

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

**Present:
The Hon'ble Justice Rai Chattopadhyay**

WPA 10101 of 2015

**Chiranjit Mandal
Vs.
State of West Bengal & Ors.**

For the Petitioners	:	Mr. Biswarup Biswas,
	:	Mr. Arif Ali,
	:	Mr. Sarbun Bhattacharjee.
For the State	:	Mr. Pinaki Bhattacharyya,
	:	Mr. Sayan Datta.
For the Respondent nos. 3 & 4	:	Md. S. Jahan,
	:	Sk. Haque.
For the West Bengal Board of Primary Education	:	Mr. Subir Sanyal,
	:	Mr. Ratul Biswas,
	:	Mr. Kaushik Chowdhury.

Heard on : 10/04/2024

Judgment on : 10/04/2024

Rai Chattopadhyay,J.

1. The following issues are involved in this case:-
 - (i) Whether the writ petitioner could have been lawfully terminated pursuant to the impugned letter issued by the Chairman, Murshidabad District Primary School Council dated July 25, 2014,

without following the due procedure for the same, as prescribed under the law.

- (ii) Whether the degree obtained by the writ petitioner to claim to be his eligible qualification (Bachelors Degree from CMJ University, Meghalaya), is a valid degree on the basis of which the eligibility of the writ petitioner for the relevant posts may be established.
2. The background facts necessary for adjudication of this matter may be narrated in the following manner. The petitioner was granted appointment letter dated January 27, 2014, issued by the Chairman, Murshidabad District Primary School Council to appoint him as the Assistant Teacher at Beniagram Girls Primary School, Farakka Circle, District – Murshidabad. Before that the petitioner had duly qualified in the TET Examinations and Counselling. His qualification was backed by certificates of Madhyamik (year 2002, West Bengal of Secondary Education), Higher Secondary (in the year 2006, West Bengal Council of Higher Secondary Education) and Bachelor of Arts Degree (year 2012 from CMJ University, Meghalaya).
3. Since after joining, however, the petitioner was not provided with his salary. The impugned letter dated July 25, 2014, was issued to him which informed as follows :-
- “This is to inform you that, the Council in-advertently issued above referred appointment in favour of you as an assistant teacher of 19, Beniagram Girls’ Primary School under this Council. As such the same is stands cancelled ab-initio. The Director of School Education, West Bengal has been pleased to withheld the approval of your empanelment for want of verification of your educational certificates. Next steps will be taken after receiving the communication from the Director of School Education’s end.”***
4. Two grounds have been pleaded by the concerned respondent/Chairman, Murshidabad District Primary School Council, in the said termination

letter dated July 25, 2014, that is, firstly inadvertence by the said authority in issuing the appointment letter and secondly, that the Educational Certificate of the writ petitioner was not verified to be a valid one. Therefore by dint of the said letter of termination dated July 25, 2014, the respondent Chairman, Murshidabad District Primary School Council/respondent nos. 3 and 4 had terminated petitioner's service.

5. Mr. Biswas is appearing on behalf of the writ petitioner. He says that the impugned order of the respondent authority dated July 25, 2014, is illegal, arbitrary and not maintainable particularly on the dual grounds that once being appointed after being successful in the eligibility tests, the writ petitioner could not have been terminated simply at the stroke of a pen, without following the due process of law established for the same. It is submitted further that the ground of inadvertence by the concerned respondent is untenable in the eyes of law. Mr. Biswas has further indicated that the allegation of invalidity of the degree of the petitioner is also not sustainable and for this he has taken this Court through the various documents annexed in this case with several affidavits filed by the respective parties. He says that according to the records and stand taken by the respective authority, the validity of the degree of the writ petitioner obtained from CMJ University, Meghalaya, stands to be sacrosanct. He alleges about non-application of mind by the concerned respondent to the said facts, while issuing the impugned termination letter. Mr. Biswas has specifically stated that the authority which has granted the degree to the writ petitioner having not cancelled the same yet, the degree of the petitioner should have to be considered as a valid one. In such facts and circumstances according to Mr. Biswas the impugned order of the respondent nos. 3 and 4 may be treated to be a non-est in the eye of law, absolutely null and void and be set aside to

restore the writ petitioner in the post, in which he was originally appointed along with all ancillary benefits.

6. Mr. Biswas has also indicated to the alleged discrimination meted out to his client by treating him dissimilarly with the equally placed persons. It is submitted that creating inequality amongst the equals is contrary to the constitutional mandate and in case of the writ petitioner such a procedure has been followed by the respondent authority. He says that other similarly circumstanced persons who was appointed like the present petitioner and subsequently terminated without the due procedure of law, has been restored in their respective services. Thus, he says that unequal treatment as above to his client should be remedied.
7. Mr. Biswas on behalf of the petitioner has relied on the following judgments, that is,:-

(i) ***Khagendra Nath Paul vs. The State of West Bengal & Ors.***, reported in (1998) 1 Cal LJ 283;

(ii) ***West Bengal Central School Service Commission & Ors.***, reported in (2002) 2 CHN 531;

(iii) ***Pascham Chand & Ors. vs. State of Himachal Pradesh & Ors.***, reported in (2008) 7 SCC 117;

(iv) ***Basudeb Biswas vs. The State of West Bengal in WPA 7452 of 2002*** [WPA 1050 of 1999 Reference File], judgment dated 12th April, 2023.

8. Mr. Bhattacharyya, is appearing for the State respondent. He has submitted that pursuant to the judgment of the Hon'ble Supreme Court any off campus establishment of CMJ University, Meghalaya, was to be declared unauthorised and any degree granted from any such out station centre would have been considered to be an invalid degree and a nullity.

He supports the impugned order dated July 25, 2014, to submit that the impugned degree of the writ petitioner having been found to be invalid and a nullity, his appointment would be liable to be terminated in terms of the conditions of appointment. Since the appointment was granted subject to verification of the credentials and in petitioner's case the same has been found to be invalid, the proper course of action for the appointing authority would have been for cancellation of the appointment and termination of his service. He says that by dint of the said letter such an appropriate action has been undertaken by the respondent authority which, he urges that may not be interfered into.

9. The appointment letter of the writ petitioner is dated January 27, 2014. The relevant portion may be extracted for benefit of discussion: -

“The joining report in duplicate should have to be submitted to the respective Head Teacher/Teacher-in-Charge and the Originals along with two copies (duly attested) of Qualification Certificates, Mark-sheets, Age Proof Certificates and other relevant Certificates such as Caste Certificate/OBC/EC certificate/P.H certificate/Training Certificate should have to be submitted before the concerned Sub-Inspector of Schools at the time of verification.”

10. Admittedly, the petitioner had joined in the school as named above as an Assistant Teacher on January 28, 2014. Since then he has performed as an Assistant Teacher there. However, he has not been paid any salary during the period of his performance in the said school and this fact is an undisputed one in this case.
11. Dispute arose concerning the verification of the credentials of the writ petitioner. According to the respondent authority, the Bachelor of Arts Degree of the writ petitioner from an outstation campus of the CMJ University, Meghalaya, would not be valid in the eyes of law. Therefore the same cannot be considered to be a sufficient proof of his education which is mandatorily required to be appointed in the post of an Assistant

Teacher. The respondents have contended that the writ petitioner having not secured a minimum 50% in aggregate in the Higher Secondary Examination was required mandatorily to have a Bachelor's Degree to his credit, for appointment. However, the respondent has disputed the validity and acceptability of the degree so produced by the writ petitioner before it.

12. It is found from the letter written by the under Secretary, University Grants Commission dated December 6, 2014, addressed to the Commissioner, School Education, Government of West Bengal, at Directorate of School Education, Primary Branch, that the CMJ University, Modrina Mansion, Laitumkhrah, Shillong (Meghalaya) was established as a private University vide notification dated July 20, 2009. That it was authorised to operate from the main campus in regular mode only, with the approval of statutory bodies/councils, as required. It has been informed that vide a judgment of the Hon'ble Supreme Court in the case of **Prof. Yashpal vs. State of Chattisgarh** reported in **[(2005) 5 SCC 420]**, the CMJ University was not authorised to open off campus centres/study centres beyond the territorial jurisdiction of the State of Meghalaya. It was informed further that the University was not allowed to open any centres even within the State of Meghalaya as per the provision contained in UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003, without the approval of UGC.
13. In the case of **CMJ Foundation & Ors. vs. State of Meghalaya & Ors. (SLP No. 19617 of 2013)**, the Supreme Court directed vide order dated September 13, 2013, for conducting hearing by the Higher and Technical Education Department, Meghalaya, Shillong, with respect to the affairs of the CMJ University. A letter from the Joint Director of Higher and Technical Education (T), Meghalaya, address to the Joint Secretary, Government of West Bengal, School Education Department dated March 22, 2016,

reveals that such hearing, pursuant to the Supreme Court's orders was concluded and the results thereof has been sent individually to the concerned persons. In the said letter dated March 22, 2016, the authority has also mentioned about a public notice having been issued regarding validity of degrees pertaining to CMJ University, that is, dated February 14, 2014 and March 18, 2014.

- 14.** A letter from the said University at Meghalaya dated September 19, 2016, is worth noting. In the same the University has issued declaration as regards *“legal status and validity of degrees/diplomas/certificates awarded by CMJ University of Meghalaya, during the period from 2010 to 2014”*. It has been written that the University is empowered to award degrees as per the approved list of nomenclature thereof notified by UGC under Section 22C of the UGC Act, 1956. Further, that the Government of Meghalaya vide office order dated March 31, 2014, closed the University for the period from March 31, 2014 to July 16, 2015. Subsequently in WPC No. 32 of 2014, the Hon'ble Meghalaya High Court has set aside the said office order of the Meghalaya Government dated March 31, 2014. It is further informed that the degrees granted by the University are valid in terms of Section 22 of the UGC Act, 1956, and also that the Bachelor of Arts Degree granted to the writ petitioner is in conformity to Section 22 (C) of the UGC Act, 1956, and is valid for employment in the Government and Semi-Government Institutions/Colleges/Schools.
- 15.** On behalf of the writ petitioner strong reliance has been placed to the said two documents as mentioned above.
- 16.** From the letter dated December 6, 2014, written by the under Secretary for University Grants Commission to the Commissioner, School Education, Government of West Bengal, Directorate of School Education,

it reveals that the University Grants Commission has been desiring that the degrees already awarded by CMJ University in past, in courses conducted by the same in regular mode and at its main campus at Shillong may be maintained, that is why the UGC vide letter dated October 22, 2013, urged in that way, to the Governor Secretariat and also to the Chief Secretary, Meghalaya Government.

17. Fact remains that the degree obtained by the writ petitioner has not yet been cancelled by the University which has granted the same, that is, CMJ University, Meghalaya. Following the ratio of the decision reported in *(1998) 1 Cal LJ 283 (Khagendra Nath Paul vs. The State of West Bengal & Ors.)*, it can be held that the University which has granted a degree is the sole authority to withdraw and cancel the same, under such condition as may be prescribed by the statute. The Court has held in the said judgment in the manner as follows:-

“13. It is, thus, for the University only to withdraw or cancel the degree under such condition as may be prescribed by the statutes and after giving the person a reasonable opportunity to present his case. Nothing has been brought to our notice that there exists any rule prescribed by statute for taking recourse to such a power. In any event, such a power can be exercised only upon giving an opportunity of hearing to the affected person. Admittedly, the University has not cancelled the degrees obtained by the writ petitioner-appellant.”

18. The ratio thereof squarely applies in this case, in so far as, neither the writ petitioner has ever been granted any opportunity of hearing by the concerned University in order to cancel his degree nor his degree has been ever cancelled by the issuing University. A similar decision of the Hon'ble Division Bench of this Court can also be relied on in this respect, that is, reported in *(2002) 2 CHN 531 [West Bengal Central School Service Commission & Ors. vs. Gita Guha (Dasgupta)]*, in which the Hon'ble Division Bench has discarded Court's interference into the question of

pronouncing equivalence of an educational qualification by the concerned University on the ground that the same would be solely the discretion of the University itself. The Court holds *“this Court is of the opinion that in those judgments the learned single Judge ventured in a territory which is a little beyond the domain of the Court”*

19. So far as the question of discrimination being meted out by the respondent authority towards the petitioner is concerned, it can be seen that to this fact there cannot be any objection or dispute, on behalf of the respondents, that other candidates who have been terminated in the similar manner like the writ petitioner, have again been restored to their original appointed posts. To discuss on this the Court notices finding of the Full Bench of this Court in ***Writ Petition No. 7452 of 2002 [WPA 1050 of 1999 Reference File], Basudeb Biswas vs. The State of West Bengal***, is follows:-

“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.”

20. Admittedly, the writ petitioner after joining in the said school has continuously served there in the capacity of an Assistant Teacher. It is a fact that he obtained Bachelor of Arts Degree from the CMJ University, Meghalaya, that was in the year 2012. Subsequently in the judgment of ***Proff. Yaspal (supra)***, the Hon’ble Supreme Court restrained off campus tuition by the private University. Evidently that was subsequent to the writ petitioner obtaining the degree. There is no material on record to show that at the relevant time, i.e, in 2012, when the petitioner has completed his courses and obtained the Bachelor of Arts Degree from the said University, there was any embargo upon the University to grant a

degree to an off-campus student like the writ petitioner. Admittedly also, a degree was granted to the writ petitioner upon completion of course by the said University in 2012. Validity of the same is in question or rather have been taken to be in question without any justifiable reason therefor. The settled law would not permit to treat a degree as an invalid one, unless the same is withheld or cancelled by the University granting the same. No other authority on the earth would be empowered to address the same not to be valid unless cancelled by the issuing University. This power of the issuing University is sacrosanct and even has not been intervened by the Courts. This Court finds that there has not been any material sufficient enough for the respondent authority to come to a decision regarding invalidity of the degree of the writ petitioner obtained in the year 2012. Therefore the conclusion which it has reached and expressed in the impugned letter dated July 25, 2014, regarding invalidity of the degree of the writ petitioner, appears to be perverse and based on no evidence. Its decision on such perverse finding regarding cancellation of the appointment of the writ petitioner is also found to be a nullity in the eye of law. Since at this moment the validity of the degree of the writ petitioner cannot be challenged on the basis of any cogent or sufficient material, the same must be treated to be a valid one. Therefore, the writ petitioner, having qualified in the competitive tests and interview and having possessed sufficient educational qualification, cannot be deprived of the right of employment without following the due procedure in law. Or else the same must be termed as an arbitrary and unreasonable action by the respondent authority leading to unfair treatment to the writ petitioner and violation of his vital statutory as well as the constitutional rights. Such action of the respondent authority is liable to be set aside.

- 21.** Accordingly the impugned letter dated July 25, 2014, by the respondent authority is set aside.
- 22.** The writ petition being WPA 10101 of 2015 is allowed with the following directions :-
- (i) The writ petitioner shall be immediately restored to his original posting;
 - (ii) The writ petitioner shall be immediately released with all the arrear dues salary and other emoluments with effect from the date of his appointment;
 - (iii) The writ petitioner shall be paid due salary and emoluments henceforth;
 - (iv) However, there shall not be any impediment or embargo for the respondent authority to take appropriate steps against the writ petitioner in accordance with law, in case there is adequate material available to it to justify invalidity of eligibility of the petitioner, being his degree cancelled or otherwise.
- 23.** Urgent Photostat certified copy of this judgment, if applied for, be given to its parties on usual undertaking.

(Rai Chattopadhyay, J.)