

(2001) 12 CAL CK 0034

In the Calcutta High Court

Case No : Appeal from Original Order No. 508 of 2000 and W.P. No. 203 of 2000

W.B. Central School Service Commission and Others

APPELLANT

Vs

Smt. Gita Guha (Dasgupta)

RESPONDENT

Date of Decision : 20-12-2001

Acts Referred:

Constitution of India, 1950 — Article 41

Citation : 106 CWN 1028

Hon'ble Judges : Pranab Kr. Chattopadhyay, J;Asok Kumar Ganguly, J

Bench : Division Bench

Advocate : Chameli Mazumdar and Sima Sengupta, for the Appellant;Milan Kumar Bhattacharjee, Prabir Banerjee, Rabi Lai Moitra and Tulsi Das Maiti, for the Respondent

Final Decision : Allowed

Judgement

Asok Kumar Ganguly, J.—This appeal has been filed by the West Bengal Central School Service Commission impugning the judgment and order dated 18th May, 2000 passed by the learned Single Judge in W.P. No. 2030 of 2000. The relevant facts of the case out of which the present appeal arises are noted below : The respondent, viz. Smt. Gita Guha (Dasgupta) filed a writ petition praying, inter alia, for a writ in the nature of Mandamus and for a direction upon the West Bengal Regional School Service Commission (Southern Region) to issue an appointment letter in her favour and treat the respondent as having been appointed as a Head Mistress on and from the date when the other successful candidates have been appointed by the said Commission and also for fixation of the scale of pay of the respondent as Head Mistress and for other consequential reliefs. The claim of the respondent is that she passed the School Final Examination in the year 1971 from the West Bengal Board of Secondary Education. Thereafter, she passed the Pre-University Examination in Science stream in the year 1973 from the University of Calcutta and she also passed the B.Sc. Examination from the same University in the year 1976 and the B.Ed.

Examination in the year 1978 from the same University. The respondent then switched over to the Arts stream and passed the Special B.A. Examination in the year 1987 from the University of Calcutta.

2. From the certificate, which have been disclosed in the writ petition it appears that in the year 1987, the respondent was allowed to sit in English only for the B.A. Examination and she passed in English only.

3. Thereafter, in the year 1992, the respondent obtained a degree of M.Ed from the Himachal Pradesh University through the same course. Thereafter, in the year 1993, the respondent obtained a Diploma in English in Teaching Course from the Institute of English.

4. The respondent was thereafter, appointed an Assistant Teacher in the Santi Sangha Sikha Mandir Girls Junior High School and the appointment of the respondent was approved by the District Inspector of Schools (S.E.), Calcutta with effect from 2nd April, 1986.

5. But, after obtaining M.A. degree from the Himachal Pradesh University, on the basis of the Correspondence Course, the respondent approached the Education Directorate of the Government of West Bengal for getting her higher pay scale in terms of Memo No. 33-Edn. (E) dated 7th March, 1990. But, the attempt of the respondent was not successful and she was informed that the degree obtained from Himachal Pradesh University on the basis of the Correspondence Course is not recognized by the Government of West Bengal, Education Department, vide G.O. No. 904-SE (Secretary) ACCY dated 19th December, 1994. The respondent ascertained that since the said memo was subsequently set aside by this Hon'ble Court and the Government issued another Memo Being CO. No. 57-AC (ACCY) dated 27th January, 1995, her case should have been considered on the basis of the subsequently memo. But, the grievance of the respondent is that in spite of the said memo, her prayer for getting higher scale was not granted.

6. Being aggrieved thereby, the respondent filed another writ petition before this Hon'ble Court being W.P. No. 2690 of 1997. On such petition being filed, a learned Judge of this Court directed the authorities to allow the higher scale of pay to the petitioner after recognizing her degree obtained from the said Himachal Pradesh University through Correspondence Course. It is the further assertion of the respondent that after the said judgement and order was delivered by a learned Single Judge of this Hon'ble Court, her higher scale of pay was enhanced since the month of May 1996.

7. Thereafter, the respondent found that an advertisement has been inserted in the Newspapers on 18th January, 1999 by the West Bengal Central School Service Commission (hereinafter referred to as the "Appellant Commission") for appointment to the post of Head Master/Head Mistress/Superintendent of the Senior Madrasa etc. The essential qualification demanded in the said advertisement is Master or Honours (Regular Degree). Bachelor in Teaching or Bachelor in Education or Post Graduate Basic Training from any recognized

University or any Training Institute recognized by the Government of West Bengal.

8. Since, the requirement of the essential qualification stipulated by the Commission in the said advertisement is the subject-matter of the controversy, it will be better if the essential qualification demanded in the said advertisement is set out below:

... (i) Essential Qualification :

Master/Honours (Regular/Special) Degree with degree in Bachelor of Teaching/ Bachelor in Education/Post-Graduate Basic Training from any recognised University or any training recognised by the Government of West Bengal as equivalent to Bachelor of Teaching/ Bachelor of Education/Post-Graduate Basic Training...

9. The respondent on seeing the said advertisement purchased a Booklet and appraised herself with the requirement of selection inserted in the said advertisement. Thereafter, the respondent submitted her form and received the Admit Card and she was given a Roll Number and was asked to appear at the Centre of the Examination and the respondent appeared in the said Examination. Further, assertion of the respondent is that her name appeared in the list of the successful candidates under Southern Region and she received a letter dated 23rd June, 1999 from the Assistant Secretary, West Bengal, Regional School Service Commission, Western Region, informing her to appear for interview before the Personality Test Board on 15th July, 1999 and the respondent was asked to bring all her original certificates. In the said letter of interview, it was stated that the same was issued on the assumption that the respondent fulfilled the required qualification and experience in terms of the said advertisement issued by the Commission. If it is found that a candidate does not fulfill those requirements, his/her candidature will be liable to be rejected without showing any reason and the said letter of interview does not convey any promise of appointment.

10. The case of the respondent is that she appeared at the said interview and she was asked to give her consent for appointment to the post of Head Mistress in any School in the Tollygunge Police Station or the Jadavpur Police Station. The further case of the respondent is that on a subsequent visit to the office of the said Commission, she was asked to give her specific consent for accepting the post of Head Mistress in the Santosh Vidya Mandir for Girls. But, as the letter of appointment was not received by the respondent, she made a further enquiry and met the Secretary of the West Bengal Regional School Service Commission, Western Region, on 13th January, 2000 and the respondent came to know that the letters have already been sent in favour of all the successful candidates excepting the respondent. Hence, she filed this writ petition.

11. In the writ proceeding, an affidavit has been affirmed by one Sri Pradip Nath Bhaduri, the Secretary of the appellant-Commission. In the said affidavit, the

stand which has been taken on behalf of the appellant-Commission is that in the advertisement which was published by the said Commission certain essential qualifications were prescribed. The said essential qualifications have been extracted above, it has been admitted that the Admit Card was issued and a written test was conducted and the respondent was called for the written test. It has been made clear in the said affidavit that it was specifically mentioned that the candidature of any candidate was liable to be rejected at any stage if it was found ineligible according to the terms of the advertisement. At the stage of the Interview also the same caution and warning was repeated. In the said affidavit, a clear stand has been taken that since the respondent obtained M.A. Degree in English from the Himachal Pradesh University through the Correspondence Course and since the said qualification has not been recognized, the respondent is an ineligible candidate. It has also been mentioned that the State of West Bengal recognized only the Correspondence Courses of the Burdwan University and the Vidyasagar University and no other Correspondence Course from any University is recognized. It may be noted, in this connection that after the service of the said affidavit on the respondent, she filed another application before the learned Single Judge stating therein that one Ramdayal Upadhyaya having Roll No. 10134 applied for the post of Head Master/Mistress and was appointed a Head Master in the Hindi High School even though Sri Upadhyaya had obtained the Post Graduate qualification from the Himachal Pradesh University through the Correspondence Course.

12. The said fact has also been urged by the learned Counsel for the respondent before this Appeal Court. It was further urged that the said Commission is, therefore, indulging in discrimination by maintaining a double standard by appointing some candidates to the post of Head Master/ Mistress on the basis of the Correspondence Course and denying the same benefit to the respondent.

13. This court will deal with this aspect of matter separately. In the background of the aforesaid factual position, the precise question that falls for consideration before this court is whether the Correspondence Course obtained by a candidate from the Himachal Pradesh University is recognized as a requisite qualification for appointment to the post of Head Master/Head Mistress in terms of the aforesaid advertisement. In this connection, it may be noted that the stand of the Commission is that it is bound by the rules framed by the State Government. The State Government has not recognized such Correspondence Course so the Commission cannot ignore the stand of the State Government by accepting the candidature of a person like the respondent who admittedly got the qualification of Master Degree on the basis of such Correspondence Course.

14. We found that no-body appeared for the State before the learned Single Judge. Therefore, we directed Sri Rabilal Mcitra, learned Advocate of this court, to take instruction and appear before this court. Pursuant to such direction, Mr. Moitra appeared and assisted the Court.

15. On the question of recognition of a degree obtained through Correspondence

Course from the Himachal Pradesh University, there have been divergent views expressed in different judgments of the Court which are noted below.

16. The first judgment on this point was delivered on 10th May, 1996 in the case of Kalidas Gangopadhyay & Ors. vs. The State of West Bengal & Ors., reported in 1996(2) CLJ 42. In that case, the petitioner obtained M-A./M.Sc. degree from the Himachal Pradesh University through the Correspondence Course. In the said case, grievances of the petitioners were that in spite of having obtained the Post-Graduate Degree they were deprived of the Post-Graduate scale of pay in view of the Government Order being C.O. No. 904-AC dated 19th December, 1994.

17. In that case, the learned Judge came to the finding that the Himachal Pradesh University was established by an Act of Legislature, viz. Himachal Pradesh University Act and is a statutory University and the said University is wholly financed by the Government of Himachal Pradesh and the University Grants Commission. The learned Judge also recorded that the said University enjoys the status of A-Class University.

18. The learned Judge while delivering the judgment in Kalidas Gangopadhyay (supra), also relied on the previous judgment of His Lordship in the case of Muchha Mondal Vs. State of West Bengal and others, . In the case of Muchha Mondal, the question which cropped up was that the M.A. Degree obtained through the correspondence Course from the said Himachal Pradesh University is not accepted by the District Inspector of Schools for approving the panel of the English Teacher in which the petitioner figured. In the said judgment, the learned Judge considered that in respect of the other similarly placed teachers, the District Inspector of Schools has accepted the M.A. Degree obtained through the Correspondence Course from the said Himachal Pradesh University. These facts have been noted in para 4 of the judgment. In view of those facts, the learned Judge held that there is no reason not to treat the M.A. Degree of the Himachal Pradesh University awarded through the Correspondence Course as recognized M.A. Degree for all purpose and the learned Judge gave a declaration that the Correspondence course in M.A. Degree of the Himachal Pradesh University is a "valid and potent Degree" like any other degree and gave direction upon the District Inspector of Schools to give due credit to the petitioner for his M.A. Degree obtained from the said Himachal Pradesh University and to approve the panel.

19. The same learned Judge in the case of Kalidas Gangopadhyay scrutinized the Government order dated 19th December, 1994. In the said order was declared the policy decision of the State Government of not recognizing the Degree/ Diploma/Master Degree acquired through the Correspondence Course from any University as equivalent to the regular course conducted by the recognized University. The learned Judge noted in para 8 of the judgment in Kalidas Gangopadhyay that the said impugned memo does not contain any reason in support of the decision and. as such the learned Judge held that the said memo contains an arbitrary decision. The learned Judge also noted that the grant of a

degree by the Correspondence Course is an accepted phenomena and the Correspondence Course introduced by any recognized University is a step in the direction of Article 41 of the Constitution of India. Therefore, the correspondence courses introduced by the University must be a meaningful one and the learned Judge himself held that the degree awarded by the Himachal Pradesh University through the Correspondence Course cannot be treated as farce and the learned Judge held that such degree awarded by the said Himachal Pradesh University to its students is a Valid and potent degree like any other degree awarded to the regular students by any other University and as such, the impugned Government Order dated 19th December, 1994 issued by the School Education Department (Secondary Branch). Government of West Bengal was quashed.

20. There is another judgment on this question dated 3rd September, 1996 in the case of Tapas Kumar Das vs. State of West Bengal & Ors. reported in 1996(2) CLJ 467.

21. In that case, the learned Judge refused to recognize the Master Degree obtained in Mathematics through the Correspondence Course from the Annamalai University and the learned Judge upheld the Government Order dated 19th December, 1994. The learned Judge in coming to his decision came to the conclusion that the degree obtained in a correspondence course and degree obtained on a regular basis from two different classes and they cannot be treated similarly.

22. The learned Judge also dealt with the question whether a court is entitled to arrive at a determination on the equivalence of a degree obtained through the correspondence course and obtained through the regular course. The learned Judge held that the court cannot decide the same and in support of the said finding, the learned Judge relied on various decisions of the Hon'ble Supreme Court of India and also on the decision in the case of Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, . The learned Judge decided in para 14 of the said judgment that it is only a competent body like University which can decide the question of equivalence. The learned Judge also refused to accept the decision in the cases Kalidas Gangopadhyay (supra) and Muchha Mondal (supra). According to the learned Judge, those judgments were not rendered on a consideration of the relevant Supreme Court decisions on the subject and as such that those judgments were delivered "per inquiring" being contrary to the decision of the Hon'ble Supreme Court and as such, not binding.

23. The same question again came up for decision in the case of Kitab Singh Rai vs. The State of West Bengal & Ors., and the judgment was rendered on 6th August, 1997, reported in 1998(1) CLJ 258. In the said judgment, Justice G.R. Bhattacharjee again relied on the previous judgments of His Lordship's in Kalidas Gangopadhyay and Muchha Mondal and held that since the Government Order dated 19th December, 1994 was quashed in the case of Kalidas Gangopadhyay, the same must continue to remain quashed in the absence of any interference by the Appeal Court and cannot be revived in view of the subsequent decision of

this court in the case of Tapas Kumar Das (supra). The learned Judge also came to the conclusion that the law which was settled in Muchha Mondal and Kalidas Gangopadhyay has been accepted by several other learned Judges of this Court and cannot be over-turned by any subsequent decision by any bench of Co-ordinate jurisdiction. The learned Judge in Kitab Singh Rai (supra), considered the judgment of the Hon"ble Supreme Court referred to in the case of Tapas Kumar Das and came to the conclusion that the law settled by the decisions in Muchha Mondal and Kalidas Gangopadhyay is the law on the point and the said judgment is consistent with the Hon"ble Supreme Court's decision and is further reaffirmed in the case of Kitab Singh Rai (supra).

24. The question was also considered by a Division Bench of this court in the case of Swadesh Kumar vs. State of West Bengal & Ors. in an unreported judgment dated on 02.2000 rendered in Writ Petition No. 1050(W) of 1999 with Writ Petition No. 2748 of 1999. In the said case, the question before the Division Bench was whether B.Ed, degree obtained through Correspondence Court can be accepted or not. On the said question, two learned Judges of the High Court expressed two different views. The learned Judges of the Division Bench while delivering the judgment also considered the judgment of the learned Single Bench in the case of Tapas Kumar Das vs. State of West Bengal reported in 1996(2) CLJ 467 and also the judgment of the learned Single Judge in the case of Muchha Monk vs. State of West Bengal reported in 1996(1) of CLJ 306.

25. After noting the said judgments, the learned Judges did not decide the controversy but decided the case on the factual basis. There is another judgment of the Division Bench in the case of Utpal Man vs. Jotirmoy Sen (supra), presided over by the Hon"ble Chief Justice. In that matter the learned Chief Justice wanted to know from the Counsel for the State whether, after the quashing of notification dated 19th December, 1999, any new notification on the subject was issued by the State. The Government Counsel submitted that no such notification on the subject was issued. In view of that submission the learned Judges of the Division Bench came to a finding that the degree obtained through correspondence course from Himachal Pradesh University cannot be denied recognition. However, after arriving of this finding, the matter was remanded to the lramed Single Judge for the disposal in accordance with law. The learned Judges however made it dear that the said judgment cannot prevent the State from passing any fresh order on the subject in accordance with law. Before arriving at the said finding, the learned Judges of the Division Bench noted the judgments in the case of Kalidas Gangopadhyay (supra) and Muchha Mondal and also the judgment of the learned Single Judge in Kitab Singh Rai's case (supra), and also the different view taken by another learned Judge in the case of Tapas Kumar Das (supra). After noting all these judgments, the learned Judges of the Division Bench held since no other notification has been issued on the subject by the State Government the degrees obtained through correspondence course from Himachal Pradesh University cannot be denied recognition. The learned Counsel for the respondent has placed before us strong reliance on the said Division

Bench judgment of this court.

26. It may be noted in this connection that we wanted the State Government to appear in the matter and wanted to know from the State Government whether any notification were issued on the subject and what is the reason or rationale behind such notification. Pursuant to those directions an affidavit was filed by the State, affirmed by Nabendralal Basak, the Principal Secretary, School Education Department, Government of West Bengal. In the said affidavit the stand which has been taken is that G.O. No. 904-SE (Secy) dated 19.12.1994 was quashed by this Hon"ble Court as a result of several judgments. The learned Counsel submitted since the said notification dated 19.12.1994 was quashed by the Hon"ble Court, subsequently, a notification was dated 12th May, 1999 was issued in compliance with the orders passed by this Hon"ble Court In three Writ petitions being W.P. No. 2075 of 1995. W.P. No. 9764 of 1995 and W.P. No. 1948 (W) of 1997. The said notification, which is relevant for our purpose, is set out below:

GOVERNMENT OF WEST BENGAL SCHOOL EDUCATION DEPARTMENT BIKASH BHAVAN, SALT LAKE, CAL.91

No. 484-SE(S)/5P-I/94(pt)

Dated the 12th May, 1999

From : Secretary, School Education Department, Government of West Bengal.

To : The Director of School Education, West Bengal, Bikash Bhavan, 7th Floor, Salt Lake, Calcutta-700091

Sub : W.P. No. 2075 of 1995 W.P. No. 9764 of 1997

W.P. No. 19484 (W) of 1997

Ref. : D.S.E."s Order Nos. 479(6)-LS dated 13/3/97

& 1645{25)-LS dated 19/8/97.

In compliance with the order dated 15/1/98, passed by Hon"ble High Court in the aforesaid matters, the undersigned is directed by the order of the Governor to say that the G.O. No. 904-SE(Secy) dated 19/12/94, since quashed by the Hon"ble High Court may be treated as non-existent and to say that the benefit of pay and allowance may be granted to the petitioners accordingly as ordered by the Hon"ble High Court and to request him to communicate the memo to all D.I. of Schools (SE) for favour of taking necessary action from their and in this respect.

Sd/- Secretary to the Government of West Bengal.

27. From the perusal of the said notification, it appears that the Government considered the said notification non-existent so far as the benefit of pay and allowance was concerned.

28. It appears from the said affidavit of the State Government that after the same was quashed, the joint Secretary, Government of West Bengal issued a subsequent notification dated 21st March, 2000, By the said subsequent notification Joint Secretary of School Education Department Appointment Branch, Bikash Bhavan, Salt Lake made the position of the State Government clear in respect of equivalence of certificate awarded by different Universities. The said notification is to the following effect:

SCHOOL EDUCATION DEPARTMENT APPOINTMENT BRANCH BIKASH BHAVAN,
SALT LAKE, CALCUTTA-700091

No. 316-SE (APPTT.)/10M-51/99

Calcutta, the 21st March, 2000

From : Shri S. Pradhan, Joint Secretary to the Govt. of West Bengal.

To : The Director of School Education, West Bengal.

Sub : Equivalence of Certificates awarded by different organizations.

The undersigned is directed to say that the certificates awarded by the Indira Gandhi National Open University, Vidyasagar University, Burdwan University, Other Universities in this State engaged in providing distant education/ correspondence courses and West Bengal Netaji Subhas Chandra Open University is hereby recognized by this Government.

The undersigned is further directed to say that this Government have no objection to recognize the certificates of the successful candidates of National Open School, New Delhi and Rabindra Mukta Vidyalaya, West Bengal having compulsory subjects in the examination similar to those as in the Madhyamik Examination of the West Bengal Board of Secondary Education or its equivalent.

This order cancels all the previous orders issued in this matter so far.

Joint Secretary

No. 316/1-SE (Apptt.)

Calcutta, the 21st March, 2000

Copy forwarded for information to the :

1. Deputy Secretary, High Education Department of this Govt.
2. Deputy Secretary, Mass Education Department of this Govt.
3. Deputy Secretary, Technical Education & Training Department of this Government.

Assistant Secretary

No. 316/2(6)-SE(Apptt.)

Calcutta, the 21st March, 2000

Copy forwarded for information to the Secondary Branch/Higher Secondary Branch/Primary Branch/Appointment/Establishment Branch/, Budget Branch of this Department for information.

Assistant Secretary.

29. From the perusal of the said notification it is clear that the Government decided to recognize certificates awarded by the Indira, Gandhi National Open University, Vidyasagar University, Burdwan University, other University in the State engaged in providing distant education/ correspondence courses. The Government also recognised Netaji Subhas Chandra Open University for that purpose and also the certificates issued to successful candidates, by National Open University, New Delhi and Rabindra Mukta Vidyalaya, West Bengal which are having compulsory subjects in the examination," similar to those as in the Madhyamik Examination, West Bengal Board of Secondary Education or its equivalent. The said order cancels all the previous orders on the subject.

30. It is obvious that the said notification issued on. 21st March, 2000 could not be considered in all the judgments delivered prior to its issue in the case of Kalidas Gangopadhyay, Muchha Mondal, Tapas Kumar Das and Kitab Singh Rai. Even though the judgment of the Division Bench presided over by the Hon'ble Chief Justice was delivered on 18th June, 2001 and the aforesaid notification was issued on 21st March, 2000 but the same was not placed before the Division Bench.

31. Explaining the rationale behind the said notification dated 21st March, 2000 it has been stated in para 2(e) of the said affidavit that before recognizing the correspondence course of Graduation/Master Degree from any University, the Government wanted to see if the curriculum/syllabus of such correspondence course is designed and taught in such a manner as to be consistent with the curriculum of the subjects taught at Madhyamik and Uchamadhyamik Level of the State of West Bengal particularly with special reference to the Uchamadhyamik (Higher Secondary) level. It was further stated in the said affidavit that the appropriate level of academic competency of the respective subject teacher cannot be otherwise assessed unless the subjects taught at the Graduation/Master Degree level in the correspondence course have a close consistency with the syllabus of the school level curriculum of the State. It has also been stated in the said affidavit that the equivalence of the master degree obtained through correspondence course from Himachal Pradesh University and Other Universities cannot be Judged except by an expert body. In the said affidavit it has also been stated that the State Government has confined its recognition to the correspondence course of only those Universities, which are mostly located in West Bengal and where the courses have some consistency with the courses at school level in West Bengal.

32. The learned Counsel, appearing for the appellant Commission, has urged that

the said Commission is bound: by the provisions of the Act and the rules namely the West Bengal School Service Commission Act, 1997 and the West Bengal School Service Commission Rules, 1997. Reliance was also placed on procedure for selection of persons for appointment to the post of Teachers of Schools. Under the said Rule 3, the required qualification is as follows:

...Master/Honours (Regular Degree with degree in Bachelor of Teaching/Bachelor in Education/Post-Graduate Basic Training from any recognised University or any training recognised by the Government of West Bengal as equivalent to Bachelor of Teaching/Bachelor of Education/Post-Graduate Basic Training; 10 years" continuous teaching experience in approved service in a Higher Secondary/High School/High Madrasah recognised by the West Bengal Board of Secondary Education/West Bengal Council of Higher Secondary Education/West Bengal Board of Madrasah Education on the date of advertisement...

33. The learned Counsel for the Commission submitted that they are bound by those rules which make it clear that Masters/Honours degree with degree in Bachelor of teaching etc., it must be a regular degree from a recognized university.

34. u/s 8 of the West Bengal School Service Commission Act. 1997. it has been made clear that the manner and scope of Selection of persons for appointment to the post of teachers shall be such as may be prescribed. Here the expression teachers include Head Masters and Head Mistress (kindly see Section 2(p) of the Act) and "prescribed" means as prescribed by the rules [kindly see Section 2(k) of the Act].

35. Therefore, the aforesaid rules have been framed under the Act namely under sub-section 1 of Section 8 read with sub-section 1 Clause (d) of sub-section 2 of Section 17 of the said Act and also sub-rule 1 of Rule 7 of the West Bengal Service Commission Rules, 1997.

36. Therefore, going by the said rules, the learned Counsel for the appellant, in our view, rightly contended that it cannot accept a qualification which has not been recognized by the State Government. The learned Counsel further contended and again, in our view, quite rightly that the notification dated 21st March, 2000 was not considered in any of the previous judgments of this court. In view of the aforesaid submission this court is of the view that it cannot issue a direction to appellant Commission to select a candidate for the post of Head Masters/ Head Mistress who does not have the requisite qualification under the aforesaid rules.

37. Now the question comes whether the court can itself come to a conclusion about the equivalence of a degree obtained from correspondence course with a regular degree when it has not been considered so either by the State Government or by any expert body like University or University Grant Commission or the like. On these aspects several judgments have been cited at the bar which are discussed below.

38. On the question of court's recognizing a qualification obtained through correspondence course for university as equivalent to the qualification demanded in the advertisement, the Apex Court has repeatedly held that Courts should not substitute its own opinion for the opinion expressed by the expert body. Reference in this connection may be made to the decision of the Supreme Court in the case of *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, . The question which cropped up was whether the condition of eligibility for admission to B.Ed, degree prescribed can be substituted by another examination which has not been recognized as equivalent. Dealing with this question, Chief Justice Bhagwati in para 7 of the judgment held "it is for each University to decide the question of equivalence and it would not be right for the court to sit in judgment over the decision of the University because it is not a matter on which the court possesses any expertise". The learned Judge held that in such situation the University is well equipped to decide whether any examination held by a University outside the State is equivalent to an examination held within the state having regard to the courses/the syllabus/the quality of teaching or instruction and the standard of examination. The learned Judge further held that this is an academic question in which the court should not disturb the decision of the authority (See para 17)

39. Again in the case of *J. Ranga Swamy Vs. Government of Andhra Pradesh and Others*, , this question was considered in a slightly different context. In that case, the petitioner's grievances are that even though he did not have a doctorate in Nuclear Physics, but the petitioner asserted that, for efficient discharge of his duties the diploma in Radiological Physics from Bhabha Atomic Research Centre (BARC) is more relevant than a doctorate in nuclear physics. In that context, the learned Judges of the Supreme Court held that it is not for the court to assess the comparative merit of such a doctoral thesis and the diploma by BARC. The matter was allowed to rest with the appropriate authorities namely University; Government or" the Indian Medical Council.

40. In another recent judgment in the case of *Director, Director, A.I.I.M.S. etc. Vs. Dr. Nikhil Tandon and Others*, . the learned Judges of the Supreme Court on dealing with the question of whether two years training at Cambridge University undergone by the respondent while working for his Ph.D. can be treated as a qualification which is recognized as equivalent to DM. The learned Judges further held that in such matters courts are not to interfere. Apart from that the learned Judges also held that it is not enough if the qualifications are equivalent. It must also be recognized as equivalent. In this context, recognized means recognized by the institution or at least by the Medical Council of India and the word recognized must have to be read and understood in the context of the recruitment rules. Going by those tests, it is clear unless a particular qualification is recognized in the recruitment rules as equivalent, it is not for the court to intervene without the necessary expertise to hold that the same is equivalent. This appears from a proper reading of para 12 of Tandon (supra).

41. Again in the case of Post Graduate Institute and Others Vs. Dr J.S. Dilawari and Others, , it has been held that in cases of prescription of qualification having regard to the job requirement, it is proper for the court to abide by the requirement determined by the appropriate body under the act and the rules and regulations and the court should not, in these areas, venture to alter the said requirements under the rules on the basis of its own assessment of equivalence of a qualification which is not recognized as equivalent by the authority.

42. Again in another recent judgment in the case of The The Commissioner, Corporation of Madras Vs. Madras Corporation Teachers' Mandram and others, , the Supreme Court held that it is a well-settled legal position that it should be left to the executive policy of the Government to prescribe the qualification of the post and the court or tribunal should not give any direction in this matter.

43. In the instant case, as noted above, the Government has not recognized the degrees obtained from Himachal Pradesh University on the basis of correspondence course as equivalent to a regular degree and the reasons for not doing so, has been explained in the Government's affidavit. In the background of these factual position, it is not open to the court to hold that the degree obtained from Himachal Pradesh University on the basis of correspondence course is equivalent to a regular degree.

44. The learned Counsel for the respondent has, however, relied on a few decisions. The first of which in the case of Mohd. Shujal Ali vs. Union of India, reported in 1974 SC 1631 is in support of his contention that the court can interfere on the question of forming opinion by the State about the equivalence of an education qualification. In support of his contention, the learned counsel relied on para 13 of the judgment and contended that where the decision of a Government is shown to be based on extraneous or irrelevant considerations or is actuated by mala fides or irrational and perverse consideration or is manifestly wrong, the court would strike down the decision of the Government. There can be no dispute with the aforesaid proposition. But, in the said para, the learned Judges made it clear that where the decision of the Government rests on some assessment by an expert body, the court should not interfere. In the instant case, the learned counsel for the respondent has not been able to point that the decision of the Government is based on any extraneous consideration bordering on mala fides of the authorities. In fact, no such case has been made out in the writ petition nor in the course of argument before us. On the other hand, from the affidavit which has been filed in this case by the State Government it appears that the decision of the State Government is based on some logic and reasons and it is not wholly without any reason. The said stand of the State Government has already been noted above which need not be repeated. Therefore, in the facts of this case this court is of the opinion that the court in the absence of proper material should not interfere with the decision of the State Government in which it has refused to recognize the correspondence course degree granted by Himachal Pradesh University as equivalent to a regular

degree.

45. The other decision cited by the learned Counsel for the respondent was in the case of Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, . The main question which came up in the said case is whether the process of evaluation of answer papers or of subsequent verification of marks does attract the principle of natural justice. The learned Judges held that the principle of natural justice cannot be extended beyond the reasonable limit and cannot be carried to an absurd length to give the candidates who sat for the examination a chance to participate in the process of evaluation of their performances and to verify the correctness of the evaluation. The learned Judges were examining the vires of Regulation 104(3). This Court is unable to appreciate the relevance of discussion in para 14 of that judgement to the facts of the present case. Para 18 is also devoted to discussing the question of constitutionality of the impugned regulation and the learned Judges formulated the tests to Judge the constitutionality of the regulation. In the instant case, the vires of any regulation is not in issue. Therefore, the said decision is not applicable in this case.

46. The learned Counsel for the respondent has, however, stated that there is one candidate namely Ram Dayal Upadhyay in whose favour the Commission has adopted a double stand. After hearing the said complaint we directed the Commission to file a fresh affidavit dealing with this question. In the said affidavit filed by the Commission, the stand of the Commission is that may be that in the case of Ram Dayal Upadhyay inadvertently an error is committed. But, the said error cannot justify the contention of the respondent. This court is of the view that such error gives rise, to heart burning and a feeling of discrimination in the respondent and the Commission should not be allowed to gloss over its errors in a matter like this.

47. Therefore, this court is of the view that the matters relating to the recruitment of Head Masters must be on the basis of the rules. The court must show due deference to the wisdom of the authorities who have framed the relevant rules relating to recruitment. A person is not entitled to be recruitment if he/she is not qualified orr the basis of the recruitment regulations discussed above.

48. So this court gives the direction to the said Commission, to review the case of appointment of Ram Dayal Upadhyay upon proper notice to him. In him connection reference may be made to the decision of the Supreme Court in the case of State of Madhya Pradesh and Ors. vs. Mahesh Kumar & Ors. reported in 1997 SCC 95. In that case the learned Judges came to the conclusion that in a case where grace marks given to a candidate in a departmental examination were withdrawn without affording the person affected any opportunity to make a representation such withdrawal of grace mark does not in any way affect any right of the person concerned inasmuch as nobody has any right to get grace mark.

49. In the instant case, if it is held by the Commission on a review of the selection process of Ram Dayal Upadhyay that the said appointment has been made by way of inadvertence or mistake, in that case no right has accrued to an appointee where appointment is an act of mistake by the Commission. Even then the court directs the Commission to give a notice to Upadhyay while reviewing the validity of his appointment. Upon review the Commission must act strictly in accordance with the advertisement and the recruitment rules.

50. While considering the facts of this case, the court cannot but be painfully aware of the falling standards of education in this State. The court is also conscious of the requirement to improve such standards. However, this court is happy to take judicial notice that some effort is being made at the appropriate level to stem the rot. It is a very difficult process but the court is happy to see that the process has already started. The court only hopes that the process should be a little more pronounced and expeditious.

51. In the background Of the existing falling standards, the court should not further dilute the same by recognizing a qualification based on correspondence course and which has not been recognized either by the State or by any expert body. In our considered view if the Court does that, it would be an exercise of judicial power in derogation of public, interest.

52. The Court, therefore, holds that in none of the cases, namely, in the Single Bench judgments by the learned Judge in the case of Muchha Mondal Kalidas Gangopadhyay. or Kitab Singh Rai, the provision of the said act and the rules framed thereunder could be considered, nor could the learned -Single Bench in those cases consider the impact of Government order dated 21st March, 2000. Therefore, those decisions of the learned. Single Judge are not and cannot be an authority on the facts which have been considered in this ease. That apart, having regard to the pronouncements of Supreme Court discussed above and. to which the attention of this court was drawn by the learned counsel for the appellant, this court is of the view of that the learned Single Judge in those three cases did not properly appreciate the jurisdiction of a writ court in the matter of pronouncing on the equivalence of an educational qualification which has not been so declared either by the State or by the University. With due respect, this court is of the opinion that in those judgments the learned Single-Judge ventured in a territory which is a little beyond the domain of the court. Therefore, we do not feel inclined to follow the ratio of those judgments and in our view the law in those judgment has not been correctly laid down.

53. So Tar as the Division Bench presided over by the Hon''ble Chief Justice in the case of Utpal Man is concerned, we are of the view that the Hon''ble Chief Justice also did not have the occasion to consider either the Act or the recruitment rules which we are considering in this case. Nor was the Division Bench informed, despite Their Lordships'' enquiry, that the State Government has come out with a recent Government order dated 21st March, 2000 which exists independently of the previous Government order dated 19th December,

1994. Therefore, the Division Bench did not have occasion to consider all these aspects of the matter.

54. We are of the opinion that even if the Government order dated 19th December, 1994 remains quashed, that will not affect the decision of the Commission taken in this case as it is guided by the recruitment rules and the subsequent Government order dated 21st March, 2000. This court however, directs that in order to find out whether Post-Graduate degree in English given by the Himachal Pradesh University on the basis of correspondence course can be recognized as valid degree by the State or not, the State Government should send the entire matter with all the relevant records to the University of Calcutta within a period of eight weeks from today and thereafter, the University of Calcutta is directed to decide this question of equivalence and give its reasoned findings within six months from the date of receiving the records from the State of West Bengal. If the University ultimately holds that it is an equivalent degree and should be recognized by the State Government, the State Government should immediately issue a notification to that effect.

For the reasons aforesaid the appeal is, therefore, allowed with the directions as above. The judgment of the learned Single Judge is set aside.

There will be no order as to costs.

Pranab Kumar Chattopadhyay, J.

I agree.

Later - Xerox certified copy of this judgment and order be given to the parties expeditiously, if applied for.