

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

% *Judgment Reserved on: July 02, 2013*

Judgment Pronounced on: July 17, 2013

+ **W.P.(C) 3822/2013**

GOVT. OF NCT OF DELHI & ANR. Petitioners

Represented by: Ms.Zubeda Begum, Advocate

versus

RAJINDER PRASAD SINGH & ORS. Respondents

Represented by: Mr.M.C.Dhingra, Advocate for
R-1.

Ms.Mamta Tiwari, Advocate for
Mr.Amitesh Kumar, Advocate for
R-2.

None for respondents No.3 & 4.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. Regretfully, half facts, and these two incorrectly stated have been disclosed in the pleadings. Half facts which were most relevant and crucial have not been disclosed by either party in their pleadings. Fortunately for us, said half facts are recorded in a decision pronounced by a Single Bench of Patna High Court reported as 2001 (2) PLJR 536 National Teacher Training College, Arer & Ors. v The State of Bihar & Ors. which has been upheld by a Division Bench.

2. In the year 1982, *Bihar Non-Government Physical Training Colleges and Non-Government Teachers' Training Colleges and Non-Government Primary Teachers' Training Colleges (Control and Regulations) Act, 1982* (hereinafter referred to as the 'State Act') was enacted to provide for the control and regulation of non-government physical training colleges, non-government teachers' training colleges and non-government primary teachers' training colleges in the State of Bihar. Section 2 of said Act prohibited any person, institution or committee to organize, maintain, manage or promote any school or college for undertaking, conducting, providing or imparting teachers' training without obtaining prior permission from the State Government.

3. In the year 1987, a registered society established the National Teachers Training College (hereinafter referred to as the 'College') in the State of Bihar without obtaining prior permission from the State Government.

4. Though the State Act did not contain any provision pertaining to grant of recognition of an institution by the State Government, on July 7, 1987 the college applied to the State Government for grant of recognition contemplated under Section 2 of the State Act.

5. While the aforesaid application was pending, the *National Council for Teacher Training Act, 1993* (hereinafter referred to as the 'NCTE Act') came into force on July 1, 1995. It is a central legislation.

6. At this juncture, it would be relevant to note Sections 14 and 17 of the NCTE Act. The two Sections read as under:-

“14. Recognition of institutions offering course or training in teacher education –

(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations:

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

(2) x x x x x x x x

(3) On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall-

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfills such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by the regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or

(b) if it is opinion that such institution does not fulfill the requirements laid down in sub-clause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing:

Provided that before passing an order under sub-clause (b), the Regional Committee shall provide a reasonable

opportunity to the concerned institution for making a written representation.

17. Contravention of provisions of the Act and consequences thereof:

(1) Where the Regional Committee is, on its own motion or on any representation received from any person, satisfied that a recognized institution has contravened any of the provisions of this Act, or the rules, regulations, orders made or issued thereunder, or any condition subject to which recognition under sub-section (3) of section 14 or permission under sub-section (3) of section 15 was granted, it may withdraw recognition of such recognized institution, for reasons to be recorded in writing:

Provided that no such order against the recognized institution shall be passed unless a reasonable opportunity of making representation against the proposed order has been given to such recognized institution:

Provided further that the order withdrawing or refusing recognition passed by the Regional Committee shall come into force only with effect from the end of the academic session next following the date of communication of such order.” (It may be noted here that the “appointed day” referred to in Section 14 (1) of the NCTE Act is August 17, 1995)

x x x x x x x x

4. If an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition under sub-section (1) or where an institution offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central

Government, any State Government or University, or in any school, college or other educational body aided by the Central Government or any State Government.” (Emphasis Supplied)

7. On September 1, 1997 the college requested the State Government to forward its application for recognition to the Eastern Regional Committee constituted under the NCTE Act for the purposes of granting recognition to the colleges.

8. However, on November 25, 1997 an order came to be passed by the State Government granting recognition to the college with effect from 1987-88. Vide letter dated December 4, 1997 the State Government communicated its decision of grant of recognition to the L.N. Mithila University (hereinafter referred to as the ‘University’) and Regional Committee. Under what circumstances order dated November 25, 1997 came to be passed remains a mystery.

9. In view of grant of recognition by the State Government, the University granted affiliation to the college on December 11, 1997.

10. Thereafter, on December 17, 1997 the college applied to the Regional Committee of the NCTE for grant of recognition.

11. In the meantime the respondent No.1, Rajendra Prasad Singh, took admission in the B.Ed. course in the college in the year 1996 and passed the examination conducted by the University in the month of April, 1998. (The respondent No.1 has stated in his pleadings that the course undertaken by him was concluded in the year 1997 but the examination in respect thereof was conducted in the year 1998).

12. Vide letter dated March 6, 1998 the Regional Committee permitted the college to conduct B.Ed. course till disposal of its application for grant of recognition.

13. Vide letter dated February 23, 1999 the Regional Committee granted recognition to the college for B.Ed. course of one year duration for the academic session 1999-2000.

14. On January 12, 1999 the University issued a provisional certificate to the respondent No.1 recording therein that the respondent No.1 had successfully completed the B.Ed. course undertaken by him.

15. On May 18, 1999 the State Government informed the University and Regional Committee that the communication dated December 4, 1997 purportedly issued by the government regarding recognition of the college has been found to be forged by the Cabinet Vigilance Department; a criminal case had been registered against the college in said regard and it has cancelled the order of grant of recognition to the college.

16. Upon receipt of above communication, vide letter dated June 4, 1999, the Regional Committee withdrew the recognition granted by it to the college with immediate effect. Likewise, the University also withdrew the affiliation granted by it to the college and cancelled the degrees awarded by the college to its students.

17. Aggrieved by the aforesaid actions of the Committee/University, the college filed a writ petition before a Single Judge of the Patna High Court, which was dismissed vide order dated March 28, 2001. The said

decision is reported as 2001 (2) PLJR 536 National Teacher Training College, Arer & Ors v The State of Bihar & Ors. It would be relevant to note the following portion of the said decision:-

“6. The case of the respondents with respect to the colleges in question may now be stated. With respect to the National Teachers’ Training College, Arer, both the State Government and the L.N. Mithila University have filed affidavits. The Government in its affidavit has stated that in course of enquiry conducted by the Investigation Bureau of the Cabinet (Vigilance) Department on the direction of the Chancellor, the recognition order dated 4.12.97 was found to be forged. On the basis of the enquiry report a criminal case being Vigilance P.S. Case NO.8/99 has been instituted. It is said that in fact the College did not exist before 1997....

20. Adverting to the instant case it would appear that though it was mandatory requirement to obtain permission from the State Government to establish colleges under the State Act of 1982, no such permission was obtained by any of the colleges which are subject-matter of these cases. In the absence of any provision regarding recognition of the training colleges etc. under the Act it is doubtful if the orders relied upon on behalf of the petitioners purporting to grant recognition, had any legal effect.

22. I do not wish to make an in-depth examination of the petitioners’ claim of being bona fide students because criminal cases involving this dispute are pending, but the facts stated in the FIRs and documents enclosed therewith create serious doubt in this regard. The record seems to have been manipulated on target scale. How else one can explain inviting applications for 10 or 12 academic sessions at a time, for example, in the cases of National Teachers Training College, Arer or S. Wakil Ahmad College, Darbhanga. Admittedly, examinations in question were held in the year 1997 and that was a joint examination for different sessions including sessions 1994-95, 1995-96 and

1996-97. In the face of materials collected by the Investigating Bureau leading to institution of the criminal cases, it is not possible to believe the petitioners that they had taken admission, prosecuted and finished their courses when the NCTE Act came into force and therefore, the provisions of that Act would not apply to them and their cases are covered by the orders passed by the State Government and/or the University granting recognition and affiliation after the appointed day i.e. 17.8.95” (Emphasis Supplied)

18. Aggrieved by the aforesaid judgment dated March 28, 2001, the College filed a Letter Patent Appeal before a Division Bench of the Patna High Court, which was dismissed vide order dated January 5, 2007. The decision is reported as Satish Kumar & Ors v V.C. Bhupendra Nr. Mandal University 2007 (2) PLJR 682. It would be relevant to note the following portion of the said decision:-

“These submissions are of no avail to the appellant/writ petitioner for the simple reason that fraud vitiates all actions. It is noted above that in the F.I.R. lodged by the Cabinet Vigilance Department, it was stated that the Government letter no.307 dated 4.12.97 was forged. Mr.Y.V.Giri, Counsel appearing for the Vigilance Department invited our attention to the counter affidavit filed on behalf of the Vigilance Investigation Bureau in the writ petition before the learned single judge. The counter affidavit encloses as annexures the relevant Government records. From the Government records, it appears that on 20.11.1997, the concerned Minister wrote in his own hand directing for grant of recognition to the College from the date of issuance of the letter, subject to the condition that in case of violation of the prescribed norms or the College not coming up to those norms, recognition would be cancelled. The grant of recognition was from the date on which the letter would be issued following the minister’s direction. But

it appears that just at the beginning of the note figure 1107 was added/interpolated with the result that the note may be read to mean that affiliation was garneted from the date of issuance of letter no.1107. Letter No.1107 was issued on 25.11.1987 and by this letter, the Government had prescribed the terms and conditions and the norms for setting up a private Teachers' Training College. Thus, by a simple but highly clever interpolation in the Minister's note in the Government file, the direction for grant of recognition was made to relate back on 25.11.1987 when the College (whatever it might have been in 1997) was not even in existence. Advertisements in a State-level newspaper for admission of students were issued for the first time in 1998; yet on the basis of interpolation/forgery in the minister's note, the College was able to obtain recognition with effect from 1986-87 and took admission of 'students' from that session. (Emphasis Supplied)

19. In the year 2003 the Delhi Subordinate Services Selection Board (hereinafter referred to as the 'DSSSB') issued an advertisement for recruitment to the post(s) of Trained Graduate Teacher (TGT) in the schools run by the Government of NCT of Delhi. One of the essential conditions prescribed in the said advertisement for appointment to the said post was that the candidate should possess a B.Ed. degree from a recognized Institute/Board/University.

20. The respondent No.1 applied for being appointed to the said post and was declared successful in the selection test conducted by the DSSSB in said regard.

21. Vide letter dated March 10, 2004 the Directorate of Education, Government of NCT of Delhi, offered appointment to the respondent

No.1 to the post of TGT (English). It would be relevant to note the following portion of the letter dated March 10, 2004:-

“1. That this offer is for appointment purely on temporary basis for a period of two years which is likely to be regular after two years after completion of the probation successfully and following verifications:-

- (i) Date of Birth*
- (ii) Education Qualifications, NOC etc.*
- (iii) Category, status, caste/Tribe certificate*

x x x x x

7. That he/she will also produce original testimonials in support of his/her education, academic and technical qualifications that render him/her qualified for appointment on the said post at the time of formal appointment.

x x x x x

14. That he/she shall file an affidavit to the effect that the certificates/documents produced by him/her and the copies of the same deposited by him/her with the application form and during the course of verification of certificates/document by the Board/Department are genuine and are issued by the recognized institute/Board/Department are genuine, as the case may be, and if the same are proved to be fake/false, subsequently by the employer his/her service shall be liable to be terminated without any notice, in addition to initiation of penal action as warranted. (Emphasis Supplied).

22. Thereafter the respondent No.1 wrote a letter to the University to provide him with his ‘original’ *B.Ed. degree*. In response thereto, the

University wrote letter dated April 2, 2004 informing the respondent No.1 that on account of unavoidable reasons the University is not in a position to issue original degree to him and that the provisional certificate dated January 12, 1999 issued by the University to him shall be deemed to be valid until the original degree is made available to him.

23. Thereafter the respondent No.1 accepted the appointment offered to him vide letter dated March 10, 2004 and submitted the provisional certificate dated January 12, 1999 to the Directorate of Education. On August 7, 2004 the respondent No.1 was appointed to the post of TGT (English) under the Directorate of Education, Govt. of NCT of Delhi.

24. Vide order dated June 04, 2005 the Directorate of Education terminated the services of the respondent No.1. Be it noted here that no reason for termination of the services of the respondent No.1 was specified in said order but concededly the same was on account of the fact that the petitioner did not produce the original B.Ed. degree as was required to be provided as a condition of the letter offering appointment.

25. Aggrieved by the order dated June 04, 2005 the respondent No.1 filed an application registered as O.A.No.1413/2005 under Section 19 of the Central Administrative Tribunals Act, 1985 before the Principal Bench, Central Administrative Tribunal, New Delhi highlighting therein that:- (i) the Directorate of Education had terminated his services on account of his inability to produce his original B.Ed. degree; (ii) the college/University is unable to provide him with his original B.Ed. degree on account of withdrawal of recognition of college by the NCTE; (iii) he cannot be penalized for the withdrawal of recognition of the

college by the NCTE for the reasons the recognition of the college was withdrawn by the NCTE on account of a fraud played by the college and that he i.e. the respondent No.1 had no role to play in said fraud.

26. Vide order dated July 18, 2007 the Tribunal allowed the aforesaid application filed by the respondent No.1 and quashed the termination order dated June 04, 2005 on the grounds that:-

(i) the order dated June 04, 2005 casts a stigma upon the respondent No.1 on account of the fact that the reason for terminating the services of the respondent No.1 was that the B.Ed. degree possessed by the respondent No.1 was not found to be authentic inasmuch as he had acquired said degree from a college which had been de-recognized by the NCTE; and

(ii) it was not open for the Directorate of Education to have passed a '*stigmatic*' termination order without conducting an enquiry into the matter.

The Tribunal however granted liberty to the Directorate to proceed in the matter by issuing a show-cause notice to the respondent No.1 and thereafter pass an order in accordance with law.

27. After issuing show-cause notice to the respondent No.1 and considering the reply submitted by him to said notice, vide order dated December 19, 2008 the Directorate of Education again terminated the services of the respondent No.1 with effect from July 7, 2005, which order again did not specify any reason to terminate the service of respondent No.1 and on the face of it is non-stigmatic.

28. Aggrieved by the order dated December 19, 2008 the respondent No.1 filed another application registered as OA No.307/2009 before the Tribunal. Vide order dated January 29, 2010 the Tribunal again allowed the application filed by the respondent No.1 and quashed the termination order dated December 19, 2008 essentially on the ground that the order dated December 19, 2008 is a non-speaking order, in that, it does not contain reasons to terminate the services of the respondent No.1 or show that the concerned authority has applied its mind to the stand taken by the respondent No.1 in the reply submitted by him to the show cause notice. It would be relevant to note the following portion of the order dated December 19, 2008:-

“8. In the present case, the termination order shows non application of mind and does not show any analysis on the grounds of the Applicant’s plea in his defence. Reasons to terminate the Applicant have not been reflected in the order....

9. Having gone through the impugned order, in our considered view, the same cannot stand to logic for the reasons that in the defence the Applicant had raised several points in the support of the claims but without examining any of the issues raised and canvassed the concerned authority by non-speaking and non-reasoned order, has terminated him from service....

10. Therefore, the order dated 19.12.2008 terminating the Applicant’s service with effect from 7.7.2005 is bad in the eyes of law and requires to be quashed and set aside. Accordingly, without going into the other aspects of the case, we come to the considered conclusion that the order dated 19.12.2008 being stigmatic and punitive in nature and being non-speaking and non-reasoned is quashed and set aside. However, the case is remitted back to the Authority

concerned to go through the representation given by the Applicant to the Show Cause Notice; accord him an opportunity of personal hearing; and pass a speaking and reasoned order as per law.” (Emphasis Supplied)

29. Thereafter affording an opportunity of personal hearing to the respondent No.1 and considering in detail the reply filed by him to the show cause notice, vide order dated September 15, 2010 the Directorate of Education once again terminated the services of the respondent No.1, the relevant portion whereof reads as under:-

“Whereas, a degree of B.Ed. is essential qualification for appointment of a TGT (Eng) as per the Recruitment rules for the post of TGT (Eng) and therefore Sh. Rajendra Prasad Singh was afforded several opportunities to produce the original B.Ed. degree of a recognized university/institution in respect of his eligibility for the post of TGT (Eng) but he could not produce the same. However he produced a provisional certificate issued by Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga in support of his claim of his professional qualification of B.Ed. and,

Whereas the services of Sh. Rajender Prasad Singh TGT (English) were terminated under Rule 5(1) of CCS (Temporary Services) Rule 1965, on the ground that Sh. Rajender Prasad Singh TGT (Eng.) was not holding a valid B.Ed. degree, which is a requirement of Recruitment Rules for the post of TGT (Eng.). The termination order of the services of Sh. Rajender Prasad Singh was passed on the ground that B.Ed. qualification of the applicant for the post was held from a University/Institution, which was not recognized for the said course by National Council for teachers Association (A statutory body of Govt. of India) and,

....

Whereas in the meantime, a letter dated 06/10/2008 was also received under the signatures of Under Secretary from Eastern Regional Committee National Council for Teachers Association (A statutory body of Govt. of India) wherein it has been categorically mentioned that the recognition granted for B.Ed. course for the session 1999-2000 vide order No.F.7-9/99-ERC/7633 dated 23.2.99 was subsequently withdrawn with immediate effect vide letter No.F.7-10/99-ERC/9415 dated 4.6.99. The degrees/certificates awarded to the students pursuant to the B.Ed. examination 1998 conducted by Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga were also declared invalid for the purpose of employment under section 17(4) of the NCTE act for misrepresentation of the facts to the Committee vide letter No.F.7-13/2000-ERC/721 dated 31.3.2000. Further, it is also informed that the aforesaid institution was not granted recognition by the NCTE for the period 1996-97 and 1997-98 during the period Sh. Rajender Prasad Singh TGT (Eng.) claimed to have taken admission and subsequently passed the B.Ed. degree course and,

.....

The facts of the case of Sh. Rajendra Prasad Singh have been examined at length and found to be not tenable in the light of the letter dated 6.10.2008 issued by Under Secretary, Eastern Regional Committee, National Council for Teachers Education (A Statutory Body of Govt. of India). In the said letter it has been clearly specified that any degree or certificate awarded to the students pursuant to B.Ed. examination 1998 conducted by Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga has been declared invalid for the purpose of employment in Central Government, any State Government or University or in any school, college or educational body aided by the Central Government or any State Government. The decision of National Council for Teachers Education has since attained finality as there is no stay or restrain against the said order

from any court of law or any other appropriate authority so the Directorate of Education has no jurisdiction to comment upon the action taken by the NCTE. The Directorate of Education has no option but to accept the decision of the NCTE.

In view of the above mentioned facts and circumstances narrated it is crystal clear that an applicant for the post of TGT (Eng) should possess valid B.Ed degree from a recognized university/institution for his/her appointment in any school under the Directorate of Education, Govt. of NCT of Delhi, as per R.R's.

In my considered opinion, the documents on record vividly indicate that Sh. Rajendra Prasad Singh does not possess any valid B.Ed. degree which is a mandatory requirement for appointment as TGT (English) in any school under the Directorate of Education, Govt. of NCT of Delhi, and in spite of given many opportunities he is failed to fulfill the qualifications as per R.R. 's hence his services are hereby stand terminated as per sub-rule 1 of rule 5 of CCS (Temporary Services), Rules, 1965 with effect from 7-7-2005, as his appointment is void ab-initio. (Emphasis Supplied)

30. Yet again, the respondent No.1 filed an application registered as OA No.1894/2011 before the Tribunal assailing the legality of the order dated September 15, 2010 terminating his services. Vide order dated December 3, 2012 the Tribunal has disposed of OA No.1894/2011 and has quashed the termination order dated September 15, 2010 and has permitted the respondent No.1 to continue to function on the post of TGT (English) on ad-hoc basis till he submits an original B.Ed. degree to the Directorate. In so concluding, it has been held by the Tribunal that though the Directorate of Education was justified in terminating the services of the respondent No.1 since he failed to produce the original

B.Ed. degree which was a condition precedent for appointment to the post of TGT (English), the respondent No.1 is not entirely blameworthy for non-production of the original B.Ed. degree since the respondent No.1 is helpless in the matter, for it is the University which is unable to provide original B.Ed. degree to the respondent No.1 due to certain compelling reasons and the respondent No.1 has no mala fide intention to not produce the original B.Ed. degree to the Directorate.

31. Aggrieved by the order dated December 03, 2012, the Directorate of Education, Govt. of NCT of Delhi has filed the present petition under Article 226 of the Constitution of India.

32. In support of the present petition, learned counsel appearing for the Directorate of Education, Govt. of NCT of Delhi essentially argued that having come to the conclusion that the Directorate was justified in terminating the services of the respondent No.1 the Tribunal committed a grave error in quashing the order dated September 15, 2010 terminating respondent's service and permitting the respondent No.1 to continue on the post of TGT (English) on ad-hoc basis till he submits original B.Ed. degree to the Directorate. Counsel further argued that the Directorate was completely justified in terminating the services of the respondent No.1 when he failed to demonstrate that he had acquired B.Ed. degree from a college which was recognized by the NCTE, which was a condition precedent for appointment to the post of TGT (English). Learned counsel argued that a teacher plays a pivotal role in molding the career, character, moral fiber and aptitude for educational excellence in young children. The formal education needs proper equipment by the

teacher to meet the challenges of the day to impart lessons with latest techniques to the students on secular, scientific and rational outlook. A well-equipped teacher could bring the needed skills and intellectual capabilities of the students in their pursuits. In that view of the matter, counsel argued that the respondent No.1 who had acquired B.Ed. degree from an unrecognized college cannot be entrusted with the task of imparting education to the young children.

33. Per contra, learned counsel appearing for the respondent No.1 argued that:-

(i) That the Directorate of Education has committed an illegality in proceeding on the premise that the respondent No.1 had acquired B.Ed. degree from an unrecognized college and thus said degree was invalid in terms of the provisions of Section 17(4) of the NCTE Act on 2 counts which are as under:-

(a) Firstly, the counsel drew our attention to the proviso to Section 14(1) of the NCTE Act. Counsel argued that said proviso prescribes that an institution which is offering a course in teachers education immediately before the appointed day under the NCTE Act is entitled to continue such course till its application for grant of recognition is disposed of by the Regional Committee of NCTE. In the instant case, the college in question was established in the year 1987 and was offering a course in teachers education before the appointed day under the NCTE Act i.e. August 17, 1995 and thus entitled to offer said course till disposal of its application for recognition by the Regional Committee of NCTE

in view of the provisions of the proviso to Section 14(1) of the NCTE Act. Since the application dated December 17, 1997 for grant of recognition submitted by the college was disposed of by the Committee on February 23, 1999 the college was entitled to offer said course before February 23, 1999 and thus could not be treated as an unrecognized college before February 23, 1999 including the period between 1996-1997 i.e. the period during which the respondent No.1 claimed to be studying in the college.

(b) Secondly, learned counsel drew our attention to the second proviso to Section 17(1) of the NCTE Act. Counsel argued that said proviso prescribes that order withdrawing recognition passed by the Regional Committee of NCTE shall come into force only with effect from the end of the academic session next following the date of communication of such order. In the instant case, the Regional Committee withdrew the recognition of the college vide its letter dated June 4, 1999. Counsel argued that order withdrawing recognition came into force only after June 4, 1999 in view of provisions of second proviso to Section 17(1) of the NCTE Act. That being the position, the order withdrawing recognition had no effect whatsoever on the B.Ed. degrees awarded by the college before June 4, 1999 including the period between 1996-1997 i.e. the period during which the respondent No.1 claimed to be studying in the college.

(ii) That the recognition of the college was withdrawn by the Regional Committee on account of a fraud played by the college. The

interests of justice requires that the respondent No.1 should not be penalized for the fraud played by the college particularly when the respondent No.1 was a bona fide student who had acquired B.Ed. degree by passing examination conducted by the University with flying colors and played no role whatsoever in the fraud committed by the college.

34. In the instant case, the services of the respondent No.1 were terminated when he was on probation. This is not in dispute.

35. The issue of termination of services of probationer has cropped up time and again. It has received judicial attention over four decades. Tests have been evolved, found to be difficult to apply; they have been reformulated from time to time.

36. The law relating to termination of services of probationer can be summarized as follows: An employer has a legal right to dispense with the services of the employee without anything more, during or at the end of the period of probation. Termination of the services of the probationer, during or at the end of the period of probation does not affect any right of his, as indeed he has no right to continue to hold the post, save and except after confirmation. However, where a probationer is stigmatized, evil consequences flow. He has to live with the stigma all his life. This stigma would affect his future prospects of finding suitable employment elsewhere. Therefore, harmonizing the right of the employer and the right of the employee the service jurisprudence has recognized that where the termination of services of a probationer visits him with a stigma or is penal or mala fide, the probationer would have a right to justify that the cause which has resulted in his being removed is

other than relating to his personal capacity, integrity, suitability, utility or capacity to work.

37. As to what amounts to stigma has been explained by the Supreme Court in the decision reported as AIR 1987 SC 229 Kamal Kishore Lakshman v Pan American World Airways in the following terms:-

“According to Webster’s New World Dictionary, it (stigma) is something that detracts from the character or reputation of a person, a mark, sign etc. indicating that something is not considered normal or standard. The Legal Thesaurus by Burton gives the meaning of the word to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Webster’s Third New International Dictionary gives the meaning as mark or label indicating a deviation from a norm. According to yet another dictionary ‘stigma’ is a matter for moral reproach.”

38. By virtue of the provisions of Sections 14, 15, 16 and 17 of the NCTE Act, no institution can commence or offer a course or training in teacher education without obtaining recognition from the NCTE after the appointed day referred to in Section 14 (1) of the Act. Further, Section 17(4) prescribes that qualification in teacher education obtained from an institution which was not recognized by the NCTE shall not be treated as a valid qualification for the purposes of employment under Central Government, any State Government or University or in any school, college or other educational body aided by the Central Government or any State Government.

39. In the instant case, the Directorate of Education terminated the services of the respondent No.1 for the reason the respondent No.1 was

not holding a valid B. Ed. Degree, in that the respondent No.1 had acquired said degree from a college which was not recognized by the NCTE. (See the order dated September 15, 2009 passed by the Directorate of Education noted by us in the foregoing paras). In essence, the reason for termination of services of the respondent No.1 was that the B.Ed. degree possessed by the respondent No.1 was not valid and thus he could not be appointed in a school under a State Government in view of the provisions of Section 17(4) of the NCTE Act.

40. The aforesaid reason for termination of services of the respondent No.1 do not cast any stigma upon the respondent No.1 as it does not cause any harm to his character or reputation. The fact that the respondent No.1 possessed a degree which is not valid by virtue of operation of law cannot be said to have caused any stigma upon the respondent No.1. However, in the first two rounds of litigation in the instant case the Tribunal has come to the conclusion that the order of termination of services of the respondent No.1 is stigmatic by proceeding on an incorrect premise that the reason for which the services of respondent No.1 were terminated was that the degree possessed by him was not authentic. There is a world of difference between authenticity and validity. Whereas authenticity relates to genuineness/credibility validity relates to legal soundness/force.

41. Be that as it may, counsel appearing for the respondent No.1 has argued that the B.Ed. degree possessed by the respondent No.1 cannot be treated as an invalid degree in terms of the provisions of Section 17(4) of the NCTE Act.

42. In order to deal with aforesaid argument, it would be necessary for us to recap the basic facts of the case.

43. Section 2 of the State Act prohibited any person, institution or committee to organize, maintain, manage or promote any school or college for undertaking, conducting, providing or imparting teachers' training without the permission of the State Government.

44. The college in question was established in the year 1987 without obtaining prior permission from the State Government.

45. After its establishment, the college applied to the State Government for grant of recognition on July 7, 1987.

46. While aforesaid application was pending the NCTE Act came into force on July 1, 1995.

47. On November 25, 1997 an order came to be issued by the State Government granting permission to the State Government with effect from 1987-88. A perusal of the order dated March 28, 2001 passed by a Division Bench of Patna High Court noted by us in the foregoing paras brings out that the college had manipulated/interpolated government records. The fact of the matter was that the State Government had granted recognition to the college with effect from November 25, 1997 i.e. date of issuance of order granting recognition and not from 1987-88. (It is also debatable that whether the State Government was empowered to grant recognition to the college when there was no provision in the State Government relating to grant of recognition by the State Government, more so after the coming into force of the NCTE Act. A

similar doubt was raised by the Single Judge of Patna High Court in the order March 28, 2001 passed by him).

48. Based on aforesaid order of grant of recognition to the college the Regional Committee of NCTE also granted recognition to the college with effect from 1999-2000 vide its letter February 23, 1999. Subsequently on discovery of fraud played by the college, the State Government as also NCTE cancelled recognitions granted by them to the college.

49. The factual position which emerges is that the college was an unrecognized college on July 1, 1995 (the date when NCTE Act came into force), July 17, 1995 (the appointed day referred to in Section 14 (1) of the Act) and 1996 (the year when the respondent No.1 took admission in the college).

50. Prior to the enactment of NCTE Act, B.Ed. and other degrees relating to teachers education were being awarded by the Universities, institutions recognized by the Government/University Grant Commission or such other bodies as may be authorized by the University Grant Commission in said regard. In the year 1993 NCTE Act was enacted to achieve planned and coordinated development of teacher education system throughout the country and prevent proliferation of sub-standard teacher education institutions.

51. After August 17, 1995 (appointed day under Section 14(1) of the NCTE Act), no institution could commence or offer a course or training in teacher education without obtaining recognition from the NCTE. The

proviso to Section 14(1) of the NCTE Act permitted only such institutions which were recognized to conduct a course or training in teacher education by any University, Government, University Grants Commission, as the case may be, on the appointed day referred to in Section 14 (1) to continue till its application for grant of recognition is disposed of by the NCTE provided it had made such application within a period of six months of the appointed day. The proviso to Section 14(1) did not apply to the unrecognized institutions which were offering courses in teachers education before August 17, 1995. (See the decision of Patna High Court reported as AIR 2006 Pat 5 Arajkiya Khwaja Shahid Hussain Primary Teacher Training College v State of Bihar & Ors and decision dated August 6, 1999 of Karnataka High Court in W.P. Nos.15470-15614/1999 'Antony Mary Sheela v State of Karnataka')

52. In view of above discussion, it has to be held that the proviso to Section 14(1) of the NCTE Act had no application in the instant case since the college in question was unrecognized on August 17, 1995 and thus the college could not continue to offer courses in teachers education till disposal of its application for grant of recognition by the NCTE.

53. In dealing with the argument predicated upon second proviso to Section 17(1) of the NCTE Act, suffice would it be to note that the NCTE had granted recognition to the college from the session 1999-2000. The letter dated October 6, 2008 written by the Eastern Regional Committee, NCTE to the Directorate of Education clearly stated that it had not granted recognition to the college for the sessions 1996-1997 i.e. the session during which the respondent No.1 claimed to be studying in

the college. The order dated June 4, 1999 passed by the NCTE withdrawing recognition granted to the college related to the academic session 1999-2000 and could have no effect whatsoever on the sessions for which NCTE had not granted recognition to the college including the session 1996-1997.

54. The question which next needs to be answered by us that whether the respondent No.1 is justified in contending that interests of justice/equity require that he should be allowed to be employed on the post in question.

55. The respondent claimed to have undertaken B.Ed. course in the college in the year 1996-1997. A perusal of the orders dated March 28, 2001 and January 5, 2007 passed by a Single Judge and Division Bench of Patna High Court respectively noted by us in foregoing paras brings out that the college did not exist before the year 1997. Wide scale manipulations/irregularities were going on in the institution which was a paper institution and claiming to be a college. The Single Judge seriously doubted the genuineness of the claims made by some persons who had approached the Court that they had undertaken courses in teacher training in the college. The decision passed by the learned Single Judge and affirmed by the Division Bench would reveal that there was no building housing a college and no classes were held. Meaning thereby nobody was an innocent student. Everybody enrolled in the college knew that they would not have attended any classes but on paper their attendance would be marked. The persons behind the fraud would manage degrees for them. Alas, the State of Bihar which was

proud of the pre-historic Nalanda University hangs its head in shame today with no reputed educational institution left functioning in the State.

56. In the decision reported as AIR 1992 SC 1926 State of Maharashtra v Vikas Sahebrao Roundale & Ors. 129 the Supreme Court highlighted the importance of maintaining high standards in the field of education. In said case, 129 persons took admission in B.Ed. course in an unrecognized institute in State of Maharashtra. When the State Government did not permit them to appear in B.Ed. examinations the said persons filed a writ petition in the Bombay High Court seeking permission to appear in the examination. The Division Bench directed the State Government to permit said persons to appear in examination. Aggrieved by the aforesaid, the State Government filed an appeal before the Supreme Court. After noting its earlier decisions reported as AIR 1986 SC 1188 N.M. Nageshwaramma v State of A.P., 1986 (2) SCR 749 A.P. Christians Medical Educational Society v Govt. of A.P., (1991) 2 SCR 231 and State of Tamil Nadu v St. Joseph Teachers Training Institute the Supreme Court allowed the appeal by holding that if the State Government is directed to permit students to appear in examination the Court would encourage and condone the establishment of unrecognized institutes which would have far-reaching effects inasmuch as imparting of teaching by not properly trained teachers is highly detrimental to the interests of the children and thus it is not appropriate that the jurisdiction of the Supreme Court and High Court under Articles 32 and 226 of the Constitution of India be frittered away

for such a purpose. It would be relevant to note the following portion of the decision:-

“Article 51A enjoins every citizen by Clause (h) to develop the scientific temper, humanism, the spirit of inquiry and reform and Clause (j) enjoins as fundamental duty to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; (a) respect for national flag and national anthem; (e) to promote harmony and spirit of common brotherhood amongst all the Indian people transcending religious, linguistic and regional or sectional diversities to renounce practice derogatory to the dignity of woman; (f) to value and preserve rich heritage of our composite culture, etc. are some of the basic duties which the budding students need to be inculcated and imbibed. They should be sowed in the receptive minds in their formative periods so that they take deep roots at maturity. The teacher needs, not only the training at the inception, but also periodical orientations in this behalf so that the children would reap the rich benefit thereof. The ill-equipped and ill-housed institutions and sub-standard staff therein are counter productive and detrimental to inculcate spirit of enquiry and excellence to the students. The disregard of statutory compliance would amount to let loose of innocence and unwary children. The proceedings of the recent seminar held in Delhi, as published by the Times of India dated 4th August, 1992, would demonstrate the admission by the teachers that they are not properly trained to cope up with the growing needs of the society and are unsuited to the duties they have to shoulder in imparting teaching to the children. The teacher plays pivotal role in moulding the career, character and moral fibres and aptitude for educational excellence in impressive young children. The formal education needs proper equipment by the teachers to meet the challenges of the day to impart lessons with latest techniques to the students on secular, scientific and rational outlook. A well equipped teacher

could bring the needed skills and intellectual capabilities of the students in their pursuits. The teacher is adorned as Gurudevobhava, next after parents, as he is a Principal instrument to awakening the child to the cultural ethos, intellectual excellence and discipline. The teachers, therefore, must keep abreast ever changing technics, the needs of the society and to cope up with the psychological approach to the aptitudes of the children to perform that pivotal role. In short teachers need to be endowed and energised with needed potential to serve the needs of the society. The qualitative training in the training colleges or schools would inspire and motivate them into action to the benefit of the students. For equipping such trainee students in a school or a college, all facilities and equipments are absolutely necessary and institutions bereft thereof have no place to exist nor entitled to recognition. In that behalf compliance of the statutory requirements is insisted upon. Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. The directions to the appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Article 226 of the Constitution, directing the appellants to permit the students to appear for the examination etc.”

57. In view of above observations of the Supreme Court and the fact that it is highly suspicious that the respondent No.1 had undertaken the B.Ed. course in the college the respondent No.1 cannot be entrusted with the task of imparting education to young children, more so when he knowingly took admission in an unrecognized institute. The respondent No.1 should suffer the consequences of having undertaken B.Ed. course from an unrecognized institute.

58. Though, not argued by the counsel for the respondent No.1, we find an infirmity in the termination order September 15, 2010 passed by the Directorate of Education, in that the services of respondent No.1 have been terminated with retrospective effect.

59. Suspension or dismissal or removal from service with retrospective effect was held to be illegal and invalid in the decisions reported as AIR 1961 Cal 626 Sudhir Ranjan Halder v State of West Bengal and 1981 (29) BLJR 309) Lalita Kumari v State of Bihar. But the principle of severability was not noted in the said two decisions.

60. In the decision reported as AIR 1966 SC 951 R. Jeevaratnam v The State of Madras, the Supreme Court had an occasion to examine a similarly worded order terminating the services of a government servant with retrospective effect. Applying the principle of severability, the Supreme Court disagreed with the wide observations of the Calcutta High Court in Sudhir Ranjan Haldhar's case (supra). It was observed:-

"The order dated October 17, 1950 directed that the appellant be dismissed from service with effect from the date of his suspension, that is to say, from May 20, 1949. In substance, this order directed that (1) the appellant be dismissed, and (2) the dismissal to operate retrospectively as from May 20, 1949. The two parts of this composite order are separable. The first part of the order operates as a dismissal of the appellant as from October 17, 1950. The invalidity of the second part of order, assuming this part to be invalid, does not affect the first part of the order. The order of dismissal as from October 17, 1950 is valid and effective. The appellant has been lawfully dismissed, and he is not entitled to claim that he is still in service. We may now

notice the cases relied on by counsel for the appellant. In Hemanta Kumar v S.N. Mukherjee, the Calcutta High Court had occasion to consider an order dated April 29, 1952 by which a civil servant had been placed under suspension with effect from January 16, 1951. While holding that the order of suspension for the period, January 16, 1951 up to April 28, 1952 was invalid and should be quashed, the Court held that the order of suspension was valid and effective as and from April 29, 1952 and this part of the order should be upheld. As a matter of fact, the validity of suspension as from April 29, 1952 was not even questioned by counsel for the parties. Far from supporting the appellant, this decision is against him on the point under consideration. In Abdul Hamid v the District School Board, the Calcutta High Court had occasion to consider an order dated April 18, 1952 discharging a teacher employed by a District School Board from service with effect from July 15, 1951, the date on which he had been arrested in connection with a pending criminal case against him. While holding that the dismissal from the period from July 15, 1951 up to April 17, 1952 was invalid, the High Court also held that the order of dismissal was entirely bad and was not effected even from April 18, 1952. The High Court observed: "It appears to me that when the real intention of the Board was to discharge the petitioner with effect from the date when he was put under arrest it is not within the jurisdiction of the Court to substitute a different intention and maintain the order of discharge in a modified manner. The order must stand or fall in toto. In this view of the matter it appears to me that the order of discharge passed by the Board cannot stand."

Our attention is drawn to similar observations in Sudhir Ranjan Haldar v State of West Bengal. With respect, we are unable to agree with this line of reasoning. An order of dismissal with retrospective effect is, in substance, an order of dismissal as from the date of the order with the superadded direction that the order should operate retrospectively as from an anterior date. The two parts of the

order are clearly severable. Assuming that the second part of the order is invalid, there is no reason why the first part of the order should not be given fullest effect. The Court cannot pass a new order of dismissal, but surely it can effect to the valid and separable part of the order." (Emphasis Supplied)

61. In view of the above authoritative pronouncement, it has to be held that the order dated September 15, 2010 can be divided into 2 parts viz.

- (i) the services of the respondent are terminated; and
- (ii) the termination to take effect from July 7, 2005.

62. The second part of the order dated September 15, 2010 is invalid. However, the termination order as from September 15, 2010 is clearly valid and effective.

63. The conclusion which emerges from the above discussion is that the action of the petitioner to terminate the service of the respondent No.1 is completely legal. Needless to state, the order terminating the service of the respondent shall take effect from September 15, 2010.

64. The impugned order passed by the Tribunal has a strange consequence. On the one hand respondent No.1 can never obtain a degree from the University and yet on the other hand he has been permitted to continue to work without being made permanent. The Tribunal has clearly observed that respondent No.1 would be permitted to work on ad-hoc basis.

65. Unfortunately, learned counsel for the petitioner did not bother to search on the internet whether the decisions of the learned Single Judge and the Division Bench of the Patna High Court could be accessed by learned counsel. Learned counsel had with her the writ number and the LPA number. But probably the counsel wanted the department to access said decisions and provide copies thereof. In the world of internet with all High Courts having digitalized their decisions and put them on their web sites, we would expect learned counsel for parties to browse the internet.

66. The writ petition is allowed as per paragraph 63 above.

67. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

JULY 17, 2013
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