
(2018) 05 CAL CK 0123
In the Calcutta High Court
Case No : F.M.A. 2353 of 2015

Malay Pahari

APPELLANT

Vs

West Bengal Central School Service COMMISSION & ORS.

RESPONDENT

Date of Decision : 04-05-2018

Acts Referred:

National Council For Teacher Education Act, 1993 — Section 14, 14(1), 14(4), (3), 15(5)

Citation : (2018) 05 CAL CK 0123

Hon'ble Judges : ASHA ARORA, J; DIPANKAR DATTA, J

Bench : Division Bench

Advocate : Bikash Ranjan Bhattacharya, Syed Chandan Hossain, Md. Apzal Ansari, Saikat Banerjee, J. Dutta Chakraborty, Tapan Kr. Mukherjee, Somnath Naskar

Final Decision : Allowed

Judgement

With a view to recruit teachers on vacant posts in non-Government High and Higher Secondary Schools in the State, the West Bengal Central School

Service Commission (hereafter the "Central Commission") issued an advertisement bearing no. 01/AT/06 dated July 12, 2006 inviting

applications from eligible candidates. Insofar as "Assistant Teachers in Physical Education" is concerned, the essential educational qualification

was mentioned as follows:

"Bachelor Degree in General Stream in Arts/Science/Commerce with Degree/Diploma in Physical Education from any recognised University". A

corrigendum was issued on July 19, 2006, whereby the essential qualification advertised earlier was substituted to read as:

"Bachelor Degree in General Stream in Arts/Science/Commerce with Degree/Diploma in Physical Education from any Teachers' Training

Institution duly recognised by N.C.T.E.â The appellant, a science graduate and also having to his credit a degree in Physical Education from Baliapal

College of Physical Education (hereafter the â??collegeâ??), affiliated to Fakir Mohan University, Orissa, offered his candidature in pursuance of

such advertisement as a candidate for recruitment on the post of Assistant Teacher in Physical Education.

The recruitment procedure laid down by the Central Commission envisaged a written examination, followed by an interview of candidates succeeding

in the written examination. Admittedly, the appellant succeeded in the written examination and was called for interview. However, at the stage of

interview, it was detected by the Central Commission that he had not acquired B.P.Ed. degree from an institution duly recognised by the National

Council for Teacher Education (hereafter the â??N.C.T.E.â??) and was, therefore, neither awarded any mark for the post-graduate qualification

acquired by him nor any mark for his appearance at the interview. In short, the appellantâ??s candidature stood rejected on the ground of not having

acquired B.P.Ed. degree from an institution recognised by the N.C.T.E.

Aggrieved thereby, the appellant invoked the writ jurisdiction of this Court. A learned judge, upon hearing the writ petition, was of the considered view

that the action of the Central Commission could not be faulted particularly having regard to the admission made by the learned senior advocate

appearing on behalf of the appellant before His Lordship that he had not acquired the B.P.Ed. degree from an institution duly recognised by the

N.C.T.E. The judgment and order dated December 02, 2014 of dismissal of the writ petition has been questioned before us in this writ appeal.

Mr. Bhattacharya, learned senior advocate representing the appellant contended that the appellant duly possessed the requisite qualification as

mentioned in the corrigendum dated July 19, 2006 and, therefore, the Central Commission was in error in not regarding the appellant as one who was

eligible to offer himself as a prospective teacher. To buttress his contention, Mr. Bhattacharya has referred to the provisions of the National Council

for Teacher Education Act, 1993 (hereafter the â??N.C.T.E. Actâ??), the correspondence exchanged by and between the principal of the college

and the Director, Eastern Regional Committee of the N.C.T.E as well as a letter dated July 01, 2007 of the principal of the college addressed to the

Secretary of the West Bengal Regional School Service Commission (Western Region) (hereafter the "Regional Commission") and has

contended that a faulty decision making process led to exclusion of the appellant from the zone of consideration for appointment as an assistant

teacher in Physical Education. He, accordingly, prayed for setting aside of the judgment and order under challenge, and for direction on the Central

Commission to take a fresh interview of the appellant and follow-up action on the basis of the final result, in accordance with law.

Mr. Banerjee, learned advocate for the Central Commission, upon hearing Mr. Bhattacharya and on noting the relevant points raised by him, has left

the matter to the discretion of the Court. Mr. Mukherjee, learned Additional Government Pleader representing the State, however, sought to contend

that the appellant was not eligible to take admission in the B.P.Ed. course in terms of an order of the N.C.T.E. dated May 20, 2001 and, therefore, the

Central Commission as well as the learned judge was right in refusing to consider the appellant as an eligible candidate. He has, accordingly, prayed

for dismissal of the appeal.

None appears for the N.C.T.E. today, although it was represented by a learned advocate on earlier occasions. We have heard learned advocates for

the appearing parties. From the materials on record, more particularly the letters written by the principal of the college which have not been countered

by any of the respondents, the following undisputed facts and circumstances emerge:

1) The college was established in the year 1981 and was initially affiliated to Utkal University. It was imparting education in M.P.Ed, B.P.Ed. and

C.P.Ed. courses. Affiliation was shifted from Utkal University to Fakir Mohan University since 1999 and the latter university has also extended

permanent recognition to imparting of lessons for the M.P.Ed. and B.P.Ed. courses by the college.

2) The appellant had taken admission in the B.P.Ed. course for the academic session 1999-2000 and acquitted himself creditably leading to

conferment of the degree in the year 2000. Section 14(1) of the N.C.T.E. Act, inter alia, ordains that any institution offering a course or training in

teacher education on the appointed day could apply for grant of recognition under such Act by making an application to the regional committee

concerned in such form and in such manner as may be determined by the Commission. The proviso thereto enabled an institution offering a course or training in teacher education immediately before the appointed day to continue such course or training for a period of six months, if it had made an application for recognition within the said period and until disposal of the application by the regional committee. Sub-section (4) of section 14 required every order granting or refusing recognition to an institution for a course or training in teacher education, passed under sub-section (3), thereof to be published in the official gazette and communicated in writing for appropriate action to the relevant institution as well as to the concerned examining body, the local authority or the State Government and the Central Government. Subsection (5) of section 15 prohibited any institution not favoured with recognition to continue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of subsection (3).

The exact date on which the college applied for recognition under section 14(1) of the Act cannot be discerned from the materials on record.

However, there is a letter dated August 6, 1997 of the Regional Director, Eastern Regional Committee, N.C.T.E. on record. By such letter, the college was permitted to apply for recognition prior to August 18, 1997. It must have so applied, for, there appears to be another letter dated March 12, 1998 of the said Regional Director informing the principal of the college (in reference to an application for recognition made by such principal) that the college had been permitted to continue to teach the B.P.Ed. and C.P.Ed. courses until final disposal of such application by such committee. It was also observed that the number of teaching staff in position was inadequate and accordingly, steps were requested to be taken to appoint regular teaching staff as per N.C.T.E. norm.

The next communication from the side of the Eastern Regional Committee of the N.C.T.E. is an order dated April 06, 2000. By such order, which was issued in exercise of the authority vested upon such committee under the N.C.T.E. Act, the college was granted conditional recognition for the academic year 2000-2001 with an intake of 60 students and subject to removal of the deficiencies pointed out therein. This was followed by subsequent orders (the dates are not printed here since there appears to be

misprints in the paper book) whereby conditional recognition was once again accorded to admit 60 students for the academic sessions 2001-2002 and 2002-2003 subject to fulfillment of the conditions mentioned therein. It

would, therefore, appear that even till the academic session ending 2003, the college had been granted conditional recognition.

Having regard to the terms of section 14 of the N.C.T.E. Act read with conditional recognition granted by the Eastern Regional Committee of the

N.C.T.E. for the academic session 2000-2001 and till at least 2002-2003, the position seems to be clear that at no point of time was the application of

the college rejected under section 14(3) of the Act and in the absence of such rejection, the proviso to section 14(1) of the Act became operative,

meaning thereby the college was entitled to offer a course or training in teacher education till such time its application for recognition was finally

disposed of by the Eastern Regional Committee of the N.C.T.E. From the orders previously passed on this appeal, it does not appear that the learned

advocate for the N.C.T.E. while responding to the questions formulated by the Bench advanced any argument that is inconsistent or contrary to what

has been held above.

The appellant having acquired the B.P.Ed. degree by taking admission in the academic session 1999-2000 by which time the letter dated March 12,

1998, referred to above, permitting the college to continue to teach, inter alia, the B.P. Ed. course, came into existence, he could not have been turned

off at the gate by the Central Commission on the specious ground that he did not have a valid teacher education qualification to his credit. It is true

that conditional recognition was issued in favour of the college for the first time by letter dated April 6, 2000, but since it was imparting lessons for the

B.P.Ed. course from even before the appointed day, i.e. July 1, 1995, the degrees conferred on students prior to April 6, 2000 stood validated by

operation of the proviso to subsection (1) of section 14 of the N.C.T.E. Act.

The contention of Mr. Mukherjee that the appellant did not obtain 45% marks in the qualifying examination, to our mind, is of no substance. This

condition was imposed by the Regional Director, Eastern Regional Committee of the N.C.T.E. for the first time in his order dated May 20, 2001. Such

condition could not have been applied retrospectively to deny the appellant the fruits of having obtained the degree in 2000 at a point of time when the

Eastern Regional Committee of the N.C.T.E. had not insisted that any student, in order to be admitted to the B.P.Ed. course, must have obtained 45%

marks in the qualifying examination. For such reason, we hold that the contention of Mr. Mukherjee is not acceptable.

We are of the considered view that the appellant is entitled to have his candidature re-considered by the Central Commission. We, accordingly, direct

that the Central Commission shall call upon the appellant to appear for an interview afresh. He shall be given due credit for the B.P.Ed. degree he has

acquired. Based on allotment of marks for academic qualifications as well as based on his performance at the interview, the appellant shall be

awarded marks. If it is found that the appellant has secured marks more than the candidate, who was last recommended for appointment from the

approved panel for the relevant recruitment year, the appellant shall obviously be entitled to a recommendation being issued in his favour for

appointment in any school within the jurisdiction of the Regional Commission.

Needless to observe, if the total marks obtained by the appellant is less than the marks obtained by the last candidate, who has been appointed from

the relevant panel, he shall be informed of the same by the Central Commission. It is also made clear that in the event the number of

recommendations for appointment on the posts of Assistant Teachers in Physical Education were less in the relevant recruitment year than the

number of reported vacancies, in that event too the appellant would be entitled to have a recommendation issued in his favour. Also, having regard to

the fact that the system of Regional Level Selection Test has been discontinued, it would be for the Central Commission to issue the order of

recommendation in favour of the appellant in case such occasion arises.

Let this exercise be completed by the Central Commission as early as possible but not later than two months from date of receipt of certified copy of

this judgment and order. In the result, the judgment and order under appeal stands set aside. The appeal is, accordingly, allowed. There shall be no

order as to costs. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously.