
(2013) 05 GAU CK 0063

In the Gauhati High Court

Case No : Writ Petition (C) No's. 4020, 4468, 5191, 5582, 6330, 6554 of 2011, 756, 4430, 4671 and 4845 of 2012

Mukta Ram Deka and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 24-05-2013

Acts Referred:

Citation : (2013) 4 GLT 528

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : S. Choudhury, Ms. D. Borgohain, Mr. A.M. Buzarbaruah, Ms. H. Das, Mr. J. Payeng, Dr. B. Ahmed and Mr. N. Baruah, for the Appellant; A. Deka, Standing Counsel, Mr. A. Chamuah, Standing Counsel, Mr. A.R. Bhuiyan, A.R. Tahbildar, M. Das and Mr. J. Saikia, for the Respondent

Judgement

Hrishikesh Roy, J.—Heard Mr. S. Choudhury, Ms. D. Borgohain, Mr. A.M. Buzarbaruah, Ms. H. Das, Mr. J. Payeng, Dr. B. Ahmed and Mr. N. Baruah, who are representing the petitioners in these cases. The authorities of the Education Department are represented by Mr. A. Deka, Standing Counsel. The UGC is represented by Mr. A. Chamuah, Standing Counsel. Mr. A.R. Bhuiyan appears for the C.M.J. University, Meghalaya. Some of the private respondents whose entitlement to function as Headmaster/Assistant Head-master on the basis of B.Ed. Degrees obtained by them from non-recognized universities/institutions, are being represented by advocates Mr. A.R. Tahbildar, Mr. M. Das and Mr. J. Saikia. The issue that is required to be answered is whether B.Ed. Degree obtained from universities/institutions like Bharatiya Siksha Parishad, U.P., C.M.J. University, Meghalaya, Naba Bharat Shiksha Parishad, Orissa etc. have any legal validity for considering promotion to the post of Headmaster/Assistant Headmaster. The concerned universities/institutions which awarded the B.Ed. Degree through Distance Mode were not accorded any approval by the National Council for Teachers Education (NOTE) and accordingly it is argued that the B.Ed. Degrees obtained from such Institutions/Universities cant have any legal validity.

2. In the counter affidavit filed by the Director of Secondary Education, Assam, it is averred that the Bharatiya Siksha Parishad, U.P. is an unauthorized institute which is neither recognized by the UGC or by the NCTE and therefore the B.Ed. Degree awarded by the said Institute is not valid for any purpose. The State Counsel argues that in order to confer a valid B.Ed. Degree, the universities/institutions must be recognised and prior approval from the UGC, NCTE etc. is necessary and since the Institutes which awarded the B.Ed. Degrees are not recognized, the State should be permitted to take appropriate action against those who are claiming higher position, on the basis of un-recognised B.Ed. Degree.

3. The Standing Counsel for the UGC, Mr. A. Chamuah, submits that none of the universities/institutions from where the B.Ed. Degree have been secured were recognized by the UGC. Moreover, the NCTE had not accorded any approval to these universities/institutions which awarded the B.Ed. Degree in these cases.

4. Some of the Headmaster/Assistant Headmaster have argued that since this Court in a recent judgment in the WP (C) 1526/2012 (Mahendra Nath Mudoi Vs. The State of Assam) has declared the Assam Secondary Education (Provincialized) Service Rules, 2003 to be ultra vires and unconstitutional, their continuance in the higher post on the basis of B.Ed. Degree secured by them from unrecognized institutions, should not be disturbed as B.Ed. Degree is not a pre-requisite now for the post of Headmaster. However the Assam Secondary Education (Provincialized) Service Rules, 1982 envisages preference for B.Ed. Degree holders for appointment to the post of Headmaster. Mr. A. Deka, Standing Counsel, Education in response submits that the State has filed Review Petition 21/2013 to challenge the decision in Mahendra Nath Mudoi (supra) and that the Review Court after hearing the Review Petition has passed status quo order on 5.3.2013. Accordingly the departmental lawyer submits that the requirement of the B.Ed. Degree for the purpose of being posted as Headmaster/Assistant Headmaster will abide by the Court's decision in the Review petition No. 21/2013.

5. The Supreme Court in Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of U.P. and Others, has recognized the primacy of the NCTE in maintenance of Standard of education of teachers, ahead of the States and Universities. Furthermore since NCTE was formed under the NCTE Act, 1993, a special law made by the parliament, the Court declared that NCTE's authority will prevail in professional education of teachers including teachers training programme.

6. In an earlier decision in Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, , the Supreme Court had held that interest of society requires that the holder of an academic degree possesses the requisite proficiency and expertise in the subject the degree certifies. The role of the UGC in maintaining uniformity of high standard was acknowledged by the Apex Court in this decision.

7. In the context of Off Campus Centres operated by the Universities beyond

their territorial jurisdiction the Commissioner and Secretary to the Government of Assam, Education Department had issued the O.M. dated 9.7.2012 on the functioning of Off Campus Centres outside of the territorial jurisdiction of the concerned University. The relevant portion of the O.M. is extracted:

(1) The concerned University shall ensure that no Off Campus centre/study centre and the centres operating through franchises are opened by the University outside their specific territorial jurisdiction in view of the judgment of Hon''ble Supreme Court of India Prof. Yashpal Vs. Govt. of Chhattisgarh.

(2) In case a University has already started an Off-campus study centre violating the Supreme Court's order and the centres are operating through franchise in the State the same is to be closed immediately.

(3) No distance Education programme shall be started without the prior approval of the distance Education Council, the Regulatory Body for Distance Education Programmes.

8. In another recent decision in National Council for Teacher Education and Another Vs. Venus Public Education Society and Others, the Supreme Court *inter alia*, has held that:

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Without recognition from NCTE and affiliation from the University/examining body, the educational institution cannot admit the students. An educational institution is expected to be aware of the law. The students who take admission are not young in age. They are graduates. They are expected to enquire whether the institution has recognition and affiliation. The institution had given admission in a nonchalant manner. It is also necessary to state that the institution had the anxious enthusiasm to commercialised education and earn money forgetting the factum that such an attitude leads to a disaster. The students exhibited tremendous anxiety to get a degree without bothering for a moment whether their effort, if any, had the sanctity of law. Such attitudes only bring nemesis. It would not be wrong to say that this is not a case which put the institution or the students to choose between Scylla and Charybdis. On the contrary, both of them were expected to be Argus-eyed. The basis motto should have been "transparency". Unfortunately; the institution betrayed the trust of the students and the students, in a way, atrophied their intelligence. The institution decidedly exhibited characteristics of carelessness. It seems that they had forgotten that they are accountable to law. Hence, the plea propounded with anxiety, vehemence and desperation on behalf of the respondent on ground of sympathy is not acceptable and, accordingly the same is repelled.

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9. In the context of the issue raised in these cases, one must bear in mind that quality of education is largely determined by the skill and commitment of the teachers. The B.Ed. curriculum is designed to empower a person with practical

knowledge of teaching. When a person obtains a B.Ed. degree, he gets exposed all the basics of teaching methodology without which, the education of the teacher is incomplete. Practice teaching is a compulsory paper of the B.Ed. curriculum and naturally practice teaching will hardly be effective in distance mode teaching imparted by the institutions with which we are concerned in these cases. Submission is made that some of the teachers who obtained the B.Ed. degree hadn't availed leave to pursue their lessons and yet they were awarded the degree by these institutions.

10. While we are discussing the issues from the perspective of the teachers, we must not forget the interest of the students who are the future of our country. If they are taught by unqualified teachers, the quality of their education will suffer and the net result will be a generation of students exposed to teaching by under-qualified teachers. Subjecting the students to untrained teachers will not only victimize the students but would also undermine the future human resources of the State. State's interest requires that teaching is imparted only by well trained teachers who have secured their B.Ed. degree from institutions recognized by statutory bodies like NCTE, UGC etc.

11. Moreover the nature of the B.Ed. curriculum is such that the degree cant be earned by pursuing the course in the distance mode as practical teaching is an important subject to be taught to the aspiring teachers. Therefore in order to protect the interest of our future generation from the vagaries of untrained teachers and to ensure the purity and quality of teaching in the schools is maintained, it is necessary that only properly trained teachers are allowed to impart teaching to the students. As the role of the NCTE has been recognized as the nodal body to ensure quality of education of teachers and approval and recognition for the institutions imparting training to teachers is mandatory, it is difficult to accord legitimacy to B.Ed. degree, which are acquired from unapproved institutions. In my considered opinion, such B.Ed. degree should not be permitted to be used to confer legitimacy for an aspiring teacher whether in the context of appointment, promotion or pay upgradation.

12. On consideration of all the above and particularly the decision of the Apex Court in National Council For Teacher Education (supra) and the O.M. dated 9.7.2012 of the Government of Assam and having noted that for imparting B.Ed. degree by the Bharatiya Siksha Parishad, U.P., C.M.J. University, Meghalaya, Naba Bharat Shiksha Parishad, Orissa, prior approval was not accorded by the NCTE to impart teachers education, I am of the view that the B.Ed. Degree awarded by these institutions are not legally valid. Therefore the B.Ed. Degree holders from such unapproved institutions can't claim appointment, promotion or higher pay. It is declared accordingly. But in so far as the relevance of a legally valid B.Ed. Degree for the purpose of appointment/advance increment/promotion etc., since the issue is being examined by the Division Bench in the Review Petition 21/2013, this Court doesn't make any order on that aspect of the matter.

13. Consequently having declared that the B.Ed. Degree obtained from Bharatiya Siksha Parishad, U.P., C.M.J. University, Meghalaya, Naba Bharat Shiksha Parishad, Orissa etc. which are unapproved by NCTE to be invalid in the eye of law, the State is directed to take appropriate steps for ensuring that no benefit is enjoyed by anyone on the strength of the invalid B.Ed. Degree secured from Institutions which are not approved by the NCTE. Interim orders in these cases will abide by the declaration made in this order. Cases are disposed of with the aforesaid direction without any order on cost.