

GAHC010251262023



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

Case No. : WA/415/2023

MUCHABBIR ALI,
S/O LATE TAHIR ALI,
PRINCIPAL OF BALESWAR HIGHER SECONDARY SCHOOL,
JALALPUR, CACHAR, P/R/O VILL- NIZ KATIGORAH PART-I,
P.O.-GANGAPUR, DIST- CACHAR, ASSAM, PIN-788804.

.....**Writ Appellant**

-VERSUS-

1.THE STATE OF ASSAM,
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EDUCATION (SECONDARY) DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE STATE SELECTION BOARD,
THROUGH THE CHAIRMAN,
I.E. THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM, EDUCATION (SECONDARY) DEPARTMENT,
DISPUR, GUWAHATI-6.

3:THE ADDITIONAL SECRETARY TO THE GOVERNMENT OF ASSAM,
SECONDARY EDUCATION DEPARTMENT,
DISPUR, GUWAHATI-6.

4:THE DIRECTOR OF SECONDARY EDUCATION, ASSAM
KAHILIPARA, GUWAHATI-19.

5:THE INSPECTOR OF SCHOOLS,
CACHAR DISTRICT CIRCLE, SILCHAR, ASSAM.

6:THE NATIONAL COUNCIL FOR TEACHER EDUCATION
THROUGH THE CHAIRPERSON,
HANS BHAWAN, (WING II)
1 BAHADUR SHAH ZAFAR MARG, NEW DELHI-110002

7:MOFUR UDDIN,
SUBJECT TEACHER,
BALESWAR HIGHER SECONDARY SCHOOL
JALALPUR, DIST- CACHAR (ASSAM), PIN-788816.

..... **Respondents**

– BEFORE –
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE SUMAN SHYAM

For the Appellant : Mr. D.K. Mishra, Senior Advocate assisted by Mr. I.H. Saikia and Mr. P.J. Borah, Advocates.

For the respondent(s) : Mr. R. Mazumdar, Standing Counsel, Education (Secondary) Department for respondent Nos.1, 2, 3, 4 & 5.

: Mr. I. Alam, Standing Counsel, NCTE for respondent No.6.

: Mr. S.K. Goswami, Mr. B.K. Goswami and Mr. N. Barman, Advocates for respondent No.7.

Date of Hearing : 15.02.2024.

Date of Judgment : 21.02.2024.

JUDGMENT & ORDER (CAV)

[Vijay Bishnoi, CJ]

This intra-Court appeal is filed by the appellant being aggrieved with the order dated 19.10.2023 passed by the learned Single Judge in WP(C) No.5221/2022, whereby the writ petition filed by the appellant/writ petitioner, questioning the B.Ed. Degree of the respondent No.7 herein, has been dismissed.

2. The brief facts of the case are that on 24.12.2018 an advertisement was published in a Bengali Daily newspaper, namely, Samayik Prasanga, inviting

applications for filling up the post of Principal of Baleswar Higher Secondary School, Jalalpur, Cachar on regular basis. The appellant and the private respondent along with another candidate had applied for the said post. The School Selection Committee of Baleswar Higher Secondary School, Jalalpur selected the respondent No.7 and placed the appellant and the other person jointly at Serial No.2.

3. The claim of the appellant is that the B.Ed. Degree of the respondent No.7 and the other person were not valid degrees because at the time when they obtained the B.Ed. Degrees from Dr. Shashi Bhushan Institute of Education, Hailakandi, the said Institute was not recognized by the National Council for Teacher Education (NCTE). It is contended that Dr. Shashi Bhushan Institute of Education was established on 31.12.1995 and the said Institute applied for recognition of its B.Ed. Degree from NCTE on 12.08.1997. The NCTE granted provisional recognition on 13.01.2000 and final recognition was granted on 15.06.2001, whereas the respondent No.7 passed the B.Ed. course from the said Institute in the year 1997 when, admittedly, Dr. Shashi Bhushan Institute of Education was not recognized by the NCTE to grant B.Ed. Degree.

4. The learned Single Judge rejected the above claim of the writ petitioner/appellant taking into consideration the fact that the B.Ed. Degree of one Shri Govinda Chakraborty obtained from the Dr. Shashi Bhushan Institute of Education prior to the date of its recognition was put to challenge by way of WP(C) No.3214/2019 [*Swapan Kumar Singha Vs. the State of Assam & Ors.*], however, the said challenge came to be rejected by the learned Single Judge vide judgment dated 05.04.2022 and the said judgment was affirmed by the Division Bench of this Court in WA No.154/2022 [*Swapan Kumar Singha Vs. The State of Assam & Ors.*] vide order dated 28.04.2023. In those judgments, the

learned Single Judge as well as the Division Bench of this Court has affirmed the B.Ed. Degree of Shri Govinda Chakraborty while recording a specific finding that as per Section 14 of the National Council for Teacher Education Act, 1993 (hereinafter to be referred as "the NCTE Act"), an application seeking grant of recognition was required to be submitted to the Regional Committee concerned in such form and in such manner as may be determined by the Regulations. It has been further observed that such application could have been filed only as per the procedures prescribed by the Regulations and such Regulations were notified later on, therefore, before coming into force of the Regulations, no application could be filed by any Institute offering B.Ed. Degree for recognition to NCTE.

5. The learned Single Judge had also taken into consideration the fact that the NCTE extended the date for filing of application for recognition up to 18.08.1997 and Dr. Shashi Bhushan Institute of Education had submitted application seeking recognition of its B.Ed. Degree course on 12.08.1997, therefore, an incumbent who has obtained B.Ed. Degree from Dr. Shashi Bhushan Institute prior to the date of its recognition cannot be made to suffer because of certain hyper-technicalities. Relying on the decisions rendered by the Hon'ble Supreme Court in *P. Kasilingam & Ors. Vs. P.S.G. College of Technology and Ors.*, reported in (1995) 2 SCC 348 and *State of UP & Ors. Vs. Bhupendra Nath Tripathi & Ors.*, reported in (2010) 13 SCC 2023, the learned Single Judge has dismissed the writ petition filed by the appellant.

6. While assailing the impugned order dated 19.10.2023, the main thrust of the arguments of Mr. D.K. Mishra, learned Senior Counsel for the appellant is that as per Section 14 of the NCTE Act, every institutions offering or intending to offer a course or training in teacher education on or after the appointed day

was required to make an application to the concerned Regional Committee in the prescribed manner as may be determined by the Regulations. It is further submitted that the NCTE Act came into force with effect from 01.07.1995 and as such the appointed date was fixed as 01.07.1995. It is argued that an Institute which did not come into existence or was not offering a course or training in teacher education immediately before the appointed date has been deliberately excluded from the first proviso to Section 14(1) of NCTE Act. It is contended that Dr. Shashi Bhushan Institute of Education, an Institute from where the respondent No.7 has obtained his B.Ed. Degree came into existence only on 31.12.1995, admittedly, after 01.07.1995 and as such, the said Institute cannot be treated as existing Institute for the purpose of Section 14 of the NCTE Act.

7. It is further argued that in any condition an Institute which was not offering B.Ed. Course on the appointed day, the B.Ed. Degree provided by it cannot be treated as a valid degree for the purpose of appointment on the post of Principal. It is contended that the learned Single Judge has not dealt with the said aspect of the matter in right perspective and therefore, the impugned judgment passed by the learned Single Judge is liable to be set aside and the writ appeal filed by the appellant deserves to be allowed.

8. The learned Senior Counsel for the appellant has further submitted that the language of Section 14 of the NCTE Act is plain and simple and has to be read according to its ordinary grammatical construction and it cannot be modified in any condition. In support of his submission, he has placed reliance on the decisions of the Hon'ble Supreme Court in the cases of (i) *Md. Hanif Quareshi Vs. The State of Bihar*, reported in *AIR 1958 SC 731*, (ii) *Kanai Lal Sur Vs. Paramnidhi Sadhukhan*, reported in *AIR 1957 SC 907*, (iii) *Union of India & Anr. Vs. Hansoli Devi & Ors.*, reported in *(2002) 7 SCC 273*, (iv) *Commissioner of*

Income Tax, Kerala Vs. Tara Agencies, reported in (2002) 6 SCC 429, (v) *Arup Bhuyan Vs. State of Assam & Anr.*, reported in (2023) 8 SCC 745 and (vi) *Union of India & Ors. G.M. Kokil & Ors.*, reported in 1984 (Supp) SCC 196.

9. Per contra, Mr. S.K. Goswami, learned counsel appearing for the respondent No.7 has argued that the learned Single Judge has not committed any illegality in dismissing the writ petition filed by the writ petitioner/appellant. It is contended that the NCTE Act came into force on 01.07.1995 and, as per Section 14 of the NCTE Act, every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may apply for grant of recognition to the Regional Committees concerned in such form and in such manner as may be determined by the Regulations. It is contended that the Regulations of the NCTE were notified on 24.02.1996 and prior to that there was no occasion for any Institution offering B.Ed. course to apply for recognition. It is contended that as per Section 14 of the NCTE Act, every institution offering or intending to offer a course or training in teacher education was supposed to apply seeking recognition to the NCTE within 6(six) months of the appointed day i.e. 01.07.1995, but the NCTE has extended the said date up to 18.08.1997 and thereafter further extended it up to 31.03.1999.

10. It is submitted that Dr. Shashi Bhushan Institute of Education had filed application seeking recognition of its B.Ed. Degree course on 12.08.1997 and the provisional recognition was granted on 13.01.2000 and the final recognition was granted on 15.06.2001. It is contended that considering the said facts, the Division Bench of this Court in WA No.154/2022, has held that the B.Ed. Degree obtained by one Govinda Chakraborty from Dr. Shashi Bhushan Institute of Education in the year 1997 along with present respondent No.7 is valid. In such circumstances, it cannot be held that the B.Ed. Degree obtained by the

respondent No.7 from Dr. Shashi Bhushan Institute of Education is an invalid degree and, thus, the learned Single Judge has rightly held that the B.Ed. Degree obtained by the respondent No.7 from Dr. Shashi Bhushan Institute of Education is valid. Learned counsel for the respondent No.7 has therefore submitted that no case for interference is made out in this writ appeal. It is further submitted that the SLP [*Petition for Special Leave to Appeal (C) No.13137/2023*] filed against the judgment dated 28.04.2023 passed by the Division Bench of this Court in WA No.154/2022 [*Swapan Kumar Singha* (supra)] has already been dismissed by the Hon'ble Supreme Court vide order dated 14.07.2023.

On the strength of the above arguments, learned counsel for the respondent No.7 has prayed that the present appeal be dismissed.

11. Heard the learned counsel appearing for the parties and perused the material available on record.

12. The facts which are not in dispute are that Dr. Shashi Bhushan Institute of Education was established on 31.12.1995 and it applied for recognition with the Regional Committee of the NCTE on 12.08.1997. Provisional recognition was granted to the said Institute on 13.01.2000 and the final recognition was granted on 15.06.2001. In the meantime, the respondent No.7 has obtained the B.Ed. Degree from Dr. Shashi Bhushan Institute of Education in the academic year 1996-1997.

13. The NCTE Act came into force on 01.07.1995 and as such, the appointed day is 01.07.1995. Section 14 of the NCTE Act provides that every institutions offering or intending to offer a course or training in teacher education on or after the appointed day, may require to apply seeking recognition of the course

or training in teacher education offered by it to the Regional Committee concerned in prescribed form and in the manner as may be determined by the Regulations within a period of 6(six) months from the appointed day. It is admitted position that Regulations were not published within a period of 6(six) months from the appointed day i.e. 01.07.1995 and came to be published finally on 24.02.1996.

If the Regulations under which an Institute has to apply recognition were not published within a period of 6(six) months from the appointed day, it was not expected on the part of any Institution to apply seeking recognition within 6(six) months of the appointed day.

14. Taking note of the above situation, the NCTE has issued notification extending the time for submitting application seeking recognition, initially, up to 01.04.1997 and thereafter up to 18.08.1997 and finally up to 31.03.1999. Dr. Shashi Bhushan Institute of Education filed application seeking recognition of its B.Ed. Degree course within that extended time.

15. Considering the above fact situation, as already noted above, the Division Bench of this Court in WA No. 154/2022 [*Swapan Kumar Singha* (supra)] has clearly held that the B.Ed. degree offered by Dr. Shashi Bhushan Institute of Education for the academic session 1996-1997 is a valid degree.

16. In the present case, the respondent No.7 has obtained the B.Ed. Degree from Dr. Shashi Bhushan Institute of Education in the academic session 1996-1997 and therefore, there is no reason to hold that the said B.Ed. Degree obtained by the respondent No.7 is invalid.

17. So far as the argument of the learned Senior Counsel for the appellant that Section 14 of the NCTE Act speaks only about those Institutions which were

existing on the appointed day, i.e. 01.07.1995 is concerned, the same cannot be accepted in view of the fact that the NCTE vide various notifications has extended the last date for submission of application seeking recognition of B.Ed. Degrees and with the extension of the said date all the Institutions existing up to the extended date and offering B.Ed. courses were eligible for submitting applications seeking recognition of B.Ed. Degrees offered by them.

Needless to say that the power of the NCTE of extending the date has already been recognized by the Division Bench of this Court in WA No. 154/2022 [*Swapan Kumar Singha* (supra)] and the said judgment has already been affirmed by the Hon'ble Supreme Court by dismissing the SLP preferred (supra).

18. In view of above discussion, we do not find any case for interference in this intra-Court appeal. Hence, the appeal is dismissed.

19. The interim order passed by this Court in this intra-Court appeal is hereby vacated. The respondent No.7 forthwith be appointed as Principal of Baleswar Higher Secondary School, Jalalpur, Cachar. The respondent No.7 is entitled for all the consequential benefits except the salary of the post of Principal for the period he has actually not worked as Principal.

JUDGE

CHIEF JUSTICE

Comparing Assistant