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HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT APPEAL NO. 247 OF 2014

Shashibala Sharma, aged about 38 years, D/o Late Shri Ramswaroop Sharma, R/o Patel Nagar, House No. 27, Ward No. 27, P.S. Rajnandgaon, District Rajnandgaon (C.G.)

... Appellant

Versus

1. State of Chhattisgarh, through its Secretary, Higher Education Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, Raipur (C.G.)
2. Chhattisgarh Public Service Commissioner, Shankar Nagar Road, Raipur (C.G.)
3. University Grants Commission, Bahadurshah Zafar Marg, New Delhi 110002.
4. Indira Gandhi National Open University, Maidan Garhi, New Delhi 110068.
5. Distance Education Council, through its Director, Indira Gandhi National Open University, Maidan Garhi, New Delhi 110068.
6. Vinayaka Mission University, NH 47, Sakri Main Road, Ariyanoor, Salem (Tamil Nadu) 636308.

... Respondents

For Appellant	:	Mr. Mateen Siddiqui, Advocate.
For Respondent No.1	:	Mr. Prafull Bharat, Additional Advocate General.
For Respondent No.2	:	Mr. Y.C. Sharma, Advocate.
For Respondent No.3	:	Mr. Sachin Singh Rajput, Advocate.
For Respondent No.5	:	Mr. Shivendu Pandya, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

24/02/2016

1. The present appeal arises from order dated 16.4.2014 dismissing Writ Petition (S) No. 4987 of 2012. The Learned Single Judge declined to interfere with the decision of the Chhattisgarh Public Service Commission not to consider the Appellant for the post of Assistant Professor, declining to recognise her M.Phil qualification

obtained by the Distance Education mode from the Vinayaka Mission University, Chennai (hereinafter referred to as 'the University').

2. Learned Counsel for the Appellant submitted that the University was established on 1.3.2001 under Section 3 of the University Grants Commission Act, 1956 (hereinafter referred to as 'UGC') by issuance of an appropriate notification by the Central Government in the official gazette on the advice of the UGC. The University fulfilled the requirements under Regulation 3.3 of the University Grants Commission (Establishment and Maintenance of Standards in Private Universities) Regulations, 2003 (hereinafter called "the Regulations, 2003") framed under the UGC Act for establishment of an off-campus centre/study centre after five years of its coming into existence. On 23.2.2008, the UGC published inter alia the name of the University as a deemed University having approval for establishment of an off-campus centre. The University was given post-facto approval from 2005 and regular recognition from February, 2007 till February, 2012. This institutional recognition was also valid for running courses by Distance Education Centres also in view of the permission granted for off-campus centre/study centre by order dated 23.2.2008. Once the University offered M.Phil programme it naturally included conduct through Distance Education mode from an off-campus centre.

3. Distance Education Centres are regulated by the Distance Education Council established under statute 28 of the Indira Gandhi National Open University Act, 1985. It is entrusted with the responsibility to ensure that Distance Education Centres are established only in the manner approved and maintain the standards for distance education. The Indira Gandhi National Open University by letter dated 28.2.2007 referring to the communication from the University dated 30.11.2006

communicated grant of recognition for courses under offer by faculty of distance education through the distance mode for a period of five years. The degree obtained by the Appellant in the session 2007-08 was within this period from an off-campus centre/study centre by the distance mode and therefore was valid for all purposes. The University Grants Commission (Minimum Standards and Procedure for awards of M.Phil/Ph.D Degree) Regulations, 2009 (hereinafter called "the Regulations, 2009") came into force on 17.7.2009. The decision of the State of Tamil Nadu dated 29.8.2006 not to allow the University to have off-campus centres has no relevance to the case of the Appellant as she has not obtained her M.Phil qualification from any off-campus centre in the State of Tamil Nadu but from a Distance Education Centre located in the State of Chhattisgarh at Bhilai. There was no specific order of the State of Chhattisgarh under Regulation 3.3 declining permission for establishment of off-campus centre/study centre at Bhilai and therefore the establishment of the off-campus centre/study centre which was complying with the Distance Education Council guidelines was valid and denial of permission to the Appellant for appearing at the interview was arbitrary. Reliance was further placed on *Developers Institute of Computer Technology & others v. The State of Madhya Pradesh & Others* (Writ Petition No. 18151 of 2010) also noticed and discussed by the Learned Single Judge.

4. Learned Additional Advocate General submitted that neither the degree of the Appellant, nor even the pleadings in the writ application make a whisper about at which location and address the Distance Education Centre had been established and was running at Bhilai. Even if the University was permitted an off-campus centre/study centre by the Distance Education Council, it could not be in violation of Regulation 3.3

which required “prior approval” of the State Government where it was proposed to be opened. If prior approval was required, the submission that the State Government never denied permission for opening of the Distance Education Centre is an argument which becomes redundant. The Learned Single Judge has also referred to 2012 (4) M.P.L.J. 680 (Smt. Rashmi Razak v. Union of India & others) to hold that M.Phil mark-sheet issued by the University through Distance Education Centres in the State of Madhya Pradesh even prior to coming into force of the Regulations, 2009 were contrary to the law and could not be considered for higher education or government service in the State of Madhya Pradesh. The situation is no different here.

5. Without prejudice to the above, Learned Additional Advocate General submitted that the contention of the Appellant that the letter dated 29.8.2006 was confined in its operation and effect to the State of Tamil Nadu is unacceptable because the off-campus centre/study centre was established by the University and once the State of Tamil Nadu prohibited running of M.Phil courses through Distance Education from the academic year 2007-08, the distinction sought to be created is artificial and contrary to logic and reason. Reliance was further placed on 2005 (5) SCC 420 (Prof. Yashpal & Another v. State of Chhattisgarh & Others) as discussed by the Learned Single Judge that establishment of an off-campus centre/study centre outside the State was beyond the legislative competence of the concerned State legislature.

6. We have considered the submissions on behalf of the parties and are of the considered opinion that the appeal is devoid of merit for reasons discussed hereinafter.

7. Under Regulation 3.3, the establishment of an off-campus centre is permissible in exceptional circumstances and that too after expiry of five years from coming into existence of the concerned University. Even thereafter the Regulation provides that it could not be established without 'prior approval' of the concerned State Government where the centre was proposed to be opened. It has emerged as an admitted fact of the present case that the Appellant has not been able to establish that any approval was ever sought from much less it was granted by the State Government for the establishment of a Distance Education Centre of the University at Bhilai.

8. The Appellant is stated to have secured her M.Phil degree in the academic session 2007-08. The State of Tamil Nadu on 29.8.2006 had prohibited the University from offering M.Phil courses through Distance Education from the academic year 2007-08. The entire controversy with regard to an off-campus centre/study centre within the State of Tamil Nadu or outside becomes irrelevant and the Appellant has not challenged the decision of the Government of Tamil Nadu dated 29.8.2006. The argument that the order dated 29.8.2006 was confined to the geographical limits of the State of Tamil Nadu is an argument in desperation and has to be stated to be rejected.

9. The pleadings in the writ petition do not contain a whisper of a suggestion at what address and location in Bhilai was the off-campus centre/study centre of the University established at which the Appellant pursued the course through Distance Education mode. It raises serious doubts in the mind of the Court with regard to her claims.

10. Nothing has been pointed out to us to distinguish the case of Smt. Rashmi Razak (supra).

11. Developers Institute of Computer Technology (supra) has also been discussed by the Learned Single Judge and distinguished. Nonetheless learned Counsel for the Appellant persuaded us to go through the same again. On a fresh reading of the order, we find no reason to arrive at any different conclusion than the Learned Single Judge that the question for consideration therein was completely different and the establishment of Distance Education Centre outside the parent State did not fall for consideration at all. It is therefore of no help to the Appellant.

12. Merely because the Appellant may have applied in response to the advertisement for the post of Assistant Professor, her application was accepted and she was allowed to appear at the written examination does not preclude the Respondents from preventing her from participating at the interview no sooner that her lack of eligibility surfaced. There is no question of any estoppel or waiver against the law.

13. We therefore find no merit in the writ appeal. It is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge