

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**Reserved on: 09.10.2023
Pronounced on: 18.03.2024**

**LPASW 125/2018
CM 1064/2022, IA 01/2018, CM 1717/2020,
CM 6189/2022**

Ryhana Abdullah
D/o Mohmad Abdullah Kumar
R/o Redwani Bala, Kulgam

... Petitioner/Appellant(s)

Through: Mr. Syed Faisal Qadiri, Sr. Advocate with
Ms. Lyba Rasool, Advocate

V/s

1. State of Jammu and Kashmir through
Commissioner/Secretary to Government,
Higher Education Department,
Civil Secretariat Srinagar/Jammu.
2. J&K Public Service Commission,
J&K Srinagar/Jammu through its
Secretary.
3. Registrar,
University of Kashmir,
Srinagar.
4. Imran Rashid
S/o Abdul Rashid Wani
R/O Beighpora Awantipora District Pulwama.

... Respondent(s)

Through: Mr. Mubeen Wani, DAG for R1
Mr. Shah Aamir, Adv. with Ms. Insha Shakeel, Adv. for R2
Mr. Azharul Amin, Sr. Advocate for R3
Mr. Shakir Haqani, Advocate for R4

CORAM:

HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

J U D G M E N T

18.03.2024

Per Rahul Bharti J'

1. The appellant had felt aggrieved of an outcome of a selection process conducted by the respondent No. 2- J&K Public Service Commission ("JKPSC" in short) which resulted in the selection and recommendation of the respondent No. 4 namely Mr. Imran Rashid for appointment to the post of Assistant Professor (Home Science) in the Government Degree Colleges of the then State of Jammu and Kashmir (now UT of Jammu & Kashmir).
2. The appellant had, therefore, come forward to question the selection process and also the recommendation for appointment of the respondent 4 by filing a writ petition as SWP No. 1965 of 2016 instituted on 14/12/2016 which resulted in its dismissal vide a judgment dated 24/08/2018 passed by the learned writ court against which the present letters patent appeal (LPA) came to be filed on 29/08/2018 which is now getting its adjudication through the medium of the present judgment.
3. We have heard the learned counsel for both sides extensively and have also perused the entire record obtaining not only on the file of the writ court but also on the file of the present letters patent appeal.
4. Although the learned Single Bench, in its judgment under letters patent appeal, has set out the sequence of facts as were obtaining

on the record of the writ file in the backdrop of which the writ court judgment came to be passed but certain important factual developments have come to take place, post writ court judgment, during the pendency of this letters patent appeal as such we need to sort out the chronology of the facts and circumstances in the light of which the examination of the impugned judgment and the challenge being posed to it by the appellant is to be dealt with by us.

5. For the purpose of filling up the posts of Assistant Professor in various disciplines in the Higher Education Department, Government of J&K for its various Government Degree Colleges, the respondent No. 1- Higher Education Department, Government of Jammu and Kashmir requisitioned the selection process to be conducted by the respondent No. 2- JKPSC which vide its Notification 12-PSC (DR-P) of 2014 dated 29/05/2014 invited applications from the permanent residents of State of J&K possessing prescribed academic qualification and age for participating in the selection process.
6. There were 869 posts of Assistant Professor in 45 Disciplines which were meant to be filled up by the selection process so set into effect by the respondent No. 2-JKPSC. One of the notified disciplines out of 45 disciplines was Home Science in which four (4) posts were to be filled up comprising of two (2) Open Merit (OM), one (1) Resident of Backward Area (RBA) and one (1) Scheduled Caste (SC).

7. In the context of the present case, it is the single post of Assistant Professor (Home Science) under RBA category for which 19 eligible candidates were in competition inclusive of the appellant and the respondent no. 4.
8. The qualification prescribed in the respondent no. 2 – JKPSC's notification dated 29/05/2014 for applying for the posts of Assistant Professor for any given discipline was good academic record as defined by the concerned University with at least 55% marks or an equivalent grade in a point scale wherever grading system is followed at the Master's Degree level in the relevant subject from an Indian University, or an equivalent degree from an accredited foreign University. In addition, an applicant was required to have cleared NET/SLET/ SET conducted by the UGC, CSIR/AIU.
9. The respondent No. 2– JKPSC, upon conducting the selection exercise, came forward with a notification No. 35 –PSC (DR-S) of 2016 dated 29/11/2016 with respect to outcome of the selection process for the four (4) posts of Assistant Professor in the discipline of Home Science and for one (1) post of Home Science Management.
10. For the reserved RBA category post of Assistant Professor (Home Science), the respondent No. 4 came to secure 46.54 marks as against the appellant's 45.26 and, thus, rendered the respondent No. 4 immediate claimant for the appointment to the

ouster of the appellant's claim. The selection was based upon performance in the interview (*viva voce*) and other parameters.

11. The appellant feeling aggrieved of the outcome of the selection process rushed to file on 14/12/2016 her writ petition SWP 1965/2016 seeking quashment of the selection of the respondent No. 4 and in consequence seeking her selection and appointment, as being the next merit placed, to the post of Assistant Professor (Home Science) under RBA category.
12. In terms of an *ex parte* interim order dated 15/12/2016, the writ court came to direct *status quo* vis-à-vis the then present position of the respondent No. 4.
13. In her writ petition, the appellant assailed the very eligibility, in terms of the essential qualification of the respondent No. 4 to be called for interview much less getting selected. In the writ petition, the appellant introduced her educational qualification to be Master of Science (M.Sc.) in the discipline of Home Science (Human Development) in the Faculty of Applied Sciences and Technology as a regular student and having obtained her degree from the Institute of Home Sciences of the respondent no. 3 - University of Kashmir. The appellant also claimed to have cleared the National Eligibility Test (NET) conducted by the UGC in the year 2012.
14. With respect to the respondent No. 4, the appellant pleaded that the respondent No. 4, at the first instance, was not even entitled to be called for the interview because of lack of prescribed

qualification in his favour as the respondent No. 4 is said to be possessing a degree through Distance Mode from Indira Gandhi National Open University, IGNOU as being Master of Science (Dietetics and Food Services Management, MS-DFSM) which is alleged not to be the requisite qualification envisaged under the Notification 12-PSC (DR-P) of 2014 dated 29/05/2014.

15. The appellant came to plead that the respondent No. 4's Master's Degree was not in the relevant subject (Home Science) and that his Degree of MS-DFSM through distance mode was not recognized for the purpose of employment in terms of clause IV of the Government Order No. 252-HE of 2012 dated 30/05/2012.
16. To buttress her case against the respondent No. 4's selection at her cost, the appellant drew reference and reliance from a decision dated 21/02/2012 of the Equivalence Committee of the respondent No.3- University of Kashmir in terms of meeting held on 25/01/2012 where in it was resolved that degree of MSCDFSM from IGNOU could not be considered as equivalent to M.Sc. in Dietetics and Clinical Nutrition of the respondent No. 3- University of Kashmir.
17. The appellant in her writ petition asserted that the respondent No. 4 did not possess a degree of M.Sc. Home Science and was not entitled to be first invited to interview much less to get selected and recommended for appointment against the post of Assistant Professor Home Science.

18. The appellant further drew reference from a Circular dated 06/09/2012 of the respondent No. 3-University of Kashmir issued by its Assistant Registrar (Academic) confirming that Degree/s awarded by a University through Distance mode in Engineering and Science streams are not considered equivalent to the corresponding degrees of the University of Kashmir and further that while the Degree/s obtained from IGNOU/MANUU/DOEACC in non-Science stream subjects are considered equivalent to the corresponding degrees subject to fulfillment of the eligibility criteria.
19. In the light of the aforesaid standpoint of the respondent No.3-University of Kashmir, with respect to the degree status of the respondent No. 4, the appellant pleaded that there was no equivalence granted by the Universities in and of the State of Jammu and Kashmir in his favour, and, therefore, the respondent No. 4's participation, selection and consequent appointment was misconceived , arbitrary, illegal, and unconstitutional in violation of the rules of selection of the respondent No. 2- JKPSC.
20. The appellant further assailed the participation and selection of the respondent No. 4 being contrary to Education Gazetted College Services Recruitment Rules of 2008 in terms whereof it is provided that the post of Assistant Professor (erstwhile known as Lecturer) is to be filled from candidates possessing Master's Degree in the concerned subject apart from other eligibility requirements prescribed under the rules.

21. In support of her averments made in the writ petition, the appellant annexed the Government Order No. 252-HE of 2012 dated 30/05/2012 with respect to subject of validity of degrees obtained through distance mode of education and this Government Order being issued pursuant to a Cabinet Decision No.104/14/2012 dated 16/05/2012.
22. In terms of this Government Order No. 252-HE, sanction came to be accorded for approval to the recommendations made by a committee constituted in terms of Government Order No. 442 – GAD of 2011 dated 13/04/2011 read with Government Order No. 558 –GAD of 2011 dated 13/05/2011.
23. One of the documents annexed by the appellant with her writ petition, is the Minutes of Meeting of Equivalence Committee of the respondent No. 3- University of Kashmir which dealt with agenda item number seven (7) with respect to recommendation of the committee for grant of recognition to M.Sc. (Dietetics and Food Science Management) of IGNOU as equivalent to M.Sc. Dietetics and Clinical Nutrition degree of the respondent No. 3- University of Kashmir, and the decision was not to grant equivalence to the said degree.
24. Also accompanying the writ petition is a Circular dated 06/09/2012 of the respondent No. 3- University of Kashmir issued by its Assistant Registrar (Academic) clarifying there in that degree awarded by a University through distance mode in Engineering and Science stream is not considered as equivalent

to the corresponding degree of the University of Kashmir whereas degree awarded in non-science stream by MANUU, IGNOU and DOEACC is to be considered equivalent to the corresponding degree.

25. One of the communications annexed by the appellant with her writ petition is a communication dated 23/05/2017 of the Deputy Registrar (Academic) of the respondent no. 3 - University of Kashmir, Srinagar to the Assistant Registrar Legal Cell of the respondent No. 3-University of Kashmir where in it is confirmed that the University of Kashmir does not offer General Degree of Master's in Home Science as offered by other Universities whereas the respondent No. 3- University of Kashmir offers Master's in five specializations of Home Science which are Food Science and Nutrition; Dietetics and Clinical Nutrition; Human Development and Extension and Communication. In this very communication, it came to be stated that the Master's Degree in Dietetics and Food Service Management, IGNOU is not at par with general degree in Master's in Home Science as offered by other Universities whereas there is 70% similarity the syllabus of the degree of Dietetics and Food Service Management of IGNOU with one of the specializations of Home Sciences offered by the University of Kashmir under Dietetics and Clinical Nutrition.
26. Thus, the singular thrust of the appellant in her writ petition against the selection of the respondent No. 4 was that his MSCDFSM Degree through distance mode from IGNOU being a

degree obtained in a Science subject was not to be recognized for the purpose of employment in terms of clause VI of Government Order No. 25 –HE 2012 dated 30/05/2012.

27. During the pendency of writ petition, the appellant had come forward reporting development that to clarify the issue the respondent No.3- University of Kashmir had convened a meeting on 17/05/2017 in which it came to resolve that Master's Degree in Dietetics and Food Service Management of IGNOU is not at par with general degree in Master's in Home Science as offered by the other Universities.

28. At whose instance this meeting was called when the writ matter was *sub judice*, upon being instituted on 14/12/2016, before the writ court, is known only to the appellant or to the respondent No. 3-University of Kashmir's Institute of Home Science but this surely was an attempt to over-reach the writ court seized of matter so as to sub-serve the interest of the appellant. The Minutes of Meeting dated 17/05/2017 has even a very misguided reference to the fact that for admission to Master's Degree in Dietetics & Food Service Management in IGNOU, students from different science subjects are entitled to seek admission and in doing so deleting reference to fact that B.Sc. (Home Science) is the first eligibility prescribed by IGNOU in IGNOU's brochure.

29. In coming forward to meet the case set up by the appellant in her writ petition against him, the respondent No. 4 came forward with his stand to answer the writ petition in order to vindicate his

selection on the basis of his qualification of Master's Degree in Home Science (Dietetics and Food Service Management) from IGNOU.

30. The respondent No. 4 pleaded in his Reply/Objections that the Government Order No. 252 – HE 2012 recognizes a degree obtained through distance mode in the subjects falling in Science stream being equivalent to corresponding degree awarded through regular mode by the State Universities subject to condition that the Science subject is approved by Distance Education Council, DEC, and practical part of the curriculum conducted from campuses of the Universities recognized by UGC and/or established by Legislature.
31. In the face of this Government Order, the respondent No. 4 pleaded that the minutes of meeting held on 25 01/2012 of the Equivalence Committee of the respondent No. 3- University of Kashmir was having no relevance as the equivalence was to be decided on the basis of Government Order No. 252 –HE.
32. In fact, the respondent No. 4 came to press into service a Circular No. F.(Clarification-Equi/Recog)Acad/KU/14 dated 04/03/2014 of the respondent No.3-University of Kashmir providing that equivalence of degree awarded by IGNOU through distance mode where lab/practical work forms part of curriculum is to be decided on case-to-case basis on the basis of various parameters laid down in the circular itself.

33. Respondent No. 3- University of Kashmir was said to have no role in the matter and, therefore, the purported decision of Equivalence Committee of the respondent No. 3- University of Kashmir could not supersede the decision of the State Government.
34. A Circular No. F.No.UGC/DEB/2013 dated 14/10/2013 of the UGC on the subject of equivalence of degrees awarded by Open & Distance Learning (ODL) Institutions at par with conventional Universities and highlighting the importance of distance education system and informing all the Registrar/Director of all Indian Universities (Deemed, State and Central Universities/Institutions of National Importance) that degree awarded through distance mode by recognized Institute in conformity with UGC notification is to be treated as equivalent to corresponding degree of traditional Universities. Respondent No. 4 also cited a direction of the UGC to all the Vice Chancellors of all the Indian Universities with respect to allowing a candidate with Master's Degree through distance mode for PhD course in accordance with UGC recommendations.
35. The respondent No. 4 cited his qualification in the National Eligibility Test (NET) of UGC thereby pleading that it could only be done if a candidate has a degree of Master's in the relevant course/subject which being Home Science.
36. With respect to the legal status of IGNOU, the respondent No. 4 has pleaded that it has been established in terms of the provisions

of the University Grants Commission Act, 1956 and fully authorized to award degrees in terms of section 22 (1). IGNOU is said to be recognized and approved by the Distance Education Council, DEC, and therefore there is no question of undermining or under-rating the status of IGNOU conducting its courses and awarding degrees through distance education mode.

37. The respondent 4 asserted that, requirement in terms of Government Order No. 252-HE with respect to practical to be part of curriculum to be conducted from within the respective campus of UGC recognized University established under an Act, in his case with respect to his degree course with practical being part of syllabus came to be conducted from within campus of the respondent No.3-University of Kashmir established by an Act of State Legislature. The respondent No. 4 pleaded that there was no question of equivalence to be solicited from the respondent No.3-University of Kashmir qua his Master's Degree in reference.
38. Along with his replies/objections, the respondent No. 4 has annexed documents of his Master's Degree from IGNOU certifying that respondent No. 4 is holder of Degree of Master of Science in Dietetics and Food Science Management, his NET certificate certifying that he has qualified UGC-NET earning eligibility for lectureship in the subject of Home Science. The respondent No. 4, in defense of validity of his Master's Degree earned from IGNOU, has referred to and annexed a communication F.1-52/2000(CPP-II) dated 05/05/2004 of the

University Grants Commission UGC addressed to the Registrar/Director of all the Indian Universities (Deemed Universities, State Universities, Central Universities and Institutions of National Importance) with respect to the subject of recognition of degree awarded by open universities. In this communication, there is a reference to a Circular issued vide UGC letter N.F.1-8/92(CCP) dated February 1992 mentioning that certificate, diploma, degree awarded by IGNOU is to be treated equivalent to the corresponding awards of the Universities in the country thereby dispelling any confusion about the legal status of the IGNOU awarded degrees/diplomas.

39. A communication No. D.O.No.F-1-25/03(CPP-II) dated 28/07/1993 by UGC is on record accompanying the respondent No. 4's reply which clarifies that Open Universities awarded degrees are not to be discredited and a student with a degree of Open University is not to be debarred from registration for Ph.D. in regular University.
40. An important document accompanying the respondent No.4's reply is Programme Guide of IGNOU for Master of Science in Dietetics & Food Service Management (M.Sc) DFSM) from where it is gatherable that B.Sc. Home Science is eligibility for getting admission to M.Sc. in Dietetics & Food Service Management M.Sc. (DFSM) thereby confirming the inherent nature of the course to be one in Home Science. The respondent

No. 4 has done his Master's Degree in June 2013 passing examination in first division scoring 67.88% Marks.

41. Supplementing his reply, the respondent No. 4 came to state that two candidates namely Farah Deeba and Aneesa Majid figuring at serial number 11 and 12 of the Merit List (Open) were also having identical Master's Degree from IGNOU.

42. To the recommendations made by the respondent No.3-JKPSC, in terms of its Notification 35 – PSC (DR-S) of 2016 dated 29/11/2016 recommending the name of the respondent No. 4 for appointment as Assistant Professor Home Science in the Higher Education Department, the Government of J&K came to issue a Government Order 385 – HE of 2016 dated 23/12/2016 appointing the recommended candidates including the respondent No. 4 as Assistant Professor in Home Science on regular temporary basis in the scale of 15,600 – 39100 with AGP of 6000 in the Higher Education Department. However, on account of interim direction dated 15/12/2016 passed in the writ petition by the writ court, said Government Order No. 385 – HE of 2016 came to be rescinded vide Government Order No. 398 of 2016 dated 30/12/2016.

43. On behalf of the respondent No.1-Higher Education Department, Government of J&K, the selection and appointment of the respondent No. 4 was defended in the light of Government Order 252-HE of 2012 dated 30/05/2012 by recognizing the respondent No. 4 as a bona fide student of IGNOU with Master's Degree in

MSCDFSM. The Higher Education Department of the Government of J&K, as being the employer, endorsed the acceptance of respondent No. 4's candidature by the respondent No. 2-JKPSC. In its Reply, the respondent No. 1-Higher Education Department, Government of J&K asserted that the validity of the degree of the respondent No. 4 is to be decided on the basis of Government Order No. 252 – HE of 2012 dated 30/05/2012.

44. On behalf of the respondent No. 2- JKPSC, the reply came to be submitted countering the case of the appellant set up in the writ petition by stating therein that the recruitment for the post of Assistant Professor was undertaken under the amended recruitment rules notified vide SRO 124 of 2014 dated 21/04/2014. On the basis of the interview conducted on 25/11/2016, respondent No. 2-JK PSC is said to have carried out the selection process by considering overall performance in the viva voce, academic merit and other related parameters in which the respondent No.4 was held to be higher in merit to the appellant. Respondent No.2-JKPSC's reply in very categorical terms came forward with stand that respondent No. 4's Master's Degree in Dietetics and Food Service Management from IGNOU is at par with Degree of M.Sc. in Home Science offered by any other University in the country as certified by IGNOU and further the respondent No. 4 is NET qualified in Home Science subject.

45. On behalf of the respondent No. 3-University of Kashmir, reply also came to be submitted stating there in that University of Kashmir offers Master's and Doctorate degree in four specializations in Home Science namely Food Science and Nutrition; Dietetics and Clinical Nutrition; Human Development and Extension and Communication. The respondent No. 3-University of Kashmir admitted that it has not declared any equivalence of the qualification of the degree of M.Sc. Dietetics and Food Service Management (DFSM) obtained by respondent No. 4 from IGNOU vis a vis Master's Degree in one of the specializations offered by the respondent No. 3-University of Kashmir. In fact, the respondent No. 3-University of Kashmir did not take a plea that a Degree in Dietetics and Food Service Management is not reckoned to be Master's Degree in Home Science by any University in India including the Universities in J&K. The import of the reply was that University of Kashmir was conducting such degree course in relation to Home Science. The respondent no. 3-University of Kashmir did not come forward to lend any explanation to the documents being referred in relation to it by the appellant in her writ petition meaning thereby the edifice upon which the appellant had built her writ case was not given any endorsement even by the respondent No. 3-University of Kashmir.

46. In the light of the pleadings coming from the appellant's end and the writ respondents' end in the writ petition, the learned writ

court came to pass an order dated 11/10/2017 with an observation that in order to resolve the controversy finally the matter was required to be examined by the Higher Education Department, Government of J&K which should examine the issue and take final decision about the position of degree of respondent no. 4 being at par with the degree of M.Sc. Home Science or not. In placing the onus on the Higher Education Department to take the call, the writ court came to take cognizance of UGC Public Notice No. F.9-3/2016(CPP-II) dated 19/07/2016 on "Equivalency of Degrees" in terms whereof it was declared that equivalence of degrees, diplomas, certificates etc., is not determined by UGC but in the case of higher education the equivalence is decided by the University concerned and in case of employment/promotion equivalence is decided by employing organization. The import of the order dated 11/10/2017 passed by the writ court acknowledged the position that it is the Higher education Department Govt. of J&K which was to be final holder of say in the matter and not the University of Kashmir.

47. Acting upon the direction given in terms of said order dated 11/10/2017 of the writ court, the Higher Education Department through its Public Law Officer's communication dated 18/10/2017 solicited the Registrar University of Kashmir to furnish its comments with respect to equivalence between M.Sc. Home Science offered by the University of Kashmir and the Master's Degree in Dietetics and Food Service Management of

IGNOU. This communication came to be responded by the University of Kashmir vide its Assistant Registrar Legal Cell's Communication No. F(Misc-LC)KU/17 dated 15/11/2017 referring therein that the University of Kashmir's response was in its communication dated 08/10/2017.

48. The requisite compliance report born out of the exercise carried out by Higher Education Department in furtherance of the direction in the writ court order dated 11/10/2017 came to be placed on 14/12/ 2017 by an application CMP 03 of 2017. In this compliance report, it came to be reiterated that the respondent No. 4's Master Degree in Dietetics and Food Service Management issued by IGNOU was valid and binding to be given effect to and selection of the respondent No. 4 by the respondent No. 2- JKPSK is valid and in accordance with the rules and regulations governing the subject without there being any ambiguity with respect to the degree of the respondent No. 4.
49. The appellant came to register her objections to the Compliance Report so submitted by the respondent No. 1-Higher Education Department by repeating the angle of University of Kashmir's purported take away back in 2012 and during the pendency of writ petition in 2017.
50. During the pendency of the writ petition, the appellant came forward with an application MP No. 03/2016 filed on 29/12/2016 whereby she sought stay of Govt. Order No. 385-HE dated 23/12/2016 whereby the appointment of the respondent No. 4

along with other named appointees therein came to be ordered as Assistant Professor.

51. During the pendency of the writ, the Govt. of J&K through its Higher Education Department came forward with an Govt. Order No. 144-HE of 2017 dated 09/03/2017 thereby posting the new appointees as Assistant Professors Home Science and the respondent No. 4 was one of them getting posted in Government College for Women Kupwara.

52. The appellant, during the course of proceedings in the writ petition, had also filed on 18/07/2017 an application CMP No. 04/2016 for placing on record the University of Kashmir's Departmental Committee Meeting Note dated 17/05/2017 and Communication dated 23/05/2017.

53. In fact there was a Committee which came to be constituted by the Government of J&K on 12/10/2017 headed by the Minister of Education along with 11 high ranking officials for taking decision with respect to, inter alia, the issue of validity of distance mode degree courses in Science subject/s where practical are part of curriculum to be reckoned valid as per Govt. Order No. 252-HE of 2012 upon being certified by the concerned University that the practical were done in the main campus.

54. It is in the totality of the aforesaid facts and circumstances of the case obtaining on the record of the writ petition that the writ court came forward with its judgment dated 24/08/2018 dismissing the writ petition of the appellant against which the present letters

patent appeal came to be preferred and maintained for its adjudication.

55. By delving deep into the controversy and examining it from all its facets and aspects, the writ court came to reckon the respondent No. 4's Master's Degree completely valid and equivalent to the corresponding degree tune with the Circular No. F.No.UGC/DEB2013 dated 14/10/2013 issued by University Government Commission. The writ court took due cognizance of fact with respect to the respondent No.4 having qualified National Eligibility Test NET in Home Science which could not have been possible if the respondent No. 4 was reckoned not to have done his M.Sc. in Home Science. The writ court came to examine its judicial review domain and latitude to sit in judgment upon the opinion of the specialized bodies particularly when the employer Higher Education Department , the selection body the respondent No. 2-JKPSC and UGC were in unison that the respondent No. 4's Master's Degree qualified to be Master's Degree in Home Science, the required qualification for appearing in the competition for selection. The writ court referred itself to the cases of:

- a) University of Mysore Vs C.D. Govinda Rao &Ors., AIR 1965 SC 491;
- b) Dr. M.C.Gupta Vs Dr. Arun Kumar Gupta , 1979 (2) SCC 339;
- c) Dr.J.P.Kulshreshta Vs Chancellor Allahabad University, 1980 (3) SCC 41;
- d) Maharashtra State Board of Secondary & Higher Secondary Education Vs ParitoshB.Sheth,1984 (4) SCC 27;

- e) Neelima Misra Vs Harinder Kaur Paintal, 1990 (2) SCC 746;
- f) Dalpat Abassaheb Solunke Vs Dr. B.S.Mahajan, 1990 (1) SCC 305;
- g) Dental Council of India Vs Subharti K.B.Charitable Trust 2001 (5) SCC 486;
- h) Rajbir Singh Dalal Vs Chaudhari Devi Lal University 2008 (9) SCC 284; and
- i) Technical Education Vs Surinder Kumar Dhawan 2009 (11) SCC 284.

56. The writ court ruled out that the respondent No. 3-University of Kashmir had no say in the matter in the context of equivalence.

In fact, the writ court came to hold that after the compliance report submitted by the Higher Education Department in response to the writ court order dated 11/10/2017, nothing survived in the writ petition for the simple reason that equivalence stood decided by the employer Higher Education Department.

57. In the letters patent appeal, the applicant is assailing the judgment on the grounds that writ court failed to appreciate that M.Sc. Degree in Home Science is different to IGNOU awarded Degree in Dietetics and Food Services Management and that the standpoint of the respondent No. 3-University of Kashmir as being the expert authority in the matter was overlooked. The writ court failed to appreciate that the nomenclature of the degree held by the respondent No. 4 is absolutely different than the one required for consideration selection and appointment against the post of Assistant Professor in Home Science. By reference to the direction given by the writ court in its order dated 11/10/2017, the appellant is asserting to say that the Higher Education

Department came forward with the compliance report without seeking assistance from experts.

58. The appellant is harping on fact that the respondent No.3- University of Kashmir is not endorsing the validity of the respondent No. 4's Master's Degree and that aspect shall have an overbearing say in the case in her favour and against the respondent No. 4 notwithstanding the fact that the respondent No.2- JKPS, the respondent No.1-Higher Education Department, UGC and even the writ court in tandem saying and holding that the Master's Degree of the respondent No. 4 is Master's Degree in Home Science.

59. We have heard both sides and surveyed the record.

60. We find that the appellant was misconceived, and fallacy gripped right from the inception in her case by seeing the things from the perspective of the respondent No.3-University of Kashmir's 2012 take which by reference to its four specializations in Home Science subject was meaning to discredit the Master's Degree of the respondent No. 4. Obviously when Kashmir University was having four specializations in Home Science and not Home Science per se in its course study, it could not have, by any stretch of reference, said that the Master's Degree of the respondent No. 4 being M.Sc. in Dietetics and Food Service Management was equivalent to M.Sc. Degree qua one of four specializations of Home Science taught by the University of Kashmir. The respondent No. 3- the University of Kashmir at no

point of time ever said or suggested, and could not have even said or suggested, that Dietetics and Food Service Management is an alien subject to Home Science in all its specializations, four of which are being the course study in University of Kashmir. In fact, University of Kashmir impliedly conceded to the fact that Dietetics and Food Service Management is 70% similar to the theory syllabus of Degree of Dietetics and Clinical Nutrition of Home Science a course study in the University of Kashmir meaning thereby even to one of its four specialization, the Dietetics & Food Service Management course was having 70% shared syllabus.

61. The University of Kashmir did not throw any light as to how much percentage wise the four specializations of Home Science subjects being taught by it for M.Sc. course were having similarity to each other. The respondent No.3-University of Kashmir in its reply to the writ petition of the appellant placed a very categorical stand that it, at no point of time, gave any equivalence declaration with respect to the respondent No. 4's Master's Degree of Dietetics & Food Service Management IGNOU. From where and how then the appellant came to decry the respondent No.4's Master's Degree (M.Sc.) Home Science is escaping our imagination. The appellant herself is and was not an expert to certify the degree equivalence but she acted so in her writ petition and this she did by creating smokescreen by alleging that first IGNOU's distance education mode degree is not a

recognized degree and secondly the M.Sc. in Dietetics and Food Service Management is not M.Sc. in Home Science. On both these pleas, the concerned authorities that is UGC, Higher Education Department, Govt. of J&K and the J&KPSC have at all relevant point of time been on same page by recognition of both aspects. We cannot discredit the unanimity of the opinion and judgment of at least said three entities which has weighed in favour of the respondent No. 4 with respect to validity and authenticity of his M.Sc. Degree in Home Science.

62. A very relevant aspect of Master of Science Dietetics and Food Service Management (MSCDSM) course by the IGNOU proving admission eligibility to B.Sc.(Home Science)Degree with specialization in Foods and Nutrition and/or Dietetics and Clinical Nutrition or PG Diploma in Dietetics and Public Health Nutrition (DDPHN), it's equivalent; Graduate with a B.Sc. Degree (or the equivalent MBBS, BHHS etc.) from the prescribed background-Home Science/Food Science and Technology, Sciences, Health Care, Medical, Pharmaceutical, Catering along with DHNE or CNCC or CFN offered by IGNOU. The M.Sc. DFSM course is of two years minimum and five years maximum. Thus, the essential eligibility is Graduation in Home Science with specialization in Food and Nutrition and/or Dietetics and clinical nutrition for admission to M.Sc DFSM. This eligibility of B.Sc. Home Science for admission to M.Sc. Dietetics and Food Service Management, IGNOU sets rest to any

controversy with respect to the nature of M.Sc. DFSM to be a Degree in Home Science in one of Home Science's specializations as the appellant herself is being M. Sc. in Home Science (Human Development) and the respondent No. 4 is M.Sc. Home Science (Dietetics and Food Service Management) .

63. The appellant in her writ petition with respect to the status of the educational qualification has averred in para 12(a) that according to information obtained by her from IGNOU, the respondent No. 4 had passed his post graduation and obtained Master of Science (Dietetics and Food Service Management) MSCDFSM and for that purpose annexed the documents as annexure E from page 27 to 32. Page 32 of annexure E is just one page of Programme Guide of Master of Science in Dietetics and Food Service Management [M.Sc. (MSCDFSM)].
64. The respondent no. 4 has annexed with his reply/objections the entire set of this Guide Booklet and from reading of its clause 4.3 the eligibility for admission to M.Sc. DFSM being meant for B.Sc. Home Science well specialization in Foods and Nutrition and/or Dietetics and Clinical Nutrition is mentioned.
65. We have no doubt in our mind that the appellant resorted to misrepresentation and suppression of facts by coming up with one page of said booklet bearing in mind the knowledge that if the entire booklet would get annexed the true picture would come out on its own to deflate the very case of the appellant.

66. We feel that even the Institute of Home Science of the respondent No. 3 - University of Kashmir did not commend itself well in the case. In its certificate cum circular dated 17/05/2017 it tried to play with words so as to create the mirage as set up by the appellant in her writ petition. In this certificate cum circular, the Institute of Home Science of the respondent no. 3 – University of Kashmir is meaning to say that the respondent No. 3 - University of Kashmir does not offer general degree of Master's in Home Science as offered by other Universities as named in said certificate cum circular but offers Master's in five specializations namely in (i) Food & Science Nutrition); (ii) Dietetics and Clinical Nutrition; (iii) Human Development; (iv) Extension & Communication. Fifth Specialization is missing in its mention in this certificate cum circular.
67. Three facts are easily gatherable from this certificate cum circular firstly that Master's in Home Science can be done in its various specializations and if the University of Kashmir is having only four specializations that does not mean that there are no other specializations for Master's in Home Science in other Universities; secondly that the University of Kashmir does not have Master's in Home Science as other named Universities have and thirdly two of the four specializations of the Home Science for Master's in the University of Kashmir are Food Science & Nutrition and Dietetics & Clinical Nutrition. For admission to M.Sc. in Dietetics & Food Service Management in IGNOU, the

basic eligibility required is of B.Sc. (Home Science) with specialization in Foods & Nutrition and/or Dietetics & Clinical Nutrition. Thus, what are two of four specializations of Master's in Home Science in the University of Kashmir are specializations of B.Sc. Home Science for seeking admission in M.Sc. Dietetics & Food Service Management IGNOU. There couldn't be more better and direct proof of the fact that M.Sc. Dietetics & Food Service Management IGNOU is essentially a degree in Home Science in its specialization form and not in its Home Science simpliciter form.

68. During the course of pendency of letters patent appeal, the respondent No. 4 brought on record, through application CM No. 6189/2022, an intervening development having a bearing on the matter in issue firstly concerning the appellant that in the later selection process for the post of Assistant Professor Home Science conducted by the respondent No. 2-JKPSC, the appellant came to be selected and recommended for appointment but was denied appointment by the Government because of adverse character and antecedent Report by ADGP CID J&K.
69. In addition, the respondent No. 4 further cited that in relation to the direction given in the order dated 11/10/2017 by the writ court, the Higher Education Department constituted committee had held a meeting on 12/10/2017 under the chairmanship of Minister of Education along with 11 high ranking officials of the Education Department, University of Kashmir, University of

Jammu, JKPSA and Secretary Law Department in which it came to be resolved that distance mode degree in science subject with practical as part of curriculum shall be reckoned as valid as per Government Order 252 –HE of 2012 dated 30/05/2012. Another committee constituted by the State Government vide order dated 12/09/2018 under the chairmanship of Commissioner/Secretary, Higher Education Department in its meeting on 10/09/2020 specifically considered the issue of equivalence and validity of different degrees and came up with a decision that Master's in Dietetics and Food Service Management IGNOU to be treated as Master's Degree in Home Science and with respect to this decision an order dated 13/10/2020 came to be issued.

70. In addition, the respondent No.3-University of Kashmir vide its Circular dated 07/02/2018 deliberated the issue of recognition of courses and issued a certificate on 26/07/2019 stating in that Kashmir University offers M.Sc. Degree in specialization in four disciplines of Home Science and that the candidates who have qualified M.Sc., DF SM with UGC NET under Home Science are eligible for teaching Home Science subjects at Undergraduate/College level and this decision of the University of Kashmir stood apprised to the Commissioner/Secretary Higher Education Department vide communication dated 01/08/2019.

71. Learned counsel for the appellant has cited some judgments of the Hon'ble Supreme Court of India to demonstrate that the

degree of the respondent No. 4 did not qualify to be degree in the relevant subject and therefore ought to have been discounted from being considered much less earning over the appellant in the matter of gaining the recommending the appointment as Assistant Professor Home Science.

72. First judgment cited by learner counsel for the appellant is “Tariq Islam Versus Aligarh Muslim University and Others”, (2001 AIRSC3058). In this case, for the post of lecturer (Philosophy), the eligibility required was Master’s Degree in the relevant subject from an Indian University or any equivalent degree from a foreign University. In this case, the degree issue was B.A (Honors) Degree from the Council of National Academy Awards, North London on the basis of which degree, the appellant, in the said case, had even worked with the respondent University for a number of years in temporary vacancy as a Lecturer in Philosophy and accordingly also submitted his credentials for selection and incidentally came to be selected and accordingly the Master’s degree status of the appellant was considered subject to an approval by the Executive Council which came to recommend private respondent to be appointed and his appointment came to be confirmed by the Vice Chancellor. Thus in this case, the equivalence was between a foreign university’s educational degree and its equivalence with the Master’s degree from an Indian university in the relevant subject.

73. Factual situation-wise, the case cited may not apply to assist the learned counsel for the appellant in the present case. In fact, what applies out of the above referred case against the appellant is the observation of the Hon'ble Supreme Court stating that normally it is wise and safe for the court to leave the decision of academic matters to the Experts who are more familiar with the problems they face than the courts generally are and the area of interference by courts would be limited to whether the appointment made by the academic body has 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 recommendation the academic body had acted and not to treat such expert body as a quasi judicial tribunal deciding disputes refer to it for decision. Equivalent of a qualification pertains purely to an academic domain and court 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. When applying the afore-cited observations of the Hon'ble Supreme Court in the context of present case, we find that JKPSC, the Higher Education Department of Govt. of J&K , the UGC are all in one voice endorsing the degree status of the respondent No. 4 and even to some extent even the University of Kashmir is on same page holding respondent No. 4's educational qualification of Master's Degree in Home Science in one of the specializations of the generic Home Science subject. The

appellant's own Master's Degree per se is not in the Home Science but in one of the specializations of the Home Science subject.

74. Thus, this court cannot overlook at least three authorities/bodies which have found nothing wrong/deficient with the Master's Degree of the respondent No. 4 and even including University of Kashmir having not declared any equivalence related status in the context of the respondent No.4's subject of specialization in terms of his Master's Degree in Home Science.
75. Next case cited by Learned counsel for the appellant is Bihar Public Service Commission and others Versus Kamini and others 2007(5) SCC 519 in which for appointment to the post of District Fisheries Officer cum Chief Executive Officer in the Bihar Fisheries Service Class II, the eligibility required was B.Sc. Zoology with two years' Diploma in Fisheries Science or a graduate degree in Fisheries Science B.S.F.C from a recognized University or M.Sc (Inland Fisheries Administration and Management) with Zoology from Central Institute of Fisheries Education Mumbai.
76. The issue in the case (supra) was whether a student can be called a graduate in Zoology subject if he or she has cleared the degree examination with Zoology as subsidiary/optional subject and not the principal subject. By that reference, it was held by an Expert Committee that student will be considered a Graduate in the subject if he/she has obtained the Degree in that subject at the

graduate level and therefore the candidate who was not having the degree in that subject at graduate level but only having that subject as subsidiary subject was held not entitled to participate in the selection process. In this case, the Hon'ble Supreme Court of India while banking upon its judgment in the case of **University of Mysore versus Govinda Rao 1965 SC591** held that whether or not a student/candidate possesses requisite qualification should be left to Educational Institutions particularly so when it is supported by an Expert Committee.

77. The ratio of this judgment is inclined in favour of the respondent No. 4 herein rather than in favour of the appellant in the light of the sequence of facts which we have drawn elaborately to show that how JKPS, the Higher Education Department of the Government of J&K, UGC were under iota if no doubt that the respondent No.4's Master's Degree is in Home Science and not in a non-Home Science domain.
78. Next in line judgment cited by learned counsel for the appellant is **Pramod Kumar Versus UP Secondary Education Services Commission and Others, 2008 AIRSC 1817**. In this case, the fact situation was that qualification issue was B.Ed. Degree from an Educational Institution non-recognized under UGC Act. In examining the position, the Hon'ble Supreme Court took cognizance of the fact that various Educational Institutions had sprung up in different parts of India representing that their academic degrees are recognized but which are not qualifying to

be University and therefore armed with a Degree from such an Institution cannot suffice the requirement of a degree from a non University Grants Commission, UGC recognized educational institution. In this case, the Hon'ble Supreme Court has observed that a degree is recognized only if it is granted by University constituted in terms of the University Grants Commission Act 1956 or under any State or Parliamentary Act and no University can be established by private management without any statutory backing. This judgment will not lend any assistance to the learned counsel for the appellant in the context of the present case. Master's Degree in Home Science of the respondent No. 4 is from UGC recognized mode and that is undisputed.

79. In the case of **Rajbir Singh Dalal (Dr.) Versus Chaudhary Devi Lal university, Sirsa and another, [2008 (9) SCC 284]**, for the advertised post of Reader in the Public Administration in Chaudhary Devi Lal University , the educational eligibility required was in relevant subject which was not defined in the advertisement and therefore it was urged that a qualification in Political Science can not be read as one in Public Administration for the very obvious difference between two subjects whereas in the present case we are not confronted with such like scenario. Master's Degree Home Science held by the respondent No. 4 is in one of the specializations of Home Science as is the Master's Degree of the appellant in Home Science in one of its specializations taught in the University of Kashmir whereas the

respondent's specialization in Home Science was not being taught in the University of Kashmir but that did not mean that the specialization of the respondent's Master's Degree Home Science was not in Home Science.

80. In the case of Mohd. Sohrab Khan Vs Aligarh Muslim University & Others [2009 (4) SCC 555], the post advertised was Lecturer in Chemistry. The contest came to be competitors having Master's Degree in Chemistry (Pure) and Master's Degree in Industrial Chemistry. Candidate with Master's Degree in Industrial Chemistry was selected leaving out the candidate with Master's Degree in Chemistry (Pure) and the outcome of the litigation was obvious that Master's Degree in Industrial Chemistry would not suffice the eligibility required. In the present case, we have no situation of such nature so as apply the ration of the judgment cited.
81. The case "State of Orissa & An. Vs Mamata Mohanty" [2011 (3) SCC 436], cited also does not have fact situation of present case and therefore said citation does not serve the purpose of the appellant to any advantage except being cited and to be taken note of by us.
82. In the case "Ganapath Singh Gangaram Singh Rajput Vs Gulbarga University Rep. By Its Registrar & Ors." [2014 (3) SCC 767], the issue was between M.Sc (Maths) and Master's Degree in MCA for the post of Lecturer MCA. Again, the

present case has no identity with the case cited by the learned counsel for the appellant.

83. The case of Ajeet Kumar Vs State & Ors. [2017 JKJ (I) 397] is a judgment which has been overturned by the Division Bench judgment in which one of us (J.Rahul Bharti) was constituting the Division Bench.

84. In the light of all the aforesaid and considered, we are of the considered view that the judgment dated 24/08/2018 of the writ court in dismissing the writ petition of the appellant is sound, both on facts and in law, and the letters patent appeal is misconceived and hence dismissed. Interim direction whatsoever passed in the case shall stand yacated.

(~~RAHUL~~ BHARTI) (TASHI RABSTAN)
JUDGE JUDGE

Srinagar
18.03.2024
N Ahmad

Whether the order is speaking: Yes
Whether the order is reportable: Yes