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

Date of decision: 12th December, 2018

+ W.P.(C) 4160/2011

NIDHI DHAMIJA Petitioner

Through: Mr. Karunesh Tandon, Adv.

versus

UNIVERSITY GRANTS COMMISSION AND ORS

..... Respondents

Through: Mr. Apoorv Kurup, Adv. with

Mr. A.C. Boxipatro, Adv. for UGC

Mr. Vikram Jetly, CGSC for R-2

Mr. Anil Soni, SC for AICTE with Mr.

Abhinav Tyagi, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T (O R A L)

1. The petitioner appeared in the Common Admission Test (CAT) for securing admission in the Management course in one of the prestigious business school of the country.

2. Consequent to clearing the said examination, the petitioner joined the Lal Bahadur Shastri Institute of Management (hereinafter referred to as “the LBSI”), from which the petitioner graduated with her Post Graduate Diploma in Business Management (hereinafter referred to as “the PGDBM”) in 2008.

3. Purportedly on the basis of the said qualification acquired by her, the petitioner was selected as Relationship Manager with Kotak Mahindra Bank. The petitioner appeared in the National Eligibility Test (NET) for Junior Research Fellowship in Management, conducted by the University Grants Commission (hereinafter referred to as “the UGC”).

4. Admittedly, on the basis of the said examination, eligibility of Indian Nationals, for award of the Junior Research Fellowship and for lectureship in Indian Universities and colleges, is determined.

5. The writ petition points out that, at the stage of application and issuance of admit card to her, no objection, regarding the eligibility of the petitioner, to undertake the said examination, was raised.

6. The petitioner successfully cleared the NET as per the result sheet issued by the UGC.

7. Based on the above qualification, the petitioner was selected as Assistant Professor in the Banarsi Das Chandi Wala Institute of Professional Studies, which she joined. While working as such, the petitioner applied, for enrollment with the Ph.D course conducted by the University of Rajasthan, as candidates who had cleared the NET examination of the UGC were not required to undertake any other examination. She was selected and joined the Ph.D course with University of Rajasthan. In order to comply with the directive to the said effect, issued by the University of Rajasthan, the petitioner

applied to the UGC for issuance of a certificate, certifying that she had successfully cleared the NET.

8. The UGC initially required the petitioner to submit a letter, issued by the All India Council for Technical Education (hereinafter referred to as “the AICTE”) confirming that the PGDBM course of the LBSI was equivalent to a Master’s Degree.

9. This requirement, it may be noted, related back to the conditions of eligibility, stipulated in the notification issued by the UGC for conducting of the NET, of which Condition No. 3 (i) read thus:

“3) CONDITIONS OF ELIGIBILITY:

(i) Candidates who have secured at least 55% marks (without rounding off) in Master’s Degree OR equivalent examination from universities/institutions recognised by UGC in Humanities (including languages) and Social Sciences, Computer Science & Applications. Electronic Science etc. are eligible for this Test. The Scheduled Caste’(SC)/Scheduled Tribe (ST)/Physically Handicapped (PH)/Visually Handicapped (VH) category candidates who have secured at least 50% marks (without rounding off) in Masters degree or equivalent examination are eligible for this Test.”

10. It may be noted, here, that in the notification issued for the subsequent examination, the UGC significantly added, in the notification for the NET examination to be conducted for the period June to December, 2010, the following conditions:

“(vi) Candidates with post-graduate diploma/certificate course(s), should in their own interest, ascertain the equivalence of their course(s) with Master's degree of

recognized Indian universities from Association of Indian Universities (AIU), New Delhi, (www.aiuweb.org)”

11. As such, in the conditions of eligibility, as stipulated in the notification for the NET exam which was undertaken by the petitioner, there was no specific stipulation to the effect that the Post Graduate Diploma/Certificate course, if undertaken by the candidate, would have to be declared as equivalent to a Master’s degree by the AIU.

12. Reverting to the recital of facts, the petitioner, in compliance with the requirement, of the UGC, to produce any equivalent certificate from the AICTE, furnished a letter, dated 21st May, 2007, issued by the AICTE which read thus:

“All India Council for Technical Education
(A statutory Body of the Govt. of India)

F.No.Eqvi./AB/Gen.Corr.(Old)/2016-17

Date 30.05.2007

Prof. Rajnish Shrivastava
Advisor (Academic)
Ph: 011-23392589
Fax: 011-23392630

Gp.Capt.R.K.Rastogi,
Chief Administrative Officer
LBS Institute of Management
Shastri Sadan, Sector III
R. K. Puram
New Delhi-110022.

Sub: Equivalent of PGDBM (Full Time / Part Time) with
MBA- reg.

Sir,

This is with reference to your request / application / proposal on the subject cited above. The same has been examined by the Standing Committee for Equivalence of AICTE as per its guidelines / norms and the Committee is of the opinion that 2-Year Full time PGDBM and 3-year Part Time PGDBM programmes offered by LBS Institute of Management New Delhi is equivalent to MBA, provided the course has been approved by the AICTE during the period for which the equivalence is sought.

This is for your kind information.

Thanking you,

Yours faithfully,

Sd./-
(Rajnish Shrivastava)"

13. The petitioner was thereafter directed, by the UGC, to produce a certificate by the AIU, declaring the PGDBM qualification, as acquired by her from the LBSI, as equivalent to a Master's degree.

14. It is the assertion of the petitioner that no such requirement existed in law. Nevertheless, the petitioner furnished, to the UGC, a letter dated 11th October, 2010, issued by the AIU to the LBSI, which read thus:

"Prof. Beena Shah M.Sc. M.Ed, Ph.D. Secretary General	Association of Indian Universities AIU House, 18, Comrade Indrajit Gupta Marg, New Delhi-110002
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No: EV/II(951)/2010/
October 11, 2010

Lal Bahadur Shastri institute of Management
7/11, Sector-11
Near Metro Station, Dwarka
Delhi 110075

Dear Sir,

This has reference to our communication of even number for grant of equivalence to your Two-year Full-time Postgraduate Diploma in Management with MBA Degree.

We would like to inform you that the matter was considered by the competent authority of AIU which decided as under:

“Resolved that the two-year full time Postgraduate Diploma in Management of Lal Bahadur Shastri Institute of Management, Dwarka, New Delhi, be recognized as equivalent to Master of Business Administration (MBA) degree of an Indian University, for a period of Five years, w.e.f. 1st October, 2010 till 30th June, 2015 or till such time the approval of the AICTE remains valid, whichever is earlier, as per the recommendations of the Visiting Team.”

Thanking you,

Yours faithfully.

(Prof. Beena Shah)
Secretary General”

15. A reading of the above letter reveals that the AIU recognises the PGDBM qualification, awarded by the LBSI, as equivalent to the MBA degree of an Indian University, for the period of five years from 1st October, 2010 till 30th June, 2015, or till such time as the approval of the AICTE remains valid, whichever was earlier.

16. In the case of the petitioner, the PGDBM qualification having been awarded by the LBSI in 2008, the above recognition, as contained in the letter dated 11th October, 2010

of the AIU, obviously could not come to her aid.

17. Predictably, therefore, on the ground that the AIU had not approved recognition, to the PGDBM qualification, of the LBSI, as acquired by the petitioner, for the period during which the petitioner had acquired the said qualification, as equivalent to a Master's degree of an Indian University, the UGC, *vide* an undated letter containing Reference No.UGC-REF:2617/(NET-DEC 2009), declared the petitioner as "disqualified in the UGC-NET held on 27th December, 2009".

18. This communication is assailed, by the petitioner, by means of the present writ petition.

19. The petitioner's contention is that, in the face of the circular dated 30th May, 2007, issued by the AICTE, declaring that the PGDBM of the LBSI was equivalent to MBA, the notification could not have declared her as disqualified in the NET examination. She points out that, there was no stipulation, for the eligibility criteria contained in the notification for the NET examination given by her, to the effect that declaration of equivalence, of the Diploma obtained by her, with the Master's degree, had necessarily to be issued by the AIU.

20. The UGC, in its counter affidavit, merely asserts, in this regard, in para 11, that "so far as equivalence of a course/certificate/degree is concerned the same is determined by

the Association of Indian Universities in India”, without providing any basis for this assertion.

21. The counter affidavit also relies on information obtained, under the Right to Information Act, 2005, by the UGC, from the AIU, to the effect that PGDBM qualification, obtained by the petitioner, could not be treated as equivalent to a Master’s degree of an Indian University, as she had not obtained the same prior to her qualification from AIU.

22. So far as the AIU is concerned, the counter affidavit filed by it, asserts that, as a matter of policy equivalence was always provided prospectively, on the basis of the report of the team of the AIU which visited the premises of the concerned institution. It is asserted, therefore, that such qualification of equivalence cannot apply retrospectively.

23. The AICTE, for its part, states, in its counter affidavit, thus:

“5. It is submitted that Section 10 of the AICTE Act prescribes the function of the Council and mandates that it shall be duty of the Council to take all necessary steps. It may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards.

6. It is submitted that in order to discharge its duties in accordance with the provisions contained in the AICTE Act, the AICTE has framed new Technical institutions, introduction of courses or programmes of existing Technical institutions. The AICTE has also evolved a Hand Book of Approval process, which details out the procedures as well as

minimum conditions which an institute must fulfil in order to seek approval for either starting new Technical Institutions or for introduction of courses/programmes as increase/variation of intake capacity of seat for courses/programmes as well as existing Technical institute.

10. However, the answering respondent *vide* an emergent meeting of the Council held on 20.09.2010 decided as follows:

“It was informed to the Council that AICTE is regularly receiving the request for granting equivalence of degree and diploma courses from various corners and is sometimes facing difficulties in disposing off the requests. It was thus decided that:

(i) the requests received for granting equivalence to degree courses for academic purposes will be referred to AIU/UGC. The requests received for granting equivalence to degree courses for employment purpose will be left to the discretion of employer.”

24. The averment, in para 10 of the counter affidavit of the AICTE, to the effect that, in a meeting, held on 20th September, 2010, it was decided that requests received, by it, for granting equivalence to degree courses for academic purposes, would be referred to the AIU/UGC, indicates that the AICTE did possess the competence to grant such equivalence, but that, owing to the number of requests received by it in this regard, it took a decision, after 2010, to delegate the powers to grant equivalence to AIU.

25. In her rejoinder, the petitioner points out that the stipulation, to the effect that declaration of equivalence of the diploma awarded to the candidate, with a Master’s degree, had

necessarily to be by the AIU, was introduced, by the UGC, for the first time, in the notification for the examination to be conducted for the session June/December, 2010. As such, she asserts that no such stipulation could be read into the notification by which her case was governed.

26. I have heard Mr. Karunesh Tandon, learned counsel for the petitioner, Mr. Apoorv Kurup, learned counsel for the UGC and Mr. Anil Soni, learned Standing Counsel for the AICTE and considered the material available on record.

27. There is no dispute about the fact that the condition of eligibility, as set out in the notification issued by the UGC, governing NET examination, undertaken by the petitioner, while requiring a candidate who have secured at least 55% marks in Master's Degree or equivalent examination from University/Institutions recognized by UGC, did not stipulate, further, that such equivalence had necessarily to be recognized by the AIU.

28. The position, as it emerges from the documents on record and the pleadings by the various statutory authorities, governing the AICTE and AIU, appears to be that, prior to May 2010, the AICTE was, in fact, issuing certificates of declaration of equivalence of diplomas awarded by various authorities with degrees of Indian Universities, but that, with effect from May,

2010, the AICTE, *vide* a Council meeting held on 20th September, 2010, decided to leave this function to the AIU.

29. The petitioner had, undisputedly, obtained her PGDBM from the LBSI in 2008, during which period the AICTE, was, indeed, issuing certificates of equivalence.

30. The validity of the said certificate of equivalence is not, moreover, questioned by any authority.

31. The applicable eligibility conditions, too, did not require the certificate of equivalence to have necessarily been issued by the AIU; a stipulation which subsequently came to be inserted by the UGC, for the NET conducted for June to December, 2010 session.

32. The act of the UGC in declaring the petitioner not to have qualified the NET, on the ground that the certificate of equivalence was not issued by AIU, therefore, effectively resorted in retrospective application of the said clause which figured only in the notification governing the NET for the subsequent June to December, 2010 session.

33. To say the least, this would be totally impermissible in law.

34. It is clear, therefore, that the circular dated 30th May, 2007, issued by the AICTE, to the LBSI, fulfilled the requirement of Condition No. 3 (i) of the conditions of eligibility as contained in the notification governing the NET which was undertaken by the petitioner.

35. I may note, here, that the judgment of a Division Bench of High Court of Patna in *Manoj Kumar vs. Union of India (2018) 3 PLJR 21*, dealt with a somewhat similar issue. The High Court of Patna held, ultimately, in that case, that the circular of equivalence had necessarily to be issued by the AIU. The distinguishing feature of that case, vis-à-vis the present, is, however, that, in the said case, the clause governing the NET, as contained in the notification of the UGC, specifically stipulated that the circular of equivalence had to be issued by the AIU – a stipulation which was absent in the conditions of eligibility governing the NET examination undertaken by the petitioner. The said decision cannot, therefore, affect the outcome of these proceedings.

36. For all the above reasons, the impugned communication No.F.29-8/2010(NET), issued by the UGC, annexed as Annexure-A to the writ petition, declaring the petitioner as disqualified in the UGC NET held on 27th December, 2009, cannot sustain in law. It is accordingly quashed and set aside.

37. The petitioner would, needless to say, be entitled to all reliefs consequential to the quashing and setting aside of the impugned communication.

38. The writ petition stands allowed in the above terms, with no orders as to costs.

C. HARI SHANKAR, J

DECEMBER 12, 2018
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