
(2013) 09 CAL CK 0041

In the Calcutta High Court

Case No : M.A.T. No. 1197 of 2012 and C.A.N. No. 7672 of 2012

Sumana De

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2014) 2 CALLT 250 : (2013) 5 CHN 15

Hon'ble Judges : Arun Mishra, C.J.;Joymalya Bagchi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arun Mishra, C.J.—The appeals have been preferred by the appellants aggrieved by a common judgment and order dated 18.6.2012 dismissing several writ applications. The question involved is singular, whether holders of Ph.D. qualifications by way of Distance Education Programme have been wrongly deprived from taking their claim to Lectureship under the College Service Commission. For the purpose of eligibility for the post of Lecturer, qualification, which was prescribed for Degree Colleges was consistent of academic record with at least 55% marks in the master's degree preceded by a 3 year- Hons. Degree in the concerned subject with at least 2nd class marks. Certain relaxations were available to S.C./S.T./Physically Handicapped category candidates, to which we are not concerned in the present matters. It is also necessary to possess qualifications of passing National Eligibility Test for J.R.F./Lectureship conducted by U.G.C./C.S.I.R. (NET) or U.G.C. accredited State Eligibility Test (SET) or possessing of Ph.D. or M. Phil. Degree in the concerned subject. Besides this, good power of expression (speaking, reading and writing) in Bengali/Nepali was also a requirement.

2. It is not in dispute that the petitioners had to their credit either degrees in Ph.D. or M. Phil from various Universities through Distance Education Programme or from Open Universities.

3. The College Service Commission did not select the writ petitioners because they had obtained their respective Ph.D. or M. Phil Degree either from Open University or through Distance Education Programme. Therefore, the writ petitions were preferred.

4. The case of the writ petitioners is that one of the petitioners, namely Sumana De, was placed at serial No. 4 of the panel for English subject from general category scoring 61.47 marks. Thereafter she was called for counselling. Counselling was not allowed on the plea that she obtained Ph.D. degree from Netaji Subhas Open University by way of Distance Education Programme in 2008. It is contended by the appellants/petitioners that the U.G.C. (Minimum Standards and Procedure for Award of M.Phil/Ph.D. degree) Regulation, 2009 (hereinafter referred to as "the Regulation of 2009") is not applicable to them. Representation was filed before the Chairman, West Bengal College Service Commission. However, no relief had been granted. It is further submitted that vide Memo dated 21.3.2000 issued by the Joint Secretary, Government of West Bengal, Netaji Subhas Open University had been recognised by the State Government. Indira Gandhi National Open University issued a letter on 11.11.2009 in the matter of post facto recognition of qualification given by Netaji Subhas Open University, Kolkata, West Bengal. In respect of those who had completed the course in between 1997 to 2008, ex-post facto recognition was granted, vide the said communication dated 11.11.2009. Thus, the degree obtained for Ph.D./M.Phil was from a recognised institution. The decision of the Supreme Court in the case of Annamalai University rep. by Registrar Vs. Secy. to Govt. Infn. and Toursm Dept. and Others, is not applicable. The action of ousting the appellants from the fray of the post of lecturer is illegal, arbitrary and discriminatory, as for the post of principal a person having Ph.D. degree through the Distance Education Programme has been recommended. There are instances that prior to 2009 certain incumbents having similar qualification have also been appointed as against the other posts also. Thus, the petitioners could not have been discriminated with.

5. In the affidavit-in-opposition filed on behalf of the respondent Nos. 2 and 3 stand taken that the Secretary and the Chairman of the West Bengal College Service Commission have been impleaded and not the West Bengal College Service Commission, which is a statutory body and as such the petitions are not maintainable. In the affidavit-in-opposition filed in W. P. No. 6327 (W) of 2010, the same has been placed on record as Annexure "R1", in which it is contended that one of the petitioners, Sumana De, was wrongly empanelled in serial No. 4 of the panel of English subject of general category. At the time of empanelment it could not be detected that she was not entitled to get 8 marks for her Ph.D. degree which she obtained from Netaji Subhas Open University through Distance Education Programme which is not accredited by the University Grants Commission. It is further contended that the degree obtained from Netaji Subhas Open University through Distance Education Programme was not taken into account by the West Bengal College Service Commission as the same is not at

par with Ph.D. degree obtained through regular course as has been held by the Hon'ble Supreme Court in Annamalai University (supra). The memo dated 21.3.2000 of the Government of West Bengal is not applicable to the present case in view of the said decision of the Hon'ble Supreme Court and the regulations framed by the U.G.C.. University of Calcutta has not recognised the said Ph.D. degree obtained from Netaji Subhas Open University through Distance Education Programme as regular Ph.D. degree granted by University of Calcutta by issuing any notification. No such decision had been taken to recognise the said degrees.

6. The Single Bench by the impugned judgment and order had held that the action of the College Service Commission cannot be said to be illegal and arbitrary. It has also been held that the degree obtained by way of Distance Education Programme from Open University or otherwise cannot be equated with the degree obtained in regular manner. Reliance has been placed on Annamalai University (supra). The College Service Commission cannot be compelled to accept the candidate who passed out from Open University without following regular course. The writ petitions have been dismissed. Aggrieved thereby, intra-Court appeals have been preferred.

7. The learned counsel appearing on behalf of the appellants submitted that the University-in-question had been recognised and Indira Gandhi National Open University has also accorded ex-post facto approval to the degree granted by way of Distance Education Programme from Netaji Subhas Open University etc. The marks awarded to Sumana De have been illegally reduced as an afterthought. When Abdul Motim has been appointed as Principal, though he was holding qualification of Ph.D. from Open University by way of Distance Education Programme, there is no reason to deprive the lecturers of similar treatment. There are other instances also when certain appointments had been made in other posts also of the persons who are possessing qualification by way of Distance Education Programme. The decision of Annamalai University (supra) is distinguishable on facts. The question involved in the aforesaid decision was totally different. The action is discriminatory, arbitrary and illegal. There is no resolution taken by the University or placed on record indicating that it would not recognise the degree obtained by way of Distance Education Programme from Open University or other Universities. The Regulation of 2009 framed by the University cannot be said to be applicable. Thus, the impugned order is bad in law and is to be set aside. Reliance has also been placed on a Notification dated 2.11.2004 of U.G.C. with respect to degree awarded by Open Universities.

8. The learned counsel appearing on behalf of the West Bengal College Service Commission submitted that College Service Commission has not recognised Ph.D./M.Phil degrees obtained by way of Distance Education Programme by taking any resolution. Hence, Ph.D./M.Phil courses through Distance Education Programme had not been recognised by either the College Service Commission or the Calcutta University. It was also submitted that U.G.C. had also not

accorded recognition to the course in question as eligibility criteria for the post of lecturer. On the other hand, when the applications were invited in 2008, even the course of Netaji Subhas Open University had not been recognised by Indira Gandhi National Open University and the Chairman had granted ex-post facto approval in 2009 to such a course with prospective effect from 1997 to 2008. U.G.C. Regulations of 2009 (as amended) mandates to oust Distance Education Programme from the purview of Ph.D. courses by prescribing eligibility criteria as per various provisions made for doing the required research work etc. The post of Principal is altogether a different where experience of 15 years is required, which is main consideration. The appointment of Abdul Motim had been made which cannot be said to be a discrimination meted out to the petitioners. The decision of the College Service Commission not to appoint any person holding Ph.D./M. Phil from Distance Education Programme cannot be said to be illegal or arbitrary. In such academic matter the Court is loath to interfere. It was further contended that there is vast difference between the standard of a degree obtained by way of regular course as compared to a course of Distance Education Programme.

9. After hearing the learned counsel appearing on behalf of the parties at length, we are of the considered opinion that quality of education cannot be compromised by directing the College Service Commission to recognise the degree of Ph.D./M. Phil etc. obtained by way of Distance Education Programme from Open Universities or from other Universities. There is a vast difference in educational standard between regular courses and distance education programme. In case degree is obtained through Distance Education Programme, no regular research work is required to be done in the University, which is necessary for doing Ph.D./M. Phil etc, by way of regular courses. Hence, there is a vast difference in standard between the aforesaid courses in obtaining the said qualification.

10. It is also significant to mention that recognition that degree may be granted is a different aspect than treating the degree-holder as eligible for the purpose of appointment as lecturer. These two things are quite separate and there has to be recognition of a degree as valid criteria for the purpose of appointment to a particular post.

11. In the case of Annamalai University (supra) the Hon''ble Apex Court has laid down the system of Distance Education Programme is alternative system and is not in substitution of formal system. The Apex Court has laid down that to ensure the standard of education, both the systems cannot be said to be same as there is distinction between formal system and informal system in the mode and manner in which education is imparted. The Apex Court laid down thus:

41. Was the alternative system envisaged under the Open University Act in substitution of the formal system, is the question. In our opinion, in the matter of ensuring the standard of education, it is not. The distinction between a formal system and an informal system is in the mode and manner in which education is

imparted. The U.G.C. Act was enacted for effectuating co-ordination and determination of standards in universities. The purport and object for which it was enacted must be given full effect.

12. It is also quite clear that the petitioners have not placed any decision taken by the West Bengal College Service Commission to recognise the degree granted by the Universities as recognised for the purpose of appointment as lecturer. Negative burden is discharged by Commission by making statement that it has not recognised the qualification in question for the purpose of appointment. No such decision of U.G.C. has also been placed on record that holders of degree by way of Distance Education Programme will be entertained for appointment as lecturers. There is no accreditation granted to such degrees for the purpose of appointment by the U.G.C. None has been placed on record. On the other hand, when we consider the amendment made in U.G.C. (Minimum Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to it) (3rd Amendment) Regulation, 2009, which provides that NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree considering dilution of standards in conferment degree, we are convinced that it would amount to further dilution of standards of education in case Ph.D./M.Phil degree conferred through Distance Education is directed to be treated at par with their regular courses for appointment of lecturers. The University may very well differentiate the merit and standard of the distance education of those who have not obtained degree through regular course. There is no case of discrimination meted out in such a matter. Education is ultimate light. When one has the duty to strive towards excellence maintaining of standard of education is necessary concomitant. The torch bearers of University education, namely lecturers, cannot be recruited from amongst non-serious incumbents who have completed their Ph.D./M.Phil etc. courses by way of Distance Education Programme. That would be perverting the very purpose of ensuring quality education to which every student has a right and the College Service Commission, U.G.C. and other regulatory bodies have a corresponding duty to ensure it for the welfare of the nation.

13. U.G.C. (Minimum Standard and Procedure for Awards of M.Phil/Ph.D. Degree) Regulation, 2009, came into force on 1st June, 2009. As selection had been undertaken thereafter in 2009, the decision taken by the College Service Commission not to appoint any one as lecturer who obtained qualification through Distance Education Course being inspired by the aforesaid U.G.C. Regulations, cannot be said to be illegal as it furthers the laudable cause of uplifting of standards of College education. Regulation No. 5 of 2009 U.G.C. Regulations provides that notwithstanding anything contained in these Regulations or other rule or regulation for the time being in force, no university, institution deemed to be university and college/institution of National Importance shall conduct M.Phil and Ph.D. programmes through Distance Education Programme. Total embargo was imposed by U.G.C. on awarding Ph.D./M.Phil

degree via distance education. As appointments were ordered in 2011 it ought to have conferred to minimum standards and procedure for award of M.Phil/Ph.D. degree as per Regulation 2009. The Regulations of 2009 further laid down the criteria for a faculty to be recognised as Research Supervisor for M.Phil and Ph.D. Programmes. Such programmes were to be conducted on "regular basis". A predetermined and manageable number of M.Phil and doctoral students depending on the number of the available eligible faculty supervisors was contemplated in Regulation 7. There is no such supervision and their numbers are not limited for Ph.D. degree granted by the Distance Education Course. Regulation No. 9 deals with the procedure for admission. It provides that there has to be interview of doctoral candidates and only pre-determined number of students may be admitted and reservation policy has to be adhered to. As per Regulation No. 13 incumbent has to undertake course work for a minimum period of one semester. The course work shall be treated as pre-M.Phil/Ph.D. preparation. That is not possible by way of Distance Education Programme. It is only possible in the University in regular course.

14. We have to come to an age when even degree of law is granted via distance education. Bearing in mind the method of obtaining such degree, such degrees are not recognised for practising as an advocate, as that would be compromising with quality of Bar. Such degrees by way of Distance Educational Programmes may be obtained for the purpose of acquiring knowledge but not for entering legal profession. On similar footing, appointment as lecturer is altogether different from the concept of recognition of a degree for acquiring knowledge through Distance Education Programme. When College Service Commission has decided not to appoint anyone who is holding Ph.D. degree from distance education the same cannot be said to be arbitrary as it is in consonance with U.G.C. Regulations.

15. The learned counsel appearing on behalf of the appellants has relied upon the Notification dated 2.11.2004 regarding recognition of degree awarded by Open University. In our opinion, the recognition of the degrees of Open Universities is different than recognition of such degrees via Distance Education Programme for the purpose of appointment. No such decision of College Service Commission has been placed on record by the appellants. They have denied that they have not given credit for P.hd./M. Phil degrees via Distance Education Programme for appointment as Lecturer.

16. In *State of Orissa and Another Vs. Mamata Mohanty*, , relied upon by the learned counsel appearing on behalf of West Bengal College Service Commission, the Hon"ble Apex Court has considered the concept that education is a process of systematic instruction, which prepares young persons for the work of life. The Apex Court has also laid down thus:

29. Education is the systematic instruction, schooling or training given to the young persons in preparation for the work of life. It is also connotes the whole course of scholastic instruction which a person has received. Education connotes

the process of training and developing the knowledge skill, mind and character of students by formal schooling. The excellence of instruction provided by an educational institution mainly depends directly on the excellence of the teaching staff. Therefore, unless they themselves possess a good academic record/ minimum qualifications prescribed as an eligibility, it is beyond imagination of anyone that standard of education can be maintained/enhanced.

18. ...We have to be very strict in maintaining high academic standards and maintaining academic discipline and academic rigour if our country is to progress.

30. ...Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs.

17. Considering the aforesaid principle laid down by the Apex Court, we feel the decision of the West Bengal College Service Commission is appropriate and cannot be said to be illegal or arbitrary in any manner. The same is in consonance with the U.G.C. Minimum Standard Regulation, 2009.

18. Coming to the plea of discrimination raised by the learned counsel appearing on behalf of the appellants with respect to the appointment of one Abdul Motim, as Principal, firstly, there cannot be any negative equality. Secondly, it is settled when a policy decision in the matter of regulating quality education is reasonable and not arbitrary, Courts cannot thrust upon a specialised academic body that it is bound to recognise o obtained through Distance Education Programme for the purpose of appointment of lecturer. It is for the academic body to take such decision and that as it is trite law the Court cannot interfere in the academic matters/in such policy matters. The Court is not an expert in such matters. Furthermore, for the post of Principal, experience of 15 years is required. The post-in-question are not the same and different eligibility criteria are prescribed. As such, plea of discrimination cannot, therefore, be raised on the basis of the aforesaid submission by the learned counsel appearing on behalf of the appellants. Few more old instances were sought to be brought to our attention. Though we are not inclined to take the documents handed over from the bar in course of arguments as the College Service Commission has not got opportunity to rebut the same. However, it appears that no document has been placed by the learned counsel appearing on behalf of the appellants to show that any appointment had been made to the post of Lecturer on and from 2008 wherein the incumbent has P.hd/M.Phil qualifications by way of Distance Education Programme.

19. It is also clear that it would amount to perpetuation of illegality in case command issued to the respondents to recognise such substandard educational qualifications, where it has not been recognised so far, and rightly so, in our opinion. More so, writ cannot be issued to perpetuate illegality and to compromise the standard of education. As such, we are not inclined to accept the submissions of the appellants.

20. Resultantly, all the appeals are found to be devoid of merits and are hereby dismissed. Consequently, all applications are dismissed. Interim orders, if any, stands vacated. Parties to bear their own costs.

Joymalya Bagchi, J.

I agree.