

(2019) 02 GAU CK 0038

In the Gauhati High Court

Case No : Writ Petition (C) No. 2706, 2983 Of 2017

Purnendu Sekhar Debnath

APPELLANT

Vs

State Of Assam And 7 Ors

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

Citation : (2019) 02 GAU CK 0038

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : N Saikia, R Karim, S.K. Das, A. Deka, K.N. Choudhury, A. Chamuah

Judgement

1. The subject matter of dispute in these two writ petitions being similar, the same are heard together and disposed of by this common order. The dispute in brief is with regard to the post graduate degree obtained by the private respondents in both the cases from Universities outside the State of Assam with their Study Centers in the North East, India.

2. Heard Ms. N. Saikia, learned counsel for the petitioner in WP(C) 2983/2017 and Sri S. K. Das, learned counsel for the petitioner in WP(C) 2706/2017. Shri A. Deka, learned Standing counsel for the Secondary Education Department; Shri A. Chamuah, learned Standing counsel for the UGC and Shri B. Sinha, learned counsel for the Sam Higginbottom University and Sri K. N. Choudhury learned senior counsel assisted by Shri A. B. Dey and Shri B. Purkayastha, learned counsel for the respondent Nos. 4 and 7 respectively in both the writ petitions (beneficiaries).

3. For a proper adjudication of the dispute involved in these writ petitions, a narration of the facts of the cases are given herein below;

The petitioner in WP(C) No. 2983/2017 is a subject teacher and was also holding the post of I/C Principal Bhikamchand Balika Bidyaniketan H.S. School. The petitioner claims to have possessed all necessary qualifications to be appointed as Principal of a Higher Secondary School and the fact that she was already

allowed to hold the charge of Principal of the School fortifies this claim.

4. An advertisement was issued on 19.06.2016, for filling up the post of Principal of various Higher Secondary Schools including the School in question which was mentioned at serial number 4 of the list of the Schools covered by the said advertisement. There is no dispute to the fact that the selection was to be held in accordance with the order dated 23.03.2016. In the ensuing selection, the respondent No. 4 was selected as the first nominee and vide order dated 02.05.2017, the said respondent No. 4 was appointed as the Principal. It is admitted fact that the said respondent No. 4 had obtained his M.A Degree from the Agartala Centre of the Madurai Kamaraj University. The aforesaid degree obtained by the said respondent No. 4 from an Off Campus Study Centre has been questioned in this proceeding as the same degree has been argued to be an invalid degree.

5. The petitioner in WP(C) No. 2706/2017 has approached this Court with a similar grievance with respect to her School, namely, Swarna Lakshmi Higher Secondary, School, Narshingpur in the district of Cachar. It is the case of the petitioner that she being the senior most teacher in the said School having all the requisite qualification was given the charge of the Principal on the retirement of the earlier incumbent. She also claims that she was inducted as a member of the District Level Committee for recommending names of teachers for Study award. She was also acting as a Member of Regularization and Rational of various teachers were working on the contract basis and is also a national certificate holder. As in the other writ petition, a requirement drive for filling up the post of Principal of regular basis was initiated vide an advertisement dated 21.06.2016, in which the petitioner along with other candidates including the respondent No. 7 had participated. The interview was held on 10.01.2017, and noticing that the M.A. degree of the respondent No. 7 of the year 2013 was from Sam Higginbottom University, Study Centre at Silchar, the petitioner had immediately lodged a complaint on 13.01.2017. However, by ignoring such complains, the said respondent No. 7 was appointed as the Principal of the School in question.

6. Ms. N. Saikia and Shri S. K. Das, learned counsels for the petitioners in the respective case submit that the post graduate degree of the private respondents who have been given appointment to the posts of Principal are invalid degrees and therefore the said respondent were not qualified and eligible even for consideration for appointment to the post of Principal.

7. Drawing the attention of this Court to the various documents on record, more specifically the affidavit filed by the University Grants Commission, especially, Paragraph-8 A, the learned counsel submits that the UGC itself having disowned such degree, there leaves little scope to save such appointments of the private respondent.

8. Ms. Saikia, learned counsel also refers to the compilation of documents which was filed by way of an affidavit dated 14.12.2018, to bring home the fact that

the Study Centre of the respondent No. 4 with regard to the M.A. Degree of the Madurai Kamaraj University is at Agartala. The stand of the UGC which has been obtained by invoking the RTI Act in favour of the petitioner has been highlighted. It is also pointed out that the jurisdiction of the aforesaid Madurai Kamaraj University would extend within the State of Tamilnadu and not elsewhere. The learned counsel also submits that in similar situations, the Gujarat High Court has interfered and places two orders respectively dated 08.09.2017 and 19.12.2017.

9. Shri S. K. Das, learned counsel for the petitioner in WP(C) 2706/2017 similarly assails the M.A degree of the respondent No. 7 which he has obtained from Sam Higginbottom University from the Study Centre at Cachar which is also an admitted fact. To fortify such factual position, the admit card of the respondent No. 7 has also been annexed. The learned counsel for the petitioner has submitted that the aforesaid University is a deemed university and its operation is limited within its own campus and not beyond that. Therefore, the degree obtained by the respondent No. 7 from the said university is no degree in the eyes of law. Consequently, the appointment of the said respondent No. 7 cannot be countenanced in law.

10. On the other hand, Shri K. N. Choudhury, learned senior counsel appearing on behalf of the respondent No. 4 in WP(C) 2983/2017 and respondent No. 7 in 2706/2017 (beneficiaries) in both the cases has not denied that the degrees obtained by his clients are from Off Centers which are located respectively at Agartala and Cachar of the University which are in the State of Tamilnadu and U.P respectively. However, the learned senior counsel submits that the degrees were obtained at such time when there was no restrictions and accordingly, the appointments are not liable for any interference. The learned counsel further submits that his clients are not at fault and the said degrees being acted upon in the selection by the Selection Committee with their eyes wide open which is also approved by the authorities in the Education Department, there is no scope to question the degree after the appointment had been duly made. It is also submitted that the instant cases are filed by unsuccessful candidates in the selection and the locus of the petitioners are also questioned.

11. Shri Choudhury, learned Senior Counsel also raises questions on the eligibility of the petitioners themselves to apply for the post of Principal. Making a specific averment, Shri Choudhury has questioned the B.Ed degrees of both the petitioners in these cases. He has submitted that so far as the petitioner in WP(C) 2983/2017 is concerned, his client has instituted a separate writ petition being WP(C) 4443/2017 wherein an specific challenge to the B.Ed degree at the present petitioner has been made.

12. On the merits of the case, Shri Choudhury, learned senior counsel submits that Madurai Kamaraj University offers distance education degrees which are recognized and in the list of colleges recognized by the UGC, the said University figures in serial No. 462. Further, there is no blanket bar in obtaining degrees

from its centers and in any case the petitioner's degree was of the year 2014 which does not call for any interference. The learned senior counsel also refers to a decision rendered by the Madras High Court wherein a similar situation the said High Court declined to interfere as there were no restrictions per se at the time of obtaining the degree.

13. Referring to the case of Orissa Lift Irrigation Corporation Ltd. referred in (2018) 1 SCC 271, the learned senior counsel has submitted that the direction of the Hon'ble Supreme Court in paragraph 53 (XI) containing restrictions on all deemed university was to be given affect from the academic Session 2018-19 onwards.

14. Shri A. Chamuah, learned counsel representing the UGC, however, has categorically submitted that degrees of the private respondents are not valid in the eyes of law. Referring to the affidavit-in-opposition of the UGC, the learned counsel has submitted that the restrictions are not new but were operating since the year 2001. In fact, the learned counsel refers to the communication dated 09.08.2001, wherein the UGC had instructed the Registrars of all Universities to stop franchising and that no student were to be permitted in such Centers. A repetition of the said direction was given vide communication dated 13.05.2003 and 16.04.2009. The learned counsel has submitted that following the law laid down by the Hon'ble Supreme Court in the case of Professor Yashpal and to meet the object of the UGC which is to maintain a high standard in the Higher Education, such communications have been issued from time to time.

15. Countering the submission made on behalf the private respondents, learned counsel for the UGC has submitted that even at the time when degrees in question were obtained, the restrictions were fully operative and therefore, the said respondents cannot take the plea of being ignorant of such restrictions and of being victims of circumstances.

16. Shri B. Sinha, learned counsel appears on behalf of the Sam Higginbottom University in WP(C) 2706/2017 and admits of having Centers at Cachar. However, the learned counsel on a specific query from this Court was unable to answer as to what manner of control or supervision the University had over the said Study Circle. As regards approval by the UGC for distance mode of education, no such approval could be produced.

17. The rival submissions of the respective counsels have been duly considered and the materials before this Court have been carefully examined. The records submitted by Shri A. Deka have also been perused.

18. The facts involved in these cases are not in dispute. The respondent No. 4 in the first writ petition had admittedly obtained his M.A. Degree from the Agartala Study Centre of the Madurai Kamaraj University which is in the State of Tamilnadu. Similarly, the respondent No. 7 in WP(C) 2706/2017 had obtained his M.A. Degree in Mathematics from the Cachar Study Centre of the Sam Higginbottom University, a Deemed University in the State of U.P.

The regulation promulgated by the UGC from time to time makes it clear that so far as the State University is concerned, it cannot have a Study Centre outside from the territorial jurisdiction of the State whereas for a deemed university the restrictions are more severe inasmuch as there cannot be Study Centre outside the campus of the Deemed University even in the same State. In the two cases, admittedly there was no approval from the UGC or the Distance Education Bureau earlier (IGNOU) and in absence of such approval, the post graduate degrees said to be obtained by the private respondents are non-est in law.

19. Regarding the period from when such restrictions are enforced, the learned counsel for the UGC has submitted that from the year 2001 itself such restrictions are in operation and therefore, the plea of the private respondents/beneficiaries that the degrees were obtained in a period when there was no restriction appears to be factual incorrect. Though, a frail attempt has been made by the private respondents to question the eligibility of the petitioners to offer their candidature for the selection to the post of Principal, such attempt is not legally permissible to be taken by a respondent in a writ proceeding. Unlike a civil suit there is no concept of counter-claim in a writ proceeding and in fact, challenging the B.Ed degree of the petitioner in the first case the respondent No. 4 has already instituted a writ petition in this Court being WP(C) 4443/2017.

20. For taking a decision in this case, a reference to the case of Prof. Yashpal reported in (2005) 5 SCC 420 is of utmost importance. The discussions which are relevant in this case are quoted herein below;

"31. In *Osmania University Teachers Association v. State of Andhra Pradesh & Anr.* 1987 (4) SCC 671, the Court reiterated that it was the exclusive responsibility of the Central Government to determine the standards for higher education and the same should not be lowered at the hands of any particular State as it was of great importance to national progress. After referring to the Constitution Bench decision in *Kerala State Electricity Board v. Indian Aluminium Co.* 1976 (1) SCC 466, where it was held that when an entry is in general terms in List II and part of that entry is in specific terms in List I, the entry in List I takes effect notwithstanding the entry in List II, the Court held as under in para 14 of the reports :

"14. Entry 25 List III relating to education including technical education, medical education and universities has been made subject to the power of Parliament to legislate under Entries 63 to 66 of List I. Entry 66 List I and Entry 25 List III should, therefore, be read together. Entry 66 gives power to Union to see that a required standard of higher education in the country is maintained. The standard of Higher Education including scientific and technical should not be lowered at the hands of any particular State or States. Secondly, it is the exclusive responsibility of the Central Government to coordinate and determine the standards for higher education. That power includes the power to evaluate, harmonise and secure proper relationship to any project of national importance. It is needless to state that such a co-ordinate action in higher education with

proper standards, is of paramount importance to national progress. It is in this national interest, the legislative field in regard to 'education' has been distributed between List I and List III of the Seventh Schedule."

"45 The State Legislature can make an enactment providing for incorporation of Universities under Entry 32 of List II and also generally for Universities under Entry 25 of List III. The subject "University" as a legislative head must be interpreted in the same manner as it is generally or commonly understood, namely, with proper facilities for teaching of higher level and continuing research activity. An enactment which simply clothes a proposal submitted by a sponsoring body or the sponsoring body itself with the juristic personality of a University so as to take advantage of Section 22 of UGC Act and thereby acquires the right of conferring or granting academic degrees but without having any infrastructure or teaching facility for higher studies or facility for research is not contemplated by either of these Entries. Section 5 Sections and 6 of the impugned enactment are, therefore, wholly ultra vires being a fraud on the Constitution."

"46 Entry 66 which deals with co-ordination and determination of standard in institutions for higher education or research and scientific and technical institutions is in Union List and the Parliament alone has the legislative competence to legislate on the said topic. The University Grants Commission Act has been made with reference to Entry 66 (See *Prem Chand Jain v. R.K. Chhabra* 1984 (2) SCR 883 and *Osmania University Teachers Association v. State of Andhra Pradesh* 1987 (4) SCC 671). The Act has been enacted to ensure that there is co-ordination and determination of standards in Universities, which are institutions of higher learning, by a body created by the Central Government. It is the duty and responsibility of the University Grants Commission, which is established by Section 4 of the UGC Act, to determine and coordinate the standard of teaching curriculum and also level of examination in various Universities in the country. In order to achieve the aforesaid objectives, the role of UGC comes at the threshold. The course of study, its nature and volume, has to be ascertained and determined before the commencement of academic session. Proper standard of teaching cannot be achieved unless there are adequate infrastructural facilities in the campus like classrooms, libraries, laboratories, well-equipped teaching staff of requisite caliber and a proper student-teacher ratio. For this purpose, the Central Government has made a number of Rules in exercise of powers conferred by Section 25 of UGC Act and the Commission has also made Regulations in exercise of power conferred by Section 26 of the UGC Act and to mention a few, UGC Inspection of Universities Rules, 1960, UGC Regulations 1985 regarding the Minimum Standards of Instructions for the Grant of the First Degree, UGC Regulations, 1991 regarding Minimum Qualifications for Appointment of Teachers in Universities and Colleges, etc. The UGC with the approval of the Central Government and exercising power under Section 22(3) of the UGC Act has issued a schedule of degrees which may be awarded by the Universities. The impugned Act which enables a proposal on

paper only to be notified as a University and thereby conferring the power upon such University under Section 22 of the UGC Act to confer degrees has the effect of completely stultifying the functioning of the University Grants Commission in so far as these Universities are concerned. Such incorporation of a University makes it impossible for the UGC to perform its duties and responsibilities of ensuring co-ordination and determination of standards. In absence of any campus and other infrastructural facilities, the UGC cannot take any measures whatsoever to ensure a proper syllabus, level of teaching, standard of examination and evaluation of academic achievement of the students or even to ensure that the students have undergone the course of study for the prescribed period before the degree is awarded to them.

The underlying essence and objective of the aforesaid judgment is to maintain a certain standard and level of teaching, examination and academic achievements of the student, in absence of which, the entire scenario in the higher field of higher education would be adversely affected.

21. In view of above discussions and taking into consideration the materials of record, this Court is of the opinion that the appointment of the respondent No. 4 Shri Asit Baran Paul as Principal of the Bhikamchand Balika Bidyaniketan H.S. School, Karimganj and the respondent No. 7 in WP(C) 2706/2017, Shri Bijon Nath as the Principal in the Swarna Lakshmi Higher Secondary, School, Narshingpur, Cachar are liable to be interfered with on the ground that the said incumbents do not possess valid post-graduate degrees which is an essential requirement under the Rules. Accordingly, their respective appointments as Principals in the Schools in question are set aside and the respondent authorities would be at liberty to fill up the post from the penal of selected candidates in accordance with law.

I make no order as to cost.