
(2015) 02 JH CK 0024

In the Jharkhand High Court

Case No : L.P.A. No. 265 of 2014 and I.A. Nos. 5649 and 5653 of 2014

State of Jharkhand and Others

APPELLANT

Vs

Bhagirathi Prasad Dey

RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2015) 02 JH CK 0024

Hon'ble Judges : Pramath Patnaik, J.;Dhirubhai Naranbhai Patel, J.

Bench : Division Bench

Advocate : Abhijeet Kr. Singh, J.C. to G.P., for the Appellant; Shubha Jha, Advocates for the Respondent

Final Decision : Allowed

Judgement

Dhirubhai Naranbhai Patel, J.

I.A. No. 5653 of 2014

1. The present interlocutory application has been preferred under Section 5 of the Limitation Act, for condoning the delay of 335 days in preferring this Letters Patent Appeal.

2. Having heard counsels for both the sides and looking to the reasons stated in this interlocutory application especially in paragraph Nos. 6, 7 and 8 thereof, there are reasonable reasons for condoning the delay in preferring this Letters Patent Appeal. We therefore, condone the delay in preferring this L.P.A. No. 265 of 2014.

3. Accordingly, I.A. No. 5653 of 2014 is allowed and disposed of.

L.P.A. No. 265 of 2014

4. Having heard counsels for both the sides and looking to the contentious issues raised in this Letters Patent Appeal, it is Admitted.

5. Notice of Admission is waived by the counsel for the respondent.

6. This appeal shall be enlisted for final hearing on 16th December, 2015.

I.A. No. 5649 of 2014

7. This interlocutory application has been preferred for getting stay against the operation, implementation and execution of an order passed by this Court by the learned Single Judge in W.P.(S) No. 2005 of 2013 with I.A. No. 4107 of 2013 dated 30th July, 2013.

8. Having heard counsels for both the sides and looking to the facts and circumstances of the case, We hereby, stay the operation, implementation and execution of an order passed by the learned Single Judge in W.P.(S) No. 2005 of 2013 with I.A. No. 4107 of 2013 dated 30th July, 2013 mainly for the following facts and reasons.:

"(i) Original petitioner has obtained teachers training from Sister Nivedita College at Kolkata. The said institution is not a University at all nor it is a institution, prima facie, approved or recognized by any State Government;

(ii) Looking to Regulation No. 4 of Bihar Rajkiyakrit Madhyamik Vidyalaya Seva Shart Niyamavali, 1983, such recognition or approval by the State Authority or by University is a must and such type of teachers training which is recognized by any State or by any University is required for becoming eligible for the post of teacher. Prima facie this Regulation No. 4 of the aforesaid Niyamavali, 1983 is not valid. This constitutes a prima facie case in favour of this appellant. Balance of convenience is also in favour of this appellant and irreparable loss will be caused to the appellant if the stay as prayed in the I.A is not granted because if the teachers who have not obtained the teachers training from a particular type of institutions they cannot be recognized as teachers.

(iii) For opposing this grant of stay, counsel for the respondent has relied upon several decisions and they are as under:--

? Sarbani Bose Vs. The State of Jharkhand and Others,

? 2009 (1) JCR 332 (Jhr)(SJ)

? 2010 (3) JCR 563 (Jhr) (SJ)

? 2010 (4) JCR 516 (Jhr) (SJ)

(iv) In none of the aforesaid decisions Regulation No. 4 of the aforesaid Niyamavali, 1983 has been argued out.

(v) Counsel appearing for the State is relying upon the decision rendered by the Division Bench of this Court in the case of Dilip Kumar Gupta and Others Vs. State of Jharkhand and Others, which is also annexed at Annexure-7 to the memo of this L.P.A. Paragraph Nos. 36 to 42 are as under:--

"Institutes, situated at Kolkata (West Bengal):

36. The appellants of LPA Nos. 246 of 2004, 301 of 2004, 271 of 2004, 308 of 2004, 445 of 2004, 236 of 2004, 269 of 2004, 235 of 2004, 548 of 2004, 518 of 2004, 300 of 2004, 289 of 2004 and 273 of 2004 claim to have passed "Sr. Teachers Training Course" from different institutions, located at Kolkata, namely,

(i) Sister Nivedita College, Kolkata.

(ii) Oxford College of Education, Kolkata.

(iii) Devid, Hare College of Correspondence, Kolkata.

(iv) Dr. B.C. Roy College of Education, Kolkata.

(v) D.C. College and D.C. Engineering College, Kolkata.

(vi) St. Thomas College of Correspondence, Kolkata.

(vii) All India Education Society, Kolkata.

(viii) All India Correspondence Coaching Society, Kolkata, and

(ix) Montessary Teachers Training College, Kolkata.

37. Most of the aforesaid Colleges claim to be affiliated to one All India Education Society, Kolkata ("AIES" for short), which itself claim to be Training Institute and a society, registered under the Societies Registration Act.

38. Immediately after examination, at the time of recommendation of successful candidates, the J.P.S.C. doubted the genuineness of Training Certificates, submitted by a number of candidates, including the appellants whose results were kept pending, which was informed by the In-charge Secretary, J.P.S.C., vide Letter No. 1/Exam.-JPSC-99/2003- 132/Sa. Ko. dated 13th November, 2003. In view of the aforesaid doubt, the Secretary, Primary, Secondary and Higher Education, Government of Jharkhand, issued clarifications vide Letter No. 8/B1-199/03-2912 dated 13th November, 2003, Letter No. 8/B1-199/03-3139 dated 4th September, 2003 and Letter No. 8/B-1-423/03/03-404 dated 16th February, 2004.

39. In these cases, though no specific stand has been taken by the parties, relating to genuineness of one or other Institution, situated at Kolkata, West Bengal, with a curiosity, to find out the status of the Institutes, I have gone through the certificates, as enclosed by the appellants with their writ petitions/ memo of appeals, issued by one or other Institutions. On bare perusal of those certificates, the following facts emerged :

(i) Formate of all the certificates, granted by the Institutions, such as, (1) Sister Nivedita College, Kolkata; (2) Oxford College of Education, Kolkata; (3) Devid Hare College of Correspondence, Kolkata; (4) Dr. B.C. Roy College of Education, Kolkata; (5) D.C. College and D.C. Engineering College, Kolkata; (6) St. Thomas

College, Kolkata; (7) All India Education Society, Kolkata; (8) All India Correspondence Coaching Society, Kolkata and (9) Montassry Teachers Training College, Kolkata, are same.

(ii) The signature of Principal(s) of almost all the Training Institutes, as aforesaid, is same. That means one person has signed as Principal of almost all the aforesaid nine Institutions, situated at Kolkata, West Bengal.

(iii) The signature of Examiner, as is appearing in the certificates, granted by 4 to 5 Institutions, is also common.

(iv) Even the address of some of the Institutions are common; for example-the addresses of Sister Nivedita College, Kolkata, All India Correspondence Society, Kolkata and Dr. B.C. Roy College of Education, Kolkata, are same i.e. "740 and 741 Lake Town, Block A, Kolkata- 700089 (see enclosure, attached to W.P.(S) No. 1294 of 2004, L.P.A. No. 246 of 2004, L.P.A. No. 269 of 2004, L.P.A. No. 548 of 2004 and L.P.A. No. 300 of 2004). The addresses of All India Education Society, Kolkata, Devid Hare College of Correspondence, Kolkata are also same i.e. 736, Lake Town, Block A, Kolkata.

(v) From Circular No. 041 dated 1st October, 2002 (page 64 of Paper book in L.P.A. No. 236 of 2004) it appears that Dr. B.C. Roy College of Education, Kolkata, is on paper, which is stated to have been amalgamated with Oxford College of Education, Kolkata. Therefore, notice has been given for general information that the candidate, who gets himself/herself admitted at Dr. B.C. Roy College of Education on or after 10.10.2002, his/her name will be transferred and enrolled at Oxford College of Education, Kolkata but mark sheet and other certificates will be issued under the name and style of Dr. B.C. Roy College of Education, Kolkata.

(vi) From the Senior Teachers Training Course Certificate, granted by Devid Hare College of Correspondence, Kolkata, as enclosed with L.P.A. No. 236 of 2004, it appears that the Teachers Training Course was for a period of six months. If the particulars of one of the students, namely, Anand Gopal (page 92 of L.P.A. No. 236 of 2004) are considered, it will appear that the date of admission, as has been shown, is 30th January, 1995 and the date of examination, as has been shown, is 25th August, 1995 i.e. after 6 to 7 months of admission. At column-11 with regard to affiliation of the Institution, it is mentioned that the institute is independent, having no tie up with the NCTE.

40. The aforesaid facts clearly raise doubt with regard to Sr. Teachers Training Course Certificate, granted by the aforesaid nine Institutions, as referred to above, situated at Kolkata, West Bengal, and there being nothing on the record to suggest that any of the institutions is either recognized by any of the State Governments, such as, State of West Bengal or State of Bihar or State of Jharkhand or Central Government or Statutory Body/Institution or affiliated with any University, those, who have obtained such certificates of Sr. Teachers Training Course can not claim their appointment In terms of Recruitment Rules,

2002, read with Teachers Training qualification, as laid down in the advertisement, published by the J.P.S.C. in August, 2002.

41. Further, the course of Sr. Teachers Training being of 6 to 7 months duration, it can not be called equivalent to B.Ed./Dip.in Ed./Dip in Teach or the other training certificate, as prescribed under Rule 2(kha) of Rules, 2002.

42. In view of the aforesaid findings, the appellants of L.P.A. Nos. 246 of 2004, 301 of 2004, 271 of 2004, 308 of 2004. 236 of 2004, 269 of 2004, 235 of 2004, 548 of 2004, 518 of 2004, 300 of 2004, 289 of 2004 and 273 of 2004, having obtained training certificates from the aforesaid nine institutions, situated at Kolkata, West Bengal, can not be granted the relief, prayed for by them."

(vi) Thus, looking to the aforesaid Division Bench decision there is also prima facie case in favour of the State. Balance of convenience is also in favour of the State and irreparable loss will caused to the State, if the stay as prayed for is not granted. We therefore, stay the operation, implementation and execution of the order, passed by the learned Single Judge dated 30th July, 2013 in W.P.(S) No. 2005 of 2013 with I.A. No. 4107 of 2013, during pendency and final hearing of this Letters Patent Appeal."

9. I.A. No. 5649 of 2014 is allowed and disposed of.