

GAHC010030872018



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

Case No. : WP(C)/963/2018

DR. BIND KUMAR CHAUHAN
S/O SRI RAM BADAN CHOUHAN
R/O VILL- 4 NO. NAWAIBIL,
P.O. LAMSAKHANG, DIST. KARBI ANGLONG,
ASSAM, PIN - 782446.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION (HIGHER) DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
EDUCATION (HIGHER) DEPARTMENT

DISPUR
GUWAHATI-6.

3:THE UNIVERSITY GRANTS COMMISSION

REP. BY DIRECTOR
BAHADUR SHAH ZAFAR MARG
NEW DELHI-02.

4:THE DIRECTOR

HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI -29.

5:THE GOVERNING BODY

REP. BY THE PRESIDENT OF GOVERNING BODY
BONGAIGAON COLLEGE
BONGAIGAON
ASSAM

6:THE PRINCIPAL

BONGIGAON COLLEGE
BONGAIGAON
ASSAM

7:THE SELECTION COMMITTEE

REP. BY ITS CHAIRMAN/MEMBERS
SELECTION COMMITTEE
BONGAIGAON COLLEGE
BONGAIGAON
ASSAM

8:PONDICHERRY UNIVERSITY REPRESENTED BY ITS REGISTRAR

RV NAGAR
KALAPET
PONDICHERRY - 605014

9:DIRECTOR OF DISTANCE EDUCATION

PONDICHERRY UNIVERSITY
RV NAGAR
KALAPET
PONDICHERRY - 60501

Advocate for the Petitioner : MR. J I BORBHUIYA

Advocate for the Respondent : SC, HIGHER EDU

Linked Case : WP(C)/1477/2018

SUNITA KHARIKAP
D/O. LT. SUNIL KHARIKAP
R/O. BARDALONG

P.O. KHARIKHANA
P.S. LANKA
DIST. HOJAI

VERSUS

THE STATE OF ASSAM AND 8 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
EDUCATION (HIGHER) DEPTT.
DISPUR
GHY.

2:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
EDUCATION (HIGHER) DEPTT.
DISPUR
GHY.

3:THE UNIVERSITY GRANTS COMMISSION

REP. BY DIRECTOR
BAHADUR SHAH ZAFAR NARG
NEW DELHI

4:THE DIRECTOR OF HIGHER EDUCATION ASSAM

KAHILIPARA
GUWAHATI
5:THE DY. DIRECTOR

HIGHER EDUCATION ASSAM
KAHILIPARA
GUWAHATI
6:THE GOVERNING BODY

REP. BY THE PRESIDENT OF GOVERNING BODY
JHANJI HEMNATH SARMA COLLEGE
JHANJI
DIST. SIVASAGAR
ASSAM
7:THE PRINCIPAL

JHANJI HEMNATH SARMA COLLEGE
JHANJI
DIST. SIVASAGAR
ASSAM
8:THE SELECTION COMMITTEE

REP. BY ITS CHAIRMAN/PRESIDENT/MEMBERS OF THE SELECTION
COMMITTEE
JHANJI HEMNATH SARMA COLLEGE
JHANJI
DIST. SIVASAGAR
ASSAM
9:PONDICHERY UNIVERSITY

REP. BY DIRECTORATE OF DISTANCE EDUCATION
R. VENKATARAMAN NAGAR
KALPET
PONDICHERY

Advocate for : MR. D K KOTHARI
Advocate for : SC
HIGHER EDU appearing for THE STATE OF ASSAM AND 8 ORS.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 14-03-2023

Heard Mr. P. Das, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned standing counsel for the Education (Higher) Department, representing respondent nos. 1, 2, 4 and 5, Ms. J. Gayan, learned counsel for respondent no. 3, and Mr. R.L. Chutia, learned counsel for respondent no. 9. None appears for the respondent nos.7 and 8 on call.

2. Pursuant to employment advertisement dated 07.07.2017, the petitioner had applied for selection and appointment to the post of Assistant Professor in the English Department of Jhanji Hemnath Sarma College reserved for ST(H). The petitioner appeared in the interview process and her name was recommended by the Selection Committee for appointment. Accordingly, the Governing Body of the said College took a resolution to that effect, and vide

letter dated 09.10.2017, the said resolution along with other documents were forwarded to the Director of Higher Education, Assam for approval. However, by a communication dated 14.12.2017, the said authority had rejected the resolution adopted by the Governing Body on the ground that the petitioner had obtained her Master Degree from Pondicherry University in a distance education mode. Hence, by filing this writ petition under Article 226 of the Constitution of India, the petitioner has, *inter alia*, prayed for quashing of the said impugned order dated 14.12.2017 issued by the Director of Higher Education, Assam (respondent no.4).

3. The learned counsel for the petitioner had referred to the contents of the writ petition and various affidavits filed by the parties and it has been submitted that the Pondicherry University was a Central University and it was empowered and authorised to impart Master in Arts Degree in English in Distance Education Mode. The learned counsel for the petitioner has painstakingly referred to the documents annexed to the writ petition and affidavits filed by the contesting parties and has submitted that the RTI replies received from the Pondicherry University and the UGC Circulars establish that the Pondicherry University had the approval from the UGC to impart Master of Arts Degree in English through Open and Distance Learning (ODL) Mode and thus, the Degree of Master of Arts in English, issued in favour of the petitioner was a valid one. Therefore, it is submitted that the Director of Higher Education could not have denied the petitioner an appointment as an Assistant Professor of English in the Jhanji Hemnath Sarma College.

4. It is also submitted that the Pondicherry University had appeared and had filed its affidavit-in-opposition today, i.e. 14.03.2023, wherein

it had clearly stated that the said University was established under Pondicherry University Act, 1985, which was an Act of the Parliament, and courses offered through Distance Mode were duly recognized by the Distance Education Council, New Delhi, which is the regulatory body for approving distance education course and in the said context, the Pondicherry University had annexed a communication dated 06.08.2008, issued by the Indira Gandhi National Open University regarding post facto approval granted to the Pondicherry University. It is submitted that in the said affidavit, reference has been made to the effect that as per the UGC notification no. UGC/DEB/2013 dated 14.10.2013, it is clarified that the degree/ diploma/ certificate awarded by the ODL institution, recognized by the Distance Education Council and UGC should be treated as equivalent to the corresponding degree/ diploma/ certificate of the traditional University/ Institutions in the Country.

5. It is also submitted that the stand of the Education (Higher) Department of the State is to the effect that the Master degree by Pondicherry University was not valid for the purpose of securing a job, which was contrary to the UGC/DEC circulars and notification, and was contrary for imparting education in the ODL mode. Moreover, it has been submitted that the degree was awarded from the Head Office of Pondicherry University, and that no part of the education was imparted in Assam and therefore, an otherwise valid Masters degree cannot be invalidated merely because the examinations were held in Pandu College for the benefit of the students in the North Eastern part of the Country. Accordingly, it is submitted that the petitioner is entitled to reliefs as prayed for.

6. The learned counsel for the UGC has supported the stand of the

petitioner. However, the learned standing counsel for the Education (Higher) Department has opposed the prayers made by the petitioner.

7. Having heard the learned appearing counsel, the Court has perused the affidavit-in-opposition filed by the respondent no. 9 as well as the respondent no.4. Also perused the rejoinder affidavit filed by the petitioner on 17.03.2021. It may not be out of place to mention that the petitioner has not annexed a copy of her Master in Arts in English certificate in her writ petition or rejoinder affidavit.

8. At the outset, it would be relevant to quote the provision of Section 3 and 7 of the Pondicherry University Act, 1985, which is extracted below:-

“3. The University. (1) *There shall be established a University by the name of "Pondicherry University".*

(2) *The headquarters of the University shall be at Pondicherry and it may also establish campuses at such other places within its jurisdiction as it may deem fit.*

(3) *The first Chancellor and the first Vice-Chancellor and the first members of the Court, the Executive Council and the Academic Council and all persons who may hereafter become such officers or members, so long as they continue to hold such office or membership, are hereby constituted a body corporate by the name of "Pondicherry University".*

(4) *The University shall have perpetual succession and a common seal and shall sue and be sued by the said name.*

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7. Jurisdiction. (1) *The jurisdiction of the University shall extend to the whole of the Union territory of Pondicherry:*

Provided that the University may, at the request of the Administrator of the Union territory of the Andaman and Nicobar Islands or of the Union territory of Lakshadweep and with the prior approval of the Central Government, extend its jurisdiction to those territories.

(2) *No college or institution situated within the local limits of the jurisdiction of the University shall be compulsorily affiliated to the University and affiliation shall be granted by the University only to such colleges or institutions as may agree to*

accept the Statutes and Ordinances.

(3) Any college or institution admitted to the privileges of the University shall cease to be associated with, or be admitted to the privileges of, any other university.

(4) No college or institution situated within the local limits of the jurisdiction of the University, but not admitted to its privileges, shall be associated with, or be admitted to the privileges of, any other university except with the previous approval of the Administrator of the Union territory in which such college or institution is situated."

9. Thus, it is clear that under Section 3, not only the Head Quarter of the Pondicherry University must be at Pondicherry, but under Section 7, the jurisdiction of the said University would extend to the whole of Union Territory of Pondicherry. Nothing has been brought on record to show that by virtue of operation of the Statute, Ordinances and Regulations of Pondicherry University, the examination centre at Pandu College, Guwahati was within the territorial jurisdiction of the Union Territory of Pondicherry.

10. It is also submitted that in connection with WP(C) 963/2018, which is previous item listed today similar to the present case, as per the contents of Annexure-24 of the said writ petition, which is the list of PCP Centres of Pondicherry University, downloaded by the petitioner in that case, one of such PCP Centre is at Guwahati. Moreover, the Spot Admission Centre for the said University is at Pandu College, Pandu, Guwahati. The learned standing counsel for the Education (Higher) Department has referred to the information available in the internet and he has submitted that the full form of "PCP" appears to be "Personal Contact Programme". We do not vouch for the correctness of such information available in the internet.

11. As per the Public Notice bearing F.No. 1-14/2022(DEB) dated 23.08.2022, issued by Prof. Rajnish Jain, Secretary, University Grants

Commission, the precautions to be taken by the students before enrolling for programme offered under ODL and/or Online Learning Mode is provided for and in para 6(i) thereof, it is provided that a university established or incorporated by or under a Central Act shall operate only within the territorial jurisdiction as per the provisions of the Act and that under para-7 thereof, prohibition of franchising arrangement for offering ODL and OL programmes has been highlighted.

12. In the case of *Prof. Yashpal & Anr. v. State of Chhattisgarh & Ors., (2005) 5 SCC 420*, cited by the learned standing counsel for the Education (Higher) Department, the requirement of maintaining high standards in education has been highlighted and it has been held that the State Act could not have provided for having off-campus centres outside its jurisdiction. Following the said ratio, it is required to be examined whether the Pondicherry University could operate its examination centre in Pandu College, Guwahati.

13. In the case of *Kurmanchal Institute of Degree and Diploma & Ors. v. Chancellor, M.J.P. Rohilkhand University & Ors., (2007) 6 SCC 35*, the Supreme Court of India had held that Nainital, not being one of the 7 (seven) districts falling within the territorial area of the University, as mentioned in schedule to the Act and also outside the State of U.P., distance education programme run by the appellant study centre was rightly cancelled by the respondent.

14. It would now be relevant to refer to para-49, 50 and 60 of the case of *The University Grants Commission & Anr. v. Annamalai University & Ors.*, decided by Madras High Court on 20.01.2023 in WA no.606 of 2015:-

49. As pointed out by the Hon'ble Supreme Court in Professor Yash Pal's case (*supra*) Article 245(1) of the Constitution of India enables the States to legislate only for their territories. All the State Universities which are established under various State enactments with a particular area of operation or a territorial jurisdiction will have to limit their functions only to such jurisdiction. We are not suggesting that these States run Universities cannot enroll students from outside the State for their programmes, but their activities cannot span beyond the State.

50. The University Grants Commission's Regulations framed in the year 2020 viz., University Grants Commission (Open and Distance Learning Programs Online Programmes) Regulations 2020 provide for territorial jurisdiction and the activities should be as per the territorial jurisdiction allotted to the University under the Act. The Regulations also provide for enrollment of learners on the open and distance learning mode from any part of the country. But Regulation 23(3) restricts all other activities such as admissions, contact programmes, examinations etc., to be conducted within the territorial jurisdiction. As far as the online education programmes there is no such territorial restrictions.

60. In fine, we conclude that the University Grants Commission Regulations will prevail in view of the primacy given to the University Grants Commission under the University Grants Commission Act as well as the Entry 66 of List 1 of the 7th Schedule of the Constitution. While the Universities established by the State enactment and other private Universities can enroll students from outside the State, their other activities viz., establishment of learner support centres, conduct of the examination etc., must be within the State only. Insofar as the deemed to be universities are concerned, they can conduct online distance education programs in compliance with the Regulations of the University Grants Commission upon having recognition from the University Grants Commission."

15. In the present case in hand, the situs of examination of the petitioner for the Master in Arts in English is not disclosed. However, we take note of the fact as emerged in WP(C) 963/2018 that one of such centre is in

Pandu College. The documents produced in that case discloses that (i) one can take admission in Pondicherry University from Pandu College, Guwahati, and that (ii) the Pondicherry College has PCP Centre at Guwahati. It would be absurd to presume that Pandu College, which is located in Guwahati is under the territorial area of Union territory of Pondicherry. The learned counsel for the respondent no.9 has produced a copy of Ordinance Governing academic matters of Pondicherry University. As per clause 11-1 of the said Ordinance, the University can admit students from any part of India and abroad, but the said clause does not enable the Pondicherry University to have activities outside its territorial jurisdiction. Therefore, the activities of (i) admission, (ii) student support centre in the form of PCP Centre at Guwahati, and (iii) examination centre at Guwahati is clearly outside the scope, ambit and prescription of Sections 3 and 7 of the Pondicherry University Act, 1985, as extracted herein above. Therefore, in light of the said provisions of section 3 and 7 of the Pondicherry University Act, 1985 the case of *Punal Kumar Das Vs. State of Assam and Ors.*, (2014) 5 GLR 639; (2014) 0 Supreme (Gau) 536 would have no applicability in this case.

16. Thus, while the online distance education programme or distance learning programme can be conducted in compliance with the guidelines of UGC/ Distance Education Council, New Delhi/ Indira Gandhi National Open University, New Delhi, and students from different places can be enrolled, but the education related activities such as establishment of student support centres, conduct of examination, etc. must be limited to the territorial jurisdiction of the Pondicherry University.

17. Therefore, as the examination of Pondicherry University was

conducted outside the jurisdiction as prescribed under Section 7 of the Pondicherry University Act, 1985, the Court is unable to find fault with the impugned decision order dated 14.12.2017 issued by the Director of Higher Education, Assam (respondent no.4), thereby rejecting the request by Principal, Jhanji Hemnath Sarma College for approval of appointment of the petitioner as Assistant Professor in English Department, Jhanji Hemnath Sarma College. Consequently, the petitioner is also not found entitled to any relief as prayed for in this writ petition.

18. We hasten to clarify that nothing contained in this order shall be construed as if we have adjudicated in any manner, the question of validity or otherwise of the Degree of Master of Arts in English, conferred by the Pondicherry University to the petitioner. However, we have only declined to interfere with the impugned order dated 14.12.2017 and declined to grant any relief to the petitioner.

19. This writ petition stands dismissed with aforesaid observations.

JUDGE

Comparing Assistant