

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4792 of 2014****Reserved on 05.07.2019****Delivered on 09.07.2019**

Lalit Kumar Patel S/o Chetan Singh Patel, Aged About 34 Years, R/o
Duhipali Post Karnpali, Tahsil Baramkela, Distt. Raigarh, C.G.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Higher Education, Mahanadi Bhawan, Naya Mantralaya, Distt. Raipur C.G.
2. Chhattisgarh Public Service Commission, Raipur Through The Secretary, Chhattisgarh Public Service Commission, Shankar Nagar Road Raipur, C.G.
3. Sweta Jaiswal R/o Bajrang Nagar, Takhatpur, Distt. Bilaspur C.G.
4. Lokhpati Patel R/o Post Office Road, Saraipali, Distt. Mahasamund C.G.
5. Usha Rathore R/o B - 117, Rama Green City, Sipat Road, Bilaspur C.G.
6. Vikash Gulhare Working In D.P. Vipra College, Bilaspur, C.G.
7. Lokeshwar Patel R/o Village Piperendra Post Nawagaon, Birol, Distt. Mahasamund C.G.

---- Respondents

For Petitioner	:	Mr. Lalit kumar Patel, petitioner in person
For State/R-1	:	Mr. Jitendra Pali, Dy. Advocate General
For Respondent no.2	:	Mr. B. D. Guru, Advocate
For Respondents 3 to 5	:	Mr. Mateen Siddiqui, Advocate
For Respondent no. 6	:	Mr. A. P. Shrivastava, Advocate
For Respondent no.7	:	Mr. R. S. Patel. Advocate

Hon'ble Shri Justice P. Sam Koshy

CAV ORDER

1. The petitioner has filed the present writ petition primarily claiming the following two reliefs:

- i) That this Hon'ble Court may kindly be pleased to direct the respondent no.2 to cancel the appointment of the respondents 3 to 7 and initiate fresh selection process in accordance with the advertisement issued by the respondent no.2.
- ii) That this Hon'ble Court may kindly be pleased to direct the respondents 1 & 2 to consider the candidature and to give appointment to the petitioner on the post of Assistant Professor (Physics).

2. The facts of the case in brief are that the Chhattisgarh Public Service Commission i.e. respondent no.2 published an advertisement on 20.05.2009 for filling up the post of Assistant Professor in Higher Education Department of the State Govt. One such post was that of Assistant Professor (Physics) for which the petitioner had applied. After the recruitment process is over, respondents 3 to 7 have been appointed and it is the appointment of these respondents 3 to 7 which is under challenge in the present writ petition.

3. After the result was published, the name of the petitioner appeared at serial no.8 in general category and at serial no.2 in OBC category of the waiting list. According to the petitioner, the appointment given to respondents 3 to 7 was contrary to the service regulations and the private respondents i.e. respondents 3 to 7 were not eligible for participating in the recruitment process. Thus, their appointment is

bad in law.

4. Contention of the petitioner in respect of respondents 3 to 5 & 7 is that all these 4 candidates have done their M.Phil from C. V. Raman University at Kota, Bilaspur and while these candidates were undergoing M.Phil course, they were also working as either contract Assistant Professor or as Shiksha Karmi. Therefore, either their degree as a regular student is bad for the reason that during the said period they were posted at different locations far away from the place where the university situates and they had also discharged their duties during the entire period and obtained salary for that period which could not have been possible for a regular student. It was the further contention that since these respondents have not undertaken M.Phil course by regularly attending the class, the degree obtained by them becomes invalid and therefore their appointment should be set aside. It was also the contention of the petitioner that these candidates have not obtained proper NOC from the Department for undertaking M.Phil course in as much as in their applications they had not disclosed the fact that they intended to undertake M.Phil as a regular student else their application would have got rejected.
5. So far as respondent no.6 is concerned, the contention of the petitioner is that the M.Phil degree which respondent no.6 has obtained is one which has been obtained from an unrecognized institution. That the degree has lost its validity in the light of the judgment of this Court passed in the case of Smt. Dolly Bajpai Vs. State of Chhattisgarh and others in WPS No.5685 of 2010 dated 16.04.2014. According to the petitioner, respondent no.6 has

obtained his M.Phil degree from a university at Tamilnadu known as Alagappa University, Karaikadi, Tamilnadu by distance education mode. According to the petitioner, respondent no.6 has undertaken M.Phil course by distance education mode sitting at Chhattisgarh and the state of Tamil Nadu having already passed an order banning the private universities from giving M.Phil & Ph.D. degree with their study centers located out of the State and in the light of the judgment of Dolly Bajpai (supra), respondent no.6 could not have been granted appointment.

6. Per contra, counsel appearing for the respondents, opposing the petition, submitted that the writ petition preferred by the petitioner is not sustainable for the reason that the challenge in the present writ petition is not to the degree that the private respondents possess but is to the appointment given to the private respondents. According to the respondents, there is no dispute raised by the petitioner so far as the private respondents not having the qualification of M.Phil. It is also not in dispute that all the private respondents have obtained M.Phil degree from a recognized university as well as from the Distance Education Council. According to the respondents, as long as the private respondents have a degree of M.Phil from a recognized university, they have every right to participate in a recruitment process. It is the contention of the counsel for the private respondents that until and unless the very degree obtained by the private respondents is not questioned and declared as invalid, the degree has its sanctity. That the respondent State and the PSC having accepted the degree which the private respondents have, the

petitioner as such would not be entitled for any relief in the present writ petition. It is the further contention of the respondents that the petitioner has not sought for any declaration of the degree of M.Phil of the private respondents to be illegal and invalid, hence the petitioner would not be entitled for any relief that he has sought for. According to the counsel for the State as well as the PSC, so far as respondents 3 to 5 are concerned, two of them have been appointed against unreserved category and one of them has been appointed against OBC woman candidate, therefore, the petitioner cannot be accommodated against any of these appointments as the petitioner belongs to OBC category. It is only respondents 6 & 7 who belong to OBC category and since respondents 6 & 7 have done better than the petitioner in the selection process, the Selection Committee found respondents 6 & 7 to be more suitable and meritorious. Therefore, the petitioner's claim is not sustainable and counsel for the respondents prayed for rejection of the writ petition.

7. Having heard the contentions put forth on either side and on perusal of the record, undoubtedly the petitioner participated in the recruitment process along with respondents 3 to 7 for the post of Assistant Professor. The petitioner belongs to OBC category. In the merit list that was published on 07.08.2014, the name of the petitioner appeared at serial no.8 in the waiting list of general category and at serial no.2 in the waiting list of OBC category. Respondents 3 to 5 & 7 have done their M.Phil from C. V. Raman University, Kota, Bilaspur and respondent no.6 has done his M.Phil through distance education mode from Alagappa University, Karaikudi, Tamilnadu.

8. The allegation against each of the private respondents is that their degree of M.Phil on the basis of which they have got employment is invalid and could not have been accepted by respondents 1 & 2 for the purpose of granting recognition to the said degree and in the process, respondents 3 to 7 should not have been appointed.
9. If we take into consideration the relief sought for by the petitioner in the writ petition, it would clearly reflect that the challenge is to the appointment given to respondents 5 to 7. The challenge is not to the degree that the respondents 5 to 7 possess. Unless the degree of respondents 5 to 7 is questioned and is declared invalid, the appointment of respondents 5 to 7 cannot be said to be bad in law.
10. Another aspect which needs consideration is the fact that the degree of the private respondents has been conferred upon them by a recognized university and that for declaring a particular degree to be invalid, it would be necessary to call upon the concerned university having issued the degree and the concerned Distance Education Counsel which had recognized the distance education mode and the UGC which ultimately has the supervisory control over the institutions so far as the granting of degree in different course is concerned. None of these bodies are made a respondent in this petition who could have disclosed before the Court whether the degree in possession of respondents 3 to 7 is valid or not.
11. Along with the reply of respondent no.6 there is a document which has been enclosed as Annexure R-6 (1) which gives an ex post facto approval. The relevant portion of the said document is reproduced herewith for ready reference:

“Distance Education Council Approval

Ex-post facto approval from DEC

The Distance Education Council (DEC), New Delhi has accorded ex post facto approval for 108 programs (order No. F. No. DEC/AU/KKD/4425/2008, dated 24.11.2009) offered through the distance mode Alagappa University, Karaikudi, with effect from 1995 to the academic year 2007-2008. Prior to 1995, the certificates issued by the University stand automatically recognized as they were approved by the relevant authorities of the University as stated by DEC. The approval was given to the University based on the recommendation of the Expert Committee, the Distant Education Council, New Delhi.

Recognition From DEC

Consequent to the inspection visit by an Expert Team (Joint Action Committee) comprising of UGC-AICTE-DEC to the Alagappa University the DEC has accorded recognition to the various programs offering through Distance mode (vide F. No. DEC/Recg/2010/2289 dated 04.08.2010. Further this recognition is valid for a period of three years till 2012-2013.

The DEC, UGC, New Delhi has granted recognition/approval for offering programmes in ODL mode for the academic year 2014-2015 vide F. no UGC/DEB/Au/TN/2013/7177-7181 dated 27-05.2014.”

12. The record also shows that respondent no.6 had taken his M.Phil degree in the academic session 2007-08 that is the period during which the ex post facto approval was given by the Distance Education Council.
13. Another factor which is revealed from the record is that the Alagappa University, Karaikudi, from where respondent no.6 has obtained M.Phil degree is a State University as has been contended

by respondent no.6. Moreover, the judgment passed by this Court in the case of Dolly Bajpai (supra) pertains to the degree of M.Phil and Ph.D. awarded by the private university through distance education mode and the study being carried out from the centres located outside the state where the university situates. The entire judgment in the case of Dolly Bajpai (supra) pertains to a private university and since Alagappa university is a State University, the finding in the case of Dolly Bajpai (supra) cannot be attracted in a straight jacket formula.

14. So far as respondents 3 to 5 & 7 are concerned, the only allegation against them is that they have obtained M.Phil degree while discharging the duty of Assistant Professor or as Shiksha Karmi and the University Authorities have issued certificates to each of the concerned private respondents in spite of the fact that they had attended the classes intermittently during holidays and on taking leave from the Department and that their degree in fact is a regular degree which has been issued to them. This again is a ground which would require the cancellation of M.Phil degree first which is not in fact the relief sought for by the petitioner and for doing so also, the University as such would have to be impleaded as a necessary party, without which the relief sought for by the petitioner, at this juncture, is not one which would be sustainable.

15. Accordingly, the writ petition stands dismissed.

**Sd/-
P. Sam Koshy
Judge**