

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Soumen Sen
&
The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Saugata Bhattacharyya

WPA 7452 of 2002
[WPA 1050 of 1999 Reference File]

Basudeb Biswas
versus
The State of West Bengal

For the Petitioner : *Mr. Debabrata Ray,*
Ms. Sarbani Mukhopadhyay,
Mr. Soumik Mondal.

For the U.G.C. : *Mr. Anil Kr. Gupta.*

For the State Respondent : *Mr. Tapan Kr. Mukherjee, A.G.P.,*
Mr. Somnath Naskar.

Hearing is concluded on : *14th March, 2023.*

Judgment On : **12th April, 2023.**

Tapabrata Chakraborty, J.

1. Having acquired the Bachelor of Science degree from the University of Calcutta in the year 1983, the writ petitioner, namely, Basudeb Biswas (in short, Basudeb) participated in a selection process for appointment to the post of an Assistant Teacher in Science and Mathematics. He emerged to be successful in the said selection process and was appointed to the said post in Bagula Purba Para High School (in short, the said school) on 10th January, 1986. Such appointment was approved by the respondent no.3 *vide* memo dated 31st March, 1986. Upon obtaining necessary permission from the Managing Committee of the said school, Basudeb pursued the Master of Science (Mathematics) correspondence course conducted by the Himachal Pradesh University under distance mode and obtained the degree in the year 1999. On the strength of the Master degree in the relevant subject of teaching, Basudeb applied for higher scale of pay. Such prayer was, however, rejected by the respondent no.2 *vide* memo dated 17th January, 2002. Challenging the said order Basudeb preferred the writ petition being WP No.7452 (W) of 2002.

2. The learned Single Judge by an order dated 16th July, 2002 referred the matter to the Hon'ble Chief Justice so that the same may be placed before a Larger Bench for deciding as to '*whether the degrees obtained from Himachal Pradesh University through correspondence course is recognized or not ?*' since, according to the learned Single Judge, the judgment delivered

by the Hon'ble Division Bench in the case of *Partha Basu -vs- State of West Bengal*, reported in 2001(3) CHN 721 [decided analogously with *Utpal Man vs. Jyotirmoy Sen*] is in conflict with the judgment delivered by the Hon'ble Division Bench in the case of *West Bengal Central Service Commission and others -vs- Gita Guha*, reported in 2002 (2) CHN 531.

3. In view of the said order dated 16th July, 2002, the matter has been placed before this Court for deciding as to '*whether the degrees obtained from Himachal Pradesh University through correspondence course is recognized or not ?*'.

4. By a notification dated 19th December, 1994, the State Government refused to recognize a post-graduate degree granted on the basis of a correspondence course by Himachal Pradesh University. The said order was challenged in the case of *Kalidas Gangopadhyay -vs- State of West Bengal*, reported in 1996 (2) CLJ 42 and by the judgment delivered on 10th May, 1996, the learned Single Judge observed that such degree obtained through correspondence course is a valid and potent degree like any other degree awarded to the regular students by any other University and quashed the order dated 19th December, 1994 placing reliance upon the judgment delivered in the case of *Muchha Mondal -vs- The State of West Bengal and others*, reported in AIR 1996 Cal 132. In the case of *Muchha Mondal (Supra)* a notification dated 10th September, 1991 was under consideration. However, a divergent view was expressed by another learned Single judge in the case of *Tapas Kumar Das -vs- State of West Bengal and others*, reported in 1996 (2) CLJ 467. The same question again came up for consideration in

the case of *Kitab Singh Rai –vs- The State of West Bengal and others*, reported in 1998 (1) CLJ 258 and the learned Single Judge came to the conclusion that the law settled by the decisions in *Muchha Mondal (Supra)* and *Kali Das Gangopadhyay (Supra)* is the law on the point. The same question was again considered by a Division Bench of this Court in the case of *Swadesh Kumar –vs- State of West Bengal* in an unreported judgment dated 1st February, 2000 rendered in Writ Petition No. 1050(W) of 1999 with Writ Petition being W.P. 2748 of 1999 and the issue was decided on the basis of the prevailing notifications. Thereafter the issue again came up for consideration in the case of *Utpal Man –vs- Jyotirmoy Sen*, reported in 2001(3) CHN 721 and the said appeal was disposed of by a judgment dated 18th May, 2001 observing that the degree obtained through correspondence course from Himachal Pradesh University cannot be denied recognition as the notification dated 19th December, 1994 had already been quashed in the earlier judgments and as no new notification on the subject had been issued by the State of West Bengal.

5. Upon promulgation of the West Bengal School Service Commission Act, 1997, an advertisement was published for appointment to the post of headmaster. On the strength of a Master degree obtained by her through correspondence course from the Himachal Pradesh University, one Gita Guha applied for participation in the said selection process. Her candidature was, however, rejected by the Commission as her Master degree was not a recognized degree. Challenging the said decision, Gita Guha preferred a writ petition which was allowed. Aggrieved by the said order of

the learned Single Judge dated 18th May, 2000, the West Bengal Central School Service Commission preferred a mandamus appeal which was allowed by a judgment delivered on 20th December, 2001. The subject matter of controversy in the said appeal was the advertisement published by the Commission wherein a Master/Honours (Regular/Special) degree was specified to be an essential qualification for the post of headmaster. The Hon'ble Appeal Court disposed of the appeal observing *inter alia* that '*even if the Government order dated 19th December, 1994 remains quashed, that will not affect the decision of the Commission taken in this case as it is guided by the recruitment rules and the subsequent Government order dated 21st March, 2000*'.

6. It needs to be pointed out that initially by a notification dated 10th September, 1991 only the Master degree obtained through correspondence course from Annamalai University was recognized. Thereafter a notification was issued on 19th December, 1994 denying recognition to degrees obtained through correspondence course from Himachal Pradesh University. After the said notification dated 19th December, 1994 was quashed in the case of *Kalidas Gangopadhyay (Supra)*, the Secretary to the Government of West Bengal, School Education Department issued a notification dated 12th May, 1999 directing *inter alia* that the notification dated 19th December, 1994 may be treated as non-existent and the benefit of pay and allowance may be granted. Taking note of such facts, the Hon'ble Division Bench in the case of *Utpal Man (Supra)* observed by a judgment dated 18th May, 2001 that the degrees obtained through correspondence course from Himachal Pradesh

University cannot be denied recognition. Thereafter, the State Government issued a further notification dated 21st March, 2000 granting recognition to the certificates awarded by the Indira Gandhi National Open University, Vidyasagar University, Burdwan University, Other Universities in this State engaged in providing distant education/correspondence courses and West Bengal Netaji Subhas Chandra Open University.

7. Subsequent thereto, the University Grants Commission (in short, UGC) framed detailed regulations providing for a regulatory mechanism for establishment and operation of private Universities for safeguarding the interest of the student community with adequate emphasis on the quality of education and to avoid commercialization of higher education and to maintain standards of teaching, research and examination. The said provisions were considered by the Hon'ble Supreme Court in the case of *Prof. Yashpal -vs- State of Chhattisgarh*, reported in 2005 (5) SCC 420 and it was directed that no University is authorised to open study centres/off campus centres beyond the territorial jurisdiction of the State. By the said judgment, the validity of the University Grants Commission (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 was upheld. Thus, in view of the said judgment, UGC cannot grant any recognition to programmes offered through distance mode by any university through study centres/off campus centres beyond the territorial jurisdiction of the university. After the said judgment, Government of West Bengal had not yet issued any fresh notification. The last notification issued is dated on 21st March, 2000.

8. The judgment in the case of *Utpal Man (Supra)* was delivered taking into consideration the notifications dated 10th September, 1991 and 19th December, 1994.

9. The subject matter of controversy in the case of *Gita Guha (Supra)* was the advertisement published by the Commission wherein a '*Master/Honours (Regular/Special) Degree with degree in Bachelor of Teaching/Bachelor in Education/Post-Graduate Basic Training from any recognised University or any Training recognised by the Government of West Bengal as equivalent to bachelor of Teaching/Bachelor of Education/ Post-Graduate Basic Training...*' was specified to be an essential qualification for the post of headmaster. There was no indication in the concerned advertisement that candidates who had obtained Master degree through correspondence course from universities would be eligible for participating in the selection process and in view thereof, it was observed that even if the notification dated 19th December, 1994 remains quashed, the same would not affect the decision of the Commission taken on the basis of the recruitment rules framed under the provisions of the West Bengal School Service Commission Act, 1997. Recognition of a degree for the purpose of appointment to a post is different from recognition of a degree for the purpose of grant of financial benefits.

10. The observations made by the Hon'ble Court in the case of *Utpal Man (Supra)* juxtaposed with the observations made by the Hon'ble Court in the case of *Gita Guha (Supra)* would reveal that there is a stark contrast. The former is restricted to the notifications dated 10th September, 1991 and

19th December, 1994 whereas the latter deals with the legality of a decision of the Commission taken on the basis of the recruitment rules. In view thereof, there is no conflict in the judgments delivered in the respective matters regarding recognition of degrees obtained through correspondence course from Himachal Pradesh University for grant of higher scale benefits.

11. The Appellate Side Rules of this Court provides that the Court referring the case is under an obligation to state the point or points upon which, the decision of one Hon'ble Division Bench differs with the decision of the other Hon'ble Division Bench. The issue referred by the order dated 16th July, 2002 was as to '*whether the degrees obtained from Himachal Pradesh University through correspondence course is recognized or not ?*'. On the date the said order was passed, i.e., on 16th July, 2002 there was no conflict in view of the notification dated 21st March, 2000 by which the State Government had granted recognition to degrees obtained through correspondence course from '*other Universities in this State engaged in providing distant education/correspondence courses*'. Even after the delivery of the judgment in the case of *Prof. Yashpal (Supra)*, the State of West Bengal has not issued any further notification.

12. Mr. Ray, learned advocate appearing for the writ petitioner argued that the petitioner is entitled to the post graduate scale of pay in view of the notifications dated 12th May, 1999 and 21st March, 2000. The respondents have granted post graduate scale of pay on the basis of the said notifications to teachers similarly situated with the petitioner. It is not a case that the teachers similarly situated with the petitioner had been granted post

graduate scale of pay by mistake. Such grant was permissible and was based upon the policy decision adopted by the State. The petitioner's claim had been withheld simply due to pendency of the matter and he is not in any manner responsible for the delay which had occurred. During pendency of the matter, the petitioner reached the age of superannuation and he was constrained to give a declaration not to proceed with the present case otherwise even his pensionary benefits would have been withheld indefinitely.

13. Mr. Mukherjee, the learned Additional Government Pleader appearing for the State respondents submitted that the University Grants Commission Act, 1956 having been enacted by the Parliament in terms of Entry 66 of List-I of the Seventh Schedule to the Constitution of India prevails over the Himachal Pradesh University Act, 1970. The legislative authority of the State of Himachal Pradesh had no power to extend its Act beyond the territorial jurisdiction of the State of Himachal Pradesh and as such the degree obtained from Himachal Pradesh University, Shimla through correspondence course is not a valid degree in West Bengal. In support of such contention he has placed reliance upon the judgment delivered in the case of *Annamalai University Rep. by Registrar –vs- Secy. to Govt. Infn. & Tourism Dept. & Ors.*, reported in 2009 (4) SCC 590.

14. Mr. Mukherjee argued that in view of Article 245(1) of the Constitution of India, Parliament alone is competent to make laws for the whole or any part of the territory of India and the legislature of a State may make laws for whole or any part of the State. Any provision in the State Act

enabling a University to have an off-campus centre outside the State is clearly beyond the legislative competence of the concerned State. In view thereof, the petitioner having obtained his Master degree, while working in a school in the State of West Bengal, through correspondence course from a University beyond the jurisdiction of the State of West Bengal cannot claim to have obtained appropriate qualification for grant of post graduate scale of pay. In support of such contention, reliance has been placed upon the judgment delivered in the case of *Prof. Yashpal and Another -vs- State of Chhattisgarh and Others*, reported in 2005 (5) SCC 420.

15. According to Mr. Mukherjee Article 14 of the Constitution is not meant to perpetuate illegality and it does not envisage negative equality and as such even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. In support of such contention reliance has been placed upon the judgment delivered in the case of *State of Odisha and Another -vs- Mamata Mohanti* [Civil Appeal No.1272 of 2011].

16. Mr. Gupta, learned advocate appearing for UGC adopts the submissions advanced on behalf of the State and submits that UGC had not granted any permission to any private University to establish off-campus/study centre. Since Himachal Pradesh University has chosen to defy such mandate and has permitted the petitioner to continue his study for acquiring the Master degree through correspondence course, he as a student of such University by continuing his study without the permission

of UGC has done so at his peril and accordingly he cannot claim post graduate scale of pay on the basis of such Master degree obtained through correspondence course. In support of such contention reliance has been placed upon judgments delivered in the cases of *Ashoke Kumar Nandy –vs- Union of India & Ors.*, reported in 2017 (4) CHN 208 and *Saikat Giri –vs- The State of West Bengal & Ors.*, reported in 2020 (3) CalLT 540.

17. It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. Plentitude of pronouncements leaves cleavage in the opinions formed in the respective cases. In the cases of *Prof. Yashpal (Supra)* and *Annamalai University (Supra)* were delivered on 11th February, 2005 and 25th February, 2009 respectively dealing with the issue as to whether the Universities offering distance education programme are mandatorily required to follow the regulations framed under the UGC Act and as to whether the provisions of State Acts can extend beyond the territorial jurisdiction of the respective States. The said judgments have not been given retrospective effect and have no manner of application in the present case since the State of West Bengal had itself issued notifications earlier recognising degrees obtained from the correspondence course from the Himachal Pradesh University. The judgment delivered in the case of *State of Odissa (Supra)* is also not applicable since in the present case since the petitioner is seeking parity

with the teachers who have been granted the benefit neither inadvertently nor by mistake.

18. Equivalence of a degree obtained through correspondence course with a degree obtained through regular course and the recognition of a degree obtained through correspondence course by the State for grant of financial benefits are two different issues. Even if an assistant teacher does not enjoy the master degree scale but still then his master degree qualification cannot be ignored in a selection process. [See the judgment delivered in the case of *Dev Pasad Sarker –vs- State of West Bengal*, reported in 2012 (2) CHN 644]. Today, i.e., about 20 years after issuance of the order dated 16th July, 2002, any endeavour on our part to consider the issue as to whether the Master degree obtained by the writ petitioner through correspondence course from Himachal Pradesh University is a valid and potent degree like any other degree awarded to the regular students by any other University, would be merely academic since in the midst of the said period, i.e., from 16th July, 2002 till date, the law pertaining to recognition of a degree obtained by a candidate through correspondence course from a private university has undergone a sea change in view of the judgment delivered by the Hon'ble Supreme Court in the case of *Prof. Yashpal (Supra)*. After the delivery of the said judgment the issue as to whether a degree obtained through correspondence course from Himachal Pradesh University is equivalent to a degree obtained through a regular degree is redundant and requires no adjudication.

19. Pursuant to our earlier order a report has been filed by the District Inspector of Schools (SE), Nadia wherefrom it appears that the petitioner retired from his service on 28th February, 2022 but his pensionary benefits were withheld for more than nine months and the same was disbursed only after the petitioner undertook not to proceed with the present case. It appears that only after this Court called for a report from the District Inspector of Schools by an order dated 10th November, 2022, he proceeded in hot haste. He obtained the representation from the petitioner on 21st November, 2022 and prepared the report on 23rd November, 2022. From such sequence it is explicit that the petitioner had no option but to submit the representation stating that he would not continue with the writ petition since even after retirement he was not getting his pension for a long period. Such representation cannot stand in the way towards grant of the benefits, as prayed for. There is no dispute that the petitioner had admittedly rendered services in the said school uninterruptedly and as such he cannot be deprived of the benefits of the higher scale of pay. Let the said report dated 23rd November, 2020 and the petitioner's representation dated 21st November, 2022, as produced, be kept on record.

20. Fairness and reasonableness are paramount issues for administrative action. As a model employer the State Government must conduct itself with high probity and candour and cannot act arbitrarily by withholding the benefits as extended to similarly situated incumbents. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly.

21. In view of the above discussion and in consideration of the fact that the writ petitioner obtained his higher qualification even prior to issuance of the last notification pertaining to recognition dated 21st March, 2000, he cannot be denied the benefits of the higher scale of pay on the basis of the Master degree obtained by him in a relevant subject through correspondence course from the Himachal Pradesh University, moreso when persons similarly situated with the writ petitioner had been granted such benefits by the State respondents, as would be explicit from the memoranda dated 4th November, 1997 and 28th October, 1997, annexed at pages 35 and 36 of the writ petition and as such it would be an idle formality to remand the writ petition to the learned Single Judge for any further hearing.

22. Accordingly, we set aside the order dated 17th January, 2002 issued by the respondent no.2 and direct the respondents to grant the post-graduate scale of pay to the writ petitioner along with all arrears, with effect from the day following the last date of the examination held in November, 1999 together with the revised pensionary benefits, upon refixation of the petitioner's scale of pay in the post graduate scale, within a period of four weeks from the date of communication of this order.

23. With the above observations and directions, the writ petition is disposed of.

24. There shall, however, be no order as to costs.

25. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Soumen Sen, J.)

(Tapabrata Chakraborty, J.)

(Saugata Bhattacharyya, J.)