJ 42, then again the matter was considered in detail in the subsequent decision in the case of Mucha Mondal's case (supra) by the Hon'ble Justice Gitesh Ranjan Bhattacharjee (as His Lordship then was) and it was held that the degree of Himachal Pradesh University through correspondence course is a valid degree. Then again the matter was considered in the case of Kitab Singh Rai vs. State of West Bengal reported in 1998(1) CLJ 258. In this case, the learned Single Judge referred to a decision in the case of Tapas Kumar Das vs. State of West Bengal reported in 1996(2) CLJ 467, and the learned Single Judge held that a co-ordinating bench cannot take a different view from the view taken by another co-ordinating-bench since both the decisions were of the learned Single Bench. In the case of Kitab Singh Rai, the learned Single Judge held that since the notification dated 19th December, 1994 which was expressly quashed by the decision in Kalidas Gangopadhyay (supra), and in appeal that decision was not interfered by the Appellate Court, then the quashing of the notification dated 19th December, 1994 holds good; subsequently, the same notification cannot be used to deny the benefit to the incumbents. Therefore, Their Lordships held that the decision in Tapas Kumar Das (supra), is in per curium. It is also pointed out that the aforesaid decision given in the case of Mucha Mondal (supra), and Kalidas Gangopadhyay (supra), has been followed by several learned Single Judges, namely, Justice Ruma Pal (as Her Lordship then was) and Justice Ajoy Nath Ray. This matter again came up before the Division Bench while disposing of the Reference and the Division Bench after considering all the decisions on the subject and with reference to the subsequent notification of the Government of West Bengal dated 24th June, 1997 held that the B. Ed. Degree obtained through correspondence course is entitled for appointment in the State of West Bengal, but the question with regard to M. A. Degree by correspondence course from Himachal Pradesh University was not answered by Their Lordships in this judgment. However, in order to answer this question we may refer to the notification being G.O. No. 904-SE (Secretary) dated 19th December, 1994 which was in force though the same was quashed in the decision in Kalidas Gangopadhyay (supra), by Justice G. R. Bhattacharjee (as His Lordship then was) then what is the effect? The relevant notification reads as under :

The undersigned is directed to refer to the subject noted above and to say that the State Government in Education (School) Department as a matter of policy, have not agreed to recognize a Degree/Diploma/Master Degrees etc. acquired through correspondence from any University etc. as equivalent to a regular course

conducted by recognized Universities.

If this notification had remained in force then perhaps things would have been different. While quashing this notification, the learned Single Judge (G. R. Bhattacharjee) in the case of Kalidas Gangopadhyay (supra) held that the degrees of M.A./M.Sc. from Himachal Pradesh University through correspondence course is a valid degree and refusal to recognise such degree was held to be unjustified. Subsequently, the same matter was again taken up by His Lordship, the Hon"ble Justice G. R. Bhattacharjee in Mucha Mondal's case (supra), when His Lordship reiterated his view with regard to degrees obtained through correspondence course from Himachal Pradesh University, again the matter came up before this court in Kitab Singh Rai (supra), when His Lordship after considering the case of Tapas Kumar Das's case (supra), where a different view was taken by the Hon"ble Justice B.P. Banerjee (as His Lordship then was), held that once the notification by which the degree has not been recognized have been quashed and the same has not been revived and on the contrary, the decision given in the case of Kalidas Gangopadhyay (supra), has not been interfered in appeal by the Appeal Court, the learned Single Judge sitting singly in Tapas Kumar Das (supra), cannot take a different view. It may be relevant to mention here that the Himachal Pradesh University is established under the Himachal Pradesh University Act, 1970 and the University has been recognized by the U.G.C., then the degrees granted by the said University cannot be denied the recognition by other authorities except unless there is a specific notification by a competent academic body that the degree granted by the Himachal Pradesh University cannot be treated as equal to the degrees granted by the other Universities. Though the relevant notification has been quashed by this court and the same has not been interfered in appeal by the Division Bench and that holds good. In order to put the matter beyond doubt we directed the learned counsel for the State to seek instruction that after the notification dated 19th December, 1994 having been quashed whether any new notification on the subject was issued by the State of West Bengal or not. The Government. Counsel on instruction has submitted that no other notification has been issued on the subject. Therefore, in this background and in view of the Division Bench Judgment, we are of the opinion that the degrees obtained through correspondence course from Himachal Pradesh University cannot be denied recognition. We, accordingly, answer the question raised in both the writ petitions in favour of the petitioners and against the respondents. both the writ being W. P. No. 3036 (W) of 1999 (Partha Basu vs. State of West Bengal) and W. P. No. 3116 (Kamal Krishna Dutta vs. State of West Bengal) petitions be remanded back to the learned Single Judge for disposal in accordance with law. However, this will not prevent the State for passing any fresh order on the subject in accordance with law. This appeal filed by the appellant being M.A.T. No. 3846 of 1998 (Utpal Man vs. Jyotirmoy Sen) is dismissed. No order as to costs. Girish Chandra Gupta, J.

I agree.