
(1999) 04 CAL CK 0071

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction W.P. No. 5063 (W) of 1997

Mohanlal Maji

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 25-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 1 CALLT 475 : (1999) 2 CHN 100

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Mr. Amal Baran Chatterjee and Mr. Samiran Mondal, Mr. Gouri Shankar Dey and Mr. Rudranil Dey, for the Appellant; Mr. Milan Bhattacharjee, Ms. Shima Das (Sil) and Mr. Nirmal Kumar Dey, Mr. Sumit Panja and Mr. Tapan Banerjee, for the Respondent

Judgement

A. Lala, J.—This matter was placed under the heading "application" since an application for early hearing being CAN No. 392 of 1999 was made along with main writ petition.

2. As and when the matter was called on, the petitioner, State and School authorities were appeared before this Court and made their respective submissions.

3. Upon hearing the submission I have passed the following order on 20th April, 1999 :

"An application was made being CAN 392/99 for early hearing of the main writ petition. It appears at the time of hearing of the application in presence of all the parties that there is a palpable mistake on the part of the District Inspector of Schools (SE), Purulla, respondent no.3 herein, in refusing the recognition of the selection of the petitioner in the post of Headmaster in the memo no. 307(3) dated 28.2.97. The Inference of the authority derived from G.O. No. 577-Edn(s) dated 2.5.88 which postulates the exclusion of right B.EM, candidate since such

qualification is considered as reckoned one for calculation of marks for selection of Head master/Assistant Headmaster which was earlier equivalent by 869-Edn(CS) ST-3/72/73 dated 11.6.74 issued by Education Department. It appears that his appointment was earlier approved by the said authority. The real crux of the case lies on a certificate issued by the University of Burdwan dated 8.10.75 which speaks that the Incumbent obtained a decree of Bachelor of Education from a recognised University i.e., the University of Burdwan. Therefore, palpable mistake is proved. Therefore, the Impugned order as in annexure "D" to the petition stands set aside. The writ petition is disposed of by directing the authority to approve¹ the appointment of the petitioner within a period of four weeks from the date of communication of the order. The writ petition is thus disposed of along with the application. There will be no order as to costs. If an urgent xerox certified copy of the order is applied for, the same be supplied to the applicant within seven days from the date of putting in the requisites."

4. Immediately after the passing of the order in the midst of the hearing of other matters one of the counsel of this Court Mr. Amal Baran Chatterjee mentioned this matter by saying that there is an application for addition of party which is pending before this court. Therefore, he has a sufficient cause to hear him out by allowing as a party respondent and recall the order passed by this court.

5. As a consequential effect this court was pleased to fix this matter under the heading "TO BE MENTIONED" on 21.4.99. As and when the matter was called on Mr. Chatterjee appeared in support of his application and Mr. Sumit Kumar Panja, learned Advocate appeared for the State being the senior counsel to the learned counsel was appearing for the State at the time of disposal of 20.4.99 and ultimately passed the contentions of the petitioners.

6. As application for addition of party was made by Mr. Chatterjee on behalf of his client and the contention of his client is more or less related to the merit of the matter. I have formally allowed him to add his client Shyamapada Majhi as party respondent herein and thereafter allowed him to make submission in respect of the merit of the matter. Mr. Chatterjee contended that his client stood second in the panel after the petitioner. The petitioner has no requisite qualification to be a Headmaster. Therefore, his candidature should be accepted by this court. Mr. Panja supported the contention of the petitioner. Both of them contended that it is an admitted position that the petitioner obtained a decree of Bachelor of education from the University of Burdwan in the year 1974 being placed in the second class by way of part-time evening courses of 18 months Introduced by the State Government in the year 1974.

7. They contended that by a resolution no. 869-Edn. (CS) ST-3/72/73 dated 11th June, 1974 Education Department, Government of West Bengal Introduced a scheme wherein it is decided as follows :

"The Governor is pleased further to direct that the diploma awarded by this Board shall be treated as equivalent to a BT/B.Ed degree for the purpose of

drawal of Increment by the serving teachers of Secondary Schools in their respective scales of pay in terms of Memo No. 666-F dated 1-3-71 of the Finance (Audit) Department."

8. They further contended that by a further Memo No. 577-Edn(S)/60-18/87 dated 20th May, 1988 the Deputy Secretary of the State Informed that the diploma as aforesaid cannot be treated as equivalent to a BT/B.Ed degree for the purpose of appointment of Assistant Head master/Assistant Headmistress or Head master/Headmistress in Secondary Schools.

9. They contended that under the above circumstances the panel prepared by the School on 3rd September, 1996 placing the petitioner at the first place cannot be justifiable. In other words, the petitioner cannot be placed in the panel because of his disqualification.

10. In addition to submission of Mr. Chatterjee, Mr. Panja separately contended on behalf of the State by saying that State has every right to withdraw any Circular or Memorandum. Therefore, when such cause of making the diploma-holder equivalent to the category of BT/B.Ed has been withdrawn, the petitioner cannot challenge the same before the court and court cannot, therefore, direct the authority concerned to appoint such Incumbent into the service.

11. Another aspect was emphasized, on being enquired by the court, that in such circumstances, how the Office Memo was Issued being Annexure "B" to the petition of 7th March, 1996 by the District Inspector of Schools (SE), Purulia, in approving service of the petitioner in different schools. They contended that the same is a mistake which was subsequently- rectified by the concerned authority but incumbent cannot justify his claim on account of any fault committed on the part of the State Authority.

12. Mr. Chatterjee also contended that the departmental order in the year 1974 was issued only for the purpose of drawal of increment by serving teachers of Secondary Schools not for any other reason.

13. Mr. Milan Bhattacharjee, learned counsel appearing on behalf of the School Authority strongly opposed the contentions taken by the respondent as well as the State Authority by saying that the resolution under the Order of 1974 has no binding effect over and in respect of degree to be given by a University. The examination is to be conducted by the Board under the Circular but not by any University. Therefore, this case cannot be brushed aside by showing that there is a circular to give equivalent status of the diploma by the Board and it was within that Circular. Therefore, a valid degree of a University will be acceptable in the eye of law. He contended that the Incumbent obtained a degree of Bachelor of Education from the University of Burdwan which cannot be withdrawn or cancelled by the Board which is primary part of the Burdwan University Act, 1981 (University Act XXIII of 1981). He further emphasized that the Burdwan University First Ordinance allowed such courses to be taken into account. Therefore, under no stretch of Imagination, the valid degree of the Incumbent

can be ruled out. Mr. Gouri Shankar Dey, learned counsel appearing in support of the petitioner produced before this Court another two Government Circulars being Memo No. 265-SE (S)/4A-27/76 dated 31st March, 1997 and Memo No. 549-SE(S)/5P-I/94(PT) dated 24th June, 1997 respectively. First one says that in view of the order of the court correspondence course of B.Ed of A University was accepted by this court when in view of the other Memo it is stated that recommendation of the degrees obtained through the correspondence distance mode of education courses conducted by the University of Burdwan will be accepted. Therefore, now it cannot be construed that the petitioner has no valid qualification in this respect.

14. Mr. Dey also contended that principle of acquiescence squarely applies in this case upon relying upon the Judgment reported in The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another, and 1991 (II) CLJ 1 (The Calcutta Municipal Corporation & Ors. v. Debit Bhattacharjee) on paragraph 16 therein. Both the decisions were cited to prove the question of acquiescence,

15. Last but not the least, Mr. Bhattacharjee again stressed upon 1991(1) CLJ 283 which is a Division Bench Judgment of this Hon'ble Court and by citing such judgment be contended that the degree of an University can be withdrawn and/or cancelled only by University alone but not by any other authority.

16. Under such circumstance, I think there is a positive case in favour of the petition, which come out from one of the resolutions of the order of 1974 being Annexure "F" to the petition itself. Paragraph 5 of the Resolutions speaks as follows :

"After due consideration Government has decided to set up a Board for conducting a part-time evening teachers" training course and to entrust the Board that the control of the evening teachers" training since to be started in the areas mentioned in the Annexure - II. These teachers" training centres will be run on the same line and on similar terms and conditions as the evening B.Ed training centres fatting within the territorial Jurisdiction of Budwan and North Bengal Universities. Details of the scheme are given in Annexure-I."

17. From the plain reading it appears that the Board introduced a part-time evening training course in the similar line with the Burdwan and North Bengal Universities and the Governor was pleased further to direct that the diploma awarded by this court shall be treated as equivalent with BT/B.Ed degree for the purpose of drawal of incumbent by the serving teachers of the Secondary Schools which was withdrawn in the year 1988. Therefore, under no stretch of imagination it can be construed that the same is in respect of a valid degree of an University. Once a University is certified in favour of a person by giving a valid degree no one other than that University can say that this is not the valid degree. State has no role to play in respect of such withdrawal. It is crystal clear that the withdrawal of recommendation of the diploma is restricted only in

respect of the Board's Education of part-time Courses.

18. Moreover whimsical Introduction and withdrawal of certain courses and to give support such stand is not encourageable at all.

19. Another Important aspect is amendment of the memorandum in 1998 being Annexure "G" to the petition by the Deputy Secretary over and in respect of an order passed by the Secretary on the pleasure of the Governor and notified in Calcutta Gazette. But no one raised any Issue about competency of such authority in doing so, therefore, it is nobody's case now.

20. However considering all aspects I do not feel that there is any necessity of recalling the order passed by this court on 20th April, 1999 and such prayer is disallowed. Therefore, the original order passed by this court on 20th April, 1999, as reviewed by this court is not recalled. Therefore, the order passed by this court on 20th April, 1999 stands. The petitioner is entitled for the relief as prescribed therein.

If an urgent xerox certified copy of order is applied for, the same will be supplied to the candidate within 7 days from the date of putting the requisites.

21. Petition dismissed