
(2023) 06 GAU CK 0069
In the Gauhati High Court
Case No : Writ Appeal No. 189 Of 2022

State Of Assam

APPELLANT

Vs

Munindra Barman

RESPONDENT

Date of Decision : 21-06-2023

Acts Referred:

University Grants Commission Act, 1956 — Section 23

Citation : (2023) 06 GAU CK 0069

Hon'ble Judges : Sandeep Mehta, CJ;Mitali Thakuria, J

Bench : Division Bench

Advocate : B. Choudhury, Himanshu Boruah, U.K. Nair

Final Decision : Dismissed

Judgement

S. Mehta, CJ

1. The instant intra-Court writ appeal is directed against the judgment and final order dated 17.12.2020, whereby the writ petition being WP(C) No.4529/2019 preferred by the respondents herein was accepted and the appellant authorities were directed to grant benefit of the Hon'ble Supreme Court's judgment in the case of Orissa Lift Irrigation Corporation Ltd. Vs. Rabi Sankar Patro & Ors., reported in 2018 (1) SCC 468 to the writ petitioners/respondents herein.

2. Heard learned counsel appearing for the parties.

3. The short controversy involved in this appeal is as to whether the respondents herein, who admittedly obtained B. Tech degree course in terms of the AICTE guidelines pursuant to the aforesaid judgment, in the second test conducted in the month of December, 2018, would also be entitled to the benefits of directions given at Paragraph 66 of the said judgment, which are reproduced hereinbelow for the sake of ready reference:

"66. Accordingly, we direct:

66.1. The 1994 Aicte Regulations, do apply to deemed to be universities and the

deemed to be universities in the present matter were not justified in introducing any new courses in technical education without the approval of Aicte.

66.2. Insofar as candidates enrolled during the academic sessions 2001-2005, in the present case the ex post facto approvals granted by UGC and their authorities concerned are set aside.

66.3. Consequent to aforesaid Direction II, all the degrees in Engineering awarded by deemed to be universities concerned stand suspended.

66.4. Aicte shall devise the modalities to conduct an appropriate test(s) as indicated in para 58 above. The option be given to the students concerned whose degrees stand suspended by 15-1-2018 to appear at the test(s) to be conducted in accordance with the directions in para 58 above. Students be given not more than two chances to clear test(s) and if they do not successfully clear the test(s) within the stipulated time, their degrees shall stand cancelled and all the advantages shall stand withdrawn as stated in paras 57 and 58 above. The entire expenditure for conducting the test(s) shall be recovered from the deemed to be universities concerned by 31-3-2018.

66.5. Those students who do not wish to exercise the option, shall be refunded entire money deposited by them towards tuition fee and other charges within one month of the exercise of such option. Needless to say, their degrees shall stand cancelled and all advantages/benefits shall stand withdrawn as mentioned in para 58.

66.6. If the students clear the test(s) within the stipulated time, all the advantages/benefits shall be restored to them and their degrees will stand revived fully.

66.7. As regards students who were admitted after the academic sessions 2001-2005, their degrees in Engineering awarded by the deemed to be universities concerned through distance education mode stand recalled and be treated as cancelled. All benefits secured by such candidates shall stand withdrawn as indicated in para 59 above. However, the entire amount paid by such students to the deemed to be universities concerned towards tuition fees and other expenditure shall be returned by the deemed to be universities concerned by 31-5-2018, as indicated in para 59.

66.8. By 31-5-2018 all the deemed to be universities concerned shall refund the sums indicated above in para 66.7 and an appropriate affidavit to that extent shall be filed with UGC within a week thereafter.

66.9. We direct CBI to carry out thorough investigation into the conduct of the officials concerned who dealt with the matters and went about granting permissions against the policy statement, as indicated in para 60 above and into the conduct of institutions who abused their position to advance their commercial interest illegally. Appropriate steps can thereafter be taken after culmination of such investigation.

66.10. UGC shall also consider whether the deemed to be university status enjoyed by JRN, AAI, IASE and VMRF calls for any withdrawal and conduct an inquiry in that behalf by 30-6-2018 as indicated above. If the moneys, as directed above, are not refunded to the students concerned, that factor shall be taken into account while conducting such exercise.

66.11. We restrain all deemed to be universities to carry on any courses in distance education mode from the academic session 2018-2019 onwards unless and until it is permissible to conduct such courses in distance education mode and specific permissions are granted by the statutory/regulatory authorities concerned in respect of each of those courses and unless the off-campus centres/study centres are individually inspected and found adequate by the statutory authorities concerned. The approvals have to be course specific.

66.12. UGC is further directed to take appropriate steps and implement Section 23 of the UGC Act and restrain deemed to be universities from using the word "university" within one month from today.

66.13. The Union of India may constitute a three-member Committee comprising of eminent persons who have held high positions in the field of education, investigation, administration or law at national level within one month. The Committee may examine the issues indicated above and suggest a road map for strengthening and setting up of oversight and regulatory mechanism in the relevant field of higher education and allied issues within six months. The Committee may also suggest oversight mechanism to regulate the deemed to be universities. The Union of India may examine the said report and take such action as may be considered appropriate within one month thereafter and file an affidavit in this Court of the action taken on or before 31-8-2018. The matter shall be placed for consideration of this aspect on 11-9-2018."

4. Mr. B. Choudhury, learned counsel for the appellants referred to the clarificatory order issued by the Hon'ble Supreme Court in the case of Orissa Lift Irrigation Corporation Ltd. Vs. Rabi Sankar Patro & Ors., reported in (2018) 2 SCC 298 and urged that in view of Paragraph 26.2 of the said clarificatory order (reproduced infra), as the respondents herein did not obtain the AICTE approved degree in the first attempt offered by the AICTE, they can claim promotion as Assistant Engineers and the consequential benefits only w.e.f. the date they acquired such degree and the benefits prior thereto would not accrue to the respondents.

5. Per contra, Mr. U.K. Niar, learned senior counsel representing the respondents herein pointed out that the first judgment in the case of Orissa Lift Irrigation Corporation Ltd., reported in 2018 (1) SCC 468 (supra) clearly provided that the candidate would be entitled to appear in any of the two attempts to be offered by the AICTE and on succeeding in any of these two attempts offered, the degrees obtained by them through distance education mode from the deemed University/Institutions which are not having approval of the AICTE, during the academic

sessions 2001-2005, would stand revived and as a consequence, all the benefits which such candidates had earlier gained, would have to be restored. Mr. Nair urged that the entitlement of such candidates to get their degrees and standing in service revived and restored status quo ante has further been reiterated in the case of *Ashok Kumar & Ors. Vs. Depinder Singh Dhesi & Ors.*, reported in (2019) 8 SCC 280. Mr. Nair further submitted that the clarificatory order in the *Orissa Lift Irrigation Corporation Ltd.* (supra) was passed on the applications of such candidates who had entered into services on the basis of the degrees offered by deemed University through distance learning mode, which were declared to be invalid by the Hon'ble Supreme Court in the first *Orissa Lift Irrigation Corporation Ltd.* case. He urged that in such situation the Hon'ble Supreme Court clarified that such first time entrants into service, who were selected on the basis of the invalid degrees, would be given one chance to have their degrees validated by appearing in the fresh test to be conducted by AICTE. The candidates, who passed the test in the first attempt, would be entitled to retain the degrees and the benefits flowing therefrom. However, those who choose not to appear or failed in this attempt, their degrees and advantages would stand suspended and withdrawn.

6. Mr. U.K. Nair submitted that his clients, i.e. the respondents herein, did not enter into service on the basis of flawed degrees and rather they were selected as Junior Engineers on the basis of valid diploma certificates. Thereafter, they sought promotion on the basis of degrees in engineering obtained via distance learning courses, which were found to be faulty in the first *Orissa Lift Irrigation Corporation Ltd.* case. In this background, the respondents were entitled to two chances for clearing the validating test to be conducted by the AICTE as provided in the first *Orissa Lift Irrigation Corporation Ltd.* case and on clearing the test in either attempt, i.e. first or the second, their positions would be restored and revived with consequential effect. He urged that the State Government itself suspended the select list for promotion of Junior Engineers akin to the respondents to the post of Assistant Engineer on the basis of first *Orissa Lift Irrigation Corporation Ltd.* case and since the respondents have cleared the validation test conducted by the AICTE in the month of December, 2018, they are entitled to all the benefits flowing from the directions given in Paragraphs 66.4 and 66.6 of the first *Orissa Lift Irrigation Corporation Ltd.* case.

7. We have given our thoughtful consideration to the arguments advanced at Bar and have gone through the impugned judgment as well as the precedents cited at Bar. The only contention of Mr. B. Choudhury, learned counsel representing the appellants for questioning the impugned judgment of learned Single Judge was based on the clarificatory order in the second *Orissa Lift Irrigation Corporation Ltd.* case. A bare perusal of the said judgment, relevant Paragraphs 25 and 26 whereof are reproduced herein below for the sake of ready reference, would indicate that the said judgment was rendered considering the applications of the candidates who had gained entry into service on the basis of degrees in engineering obtained through distance education mode, which was disapproved

by Hon'ble Supreme Court in the first Orissa Lift Irrigation Corporation Ltd. case.

"25. We now turn to the general submission advanced by all the learned counsel that the candidates after securing the degrees in Engineering through distance education mode, have advanced in career and that their ability was tested at various levels and as such requirement of passing the examination in terms of the judgment be dispensed with in their case. We cannot make any such exception. The infirmity in their degrees is basic and fundamental and cannot be wished away. At the same time, we find some force in their submission that if the suspension of their degrees and all advantages were to apply as indicated in the judgment, the candidates concerned may lose their jobs and even if they were to successfully pass the test, restoration of their jobs and present position would pose some difficulty.

26. We, therefore, as a one-time relaxation in favour of those candidates who were enrolled during the academic years 2001-2005 and who, in terms of the judgment, are eligible to appear at the test to be conducted by Aicte, direct:

26.1. All such candidates, who wish to appear at the forthcoming test to be conducted by Aicte in May-June 2018 and who exercise option to appear at the test in terms of the judgment, can retain the degrees in question and all the advantages flowing therefrom till one month after the declaration of the result of such test or till 31-7-2018 whichever is earlier.

26.2. This facility is given as one-time exception so that those who have the ability and can pass the test in the first attempt itself, should not be put to inconvenience. If the candidates pass in such first attempt, they would be entitled to retain all the advantages. But if they fail or choose not to appear, the directions in the judgment shall apply, in that the degrees and all advantages shall stand suspended and withdrawn. At the cost of repetition, it is made clear that no more such chances or exceptions will be given or made. They will undoubtedly be entitled to appear on the second occasion in terms of the judgment but this exception shall not apply for such second attempt.

26.3. We direct Aicte to conduct the test in May-June 2018 and declare the result well in time, in terms of our directions in the judgment and this order. Aicte shall however extend the time to exercise the option to appear at the test suitably."

The candidates who gained entry into service on the strength of the flawed degrees were given the opportunity as one-time exception to pass the test to be conducted by the AICTE to judge their ability. In such circumstances, it was further provided that if those candidates failed or chose not to appear in the test to be conducted in the months of May-June their degrees and all advantages would stand suspended and withdrawn. Thus, the clarificatory order in no manner dilutes or takes away the liberty of two attempts granted in the first Orissa Lift Irrigation Corporation Ltd. case. By virtue of direction given in Paragraph 66.6 of the above judgment, the in-service candidates were given two chances to clear the test/tests within the stipulated timeframe and on doing so,

all the advantages/benefits would have to be restored to them with the revival of the degrees.

8. The respondents herein had been originally appointed as Junior Engineers on strength of diploma certificates and thereafter, they were selected for promotion to the posts of Assistant Engineer on the basis of the engineering degrees obtained through distance education mode. They did not gain entry into service on the basis of the flawed degrees. They cleared the AICTE test held in December, 2018 in pursuance of directions given by the Hon'ble Supreme Court at Paragraph 66.6 of the first Orissa Lift Irrigation Corporation Ltd. case. Hence, upon clearing the test, their Engineering degrees stood revived and all the advantages/benefits flowing therefrom would have to be restored. This would include the revival of their selection for promotion as Assistant Engineer.

9. We can thus, conclude without any hesitation that the view taken by the learned Single Judge in accepting the writ petition filed by the respondents herein in the terms indicated above does not suffer from any infirmity.

Consequently, the judgment and order dated 17.12.2020, which is assailed in this writ appeal, does not warrant any interference.

Resultantly, the writ appeal fails and is dismissed as being devoid of merit.

No order as to costs.