

(2010) 06 CAL CK 0003

In the Calcutta High Court

Case No : G.A. No. 1611 of 2010 and A.P.O.T. No. 300 of 2010 (Arising out of W.P. No. 238 of 2010)

West Bengal College Service Commission and Others

APPELLANT

Vs

Mandira Ghosh and Another

RESPONDENT

Date of Decision : 22-06-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : 114 CWN 1092

Hon'ble Judges : Syamal Kanti Chakrabarti, J;Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : Pulak Ranjan Mondal, for the Appellant; Kamalesh Bhattacharyya and M. Rahaman, P.K. Ghosh and Amrita Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Syamal Kanti Chakrabarti, J.—Assailing the judgment and order dated 9th March, 2010 passed by a learned Judge of this Court in W.P. No. 238 of 2010, West Bengal College Service Commission authorities preferred the appeal and filed the application for stay in connection with the said appeal. By the aforesaid impugned judgment and order under appeal, learned Single Judge was pleased to set aside the communication dated 15th February, 2010 made to the writ petitioner deleting her name from the panel prepared for appointment to the post of Lecturer in Sanskrit and the matter was remanded back to the highest authority of the West Bengal College Service Commission namely, the Chairman of the Commission to take a fresh decision not only in accordance with law but in the light of the observations made therein and also taking into consideration the certificates of the Jadavpur University. Being aggrieved by and dissatisfied with the said decision, West Bengal College Service Commission has preferred the appeal challenging the propriety and legality of the aforesaid findings of the learned Single judge and also filed the application for stay in connection with the said appeal. We have heard the Learned Counsel of the respective parties at

length in connection with both the appeals and the connected Stay Application. In the instant case, the respondent/writ petitioner, Smt. Mandira Ghosh obtained her degree of Bachelor of Arts with Honours in Sanskrit in 2001 and she also obtained her degree of Master of Arts in Sanskrit in 2005 as well as M. Phil degree in Comparative Literature from the Jadavpur University.

2. The appellant-West Bengal College Service Commission issued an advertisement being No. 3/2008 on 5th December, 2008 inviting applications from eligible candidates for the purpose of appointment to the post of Lecturer/Librarian for Non-Government Colleges and Teachers Training Colleges affiliated to the State University of West Bengal. In response, the said respondent/writ petitioner applied for the post of Lecturer in Sanskrit under the North Bengal University zone. The writ petitioner was called to appear before the interview board on 1st July, 2009 by the Secretary of the Commission and thereafter, on 25th November, 2009 the appellant-Commission published a merit list in respect of Lecturer in Sanskrit and the name of the said writ petitioner appeared at Serial No. 3 of the panel.

3. On 15th February, 2010, the said writ petitioner went to the office of the West Bengal College Service Commission to enquire about the counselling while she came to know that her name was deleted from the panel and the same has been duly intimated by the letter dated 9th February, 2010.

4. Being aggrieved by such decision taken by the appellant-Commission without giving her any opportunity of being heard, the respondent/writ petitioner filed the writ petition (W.P. No. 238 of 2010) which was finally disposed of by the judgment and order under appeal passed by the learned Single Judge.

5. The relevant observations of the learned Single Judge made in the judgment and order under appeal are quoted hereinbelow:

"However, the fact remains that the West Bengal College Service Commission has proceeded to treat the M. Phil, in comparative literature as being a subject alien to the advertisement which, inter alia, requires that a candidate should possess Ph.D. or M. Phil, degree in the concerned subject. In the instant case, the concerned subject is Sanskrit. Considering the aforementioned Certificates of the Jadavpur University and the observations made by this Court, this Court is now of the view that the Commission should "re-adjust their thinking caps" and take a fresh decision in accordance with law?"

6. Mr. Pulak Ranjan Mondal, Learned Counsel representing the appellants submitted that the respondent/writ petitioner did not fulfil the eligibility criteria by not obtaining the degree of M. Phil in the concerned subject namely, Sanskrit and, therefore, the said writ petitioner cannot claim herself eligible for the post of Lecturer in Sanskrit. Mr. Mondal further submitted that the eligibility criteria specifically mentioned in the advertisement clearly provides that a candidate seeking to apply for the post of Lecturer must possess M. Phil, degree in the concerned subject and not in any other equivalent/allied subject.

7. In the present case, respondent/writ petitioner obtained M. Phil, degree in Comparative Literature from Jadavpur University and not in Sanskrit. Therefore, according to Mr. Mondal, in view of the specific eligibility criteria mentioned in the advertisement, candidature of the respondent/writ petitioner cannot be considered in respect of any post of Lecturer in Sanskrit subject.

8. Mr. Mondal referred to the clarification issued by the University Grants Commission under Memo dated 14th June, 2007 and submitted that the M. Phil/ Ph.D. should be in the concerned subject for appointment as a Lecturer. In the said letter, however, it has been specifically mentioned that the relevance of the subject is to be decided by the concerned University as per its requirements. The aforesaid written communication of the University Grants Commission dated 14th June, 2007 is set out hereunder:

University Grants Commission Bahadur Shah Zafar Marg

New Delhi 110002

No. R. 1-3/2007 14th June, 2007

The Vice-Chancellor University of Calcutta Kolkata-700073

Sub: Clarification for the appointment as Lecturer regarding

Sir,

With reference to your D.O. Letter No. U-7/177/2007 dated 27.04.2007 addressed to Prof. Sukhadeo Thorat, Chairman, U. G. C. on the above subject, I am directed to say that M. Phil/Ph.D. should be in the concerned subject for the appointment as Lecturer. However, the relevance of the subject is to be decided by the concerned University as per its requirements.

Yours faithfully, Sd/-

(Mrs. Shashi Munjal)

Under Secretary.

9. From the above clarification of the University Grants Commission dated 14th June, 2007 it is crystal clear that sufficient liberty is granted to the concerned University to decide relevancy of a subject according to its requirement. Therefore, it is the University concerned which will decide the proficiency of a candidate required for teaching in a particular subject for which he or she may be appointed as a Lecturer. The ultimate authority in this regard is the University and not the Commission. There is no dispute that the Interview Board in the instant case called the candidate for interview on 1st July, 2009 and having been satisfied on the performance of the candidate recommended her name for appointment as Lecturer in Sanskrit treating her M. Phil, in Comparative Literature as equivalent to M. Phil, in Sanskrit. Accordingly, her name was included in the merit list published on 25th November, 2009 against Serial No. 3. Such a decision taken by the Interview Board is quite consistent with the spirit of

the clarification made by the University Grants Commission and under such circumstances, appellant-West Bengal College Service Commission which constituted the Interview Board cannot ignore or reject the recommendation of its own constituted expert body.

10. There is no dispute that the respondent/writ petitioner passed B.A. Examination with Honours and also M.A. with Sanskrit. The respondent/ writ petitioner being a student of Jadavpur University knew that the M. Phil, degree in Comparative Literature is equivalent to that of Sanskrit and, therefore, submitted application for the post of Lecturer in Sanskrit pursuant to the advertisement issued by the West Bengal College Service Commission upon realising that she had the requisite qualifications for the post of Lecturer in Sanskrit.

11. The learned Single Judge in the impugned judgment and order under appeal also considered the certificate issued by the Head of the Department of Sanskrit, Jadavpur University dated 25th February, 2010 wherein it has been specifically mentioned as hereunder :

"" JADAVPUR UNIVERSITY, CALCUTTA - 700 032, INDIA

Ref. No. R.1-3/2007 25.02.2010

To whom it may concern

This is to state that any candidate who has completed M. Phil in Comparative Literature is eligible for a teaching post in Sanskrit and Vice Versa.

Sd/-

Sd/-

Head, Department of Comparative Literature Jadavpur University

Head, Department of Sanskrit Jadavpur University

12. By the written communication dated 2nd/3rd March, 2010, the Registrar of Jadavpur University also mentioned the relevant resolution of the Faculty Council for P.G. and U.G. Studies in Arts of Jadavpur University on the issue relating to equivalence of M. Phil, degree. The said written communication of the Registrar, Jadavpur University dated 2nd/3rd March, 2010 addressed to the respondent/ writ petitioner is set out hereunder:

"JADAVPUR UNIVERSITY, CALCUTTA-700032, INDIA

Ref. No. R.11/50/10 Dated : March 2nd/3rd March, 2010

Ms. Mandira Ghosh

C/o. Shri Aveek Majumder

Department of Comparative Literature

Jadavpur University

Dear Madam,

Sub : M. Phil Degree Equivalence

This has reference to your appeal to the Vice-Chancellor dated 28.02.2010 on the captioned subject.

In this connection, I have been directed to reproduce the relevant resolution of the Faculty Council for P.G. and U.G. Studies in Arts, Jadavpur University, passed in the meeting held on 24.02.2010.

1.b) "RESOLVED and confirmed that the M. Phil degree in Comparative Literature is equivalent in merit to that in Sanskrit.

"FURTHER, the Faculty Council of Arts, Jadavpur University, considers the candidates with an M. Phil degree in Comparative Literature eligible to apply for a teaching post in the Department of Sanskrit and vice-versa."

The above is for your information please.

Thanking you,

Yours faithfully,

Sd/-

Registrar

13. It is for the University to decide whether the degree conferred to a student can be regarded as equivalent to any other degree conferred by any other University in respect of any subject. The appellant-West Bengal College Service Commission prescribed the qualification for the post of Lecturer wherein it has been specifically mentioned that the candidates having M. Phil degree in the concerned subject is not required to qualify NET or SET.

14. The respondent/writ petitioner herein undisputedly, did M. Phil. and, therefore, claimed the aforesaid benefit. The West Bengal College Service Commission, however, refused to treat the M. Phil, degree of the writ petitioner in Comparative Literature as the requisite M. Phil, degree for the post of Lecturer in Sanskrit. Since the University concerned namely, Jadavpur University authorities made it clear that M. Phil, degree in Comparative Literature is equivalent to M. Phil, degree in Sanskrit, appellant-West Bengal College Service Commission has no authority to disregard the aforesaid opinion expressed by the University awarding the degree and refusing to treat the said respondent/writ petitioner as eligible candidate for the purpose of appointment to the post of Lecturer in Sanskrit.

15. The West Bengal College Service Commission, in our opinion, has wrongfully and illegally deleted the name of the respondent/writ petitioner from the panel prepared for the post "of Lecturer in Sanskrit specially under North Bengal University zone without appreciating the certificates issued by the competent

authority of Jadavpur University.

16. Mr. Mondal, Learned Counsel of the appellants submitted that many candidates having equivalent degree did not apply for the post of Lecturer since the same was not specifically mentioned in the advertisement issued by the West Bengal College Service Commission and the interests of the said candidates will be prejudiced if the judgment and order under appeal passed by the learned Single Judge is allowed to be sustained. Mr. Mondal further submitted that the specific provisions of Article 14 and 16 of the Constitution of India will be violated in the facts of the present case if the respondent/writ petitioner is considered for the post of Lecturer in Sanskrit upon treating the M. Phil, degree in Comparative Literature of the said respondent/writ petitioner as equivalent to the M. Phil, degree in Sanskrit.

17. We do not appreciate the aforesaid arguments advanced on behalf of the appellants herein as the learned Single Judge while deciding the writ petition only considered and adjudicated the issue raised by the respondent/writ petitioner. If any other candidate having equivalent degree and necessary qualification had chosen not to submit application presumably being misguided by the advertisement then such a candidate should blame himself and not the Court and this Court cannot reach to any unknown candidate for protecting its interests in this regard.

18. For the aforementioned reasons, we are satisfied that the learned Single Judge has considered the issues raised before it strictly in accordance with law and we do not find any illegality and/or infirmity and/or irregularity in the said judgment and order under appeal passed by the learned Single Judge.

19. In the aforesaid circumstances, we refuse to interfere with the judgment and order under appeal passed by the learned Single Judge. Accordingly, we vacate the interim order and dismiss the appeal as well as the connected Stay Application since we do not find any merit in the same.

20. In the facts of the present case, there will be, however, no order as to costs. Xerox signed copy of this order duly countersigned by the Assistance Registrar be supplied to the parties on the usual undertaking.

Pranab Kumar Chattopadhyay, J.

21. I agree.