

Tariq Islam vs Aligarh Muslim University & Ors on 9 October, 2001

Equivalent citations: AIR 2001 SUPREME COURT 3058, 2001 AIR SCW 4128, 2002 LAB. I. C. 566, 2001 ALL. L. J. 2605, 2002 (1) SERVLJ 343 SC, (2002) 1 SERVLJ 343, (2002) 1 JCR 92 (SC), 2001 (8) SCC 546, (2001) 8 JT 459 (SC), (2001) 3 UPLBEC 2566, (2001) 8 SERVLR 492, (2001) 4 SCT 818, (2001) 4 ALL WC 3172, (2002) 1 LAB LN 62, (2001) 7 SCALE 86, (2002) 1 ESC 54, (2001) 7 SUPREME 401

Bench: S. Rajendra Babu, Doraiswamy Raju

CASE NO.:

Appeal (civil) 7076 of 2001

PETITIONER:

TARIQ ISLAM

Vs.

RESPONDENT:

ALIGARH MUSLIM UNIVERSITY & ORS.

DATE OF JUDGMENT: 09/10/2001

BENCH:

S. Rajendra Babu & Doraiswamy Raju

JUDGMENT:

RAJENDRA BABU, J. :

Leave granted.

Respondent No.1 issued an advertisement inviting applications for appointment to the post of Lecturer in Philosophy on October 1, 1997. Apart from other qualifications, one of the essential qualifications provided for such appointment in the said advertisement is Good academic record with at least 55 per cent marks or equivalent grade at masters degree level in the relevant subject from an Indian University or equivalent degree from a foreign university. The appellant who had obtained B.A.(Hons) degree from the Council of National Academic Awards, North

London, securing more than 55% marks and who had worked with the first respondent University from 25.8.1981 to 2.1.1993 in temporary vacancies for about 10 to 11 years as a Lecturer in Philosophy, offered his candidature for appointment to the post of Lecturer in response to the aforesaid advertisement. The Selection Committee selected the appellant and respondent No.7 to the third vacancy. It was stated that in case it is held that the appellant is not possessing Masters degree and his appointment is not approved by the Executive Council, Dr. Mohd. Hayat Aamir, respondent No.7, be appointed. Thereafter the Vice Chancellor approved the appointment of respondent No.7. The appellant filed a writ petition stating that he possessed the necessary qualifications for the appointment having obtained B.A.(Hons) degree from the Council of National Academic Awards and having passed the M.Phil. in 1986 and having obtained the Doctorate degree in Philosophy in 1991. At the time when his admission came up for consideration in M.Phil. leading to Ph.D., a reference was made to the British Council by the Standing Committee for Equivalence and the Faculty of Arts accepted his admission. The Dean, the Faculty of Arts, in fact, intimated that the issue was academically settled. The Academic Council approved the admission of the appellant to M.Phil. leading to Ph.D. course. Thereafter, on 6.11.1984, his admission to M.Phil. was cancelled and he made a representation and his representation was allowed on 6.4.1985. Then on 13.4.1985, the Controller of Examinations and Admissions issued an order declaring equivalence for the purpose of admission to Ph.D. course and thereafter the order of cancellation of admission of the appellant was revoked. The Academic Council ratified the decision of the Vice Chancellor based on the recommendation of the equivalence committee by resolution passed on 27.7.1985. In this background, the appellant asserted that he possessed the necessary qualifications for being appointed as a Lecturer.

The High Court relied on a book on equivalence of foreign degrees published by Association of Indian Universities to hold that the B.A.(Hons) degree possessed by the appellant is not equivalent to Masters degree and thereby the appellant lacks essential qualification for appointment as Lecturer. On that basis, the High Court dismissed the writ petition. Hence this appeal.

During the pendency of the proceedings before this Court, after notice was issued to the University, the Executive Council passed a resolution on 31.7.2000 asking the Vice Chancellor to re-consider the matter. In view of this development, this Court made an order on 27.9.2000 disposing of the matter observing that the proper course for the Vice Chancellor is to re-examine the matter afresh uninfluenced by the decision of the High Court. However, later on respondent No.7 filed an application stating that he had not been served with notice in the matter though he had been impleaded as a party. This Court, by order dated 23.4.2001, therefore, recalled the order made on 27.9.2000 and heard the matter in full.

The Vice Chancellor expressed his view after making a detailed note as under:

a. The Academic Councils decision of July 27, 1985 with regard to the equivalence of Dr. Tariq Islam's degree remained valid for the entire period from July 1985 up to March 7-8, 1999 and was treated as such by the University which employed Dr. Tariq Islam as Lecturer in short-medium terms vacancies in the following periods:

i. 03.11.87 14.08.90 ii. 10.01.91 - 09.02.91 iii. 03.08.91 08.03.99 It can, therefore, safely be assumed that the validity question was revived only in the context of the General Selection Committee of 06.03.99 for reasons which are not stated on record but which have been hinted at or alleged in various quarters.

b. By inviting Dr. Islam to present himself before the General Selection Committee the University administration was acknowledging the validity of his academic credentials for the purposes of the interview. This was endorsed by the General Selection Committee which allowed itself to interview the candidate and even found him fit for selection (By well established practice the job of a Selection Committee is to select, or not to select, candidates in categorical terms; conditionalities on selection are inadmissible and have been frowned upon by the competent authorities)

c. While it is true that the name of Dr. Islam was bracketed with that of another candidate who was recommended, the sequence in which the two names were mentioned indicates clearly that the judgment of the General Selection Committee regarding their respective merit.

d. The University administration's right to review its earlier decision in any matter is undisputed but is subject to the established rule (sustained by judicial rulings) that such a review should be carried out in a reasonable manner within reasonable time when time is not stipulated in the statute. Furthermore, the implications of such a review, in human terms, cannot be overlooked. On both these counts the decision taken on 08.03.99 falls short of the expectations of reasonableness more so because the University administration was aware of humanitarian implications of the decision.

e. Attendant circumstances relating to the manner in which the decision was made and notified hint at the existence of subjective considerations.

Taking these factors into consideration, the Vice Chancellor made an order on November 29, 2000 as follows:

It does not appear reasonable that the decision taken on July, 1985 be retrospectively revoked, particularly when both Dr. Tariq Islam and the University have stood by that decision. Any reversal of this decision is bound to cause an irreparable harm to him. In this particular situation, therefore, it does appear to me that the ends of justice will only be served if conferment of both the M.Phil. and Ph.D. degrees upon Dr. Tariq Islam be treated as valid for all purposes and the recommendations of the General Selection Committee dated 8.3.1999 in his favour be accepted.

Taking all these factors into account, the undersigned, on behalf of the Executive Council and notwithstanding the contents of the Office Memo No.D-376(A)/WS/Gen-2.1/Reg. Dated 8.3.1999, has accepted the recommendations of the General Selection Committee in respect of Dr. Tariq Islam and sanctioned his appointment as temporary Lecturer in the Department of Philosophy, with effect from December 01, 2000.

In the meanwhile, respondent No.7 had been appointed as a Lecturer whose name was suggested as an alternate to the appellant by the Selection Committee, but he has been continued as Temporary Lecturer in the Womens College until further orders.

In the University of Mysore & Anr. vs. C.D.Govinda Rao & Anr., 1964 (4) SCR 575, the appointment of one Anniah Gowda was set aside by the High Court on the basis that he did not satisfy the qualification that he must possess either a first or a high second class Masters degree of an Indian University. This Court stated that normally, it is wise and safe for the courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the courts generally are. Area of interference by courts would be limited to whether the appointment made by the academic body had contravened any statutory or binding rule and while doing so, the Court should show due regard to the opinion expressed by the experts and on whose recommendations the academic body had acted and not to treat such expert body as a quasi-judicial tribunal, deciding disputes referred to it for decision. Equivalence of a qualification pertains purely to an academic matter and courts would naturally hesitate to express a definite opinion, particularly, when it appears that the experts were satisfied that the equivalence has already been considered and declared by it. This view has been reiterated by this Court in several decisions on the question of equivalence of qualifications including the one in Rajendra Prasad Mathur vs. Karnataka University & Anr. 1986 Supp. SCC 740.

In the present case, the High Court has merely relied upon a book published as equivalence of foreign degrees by the Association of Indian Universities and places its interpretation that the B.A.(Hons) degree possessed by the appellant is not equivalent to Masters degree of the Aligarh University and, therefore, the appellant lacks essential qualification for appointment as the Lecturer. The contents of the publication, apart from the Book itself, cannot be ascribed with any official sanctity of binding force or authority. The glaring facts arising in this case have not been taken note of by the High Court. The appellant had already obtained M.Phil. and Ph.D. degrees from the respondent University. At the time of his admission to M.Phil. leading to Ph.D. course in the Department of Philosophy, the question of equivalence in qualification was examined in detail and the Academic Council approved his admission to M.Phil. or Ph.D. course. In the event his qualification of B.A.(Hons) degree from the Council of National Academic Awards is not equivalent to Masters degree, he could not have been admitted to M.Phil. leading to Ph.D. course. But to say that such acceptance of such equivalence is only for the purpose of admission to

M.Phil. leading to Ph.D. course and not for other purposes will lead to anomalous results. Equivalence of qualification has to be determined before a person is allowed to undergo a course. When the appellant as a result of such admission obtained such high qualifications as M.Phil./Ph.D., it is difficult to imagine that the equivalence of qualification obtained by him earlier was not considered by the University. After having obtained such degrees to nullify the equivalence declared by the Academic Council and the Vice Chancellor will be to put the clock back causing grave injustice to the appellant. Had he been denied admission on the ground that his qualification is not equivalent to the Masters degree, he might have obtained an equivalent qualification or pursued his studies else where. That opportunity having been deprived to him and his admission to such courses having been ratified based on the recommendations of the equivalence committee, it cannot be nullified in the manner it has been done.

In these circumstances, when now a better view had prevailed over the Vice Chancellor and the Academic Council which has now decided that the qualification possessed by him is sufficient we set aside the order made by the High Court and allow the writ petition filed by the appellant in the High Court directing the respondents to give effect to the order made by the Vice Chancellor on November 29, 2000 with all consequential benefits arising therefrom.

However, we must notice that the position of respondent No.7 is none too enviable because he was appointed as an alternate to the appellant and he continued in such appointment till now. It is clear that in the special features arising in this case as he has been appointed and he was hopeful of being continued pursuant to the selection made and having found the appellants appointment to be not correct, which has now been reversed by the University itself, this turn about of the University in flip-flop-flip stance has put him in a predicament. We, therefore, direct the University to accommodate respondent No.7 in an appropriate post as well.

The appeal stands allowed in the terms stated above. No costs.

...J. [S. RAJENDRA BABU] ...J. [DORAISWAMY RAJU] OCTOBER 9, 2001.