

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.18514 of 2014

RAM CHANDRA BERA

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

For the petitioner	: Mr. Subir Sanyal, Adv., Mr. Subhas Jana, Adv., Mr. Sourojit Mukherjee, Adv.
For W.B.C.S.C.	: Mr. Pulak Ranjan Mandal, Adv., Ms. Bandana Mandal, Adv., Mr. Subhrangsu Panda, Adv.
For UGC	: Mr. Anil Kumar Gupta, Adv., Mr. Yogesh Kumar Sharma, Adv.
Hearing concluded on	: 20.05.2024
Judgment on	: 09.08.2024

Kausik Chanda, J.:-

The petitioner contends that he belongs to the OBC-A category and holds a B.A. (Hons) in Bengali, a B.A. in Education, and a Postgraduate Degree in Education. He completed his M.Phil in Education from Rabindra Bharati University, with the written examination held in January 2009, the final examination in April 2011, results published on May 20, 2011, and the certificate issued on May 15, 2012.

2. In the year 2010, he enrolled for a Ph. D. degree at C.M.J. University, Meghalaya, which required 200 hours of coursework. Consequently, he began attending the required classes. By August 25, 2011, the university confirmed his successful completion of the coursework and the examination held in July 2011, instructing him to commence research and thesis preparation under a supervisor's guidance.

3. By a notification dated November 6, 2012, from C.M.J. University officially awarded him the Ph.D. degree, under the UGC Rules and Regulations of 2009. He subsequently received the Ph.D. degree certificate from C.M.J. University, Meghalaya, on November 22, 2012.

4. In response to Advertisement No. 1/2012/WBCSC, which announced nine vacancies in the OBC-A category for Assistant Professors in Education, he participated in the selection process held in the year 2012 conducted by West Bengal College Service Commission (the Commission, in short).

5. The Provisional merit panel published on June 19, 2014, listed five candidates in the OBC-A category for the Education subject, with the lowest-ranked candidate scoring 43.2. His name did not figure in the merit list. By filing this writ petition, he seeks a mandamus to publish a merit panel for the nine declared vacancies in Assistant Professor positions under the OBC-A category and also for a direction upon the Commission to award him marks for the publication of two Ph.D. papers and viva-voce performance.

6. The writ petition was moved on July 1, 2014, when a Coordinate Bench of this Court directed that, should the petitioner succeed, the college service commission would recommend the petitioner for any future vacancies.

7. The affidavit-in-opposition from the University Grants Commission (UGC, in short) emphasises that the petitioner simultaneously pursued both M.Phil and Ph.D. programmes.

8. The affidavit further asserts that C.M.J. University is authorized only to confer degrees at its main campus in a regular mode. This restriction is supported by the Supreme Court's ruling reported at **(2005) 5 SCC 420 (Prof. Yashpal v. State of Chhattisgarh)**.

9. Additionally, it discloses that the Governor of Meghalaya recommended the dissolution of C.M.J. University due to irregularities, as stipulated under Section 48 of the CMJ University Act, 2009. On August 1, 2013, a UGC Expert Committee visited the university and subsequently

submitted a report. This report was approved by the commission and forwarded to the Hon'ble Governor, recommending action against the university and requesting a decision on the validity of degrees awarded by C.M.J. University. The recommendation highlighted that only degrees conferred through regular mode at the university's own campus in Meghalaya should be considered valid.

10. The Commission, on the other hand, submits that the petitioner lacks NET/SET qualification. He applied for the post of Assistant Professor based on his Ph.D. degree. There are significant concerns regarding the authenticity of this degree.

11. The petitioner completed his M.Phil. at Rabindra Bharati University in 2011, but his Ph.D. was awarded by CMJ University in 2012, despite registering for it in 2010.

12. The M.Phil. programme at Rabindra Bharati University involved written exams in January 2009 and a final dissertation exam in April 2011. The results were published on May 20, 2011, and the certificate was issued on May 15, 2012. The petitioner also registered for the Ph.D. programme at CMJ University in 2010 while still pursuing his M.Phil.

13. A candidate must submit a Migration Certificate from their previous university when registering for a new programme. The petitioner should have provided this certificate from Rabindra Bharati University to C.M.J. University once his M.Phil. results were published. However, his registration for the Ph.D. programme at CMJ University occurred before the

completion of his M.Phil., suggesting that he was pursuing both degrees simultaneously, which is not permissible under the law. UGC guidelines explicitly prohibit students from pursuing dual degrees simultaneously in regular mode.

14. The Commission has relied upon a judgment reported at **(2016) 3 SCC 521 (*Kuldeep Kumar Pathak v. State of Uttar Pradesh*)** to argue that if there is any regulation prohibiting simultaneous persuasion of two courses, a candidate should not be granted the benefit of such degree. The Commission submits that since the UGC Regulation specifically prohibits simultaneous persuasion of two degrees the petitioner was rightly prevented from appearing in the selection process by the Commission.

15. The selection processes for various recruitment advertisements, including Advt 1/2012, have been completed, with no remaining vacancies in the Education subject. The petitioner is ineligible for the Assistant Professor position due to the absence of NET/SET qualifications and the questionable validity of his Ph.D. degree, which was obtained in violation of UGC guidelines and with undisclosed information about his M.Phil. studies.

16. I am of the clear opinion that the Commission ought not to have rejected the candidature of the petitioner disputing his Ph.D. degree.

17. A certificate issued by the Joint Registrar (Exam) of Rabindra Bharati University clarified that the petitioner was admitted to the 2-year M.Phil. programme in Education at the University for the 2007-2008 session on

January 10, 2008. The M.Phil. examination consists of two components: Theory (including Paper I and Paper II) at the end of the first year, and a Dissertation at the end of the second year.

18. The petitioner took the theory examination in January 2009, with 75% attendance. However, he did not sit for the subsequent year's Dissertation examination, which was scheduled for 2009.

19. He submitted his M.Phil. Dissertation on December 15, 2010, and took the Dissertation examination in 2010, where interaction with the supervisor was required. The petitioner then defended his Dissertation in the Viva-Voce Examination on March 29, 2011.

20. The result was officially published on May 20, 2011, and his M.Phil. degree was awarded on the same date.

21. Even if, for the argument's sake, it is assumed that the petitioner pursued his M. Phil course and Ph. D. course simultaneously, the same could not be a ground to discard his Ph. D. degree.

22. It appears that the Chairman, University Grants Commission, constituted an expert committee to look into the issue of pursuing more than two degrees simultaneously from the same university or different universities either through distance mode/part-time mode. The expert committee in its meeting held on October 29, 2012, recommended that students enrolled in a regular degree course should be allowed to pursue an additional degree simultaneously under open or distance education mode from the same or different university. By a letter dated December 28,

2012, the University Grants Commission sought the views of the Vice-Chancellor of all Universities on the report before taking a final decision in that regard.

23. It further appears that in a meeting held on July 31, 2013, the University Grants Commission approved the report of the expert committee. Thereafter, by a notification dated January 15, 2016, the University Grants Commission notified as follows:

“F. No.: 1-6/2007(CPP-II)

15th January 2016

PUBLIC NOTICE

SUBJECT: CLARIFICATION ON ALLOWING STUDENTS TO PURSUE TWO DEGREES SIMULTANEOUSLY.

The Commission had sought the comments of the Statutory Councils. The responses, so far, received do not endorse the idea of allowing the students to pursue two degree simultaneously. Therefore, the universities shall conduct their programmes in accordance with the First Degree and Master Degree Regulations, 2003 prescribed by the UGC and also follow the norms and parameters prescribed by the Statutory Council concerned, wherever relevant.

Sd/- (illegible)
(Jaspal S. Sandhu)
Secretary”

24. It is a settled law that in the absence of due authentication and promulgation of the guidelines, the contents thereof cannot be treated as an order of the Government and would really represent an expression of opinion. It is also essential that what is claimed to be a law must be notified or made public in order to bind the citizens. Before a law can

become operative, it must be promulgated or published. [See: (2011) 8 SCC 670 (*State of Uttaranchal v. Sunil Kumar Vaish*), (1951) SCC 936 (*Harla v. State of Rajasthan*) and (2014) 10 SCC 673 (*Gulf Goans Hotels Company Limited v. Union of India*).

25. Therefore, it is evident that before January 15, 2016, there was no notification issued by the University Grants Commission that prohibited pursuing two degrees simultaneously.

26. The petitioner, admittedly, completed both his M. Phil and Ph. D. course in the year 2012. The UGC circular dated January 15, 2016, could not have been retrospectively applied to the petitioner.

27. Since I have already observed that at the relevant point of time when the petitioner obtained his Ph.D. degree and M. Phil. degree, there was no regulation of the University Grants Commission prohibiting him from pursuing two degrees simultaneously, the Commission should have allowed the petitioner to participate in the selection process on the strength of his Ph. D. degree. In fact, the case of the petitioner is covered by the decision rendered in ***Kuldeep Kumar Pathak*** case.

28. I am also of the view that the study of two-degree courses simultaneously can only be cancelled by the relevant Universities. The Commission could not have declined to recognise the degree on that ground. In this regard, reliance may be placed upon a judgment passed by a Division Bench of this Court reported at (1998) 1 Cal LJ 283 (***Khagendra Nath Paul v. The State of West Bengal***). In dealing with a

case when a student obtained two degrees simultaneously from two different universities, the Division Bench held as follows:

“14. It is well known that right to exercise the power includes right not to do the same. The University may or may not cancel the degrees held by the Petitioner. Even assuming that he has violated the provision of the Ordinance, so long the degrees obtained by the Petitioner are not cancelled by the concerned University, the same would remain in force and all concerned are bound to give effect thereto. As the power to cancel a degree is only vested in the University, evidently, the school authorities or the District Inspector of Schools cannot deprive the Petitioner from having the benefit thereof inasmuch as it well known that a person cannot be permitted to do something indirectly which he cannot do directly.”

29. It is also evident that the petitioner attended the Ph.D. programme as per UGC Regulation 2009, and completed the coursework at the main campus of the C.M.J. University in Shilong.

30. The reference to the Supreme Court's judgment in ***Prof. Yashpal's*** case is irrelevant to the petitioner's case, as it pertains to issues that do not apply to the regular Ph.D. course the petitioner undertook at C.M.J. University's main campus.

31. The stand regarding the recommendation for dissolution by the Governor of Meghalaya is also misplaced, as the recommendation concerned only off-campus centers and not the regular Ph.D. courses. Following the Governor's recommendation, the University was dissolved, but this decision was overturned by the Meghalaya High Court, which ruled on July 16, 2015, that the university's operations must comply with legal provisions. The Supreme Court later dismissed the state's appeal, allowing

C.M.J. University to clarify the validity of its degrees, including the petitioner's Ph.D., which conforms to UGC standards.

32. In the present case, it is, however, disputed whether the petitioner participated in the interview or not. Though the petitioner contends that he participated in the interview and was evaluated by the interview board, the Commission maintains that the petitioner was not allowed to take part in the interview for his questionable Ph. D. degree. The petitioner could not demonstrate before this Court that he was evaluated by the interview committee.

33. Given that the Commission rejected the petitioner's Ph.D. degree based on misunderstandings about off-campus operations and simultaneous enrollment. I allow this writ petition with a direction upon the College Service Commission to allow the writ petitioner to participate in the upcoming selection process for the post of Assistant Teacher in Education.

34. If the petitioner applies for the said post in the upcoming selection process conducted by the Commission, the Commission shall allow the petitioner to participate for the selection process for the said post condoning his age bar. The College Service Commission shall also give due credit for the Ph. D. degree obtained by the petitioner from C.M.J. University, Meghalaya, as per applicable rules. Having regard to the facts of the case, the petitioner will be allowed to avail maximum three successive chances to appear in the examination conducted by the Commission.

35. Accordingly, W.P.A. No.18514 of 2014 stands allowed.

36. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)