
(2020) 05 CAL CK 0016

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 22018, 22019 (W) Of 2018, Civil Application (CAN) No. 7460, 7461 Of 2019

Md. Jahidul Islam & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 13-05-2020

Acts Referred:

All India Council For Technical Education Act, 1987 — Section 2(h), 2(i), 10(k), 10(1) (k)
University Grants Commission Act, 1956 — Section 2(f), 3, 23

Citation : (2020) 05 CAL CK 0016

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Samim Ahammed, Arka Maiti, Santanu Mitra, Shamim Ul Bari, Tapan Mukherjee, Pritam Chowdhury, P. S. Bhattacharyya, S. S. Koley, Arunava Maiti, Sunil Singhania

Final Decision : Disposed Of

Judgement

Amrita Sinha, J

W.P No. 22019 (W) of 2018

The petitioner is an OBC-A category candidate. He possesses the qualification of Bachelor in Technology (B.Tech) in Computer and Engineering from Aliah University. He obtained the aforesaid qualification in the year 2014 upon completion of a regular course of four years. He cleared the Graduate Aptitude Test in Engineering (GATE)-2017 and obtained the score of 40.79.

In response to an advertisement dated 25th February, 2017 published by the West Bengal State Electricity Distribution Company Limited, hereinafter referred to as 'the Company', the petitioner participated in the recruitment process for being appointed in the post of Assistant Engineer (IT & C). He was issued admit card for participating in the recruitment process. He appeared for personal interview and according to him, he performed reasonably well.

Sometime in June, 2018 the petitioner came to learn that successful candidates were being issued appointment letters by the Company. As the petitioner did not receive any communication from the Company he tried to collect information of the same. On enquiry the petitioner got to learn that his candidature was cancelled. In response to an application made under the Right to Information Act, 2005 the petitioner was informed that the appointment letter was not issued in his favour even though he obtained higher marks than the last empanelled candidate, allegedly because the B.Tech course pursued by him was not approved by the All India Council for Technical Education (AICTE). The petitioner was further informed that he received a total score of 52.12 and the score of the last empanelled candidate was 36.74.

W.P No. 22018 (W) of 2018

The petitioners are OBC-A category candidates. They obtained the B.Tech Degree in Electrical Engineering during the period 2013-2015 from the Aliah University after completion of a regular course of four years.

In response to an advertisement published by the Company the petitioners applied for being appointed in the post of Sub-Assistant Engineer (Electrical). The petitioners participated in the written test and the computer proficiency test. As the petitioners were not called for the viva voce test the petitioners made enquiry wherefrom they learnt that their candidatures stood cancelled. On an application made under the Right to Information Act the petitioners were informed that their application could not be taken up for consideration as the B.Tech course completed by them was not approved by AICTE.

The petitioners have filed the writ petition being aggrieved by the action of the Company in cancelling their candidature by not recognising the B.Tech degree obtained by them.

The issue which falls for consideration in both the writ petitions is whether the Company was right in rejecting the candidature of the petitioners on the ground of non-approval of their B.Tech course by AICTE.

As the issue to be decided in both the writ petitions are identical, both the petitions were taken up for consideration analogously and are being disposed of by this common judgment.

According to the petitioners their qualification of B.Tech has been obtained from the Aliah University which is established under the Aliah University Act, 2007. The said Act was passed by the West Bengal Legislative Assembly and according to Section 2(h) and Section 10(k) of the AICTE Act, 1987 the University is empowered to grant degrees on its own, without the approval of AICTE. The petitioners have relied upon the various provisions of the UGC Act, 1956, AICTE Notifications dated 27th January, 2005 and 29th January, 2014, the Aliah University Act, 2007 in support of their contention that the respondent authority erred in rejecting their candidature.

The petitioners further submit that Aliah University is recommended by the University Grants Commission as a State University and accordingly the degree granted by Aliah University is valid and the Company ought to recognize the said degree for the purpose of considering their candidature for appointment.

The petitioners have annexed documents to show that AICTE has approved the B.Tech course offered by Aliah University with effect from 2015 and accordingly the degree awarded by the said University in the year 2014 and prior thereto should be deemed and treated to be an approved degree by AICTE.

The petitioners pray for a direction upon the Company to issue appointment letters in their favour as they obtained more or nearly same marks as that of the last empanelled candidates in the respective posts.

The petitioners rely upon the judgment delivered by the Hon'ble Supreme Court in the matter of Bharathidasan University & Anr. -vs- All India Council for Technical Education & Ors. reported in (2001) 8 SCC 676 paragraphs 8, 9, 10, 13 and 15 wherein the court took into consideration the definition of the expression "technical institution" under Section 2(h) of the AICTE Act which mentions that technical institution means an institution, not being a university which offers courses or programmes of technical education. It has been submitted that University has been kept out of the definition of technical institution.

In the said judgment the court also took note of the fact that according to Section 2(i) of the AICTE Act "University" means a university defined under Clause (f) of Section 2 of the University Grants Commission Act, 1956 and also to be inclusive of an institution deemed to be a university under Section 3 of the said Act, the court was of the opinion that any regulation in exercise of powers under Section 23 of the Act, in so far as, it compels the universities to seek for and obtain prior approval and not to start any new department or course or programme in technical education (Regulation 4) and empower itself to withdraw the said approval, in a given case of contravention of the Regulations (Regulation 12), are strictly opposed and inconsistent with the provisions of Section 10(1)(k) of the Act and consequently void and unenforceable.

The court held that the Regulation of AICTE could not have made, so as to bind universities/University Grants Commission in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions.

The petitioners submit that in view of the law laid down by the Hon'ble Supreme Court, Aliah University was not required to seek any prior approval for granting the degree in technical education.

The petitioners also rely upon the judgment delivered by a three-judge Bench of the Hon'ble Supreme Court in the matter of Dr. B. L. Asawa -vs- State of Rajasthan & Ors. reported in (1982) 2 SCC 55 wherein the court held that a

degree granted by a university duly established by statute in the country has ipso facto to be regarded, accepted and treated as valid throughout the country. In the absence of any express provision to the contrary, such a degree does not require to be specifically recognized by other universities in any State in India before it can be accepted as a valid qualification for the purpose of appointment to any post in such a State.

The petitioners submit that the Company ought to have appointed the petitioners in the post in question by treating their degree to be a valid one, as the same was awarded by a State university duly recognised by the UGC, more so, because they obtained reasonably more marks than that of the last empanelled candidates.

Per contra, the learned advocate appearing on behalf of the Company submits that in the advertisement published on 25th February, 2017 there was a specific indication that for the post of Assistant Engineer (IT & C), the educational qualification required is B.E./ B.Tech/ B.Sc (Engg.) degree in Information Technology / Computer Science / Electronics / Electronics & Telecommunications / Electronics & Communication / M.Sc (Computer Science)/ MCA/ B.Sc. (Hons.) with B.Tech (three years' duration) in Computer Science and Engineering from any Institute approved by AICTE/IITs.

The educational qualification for being appointed in the post of Sub- Assistant Engineer (Electrical) is diploma in Electrical Engineering from any Institute/ College duly recognised by any of the State Council of Technical Education (SCTE).

It was specifically mentioned that the degree/diploma has to be approved by AICTE/ SCTE. The Company relies upon the communication made by the training and placement officer of the Aliah University specifically mentioning that the B.Tech courses offered by the Aliah University were not approved by AICTE during the academic years 2010 to 2015. It has been submitted that as the petitioners did not meet the requisite qualification, as prescribed in the advertisement, the employment was rightly not offered to them.

It has further been contended that the petitioners never challenged the advertisement which required candidates to possess degrees/diplomas from any Institute approved by AICTE/SCTE. The petitioners being aware of the eligibility criteria participated in the recruitment process. As soon as it was revealed that the petitioners did not meet the requisite eligibility criteria as per the advertisement their candidature was cancelled. It has been urged that as the petitioners did not possess the requisite minimum essential qualification as prescribed in the advertisement, they do not have any right to be considered for appointment. Ld. Advocate for AICTE submits that the B. Tech course of the petitioners was not approved by ACITE.

The respondents pray for dismissal of the writ petitions.

I have heard the submissions made on behalf of all the parties.

The minimum essential qualification prescribed for appointment in the post of Assistant Engineer (IT & C), as published in the advertisement, is set out herein below:-

"B.E./B.Tech/B.Sc.(Engg.) degree in Information Technology/Computer Science/Electronics/Electronics and Telecommunication/Electronic and Communication/M.Sc. (Computer Science)/MCA/B.Sc. (Hons.) with B.Tech (three years' duration) in Computer Science and Engineering from any Institute approved by AICTE/IITs."

The minimum essential educational qualification for appointment in the post of Sub-Assistant Engineer (Electrical) is diploma in Electrical Engineering from Institute/College duly recognised by any of the State Council of Technical Education (SCTE).

The general instructions attached to the advertisement clearly mentioned that the candidate must fulfil the essential qualification as per the advertisement published and it will be the candidates' prerogative to ensure that he fulfils the eligibility criteria before applying.

The petitioners have annexed certificates issued by the Aliah University mentioning that they obtained the degree of Bachelor of Technology in Computer Science and Engineering/Electrical Engineering in the years 2013/ 2014/2015. The Company in their affidavit in opposition has annexed a letter dated 31st August, 2017, allegedly issued by the Training and Placement Officer of Aliah University to the Additional General Manager (HR & A) recruitment and manpower planning cell of the Company, inter alia, mentioning that the B.Tech course offered by Aliah University in the stream of Computer Science and Engineering was not approved by AICTE during the academic years 2010-2014 and 2011-2015. It was further informed that all B.Tech courses of the University have been approved by AICTE in the academic years 2015-2016. AICTE has candidly accepted the fact that the degree awarded to the petitioners was not approved by them. The petitioners have not produced any document to show that the diploma/degree awarded by Aliah university was approved by either AICTE or SCTE.

From the aforesaid it is crystal clear that, the degree/diploma awarded to the petitioners by the University was not approved by AICTE/SCTE in the year 2014 or prior thereto. The minimum essential qualification required for participating in the selection process was a degree/diploma approved by AICTE. Admittedly, the degree/ diploma awarded by the University in favour of the petitioners was not approved by either the Central or State Council of Technical Education.

The learned advocate representing the petitioners strenuously submits that, as the B.Tech degree/ diploma was awarded by the University, the same is not required to be approved by AICTE/ SCTE. The petitioner has relied upon the provisions of the AICTE Act, 1987, the Aliah University Act, 2007, the UGC Act,

1956 and the various notifications issued by AICTE from time to time, in support of his contention that the degree obtained by the petitioners is not required to be approved by AICTE. It has been contended that it is the degree that matters and not the approval of AICTE. As long as the petitioners possess the degree of B.Tech (Computer Science and Engineering)/(Electrical) from a university, recognised by UGC, the degree is not required to be separately approved by AICTE/ SCTE.

Prior to going into further discussions, it is noted that, the petitioners have neither challenged the advertisement nor the educational criterion set out in the advertisement for appointment in the various posts. The petitioners were ineligible to participate in the selection process the day the advertisement was published, i.e from the very inception of the recruitment process, as they did not possess the minimum essential qualification as prescribed therein. They do not appear to be aggrieved by the act of the Company in prescribing the minimum requirement of the degree/ diploma to be approved by AICTE/ SCTE. It appears that, the petitioners were all along aware that their degree/diploma was not approved by AICTE/ SCTE, but even then, took the risk of applying in response to the said advertisement, presumably on the mistaken notion that the degree/ diploma does not require any approval from AICTE/ SCTE. Whether the degree/ diploma awarded by Aliah university is at all required to be separately approved by a Council of Technical Education is a different issue altogether.

According to the petitioners, the degree awarded by Aliah University is equivalent to the degree awarded by any other Institute approved by AICTE/IITs. The Aliah University in their communication to the Company specifically mentioned that all the B.Tech courses of the university have been approved in the academic year 2015-2016. The aforesaid statement made by the Training and Placement Officer of the University in the letter dated 31st August, 2017 negates the contention of the petitioners, that there was no requirement for obtaining approval of AICTE in respect of the B.Tech courses conducted by the Aliah University. Had there been no requirement of approval, then the question of granting approval to the B.Tech courses awarded by the University, does not and could not arise at all. The categorical averment by the Aliah University, that the degree of the petitioners awarded by Aliah University was not approved, stands admitted.

The Company fixed the minimum essential qualification for appointment being a degree/diploma from any Institute approved by AICTE/IITs/ SCTE.

It is always the choice and prerogative of an employer to fix up the minimum essential educational qualification required for appointment. The same is usually fixed as per the requirement of the employer. Fixing up the selection mode, procedure, criteria for recruitment, is the sole domain of the employer and it has been consistently laid down that the courts should abstain from transgressing into the jurisdiction of the employer, unless of course, the same is patently illegal or arbitrary. In the opinion of the Court, the act of the Company in restricting appointment amongst candidates possessing degree/ diploma approved by

AICTE/ SCTE, is neither illegal nor arbitrary.

Since the eligibility criteria prescribed for appointment is not under challenge, accordingly, whether the degree awarded by Aliah University and the degree awarded by any other Institute approved by AICTE/IITs are equivalent to each other, is not an issue to be decided in the instant writ petition. It is also not required to be decided whether the University was required to get the courses approved by AICTE or whether the degree awarded by the University required a separate approval or not. The issue of equivalence of the degrees, one approved by AICTE and the other not, has not been addressed by the respondents at all. The issue of validity of the degree awarded by the Aliah University has also not been addressed by the respondents.

The clear stand of the respondent is that, as the petitioners did not possess a degree/diploma approved by AICTE/ SCTE, accordingly, the application of the petitioners for being appointed in the post in question, has rightly been rejected by the Company. In view of the stand taken by the respondents, the ratio of the decisions relied upon by the petitioners, in my opinion, will not be applicable in the facts and circumstances of the instant case.

The petitioners have brought to the notice of this court that the Company by an office order dated 23rd October, 2019 has modified the existing Recruitment Policy 2010 with regard to the eligibility criteria and the layout of qualification. It mentions that candidates with B.E./B.Tech/B.Sc. (Engineering) degree in the respective branch of engineering from any university or deemed university duly recognized by UGC or institute approved by AICTE, IITs/NITs or any institute of eminence or national importance or concerned statutory council (wherever applicable) will be eligible to apply for recruitment for Class-I technical post. The office order is prospective in operation.

As admittedly, the petitioners did not possess the requisite qualification, as per the advertisement, the action of the Company in not appointing the petitioners, even though they scored nearly similar or more marks than the last empanelled candidates, cannot be faulted. The employer Company always has the liberty to review and modify the eligibility criteria of the recruitment process as and when required, and it is not proper for the court to intrude into the domain of the employer. The employer is the best person/authority to know what is exactly required from his/its employee.

A writ of Mandamus can be issued only in cases of proven breach of the fundamental or statutory right of a citizen. In the instant case, it does not appear that there has been any breach in either the fundamental or the statutory right of the petitioners. Accordingly, no direction can be issued upon the Company to treat the petitioners as eligible candidates for selection to the posts in question.

Moreover, there may be candidates from various other universities possessing similar degree/diploma not approved by AICTE/ SCTE, who may have applied in response to the said advertisement, and may have met the same fate. Many may

not have even applied, knowing fully well, that their degree was not approved by AICTE. The petitioners participated in the selection process without any murmur. Being unsuccessful, they cannot turn around and raise issue with the prescribed minimum essential qualification fixed by the employer. At the same time, they ought not to get any preferential treatment only because they have approached the court for relief.

Since however it appears that the Company has modified its recruitment policy and have taken a decision that the candidates possessing B.Tech degree from any University, duly recognized by UGC will be eligible to apply, and as the University awarding degree to the petitioners was duly recognized by UGC it will be open for the Company to reconsider the case of the petitioners for appointment in the post in question within a period of eight weeks from the date of communication of a copy of this order. The reconsidered order of the Company will be communicated to the petitioners within a week thereafter.

It is specifically made clear, that the order passed by the court shall neither be treated as a mandate upon the respondents to consider giving appointment to the petitioners, nor will it create any right in favour of the petitioners to be appointed in the posts in question. The Company shall have and exercise the discretion to appoint the best available candidate.

W.P. Nos. 22018 (W) of 2018 and 22019 (W) of 2018 are disposed of.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously, on compliance of usual legal formalities.