

(2014) 12 CAL CK 0102
In the Calcutta High Court

Case No : MAT 1068 of 2014, CAN 9459 of 2014, MAT 2007 of 2014 and CAN 11087 of 2014

Abdul Motin

APPELLANT

Vs

Manisankar Maiti

RESPONDENT

Date of Decision : 24-12-2014

Acts Referred:

Citation : (2015) 4 CHN 598

Hon'ble Judges : Tapash Mookherjee, J; Jyotirmay Bhattacharya, J

Bench : Division Bench

Advocate : Joydeep Kar, Ekramul Bari and K.M. Hossain, Advocate for the Appellant; Rabilal Moitra, Kanailal Samanta, R.L. Moitra and Nivedita Roy, Advocate for the Respondent

Judgement

Jyotirmay Bhattacharya, J.—Two writ petitions were filed concerning an identical issue. One of such writ petitions was filed by Dr. Mani Sankar Maity who ranked third in the panel prepared by the West Bengal College Service Commission for the post of Principal of non-Government Colleges affiliated to the Universities of the State of West Bengal. He challenged the acceptability of the Ph. D degree granted by the Netaji Subhas Open University as an essential academic qualification for the post of Principal. According to him Dr. Motin who ranked second in the panel prepared by the concerned College Service Commission for the said post was an ineligible candidate as his Ph. D degree which he obtained from Netaji Subhas Open University cannot be accepted as a valid Ph. D degree by the Commission. He thus, contended that the first empanelled candidate, namely, Dr. Bhattacharya who having declined to accept the offer for his appointment for the post of Principal in Tampralipta Mahavidyalaya and the second empanelled candidate, namely, Dr. Motin being an ineligible candidate, appointment should have been offered to him, who was the third empanelled candidate. Accordingly he prayed for appropriate relief in his said writ petition which was registered as W.P No. 20024(w) of 2012.

2. The other writ petition being W.P No. 10296(w) of 2013 was filed by Dr. Motin, the appellant herein seeking issuance of direction upon the concerned authority for appointing him to the post of Principal in Tamralipta Mahavidyalaya as he ranked second in the panel and the first empanelled candidate refused to accept the offer of his appointment to the post of Principal in the said Tamralipta Mahavidyalaya.

3. Accordingly, both the aforesaid writ petitions were heard together by the Writ Court and both the writ petitions were disposed of by the learned Single Judge on 20th January, 2014. The writ petition filed by Dr. Maity being W.P No. 20024(W) of 2012, was dismissed by the learned Single Judge by holding inter alia, that the Ph.D degree which was obtained by Dr. Motin from Netaji Subhas Open University cannot be accepted as a valid Ph.D degree for the post of Principal. Accordingly direction was given by the learned Single Judge of this court to recast the panel in the light of the discussion made by His Lordship in the impugned judgment. Simultaneously, the writ petition filed by Dr. Motin being W.P No. 10296(W) of 2013 was rejected by the learned Single Judge of this Court for an identical reason. While disposing of both the writ petitions, His Lordship made it clear that the Ph.D degree granted by an Open University cannot be treated at par with the Ph.D degree granted by a formal conventional recognized University to the research scholar after completion of regular course successfully.

4. His Lordship further held that when the Ph. D and/or the M. Phil degree granted through a Distance Education Programme or through an Open University system is not recognized as an acceptable degree awarded by the College Service Commission for the post of lecturer, such a Ph. D and/or M. Phil degree obtained through Distance Education Programme or through an Open University system cannot be recognized as an acceptable degree for the post of Principal. According to His Lordship Ph.D Degree granted by an Open University and/or through Distance Education Programme to a Ph.D Scholar is a substandard educational qualification in comparison to the Ph.D Degree granted by formal conventional recognized University to the research scholar, after his successful completion of regular Ph.D course. This conclusion was drawn by His Lordship by following the decision of the Hon''ble Supreme Court in the case of Annamalai University rep. by Registrar Vs. Secy. to Govt. Infn. and Toursm Dept. and Others, and another Division Bench Decision of this Hon''ble court in the case of Sumana De Vs. State of West Bengal, . In fact, while deciding the appeal filed by Sumana De, the Division Bench of this Hon''ble court by following the decision of the Hon''ble Supreme Court in the case of Annamalai University (supra) held that there is a vast difference in educational standard between regular courses and Distance Educational Programme. It was further held therein that in case degree is obtained through Distance Education System, no regular research work is required to be done in the University, which is necessary for obtaining Ph. D/M. Phil Degree Etc. after completion of regular course through the conventional Universities. The Division Bench thus, held that there is a vast difference in standard between the aforesaid courses in obtaining the said qualification and

when education is the ultimate light, one has the duty to maintain excellence in the standard of education which is its primary and necessary commitment. Relying upon those two decisions, the learned Single Judge of this Court decided the aforesaid issue raised in the said writ petition and allowed the writ petition filed by Dr. Maity and dismissed the writ petition filed by Dr. Motin. The legality and/or propriety of the judgment and/or order passed by the learned Single Judge of this Court on 20th January, 2014 in both the aforesaid writ petitions are under challenge in two appeals being MAT No. 1068 of 2014 and MAT No. 20007 of 2014 both filed by Dr. Motin.

5. Let us now consider the merit of both the aforesaid appeals in the facts of the present case. The facts of this case is more or less admitted by the parties. pursuant to an advertisement issued by West Bengal College Service Commission, many candidates including Dr. Maity, Dr. Motin and Dr. Bhattacharya participated in the selection process for the post of Principal of non-Government Colleges. In the panel prepared by the College Service Commission, Dr. Bhattacharya ranked first, Dr. Motin occupied the second position and Dr. Maity ranked third position. Dr. Bhattacharya has already joined another college as a Principal and he is not interested to join the present college as Principal therein. Since Dr. Bhattacharya is not interested to join the post of Principal in the said college, Dr. Motin was chosen by the College Service Commission for his recommendation as he was occupying the second position in the panel. Dr. Maity was not satisfied. He felt aggrieved as according to him Dr. Motin was an ineligible candidate for the said post as the Ph.D degree which he obtained through Open University cannot be recognized as an acceptable degree for the post of Principal. According to him, he being an eligible candidate having Ph.D degree conferred upon him by Calcutta University after completion of regular course should have been recommended for the post of Principal for the said College as Dr. Bhattacharya the first empanelled candidate is disinterested in accepting the said offer of appointment and the second man in the panel, namely, Dr. Motin is ineligible candidate.

6. Let us now consider the merit of these two appeals in the facts of the instant case. Before entering into the merit of these appeals we feel it necessary to mention the essential qualifications prescribed by the University Grants Commission for the post of Principal in the UGC Regulations of minimum qualifications for appointment of teachers and other academic standard in Universities and colleges and measures for the maintenance of standards in higher education 2010 (hereinafter referred to as the "said Regulation of 2012"). Accordingly, the relevant regulation 4.2.0 is set out hereunder.

"(i) A Masters degree with at least 55% marks (or a qualification grade in a point scale wherefrom grading system is followed) by a recognized University.

(ii) A Ph. D degree in concerned/allied/relevant discipline(s) in the Institution concerned with evidence of published work and research guidance.

(iii) Associate professor/professors with a total acceptance of 15 years of teaching/research/administration in Universities, colleges and other institutions of higher education.

(iv) A minimum score as stipulated in the academic performance indicator (API) based performance based appraisal system (PBA), as set out in this Regulation in appendix III for direct recruitment of Professors in colleges.

7. Following the said UGS guidelines West Bengal College Service Commission published an advertisement in the newspaper inviting application from suitable candidates prescribing therein identical eligibility criteria for the post of Principal as mentioned in the UGC Regulation of 2010. Undisputedly both the candidates, namely, Dr. Motin and Dr. Maity fulfil the eligibility criteria regarding academic qualification and experience as mentioned in column No. 3(A)(a) and (c) of the said advertisement. Dispute is with regard to the Ph.D degree which was awarded to Dr. Motin by Netaji Subhas Open University which according to Dr. Maity cannot be recognized as an acceptable Ph.D degree in terms of the eligibility criteria as prescribed in column No. 3(A)(b) of the advertisement.

8. Since the dispute centers around the eligibility criteria mentioned in column No. 3 (A)(b) of the advertisement, let us now consider as to how far the Ph.D degree obtained by Dr. Motin through Netaji Subhash Open University can be recognized as an acceptable Ph.D degree for the post of Principal of a non Government college. The validity and/or acceptability of a degree granted to a candidate by an Open University through Informal Educational Programme or through Distance Educational Programme has already been decided by the Hon"ble Supreme Court in the case of Annamalai University (Supra), wherein the Hon"ble Supreme Court after considering the various provisions of the UGC Act of 1956 and an Open University Act and the objects and/or reasons for enacting those two Acts and the standard of education imparted to the students through conventional system of education followed by the conventional recognized Universities and the mode and manner in which informal system of education is imparted to the students by an Open University through non-Conventional Programme or through Distance Education Programme held as follows:--

"Paragraph 40 : "The UGC Act was enacted by Parliament in exercise of its power under Entry 66 List I o the Seventh Schedule to the Constitution of India whereas the Open University Act was enacted by Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnance of the provisions of the said two Acts, therefore, does not arise. It is true that the Statement of Objects and Reasons of the Open University Act shows that the formal system of education had not been able to provide an effective means to equalise educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible

Paragraph 41 : Was the alternative system envisaged under the Open University Act in substitution of the formal system, is the question. In our opinion, in the

matter of ensuring the standard of education, it is not. The distinction between a formal system and informal system is in the mode and manner in which education is imparted. The UGC Act was enacted for effectuating coordination and determination of standards in Universities. The purport and object for which it was enacted must be given full effect".

9. The conclusion which was so arrived by the Hon''ble Supreme Court, in our view is the complete answer to the question raised before us in these two appeals. Thus, by applying the principles as laid down by the Hon''ble Supreme Court in the said decision, we can safely hold that the Ph.D degree which was obtained by Dr. Motin from an Open University cannot be treated at par with the Ph.D degree granted by a conventional recognized University after completion of the Ph.D Programme conducted on regular basis.

10. Mr. Kar, Learned Advocate, appearing for the appellant, namely, Dr. Motin tried to impress upon us that the decision of the Hon''ble Supreme Court in the case of Annamalai University (supra) has no application in the present case. He contended that the facts of the case before the Hon''ble Supreme Court in the case of Annamalai University (supra) was completely different from the facts of the present case and as such the principle which was laid down by the Hon''ble Supreme Court in the case of Annamalai University (Supra) cannot be applied in the present case. He pointed out from the said decision of the Hon''ble Supreme Court that it was a case where a candidate acquires Master''s Degree without obtaining the Bachelor Degree. In this context the Hon''ble Supreme Court considered the validity of the Master''s Degree of the candidate concerned. Admittedly, such Master Degree was granted to the candidate concerned by an Open University despite he did not have the bachelor degree. In this context the Hon''ble Supreme Court was invited to decide the fate of such Master''s degree of the candidate concerned. Of course, it is rightly pointed out by Mr. Kar that the validity and/or legality of the Master''s degree of Dr. Motin is not under challenge in the context in which the legality and/or validity of the Master''s degree of the concerned candidate was challenged before the Hon''ble Supreme Court in the case of Annamali University (Supra). But after considering the said judgment of the Hon''ble Supreme Court as a whole in between the lines we find that while deciding the said issue the Hon''ble Supreme Court, considered the legality and validity of both the aforesaid Acts, that is, the UGC Act and the Open University Act and the object and reasons for which those two Acts were enacted and the standard of education which are imparted to the students under two different systems and thereafter came to the conclusion as mentioned hereinabove. As such we have no hesitation to hold that be it a gradation degree, a Master degree, Ph. D degree or M.Phil Degree which is granted by an Open University either through Distance Mode of Education Programme or through any Informal Education Programme cannot be equated with the gradation degree, Master degree, Ph.D degree or M.Phil degree granted to a candidate by Formal Conventional Recognized Universities after conducting a conventional course on regular basis.

11. That apart, we fully agree with the observations made by the other Division Bench of this Hon'ble Court in the case of *Sumana De (Supra)* that when education is the ultimate light and/or goal, one has the duty to maintain excellence in the standard of education and such excellence in standard of education cannot be maintained if educational qualification of the teachers is diluted and a sub-standard degree is recognized as an acceptable degree for the post of Principal of a college. We are not unmindful of the eligibility criteria which is prescribed by the University Grants Commission for the post of lecturer in the UGC Regulation of 2009. Post of lecturer is the first stepping in the teaching hierarchy in the college and/or the University. UGC Regulation of 2009 not only prescribes procedure for admission in the M.Phil Degree/Ph.D programme but also prescribes the minimum qualification required for appointment and Career Advancement of teachers in Universities and/or Institutions affiliated to it. The earlier provision was substituted by the following paragraph of the UGC Regulation of 2009:--

"NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of lecturers in Universities/colleges/institutions. Provided, however, that candidates, who are or have been awarded Ph.D degree in compliance of the University Grants Commission (Minimum Standard and Procedure for Awarded of Ph.D Degree), Regulation 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET for requirement and appointment of an Assistant Professor or equivalent position in Universities/colleges/institutions."

12. Thus, clearance of NET and SLET was made equivalent to the Ph. D degree acquired by a candidate in compliance of the University Grants Commission Regulation of 2009. Meaning thereby that those who have not acquired Ph. D Degree by following the UGC Regulation of 2009 will not get the benefit of their Ph. D degree for the purpose of exemption in appearing and/or clearing the NET and SLET examination for appointment as lecturer in the University, colleges and/or Institution. Thus, when such a provision was introduced in the UGC Regulation of 2009 in the place of its earlier Regulation for upliftment and/or upgradation of standard of education in colleges and/or Universities and/or Institutions, we do not find any reason to recognize a sub-standard Ph.D degree as an acceptable degree for the post of Principal which was sought to be filled up through a Selection process initiated in the year of 2011.

13. Mr. Kar, however, contended that though the University Grants Commission introduced the aforesaid provisions of equating the NET/SLET clearance with Ph.D degree acquired by a candidate in accordance with the UGC Regulation of 2009, but such a provision was not introduced by the University Grants Commission while prescribing the academic qualification for the post of Principal in 2010 Regulation. By referring to the UGC Regulation of 2010 Mr. Kar pointed out that while prescribing the educational qualification for the post of Principal in Regulation 4.2.0 (II) it was provided that a Ph.D degree in concerned/allied/relevant discipline(s) in the institution concerned with evidence of published work

and research guidance is the requisite qualification. He further pointed out that while prescribing the Ph.D degree as an essential qualification, University Grants Commission in its Regulation framed in 2010 did not provide for an identical provision for acquiring Ph.D degree in compliance of University Grants Commission minimum standard of 2009 even though such a restriction was prescribed by the University Grants Commission in its Regulation of 2009 for the post of lecturer. He thus, contended that when the UGC Regulation of 2010 does not provide for acquiring Ph.D degree in compliance of the UGC Regulation of 2009 then the Court cannot insist upon the requirement of obtaining Ph.D degree in compliance of the UGC Regulation of 2009 as an acceptable qualification for the post of Principal.

14. Though we find some substance in such contention of Mr. Kar that in the absence of an identical provision in the Regulation of 2010 for the post of Principal, we cannot insist upon for fulfillment of the said condition regarding Ph.D degree for the post of Principal. But at the same time we cannot recognize a sub-standard Ph.D degree awarded by an Open University through an Informal Educational Programme by treating it at par with the Ph.D degree conferred on a Ph.D scholar by Formal Conventional Recognized Universities after completion of conventional course on regular basis.

15. Thus, we conclude that even though a candidate has not acquired the Ph.D degree in compliance of the UGC Regulation of 2009 prior to introduction of the said Regulation, still then Ph.D degree of such a candidate can be recognized as an acceptable degree provided he has acquired such degree from any conventional University after prosecuting the Ph.D programme on regular basis. This conclusion we arrive at only for this reason that 15 years teaching experience which is the other criteria for appointment to the post of Principal in a non-Government college as per UGC Regulation of 2010 cannot be fulfilled by any candidate who acquired Ph.D degree in compliance of the UGC Regulation of 2009. Thus, if we hold that a candidate who has not acquired Ph.D degree in conformity with the UGC Regulation of 2009 is not eligible for the post of Principal then not a single candidate can be found for the post of Principal as 15 years teaching experience will stand as a bar as a candidate acquired Ph.D degree in compliance of UGC Regulation of 2009 cannot acquire 15 years teaching experience in 2011. Thus, we do not find any illegality in the impugned order; rather we fully agree with the findings of the learned Single Judge regarding non-acceptability of a Ph.D degree granted by an Open University.

16. Before parting with we, however, want to indicate herein that the UGC Regulation of 2010 not only prescribes for Ph.D Degree in concerned/allied/relevant discipline(s) in the institution concerned as an essential qualification of the candidate but also prescribes for production of evidence of published work and research guidance. It is true that Dr. Maity has acquired Ph.D degree from Calcutta University after completing conventional course on regular basis prior to 2009 and he has also mentioned about publication of his work on the relevant

subject. But he has left the relevant column in his application for research guidance unfilled. Since research guidance is also an eligible criteria, we feel that this eligible criteria should be satisfied by the concerned candidate in order to get appointment in the post of Principal. Though some confusion is raised with reference to the expression "Research Guidance" as according to Mr. Kar research guidance means that a research fellow is required to prosecute the research programme under a research guide. He thus, contended that if a candidate acquires Ph.D degree under a research guide then he fulfills such criteria. Though such submission does not apparently appear to us very much convincing as we find that while prescribing the teaching experience for the post of Professor in Regulation 4.1.0, the University Grants Commission prescribes a minimum tenure of a teaching experience in University/college and/or experience in research at the University/national level or institution or industries including experience of guiding candidates for research at Doctoral level. The meaning which Mr. Kar wants to give to the expression "Research Guidance" in our view does not match with the identical provision introduced by the UGC for the post of Professor in Regulation 4.1.0.

17. Since fulfillment of this criteria was neither any issue before the Writ Court nor an issue before us, we do not like to decide the said issue finally. Presently, however, we make it clear that before recasting the panel the College Service Commission should also consider as to whether Dr. Maity fulfills this requisite eligibility criteria for the post of Principal of the said college.

18. Thus, we do not find any merit in any of these two appeals. Both the appeals are thus, dismissed with the above observation. Selection process may be concluded in the light of the judgment and/or order passed by the learned Single Judge subject to the condition as mentioned above as early as possible.

19. Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

Tapash Mookherjee, J.

20. I agree