

(2023) 12 GAU CK 0008

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3166 Of 2021

Biren Saikia

APPELLANT

Vs

State Of Assam And 6 Ors

RESPONDENT

Date of Decision : 06-12-2023

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14

Citation : (2023) 12 GAU CK 0008

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : D Deka

Final Decision : Disposed Of

Judgement

1. Heard Mr. D. Deka, learned counsel for the petitioner. Also heard Mr. N.J. Khataniar, learned counsel for the respondents in the Secondary Education Department of Government of Assam, Mr. I Alam, learned counsel for the respondents in the NCTE, Mr. N.C. Das, learned Senior Counsel for the Dibrugarh University, Mr. G. Goswami, learned counsel for the authorities in the Bihpuria PGT College and Mr. S.K. Das, learned counsel for the respondent No. 7 Biren Bora.

2. The petitioner Biren Saikia based upon his qualification and eligibility seeks to be the Principal of Kherajkhat Senior Secondary School. The petitioner participated in a selection process for the post of Principal of Kherajkhat Senior Secondary School as per the advertisement dated 14.12.2018 and states that in the selection process he was otherwise the first selected candidate in order of merit but by the order impugned dated 29.04.2021 of the Director of Secondary Education, Assam, the respondent No. 7 Biren Bora who has the qualification of M.Sc., B.Ed. and is a Post Graduate Teacher at Kherajkhat Senior Secondary School, Lakhimpur was appointed as a regular Principal of the School.

3. The petitioner Biren Saikia earlier instituted WP(C)/2057/2020 assailing the

communication dated 07.02.2020 by which the present respondent No. 7 Biren Bora was appointed as the regular Principal of the school. In the said writ petition it was the stand of the petitioner Biren Saikia that he had the qualification of Post Graduate degree as well as B.Ed. degree and therefore, he was duly qualified to be appointed as regular Principal of the school but ignoring his claim the respondent No. 7 Biren Bora had been appointed as the regular Principal of the school. In the said writ petition it was the stand of the State respondents in the Secondary Education Department that the petitioner Biren Saikia was not appointed inasmuch as his B.Ed. degree was not a valid degree under the law. Accordingly, by the order dated 03.12.2020 in WP(C)/2057/2020 the matter was remanded to the NCTE to examine as regards the validity of the B.Ed. degree of the petitioner.

4. In response thereof the NCTE took a decision in the minutes of 289th meeting of the ERC held on 15.02.2021 to refer the matter to the Secretary to the Department of Education, Government of Assam and to the Registrar of the concerned affiliating body which has to be understood to be the Dibrugarh University for taking a decision and to inform the NCTE regarding the recognition status of the B.Ed. course conducted by the Bihupuria PGT College in the year 1996-97. In response thereof, by the communication dated 16.03.2021 of the Commissioner & Secretary to the Government of Assam in the Secondary Education Department made amongst others to the Regional Director of Eastern Regional Committee of NCTE as well as to the Director of Secondary Education, Assam, a conclusion was arrived that the writ petitioner Biren Saikia was a B.Ed. student during the year 1996-97 and he failed in the regular B.Ed. examination held in the year 1997 and passed the examination only on 27.02.1999 and that the Bihupuria PGT College, Lakhimpur was not recognized during the year 1996 till the year 2001 and therefore, the B.Ed. degree of the writ petitioner Biren Saikia is not a valid degree.

5. Based upon such conclusion, the order impugned dated 29.04.2021 had been passed appointing the respondent No. 7 Biren Bora as the regular Principal of Kherajkhat Senior Secondary School. In the instant writ petition the order dated 29.04.2021 is assailed on the ground that as per the law applicable on the subject the B.Ed. degree of the petitioner obtained in the manner taken note of by the respondent authorities is not an invalid B.Ed. degree.

6. The respondents in the Secondary Education Department, Assam in the writ petition takes a stand that the decision arrived at in the communication dated 16.03.2021 is a right decision that the B.Ed. degree would not be a valid degree. Mr. G. Goswami, learned counsel for the Bihupuria PGT College also agrees with the view of the Secondary Education Department. Mr. N.C. Das, learned Senior Counsel for the Dibrugarh University on the other hand has a different view to express that according to the university authorities that B.Ed. degree would be a valid degree.

7. In order to substantiate that the B.Ed. degree of the petitioner is a valid

degree, Mr. D. Deka, learned counsel for the writ petitioner makes a reference to the attending facts and circumstances in which it was obtained. It is stated that Bihupuria PGT College made an application for recognition of the B.Ed. degree offered by it before the NCTE in April, 1996 and in and around August, 1996 the petitioner took admission in the B.Ed. course offered by Bihupuria PGT College. Around December, 1996 the NCTE by the order had rejected the application seeking recognition of the B.Ed. college and the petitioner appeared in the B.Ed. examination held at the end of the session 1996-97 but was not successful and later on, appeared in the examination in the year 1998 and he had successfully passed out the B.Ed. examination in the year 1999.

8. In order to substantiate that a B.Ed. degree is a valid degree, Mr. D. Deka, learned counsel for the petitioner relies upon a pronouncement by the Hon'ble Supreme Court rendered in *State of Uttar Pradesh and others vs. Bhupendra Nath Tripathi and others* reported in (2010) 13 SCC 203 wherein in paragraph 29 it has provided as extracted:

"29. Section 14(5) read with Section 14(1) enables the institution offering a course or training in teacher education on the appointed day to continue the course or training as the case may be during the pendency of the application seeking recognition and even in case of refusal of recognition, the course may have to be discontinued, only at the end of academic session. The institution offering training or course is entitled to award degree or certificate as the case may be."

9. Accordingly, by relying upon the proposition laid down by the Hon'ble Supreme Court in *Bhupendra Nath Tripathi (supra)* it is the submission of Mr. D. Deka, learned counsel for the petitioner that for the B.Ed. course offered by the Bihupuria PGT College for the session 1996-97, as per the proposition laid down by the Hon'ble Supreme Court, even in the event of a refusal of recognition by the NCTE in December, 1996, the course offered could have been discontinued only at the end of the academic session. Therefore, in the instant case, the Bihupuria PGT College having offered the course for the year 1996-97, the said course could have been discontinued only at the end of the academic session and not at the stage where the NCTE had refused recognition in December, 1996. As the entire course was offered by the Bihupuria PGT College and the petitioner had availed and participated in the complete course for the session 1996-97, therefore, the course offered by the Bihupuria PGT College for the session 1996-97 inspite of the application for recognition being rejected, would have to be accepted to be a course which was validly offered by the Bihupuria PGT College. By referring to the further provision in paragraph 29 of its judgment in *Bhupendra Nath Tripathi (supra)* it is the contention of Mr. D. Deka, learned counsel for the petitioner that the institute whose application for recognition may have been rejected during the session would firstly be entitled to complete course upto the end of the session and the institute offering the course is entitled to award the degree or certificate as the case may be.

10. In other words, it is the submission of Mr. D. Deka, learned counsel for the petitioner that whatever course was offered by the Bihupuria PGT College for the session 1996-1997 would continue upto the end of the session and upon continuing the course upto the end of the session the institute would also be entitled to award a degree or certificate.

11. Mr. S.K. Das, learned counsel for the respondent No. 7 Biren Bora on the other hand relies upon the judgment rendered by the Hon'ble Supreme Court in *Maa Vaishno Devi Mahavidyalaya vs. State of UP* reported in (2013) 2 SCC 617 the relevant paragraphs being paragraphs 41 and 57, *Adarsh Shiksha Mahavidyalaya & ors vs. Subhash Rahangdale & ors.* reported in (2012) 2 SCC 426 the relevant paragraphs being 67 and 69 and *National Council for Teacher Education vs. Venus Public Educational Society* reported in (2013) 1 SCC 223 the relevant paragraphs being paragraphs 32, 34 and 35 to a raise counter contention that B.Ed. degree through an institution which is not recognized under the law is an invalid degree.

12. In *Maa Vaishno Devi Mahavidyalaya* (supra) in paragraph 57 it is provided that under Section 14 of the National Council for Teacher Education Act, 1993, the NCTE is required to either grant or refuse recognition of an institute and that the affiliation enables and permits an institution to send its students to participate in public examinations conducted by the examining body and recognition is the license to the institution to offer a course or training in teaching education. In paragraph 67 of its judgment in *Adarsh Shiksha Mahavidyalaya* (supra) the Hon'ble Supreme Court was of the view that the conclusion recorded by the High Court in the matter before the Supreme Court and the directions contained therein are of general application and do not target any particular college and in paragraph 88 it had been held that the result of students admitted by an unrecognized institution or by an institution which had not been granted affiliation by the examining body shall not be declared. In *Venus Public Education Society* (supra) in paragraphs 33 and 34 it had been held that a direction issued by the High Court to consider the case of an institution for grant of recognition without further inspection is unsustainable and further that the High Court could not have directed the recognition to be retrospectively operative because certain formalities remained to be complied with. In paragraph 35 it had been held students before enrolling themselves in an institution are expected to enquire as to whether the institution has recognition and affiliation and the students exhibited tremendous anxiety to get a degree without bothering for a moment whether their effort, if any, had the sanctity of law.

13. A conjoint reading of the proposition laid down by the Hon'ble Supreme Court in *Maa Vaishno Devi Mahavidyalaya* (supra), *Adarsh Shiksha Mahavidyalaya* (supra) and *Venus Public Education Society* (supra), a proposition of law can be culled out that in the event a student acquires a B.Ed. qualification from an institute which is not recognized under the law, such degree would be invalid degree and cannot be used for any further purpose. The aforesaid proposition of

law laid down by the Hon'ble Supreme Court is of a general nature that when a B.Ed. degree had been obtained from an institute which is not recognized under the law, such B.Ed. degree would be invalid. But in the instant case it is the contention of Mr. D. Deka, learned counsel for the petitioner that the proposition laid down by the Hon'ble Supreme Court in Bhupendra Nath Tripathi (supra) is under a specific circumstance as regards what would be the implication under the law of a degree in B.Ed., if it is obtained from an institution where an application was made before the NCTE for its recognition but later on, within the session itself it stood rejected. As per the proposition laid down by the Hon'ble Supreme Court in Bhupendra Nath Tripathi (supra) even if an application by an institute seeking recognition is refused by the NCTE the course that had already been offered for that given year or session would continue till the end of the session and it is not to be understood that the course stands discontinued upon the recognition being refused and further whosoever obtains a B.Ed. degree by undertaking such course in that given year would be entitled to a degree or certificate.

14. In the aforesaid circumstance it is stated by Mr. S.K. Das, learned counsel for the respondent No. 7 Biren Bora that the petitioner failed to obtain his B.Ed. degree at the end of the session as in the first attempt he had failed and he had successfully passed out only in the year 1999.

15. A reading of the proposition laid down by the Hon'ble Supreme Court does not make it discernible that there is also a requirement to obtain the B.Ed. degree at the end of that academic session itself. The Supreme Court provides that whatever course was undertaken by the students in that given year when the recognition was refused that course would be continued till the end of the session and whosoever obtains that degree by pursuing such course that degree would be a valid degree in law.

16. Mr. S.K. Das, learned counsel for the respondent No. 7 further states that the course was one year course. None of the parties are at dispute that it was not a course of one year.

17. A reading of the proposition of the Hon'ble Supreme Court makes it discernible that the course that was undertaken in that given year when the recognition was refused would have to be allowed to be continued and whosoever acquires a B.Ed. degree pursuant to such course undertaken would be a valid degree. Nothing can be read in the proposition of the Hon'ble Supreme Court that the final examination also has to be passed at the end of that year itself and not later inasmuch as the relevant aspect of consideration is the course that was undertaken in the given year and not the examination which was passed.

18. Accordingly by placing complete reliance of the proposition laid down by the Bhupendra Nath Tripathi (supra) we are unable to accept the views of the respondents in the Secondary Education Department that the degree obtained by

the petitioner in the circumstance narrated above from the Bihupuria PGT College would be an invalid degree under the law.

19. Accordingly, we remand the matter back to the Director of Secondary Education, Assam to examine the claim of the petitioner as regards his claim for appointment as regular Principal of Kherajkhat Senior Secondary School. In doing so, as the respondent No. 7 Biren Bora has already been appointed as regular Principal of Kherajkhat Senior Secondary School, due hearing under the law be also given to Biren Bora in respect of any such decision that may be arrived at.

20. The requirement of considering the acceptability of the B.Ed. degree of the petitioner be done by the Director within a period of two months from today and whatever decision be taken shall be strictly in terms of all such applicable law including the principle of natural justice in respect of all the parties.

Writ petition stands disposed of in the above terms.