
(2003) 08 CAL CK 0019
In the Calcutta High Court
Case No : M.A.T. No. 2257 of 1978

Debasis Sarkar

APPELLANT

Vs

Abdul Hai and Others

RESPONDENT

Date of Decision : 01-08-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19, 21, 226

Citation : (2004) 1 CALLT 215

Hon'ble Judges : Debi Prasad Sengupta, J;Asok Kumar Ganguly, J

Bench : Division Bench

Advocate : Chandreyi Alam, Sahasranagshu Bhattacharjee and Runu Mukherjee, for the Appellant;Pushpendu Bikash Sahoo and Sudhakar Biswas, for the Respondent

Final Decision : Allowed

Judgement

A.K. Ganguly, J.—This appeal is directed against the judgment and order dated 23.06.1998 delivered by a learned single judge of this Court in W.P. No. 3783(W) of 1997 and by the said judgment, the learned single judge had allowed the writ petition.

2. The appellant along with others applied for the post of Assistant Teacher in Work Education in Golabari High School (hereinafter referred as the "said school") and appeared before the selection Committee which, after selection, prepared a panel and the appellant came first in the panel. After the said panel was approved by the Managing Committee of the said school and was sent for approval of the District Inspector of Schools (S.E.), Dakshin Dinajpur, the respondent No. 1 in this appeal moved a writ petition being C.O. No. 3639(W) of 1996.

3. In the said writ petition, the contentions of the respondent No. 1 were that the names of the persons above him in the said panel were wrongly included and, as such, the said panel should not be approved. The issues about the invalidity of

the degree obtained by the appellant were raised.

4. On such writ petition, a learned Judge of this Court by an order dated 29.11.1996, after hearing the parties, was pleased to dispose of the said writ petition with a direction to the District Inspector of Schools to hear the parties and to decide the dispute. The learned Judge did not decide the controversy on merits.

5. Thereafter, the hearing took place before the District Inspector of Schools and all the interested parties including this appellant and the respondent No. 1 attended and were heard. The District Inspector of Schools, after hearing all the parties, held that the panel prepared by the Selection Committee on 21.12.1995, is illegal in the eye of law. The said decision of the District Inspector of Schools dated 20.01.1997 has been challenged in the present writ petition out of which the appeal arises.

6. The relevant facts are that in terms of the recruitment rules the District Inspector of Schools (S.E.), Dakshin Dinajpur accorded prior permission by his Memo dated 04.07.1995 for recruitment for the post of Assistant Teacher in Work Education mentioning the qualification for the post, that is, Graduate Degree with PGBT/B.Ed. In terms of such permission for recruitment granted to the Managing Committee of the said School the said School approached the local Employment Exchange for sponsoring the names of eligible candidates and the local Employment Exchange sponsored the names of ten (10) candidates and the name of the appellant was also included.

7. Thereafter, in terms of the recruitment rules, a Selection Committee was constituted and an interview was taken on 02.12.1995 and in the said selection test, the appellant, as stated above, secured the first position and the writ petitioner/respondent No. 1 secured the third position. After such selection, the panel was duly approved by the Managing Committee in its meeting held on 21.12.1995 and was sent to the District Inspector of Schools (S.E.). Dakshin Dinajpur, for his approval. After the said panel was sent for approval, the respondent No. 1 in this appeal, as noted above, filed a writ petition [C.O. No. 3639(W) of 1996] challenging the said panel.

8. The learned single Judge, as noted above, in the judgment under appeal allowed the writ petition and quashed the panel. In doing so, the learned single judge held that the appellant was a student of PGBT College at Sarisa, which is an unrecognized institution, and as such, the certificate, obtained on the basis of training in the said institution, is not valid. The learned Judge held that the appointment should not be given to a person without recognized degrees even if those degrees came from high and reputed places. The learned Judge further found that if the Court directs sending of students for appearing in an examination from the unrecognized institutions, then the Court is directing breaking of laws and is acting in a manner which is contrary to the rule of law. The learned judge further held that the students taking examinations from an

unrecognized institution either under orders of the Court or otherwise, cannot be given a diploma and those diplomas are not valid for appointment and for other purposes. The learned Judge further held that if the appointment of the appellant is approved, then a premium would be put upon unrecognized college.

9. Considering all those aspects, the learned Judge held that even though it is unfortunate that a person who got an appointment will have to lose it, but the learned Judge held that the Court should uphold the rule of law and should set aside the appointment of the appellant, who was working in the said School on the basis of such appointment since 22.01.1997.

10. The learned counsel for the appellant while assailing the judgment under appeal argued on the following facts:

11. The diploma, which was obtained by the appellant, is a valid one and a Xerox copy of the said diploma has been annexed to the Paper Book, which shows that the same has been issued by the Government of West Bengal Education Department. Secondly, the learned counsel submitted that the examination was conducted and held by the Director of Public Instruction, West Bengal. The learned counsel further submitted that the name of the appellant was sponsored by the local Employment Exchange as an eligible candidate and there is no bar under the rules. The learned counsel submitted that all those aspects have been considered in great detail in the order of the District Inspector to schools (S.E.), Dakshin Dinajpur and there is no reason why a writ Court should interfere with the said order. The said order has considered the relevant questions of facts in great detail. The learned counsel submitted that the writ Court should not have disturbed those findings of fact in the absence of any legal infirmity. It was also urged that the appointment of the appellant which is continuing since 1997 should not be put to an end for no fault of his.

12. The learned counsel for the respondent No. 1, on the other hand very much relied on the decision of the learned single Judge and mainly argued on the point that the appellant, being a student of an unrecognized institution, could not have obtained the diploma and even if he had obtained the diploma, the said diploma should not have been accepted by the authority as a valid one. The learned counsel cited various decisions in support of his submissions that such qualification cannot be accepted as valid.

13. These are the rival contentions of the parties.

14. Now the precise question which falls for decision in the appeal is whether or not the appointment of the appellant is vitiated in view of the fact that he was a student of a minority Post Graduate Basic Training College at Sarisa, an unrecognized institution, while pursuing the course of PGBT. This Court is inclined to hold that the appointment of the appellant is not vitiated on the ground for the reasons indicated below:

15. Normally, when an appointment is challenged, the challenge is based on

some errors in the selection process. In the instant case, the selection process is apparently flawless and there is no allegation of malice or partisanship made by the respondent No. 1 against the persons conducting the selection processes. Now so far as the question of violation of statutory provision is concerned, there is no provision of law which debars the consideration of the candidature of a person who has the requisite qualification on the basis of a certificate granted to him by the appropriate authority. No statutory regulation has been shown to this Court who permits the selecting authority to go behind the certificate to find out whether the institution, in which the candidate was studying the course, is a recognized institution or not. On the other hand, under the rule viz. Rule 5(q), it is provided that candidates, sponsored by the Employment Exchange, "shall be called for interview". In the instant case, the appellant was a candidate sponsored by the Employment Exchange. Therefore, the Selecting Committee was under an obligation to call him for an interview. Naturally, the appellant was called and the respondent No. 1 was also called for the interview and in the said interview, on an assessment by the Selection Committee, the appellant came at the top of the panel and the respondent No. 1 occupied the third position of the said panel. There is no whisper of challenge against that assessment made in the selection.

16. The learned counsel for the respondent No. 1 relied on Clause 6(xii) of Recruitment Rules in order to argue that in the instant case, the diploma obtained by the appellant should not have been taken into consideration by the Selection Committee. But, this Court does not find the same to be a tenable submission. The relevant Clause 6(xii) shows that a diploma/degree of Work Education approved by the State Government for the Work Education Teacher would fetch 20 marks. In the case of the appellant, diploma has been issued by the State Government. Therefore, there is no question of its approval by the State Government. There is thus no violation of Clause 6 (xii) of the Recruitment Rules.

17. The learned single judge has laid great emphasis on the expression "without prejudice" mentioned in the diploma obtained by the appellant and on that ground held that it was invalid. But this Court finds that the diploma which has been obtained by the appellant has been issued by the Government of West Bengal Education Department under the signature of Director of Public Instruction, West Bengal. Therefore the said diploma is perfectly valid. But, the said diploma refers to a Court proceeding, viz. C.O. No. 7017(W) of 1993 and contains the recital "the certificate is issued without prejudice to the rights and contention of the concerned party".

18. It may be made clear at the outset that the appellant was not a party in the said proceeding, being C.O. No. 7017(W) of 1993. The said proceeding was initiated by way of one Sakila Begum & Anr. against the State of West Bengal & Ors. On such proceeding being initiated, a learned Judge on this Court passed an order on 24.09.1992 directing the respondent viz. the State Authorities, to hold

the examination and publish the result. The petition was moved by the Authorities of the said unrecognized institution for a direction upon the respondents to allow the students to appear in the Post-Graduate Basic Training Final Examination. After the said order was passed on 24.09.992, there has been possibly some non-compliance with the said order and, thereafter, a proceeding was initiated by way of contempt and in such proceeding there was a further direction for holding such examination. The said contempt proceeding was disposed of with the following directions:

"The contempt authority will issue necessary application form to be filled up by the examinees. The College functionaries will submit the form along with the prescribed identification form with Passport size photograph of the students duly attested by the Principal to the Director of Public Instruction i.e. competent authority within 16th August 1993. The Principal of both the Colleges are entitled to authorize a competent officer from the respective colleges to collect the Admit Cards from the competent authority within 31st August 1993.

The contempt application is disposed of accordingly."

19. Therefore, pursuant to those orders, the examination was held and the appellant appeared in the said examination and was successful and, thereafter, the certificate was issued as noted above. His mark-sheet was also issued by the Education Directorate, Government of West Bengal and the same was signed by the Director of Public Instruction, West Bengal. Thereafter, the name of the appellant was also published in the Calcutta Gazette. But, both in the mark-sheet and the Calcutta Gazette, the aforesaid proceeding has been mentioned.

20. In the context of these facts, the expression "without prejudice" cannot invalidate the certificate. The expression "without prejudice" is very commonly used in legal parlance. Counsel for the parties cited Stroud's & Black's Law Dictionary to explain the meaning of the expression "without prejudice". The said expression has been frequently used in a large number of situations. So one has to appreciate the factual context to understand the meaning of the expression.

21. In the instant case, "without prejudice" has been used in the sense that while issuing the certificate, the authority issuing the certificate has not surrendered any of its rights against the contesting parties in the proceeding in question. It is nobody's case that the appellant is a party in the said proceeding, nor it is anybody's case that the order which was passed in the said proceeding has been set aside or overturned in subsequent stages of the proceeding. The said order is still holding the field and the contempt proceeding has been disposed of and attained finality. Therefore, in the context of these facts, in my judgment, the learned judge was in error by not accepting the validity of the certificate obtained by the appellant, because it contained the expression "without prejudice".

22. In my judgment, it cannot be said that the appellant does not have a right to seek employment on the basis of such a certificate. If the Court comes to a

finding to the effect that would in my judgment, stretching things too far. In other words, for no fault of the appellant, he will be subjected to a handicap in the matter of seeking employment. But in the admitted facts of the case that will be an unjust decision. Admittedly the examination in question, was conducted by the Director of Public Instruction, West Bengal. The question papers were set by the said authority. The examinations, both in theory and practical were conducted by the said authority and the results were also published by the said authority. Apart from that, the Director of Employment Exchange, Government of West Bengal, has accepted such qualification as valid for appointment. The Employment Exchange has incorporated the said qualification in their records and the Employment Exchange has sent the name of the appellant as an eligible candidate. In the background of these facts, if a candidate, who after competing with others, secured the top position in the panel, is told by the Court that all your efforts and endeavour must be ignored in view of the fact that "you were a student of an unrecognized institution", that would be doing great injustice to this claim for appointment.

23. The right to be considered for obtaining an employment under the State is certainly a fundamental right under Article 16 of the Constitution of India. It cannot be disputed that Article 16 is a facet of the principle of equality under Article 14. Now, in order to obtain such employment, one must have the requisite educational qualification. Today, the Government cannot establish sufficient number of educational institutions. The Court can and should take judicial notice of the fact that the numbers of students who were willing to obtain qualification far out weigh the capacity of institutions established or recognized by the State Government. Therefore, some institutions which are not yet recognized have come up and the students have sought admission in those institutions. Of course, in the name of education and taking advantage of helplessness of the students sometime a racket operates and fake institutions have also sprung up. That is a different question. But in the instant case, the institution in question cannot be considered as some of those so called fake institutions. Materials have been placed before us by the learned counsel for the appellant, and for ends of justice, we have considered those materials about the present status of the said institutions.

24. It appears that a communication was addressed to the Principal of the said institution from the University College of Arts & Commerce, that inspection team constituted by the Syndicate of the Calcutta University will visit the said College in respect of recognition and affiliation of the existing minority Post-Graduate Basic Training College as a B.Ed. College. There is another communication dated 21.01.2003 issued by the Government of West Bengal, Higher Education Department, to the Principal of the said institution that all pending results of PGBT examinations held in the year 1998 should be published, admitting thereby that the minority Post-Graduate Basic Training College at Sarisa is a recognized PGBT College under Article 30 of the Constitution of India with retrospective effect from 23.11.1990. The Principal of the said institution was asked to obtain

fresh recognition and affiliation from the Calcutta University and it was made clear that the State Government will extend all possible cooperation. It may be noted that pursuant to the said letter of the State Government, the University issued a letter for an inspection of the said college on 24.03.2003.

25. In view of these materials, we cannot hold that the institution in which the appellant was pursuing the course was an "education shop" or a "masked phantom" as pointed by Justice Chinapa Reddy in *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, . So, the appellant is not at fault by undertaking his course in the said institution when admittedly the number of recognized institutions are not adequate. Therefore, in view of the aforesaid discussions, this Court cannot hold that the appointment obtained by the appellant on the basis of a valid certificate issued by the competent authority should be set at naught just because of the fact that his certificate contains the expression "without prejudice".

26. Before directing that a person must lose his job, the Court must, in my judgment, keep in mind that obtaining a job in the present day situation, after competing with other candidates, is not an easy thing. Once such an employment has been obtained, which is the only means of livelihood of the appellant, the same cannot be taken away except on the basis of a procedure which is just, reasonable and fair. In *D.K. Yadav Vs. J.M.A. Industries Ltd.*, , the learned judge of the Supreme Court held that in any case of termination or loss of service, the procedure for such loss of service must be reasonable, just and fair and must satisfy the requirement of Articles 14 and 21 of the Constitution. With great respect, the learned single Judge glossed over this aspect of the matter by saying that it is unfortunate that the person who has got an employment has to lose it. Therefore, it was clear that the conscience of the learned Judge was disturbed as His Lordship found that the order might lead to loss of service of an employee without any misconduct on his part. But unfortunately, the learned Judge, with great respect, if I may say so, did not advert to the relevant legal aspect of the matter before directing that the appellant must lose his job.

27. Keeping this aspect of the matter in mind this Court finds that most of the cases cited by the learned counsel for the respondent No. 1 are not relevant to the facts of the present case.

28. The decision in the case of *Union of India and Another Vs. Ravi Shankar and Another*, and the decision in the case of *State of Rajasthan and Others Vs. Lata Arun*, were concerned with the question of the appointment of a person who did not have the requisite qualification under the relevant rules.

29. In the case of *Ravi Shankar*, the Court held that the degree of *Vaidya Visharat* awarded by the Hindi Sahitya Sammilani, Allahabad, is not a recognized qualification. Therefore, a person holding such degree is not entitled to be appointed as a Pharmacist. In the instant case, the degree for diploma which has been obtained by the appellant has been issued by the competent authority, viz.

The Government of West Bengal, Education Department and is the requisite qualification and is recognized by the Employment Exchange. Therefore, the facts here are totally different. Similarly, in the case of Lata Arun the candidate did not possess the prescribed educational qualification for admission to the General Nursing Course. From the facts of that case, it appears that when the matter was challenged before the High Court by Lata Arun, the High Court left it to the Nursing Council to dispose of the dispute after considering the case of Lata Arun. The Nursing Council declared that Lata Arun is ineligible. But then, another learned Judge by the impugned judgment held that the Nursing Council should have decided the case in favour of Lata Arun. On those facts the Hon''ble Supreme Court held that the High Court cannot determine whether a particular educational qualification is equivalent to the prescribed qualification.

30. But in the instant case, these factual aspects are not at all present. On the other hand, it appears that in prior writ petition filed by the respondent No. 1 [C.O. 3639(W) of 1997], the High Court directed the District Inspector of Schools (S.E.) to decide the dispute about the claim of the respondent No. 1 in the matter of panel prepared by the Selection Committee and pursuant to that direction of the High Court the District Inspector of Schools (S.E.), considered the aspect in great detail and came to a finding rejecting the claim of the respondent No. 1. This Court does not find any error in those findings. Therefore, the decision in the case of Lata Arun is of no assistance in the present case.

31. The other case cited by then learned counsel for the respondent No. 1 was a Division Bench judgment of this Court in the case of West Bengal Central School Service Commission and Ors. v. Gita Guha (Dasgupta), reported in 2000(2) CLJ 34. In that case, the dispute was over recognition of a correspondence course from the Himachal Pradesh University as equivalent to a Regular Master Degree from a recognized University. The School Service Commission refused to recognize the correspondence course as equivalent to a degree given ,on a regular course by a recognized University. In the context of those facts the Division Bench held that the Court cannot substitute its own opinion for the view taken by the appropriate authority of not recognizing any course or a degree as equivalent to the one which has been prescribed as a requisite qualification under the rules. Here the said question does not at all arise. The decision which has been cited by the learned counsel for the respondent No. 1 in CBSE and Anr. v. P. Sunil Kumar and Ors., deals with the case of school education. It is obvious that there is a distinction between the school education at the secondary or higher secondary level and professional education for obtaining a technical qualification. In CBSE case the Hon''ble Supreme Court held that the interim order which was issued by the High Court permitting students, studying in the institution not affiliated with the C.B.S.E., to appear at the examination and further directing the C.B.S.E. to issue certificates, was in contravention of rules and regulations of C.B.S.E. and the Supreme Court held that the High Court was not justified in issuing the same. But in the instant case, so far as the order, allowing the students of the said institution to appear in the PGBT examinations to be

conducted by the State Government, was not challenged in any higher forum and there is no finding that those orders are contrary to law. On the other hand, on the basis of those orders, which have been passed, both the State Government and the Calcutta University authorizes are taking steps to recognize the said institution. Therefore, there is a very vital and factual distinction between the case of CBSE and the present case.

32. In fact in this case. State has not made any submission. It is a fight between two individuals for a post in respect of which both were interviewed. The appellant came first and the respondent No. 1 was third in the panel.

33. The last decision cited by the learned counsel for the respondent No. 1 was rendered in the case of C.B.S.E. and Another Vs. P. Sunil Kumar and Others, . In that case the facts were that on the material date, viz. the last date fixed for receipt of the application, the candidate did not possess the requisite qualification and, as such, she was ineligible.

34. Therefore, the Court held that on the material date the candidate did not have the qualification and, as such, her selection and appointment were illegal. In that case applications were considered for on 20.4.1968 and on that date, the candidature of the appellant was considered, but she did not have the qualification and she obtained the qualification some time in the year 1971. The Court held that the appointment was illegal and even though the appointee was continuing for a very long time under the orders of the Court pending litigation, such appointment does not become legal. Here the factual distinction between the case of Harpal Kaur and the present case is too obvious to be stated again. On the date of the appointment, the appellant had the requisite qualification.

35. The decision in A.P. Christian Medical Society case, on which the learned single Judge relied, was rendered on totally different facts. In that case, the Court was concerned with the indiscriminate mushrooming of fake educational institutions under the veil of minority claim. This, the Court found, had a demoralizing effect on educational scenario of the State of Andhra Pradesh where many students were duped by such intuitions and after seeking admission in those institutions by paying substantial money, their careers also were in total jeopardy. The apex Court strongly condemned the aforesaid trend. The observations of the apex Court must be understood in the context of those facts. The present case, on totally different facts, cannot be decided on the ratio of A.P. Christian Medical Society.

36. The appeal is therefore allowed and we cannot, with great respect to the learned single judge, share His Lordship's views. Therefore the judgment under appeal is set aside and the writ petition is dismissed.

Since the appellant is continuing in the appointment since 1997, we do not have to pass any consequential direction to reappoint him. We, however, declare that the appointment of the appellant is legal and is affirmed by us.

There will be no order as to costs.

D.P. Sengupta, J.

37. I agree.