

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3693 OF 2020

(Arising out of Special Leave Petition (Civil) No.27694 of 2018)

BHAGIRATHI PRASAD DEY

...Appellant

VERSUS

STATE OF JHARKHAND & ORS.

...Respondents

WITH

SPECIAL LEAVE PETITION (CIVIL)NO.14142 OF 2020

(ARISING OUT OF DIARY NO.39845 OF 2018)

**J U D G M E N T**

**Uday Umesh Lalit, J.**

1. Leave granted.
2. This appeal arises out of the judgment and order dated 03.05.2018 passed by the High Court<sup>1</sup> in LPA No.265 of 2014.
3. On 23.05.1984, the appellant was appointed as Assistant Teacher in the Project Girls High School, Kharsawan by the Managing Committee of the School. In 1993, the appellant was issued a Certificate by Sister Nivedita College, Kolkata ('the College', for short) certifying that the appellant had

<sup>1</sup> The High Court of Jharkhand at Ranchi

completed the course of Senior Teachers' Training and secured Second Class in the Examination held on 22.08.1993.

4. Similar such Certificates were subject matter of consideration by different Benches of the High Court and one may divide those cases in two categories:-

- I) the cases where the Certificates were issued by the College before the National Council for Teacher Education Act, 1993 ("NCTE Act" for short) came into effect on 01.07.1995; and
- II) the cases where the Certificates were issued after the NCTE Act had come into effect.

5. Insofar as the first category of cases are concerned, some of the decisions rendered by the High Court were as under:-

- A) While dealing with Writ Petition (S) No.5412 of 2005 vide order dated 18.05.2006 Single Judge of the High Court made following observations:

"1. ... Further prayer has been made by the petitioner to declare that the provisions of National Council for Teacher Education Act, 1993 (hereinafter to be referred as the 'N.C.T.E. Act') which came into effect since 1<sup>st</sup> July, 1995 are prospective and shall have no effect or abrogation to the accrued right of obtaining decree or diploma.

... ..

9. It has been held by the Court that the NCTE Act,

1993 came into force since 1<sup>st</sup> July 1995 and after six months thereafter i.e. after 1<sup>st</sup> January, 1996 nobody, offering a course or training in teachers education, can run the institute without prior recognition by the National Council for Teachers Education. The petitioner having passed the examination in the year 1992 itself, the question of recognition of Dr. B.C. Roy College of Education, Calcutta, by the National Council of Teachers Education at the relevant point of time does not arise. The Director, Primary Education, Jharkhand, Ranchi, has failed to appreciate the aforesaid facts and simply giving reference to the High Court's decision, rendered in the case of Dilip Kumar Gupta and Ors. (supra), cancelled the provisional approval, as was given by the District Superintendent of Education, Singhbhum West, Chaibasa."

The aforesaid decision was affirmed in LPA No.400 of 2006 by the Division Bench of the High Court vide order dated 24.11.2006, which made following observations:

"Further, it is noticed, as correctly pointed out by Mrs. I. Sen Choudhary, learned counsel appearing for the appellants, National Council for Teachers Education Act came to be introduced on 1st July, 1995. It is true, as strenuously contended by Mrs. Sen Choudhary, counsel for the appellants, that the Division Bench made an observation entertaining doubts with regard to the genuineness of the Institution granting teachers' training certificate. But, however, it is correctly pointed out by the learned counsel of the respondent that that portion has been expunged by the Supreme Court *vide* order dated 3.3.2006, holding that the Division Bench could not have entertained those doubts in the absence of anything to show that the other parties were heard on the relevant question. As such those observations cannot be made use of by the authorities for passing the order impugned in the writ petition. So, in our view, the direction given by the learned Single Judge, directing the authority to pay the salary of the petitioner/respondent, is perfectly valid and justified."

The matter was carried further before this Court. However, Special Leave Petition (Civil) CC No.4396/2007 was dismissed by this Court vide order dated 14.05.2007.

B) Various orders passed by other Single Judges of the High Court took the similar view and by way of example, we may cite two such orders where following directions were issued:

i) Order dated 13.09.2010 in Writ Petition No.393 of 2010:

“7. The Committee on its formation rejected the claim of the petitioner, as the petitioner had obtained degree in training from Sister Nivedita College, Kolkata, which was not a recognized college, but the Committee failed to consider that the N.C.T.E. Act came into force w.e.f. 1.7.1995, whereas the petitioner had obtained B.Ed. (training) degree from the said Institute in the year 1989 and under this situation, this Court in the case of *Kalpana Lodhiya* (supra) has been pleased to hold that the training degree obtained from Sister Nivedita College, Kolkata prior to 1995 must be recognized as valid training degree, as N.C.T.E. Act, which was promulgated in the year 1993, came into force w.e.f. 1.7.1985. Thus, the order, under which Three Members Committee did not find the petitioner to be eligible for regularization, is hereby set aside.”

ii) Order dated 15.09.2011 in Writ Petition (S) No.5568 of 2009:

“6. The reasons given by the Three Member Committee that the petitioner has not cleared his teachers training certificate examination is incorrect mainly for the reason that looking to Annexure-15 to the supplementary affidavit filed by the petitioner, this certificate was already given to the School authorities by the petitioner and they have to submit to the Committee. The supplementary affidavit filed by the petitioner is dated 7<sup>th</sup> July, 2011. In view thereof or

otherwise also, looking to the annexures annexed by the petitioner in this petition and subsequently affidavit before this Court in this matter, it appears that the petitioner has cleared his teachers training certificate examination on 16<sup>th</sup> March, 1994 and as this certificate examination has been cleared prior to enforcement of the Act of 1993, his case is alike to other writ petitions of the aforesaid decided cases.

7. As a cumulative effective of the aforesaid facts, reasons and judicial pronouncements, I hereby quash and set aside the report given by the Three-Member Committee which is at Annexure-B to the counter affidavit filed by respondent No.2 to the extent to which it affects the present petitioner and the reasons given in the said report for the present petitioner is de hors to law for the reasons stated herein above and I, hereby direct the respondents that services of the petitioner may be recognized and necessary order may be passed to that effect and the petitioner will be entitled to all the consequential benefits including salary.”

6. Writ Petition (S) No.2005 of 2013 filed by the appellant came to be allowed by the Single Judge of the High Court by order dated 30.07.2013. The factual background leading to the filing of the petition was stated as under:-

“In the Writ Petition, the petitioner has prayed for a direction on the respondents to take decision regarding approval/recognition of the services of the petitioner as Assistant Teacher in Project Girls High School, Kharsawan, as has been done in the cases of other similarly situated persons. The petitioner has also prayed for a direction on the respondents to pay salary and other consequential benefits to the petitioner from 1.1.1989 like other similarly situated persons.

It has been stated that the petitioner was appointed as Assistant Teacher by the Managing Committee in the said school on 6.1.1984. The petitioner subsequently completed teachers training from Sister Nivedita College at Kolkata in 1993.

In the year 1984-85, the Government had decided to take over 300 Project Girls' High Schools. The petitioner's School was also taken over in 1985.

For the purpose of regularization/approval of the services of the teachers and non-teaching staff of those Schools, Three Men Committee was constituted. The Three Men Committee scrutinized the services of the teachers of the school for the purpose of approval, but the petitioner's service was not approved, for the reason that the petitioner got teachers training from the college, which was not recognized under the provisions of National Council for Teachers Education Act, 1993 ('NCTE Act, 1993', for short).

Learned counsel for the petitioner submitted that the petitioner got his teachers training certificate in 1993, whereas NCTE Act, 1993 came into force from July, 1995.

Learned counsel for the petitioner further submitted that admittedly NCTE Act was not in existence when the petitioner had got teachers training from Sister Nivedita College, Kolkata and there was no defect in his training certificate. She further submitted that the petitioner was duly appointed by the Managing Committee and he has all eligibility and qualification for being appointed as Assistant Teacher in the High School. Denial of recommendation for approval of Three Men Committee is, therefore, arbitrary and discriminatory.”

Relying on the long line of decisions, some of which have been adverted to earlier, the Single Judge allowed the petition with following observations:-

“Considering the said submissions and the facts and circumstances, this writ petition as well as I.A.No. 4107 of 2013 are disposed of in the light of the order dated 15.9.2011 passed in Om Prakash Gope<sup>2</sup> quashing the refusal of petitioner's recommendation by Three Men Committee (Annexure-3) and directing the respondent No.2, who is said to be the competent authority, to issue appropriate order recognizing the

<sup>2</sup> W.P.(S)No.5658 of 2009 [Om Prakash Gope vs. State of Jharkhand & Ors.]

services of the petitioner as Assistant Teacher in Project Girls High School, Kharsawan and pay all consequential benefits including arrears of his salary, within six weeks from the date of receipt/production of a copy of this order.

If the admitted amount/arrears is not paid within the said period, the petitioner shall be entitled to get interest @10% per annum from the date the amount found payable till the date of final payment.”

7. The order passed by the Single Judge and some other orders were challenged by the State by filing Letters Patent Appeals before the Division Bench. The relevant submissions in L.P.A.No. 265 of 2014, pertaining to the appellant were noted by the Division Bench as under:-

“So far as the respondent of L.P.A. No.265 of 2014 (original petitioner in W.P.S.No. 2005 of 2013) is concerned, the management was taken over by the Government and by that time, Alam Committee was constituted of three member to weed out those teachers, who were appointed without any eligibility or qualification. This weeding out process was done by Alam Committee and a report was also given by the said Committee. As per the report given by this Alam Committee, the respondent of L.P.A. No. 265 of 2014, who was appointed by the School Management Committee, was not having Senior Teachers Training from a recognized institution, and hence, his services were not recognized. This aspect of the matter has not been properly appreciated by the learned Single Judge while allowing the writ petition being W.P.(S)No.2005 of 2013 vide judgment and order dated 30.07.2013.”

The Division Bench by its judgment, presently under appeal, set aside the view taken by the Single Judge against which the present appeal has been preferred.

8. The instant case comes in the 'Ist Category' of cases as stated above. Insofar as that category is concerned, the matter stands concluded by the decisions of the High Court, which were confirmed by dismissal of Special Leave Petition arising therefrom. In the circumstances, the Division Bench was not justified in taking a different view in the matter.

9. We, therefore, allow this appeal, set aside the view taken by the Division Bench with regard to the case of the appellant and direct:

- a) that the qualification and the Certificate issued by the College shall be considered to be good and valid qualification for the appellant;
- b) the appellant shall be entitled to have all the benefits accruing to him from the service rendered as Assistant Teacher and all consequential benefits including the arrears of salary, if any, shall be paid within eight weeks from today; and
- c) in case the arrears are not paid within the aforesaid period, the appellant shall be entitled to interest @ 6% per annum.

10. With the aforesaid directions, this appeal stands allowed. No costs.

I.A. Nos.30339 of 2020 and 30315 of 2020

These two Interlocutory Applications seeking impleadment have been filed by the applicants Ramdeo Prasad and Rajendra Kumar respectively submitting that their cases stand on similar footing. However, these cases had not engaged the attention of the High Court at any juncture nor was the other side put to notice and called upon to respond to the assertions made on behalf

of the applicants. We, therefore, do not pass any orders in these Interlocutory Applications but permit the applicants to institute such proceedings as are open to them in law to agitate their grievances. If instituted, such proceedings shall be decided in accordance with law and on their own merits.

With the aforesaid observations, these applications stand disposed of.

SLP (CIVIL) NO.14142 OF 2020 (@DIARY NO.39845 OF 2018)

Delay condoned.

In this case, the appointments in question were issued well after the provisions of the NCTE Act came into force. Further, the Certificates issued by the College were also after the NCTE Act had come into force. The case, therefore, stands on a different footing and the view taken by the High Court while rejecting the claim does not call for any interference.

The Special Leave Petition is, accordingly, dismissed.

.....J.  
[UDAY UMESH LALIT]

.....J.  
[VINEET SARAN]

NEW DELHI;  
NOVEMBER 17, 2020.

ITEM NO.303

COURT NO.3  
(HEARING THROUGH VIDEO CONFERENCING)

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

SLP (Civil) No.27694 of 2018

BHAGIRATHI PRASAD DEY

Appellant(s)

VERSUS

STATE OF JHARKHAND &amp; ORS.

Respondent(s)

(IA No.30318/2020 - FOR EXEMPTION FROM FILING O.T.; IA No.52211/2019 - FOR EXEMPTION FROM FILING O.T.; IA No.45291/2019 - FOR EXEMPTION FROM FILING O.T.; IA No.147690/2018 - FOR EXEMPTION FROM FILING O.T.; IA No.30340/2020 - FOR EXEMPTION FROM FILING O.T.; IA No.30339/2020 - FOR INTERVENTION/IMPLEADMENT; IA No.30315/2020 - FOR INTERVENTION/IMPLEADMENT; IA No.52210/2019 - FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

SLP (CIVIL) DIARY NO.39845 OF 2018

Date : 17-11-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT  
HON'BLE MR. JUSTICE VINEET SARAN

For Appellant(s) Mr. Ajit Kumar Sinha, Sr. Adv.  
Mr. Ashwarya Sinha, AOR

For Respondent(s) Mr. Kumar Anurag Singh, Adv.  
Mr. Manoj Kumar, Adv.  
Mr. Anando Mukherjee, AOR

Mr. Vinay Garg, AOR  
Mr. Upendra Mishra, Adv.  
Mr. Sanjeev Kumar, Adv.  
Mr. Uday Singh, Adv.  
Ms. Deepak Garg, Adv.

Mr. Krishnanand Pandeya, AOR

UPON hearing the counsel the Court made the following  
O R D E R

SLP (Civil) No.27694 of 2018

Leave granted.

The appeal is allowed and the applications for impleadment (I.A. Nos.30339 of 2020 and 30315 of 2020) are disposed of, in terms of the Signed Judgment.

Pending applications also stand disposed of.

SLP (CIVIL) DIARY NO.39845 OF 2018

Delay condoned.

The Special Leave Petition is dismissed, in terms of the Signed Judgment.

Pending applications, if any, also stand disposed of.

(MUKESH NASA)  
COURT MASTER

(BEENA JOLLY)  
BRANCH OFFICER

(Signed Judgment is placed on the File)