

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 18251 of 2019

Sudip Adak
VS
The State of West Bengal & ors.

For the Petitioner : Mr. Sujay Chakraborty,
: Ms. Shashwati Bhattacharjee.

For the State : Mr. Shamim Ul Bari.

Heard on : 12/11/2024

Judgment on : 12/11/2024

Rai Chattopadhyay, J. :-

(1) An office memorandum dated September 3, 2019, issued by the respondent No.3/District Inspector of Schools (Secondary Education) Hoogly [hereinafter referred to as the "DI"], is under challenge in this writ petition. In the same the DI has concurred with the earlier order of his predecessor in chair, dated May 10, 2018, by dint of which a panel prepared for appointment of the Assistant Headmaster, was disapproved for the reason that the present petitioner, who secured first place in the said panel, has acquired his B.Ed. degree through the '*open and distance learning mode*' [in short "*ODL mode*"], from the Netaji Subhas Open University. DI has relied on and quoted the portion of G.O.No. 1628-GA dated 10.07.2002 [hereinafter referred to as "*No.1628*"] in this regard, to say that according to the same the

qualification acquired through the regular course and not through any other mode would be acknowledged and acceptable, to be the eligible qualification.

(2) Let the portion of the said notification be quoted bellow.

“2. Headmaster or Headmistress or Teacher-in-Charge as the case may be as directed by the School Authority, after receiving of prior permission from the Dist. Inspector of Schools (SE) for filling up of the post of Assistant Headmaster/Assistant Headmistress, shall notify and collect applications of such approved and willing teacher(s) of his/her Institution, who are (a) Graduates with Honours including Special Hons. or holding Masters Degree with 'two years' course and having 5(five) years' teaching experience in a high/higher secondary institution. 'Approved' means having service in an educational institution recognised by the West Bengal Board of Secondary Education (W.B.B.S.E.)/West Bengal Council of higher Secondary Education (W.B.C.H.S.E.)/west Bengal Madrasah Education Board (W.B.M.E.B) and duly approved by the Dist. Inspector of Schools (SE) of the concerned district and (b) holding Regular B.T/ B.Ed./P.G.B.T. degree/Diploma Certificate.”

(3) Therefore, for a Master's degree holder teacher, it would be necessary that he undergoes a two years course therefor and holds regular B.T./B. Ed./P.G.B.T. degree/ Diploma Certificate, in order to be eligible for appointment as an Assistant Headmaster, in terms of the said No.1628.

(4) Admittedly the writ petitioner obtained his B.Ed. degree from the Netaji Subhas Open University. Through ODL mode. He took part in the process of selection for appointment of the Assistant Headmaster in the school. From amongst the two

persons, he obtained the higher marks and stood first in the panel prepared for such appointment. However, no further steps were taken by the DI, for approval of such panel.

- (5)** The other person in the panel, namely Anupam Goswami moved a writ petition, that is, W.P.No.499 (w) of 2018. The Court disposed of the same vide order dated February 13, 2018, directing the DI to take a decision as regards approval of the panel upon scrutinizing the records pertaining to the selection process.
- (6)** The second writ petition in this connection was filed by the present petitioner, being W.P.No. 7380 (w) of 2018, which was disposed of by the Court vide order dated June 17, 2019. The Court again directed the DI to reconsider for approval of the panel as above, considering the aspect whether the B.Ed. degree of the petitioner was recognized by the School Education Department, Government of West Bengal. DI was directed to give reasons in case the B.Ed. course undergone by the petitioner was not equivalent to a B.Ed. course recognized by the Education Department, Government of West Bengal.
- (7)** The resultant order is that dated September 3, 2019, which has been assailed in this writ petition. As stated earlier, the DI has held therein that a degree in regular B.Ed. course would only be acceptable as the eligible qualification, for appointment as an Assistant Headmaster in terms of the notification No.1628.
- (8)** Mr. Chakraborty appears for the writ petitioner. He has submitted that the Supreme Court has now settled the law that a B.Ed. degree through the regular course and the ODL mode would be equivalent. In this regard Mr. Chakraborty has relied

on a judgment of the Supreme Court reported in **(2018) 16 SCC 533 [Abdul Motin vs Manishankar Maity and Others]**. He has also relied on a judgment of this Court, that is, **Manas Kumar Sarkar vs. State of West Bengal** reported in **2019 SCC OnLine Cal 2726**.

- (9) In the said judgment of **Abdul Motin (supra)**, the Court has held that a PhD degree issued by a formal conventional University must be treated at par, having been so issued under the uniform standards prescribed by the University Grants Commission Act.
- (10) According to the petitioner the ratio of this judgment would squarely apply in his case and the decree obtained by him through ODL mode, should be accepted as his qualification, adequate for appointment in the post of an Assistant Headmaster. The writ petitioner seeks the panel be approved immediately and appointment be given to him as the first candidate in the said panel.
- (11) The writ petitioner's contentions and prayer have been strongly denied by Mr. Bari, learned Advocate appearing for the State. He would strongly rely on the notification No.1628, relevant portion of which has been quoted above. He would say that the said notification being still in vogue, the respondent is legally duty bound to abide by the provisions thereof. Upon relying on the same, he would say that only a B.Ed. degree of a regular course would be acceptable as the eligible qualification of the person to be appointed in the post of an Assistant Headmaster. In that way, the writ petitioner would be an ineligible person, to

be appointed in the said post, for the reason of not fulfilling the eligibility criteria, he would say.

- (12)** He would further submit that the G.O.No.1628, being still in vogue and not set aside, the respondent authority is duty bound to follow the same, in case of an institution within the State. He would further say that a distant learning, without the practical learning experiences in a B.Ed course, would not fulfil the course structure and purposes, unlike the same do in a regular course. Therefore, according to the State respondent, B.Ed. degree of the petitioner, obtained in ODL mode, would not be equivalent to a degree in regular course. Therefore, the same being not acceptable as a valid and eligible qualification, the petitioner is ineligible to be appointed as the Assistant Headmaster, though stood first in the selection process. The respondent would seek dismissal of the writ petition.
- (13)** The issue to be determined in this writ petition is whether the B.Ed. degree conferred to the petitioner by the Netaji Subhas Open University ought to be treated differently than a B.Ed. degree conferred by a regular university, for the purpose of appointment in the post of an Assistant Headmaster, which is an essential qualification to be eligible for appointment in the said post, in terms of the prevalent Rules.
- (14)** Any University, that is either a conventional and regular university or an open University, are bound by the provisions under the University Grants Commission Act, enacted by the Parliament for effectuating coordination and determination of standards in universities. The Supreme Court in its judgment reported in **(2009) 4 SCC 590 [Annamalai University vs**

Information and Tourism Department], has held that the provisions of the said Act are binding on all universities, whether conventional or open and its powers are very broad. It has also held there that the regulations framed under the Act apply equally to the open universities as well as the formal conventional universities. Let the relevant provision thereof is quoted as hereinbelow.

“40. The UGC Act was enacted by Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas the Open University Act was enacted by Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the Statement of Objects and Reasons of the Open University Act shows that the formal system of education had not been able to provide an effective means to equalise educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.

41. Was the alternative system envisaged under the Open University Act in substitution of the formal system, is the question. In our opinion, in the matter of ensuring the standard of education, it is not. The distinction between a formal system and an informal system is in the mode and manner in which education is imparted. The UGC Act was enacted for effectuating coordination and determination of standards in universities. The purport and object for which it was enacted must be given full effect.

42. The provisions of the UGC Act are binding on all universities whether conventional or open. Its powers are very broad. The Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-section (1) of Section 26 are of wide amplitude. They apply equally to open

universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of UGC are all-pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12-A and clauses (a) and (c) of sub-section (2) thereof.”

- (15) In the judgment of **Abdul Motin (supra)**, the Supreme Court has discussed the following two written communications of the University Grants Commission, which are also worth reliance in this case. Let the relevant portion of the same be quoted here.

“13. *****

“F1-52/2000 (CPP-II)

5-5-2004

**The Registrar/Director of
all the Indian Universities (Deemed,
State, Central Universities/Institutions
of National Importance)**

**Subject : Recognition of Degrees awarded by
Open Universities.**

Sir/Madam,

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**May, I therefore request you to treat the
Degree/Diploma/Certificates awarded by the Open
Universities in conformity with the UGC notification on
Specification of Degrees as equivalent to the
corresponding awards of the traditional Universities in
the country.**

**Yours faithfully,
(Dr [Mrs] Pankaj Mittal)
Joint Secretary**

University Grants Commission”

AND

“F. No. UGC/DEB/2013

Dated : 14-10-2013

**The Registrar/Director
of all the Indian Universities
(Deemed, State, Central
Universities/Institutions of
National Importance)**

**Subject : Equivalence of Degree awarded by Open and
Distance Learning (ODL) Institutions on a par with
Conventional Universities/Institutions.**

Sir/Madam,

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**Accordingly, the Degrees/Diplomas/Certificates
awarded for programmes conducted by the ODL
institutions, recognised by DEC (erstwhile) and UGC, in
conformity with UGC notification on specification of
Degrees should be treated as equivalent to the
corresponding awards of the Degree/Diploma/Certificate
of the traditional Universities/Institutions in the country.**

(Vikram Sahay)

Director (Admn.)

University Grants Commission”

- (16)** The writ petitioner has obtained B.Ed. degree from the Netaji Subhas Open University, which is a university governed under the University Grants Commission Act, 1956. As discussed earlier, the Court has held that the formal system of education in a conventional university would differ from that of an informal system, in an open university, in terms of the mode and manner in which education is imparted. The object of the University Grants Commission Act, 1956, is to bring in

coordination and determination of equivalence of standards in universities. Therefore, by dint of letters dated May 5, 2004 and October 14, 2013, as quoted above, the said Commission has sought to recognise the degree awarded by the open universities, as equivalent and at par, to that of a traditional university.

(17) In view of the same as discussed above, the Court has no hesitation to hold that a degree from an open university, like the B.Ed. degree obtained by the petitioner from the Netaji Subhas Open University, should be treated at par and equivalent with a B.Ed. degree from any other conventional university. It is pertinent to note that subsequent to the notification No. 1628, upon which the respondent has placed strong reliance, the University Grants Commission, by dint of its letters dated May 5, 2004 and October 14, 2013, has sought to treat a degree of an open university as equivalent and at par with that of a conventional university. The same have been duly accredited by the Supreme Court, as a measure to be followed by the universities, which are bound under the provisions of the University Grants Commission Act, 1956. In consideration thereof it would not be erroneous and improper to say that B.Ed. Degree obtained from an open university should be read as integral within the terminology (Regular) used in Para 2(b) in the notification No. 1628.

(18) It is worth mentioning that refusing to accept the degree of the petitioner from an open university, at par and equivalent, to that granted by a conventional university would render the object and purpose of the Act of 1956, to be redundant and nugatory and provisions thereunder as useless practices.

- (19)** In such circumstances the Court is unable to find the impugned order of the DI, dated September 3, 2019, to be a just, legal and proper one. Instead, the same appears to be in violation of the law settled in this regard, as discussed above. Hence, being unreasonable and not in conformity with the settled law, the same should be termed as an illegal order, liable to be set aside.
- (20)** On the premise as above, the present writ petition is allowed and disposed of, with the following directions:
- (i)** the impugned order of DI dated September 3, 2019, is set aside;
 - (ii)** the DI/respondent No.3, is directed to immediately approve the panel, vide the "*Final Assessment Sheet for the Interview of Assistant Headmaster Date of Interview – 20/12/2017 at 11 am*", of Harit High School (H.S.);
 - (iii)** all necessary consequential order/orders, shall be issued immediately after approval of the said panel;
 - (iv)** the entire exercise as above shall be concluded within a period of three weeks from the date of communication of copy of this order.
- (21)** Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.
- (22)** Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)