

(2010) 03 PAT CK 0179
In the Patna High Court
Case No : CWJC No. 17734 of 2009

Naushad Anwar and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Bihar Zila Parishad Secondary and Higher Secondary Teachers (Appointment and Service Conditions) Rules, 2006 — Rule 4
Constitution of India, 1950 — Article 14, 16, 226
University Grants Commission Act, 1956 — Section 12B, 2, 22

Citation : (2011) 59 BLJR 1237 : (2011) 1 PLJR 887

Hon'ble Judges : Dipak Misra, C.J.; Shiva Kirti Singh, J

Bench : Division Bench

Advocate : S.B.K. Mangalam, for the Appellant; Lalit Kishore and Satyabir Bharti, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—In this writ petition preferred under Article 226 of the Constitution of India the Petitioners seek to challenge the validity of the letter issued under Memo No. 2005 dated (Annexure-7) by the Director, Secondary Education, Govt, of Bihar, Patna as contrary to the provisions contained in Articles 14 & 16 of the Constitution of India.

2. The facts that have been exposited in the petition which are essential to be narrated are that on 11.8.2008 vide Annexure-2 in the weekly Rojagar Samachar, a news item in the name of "Career in Library and Information Science" was published in which the name of Alagappa University was published amongst other Universities offering Degree in Library and Information Science through the Distance Mode of Education. The Petitioners and other candidates took their admission in the Academic Session 2007-08 in Bharat Institute of Engineering & Technology which is a Study Centre of the Alagappa University in the State of Bihar. They completed their course and appeared in the examination conducted by the University and were declared to have passed the examination.

The Alagappa University has issued the mark-sheets and the Certificates of Bachelor in Library and Information Science in favour of the Petitioners.

3. An advertisement (Annexure-6) had been issued by the District Board for the post of Librarian. The Petitioners and other students, who had obtained their Degree in Library Information Science from Alagappa University in the Academic Session 2007-08, submitted their application forms before the competent authority. The application forms submitted by the Petitioners and others were scrutinized by the Selection Committee of the District Board and their names were included in the provisional merit list prepared by the Selection Committee. While the Petitioners were about to be called for counselling a letter was issued by the Director, Secondary Education, Patna, 4th Respondent herein, vide Memo No. 2005 dated 3.12.2008 addressed to all the District Education Officers, District Education Superintendents and Sub-Divisional Education Officers directing them not to recognize the Degrees conferred by the Alagappa University, Karaikudi, Tamilnadu on the ground that communication of the Director, Distance Education Council had not recognized the Degrees conferred by the Alagappa University for Bachelor in Library & Information Science.

4. In view of the aforesaid direction the Petitioners and other similarly situated candidates were not called for counselling by the Appointment Committee of the District Board. On an enquiry being made they came to know that they were not called for counselling taking recourse to amended Rule 4(Ka)(vii) of the Bihar Zila Parishad Secondary and Higher Secondary (Appointment & Service Condition) Rules, 2006 (for brevity "the Rules") which stipulates the requirement being Graduation from any recognized University with a minimum 45% of marks and a Degree in Library Science from a University recognized by the State Government and the Education Department. It is contended that all the Petitioners satisfy the first (sic) as they have passed Graduation with requisite percentage of marks from the recognized Universities. As far as the second eligibility criterion is concerned they have graduated in Library & Information Science from the Alagappa University, Karaikudi, Tamilnadu. It is put forth that the said University is established by the special Act of the Legislature of the State of Tamilnadu and is recognized under Sections 12(B) & 2(f) of the University Grants Commission Act, 1956 (for short "the 1956 Act")- The University was competent to confer Degrees to the students u/s 22 of the 1956 Act in any branch of studies including the students, who have pursued their studies through the Distance Mode which was adopted by the said University in 1992. It is set forth that when the University has started the course through the Distance Mode there was no requirement for obtaining approval of the Distance Education Council which was made a condition precedent in the year 1995 for the purposes of employment to the posts and services under the Central Government.

5. As pleaded, the State Government had not issued any letter that the Degree conferred by the University through the Distance Mode of Education having no approval of the Distance Education Council would not be a valid Degree for the

purpose of employment to post and service under the State Government. Some of the candidates who had obtained their Library Science Degree from the Alagappa University preferred CWJC No. 18561 of 2008 wherein on 15.1.2009 the State was directed to file a counter affidavit, wherein a stand was taken that recognition of the Distance Education Council is a pre-condition for recognition of a Degree obtained from the Distance Mode of Education and accepting the said stand the writ petition was dismissed on 26.2.2009. After dismissal of the writ petition the candidates having Degrees from the said University tried to persuade the University to grant approval of the Distance Education Council so that their Degree can be treated as valid Degrees for the purposes of appointment and they came to know that the University had already submitted an application to the Distance Education Council for grant of post facto recognition and the matter was pending before the Distance Education Council. At that stage CWJC No. 3995 of 2009 was filed for issue of a direction to the Distance Education Council for grant of post facto approval. The said writ petition was disposed of on 1.4.2009 wherein this Court directed the Distance Education Council to dispose of the application expeditiously.

6. It is contended that a number of candidates, who had obtained Degrees from Patna University, Patna, Magadh University, Gaya, Vinayaka Mission University, Salem, Tamilnadu, Nalanda Open University, Patna which do not have the requisite recognition, have been permitted to participate in the counselling and their names have been included in the merit list. As the Petitioners felt that they were discriminated solely because they had passed out from Alagappa University they preferred CWJC No. 6235 of 2009 which was disposed of on 18.5.2009 recording the stand of the State that it would adopt a uniform yardstick and not consider anyone for appointment in respect of a course which is not recognized by the Distance Education Council. Despite the direction passed in the said writ petition, the Principal Secretary, Human Resources Development Department, Govt, of Bihar, Patna-Respondent No. 3 did not issue any direction for elimination of the names of the Applicants from the merit list, who do not have the approval of the Distance Education Council and their names still feature in the final merit list.

7. It is put forth that on an application filed by one Prashant Kumar under the Right to Information Act, certain information was sought for, but the State Government has turned down and informed that approval of the Distance Education Council is not a pre-condition for appointment in the State of Bihar. It is further urged that the Distance Education Council of the Indira Gandhi National Open University considered the application of Alagappa University of post facto approval of the courses offered by the University through the Distance Mode of Education and the Council has granted its post facto recognition to the Degrees offered by Alagappa University through the Distance Mode of Education in 108 subjects from the Academic Session 1995 to 2007-08. The said letter has been brought on record as Annexure-21. In view of the aforesaid recognition from the Distance Education Council, the Petitioners approached the Respondent No. 3 to

consider their case and other similarly situated persons also for appointment against the post of Librarian pursuant to the advertisement issued on 25.8.2008, but the effort became futile.

8. A reference has been made to order dated 17.11.2009 passed in CWJC No. 5129 of 2009* wherein a direction has been issued to the Respondent authorities to consider the case of those Petitioners, who were also illegally not called for final counselling because of dispute pertaining to equivalence of different degrees. The Petitioners, as urged, are similarly placed with the Petitioners in CWJC No. 5129 of 2009*.

9. In the aforesaid backdrop the Petitioners have preferred the writ petition challenging the constitutional validity of the relevant Rules.

10. This Court on 7.1.2010 had passed the following order:

Though this writ petition was filed challenging the constitutional validity of communication dated 3.12.2008 contained in Annexure-7, Mr. S.B.K. Mangalam, learned Counsel for the Petitioners, does not press the said prayer.

Two grounds that have been urged by Mr. Mangalam, learned Counsel for the Petitioners are; (i) the Petitioners, who have secured the degree from distant education from Alagappa University, Karaikudi, Tamilnadu, are eligible inasmuch as the competent authority of Indira Gandhi National Open University has granted ex post facto approval to the distant education course carried on by the aforesaid University and, therefore, the Petitioners meet the requisite criteria stipulated in the advertisement, and (ii) the State Government while preparing the merit list have included the names of certain persons who do not have the necessary degree but there has been discrimination as far as the present Petitioners are concerned.

Mr. Lalit Kishore, Additional Advocate General-III prays for ten days time to file reply to only in respect of these two aspects so that the controversy can be put to rest. Let the matter be listed on 21.1.2010.

11. In pursuance of the aforesaid order a counter affidavit has been filed contending, inter alia, that Alagappa University which used to impart education in Library Science through the Distance Education was not recognized by the Distance Education Council which is a prerequisite for purpose of conferring degrees in courses in any course of Distance Education. A reference has been made to the letter No. 16585 dated 2.12.2008 sent by the Director, Distance Education Council that the Alagappa University has not been recognized by the Distance Education Council. The said University has been granted recognition on 24.11.2009 whereas the process of appointment had already been completed by January, 2009 and, therefore, the claim of the Petitioners at this juncture cannot be entertained. It is further asserted in the return that the students of Nalanda Open University whose degree of Bachelor in Library Science though was not recognized rather their names were short-listed is not incorrect inasmuch the

Chancellor, Nalanda Open University by letter dated 10.1.2009 had categorically stated that the said University had been recognized by the Distance Education Council vide letters dated 31.8.2007, 8.4.2008 and 18.12.2008, i.e., prior to the date on which the Alagappa University had been granted recognition on 24.11.2009 by which date the counselling had been completed. Because of the said situation the Appointment Committee allowed the candidates to appear in counselling who had obtained the degrees from Nalanda Open University. It is put forth that as per the allegation made in the petition which has been reflected in Annexure-12 that the names of the Applicants from different Universities whose degrees have no approval of Distance Education Council before January, 2009, would be revised.

12. A supplementary affidavit has been filed by the Petitioner stating that the Rules were amended vide Notification No. 1339 dated 25.8.2008. The said amendment reads as under:

- i. Graduate with minimum 45% marks from any recognized University. In case of Applicants of Scheduled Caste/Scheduled Tribe/Extremely Backward Class/Backward Class and Physically Challenged Applicants relaxation of 5% marks would be permissible.
- ii. Degree of Bachelor in Library Science granted by the Education Department of the State Government.

13. Referring to the aforesaid amendment it is put forth that on a reading of Rule 4(vii) it cannot be understood that there is a stipulation that the Degree of Bachelor in Library Science obtained through Distance Mode of Education, the recognition of the Distance Education Council of Indira Gandhi Open University is a must. Reliance has been placed on the advertisement for second phase of teachers' appointment issued by the Principal Secretary, Human Resources Development Department, Government of Bihar on 29.8.2008 which does not lay down any pre-condition that approval of Distance Education Council is imperative. In essence, it is contended that approval of Distance Education Council was not a condition precedent for appointment against the post of Librarian and, therefore, the Petitioners could not have been denied the privilege of counselling. It is contended that the Petitioners have come to learn from reliable sources that more than 270 candidates, who have Degrees of Bachelor in Library Science from various Universities, which do not have approval of Distance Education Council, are going to be appointed by the State Government.

14. From the aforesaid factual narration, the core question that emerges for consideration whether the students, who have passed from Alagappa University through Distance Education, can be allowed to participate in the counselling. There is no shadow of doubt that the Alagappa University did not have the recognition from the Distance Education Council at the time of examination. It obtained post facto recognition on 24.11.2009, that is, at a very belated stage. The process of appointment, as set forth in the return, had already been

completed in January, 2009. Certain Universities were given post facto approval much earlier to Alagappa University and, at that time, the process was at the infant stage. In our considered opinion, the same would make a worldwide difference. That apart, on that ground alone, this Court cannot issue a mandamus to the Respondents to allow the students, who had passed out from Alagappa University, to appear in the counseling as the counseling is over. It is extremely difficult to put the clock back.

15. In view of the aforesaid analysis we perceive no merit in this writ petition and, accordingly, the same stands dismissed without any order as to costs.