

GAHC010038182019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1565/2019

DALIMI DAS
D/O- LT LALIT CHANDRA DAS, R/O- VILL AND P.O. KULHATI, P.S. HAJO,
DIST- KAMRUP, ASSAM, PIN- 781104

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, SECONDARY
EDUCATION DEPTT., DISPUR, GHY-6

2:THE DIRECTOR
SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE DY. REGISTRAR
CMJ UNIVERSITY
JORABAT
RI-BHOI DISTRICT
MEGHALAYA- 793101

4:THE UNIVERSITY GRANT COMMISSION
BAHADURSHAH JAFAR MARG
NEW DELHI- 1100

Advocate for the Petitioner : MR. R C SAIKIA

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 24.03.2023

Heard Mr. R.C. Saikia, learned counsel for the petitioner as well as Mr. R. Mazumdar, learned standing counsel for the Secondary Education Department, appearing for the respondent nos. 1 and 2. None appears on call for the respondent no. 3 and 4.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for a direction to the respondents to give the recognition to the B.Ed. Degree obtained by the petitioner from CMJ University, Meghalaya.

3. In brief, the case of the petitioner is that she has obtained B.Ed. Degree from CMJ University. The learned counsel for the petitioner has submitted that although he has not annexed a copy of the said degree, but had produced a photocopy before the Court, which was perused and returned. As per the photocopy of certificate of degree produced, the said certificate was issued on 23.05.2017 for the examinations which was held in the year 2012. The case of the petitioner is that although the Government of Meghalaya had dissolved the said CMJ University, but pursuant to judgment and order dated 16.07.2015, passed by High Court of Meghalaya in W.P. No. 177/2014, the said University had started functioning and vide letter no. EDN.19/2012Pt/Vol.I/514 dated 07.01.2019, the Joint Secretary to the Government of Meghalaya, Education Department had written to (i) The Secretary to the Government of Assam, Secondary Education Department, and (ii) The Director of Secondary

Education, Assam regarding validity of B.Ed. Degree conferred by CMJ University, which was followed by another letter no. EDN.22/2012Pt/Vol.I/548 dated 28.01.2019, by the Secretary to the Government of Meghalaya, Education Department to the Commissioner and Secretary to the Government of Assam, Secondary Education Department regarding validity of the B.Ed. Degree obtained from CMJ University. It is also submitted that on the basis of the B.Ed. Degree obtained by a large number of candidates from Assam, several of such candidates have been able to secure service as Teachers, Lecturers, Assistant Professors, Professors, Headmaster, Vice Principal, Principal, etc. of various schools and colleges in the State of Assam. Hence, it is submitted that when the Government has accepted the said B.Ed. degree from CMJ University for giving employment to quite a large number of teaching staff in Schools and Colleges, the case of the petitioner cannot be allowed to be viewed differently, so as to deprive her of employment opportunity, which was violative of Article 14 and 16 of the Constitution of India.

4. The learned counsel for the petitioner has submitted that owing to some anomalies, the Government of Meghalaya, by an order dated 31.03.2014, dissolved the CMJ University. The said CMJ University had assailed the said order before the High Court of Meghalaya by filing a writ petition which was numbered as W.P. No. 177/2014 and the said High Court, by its order dated 16.07.2015, allowed the writ petition by quashing the show cause notices dated 11.12.2013 and 24.01.2014 and by setting aside the order dated 31.03.2014. Hence, it is submitted that there is no legal impediment in acceptance of B.Ed. Degree given by the CMJ University. It was also submitted that as the respondents had not filed any affidavit-in-opposition, following ratio in the case of *Naseem Banu Vs. State of U.P. & Ors., 19936 Supp(4) SCC 46*, and *Rejia*

Khatun Vs. State of Assam & Ors., 2001 (3) GLT 262, this Court should deem that the contention of the petitioner has been admitted by the respondents and the writ petition deserves to be allowed.

5. The learned standing counsel for the respondent nos. 1 and 2 has raised objection as to the maintainability of this writ petition on the ground of non- joinder of National Council for Teacher Education (NCTE for short), who is the sole authority for commenting on the validity of B.Ed. course conducted by the CMJ University and validity of the B.Ed. Degree conferred by the said University. By referring to various NCTE Regulations and notifications issued by the NCTE, it has been submitted that from the pleadings made in the writ petition, it is evident that the petitioner had not attended the requisite number of classes in CMJ University for pursuing B.Ed. course and therefore, the Government of Assam in the Secondary Education Department has not done any illegality in not recognizing the B.Ed. Degree of the petitioner to be valid for the purpose of offering employment to her. It is also submitted that the petitioner has not made any statement in the writ petition that the said CMJ University had obtained NCTE approval to impart B.Ed. course before admitting students in such course. In this regard, it has been submitted that the petitioner had appeared in the B.Ed. Examinations, 2012 conducted by the CMJ University, and for the said period of time, the National Council For Teacher Education (Recognition Norms and Procedure) Regulations, 2009 was applicable. By referring to the provision of Regulation 3 and 4 of the said Regulation, it has been submitted that the said regulations is mandatorily applicable to all matters relating to teacher education programmes covering norms and standards and procedures for recognition of institutions, commencement of new programmes and addition to sanctioned intake in existing programmes and other matters

incidental thereto and that amongst others, all universities, including institutions deemed to be universities, so recognized under the University Grants Commission Act, 1956 are eligible for consideration of their applications under the said regulations. It is submitted that *para materia* provision was also there under the 2005 Regulation. Thus, it is submitted that unless the petitioner can show that the said CMJ University had the approval to conduct B.Ed. course which culminated in B.Ed. Examinations in the year 2012, the B.Ed. Degree certificate of the petitioner would not be valid for the petitioner to acquire teaching job under the Secondary Education Department.

6. It is also submitted by the learned standing counsel for the Secondary Education Council that he could not find the name of CMJ University as an institution approved by the NCTE to impart B.Ed. course in the year 2011-2012.

7. In support of his submission, the learned standing counsel for the NCTE has referred to the case of *National Council for Teacher Education v. Venus Public Education Society*, (2013) 1 SCC 223: 2012 0 Supreme(SC) 780 (para-29).

8. Considered the rival submissions made by the learned counsel for the petitioner and the respondent nos. 1 and 2.

9. In para-2, the pleaded case of the petitioner is as follows:—

“That the petitioner begs to state that she is the Graduate Teacher who had appointed on 10.03.1992 and subsequently her service was provincialised on 01.01.2013. Now the petitioner has been working as Headmistress in Baramboi Anchalik High School in the District of Kamrup, Assam. The petitioner subsequently obtained her B.Ed.

Degree from CMJ University In-Campus.

Copy of the B.Ed. Degree obtained by the petitioner from CMJ University along with a copy of the approval order are enclosed herewith and marked as Annexure-I and IA respectively."

10. However, the document annexed to the writ petition as Annexure-I is a photocopy of letter no. 1932 dated 03.03.2006 from the Inspector of Schools, Kamrup District Circle, Guwahati to the Secretary, Baramboi Girls High School, thereby provisionally approving the resolution no. 2 dated 19.02.2006 of the School Managing Committee in respect of appointment of the petitioner as Headmistress. Thus, it is seen that the copy of the B.Ed. Degree of the petitioner is not annexed to this writ petition and therefore in course of hearing, the certificate of B.Ed. Degree was produced by the learned counsel for the petitioner and it was observed that the B.Ed. Degree Certificate was issued on 23.05.2017 for examinations held in the year 2012. Thus, from the statement made by the petitioner in para-2 of the writ petition, presumption can be drawn to the effect that the petitioner was pursuing B.Ed. course in the year 2011-12 and examination for said session was held in the year 2012. Thus, we also see that there is some amount of mismatch in the facts as pleaded in para-2 of the plaint and document appended as Annexure-I of the writ petition. Nonetheless, in this case, we ignore the same.

11. The petitioner claims in para-4 of the writ petition that she had attended her classes on holidays of her school and on Saturdays and Sundays, etc. We have no material to presume that the CMJ University held B.Ed. classes for the petitioner on Sundays and State and National Holidays and University holidays. This is of some significance because as per the Entry No. 5 of

Schedule-VII appended to the NCTE Regulations, in order to successfully complete the course, the student must attend at least 150 days of class. Therefore, assuming but not admitting that classes were regularly held on Saturdays and Sundays, it makes for 104 days of classes out of 52 weeks in a year. Therefore, the petitioner would still have to give some explanation how she completed 150 days of classes. Nonetheless, the Court does not take any adverse view against the petitioner on this count alone.

12. There is no material in this writ petition to show that the said CMJ University had obtained prior approval from the NCTE to admit students in the B.Ed. course for the year 2011-12. The learned counsel for the petitioner had produced a copy of Cabinet decision dated 01.11.2017 and Gazette notification dated 11.01.2019, granting retrospective recognition to the Central/ State/ Union-Territory funded Institutions/ Universities conducting Teacher Education course without NCTE recognition till academic year 2017-18. The said cabinet decision and notification dated 11.01.2019 does not help the petitioner as the petitioner has failed to show that CMJ University was funded by any Govt. i.e. Central/ State/ Union-Territory.

13. The learned counsel for the petitioner has referred to a photocopy of letter dated 07.08.2018, issued by the UGC to the Joint Secretary, Secondary Education Department. The same also does not help the petitioner because of the reasons stated in the foregoing paragraph that the CMJ University did not have NCTE approval, as it was not Government funded, the notification dated 11.01.2019 cannot be applied to the benefit of the petitioner.

14. Moreover, on a perusal of the NCTE website, as shown by the

learned standing counsel for the Secondary Education Department, it is noticed that name of 5 (five) institutions are enlisted for imparting B.Ed., course, which does not include the said CMJ University. However, in this regard, in the absence of documents to that effect, we refrain from rendering any opinion as to whether or not the said CMJ University is enlisted for the State of Meghalaya to take up teaching programme in respect of B.Ed. Degree.

15. In the case of *Venus Public Education Society (supra)*, the Supreme Court of India had referred to its earlier decision rendered in the case of *Adarsh Shiksha Mahavidyalaya & Ors. v. Subhash Rahangdale & Ors., (2012) 2 SCC 425*, wherein it was emphatically held that no institution can admit any student unless it has obtained unconditional recognition from the Regional Committee and affiliation from the examining body. The relevant paragraphs 29, 34 and 35 (as extracted from e-journal Supreme Today) is quoted below:-

“29. *In Adarsh Shiksha Mahavidyalaya (supra), this Court, after referring to Sections 12, 14 to 16, 17, 17-A, 18, 20, 29 and 32 of the 1993 Act, Regulations 3, 5, 7 and 8 of the 2005 Regulations and further referring to paras 1.0, 2.0, 3.0, 3.1, 3.2 and 3.3 of the amended Regulations made by notification dated 12.7.2006, has categorically laid down thus:-*

“What needs to be emphasised is that no recognition/ permission can be granted to any institution desirous of conducting teacher training course unless the mandatory conditions enshrined in Sections 14(3) or 15(3) read with the relevant clauses of Regulations 7 and 8 are fulfilled and that in view of the negative mandate contained in Section 17-A read with Regulation 8(10), no institution can admit any student unless it has obtained unconditional recognition from the Regional Committee and affiliation from the examining body.”

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34. *Adjudged in the aforesaid perspective the High Court could not have directed the recognition to be retrospectively operative because certain formalities remained to be complied with. It could not have put the clock back. It needs no special emphasis to state that the High Court did not keep itself alive to the conceptual difference between "letter of intent" and "formal recognition". True it is,*

there was delay but that could not have enabled the High Court to issue a writ for treating the recognition to be effective for the year 2011-12 with intake of fifty students. That apart, the respondent-institution had not obtained affiliation from the university. Therefore, the direction of the High Court is contrary to the provisions of law and the interpretation of the Act and the Regulations made by this Court and, accordingly we are compelled to set aside the same, and we so direct.

35. *Now, to the last plank of submission of the learned counsel for the appellant. It is urged by him that the NCTE had procrastinated its decision at every stage and such delay was deliberate and, therefore, the society was compelled to admit the students and impart education, regard being had to the fact that there were really no deficiencies. As has been laid down in many a pronouncement of this Court that without recognition from the NCTE and affiliation from the university/examining body, the educational institution cannot admit the students. An educational institution is expected to be aware of the law. The students who take admission are not young in age. They are graduates. They are expected to enquire whether the institution has recognition and affiliation. If we allow ourselves to say so, the institution had given admission in a nonchalant manner. Possibly, its functionaries harboured the idea that they had incomparable fertile mind. The students who had taken admission possibly immersed with the idea that ignorance is a bliss. It is also necessary to state that the institution had the anxious enthusiasm to commercialize education and earn money forgetting the factum that such an attitude leads to a disaster. The students exhibited tremendous anxiety to get a degree without bothering for a moment whether their effort, if any, had the sanctity of law. Such attitudes only bring nemesis. It would not be wrong to say that this is not a case which put the institution or the students to choose between Scylla and Charybdis. On the contrary, both of them were expected to be Argus-eyed. The basic motto should have been "transparency". Unfortunately, the institution betrayed the trust of the students and the students, in a way, atrophied their intelligence. The institution decidedly exhibited characteristics of carelessness. It seems that they had forgotten that they are accountable to law. The students, while thinking "vision of hope", chose to play possum. The law does not countenance either of the ideas. Hence, the plea propounded with anxiety, vehemence and desperation on behalf of the appellant is not acceptable and, accordingly we unhesitatingly repel the same."*

16. In light of the observations made by the Supreme Court of India in the case of *Venus Public Education Society (supra)*, we are of the considered opinion that although by the judgment of the Meghalaya High Court in the case

of *CMJ Foundation & Ors. v. State of Meghalaya & Ors.*, WP(C) 177/2014, decided on 16.07.2015, the existence of the said CMJ University has survived, but with all respect to the said decision, the learned counsel for the petitioner could not show that the said decision conferred validity to the B.Ed. course conducted by the CMJ University, without the prior approval and/or consent granted by the NCTE. Therefore, in light of the discussion above, the Court is unable to find fault with the decision of the Secondary Education Department of the Government of Assam of not giving recognition to the B.Ed. Degree granted by the CMJ University, Meghalaya.

17. The learned counsel for the petitioner had submitted that a lot of people in Assam who have obtained B.Ed. Degree from CMJ University have been appointed in various teaching posts. In this regard, the Court is of the considered opinion that in this writ petition, the validity of B.Ed. Degrees of any third party has not been questioned and therefore, no comment is warranted as to the validity of B.Ed. degree of any person other than the petitioner herein. Nonetheless, if any B.Ed. Degree is not in accordance with law and yet anyone has been appointed on the strength of such a degree, it would amount to committing a wrong. However, a 3 Judge Bench of the Supreme Court of India in the case of *R. Muthukumar & Ors. v. The Chairman and Managing Director Tangedco & Ors.*, reported in (2022) 0 Supreme(SC) 135, has put its seal of approval on the well settled legal proposition that one wrong committed in one case cannot be allowed to repeated in another case as there is no concept of negative equality. Therefore, the appointment made to any other person on the basis of B.Ed. Degree of CMJ University for Examination held in the year 2012 would be of no help to the case of the petitioner.

18. In view of the facts and legal position which has emerged, the Court is not inclined to invoke the doctrine of non-traverse for which the case of *Naseem Banu (supra)* and *Rejia Khatun (supra)* have been cited, because in this case the petitioner has not been able to show her legal rights. Therefore, the said cases would not help the petitioner.

19. Accordingly, the Court is of the considered opinion that the petitioner is not entitled for rule to be issued and/or made absolute in terms of the prayer made in the writ petition and thus, this writ petition fails and the same is dismissed.

20. The parties are left to bear their own cost.

21. Before parting with the records, it is clarified that nothing contained in this judgment shall be construed as if this Court has nullified the degrees granted by the said CMJ University so as to adversely affect any student who had acquired a degree from the said University. Therefore, this decision is to be restrictively construed qua the petitioner and only to the extent of non-interference with the decision of the Secondary Education Department, Government of Assam of not giving recognition to the B.Ed. Degree of the petitioner, granted by CMJ University for B.Ed. Examinations, 2012.

JUDGE

Comparing Assistant