

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

T.A. No. 62/6701/2020



Pronounced on: This the 24th day of August 2021

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)

Ihrasa Bashir (Aged: 42 years), D/o Bashir Ahmad Zargar, R/o Aglar,
Chirat, Shopian.

.....Applicant

(Advocate: Mr. Showkat Ahmad Makroo, Sr. Advocate assisted by Mr. Bilal
Ahmad Malla)

Versus

1. State of Jammu & Kashmir through Commissioner/Secretary to
Government, Youth Services and Sports Department, Civil
Secretariat, Srinagar/Jammu.
2. Director General, Youth Services and Sports Department, J&K,
Srinagar.
3. District Youth Services and Sports Office, Shopian, Kashmir

.....Respondents

(Advocate: Mr. Amit Gupta, learned A.A.G.)

(ORDER)

(Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (J))



1. Applicant Ihrasa Bashir in the present T.A. seeks the following reliefs:-
 - “(i) Writ of Mandamus commanding the respondents to release the unpaid legitimately earned salary of the petitioner.
 - (ii) Writ of Mandamus commanding the respondents to take action in light of the communications bearing No. DGYSS/Acctts/2018/8243 dated 21.12.2018, No. Edu/Tech/Phy/Legal/37/2011 PF dated 15.03.2019 and No. DG-YSS/lit/K15/12053-58 dated 06.03.2019 and redress the grievance of the petitioner forthwith.
 - (iii) Writ of Mandamus commanding the respondents to give same and similar treatment to the petitioner as has been given to Sheikh Naseer Ahmad Sheeraza Akhter; and Miss Shokta Mohi-ud-din D/o Ghulam Mohi-ud-din Beigh R/o Budgam.
 - (iv) Writ of Prohibition restraining the respondents from dispensing the services of the petitioner as the degrees awarded by Bhartiya Shiksha Parishad University, Lucknow, Uttar Pradesh are subject matter of litigation and the status and recognition of the said University is subjudice in the Hon'ble Court at Lucknow.
Any other order, writ or direction may also be issued in favour of the Petitioner and against the Respondents which this Hon'ble Court deems fit and necessary in the facts and circumstances of the case.”
2. Case of applicant is that she was appointed to the post of Physical Education Teacher in District Shopian vide order dated 06.01.2010. Her appointment was cancelled vide impugned order No. 68-Edu (YSS) of 2019 dated 19.09.2019 on the ground that she obtained the B.P.Ed Degree from Bhartiya Shiksha Parishad University, Lucknow, Uttar Pradesh which is not a recognised University. She challenges the impugned order on the ground that no show cause notice was given to her before cancelling her appointment. Her further case is that she has not been paid her salary which is apparent from the various

communications placed by her on record and that the Hon'ble High Court also directed the respondents to deposit her salary in the registry of the High Court which is yet to be deposited.



3. We have heard and considered the arguments of Mr. Showkat Ahmad Makroo, Sr. Advocate assisted by Mr. Bilal Ahmad Malla and Mr. Amit Gupta, learned A.A.G. for the respondents and gone through the material on record.
4. It is the case of respondents that degree has been obtained from Bhartiya Shiksha Parishad Lucknow, U.P. which is not recognized. Respondents contend that Bhartiya Shiksha Parishad Lucknow, from where the applicant obtained her degree, is not recognized by the UGC and therefore, Bhartiya Shiksha Parishad Lucknow, U.P., has no right to confer degrees in terms of the UGC Act, 1956, and therefore their degree including that of applicant are not valid degrees and applicant has no right to be appointed on the basis of such degree.
5. The validity of degrees from Bhartiya Shiksha Parishad, Lucknow, U.P. has been subject matter of the following litigation:

A. Smt. Sunita Kushwaha v/s State of U.P., (2006) 1 All LJ 795:

- “8. It is admitted that Bhartiya Shiksha Parishad is not a University either as defined under section 2(f) of the UGC Act, 1956 or is a Deemed University under section 3 of the said Act or an institution especially conferred power to grant or confer degree by an Act of Parliament.
9. In the circumstances, the degree obtained by the petitioner-appellant from the said Bhartiya Shiksha Parishad, U.P, Lucknow is wholly illegal and unauthorised, having no value in the eyes of law to confer any benefit upon him for any purpose



whatsoever. On the basis of it, it is apparent that the Bhartiya Shiksha Parishad by issuing degrees is violating the prohibition contained in section 22 of the U.G.C Act, 1956. In spite of the fact that under law it has no authority or power to award any degree and yet a degree, a photocopy filed by the petitioner-appellant, contained in Annexure-11 to this appeal, has been issued, which is nothing but a nullity and waste paper having no value in the eyes of law.”

B. Ishfaq Ahmad Beigh v/s State, (2014) 2 JKJ 216:

“10. The precise case projected by petitioner in the instant petition is that respondents have not given due weightage to his additional qualification i.e. B.Ed. Degree obtained by him from Bhartiya Shiksha Parishad Lucknow, U.P.

11. The B.Ed. Degree obtained by petitioner from Bhartiya Shiksha Parishad Lucknow, U.P., is not recognized by the UGC, therefore, weightage cannot be sought much-less given to his additional qualification. Petitioner's case was considered by respondents as per his merit alongwith other eligible candidates. He figures at the bottom of Panel/merit List (Serial No. 7), therefore, could not be selected in presence of better and meritorious candidates.”

C. SWP No. 687/2014 titled Shahida Bano Sheikh v/s State decided by Hon’ble High Court of J&K vide order dated 10.11.2017:

“The communication produced by the learned AAG dated 30.03.2012 reads as under:



“With reference to your letter No. BCI:D:413/2012 (Council) dated 07.02.2012 on the above subject it is to inform that Bhartiya Shiksha Parishad, Luknow (BSP) UP is not an established University/Institution by either State Act or Central Act or Provincial Act or recognized by the University Grants Commission (UGC) under section 2(f) and section 3 of the UGC Act, 1956. It is not empowered to confer any degree. The degree awarded by Bhartiya Shiksha Parishad, Lucknow is not recognized.”

7. Thus, from the perusal of the aforesaid communication, it is evident that the degree awarded by the Bhartiya Shiksha Parishad, Lucknow is not recognized by the University Grants Commission. Therefore, action of the respondents in not treating the degree awarded to the petitioner valid cannot be found fault with. So far as submission made by the learned counsel for the petitioner that he has not been afforded opportunity of being heard.”

6. The position is well settled that the degrees obtained from Bhartiya Shiksha Parishad Lucknow, U.P. are not valid since the said organisation is not recognised by University Grants Commission and therefore no appointment to a Government job can be given on the basis of such degree.
7. It was submitted by learned counsel for applicant that no notice was given to the applicant before cancelling her appointment and therefore her right to a hearing before passing any adverse order against her has been violated, as such, the impugned order deserves to be set aside.
8. On the other hand, learned AAG submitted that issuance of notice to the applicant and observance of the principles of natural justice would have been an empty formality in the present case and no fruitful purpose would have been served by issuing notice, since there would

have been no other conclusion possible on admitted or indisputable facts i.e. the degree obtained by applicant cannot be relied upon for obtaining a Government position and therefore, the impugned order does not require to be quashed even if passed in violation of natural justice and that no real prejudice has been caused or established by the applicant by setting aside of her appointment order.



9. We note the present citations wherein the settled principle of law of observing principles of natural justice applicable to the facts of such like present case has been laid down by the Hon'ble Apex Court as below:

- (i) State of Manipur v/s Y. Token Singh, (2007) 5 SCC 65 that :-

“22. The respondents, therefore, in our opinion, were not entitled to hold the posts. In a case of this nature, where the facts are admitted, the principles of natural justice were not required to be complied with, particularly when the same would result in futility.”

- (ii) Kendriya Vidyalaya Sangathan & Ors. v. Ajay Kumar Das & Ors., (2002) 4 SCC 503

“It is clear that if after the termination of services of the said Dr. K.C. Rakesh, the orders of appointment are issued, such orders are not valid. If such appointment orders are a nullity, the question of observance of principles of natural justice would not arise.”

10. On the question whether principle of natural justice should be observed by giving a notice before passing an adverse order, we are of the opinion that looking to the settled law and the factual position in the present case giving opportunity of hearing to the applicant before issuance of the impugned order was not an essential requirement and it would have been an exercise in futility. Indisputably, the degree in

question obtained from Bhartiya Shiksha Parishad Lucknow, U.P. is not a valid degree. Resultantly, there was no necessity to afford opportunity to the applicant before issuing the impugned order cancelling her appointment. The contention of applicant regarding the violation of principle of natural justice and consequential prayer for setting aside the impugned order is devoid of force of law and to be rejected.



11. However, applicant has sought the relief of directing the respondents to disburse her arrears of salary which have not been paid to her even though the Hon'ble High Court had given the relief. Applicant is entitled to the salary for the period she has worked in the respondent-department. Respondents are therefore directed to release the arrears of salary under rules due to the applicant within a period of one month from the date of receipt of certified copy of this order.
12. In view of the facts of the case, the T.A. is partly allowed to the extent mentioned above. No costs.

(ANAND MATHUR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun/-