
(2013) 08 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 473 of 2012

Javaid Ahmad Dar

APPELLANT

Vs

State of J. and K. and Others

RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Citation : (2013) LabIC 4187

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : S.A. Makroo, for the Appellant; Alla-uddin Ganai, Dy. A.G., Azhar-ul-Amin and T.H. Khawja, for the Respondent

Judgement

Tashi Rabstan, J.—Advertisement Notice No. ZEO/Y/3953-56/10 dated 31st March, 2010, consequent upon opening of New Primary

School for Nai Basti Mishipora, Zone Yaripora, District Kulgam, under Sarva Shiksha Abhiyan (SSA) 2009-2010, came to be issued by Zonal

Education Officer, Yaripora - respondent No. 4 in the petition, inviting applications from eligible candidates hailing from Revenue Village Widow

Mishipora with minimum qualification of 10+2 and above with the prescribed age limit for engagement of two Rehbar-e-Taleems (ReTs) in the said

School. After applications were received, a Panel of five candidates was prepared, in which petitioner figures at Serial No. 1 and respondents

6&7 at Serial Nos. 4 and 2 respectively. The Panel was forwarded to Chief Education Officer, Kulgam - respondent No. 3. The petitioner was

tentatively selected as ReT and objections sought there against. The Tentative Selection List (Annexure N to writ petition) bearing No.

CEO/K/9849/12 dated 8.02.2012, however, mentions that inclusion of candidate (petitioner) in the tentative list does not confer any right or claim

for engagement. Respondent No. 3 vide Notification, No. CEO/K/9890/12 dated 13th February, 2012 published in Daily Kashmir Uzma on

15.2.2012 (Annexure-O to writ petition) withdrew Tentative Selection List No. CEO/K/9849/12 dated 8.02.2012, whereby petitioner was

tentatively selected as ReT.

2. Petitioner, aggrieved of his exit from the zone of consideration for selection against the ReT position, has come up with writ petition on hand on

the grounds that he is resident of Village Widow Mishipora and he has, to his credit, Bachelor's Degree in Physiotherapy earned from Allahabad

Agricultural Institute. It is insisted that petitioner was figuring at Serial No. 1 in the Panel prepared by respondent department and was expecting

his selection but a plea was taken that his Bachelor's Degree could not be entertained. It is pleaded that petitioner has completed his Bachelor's

Degree in Physiotherapy from Allahabad Agricultural Institute, which is a deemed university and recognized by Indira Gandhi National Open

University and Distance Education Council, for imparting courses through ""distance mode"". It is averred that petitioner has highest merit and is

figuring at S. No. 1 in the Panel, as such, has a right to be engaged as ReT for newly opened Primary School, Nai Basti Mishipora. It is also

pleaded that respondents, in utter disregard of merit position, are trying to accommodate private respondents by selecting them over and above the

head of petitioner on the ground that petitioner has done his Bachelor's Degree through ""distance mode"". It is submitted that petitioner is having a

valid degree and even if he has done the said degree through ""distance mode"", same does not nullify his degree in the eyes of law as the University,

from which he has obtained the degree, is a recognized deemed university. The petitioner, on the edifice of case set up in writ petition, has sought

following relief:

(i) Writ of certiorari, quashing order/notification dated 13.2.2012 published in daily newspaper - Kashmir Uzma, in its issue dated 15.02.2012;

(ii) Writ of mandamus, commanding respondents to issue engagement order in favour of petitioner for engagement as ReT in Government Primary

School, Nai Basti, Mishipora;

(iii) Writ of mandamus, commanding respondents to give all the benefits to petitioner which will accrue to him on being engaged as ReT;

(iv) Writ of prohibition, restraining respondents from issuing order of engagement in favour of private respondents being inferior in merit.

3. Respondents 1 to 4, in their reply, have resisted the writ petition on the grounds that consequent upon sanctioning of new Primary School Nai

Basti Mishipora, an advertisement notice was issued for engagement of two ReTs and that a Panel of 05 candidates was framed, in which

petitioner figured at Serial No. 1 on the basis of his qualification as Bachelor in Physiotherapy (BPT), that was forwarded to respondent No. 3.

However, objections were filed against inclusion of petitioner in the zone of consideration on the plea that petitioner has obtained Bachelor's

Degree in Physiotherapy through ""distance mode"" from Allahabad Agricultural Institute. It is averred that respondent No. 2 has issued a

communication No. DSEKT/Legal/1733/Misc/694 dated 3rd March, 2012, intimating that as per standing instructions, the degrees, acquired by a

candidate in ""distance mode"" from the outside State University, are not to be entertained.

4. Respondent No. 7, in his Reply Affidavit, has opposed the writ petition on the grounds that petitioner had managed his tentative selection on the

basis of Bachelor's in Physiotherapy (BPT), that petitioner claimed to have obtained from Sam Higginbottom Institute of Agriculture, Technology

& Science by distance mode through Institute of Public Health and Hygiene, New Delhi. It is insisted that any degree obtained in Science stream

through ""distance mode"" is neither considered equivalent to corresponding degrees of Kashmir University nor recognized by University of Kashmir

or Government of Jammu and Kashmir and that the degrees obtained from or through franchisee-centre located at a place, which is beyond the

territorial jurisdiction of the State, in which University is headquartered, are not otherwise also countenanced by law and have been declared illegal

by Hon'ble Supreme Court. It is pointed out by respondent No. 7 that petitioner has obtained BPT from Institute of Public Health and Hygiene,

New Delhi, though the Degree is shown to have been conferred by Sam Higginbottom Institute of Agriculture, Technology and Science, and that

such degrees are not only invalid degrees but unknown to law. To lend support to his contentions, respondent has placed on record letter No.

DDE/SHIATS-DU/VERIFICATION/2012/13 dated 8th February, 2013 of Sam Higginbottom Institute of Agriculture, Technology & Sciences

(Formerly Allahabad Agricultural Institute) (Deemed University) Allahabad(Annexure RA), addressed to Chief Education Officer, Kulgam -

respondent No. 3, informing that petitioner, bearing Enrollment No. A-202210187, has completed Bachelor of Physiotherapy (BPT) in April,

2007 through "distance mode" from one of its franchisees/institutes, namely Institute of Public Health and Hygiene, RZ-A-44, "Mahipalpur, New

Delhi". It is averred that respondent No. 7 has done his Graduation from University of Kashmir as a regular student and has more marks than

petitioner at 10 + 2 level. Respondent No. 7, on the strength of submissions made in his reply, sought dismissal of writ petition.

5. Petitioner, in rebuttal to the reply filed by respondents, has, in his Supplementary Affidavit, stated that he has qualified the Degree of BPT from

recognized Institute of Allahabad Agriculture Institute, Allahabad, known as "Institute of Public Health & Hygiene", which is located at

Mahipalpur, New Delhi". It is pleaded that petitioner has attended classes "regularly" in the said Institute and has also attended practical test and

appeared in the examination and in this regard has placed on record a Certificate (Annexure B) claimed to have been issued by Chief

Administrative Officer, Institute of Public Health & Hygiene, Regd. Office and Training Centre RZ-A-44, "Mahipalpur, New Delhi-37". The

relevant extract of the Certificate (Annexure B) is reproduced herein:

This is to certify that Mr. Javaid Ahmad Dar S/o. Mr. Ab. Gani Dar R/o Mishipora, Tehsil & Distt. Kulgam-192102, J&K, was bona fide [bona

fide] & Regular student for Bachelors of Physiotherapy (BPT) of Allahabad Agricultural Institute - Deemed University, (Session-2003-2007),

being conducted at our Affiliated Institute (AH-402).

6. It is also pleaded by petitioner in his Supplementary Affidavit that Allahabad Agricultural Institute, Allahabad, Uttar Pradesh, is a Deemed

University and is figuring amongst the Universities/Institutes, whose programmes have been approved by the Distance Education Council.

Petitioner has placed with his Supplementary Affidavit a List of Universities/Institutions (Annexure-A), whose programmes/courses have been

approved by Distance Education Council, in which Allahabad Agricultural Institute figures at Serial No. 02 amongst the Universities of State of

Uttar Pradesh. It is contended that petitioner has attended the classes

""regularly"" in the Institute of Public Health & Hygiene, ""Mahipalpur, New Delhi"" and has qualified both internal assessment i.e. Practical and End Semester Examination in the said Institute which is a recognized Institute of Allahabad Agriculture Institute. The petitioner, in his Supplementary Affidavit, has relied on Government Order No. 252-HME of 2012 dated 30.05.2012 and stated that he has qualified the Degree of BPT from Allahabad Agricultural Institute through its institute namely Public Health & Hygiene, ""Mahipalpur, New Delhi"" and attended the classes as well as practicals in the Institute ""regularly"" and that the said fact can be ascertained from respondent No. 5, after respondent No. 5 files his reply.

7. Respondent No. 6, despite service, did not appear. Resultantly, he was set ex parte vide order dated 31st July, 2013.

8. Respondent No. 5, in its affidavit, states that Allahabad Agricultural Institute is a grant-in-aid Institute by Government of Uttar Pradesh. The petitioner, it is stated, has completed Bachelor of Physiotherapy from the University in the year 2007 through ""distance mode"". The relevant paragraph of the affidavit qua petitioner having completed Bachelor of Physiotherapy through ""distance mode"" is reproduced hereunder:

4- That Shri Javaid Ahmad Dar S/o. Shri B. Gani Dar (Enrolment No. A-2033010187) has successfully completed Bachelor of Physiotherapy (BPT) from this University in the year 2007 through distance mode.

9. I have heard learned counsel for the parties and have gone through the pleadings and perused the record on the file.

10. Before adverting to the law relating to the subject-matter, it is necessary to have an overview of the pleadings taken by petitioner in his writ

petition and Supplementary Affidavit. The petitioner, in his writ petition, pleads that he has done Bachelor's BPT Degree through ""distance mode

whereas in Supplementary Affidavit he states that he has ""regularly"" attended the classes in the Institute of Public Health & Hygiene, ""Mahipalpur,

New Delhi"" and in order to buttress his stand he has placed on record a copy of Certificate (Annexure B to Supplementary Affidavit), stated to

have been issued by Chief Administrative Officer, Institute of Public Health & Hygiene, Regd. Office and Training Centre RZ-A-44, ""Mahipalpur,

New Delhi-37"", wherein it is certified that petitioner was a bona fide and regular student for Bachelors of Physiotherapy (BPT) of Allahabad

Agricultural Institute. This claim of petitioner has been nullified as also falsified none other than by the Allahabad Agricultural Institute, wherefrom

petitioner claims to have obtained BPT Degree. The Affidavit given by the Allahabad Agricultural University categorically makes it clear that

petitioner has completed Bachelor of Physiotherapy (BPT) in the year 2007 through ""distance mode"". Apart from that, letter No. DDE/SHIATS-

DU/VERIFICATION/2012/13 dated 8th February, 2013, addressed by Sam Higginbottom Institute of Agriculture, Technology & Sciences

(Formerly Allahabad Agricultural Institute) (Deemed University) Allahabad, to respondent No. 3, makes it clear that petitioner, bearing Enrollment

No. A-202210187, has completed Bachelor of Physiotherapy (BPT) through ""distance mode"" from one of its institutes namely Institute of Public

Health and Hygiene, RZ-A-44, ""Mahipalpur, New Delhi"". Therefore, the stand taken by petitioner that he has qualified the Bachelor of

Physiotherapy as a ""regular"" student is devoid of any merit and substance.

11. The controversy involved in the present case is squarely covered by a judgment passed by our High Court in a bunch of cases titled Muzaffar

Zaman Shah v. State and others (SWP No. 102/2011 and 14 connected matters) decided on 6th June, 2012. It would be advantageous to

reproduce apropos excerpt of the said judgment hereunder:

(15) The controversy involved in the petitions in hand has already been dealt with by this Court in case titled Bilal Ahmad Najar v. State of J.&K.,

bearing SWP No. 187/06, decided on 27th February, 2009, and it has been held that degrees issued by various universities in violation of UGC

Act and the other applicable laws are not valid degrees insofar as employment of the State is concerned and the persons holding such degrees

cannot claim any weightage on the basis of such degrees. It is apt to reproduce last 3 paragraphs herein:--

On consideration of the matter I could not find any ground for admission of the present petition. The petitioner has obtained a degree in distance

education which admittedly is not a recognized degree by the University of Kashmir or by the Government of Jammu & Kashmir as such the

degree obtained by the petitioner cannot be treated as a valid degree insofar as employment in the State is concerned.

It is urged by the learned counsel for petitioner that though the degree obtained

by the petitioner is through distance education mode it is not in fact so as the petitioner has attended regular classes at the Kawa Institute of Management. This in my view will not help the petitioner. Admittedly the degree under the distance education programme by the said Institute or the said University has not till date been recognized either by the University of Kashmir or by the Government, so the petitioner cannot take benefit of the same. Learned counsel has further referred to the stand taken by the University of Kashmir wherein the University authorities have stated that the degree is not recognized by the University for academic purpose and that it is for the State Government to consider it for employment purpose. The State Government has admittedly not recognized the degree for the purpose of employment as such the petitioner cannot claim any weightage on the basis of such degree. In these circumstances this petition is dismissed.

(16) Since it has already transpired that the universities have acted beyond the limits provided by the guidelines and Acts established for the purpose, therefore, the ratio laid down by the judgment supra squarely covers the theme.

12. The Court further observes:

(21) ...it needs to be clarified that the chance should transform the life only upwards and not backwards; it should be constructive and not destructive; for progress and not for retreat; for innovation and not for steadiness, for illumination and not for confusion; and, above all, for positive and not for negative objectives. At a time, when the shape of life is rapidly changing its colours because of technological advancement that man has made, the developmental process is simultaneously being used for wrong practices also. We have hackers who use the same technology and infrastructure not for the good but for the bad. The wrong doing, of whatever kind, is something that needs to be put breaks on because this, in real sense, hampers the progress of a nation in every possible way. The case in hand is glaring example of such wrong doing, technology misused at its worst.

(22) The petitioners, who are before this Court, seeking direction in the name of respondents to give due weightage to their higher qualifications, though not valid, as discussed above, indeed want this Court to put its seal on

the said illegal act.

13. Again, the Division Bench of our High Court in case titled Imtiyaz Ahmad Bhat and others v. State and others (LPA No. 128/2012) decided

on 24th August, 2012, while dismissing the appeal, has pointed out:

7. The decisions have been taken by the Government and the Expert Committee of the University of Kashmir, which declared the appellants to be

ineligible on the ground that their degrees were not recognized by the Government of J.& K. and University of Kashmir. Since no challenge has

been thrown to the decisions so taken, the appellants would be precluded from pressing their claim in the writ petition. The decisions of the

Government and Expert Committee of the University of Kashmir, until such time same are called in question in appropriate proceedings and are set

aside, would not make the appellants eligible for seeking consideration for being selected/appointed on the posts of Lecturers (10+2) in

Environments Science.

14. To properly appreciate the issue involved in the present case, it would be appropriate to take into consideration the decision of the Hon'ble

Supreme Court, rendered in the case of Prof. Yashpal and Another Vs. State of Chhattisgarh and Others,

15. In the said decision, provisions of the Chhattisgarh Niji Kshetra Vishwavidhyalaya (Sthapana Aur Viniyaman) Sanshodhan Adhiniyam, 2004

were held to be ultra vires the Constitution on various grounds. It was also held that the impugned Act, which provided for having off-campus

centers of the University outside the State, was beyond the legislative competence of the State of Chhattisgarh Legislature and was in violation of

Article 245 of the Constitution of India. It was held that a University established by a State enactment would have jurisdiction only within the area

specified in the Act or at best only within the territorial limit of the State concerned and not beyond the same, in the following terms:--

60. Dr. Dhavan has also drawn the attention of the Court to certain other provisions of the Act which have effect outside the State of Chhattisgarh

and there-by give the State enactment an extraterritorial operation. Section 2(f) of the amended Act defines "'off-campus centre'" which means a

centre of the university established by it outside the main campus (within or outside, the State) operated and maintained as its constituent unit

having the university's complement of facilities, faculty and staff'. Section 2(g) defines "'off-shore campus'" and it means a campus of the university established by it outside the country, operated and maintained as its constituent unit, having the university's complement of facilities, faculty and staff. Section 3(7) says that the object of the university shall be to establish the main campus in Chhattisgarh and to have study centers at different places in India and other countries. In view of Article 245(1) of the Constitution, Parliament alone is competent to make laws for the whole or any part of the territory of India and the legislature of a State may make laws for the whole or any part of the State. The impugned Act which specifically makes a provision enabling a university to have an off-campus centre outside the State is clearly beyond the legislative competence of the Chhattisgarh Legislature.

16. Government Order No. 252-HE of 2012 dated 30th May, 2012, relied upon by petitioner and enclosed with his Supplementary Affidavit, itself depicts that the degree obtained through distance education from off-campus, which have been established by the State Universities beyond the territorial jurisdiction, shall not be recognized.

17. In the present case, petitioner, as pointed out above, has obtained Bachelor of Physiotherapy (BPT) through distance education mode from off-campus of Allahabad Agricultural Institute. The programmes/courses of Allahabad Agricultural Institute have been approved by Distance Education Council for its Campus at Allahabad and not for its off-campus, like off-campus at "'Mahipalpur, New Delhi'". Therefore, the weightage, so sought by petitioner to his qualification obtained through distance mode from off-campus, is not valid and cannot be granted, as such.

18. In the aforementioned backdrop and in the totality of circumstances, the writ petition is held to be without any merit and is, accordingly, dismissed. Interim direction(s) shall stand vacated.