

**(1981) 04 CAL CK 0012**  
**In the Calcutta High Court**  
**Case No : C.R. No. 19816 (W) of 1975**

Bholanath Khasnabis

APPELLANT

Vs

State

RESPONDENT

**Date of Decision :** 29-04-1981

**Acts Referred:**

Calcutta University Act, 1966 — Section 53

**Citation :** AIR 1981 Cal 316

**Hon'ble Judges :** T.K. Basu, J

**Bench :** Single Bench

**Advocate :** Sakti Nath Mukherjee, for the Appellant; Sadhan Gupta, A.A.G., for the Respondent

**Final Decision :** Allowed

## Judgement

T.K. Basu, J.—The petitioners in the present Rule are citizens of India and are all working under the Judgeship of the District Hooghly. They are all holders of L.L.B. Degree from Calcutta University.

2. On or about the 21st Oct., 1974 the Finance Department of the Government of West Bengal issued a Memorandum which is Annexure "A" to the petition. The relevant portion of the Memorandum is set out here-in below :--

"In order to attract men of quality and also for removing frustration, the benefit of three increments shall be given to those who acquired specialised knowledge of a technical nature by obtaining post-graduate Diploma of recognised Universities and six incremental benefits for those who obtained post-graduate Degrees of recognised Universities subject to the condition that these incremental benefits shall be available once in their career who have not got it at the time of entry, may get it as soon as those post-graduate qualifications are obtained. Provided that (a) these incremental benefits for post only in such cases where possession of those post-graduate qualifications of a specialised and technical nature would be considered as an added qualifications for the due discharge of their official

duties and not otherwise.

(b) these incremental benefits due to post graduate qualifications of a specialised nature would not be admissible in respect of posts whose recruitment rules require such postgraduate qualifications of technical nature as the minimum qualifications".

3. On the 11th April, 1975 the District Judge, Hooghly passed the following order : --

"The following Class III Government servants working under this Judgeship have applied for giving them the incremental benefits as they are in possession of post-graduate L.L.B. Degree :--

The recruitment rules of these Government servants do not require such post-graduate qualification of technical nature as minimum qualification. Of the Government servants named above, No. 1 is the Sheristadar (Office Superintendent) of this Judgeship and his duties include inter alia checking of court-fees, computing the period of limitation and reporting other matters involving legal implications. Having considered the nature of duties, I am of opinion that the possession of LL.B. Degree viz. post graduate qualification by the District Judge's Sheristadar is an added qualification of specialized and technical nature for the due discharge of his official duties.

The Government servants named serial Nos. 2 to 6 above are posted in different Courts under this Judgeship and regard being had to the nature of their official duties, the possession of the LL.B. Degree by them is also considered as an added qualification of specialized and technical nature in the due discharge of their duties in Law Courts.

Accordingly, in terms of the Government of West Bengal Finance Memo No. 10035-F, dated 21-10-1974 the six Government servants be given the benefit of six increments with effect from the date noted against their names".

4. On the 19th May, 1975 the District Judge, Hooghly passed a similar order being Order No. 57 bearing the above date in respect of the petitioner No. 5.

5. On the 28th November, 1975 the respondent No. 1 sent a communication to the District Judge, Hooghly in the following terms :--

"The undersigned is directed to refer to his letter No. 1S48/G-3/75. dated 18-7-1975, on the above- subject and to say that incremental benefits are not admissible in terms of Sub-rule (iii) of Rule 2 of the F. D. Memo No. 10035-F, D/- 21-10-1974 in such cases as the candidates have neither acquired any post-graduate qualification of technical nature nor are such qualifications required for the due discharge of the duties of the posts in the clerical cadre. It is accordingly requested that the relevant order Nos. 31, dated 11-4-1975 and 57, dated 19-5-1975 passed by him in these respects may please be cancelled and steps be taken for recovery of the amount overdrawn by the incumbents in terms of

the aforesaid orders.

Action taken in this matter may please be reported to this Department at an early date."

6. It is this communication and the order contained therein dated the 20th November, 1975 which is challenged before me in this application.

7. I may mention that during the pendency of this application a number of Assistant Registrars (Court) of the Appellate Side of this Court made an application for being added as party respondents on the ground that they had made a joint representation for granting six incremental benefits in terms of the above Memorandum. The Chief Justice of this Court was pleased to forward the said representation to the Judicial Department of Government of West Bengal. According to the applicants for being added as parties. The representation has been kept pending in view of the pendency of the present Rule.

8. By an order dated the 29th August, 1979 the above mentioned applicants were added as party respondents to the present Rule being the respondents Nos. 4 to 12.

9. Mr. Saktinalh Mukherjee appearing for the petitioners submitted that in order to avail of the benefit of six increments in terms of the aforesaid memorandum an employee of the State Government must fulfil three conditions. First, he must be in possession of post-graduate Degree. Secondly, the Degree must be of a specialised and technical nature. Thirdly, the acquisition of the degree would help in the discharge of his duties.

10. There is no dispute that all the petitioners and the added respondents are in possession of an L.L.B. Degree of the Calcutta University.

11. Mr. Sadhan Gupta, Additional Advocate General who appeared for the respondents did not really controvert the submission that an L.L.B. Degree is of a specialised and technical nature and in the facts of the present case it helped the petitioners and the added respondents in the discharge of their duties. In other words, it was not seriously contested that the second and the third conditions for entitlement to the incremental benefits under the above mentioned Memorandum were fulfilled in the present case. The only controversy that was raised before me was on the question as to whether the LL. B. Degree of the Calcutta University was a postgraduate Degree or not.

12. Mr. Mukherjee before making his submission on the first condition underscored the fact that the District Judge, Hooghly who was the appointing authority of the petitioner had taken the view that the petitioners were entitled to the incremental benefits in terms of the Memorandum abovenamed. According to him, the Deputy Secretary of the Government of West Bengal was sitting, as it were, in appeal or review over an order of the District Judge. Under which provision of law this was being done, is, according to Mr. Mukherjee, far from clear.

13. Be that as it may, the rival contentions on the fulfilment of the first condition may be noted. Mr. Mukherjee referred me to several provisions in the Calcutta University First Regulations 1966 for the purpose of showing that the study of law at the Calcutta University is a post-graduate study. He pointed out that although a new Act has been passed in 1979, the earlier regulations continue by virtue of Section 59 (7) of the 1979 Act as no new Regulations have been framed under the new Act. He also referred to certain Dictionary meanings of the expression "post-graduate". According to Shorter Oxford Dictionary (Third Edn. Vol. 2) at page 1553, "post-graduate" means "pertaining or relating to a course of study carried on after graduation". Similarly, in Webster's Dictionary, 2nd Edn. Vol. 3 at page 1929 the expression "Post-Graduate" means "of pertaining to or designating graduate, or studies pursued after graduation".

14. There is no controversy that a student can only undertake a study of law in Calcutta University after graduating from some recognised University. Reference was made by Mr. Sakti Nath Mukherjee to a decision of the Division Bench of the Rajasthan High Court in the case of Shitabkhan Vs. Bar Council of India and Others, . In that case the petitioner passed his Higher Secondary Examination of the Board of Secondary Education, Rajasthan and thereafter joined three years' Diploma Course in Rural Services of the National Council for Rural Higher Education, Ministry of Education, Government of India, New Delhi. He took the LL. B. Degree from the University of Rajasthan in the year 1965. Since the Central Government in exercise of the powers conferred by the Advocates Act, 1961 exempted the candidates who had obtained Degree in law on the results of examination held before 31-12-1965 from undergoing a course of training as required by the Act the petitioner applied to the Bar Council of Rajasthan for enrolment as an Advocate. The Bar Council of Rajasthan in conformity with the decision of the Bar Council of India informed the petitioner that in view of a resolution passed by the Bar Council of India as far back as 25-2-1963 a Degree in law obtained after 30-6-1964 from any University in the territory of India could be recognised only if such Degree had been obtained after undergoing a course of study in law after graduation and hence he could not be enrolled. The petitioner challenged the validity of that aforesaid resolution and the decision of the Bar Council of Rajasthan. That challenge was repelled by the Rajasthan High Court which inter alia held that the expression graduation "as used in the impugned resolution refers to the Act of receiving a Degree from the University recognised by law". It also held that when a word is not defined in the Act itself, it may be permissible to refer to dictionaries to find out the general sense in which the word is understood in common parlance. However, in selecting one out of the various meanings of the word, regard must always be had to the context.

15. This decision was relied by Mr. Mukherjee in support of his contention that Law Degree is a post-graduate Degree in the sense that it can only be obtained after graduation from a University recognised by law.

16. Mr. Gupta, Additional Advocate General did not contest the fact that the

study of law in the Calcutta University was a post-graduate study. He, however, contended that the Degree in law from the Calcutta University was not a post-graduate degree. He stressed the fact that the Degree conferred by the Calcutta University in law is a degree of a Bachelor and not of a Master. According to this contention, one can only obtain a post-graduate degree in a particular subject provided one has obtained a Degree of Graduation in that subject. In other words, the post graduate degree in law from the Calcutta University according to Mr. Gupta would only refer to the degree of LL. M. (Master of Laws) or LL. D. (Doctor of Laws).

17. Mr. Mukherjee sought to counter this contention by saying that a post-graduate study which leads to a Degree must necessarily be a post-graduate Degree.

18. In my view, the contention of Mr. Mukherjee is sound and should be accepted. Admittedly, the study of law in Calcutta University under the relevant Statutory Provisions is a post-graduate study. That being so, I fail to see that how a Degree obtained at the end of that study can be anything but a Post-Graduate Degree. I am unable to accept the contention of Mr. Gupta that a; Post-graduate Degree in all cases postulate. that the holders of that Degree must have obtained a Bachelor's Degree in the same subject. The degree of law in the Calcutta University, in my view, is sui generis in the sense that it really forms a class by itself and is not comparable to other Degrees of the same University. In my view, the Degree in law of the Calcutta University is a postgraduate degree. That being so, the petitioners and the added respondents are, in my view, entitled to the six incremental benefits in terms of the Finance Department Memorandum mentioned hereinbefore.

19. This disposes of the only controversy that was raised before me.

20. In the result, this application succeeds and the rule is made absolute.

21. There will be a writ in the nature of Mandamus directing the respondents to forthwith recall, cancel and withdraw the order of the respondent No. 1 being Order No. 10940G dated 28th November, 1975 and to forbear from giving effect thereto in any manner whatsoever.

22. There will be no order as to costs.