

(2019) 04 PAT CK 0004

In the Patna High Court

Case No : Letters Patent Appeal No. 671 Of 2018, Civil Writ Jurisdiction Case No. 6827 Of 2016

Priyanka Kumari And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 11-04-2019

Acts Referred:

Chhatisgarh Niji Kshetra Vishwavidyalaya (Sthapana Or Viniyaman) Adhiniyam 2002 — Section 5

Citation : (2019) 2 PLJR 746

Hon'ble Judges : Amreshwar Pratap Sahi, CJ;Anjana Mishra, J

Bench : Division Bench

Advocate : Sanjay Kumar Verma, Ajit Kumar Singh, Ashutosh Ranjan Pandey, Rakesh Narayan Singh

Judgement

1. Heard Shri Sanjay Kumar Verma, learned counsel for the appellants and Shri Ashutosh Ranjan Pandey, learned Additional Advocate General No. 15 for the State of Bihar.

2. This appeal questions the correctness of the judgment of the learned Single Judge dated 22nd February, 2018 passed in C.W.J.C. No. 6827 of 2016, whereby the claim of the appellants and their effort to save their employment on the strength of a degree awarded by the University of Technology and Science, Chhattisgarh has been declined.

3. The learned Single Judge has after narrating the facts as also the law laid down by the Apex Court in the case of Prof. Yashpal and another Vs. State of Chhattisgarh and others, reported in (2005) 5 SCC 420 has arrived at the conclusion that the appellants are not entitled to the academic benefits of the said University which has been declared to be non-existent under the judgment of the Apex Court aforesaid and therefore their employment on the basis of any degree by the University was rightly terminated.

4. Learned counsel for the appellants has, however, urged that the very same judgment in Paragraphs 64 and 65 has indicated that the students' career instead of being jeopardized should be revisited by the State Government in order to extend any benefit of affiliation or otherwise in order to sustain the career of such students who had been admitted in such Institutions. On the strength of the aforesaid observations, learned counsel submits that this was a University created under an Act of the State Legislature, namely, Section 5 of the Chhatisgarh Niji Kshetra Vishwavidyalaya (Sthapana or Viniyaman) Adhiniyam 2002 and therefore its existence cannot be doubted. The contention is that so far as the appellants are concerned, the legality of the establishment of the University or otherwise cannot be attributed to them for the purpose of virtually recalling the degrees already conferred on them by such University, inasmuch as, they have bona fide pursued their studies and have been awarded degrees which in the present case are degrees relating to Library Science on the basis whereof they were granted employment. It is their employment which has now been terminated on the ground of their degrees being invalid. In the above background, it is submitted that the declaration of law by the Apex Court itself extended protection and issued directions to the State of Chhattisgarh for protecting the interest of students and their career. The contention, therefore, is that the appellants stand on a better footing, inasmuch as, they are students who had already been awarded degrees by the time the University was declared to be non-existent under the judgment of the Apex Court. Consequently, any form of default on the part of the appellants who have pursued their academic career in this University cannot be a cause for recall of the employment which the appellants had been offered on the basis of a degree which otherwise was valid when it was granted.

5. Affidavits were exchanged between the parties and thereafter the learned Single Judge has recorded the findings and has concluded that even assuming for the sake of arguments that the termination orders have emanated without following any procedure of law and are in violation of principles of natural justice, relegating the matter back to the authorities for a decision afresh would be a useless formality, inasmuch as, on the admitted facts the degree on the basis of which the appellants had obtained employment is invalid and consequently all the appellants holding a degree, which is a nullity, cannot claim continuance in employment on the strength thereof.

6. Learned counsel for the appellants has urged that the aspect with regard to any protection being given to such students who had already obtained degrees does not appear to have been negated by the Apex Court in the judgment in the case of Prof. Yashpal (*supra*) nor has the State Government of Chhattisgarh denied any such benefit. It is also submitted that even the learned Single Judge has not considered this aspect and, therefore, in the above background the termination of the employment of the appellants without following the due procedure of law cannot be justified.

7. Shri Ashutosh Ranjan Pandey, learned counsel for the State of Bihar, however, contends that an employment extended to the appellants on the basis of an academic degree which is a nullity cannot be sustained and any continuance thereof would be contrary to law. He submits that it is in this background that the action was taken by the authorities and after having verified the status of the Institution the letter of the Deputy Director (Education) dated 19th May, 2009 was issued informing the authorities to take appropriate action in relation to the engagement of the appellants as well as such other similarly situate employees who had obtained degrees from such Institutions.

8. Responding to the aforesaid arguments, learned counsel for the appellants urged that the said document at Serial No. 5 of the list appended indicates the name of the University which is not a correct name, and even otherwise there is an indication that the University is closed from 2005. It is submitted that the closure of the University was on account of the judgment of the Apex Court and such a closure, therefore, does not eclipse or abrogate the degree obtained by the appellants from the University when it was in existence prior to that. Consequently, the said directions issued by the Deputy Director (Education) would not be applicable in a retrospective manner so as to take away any impact of a valid degree which otherwise was capable of being acknowledged as it had been conferred by the University that was created under a Statute. The University, therefore, was empowered to confer such a degree and consequently, the letter of the Deputy Director (Education) dated 19th May, 2009 does not take away the effect or nullify the effect of a degree already awarded by the University.

9. We have considered the entire arguments before us and we find that the Apex Court judgment in the case of Prof. Yashpal (*supra*) derecognises such Universities by declaring the provisions of the Act under which the University was established to be ultra vires. The birth of the University, therefore, having taken under Statute which was declared to be ultra vires, therefore, cannot allow the acknowledgment of a degree granted by such a University to be valid which has been declared to be non-existent. In our opinion, it would be paradoxical to recognize a degree of a University that has been declared to be non-existent on account of an invalid law under which the University itself was created. If the creation of the University itself was unlawful, then any degree conferred by such a University cannot be pressed into service for the purpose of a lawful employment.

10. We, therefore, do not find any error in the conclusion ultimately drawn by the learned Single Judge in declining to entertain the writ petition for grant of any such benefit.

11. There is, however, one argument which deserves mention, namely, the Apex Court in the judgment of Prof. Yashpal (*supra*) did not specifically declare any such degrees already conferred to be a nullity. To that extent, the appellants could have raised their grievances before the State of Chhattisgarh for extending such benefits, but in the present case what we find that neither the University

Grants Commission nor the State of Chhattisgarh have been made party respondents on the basis whereof any such determination can be attempted by this Court in order to gather as to whether the appellants would be entitled to any such benefit or not. There is no indication in any of the documents filed that the State of Chhattisgarh had taken any steps for recognition of such degrees which virtually by operation of law and the declaration of law by the Supreme Court stood lapsed without there being any further action for reviving or acknowledging them as to be surviving for the purpose of any employment under the State.

12. Consequently, we are unable to further probe on the issue so raised by the appellants with regard to the validity or otherwise of their degree and we leave it open to the appellants to claim any such benefit, if permissible in law, inasmuch as, the question of recognition of such a degree would not be open to be examined by us in view of what has been stated hereinabove.

13. The appeal, therefore, is accordingly consigned to records with the said observations.