

Jawed Usmani
Chief Secretary



D.O. Letter No. 282/74-S/2013
Govt. of Uttar Pradesh,
Lucknow

Dated : 25th July, 2013
26

Dear Shri Pariat,

I have been directed to draw your attention to the order dated 08-07-2013 passed by Hon'ble Justice V.K. Shukla, High Court Allahabad in Writ Petition No- 36180/2013 filed by Satyesh Kumar and others of Distt. Sidharthanagar Vs State of U.P. and others (Annex -1).

This petition has been filed by the candidates, who had applied for selection and appointment to the post of Part Time Instructors in Upper Primary Schools (6-8 Class) in U.P. and whose candidature have been withheld because of the Court Order dated 24-05-13 issued by Guwahati High Court (Annex -2) whereby B.Ed degree obtained from C.M.J. University, Modrina Mansion, Laitumkhrah, Shillong, Meghalaya have been held invalid as it was unapproved by NCTE.

The Hon'ble Allahabad High Court has directed the petitioners to implead the State of Meghalaya through Chief Secretary as respondent No. 8. who has been "directed to get an inquiry conducted in regard to existence of the University and the real reason of petitioners and similarly situated students being there and thereafter submit its report on the next date fixed along with counter affidavit."

In the light of the orders of the Hon'ble High Court, you are requested to take appropriate action. It would be appreciated if a copy of the findings of your inquiry is also sent to us for further necessary action. In case any further assistance/ details regarding this writ petition is required, the same would be provided by the State Project Director, Sarva Shiksha Abhiyan, Uttar Pradesh.

With regards,

Yours sincerely,


(Jawed Usmani)

Encl. - as above

Mr. W.M.S. Pariat, I.A.S.
Chief Secretary
Govt of Meghalaya
Room No. 321
Secretariat building
Shillong-793001

Court No. - 30

Case :- WRIT - A No. - 36180 of 2013

Petitioner :- Satyesh Kumar And 2 Ors.

Respondent :- State Of U.P. & 6 Ors.

Counsel for Petitioner :- Girijesh Tiwari

Counsel for Respondent :- C.S.C., Ashok Kumar Singh, Rikvik Upadhya
Hon'ble V.K. Shukla, J.

Learned Standing Counsel has accepted notice on behalf of the respondent nos. 1, 3, and 4 and Sri Ashok Kumar Singh, Advocate has accepted notice on behalf of the respondent no. 6.

Each one of the respondent is granted six weeks time to file counter affidavit. Rejoinder affidavit may be filed within two weeks thereafter.

Issue notice to respondent nos. 7 and 8.

List on 9.10.2013 alongwith W.P. No. 36168 of 2013.

In the present case, petitioners claim that they have pursued their graduation course as regular students from Chandra Mohan Jha (CMJ) University, Modrina Mansion, Laitumkhrah, Shilong, Meghalaya, which is a private University establishment as per the Meghalaya Act No. 4 of 2009. Petitioners claim that pursuant to the advertisement which has been so issued for making selection and appointment on the post of part time instructor, as they fulfilled requisite terms and conditions under Government Order dated 7.2.2013, they have applied. Petitioners claim that on merit, they are entitled to be offered appointment, but their candidature in question has been kept on hold merely of the fact that they have obtained their graduation certificate from the aforesaid University. Petitioners are contending before this Court that University in question is duly recognized by U.G.C. and said University has been duly created under Meghalaya Act No. 4 of 2009 and in view of this, there is no reason whatsoever to ignore the aforementioned degree in question, and as such action of the respondent is bad.

Record in question reflects that in order to verify the genuineness of aforementioned degrees, qua candidates from Azamgarh, two member team had gone to Shilong and for making physical verification, spot inspection was carried out wherein it was mentioned that said University in question is closed on the spot and same is being protected by police force and further action has been taken against the Registrar and Vice Chancellor etc. District Magistrate has asked the two members to approach Director of Higher and Technical Education Meghalaya, who further informed that unrecognized courses are being run, and inquiry is on, and arrest process is on and State of U.P. should be informed that degrees are fake, and alleged University is fraud. Coupled with this it is also reflected that Chancellor of the University has also issued instruction in regard to aforementioned University in question.

Prima facie factual aspect which has so emerged requires inquiry as to

- whether University is functioning or not and secondly as to whether with the collusion with the authorities certificate/degrees are being issued in favour of the students. This Court on prima facie basis fails to understand though there is no restriction as to why all the students leaving their State perused their graduation from Chandra Mohan Jha (CMJ) University, Modrina Mansion, Laitumkhrah, Shilong, Meghalaya, and no reasonable reason has been given by them except for stating that they have a right to study anywhere in India. However, in the facts of the case, it would be much more appropriate that learned counsel for the petitioner should implead State of Meghalaya through its Chief Secretary, Meghalaya as respondent no.8 in the array of the respondents, during the course of the day and respondent no.8 is directed to get an inquiry conducted in regard to existence of the University and the activity of the University and the real reason of petitioners and similarly situated students being there and thereafter submit its report on the next date fixed alongwith counter affidavit. Apart from this Sri Ritvik Upadhaya, Advocate who has been served with the copy of the writ petition is directed to inform University Grants Commission, so that University Grants Commission at its own level conduct an inquiry and submits its report within three months alongwith counter affidavit.

Learned Standing Counsel present in Court is directed to see and ensure that Chief Secretary of State U.P. informs of this order to the Chief Secretary of Meghalaya also, so that inquiry is conducted and report is submitted.

List on 9.10.2013.

Order Date :- 8.7.2013

T.S.

Wp© 5582/2011

BEFORE
HON'BLE MR. JUSTICE HEJSHIKESH ROY

Date of Order: 24/05/2013

Heard Mr. S. Choudhury, Ms. D. Borgohain, Mr. A.M. Buzarbaruah, Ms. H. Das, Mr. J. Payeng, Dr. B. Ahmed and Mr. N. Baruah, who are representing the petitioners in these cases. The authorities of the Education Department are represented by Mr. A. Deka, Standing Counsel. The UGC is represented by Mr. A. Chamuah, Standing Counsel. Mr. A.R. Bhuiyan appears for the C.M.J University, Meghalaya. Some of the private respondents whose entitlement to function as Headmaster/Assistant Headmaster on the basis of B.Ed Degrees obtained by them from non-recognized universities/institutions, are being represented by advocates Mr. A.R. Tahbildar, Mr. M. Das and Mr. J. Saikia.

2. The issue that is required to be answered is whether B.Ed Degree obtained from universities/institutions like Bharatiya Siksha Parishad, U.P., C.M.J. University, Meghalaya, Naba Bharat Shiksha Parishad, Orissa, etc. have any legal validity for considering promotion to the post of Headmaster/Assistant Headmaster. The concerned universities/institutions which awarded the B.Ed Degree through Distance Mode were not accorded any approval by the National Council for Teachers Education (NCTE) and accordingly it is argued that the B.Ed Degrees obtained from such Institutions/Universities can't have any legal validity.

3. In the counter affidavit filed by the Director of Secondary Education, Assam, it is averred that the Bharatiya Siksha Parishad, U.P. is an unauthorized institute which is neither recognized by the UGC or by the NCTE and therefore the B.Ed Degree awarded by the said Institute is not valid for any purpose. The State Counsel argues that in order to confer a valid B.Ed Degree, the universities/institutions must be recognized and prior approval from the UGC, NCTE etc. is necessary and since the Institutes which awarded the B.Ed Degrees are not recognized, the State should be permitted to take appropriate action against those who are claiming higher position, on the basis of unrecognized B.Ed Degree.

4. The Standing Counsel for the UGC, Mr. A. Chamuah, submits that none of the universities/institutions from where the B.Ed Degree have been secured were recognized by the UGC. Moreover, the NCTE had not accorded any approval to these universities/institutions which awarded the B.Ed Degree in these cases.

5. Some of the Headmaster/Assistant Headmaster have argued that since this Court in a recent judgment in the WP(C) 1526/2012 (Mahendra Nath Mudoi vs. The State of Assam) has declared the Assam Secondary Education (Provincialized) Service Rules, 2003 to be ultra vires and unconstitutional, their continuance in the higher post on the basis of B.Ed Degree secured by them from unrecognized institutions, should not be disturbed as B.Ed Degree is not a prerequisite now for the post of Headmaster. However the Assam Secondary Education (Provincialized) Service Rules, 1982 envisages preference for B.Ed Degree holders for appointment to the post of Headmaster. Mr. A. Deka, Standing Counsel, Education in response submits that the State has filed Review Petition 21/2013 to challenge the decision in Mahendra Nath Mudoi (supra) and that the Review Court after hearing the Review Petition has passed status quo order on 5.3.2013. Accordingly the departmental lawyer submits that the requirement of the B.Ed Degree for the purpose of being posted as Headmaster/Assistant Headmaster will abide by the Court's decision in the Review petition No.21/2013.

6. The Supreme Court in Maa Vaishno Devi Mahila Mahavidyalaya vs. State of U.P. reported in (2013) 2 SCC 617 has recognized the primacy of the NCTE in maintenance of Standard of education of teachers, ahead of the States and Universities. Furthermore since NCTE was formed under the NCTE Act, 1993, a special law made by the parliament, the Court declared that NCTE's authority will prevail in professional education of teachers including teachers training programme.

7. In an earlier decision in Prof. Yashpal vs. State of Chhattisharh reported in (2005) 5 SCC 420, the Supreme Court had held that interest of society requires that the holder of an academic degree possesses the requisite proficiency and expertise in the subject the degree certifies. The role of the UGC in maintaining uniformity of high standard was acknowledged by the Apex Court in this decision.

8. In the context of Off Campus Centres operated by the Universities beyond their territorial jurisdiction the Commissioner and Secretary to the Government of Assam, Education Department had issued the O.M. dated 9.7.2012 on the functioning of Off Campus Centres outside of the territorial jurisdiction of the concerned University. The relevant portion of the O.M. is extracted :

"(1) The concerned University shall ensure that no Off Campus centre/study centre and the centres operating through franchises are opened by the University outside their specific territorial jurisdiction in view of the judgment of Hon'ble Supreme Court of India Prof. Yashpal-vs-Govt. of Chhattisgarh.

(2) In case a University has already started an Off-campus study centre violating the Supreme Court's order and the centres are operating through franchise in the State-the same is to be closed immediately.

(3) No distance Education programme shall be started without the prior approval of the distance Education Council, the Regulatory Body for Distance Education Programmes."

9. In another recent decision in National Council For Teacher Education vs. Venus Public Education Society reported in (2013) 1 SCC 223, the Supreme Court inter alia, has held that :

Without recognition from NCTE and affiliation from the University/examining body, the educational institution cannot admit the students. An educational institution is expected to be aware of the law. The students who take admission are not young in age. They are graduates. They are expected to enquire whether the institution has recognition and affiliation. The institution had given admission in a nonchalant manner. It is also necessary to state that the institution had the anxious enthusiasm to commercialised education and earn money forgetting the factum that such an attitude leads to a disaster. The students exhibited tremendous anxiety to get a degree without bothering for a moment whether their effort, if any, had the sanctity of law. Such attitudes only bring nemesis. It would not be wrong to say that this is not a case which put the institution or the students to choose between Scylla and Charybdis. On the contrary, both of them were expected to be Argus-eyed. The basis motto should have been "transparency". Unfortunately, the institution betrayed the trust of the students and the students, in a way, atrophied their intelligence. The institution decidedly exhibited characteristics of carelessness. It seems that they had forgotten that they are accountable to law. Hence, the plea propounded with anxiety, vehemence and desperation on behalf of the respondent on ground of sympathy is not acceptable and, accordingly the same is repelled."

10. In the context of the issue raised in these cases, one must bear in mind that quality of education is largely determined by the skill and commitment of the teachers. The B.Ed curriculum is designed to empower a person with practical knowledge of teaching. When a person obtains a B.Ed degree, he gets exposed all the basics of teaching methodology without which, the education of the teacher is incomplete. Practice teaching is a compulsory paper of the B.Ed curriculum and naturally practice teaching will hardly be effective in distance mode teaching imparted by the institutions with which we are concerned in these cases. Submission is made that some of the teachers who obtained the B.Ed degree hadn't availed leave to pursue their lessons and yet they were awarded the degree by these institutions.

11. While we are discussing the issues from the perspective of the teachers, we must not forget the interest of the students who are the future of our country. If they are taught by unqualified teachers, the quality of their education will suffer and the net result will be a generation of students exposed to teaching by underqualified teachers. Subjecting the students to untrained teachers will not only victimize the students but would also undermine the future human resources of the State. State's interest requires that teaching is imparted only by well trained teachers who have secured their B.Ed degree from institutions recognized by statutory bodies like NCTE, UGC etc.

12. Moreover the nature of the B.Ed curriculum is such that the degree can't be earned by pursuing the course in the distance mode as practical teaching is an important subject to be taught to the aspiring teachers. Therefore in order to protect the interest of our future generation from the vagaries of untrained teachers and to ensure the purity and quality of teaching in the schools is maintained, it is necessary that only properly trained teachers are allowed to impart teaching to the students. As the role of the NCTE has been recognized as the nodal body to ensure quality of education of teachers and approval and recognition for the institutions imparting training to teachers is mandatory, it is difficult to accord legitimacy to B.Ed degree, which are acquired from unapproved institutions. In my considered opinion, such B.Ed degree should not be permitted to be used to confer legitimacy for an aspiring teacher whether in the context of appointment, promotion or pay upgradation.

13. On consideration of all the above and particularly the decision of the Apex Court in National Council For Teacher Education (supra) and the O.M. dated 9.7.2012 of the Government

of Assam and having noted that for imparting B.Ed degree by the Bharatiya Siksha Parishad, U.P., C.M.J. University, Meghalaya, Naba Bharat Shiksha Parishad, Orissa, prior approval was not accorded by the NCTE to impart teachers education, I am of the view that the B.Ed Degree awarded by these institutions are not legally valid. Therefore the B.Ed Degree holders from such unapproved institutions can't claim appointment, promotion or higher pay. It is declared accordingly. But in so far as the relevance of a legally valid B.Ed Degree for the purpose of appointment/advance increment/promotion etc., since the issue is being examined by the Division Bench in the Review Petition 21/2013, this Court doesn't make any order on that aspect of the matter.

14. -- Consequently having declared that the B.Ed Degree obtained from Bharatiya Siksha Parishad, U.P., C.M.J. University, Meghalaya, Naba Bharat Shiksha Parishad, Orissa etc. which are unapproved by NCTE to be invalid in the eye of law, the State is directed to take appropriate steps for ensuring that no benefit is enjoyed by anyone on the strength of the invalid B.Ed Degree secured from Institutions which are not approved by the NCTE. Interim orders in these cases will abide by the declaration made in this order.

15. Cases are disposed of with the aforesaid direction without any order on cost.