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W.A.No.2429 of 2019

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 04.04.2024**

DELIVERED ON: 24.04.2024

CORAM :

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

**W.A.No.2429 of 2019
and CMP.Nos.15968, 15969 of 2019
CMP.No.9175 / 2020 & 11248 of 2022**

B.Thandavamurthy

... Appellant

Vs.

1.The University of Madras,
Represented by its Registrar,
Chepauk, Chennai-600 005.

2.The Regional Joint Director of Collegiate Education,
Teacher Training Campus,
Saidapet, Chennai-600 015.

3.The Management of Agurchand Manmull Jain College,
Accredited by NAAC, (A.M.Jain College),
rep by its Principal,
Meenambakkam, Chennai-600 114.

4.The State of Tamil Nadu,
rep by its Secretary,
Higher Education Department,
Secretariat Fort St.George,
Chennai-600 009.

... Respondents



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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 10.04.2019 made in W.P.No.2929 of 2019.

For Appellant : Ms.G.Thilakavathi, Senior Counsel
for M/s.R.Gophinath

For Respondents : M/s.V.Sudha for R1
Mr.D.Ravichandran, Special Govt. Pleader
for R2 and R4

JUDGMENT

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

The appellant is the writ petitioner and aggrieved by the order of the Writ Court dated 10.04.2019 made in W.P.No.2929 of 2019, in and by which the challenge made by the writ petitioner against the order of cancellation of approval of qualification granted to the appellant/writ petitioner to hold the post of Assistant Professor in Tamil in the third respondent College on the ground that the qualification acquired by him is not under 10+2+3+2/11+1+3+2 pattern, came to be dismissed, has filed the instant writ appeal.

2. The appellant completed his X standard during the year 1991-1992 and thereafter, during the year 1996, he undergone the preparatory exam



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conducted by the first respondent University, so as to enable him to continue his further education through Distance Education Programme and after successful completion of preparatory exams, he got admission in B.Lit (Tamil) and thereafter pursued Masters Degree in Tamil during 1999-2001 and completed his M.Phil (Tamil) in 2005. The appellant had also completed Tamil Nadu State Eligibility Test (SET) for Lectureship in Tamil. Thereafter, he joined as Assistant Professor under the third respondent College with effect from June 2015. While that being so, the first respondent University had withdrawn the approval earlier granted in respect of the qualification possessed by the appellant by passing the impugned order dated 28.05.2018, on the ground that he had not completed the course of study in 10+2+3 pattern. In pursuant to the order of the first respondent University, the third respondent College relieved the petitioner from service. The order of the first respondent cancelling the approval of qualification obtained by the appellant was challenged in the writ petition. The Writ Court has dismissed the writ petition, against which the appellant has filed the instant writ appeal.



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3. The learned Senior Counsel for the appellant contended that the appellant got admitted to Under Graduate course only after undergoing the preparatory course conducted by the first respondent University recognized for the purpose of grant of admission to Under Graduate Degree and thus he is fully qualified and when the University itself is conducting such courses and granting admission, the same cannot be disputed. The learned Senior Counsel for the appellant further contended that as per the provisions of the University Grants Commission Regulations, Indira Gandhi Open University Act was enacted by the Government of India recognizing the Distance Education Mode for the degree granted by the concerned University and when the said degree is a valid degree under the UGC Regulations, the impugned order of the first respondent, vide proceedings dated 28.05.2018, rejecting the approval of qualification obtained by the appellant, is *per se* unsustainable and prays for allowing of this writ appeal.

4. The learned counsel appearing for the first respondent University vehemently objected to the submission made by the learned Senior Counsel



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for the appellant by relying upon the decision of the Hon'ble Supreme Court

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in ***Annamalai University v. Secretary to Government, Information and Tourism Department and Others [(2009) 4 SCC 590]*** and further drawn the attention of this Court to G.O.Ms.No.107, P&AR Department dated 18.08.2009, which states that the degree obtained through Open University Scheme will be acceptable for Government appointments, provided the candidate has done 10th standard followed by 12th Standard (+2) before obtaining the Under Graduate Degree and the said yardstick has been followed by the Universities and colleges for appointing Assistant Professors who had undergone studies in 10+2+3 pattern and whereas in the present case on hand, the third respondent College had appointed the appellant inadvertently and therefore, the contention of the appellant that they had undergone the preparatory course conducted by the first University for getting admission to Under Graduate Course is unacceptable. It is further contended by the learned counsel for the first respondent that the issue on hand has already been decided in the case of ***V.Kanimozhi v. The Director of School Education, Chennai and Others [2014 WLR 449 = 2014 (3) MLJ 696]*** and therefore, the appellant cannot contend before this Court that



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the first respondent has acted in contrary to the guidelines issued by the Government in G.O.Ms.No.107 dated 18.08.2009. The learned counsel for the first respondent University, on instructions, has informed this Court that the qualifications prescribed as per the UGC regulations has to be uniformly followed by the Colleges affiliated by the Universities and the same cannot be deviated and therefore, prays for dismissal of this writ appeal.

5. Heard the learned counsel for the parties and perused the materials on record.

6. The point for consideration is whether the appellant is entitled to continue as Assistant Professor in the third respondent College without undergoing 10+2+3/11+1+3 pattern, as stipulated under G.O.Ms.No.107, P&AR Department dated 18.08.2009 ?

7. Let this court first refers to the decision rendered by the Hon'ble Apex Court in *Annamalai University v. Secretary to Government, Information and Tourism Department and Others [(2009) 4 SCC 590]*,



wherein it was held as under:

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"41. Was the alternative system envisaged under the Open University Act in substitution of the formal system, is the question. In our opinion, in the matter of ensuring the standard of education, it is not. The distinction between a formal system and an informal system is in the mode and manner in which education is imparted. The UGC Act was enacted for effectuating coordination and determination of standards in universities. The purport and object for which it was enacted must be given full effect.

42. The provisions of the UGC Act are binding on all universities whether conventional or open. Its powers are very broad. The Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-section (1) of Section 26 are of wide amplitude. They apply equally to open universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed herein before that the functions of UGC are all-pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12-A and clauses (a) and (c) of sub-section (2) thereof.

43. Indisputably, as has been contended by the learned counsel for the appellant as also the learned Solicitor General that the Open University Act was enacted to achieve a specific object. It opens new vistas for imparting education in a novel manner. Students do not have to attend classes regularly. They have wide options with regard to the choice of subjects but the same, in our opinion, would not mean that despite a parliamentary Act having been enacted to give effect to the constitutional mandate



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contained in Entry 66 of List I of the Seventh Schedule to the Constitution of India, activities and functions of the private universities and open universities would be wholly unregulated."

8. The Secretary to the Government, Higher Education Department, has also communicated through a letter dated 21.02.2018 to the Registrar, Tamil Nadu Open University, wherein it is stated as follows:

"பார்வையில் காணும் தங்களது கடிதங்களில் தமிழ்நாடு திறந்தநிலைப் பல்கலைக்கழகத்தில் திறந்த நிலை கல்வி (Open Education Stream) முறையில் அடிப்படைக்கல்வித் தகுதி இல்லாதவர்கள் ஆயத்தப்படிப்பினை (Bachelor Preparatory Programme) முடித்து சான்றிதழ், முட்டயம், இளநிலைப் பட்டம் பெறுவதை பொதுப்பணிகளில் நியனம் பதவி உயர்வு பெற அங்கீகரித்து உரிய ஆணை வெளியிடுமாறு தங்களால் கேட்டுக்கொள்ளப்பட்டது.

2. முறைசார் கல்விக்கான 1985ஆம் ஆண்டைய (University Grants Commission Regulations for formal education) முதல் பட்டம் பெறுவதற்கான மாணவர்களுக்கான சேர்க்கை குறித்து கீழ்க்காணும் ஒழுங்குமுறை விதிகள் நடைமுறையில் உள்ளன.

2. Admission/Students:

(1) No student shall be eligible for admission to the 1 st Degree Course in these faculties unless he has successfully completed 12 years schooling through an examination conducted by a Board/University. The admission shall be made on merit on the basis of criteria notified by the institutions after taking into account the reservation order issued by the Government from time to time.

3. உயர்நீதிமன்றத்தில் திரு.ரமேஷ் என்பவர் தொடுத்த மேல்முறையீட்டு வழக்கு எண்.1221 2005ல் பத்தி 26ல் பின்வருமாறு



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தீர்ப்பு வழங்கப்பட்டுள்ளது.

அரசாணை(நிலை) எண்.216 ப.ம.நி.சீ.(துறை), நாள் 26.08.1997ல் அரசால் வெளியிடப்பட்ட ஆணையின்படி திறந்த நிலை பல்கலைக்கழகம் மூலம் பெறப்படும் பட்டங்கள் , மரபுசார் முறைப்படி (Regular Stream) பெற்ற பட்டங்களுக்கு இணையாகக் கருதப்பட்டாலும் கூட அவை நடைமுறையிலுள்ள விதிகள் ஒழுங்குமுறைகளுடன் ஒத்திசைவோடிருக்க வேண்டும். பல்கலைக்கழக ஒழுங்குமுறை விதிகள் படி அப்பட்டங்கள் முறையானதாக கருதப்படாததாலும், அரசு, திறந்த நிலைப் பல்கலைக்கழகம் மூலம் பெறப்படும் பட்டங்கள் மரபுசார் முறைப்படி (Regular Stream) பெற்ற பட்டங்களுக்கு இணையாகக் கருத மனதார கருதியாக ஏற்றுக்கொள்ள முடியாது.

4. அரசாணை நிலை எண்/107 பணியாளர் மற்றும் நிர்வாகச் சீர்திருத்தத்துறை நாள்.18.08.2009ல் பள்ளி இறுதித் தேர்வு (பத்தாம் வகுப்பு) மற்றும் பள்ளி மேல்நிலைக் கல்வி தேர்வு (+2) ஆகியவைகளில் தேர்ச்சி பெற்றபின், திறந்தநிலைப் பல்கலைக்கழகங்களின் வழியாகப் பெறப்படும் பட்டயம் பட்டங்கள் மட்டுமே பொதுப் பணிகளில் நியமனம் பதவி உயர்வு பெற அங்கீகரித்து ஆணைகள் வெளியிடப்பட்டது. இவ்வரசாணையின்படி அரசு பணியாளர் (பணி நிபந்தனைகள்) சட்டம் 2016ல் விதி 25ல் உரிய திருத்தங்கள் மேற்கொள்ளப்பட்டது.

5.அரசாணை (நிலை) எண்/144. பணியாளர்கள் மற்றும் நிர்வாகச் சீர்திருத்தத்துறை (எம்) துறை நாள் 20.11.2017ல் மாநிலத்தின் பலவேறு பல்கலைக்கழகங்களில் வழங்கப்பட்டு வரும் முதல்நிலை அடிப்படைக் கல்வி (Pre-foundation Course) மற்றும் அடிப்படைக்கல்வி (Foundation Course) ஆகியவை முறையே பத்தாம் வகுப்பு (SSLC) மற்றும் மேல்நிலைக் கல்வி (+2) ஆகியவற்றிற்கு இணையானது இல்லை என ஆணைகள் வெளியிடப்பட்டுள்ளது.



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6. மேலே பத்தி 2, 3, 4 மற்றும் 5 ல் குறிப்பிடப்பட்டுள்ள காரணங்களின் அடிப்படையில், தமிழ்நாடு திறந்தநிலைப் பல்கலைக்கழகத்தில் திறந்த நிலை கல்வி (Open Education Stream) முறையில் அடிப்படைக் கல்வித் தகுதி இல்லாதவர்கள் ஆயத்தப்படிப்பினை (Bachelor Preparatory Programme) முடித்து சான்றிதழ், பட்டயம், இளநிலைப் பட்டம் பெறுவதை பொதுப்பணிகளில் நியமனம் பதவி உயர்வு பெற அங்கீகரித்து உரிய ஆணை வெளியிடக்கோரும் தங்களது கருத்துருவை ஏற்க இயலாது என தெரிவித்துக்கொள்கிறேன். "

9. This Court in the decision in ***V.Kanimozhi v. The Director of School Education, Chennai and Others [2014 WLR 449 = 2014 (3) MLJ 696]***, has elaborately discussed the issue on hand and the relevant paras are extracted hereunder:

"6. For the sake of convenience, let me first consider the Division Bench judgment of this Court in T.L.Muthukumar Vs. The Registrar General, Madras High Court (cited supra). That was a case where G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009 referred to above was challenged. While upholding the said G.O.Ms.No.107, dated 18.08.2009, in paragraphs 18 and 19, the Division Bench held as follows:

"18. As discussed above, the rule framed by the High Court inter alia clearly lays down the qualification for the purpose of promotion from Categories 7, 8 and 9 to Category 6. It is clearly mentioned that for the purpose of promotion, a person must possess and hold the B.A./B.Sc./B.Com or other



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Bachelor's degree of the Madras University or of a recognized University. The rule does not recognize B.A. or B.B.A. degree from an Open University obtained by a candidate without having the basic +2 qualification. The condition contained in the High Court Service Rules, therefore, cannot in any way be superseded by other law not applicable to the employees of the High Court.

19. Admittedly, the petitioners', although, obtained the first degree by correspondence course without having the basic +2 qualification. Such degree having not been recognized under the Rules framed by the High Court in exercise of powers conferred under Article 229 of the Constitution of India, the petitioners' cannot claim promotion on that basis."

7. A perusal of the above judgment, more particularly paragraphs 18 and 19 would go to show that while upholding G.O.Ms.No.107, dated 18.08.2009, this Court has taken the view that the degrees obtained from an Open University scheme from Annamalai University cannot be accepted for the purpose of appointment in the Madras High Court because as per the Madras High Court Service Rules, it is clearly stated that for the purpose of promotion, a person must possess and hold B.A./B.Sc./B.Com. or other Bachelor's degree of the Madras University or of a recognised University and the Rule does not recognise B.A. or B.B.A. Degrees from an Open University obtained by a candidate without having the basic +2 qualification. The Division Bench has however held that the conditions contained in the Madras High Court Service Rules cannot be in any way superseded by other law not applicable to the employees of the Madras High Court."



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10. It is trite law that when the recruitment authority has prescribed qualification for appointment to a particular post, the Courts cannot interfere with the qualification so prescribed as violative of Articles 14, 16 and 19 of the Constitution of India. Prescription of requisite qualification is within the helm and domain of the recruitment authority for appointment to a particular post. It is also well settled that Courts cannot interfere with the qualification prescribed by the authorities, unless the same is violative of the relevant statutes or found to be arbitrary.

11. The prescription of requisite qualification namely completing the Under Graduate Degree after undergoing 10+2+3/11+1+3 pattern has been upheld by this Court in a catena of decisions and also by the Hon'ble Supreme Court. In such circumstances, the third respondent College has inadvertently appointed the appellant without considering the qualifications prescribed by the University and therefore, the first respondent University has rightly rejected the approval of the appointment of the appellant as Assistant Professor in the said college.



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12. Even though the appellant has made an valiant attempt to convince this Court that the appellant had undergone preparatory course offered by the University for getting admitted in B.Lit (Tamil) under Distance Education Mode and successfully completed the Under Graduation Decree and thus, as per the UGC guidelines, he has got a valid deree in the University, we are not endeavoured to go into the validity of the degree obtained by the appellant. We are concerned only as to whether the appellant has satisfied the qualification prescribed by the University by obtaining the qualification under 10+2+3/11+1+3 pattern as per G.O.Ms.No.107, P&AR Department dated 18.08.2009. Since the appellant has not satisfied the aforesaid eligibility criteria of obtaining the degree under 10+2+3/11+1+3 pattern, in the light of the decision of the Hon'ble Supreme Court in *Annamalai University case (cited supra)* as well as by this Court in *V.Kanimozhi's case (cited supra)*, the appellant is not entitled to continue in the post of Assistant Professor in the third respondent College. The contention of the learend Senior Counsel for the appellant does not merits acceptance. This Court finds no reason to interfere with the order of



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the Writ Court and finds no merit in this writ appeal.

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13. In the light of the aforesaid discussions and the decisions cited supra, this Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

(D.K.K.J.) (K.B. J.)
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Internet: Yes/No
Index : Yes/No
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To

- 1.The Registrar,
The University of Madras,
Chepauk, Chennai-600 005.
- 2.The Regional Joint Director of Collegiate Education,
Teacher Training Campus,
Saidapet, Chennai-600 015.
- 3.The Principal,
The Management of Agurchand Manmull Jain College,
Accredited by NAAC, (A.M.Jain College),
Meenambakkam, Chennai-600 114.
- 4.The Secretary,
The State of Tamil Nadu,
Higher Education Department,



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Secretariat Fort St.George, Chennai-600 009.

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D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.

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Judgment in
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