

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 10th September, 2010*

+ **WP(C) 4536/2010**

SUNIL BHATNAGAR ...Petitioner
Through : Mr.A.K.Trivedi, Advocate

Versus

KENDRIYA VIDHALAYA SANGATHAN
& ANR. ...Respondents
Through: Mr.S.Rajappa, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. Acquiring a graduation degree and a B.Ed. degree from Maithli Vishwavidyalaya Peeth Central University, misguided by the fact that the said university was recognized by the University Grants Commission and confident of having empowered himself with knowledge and degrees, the petitioner applied for being appointed as a primary teacher when the Kendriya Vidyalaya Sangathan i.e. the first respondent invited applications from eligible applicants, stating in the advertisement that the essential educational qualifications prescribed by the recruitment rules was a graduate degree as also a B.Ed. degree from a recognized institution. The petitioner successfully cleared the selection process and was appointed as a primary teacher. The next year i.e. in the year 1986 he submitted an application when the first respondent advertised and invited application from

eligible persons to be appointed as a Trained Graduate Teacher, for which post prescribed education qualifications were the same as that of a primary teacher. Petitioner applied and was successful in the selection process and was appointed as a TGT in the year 1986.

2. He submitted his original degree certificates for verification when he was appointed as a primary teacher and nobody raised any objection that the Maithli Vishwavidyalaya Peeth Central University was not recognized by the University Grants Commission and thus the B.Ed. degree relied upon by the petitioner could not make him eligible as the requirement was of obtaining the degree from a recognized institution.

3. Petitioner rendered unblemished service, firstly as a primary teacher for one year and then as a TGT for 21 years, when on 20.11.2007 a charge sheet was issued to him alleging that the petitioner deliberately suppressed the information that the B.Ed. degree obtained by him from Maithli Vishwavidyalaya Peeth Central University was not a valid degree as the said university was not recognized by the University Grants Commission. It be noted that the respondent No.1 issued the charge sheet because a question had been raised in Parliament in the year 2007 pertaining to the degrees issued by Maithli Vishwavidyalaya Peeth Central University and the Minister for Human Resource Development had responded that University Grants Commission had not accorded any recognition to the said university and then various education institutes started re-scrutinizing their record and in the process it got detected that the B.Ed. degree submitted by the petitioner was from Maithli Vishwavidyalaya Peeth Central University.

4. Now, as noted above, the charge was of deliberately suppressing the fact that Maithli Vishwavidyalaya

Peeth Central University was not recognized by the University Grants Commission and the B.Ed. degree relied upon was not a valid degree.

5. The petitioner denied the charge of suppression and stated that he bona fide believed that Maithli Vishwavidyalaya Peeth Central University was a recognized university. He stated that he had worked for 22 years without any blemish. He prayed that time be given to him to acquire a B.Ed. degree from a recognized university.

6. We may note that to prove his bona fides, the petitioner enrolled with M.D. University Rohtak, which is a university recognized by the University Grants Commission, for the B.Ed. course, which he has since successfully completed in the current year and in the month of April a B.Ed. degree stands conferred upon him.

7. Reverting back to the facts, the Inquiry Officer held in favour of the petitioner on the charge of having suppressed that Maithli Vishwavidyalaya Peeth Central University was not a recognized university. The Inquiry Officer held that there was no evidence from which it could be gathered that the petitioner knew that the University was not granted recognition by the University Grants Commission. But he held, for which there was good evidence, that the B.Ed. degree obtained by the petitioner could not be treated as a valid degree.

8. Acting upon the report of the Inquiry Officer, vide order dated 3.9.2008 the Disciplinary Authority inflicted the penalty of removal from service. The statutory appeal failed when order dated 23.12.2008 was passed by the Appellate Authority dismissing the appeal. Further challenge taken by the petitioner before the Central Administrative Tribunal failed when OA No.329/2009 was dismissed by the Tribunal vide

impugned order dated 16.11.2009. The Tribunal relied upon the decision of the Supreme Court reported as Pramod Kumar Vs. UP Secondary Education Services Commissioner & Ors. 2008 (7) SCC 153 wherein a similar B.Ed. degree issued by the same university was held to be not a valid degree and the action taken by the authorities to disengage the services of Pramod Kumar was held valid.

9. The petitioner sought review of the order dated 16.11.2009 by filing RA No.94/2010 pointing out that in a similar matter the same Bench of the Tribunal has granted relief. RA No.94/2010 was dismissed vide impugned order dated 23.4.2010 observing that the decision relied upon by the Bench to seek review had not considered the decision of the Supreme Court in Pramod Kumar's case (supra) as the same was not brought to the notice of the Tribunal and had it been so done, the Tribunal would not have passed the order relied upon.

10. It may be noted at the outset that Pramod Kumar was appointed on 29.11.1988 and the issue of his B.Ed. degree not being valid arose in the month of February 1993 when it was detected by the inter-college where he was placed after selection and on 18.2.1993 a notice was issued to him.

11. Holding that a person must be eligible by the prescribed cut-off date, holding that the B.Ed. degree then obtained by Pramod Kumar i.e. in the year 1988 was not a valid degree, the Supreme Court held against Pramod Kumar.

12. With respect to the plea of Pramod Kumar that he had since obtained a B.Ed. degree from M.D. University Rohtak, the Supreme Court, in para 8 of its decision, observed as under:-

“He prayed for appearing in the said examination in B.Ed. correspondence examination from Maharshi

Dayanand University, Rohtak (Haryana). Allegedly, such permission was granted and he obtained a requisite degree. Before us, however, only a mark-sheet issued by the Controller of Examination of Maharshi Dayanand University, Rohtak has been placed. Whether the correspondence course for B.Ed. degree granted by the said university is valid and recognized by the State of U.P. or not is not known.”

13. As against Pramod Kumar where the error got detected within 5 years of Pramod Kumar joining service, in the instant case the error has got detected after 22 years. As noted by us the petitioner joined service in the year 1985 and the error was detected in the month of November 2007. By said year the petitioner became 49 years of age and we take judicial notice of the fact that the petitioner became overage for being employed as a teacher under the Government or any institute recognized by the Government. We take note of the fact that in all States schools have to be affiliated with the State Education Boards or the Central Board for Secondary Education and as per the rules notified in each State the teachers must possess the requisite educational qualifications and an upper age limit is prescribed, which normally is 27 years.

14. Having rendered 22 years meritorious service and in view of the fact that as of now the petitioner has obtained the B.Ed. degree, we distinguish Pramod Kumar’s decision and hold that the same is not applicable for the reason Pramod Kumar, evidenced by para 8 of the decision of the Supreme Court, could not successfully establish his having obtained a valid B.Ed. degree, but the petitioner has been able to show evidence.

15. It is not a case where the petitioner acted with deceit or conceit. The Inquiry Officer has held in his favour on said issue. He is a victim of circumstances. He has served

the cause of education for 22 years and has contributed to the enrichment of knowledge in the country and unlike Pramod Kumar who was young enough when his services were discontinued, the petitioner has been thrown by the road side and would find no shelter on account of his being overage.

16. Even the respondents have contributed to what has happened and their negligence has to be factored in the final decision. Had the respondents been vigilant, the petitioner would have realized in the year 1985 itself that he needed to obtain a degree from an institution recognized by the University Grants Commission. In the year 1985 age was on his side. The future had yet to be lived. He could have made a meaning for his life. Today, the future has become the past and there is contributory negligence, in the metamorphoses, of the respondents.

17. Special and peculiar facts of the instant case create special equities in favour of the petitioner requiring appropriate relief to be granted.

18. Noting that what was done by the respondents was technically correct but substantively wrong in the context of the special equities in favour of the petitioner and further noting the fact that in the month of April 2010 the petitioner had obtained the necessary B.Ed. degree from a recognized university we dispose of the petition quashing the impugned order dated 23.4.2010 as also the impugned order dated 16.11.2009 passed by the Tribunal and allow OA No.329/2009 and quash the order dated 30.9.2008 passed by the Disciplinary Authority imposing the penalty of removal from service. We also quash the order dated 23.12.2008 passed by the Appellate Authority. We direct that the petitioner would be re-inducted in service but without any back wages. However, the period post removal from service till

reinstatement would be treated in service for purposes of pension and annual increments. We are declining back wages for the reason we have granted relief to the petitioner on equities and as a special case and keeping in view that technically speaking he could not be taken back as a teacher but for his having obtained the necessary B.Ed. degree in the month of April 2010 i.e. attained eligibility for re-induction as a teacher in the said month.

19. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

SEPTEMBER 10, 2010

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