
(2014) 01 CAL CK 0099
In the Calcutta High Court
Case No : Writ Petition No. 20024 (W) of 2012
In Re: Manisankar Maiti

Date of Decision : 20-01-2014

Acts Referred:

Citation : (2014) 3 CHN 379

Hon'ble Judges : Dr. Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Rabilal Moitra and Kanailal Samanta, Advocate for the Appellant; P.R. Mondal, Sutanu Patra, Ekramul Bari, K.M. Hossain and Tarun Kr. Das, Advocate for the Respondent

Judgement

Dr. Sambuddha Chakrabarti, J.—Challenging the empanelment of the respondents Nos. 7 and 8 for the post of Principal of Tamralipta Mahavidyalaya (the College, for short) the petitioner has brought into fore a very important aspect relating to the possible area of discrimination. More importantly, the issue cropped up is with regard to the acceptability of the Doctorate Degree granted by the Netaji Subhas Open University (the University, for short) or at which level such degree is acceptable or liable to be discarded by a statutory body entrusted to find out the best merits for different academic posts relating to appointments in different colleges. In other words, the question that has cropped up boils down to whether the same degree can be said to be a valid one for a certain appointment and not a valid one for another level of appointment. Inextricably entwined with it is a question whether a degree can be said to have relative levels of validity for different categories of appointment. Can a degree be said to be valid for appointment to "X" post and not recognizable for "Y"? Can validity of a degree be differentiated in its application to appointment for various posts? Can such differentiation be called discrimination? These relevant issues are necessary to be examined in order to find out the challenge thrown out by the petitioner in the present writ petition. The facts of this case are more or less admitted. Pursuant to an advertisement issued by the West Bengal College Service Commission i.e. the respondent No. 3, the petitioner and the respondent Nos. 7 and 8 had applied for the post of the Principal of the College. In the panel

prepared by the Commission, the respondent No. 7 topped the list; the respondent No. 8 occupied the 2nd position and the petitioner ranked 3rd. The respondent No. 7 has already joined another college as a Principal and is not interested to join the present college. Therefore, the respondent No. 8, i.e., Abdul Motin, becomes the first empanelled candidate and the petitioner's challenge is with regard to his selection.

2. Although the petitioner has introduced various aspects including alleged improper awarding of marks in favour of the respondent No. 8 vis-a-vis the petitioner's performance at the interview, this is not the subject-matter of serious challenge in the petition and the Court also cannot embark into any enquiry about the correctness of awarding of marks at an interview which pertains to the field of specialized expertise or expert job. It is now a settled principle of law that a Court should not substitute itself as an expert when a validly constituted expert body has assessed relative merits of the candidates and has awarded marks.

3. The only question that remains to be decided is whether the selection of the respondent No. 8 can be justified, he not having, as the petitioner alleges, the requisite qualification for such selection. It is also an admitted position that for the post of a Principal, possession of doctorate degree is an essential qualification. According to the petitioner, the respondent No. 8 has his Ph.D. degree from the University and this degree having been declared by the Supreme Court as an inferior one the respondent No. 3, i.e., the College Service Commission was not justified in recognizing the same at par with a doctorate degree of any other University. This is all the more so because, the Commission itself does not recognize the doctorate degree of the said University as a valid degree for the purpose of appointment for the post of lecturer.

4. The main case of the petitioner is that the respondent No. 8 who was selected for the post of Principal, holds a Ph.D. degree, which is not accepted by the Commission.

5. Mr. Moitra, learned Senior Advocate for the petitioner, has drawn the attention of the Court to the fact that the Commission in the case of appointment for the post of lecturers has persistently refused to accept the degree as a valid one and if the degree is not valid for the post of lecturer on the parity of logic the same should also not be considered a valid one for the purpose of appointment to the post of a Principal.

6. Mr. Moitra has referred to a judgment and order passed by a learned Single Judge of this Court in writ petitions which were heard analogously and disposed of by the judgment and order dated June 18, 2012. This has been annexed to the writ petition as Annexure P-8. Those petitions were filed by a large number of candidates aspiring to be appointed as lecturers having a Ph.D. or an M.Phil. degree from various Universities through Distance Education Programme or from Open Universities. The reason for filing the writ petitions was the refusal by the

Commission to accept the Ph.D. degree obtained from an Open University or on the basis of Distance Education Programme. A learned Single Judge of this Court while dismissing the writ petitions and accepting the submissions of the Commission relied on the case of Annamalai University rep. by Registrar Vs. Secy. to Govt. Infn. and Toursm Dept. and Others, and held that the action of the College Service Commission has the support of law. The method adopted by them was not discriminatory and held that the College Service Commission had acted in a reasonable manner. His Lordship did not find any fault with the stand taken by the Commission. The learned Single Judge further held that the Commission had chosen to appoint only those candidates who had passed out of following regular course. It is not that the College Service Commission has in some casts allowed the candidates of an Open University to get access to the job of lecturers and in some cases they have denied. Learned Single Judge had further come to the conclusion that the College Service Commission had consistently followed the course of allowing those candidates who got their educational qualifications through the regular course and had not used any discriminatory standard.

7. Mr. Moitra relying on the same judgment has submitted that the stand taken by the Commission having been upheld by this Court it could not take a stand different in the case of selection for the post of a Principal of a college.

8. Mr. Moitra has further submitted that this judgment of the learned Single Judge was appealed against and the Appellate Court had dismissed the appeal upholding the decision of the learned Single Judge.

9. Mr. Mondal, learned Advocate for the Commission, has submitted that the ratio decided in the judgment of the learned Single Judge referred to above must be held restricted to the selection of lecturers and not a Principal. According to him, for the post of Principal what is necessary is 15 (fifteen) years and API Teaching or research experience and as such, the selection to the post of Principal was done on the basis of a very different eligibility criteria. Therefore, this stand taken by the College Service Commission in respect of lecturers is not applicable to the selection to the post of a Principal.

10. The Commission's further stand is that even without a Ph.D. degree it had selected a candidate for the post of a lecturer if he or she had cleared the NET/SLET examination which was treated as alternative to Ph.D. degree for the purpose of getting an appointment.

11. Mr. Mondal, learned Advocate for the College Service Commission and Mr. Bari, learned Advocate for the respondent No. 8, have both relied on a passage from the said judgment of the Appellate Court which, according to the learned Advocates, support the decision taken by the College Service Commission in selecting the respondent No. 8 for the post of Principal. According to them, when the appellant in the said appeal, the unsuccessful candidate for the post of a lecturer, had drawn the analogy of the respondent No. 8 whose Ph.D. degree was

accepted by the Commission the Division Bench held inter alia that there was no question of any negative equality and since for the selection to the post of a Principal the minimum eligibility criteria was 15 years' experience and since the two posts carried different eligibility criteria, there was no question of any discrimination as the posts were different.

12. It was submitted particularly by Mr. Bari that in view of the very specific observation made by the Division Bench that the two posts were different, there was no question of any discrimination and such an observation leaves no room for any contrary submission to be made or considered by the Court.

13. I have heard the learned Advocates for the respective parties and have gone through the records. On a query made by this Court, Mr. Mondal had submitted on instruction that after the judgment in the case of Annamalai University (supra), the Commission had written to the State Government for proper guidance while preparing the panel for the posts of lecturers in the year 2009. In reply thereto the Joint Secretary, Higher Education Department (CS Branch), Govt. of West Bengal had asked the Chairman of the Commission to abide by the order of the Supreme Court. According to Mr. Mondal, since then the Commission has been following the post of lecturers.

14. I wanted to see the records to ascertain the exact decision taken by the College Service Commission after they had received the communication from the State Govt. Mr. Mondal clearly submitted that neither any separate resolution was adopted nor any decision was taken by the Commission with regard to the Ph.D. degree obtained from an Open University or through the method of Distance Education. It is indeed rather surprising that a course of action was decided to be followed by the Commission with regard to the eligibility of a certain class of candidates without taking any formal decision to that effect.

15. Be that as it may, even if the Commission had decided to follow the judgment of the Supreme Court in the case of Annamalai University (supra) it should have uniformly followed in all cases and not drawn an artificial line of distinction between the post of Lecturers and Principals. It has been very specifically observed by the Supreme Court in the case of Annamalai University (supra) that the alternative system envisaged under the Open University Act was not in substitution of the formal system in the matter of ensuring the standard of education. The Supreme Court observed-

"The distinction between a formal system and an informal system law in the mode and manner in which education was imparted. The UGC Act was enacted for effectuating co-ordination and determination of standards in universities. The purport and object for which it was enacted must be given full effect."

16. In such view of it, if the College Service Commission had decided to follow the Supreme Court judgment treating degrees obtained from an Open University as not equal to the degrees obtained after pursuing the regular course, it should have persistently followed the same yardstick in respect of posts where this

degree has become relevant for consideration. A degree is bad for an inferior post but valid for a superior post in an argument this Court is not ready to accept.

17. Mr. Mondal tried to justify the stand taken by the Commission by submitting that for the post of a Principal, 15 years" research or teaching experience is necessary. For the post of a lecturer possessing a NET/SLET is sufficient even without a Ph.D. degree to get an employment. This argument clearly overlooks a very important aspect of the essential qualifications required for the post of a Principal.

18. From the advertisement issued by the College Service Commission inviting applications for the post of a Principal which has been annexed to the writ petition as Annexure P-5, it appears that a Ph.D. degree in the concerned subject with evidence of published work and research guidance was a part of essential qualifications for a candidate to apply for the said post.

19. Thus, the submission made by Mr. Mondal that for the post of a Principal that 15 years" teaching experience is necessary serves no purpose once a doctorate degree is an essential qualification. If the essential qualification is not an acceptable qualification by an academic body, it must be held that those who possessed it could not be said to have a valid doctorate degree. The alternative qualification for the post of a lecturer having NET/SLET qualification is absolutely besides the point and has no relevance for the present purpose. Possessing a NET or a SLET qualification may be an alternative one which enables a candidate to get a lecturer's job without a Ph.D. degree. Thus, those who do not have a doctorate degree or an accepted doctorate degree this provision makes a leeway for those who possess an alternative qualification in the form of NET/SLET for their appointment. But that has no relevance in the present case. The question here is not why a lecturer was appointed without a Ph.D. degree and we are not for the present concerned with the appointment of a lecturer.

20. So far as the judgment passed by the Appellate Court in MAT No. 1197 of 2012 and other matters i.e., the appeals filed by the unsuccessful writ petitioners from the judgment of the learned Single Judge, I do not think that the respondents can take any advantage of the observations made therein. It cannot be gainsaid that the eligibility for the post of a Principal was not the issue before the Appellate Court. Abdul Motin was also not a party to any of the appeals. The eligibility of a person applying for the post of Principal in a general degree college was also not the issue before the Appellate Court which is an issue in this writ petition.

21. It appears from the said judgment that reference to Abdul Motin was made by the appellants by way of an illustration as well as for alleging discrimination by the Commission. It was in this context that the Division Bench had made some observations holding that there was no discrimination committed by the Commission. The selection of Abdul Motin did not arise in the context of the said judgment in a manner which required a decision on the point.

22. This is all the more so because, as it appears from the said judgment, the Court's attention was not drawn to the fact that for the post of a Principal, a Ph.D. degree is an essential qualification. Maybe that is why the Appellate Court observed that for the post of a Principal experience of 15 years was required and it was in this context that the Bench held that the posts in question were not the same and different eligibility criteria were also prescribed. It is true that the posts are different. It is equally true that different eligibility criteria are also prescribed for the two posts. But it was never made known to the Court that Ph.D. degree was a qualification which was common to both the cases. And, if one accepts the submission of Mr. Mondal that for the post of lecturer there is an alternative qualification in the form of NET/SLET, for the post of a Principal there is no alternative qualification. An acceptable Ph.D. degree is all the more necessary for the post of a Principal for which there is no provision of any alternative qualification. Thus, Mr. Mondal's submission goes against the stand taken by the Commission itself. When for the post of a Principal, Ph. D. degree had no alternative it was imperative that a candidate in order to be considered must have to have an accepted Ph.D. degree.

23. The Appellate Court had held that since the two posts were different, there is no question of discrimination. This Court respectfully agrees with this observation. At the same time the question is whether the impugned action of the Commission to accept the doctorate degree of the respondent No. 8 was valid. The observations made by the Appellate Court with regard to the qualification of the respondent No. 8 even if he was not a party to the appeals were:

"It is also clear that it would amount to perpetuation of illegality in case command issued to the respondents to recognize such substandard educational qualifications, where it has not been recognized so far, and rightly so, in our opinion. More so, writ cannot be issued to perpetuate illegality and to compromise the standard of education."

24. This was clearly meant for the Ph.D. and M. Phil degree by way of a Distance Education Programme or through an Open University System. If the Appellate Court has held that to ask the respondents to recognize such a degree would be to perpetuate illegality which they have not done so faras such illegality cannot either be directed to be committed nor sanctified by this Court for any higher post than that of a lecturer. In any case, the Appellate Court has described such qualifications as "substandard educational qualification". Such being the position, I find sufficient merit in the submission of Mr. Moitra that the concerned respondent's Ph.D. qualification in view of the judgments both of the Supreme Court as well as of this Court should not have been regarded as a valid qualification for the post of a Principal and the Appellate Court having described the same as a "substandard educational qualification" without any qualification with regard to any particular category of candidates to whom it shall be applied the College Service Commission clearly erred in recognizing such a qualification

of the respondent No. 8 as a valid Ph.D. degree for the post of a Principal.

25. Mr. Mandal had persistently submitted that the judgment passed by the learned Single Judge of this Court must be restricted to the post of lecturers only. This, I am afraid, is an artificial distinction without any difference. May be the immediate occasion for passing the judgment was that some unsuccessful candidates for the post of lecturers had filed these writ petitions and in the context of those writ petitions the Court had decided the issue. But the Court had never said that this judgment is to be regarded as particularly restricted to the posts of lecturers.

26. That apart, if a degree is declared substandard, the action of the respondent Commission cannot be justified in treating it as a valid one for a higher post.

27. The effect of the action of the respondent is that a doctorate degree which was not considered to be at par with the doctorate degree obtained through the regular course in other respects, should not be so in the case of a Principal. It is a settled position of law that in the matter of appointment, the essential qualification must be fulfilled by a candidate in order to be considered for that post and unless there is any specific power given to the authorities to relax the qualification, an examining body has no power to relax the same.

28. Mr. Mondal has submitted that a candidate without a Ph.D. degree cannot be considered for the post of a Principal. If such be so, equally a candidate without an acceptable Ph.D. Degree should not also have been considered for the post of a Principal.

29. I thus find sufficient merit in the submission made by the learned Advocate for the petitioner.

30. Since it has been submitted in Court that the respondent No. 7 who was the first empanelled candidate is not interested for the post of Principal of the concerned College, I direct the respondents to recast the panel in terms of the judgment and order and to make a fresh recommendation in accordance with the said recast panel within a period of three weeks from the date of communication of this order.

31. The writ petition is allowed.

32. There shall be no order as to costs. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible upon compliance of all requisite formalities.