

(2013) 04 CAL CK 0098
In the Calcutta High Court
Case No : Writ Petition No. 8103 (W) of 2010

Susmita Sarkar (Das) and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Citation : (2013) 4 CALLT 38

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Abdul Bari and Mr. R.N. Chakraborty, for the Appellant; Pulak Ranjan Mondal for the Respondent Nos. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is at the instance of eight candidates who responded to the advertisement No. 3/2008 dated December 5, 2008 inviting applications for the post of Librarian/Assistant Librarian in different subjects including the subject Library Science under several zones particularly, Burdwan University Zone, Kalyani University Zone, Calcutta University Zone etc. The petitioners applied to the said post contending, inter alia, that they were duly qualified for the said post and, accordingly, they appeared in the interview board. Subsequently, when the College Service Commission published the result, the names of the petitioners had not been incorporated in the said list of selected candidates. The petitioners came to know that their candidatures were not considered in view of the fact that they obtained their M.Phil degrees from different universities through the distance education mode. So, they filed a joint writ petition praying for issuance of a writ of mandamus commanding the respondents to incorporate the names of the petitioners in the selection list, upon taking account of the M.Phil degree of the petitioners and for other consequential reliefs. Now, the question is whether the respondents can act in derogation to the statutory provision and whether the respondents can invalidate a degree which has been recognized by the competent authority.

2. Having heard the learned Counsel for the parties and oil going through the materials on record, I find that it is not in dispute that the writ petitioners obtained their degree of M.Phil in the respective subjects through the distance education system under the different universities.

3. Mr. Abdul Bari, learned Advocate appearing for the petitioner has contended that so far as the requisite qualification for being appointed to the said post is concerned, the petitioners possess the same qualification and, as such they should have been considered along with other candidates appearing for the said post. The respondent authorities did not inform the petitioners of the ground of rejection of the candidatures of the petitioners and under such circumstances, the petitioners had to obtain information under the provision of the R.T.I. Act, 2005 and they came to know that a policy decision had been adopted that the candidates possessing the degrees through distance education, would not be considered. But Dr. Abdul Momin was recommended by the concerned College Service Commission to the post of Principal in Tamralipta Mahavidyalaya and that he obtained the degree from the Netaji Subash Open University. So, the petitioners expected equal treatment.

4. Mr. Bari has also contended that as per latest advertisement in different news papers by the College Service Commission, it was indicated that the candidates with qualification obtained under distance education system, would be allowed to take part in the process and so the prayer of the petitioner should be considered.

5. Mr. Bari has also contended that according to the decision of Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, particularly Paragraph Nos. 18, 19 & 20 the Judges are to interpret the words of statutes, their words are not to be interpreted as statutes. On circumstantial flexibility, one additional or different fact may make a word of different between conclusions in two cases and so disposal of cases by blindly placing reliance on a decision is not proper. So, the decision of Hon'ble Mr. Justice Girish Chandra Gupta shall not be taken as the ratio in all circumstances.

6. On the other hand, Mr. Pulak Ranjan Mondal, learned Advocate appearing for the respondent No. 3 & 4 has contended that the present application being a joint one by different candidates for different posts, is not maintainable at all. They have no common interest in the matter and so, the application is not maintainable. So far as the qualification for the post of Professors in different colleges including B.Ed. Colleges, are concerned, they have been specifically determined by the UGC and those have been described as eligible criteria for different posts appearing as Annexure P-1 at Page No. 26 to the application and such qualifications must be filled up before being selected by the concerned College Service Commission.

7. He has also contended that several litigations were held in this matter and it has been settled that so far as recruitment to the post of Literatures, Librarian etc. in different colleges is concerned, higher education as indicated at Page No.

27 to the application is a must and the candidates must possess good academic records and so, the candidates who have the degrees through the regular course should be preferred to those having the degrees through the distance course. So, the candidates desiring appointment to the aforesaid post must have studied through a regular course and not through the distance regulation as done in the instant cases by obtaining M.Phil degree by distance education. The case of Mr. Momin was considered for the post of the Principal under special circumstances and it would not apply as a general one and as such fresh advertisement had been done in the year 2012 indicating the qualifications required for recruitment to the said post.

8. Mr. Mondal has referred to the decision passed by one of the Hon''ble Judges of this Hon''ble Court, namely, Mr. Girish Chandra Gupta in W.P. No. 609(W) of 2010 wherein, it has been clearly indicated that the candidates having obtained degrees in different courses in the regular courses, have been preferred. Mr. Mondal has referred to the observations made by Hon''ble Justice Girish Chandra Gupta and for convenience the relevant paragraph is quoted below:-

The College Service Commission has consistently followed the course of allowing those candidates who got their educational qualification through the regular course. They have in the matter of following their procedure not used any discriminatory standards. The College Service Commission by no stretch of imagination, can be compelled to appoint the candidates coming out from the Open University or coming through the distance education programme. It is the choice of the College Service Commission, which is supreme. It can not be said that the choice has been made by the College Service Commission unreasonably or illogically.....

No elaborate reasoning is required to show that the traditional way of imparting education is preferable, but it is not practicable in the changed scenario considering the huge population of our country. The College Service Commission has restricted entry to the post of Lecturer to those candidates who have come through preferable mode of education and for that reason they also have the backing of law indicated above. The College Service Commission has acted in a reasonable manner. It is difficult to find fault with them.

9. While dealing with the said matter, Hon''ble Justice Girish Chandra Gupta has discussed the decision of Annamalai University rep. by Registrar Vs. Secy. to Govt. Infn. and Tourism Dept. and Others,

10. Mr. Mondal while referring to the decision of Annamalai University rep. by Registrar Vs. Secy. to Govt. Infn. and Tourism Dept. and Others, has contended that the regulations framed by the UGC to determine standards of education, held, became part of the UGC Act and the same are applicable to both open universities as well as conventional formal universities. The alternative system envisaged under IGNOU Act was not in substitution of the formal system. The distinction lay rather in the mode and manner of imparting education. Hence,

Master's degree awarded in violation of Regulation. 2 of UGC Regulations of 1985 by a university under Open University System without requiring three years' graduate degree, held, void.

11. He has also contended that as per Paragraph No. 59 of the said decision that the provisions of the UGC Act must prevail over the Open University Act.

The Regulations were framed almost at the same time after passing of the Open University Act. The Regulations were framed at a later point of time indisputedly, the Regulations embrace within its fold the matter covered under the Open University Act also.

12. Mr. Mondal has also contended that the process for recruitment adopted pursuant to advertisement of 2008, had already been completed and a fresh advertisement had been made in 2012. So, there is no scope of re-opening the chapter unless there is any gross violation of 12 Rules/Regulation or injustice had occasioned. In the instant case, there is no discrimination which calls for interference.

13. Having due regard to the submissions of the learned Counsel of both the sides and on perusal of the materials on record, I find that so far as the recruitment in question is concerned, the College Service Commission may choose to recruit the best candidates for imparting education to the students and it is prerogative to the concerned College Service Commission to decide whether the candidates holding the regular courses should be preferred for that purpose.

14. I fully agree with the decisions referred to by Mr. Mondal that the concerned College Service Commission was free to adopt such a course which would be better for all the students who are to take education from the expert teachers. I do not find that any discrimination has been done showing that some of the candidates from the open universities were recruited depriving the petitioners. In my view, it cannot be stated that the respondents had acted in derogation to the statutory provisions and that the respondents had made invalidation of a degree awarded by the Open University. The questions framed are, thus, answered.

15. Accordingly, I am of the view that the writ of mandamus as prayed for cannot be granted. Moreover, I find that different candidates from different distinct have filed a joint writ petition and their case cannot be considered as one having common interest in the matter. Their cases are quite different and so individual case should have been preferred had there been actual grievance over the process of selection. For that reason the application is not also maintainable.

16. Accordingly, I am of the opinion that the petitioners have failed to succeed and so the application is liable to be dismissed. Therefore, the application is dismissed.

Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.