

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.03.2016

DATE OF DECISION: 15.03.2016

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A. Nos.591 to 597 of 2015
and connected Miscellaneous Petitions

W.A. No.591 of 2015:

- 1 THE REGISTRAR
INDIAN MARITIME UNIVERSITY
CHENNAI 600 119
 - 2 THE DIRECTOR
CHENNAI CAMPUS
INDIAN MARITIME UNIVERSITY
CHENNAI 600 119
- ... APPELLANTS IN ALL WAS

VS.

DR. SELVI GANESH
ASSISTANT PROFESSOR
SCHOOL OF MARITIME LAW
INDIAN MARITIME UNIVERSITY
UTHANDI
CHENNAI 600 119

..RESPONDENT IN WA 591 OF 2015

DR.JEYAN P.A
ASST PROFESSOR SCHOOL OF MARITIME
MANOSEMENT SMM INDIAN MARITIME UNIVERSITY
UTHANDI CHENNAI

..RESPONDENT IN WA 592 OF 2015

M.S.RAVI SHARMA

..RESPONDENT IN WA 593 OF 2015

J.VANI SHREE

..RESPONDENT IN WA 594 OF 2015

DR.BHASKAR BASU

..RESPONDENT IN WA 595 OF 2015

PROF.DR.A.ANITHA RAO

..RESPONDENT IN WA 596 OF 2015

S. VASUDEVAN

FINANCE OFFICER INDIAN MARITIME UNIVERSITY

UTHANDI CHENNAI 600 119 ..RESPONDENT IN WA 597 OF 2015

UNION OF INDIA

REPRESENTED BY THE SECRETARY TO GOVERNMENT

MINISTRY OF SHIPPING

NEW DELHI - 1

..RESPONDENT IN ALL WAS

W.A. No.591 of 2015:

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 05.01.2015 passed in W.P. No.14265, 14266, 18657, 19915, 20164, 21228 and 21939 of 2013.

WP No.14265 of 2013: Petition filed under Article 226 of the constitution of India praying for the issuance of a writ of mandamus Forbearing the Respondents from terminating the services of the petitioner as Assistant Professor in Law at Indian Maritime University Chennai 600 119 except by following the procedure contemplated under law.

WP No.14266 of 2013: Petition filed under Article 226 of the constitution of India praying for the issuance of a writ of mandamus Forbearing the Respondents from terminating the services of the petitioner as Assistant Professor in Management at Indian Maritime University Chennai 600 119 except by following the procedure contemplated under law.

WP 14267 of 2013: Petition filed under Article 226 of the constitution of India praying for the issuance of a writ of certiorarified Mandamus forbearing the Respondents from terminating the services of the petitioner as Assistant Professor in Law at Indian Maritime University Chennai 600 119 except by following the procedure contemplated under law.

WP 19915 of 2013: Petition filed under Article 226 of the constitution of India praying for the issuance of a writ of mandamus calling for records pertaining to the proceedings No. IMU/EST/HQ/STAFF/01/FACUL/ MGT/AP012/2012/12-11 dt 14.6.2013 issued by the 3rd respondent quash the same and direct the respondents to permit the petitioner to join duty as Assistant Professor in Management in the respondent University as per the original proceedings No. IMU/ EST/HQ/STAFF/01/FACUL/MGT/AP012/2012 dt 27.12.2012.

wp 20164 of 2013: Petition filed under Article 226 of the

constitution of India praying for the issuance of a writ of Certiorarified mandamus calling for records pertaining to the proceedings NO. IMU/ EST/ HQ/ Staff/ 01/ Facul/ MGT/ASPOO1/2012/12-02 dated 14.6.2013 issued by the 3rd respondent quash the same and direct the respondents to permit the petitioner to join duty as Associate Professor-Management in the respondent University as per the original proceedings No. IMU/ EST/ HQ/ Staff/ 01/ Facul/ MGT/ASPOO1/2012 dated 4.12.2012.

WP 21228 of 2013: Petition filed under Article 226 of the constitution of India praying for the issuance of a writ of certiorarified mandamus calling for records pertaining to the proceedings No. IMU/EST/HQ/Staff/01/Facul/ LAW/ POO1/2012/12-01 dated 14.6.2013 issued by the 3rd respondent quash the same and direct the respondents to permit the petitioner to join duty as Professor Maritime Law in the respondent University as per the original proceedings NO.IMU/EST/HQ/Staff/01/ Facul/LAW/POO1/2012 dated 4.12.2012.

WP 21939 of 2013: Petition filed under Article 226 of the constitution of India praying for the issuance of a writ of mandamus Writ of Certiiorarified Mandamus calling for the records of the respondents 1 and 2 in connection to the Advertisement issued in The Hindu dated 17.7.2013 and in the website of the Respondent University and quash the order of termination IMU/REGER/EC-24-PART 1 of 2013 dt.05.08.2013 issued by the 2nd Respondent and the same was communicated to the Petitioner on 7.8.2013 and quash the same in so far as the Respondents 1 and 2 have notified the post of Finance Officer to which post the petitioner is already appointed and allow the Petitioner is continuing and all attendant beneits and unhindered entry into the campus to discharge her duties in Chennai as before in Chennai us before (Prayer as per amended as per order dated 07.10.2013 by DHPJ in MP 4/2013 in WP 21933/2013)

For appellants in सत्यमेव जयते Mr. R. Krishnamurthy, Sr. Counsel
all the W.As. for Mr. K.R. Thamizhmani

For R1 in W.A. No.591/2015 Mr. D. Muthukumar

For R1 in W.A. Nos.592-596/2015 Mr. B. Ravi

For respondent in W.A. No.597 of 2015 Mr. R. Subramanian

For R2 in all the W.As. Mr. A. Kumaraguru

COMMON JUDGMENT

Having regard to the commonality of the issue involved in these intra-Court appeals, they are considered and decided by this common judgment.

2 By the impugned common order dated 05 January 2015, 17 writ petitions and 2 contempt petitions were considered and decided. While all the writ petitions were allowed setting aside the orders impugned therein, the contempt petitions were closed on the ground that final orders have been passed in the writ petitions. Aggrieved by the said order, the respondents in seven of those writ petitions, being W.P. Nos.14265, 14266, 18657, 19915, 20164, 21228 and 21939 of 2013, respectively, are before us in the instant intra-Court appeals.

3 To avoid prolixity, the parties are referred to as per their arraignment in the instant intra-Court appeals.

4 At the cost of this judgment being a bit verbose, it is worthwhile to refer to the relief sought in the writ petitions.

5 W.A. No.591 of 2015 is filed assailing the order passed in W.P.No.14265 of 2013, which was filed by the first respondent seeking a writ of mandamus forbearing the appellants from terminating her services as Assistant Professor in Law in Indian Maritime University, Chennai 600 119 (for brevity "the University"), except by following the due process of law.

6 W.A. No.592 of 2015 is filed assailing the order passed in W.P.No.14266 of 2013, which was filed by the first respondent seeking a writ of mandamus forbearing the appellants from terminating his services as Assistant Professor in Management in the University, except by following the due process of law.

7 W.A. No.593 of 2015 is filed assailing the order passed in W.P.No.18657 of 2013, which was filed by the first respondent, calling in question, the legality and validity of the proceedings dated 14 June 2013 issued by the Registrar of the University, whereunder, his appointment was withdrawn and for a direction to the appellants to permit him to join duty as Associate Professor - Ocean Engineering in the University, as per the original proceedings dated 04 December 2012 and e-mail communication dated 14 December 2012 of the Registrar of the University.

8 W.A. No.594 of 2015 is filed assailing the order passed in W.P.No.19915 of 2013, which was filed by the first respondent, calling in question, the legality and validity of the proceedings dated 14 June 2013 issued by the Registrar of the University, whereunder the appointment was withdrawn, and for a direction to the appellants to permit her to join duty as Associate Professor - Management in the University, as per the original proceedings dated 27 December 2012.

9 W.A. No.595 of 2015 is filed assailing the order passed in W.P.No.20164 of 2013, which was filed by the first respondent, calling in question, the legality and validity of the proceedings dated 14 June 2013 issued by the Registrar of the University, whereunder the appointment was withdrawn, and for a direction to the appellants to permit him to join duty as Associate Professor-Management in the University, as per the original proceedings dated 04 December 2012.

10 W.A. No.596 of 2015 is filed assailing the order passed in W.P.No.21228 of 2013, which was filed by the first respondent, calling in question, the legality and validity of the proceedings dated 14 June 2013 issued by the Registrar of the University, whereunder the appointment was withdrawn, and for a direction to the appellants to permit her to join duty as Professor-Maritime Law in the University, as per the original proceedings dated 04 December 2012.

11 W.A. No.597 of 2015 is filed assailing the order passed in W.P.No.21939 of 2013, which was filed by the respondent, calling in question, the legality and validity of the advertisement issued in "The Hindu" dated 17 July 2013 and in the website of the University and the consequential order of termination communicated to the respondent on 07 August 2013 insofar as the appellants have notified for the post of Finance Officer, to which post, the respondent is already appointed.

12 The facts in brief, leading to the filing of the instant appeals are that the appellant University was constituted under the provisions of the Indian Maritime University Act, 2008 (for brevity "the Act") on 14 November 2008. Pursuant to the advertisement published in The Hindu-Business Line on 18 September 2012, applications were invited for faculty recruitment on the post of Assistant, Associate and Full Professors. Prior to that, vide advertisement published in "The Hindu" on 29 July 2012, applications were invited for appointment on the post of Finance Officer on deputation/tenure basis. In response, the private respondents, along with several other candidates, submitted their candidature for selection and appointment. On proper selection, the private respondents along

with 9 other writ petitioners, viz., Emil Mathew, Yogamala, Krushna Mohan Pattanaik, Mourougane, Lekha K.C. Ravi, Siva Durga Prasad, Nasar, Nagaraj and Avinash Godey, were appointed on the respective posts. The private respondent in W.A. No.597 of 2015, namely, S.Vasudevan, was appointed on the post of Finance Officer on tenure basis for a period of five years from the date of appointment vide order dated 05 October 2012. While some of the candidates joined the post, some others could not. In the meantime, by letters dated 14 June 2013, the offers of appointment given to the private respondents in W.A. Nos. 593 to 596 of 2016, namely, Ravi Sharma, Vanishree, Bhaskar Basu and Anita Rao, respectively were withdrawn. Subsequently, the appointment of S. Vasudevan was cancelled by order dated 05 August 2013. Similarly, the appointment of private respondents in W.A. Nos.591 and 592 of 2015, namely, Selvi Ganesh and Jayan, respectively was cancelled vide communication dated 26 September 2013. Feeling aggrieved, the private respondents, viz., Selvi Ganesh, Jayan, Ravi Sharma, Vanishree, Bhaskar Basu, Anita Rao and Vasudevan along with other candidates, viz., Emil Mathew, Yogamala, Krushna Mohan Pattanaik, Mourougane, Lekha Ravi, Siva Durga Prasad, Nasar, Nagaraj and Avinash Godey filed separate writ petitions. While the writ petitions filed by Emil Mathew, Selvi Ganesh, Jayan, Yogamala, Krushna Mohan Pattanaik and A. Mourougane were for a writ of mandamus forbearing the appellant University from terminating their services, Ravi Sharma, Vanishree, Bhaskar Basu and Anita Rao filed writ petitions calling in question, the legality and validity of orders withdrawing their appointment. Likewise, while Vasudevan assailed the advertisement issued in the Hindu dated 17 July 2013 and also the consequential order of termination, Lekha K.C. Ravi, Mourougane, Siva Durga Prasad, Nasar, Nagaraj and Avinash Godey filed writ petitions assailing the orders cancelling their appointment.

13 The learned Single Judge, setting aside the impugned orders, allowed the writ petitions by a common order dated 05 January 2015. Feeling aggrieved by the said common order, the appellant university has come up with the instant appeals qua seven writ petitioners, viz., Selvi Ganesh, Jayan, Ravi Sharma, Vanishree, Bhaskar Basu, Anita Rao and Vasudevan and in respect of other writ petitioners, the appellant University accepted the observations of the learned Single Judge and granted appointment and also other benefits to them as per the order.

14 In the order withdrawing the offer of appointment, no reason was assigned. However, in the order cancelling the appointment of S. Vasudevan, it was pointed out that he had applied for the post when he was not in service. Thus, he was not eligible for appointment on deputation post after retirement

from service. Accordingly, his appointment was terminated with immediate effect.

15 In case of Selvi Ganesh and Jayan, it was stated that a Committee under the Chairmanship of Capt. P.V.K. Mohan was constituted by order dated 26 February 2013 to examine the procedure adopted in the selection process. The said Capt. Mohan Committee had noted the following irregularities:

1 Against 10 vacancies for the regular faculty in Management as per EFC's norms, 21 were recruited.

2 per DoPT's guidelines, 200 point roster for reservation should be followed for the post of Assistant Professor and organisation should designate an officer from SC/ST category who will certify that the roster is followed as per Government rules. For the posts of Professor/Associate Professor, 40/100 points should be followed. These were not followed.

3 As per DoPT's guidelines, 60 days of time should be provided for calling the application from the applicant from the date of the calling the application from the applicant from the date of the advertisement which can be reduced to 45 days after approval of the Competent Authority. The advertisement should clearly mention the number of vacancies, stream-wise with specialisation, if any, and showing the vacancies as un-reserved/reserved for SC/ST/OBC, etc. Contrary to these rules, only 28 days were provided for calling for applications.

4 In some cases interview were taken telephonically or through Skype whereas this condition was not given in the advertisement.

5 Some of the selected faculty did not meet the age and or required educational qualification/required experience criteria.

6 Student teacher ratio as per EFC norms was not maintained.

7 Number of eligible candidates were left out and selection committee was not constituted as per prescribed norms."

16 Accepting Capt. Mohan Committee's report and also the Chief Vigilance Officer's report dated 10 and 11 April 2013, the

Executive Council resolved to cancel the entire selection process as being illegal. Accordingly, all the appointments made by the said Selection Committee were cancelled.

17 Shri R.Krishnamurthy, learned Senior Counsel, assisted by Mr.K.R.Thamizhmani, learned Advocate would submit that the appellant University has chosen to assail the common order passed only in seven writ petitions, wherein on scrutiny it was found that the respondents / writ petitioners had no proper qualification as requisite for the post. Thus, permitting unqualified hands would cause great injustice to the cause of education. In this regard, the learned Senior Counsel relies on a decision of the Supreme Court in Ganapath Singh Gangaram Singh Rajput vs. Gulbarga University, represented by its Registrar and others¹.

18 It is further contended that no right has accrued in favour of the private respondents as mere offer of employment does not confer any right on the appointees. Drawing a simile, relying on the judgment in Om Prakash Mann vs. Director of Education (Basic) and others², it is urged that in case of probationers, no opportunity of hearing is required.

19 On the factual aspects, the learned Senior Counsel would contend that in case of Selvi Ganesh, she, after having obtained an interim order, abandoned the post voluntary, left India and secured employment abroad. In case of Jayan, on the basis of interim order granted, he continues in service till date. In case of Bhaskar Basu, it is contended that he had joined back in service in old post. In case of Anita Rao, it is urged that on withdrawal of employment, she had gone back to her erstwhile employer, viz., GITHAM University and as such, she has not suffered any loss. In case of M.S. Ravisharma and Vanishree, the offers of employment were withdrawn before they joined in service with the appellant University. In case of S. Vasudevan, it is contended that he does not possess the basic qualification of post graduation in Commerce, but, I.C.W.A., claiming to be a qualification superior to the required qualification for the post. In case of W.A.Nos.591 and 596 of 2015, it is urged that the departments concerning the said subjects have been closed and as such, they cannot continue in their respective posts. In this regard, reliance is placed on the judgment in N. Ramanatha Pillai vs. The State of Kerala and another³.

1 (2014) 3 SCC 767

2 (2006) 7 SCC 558

3 AIR 1973 SC 2641

20 Mr. D. Muthukumar, learned counsel for Selvi Ganesh, in response, would contend that no opportunity of hearing was given to Selvi Ganesh before the order of termination was passed, which is violative of Article 311 of the Constitution of India. Further, no specific reason has been stated in the termination order. On the question of qualification, it is submitted that she is fully qualified, as, after completion of her B.L. degree in the year 1988, she has obtained M.Phil. in International Law in the year 2006 and also Ph.D. in International Law in 2011. The requisite qualification for the post is only post graduation, whereas, she has obtained M.Phil. qualification in International Law. Thus, the criterion of requisite qualification is fully satisfied. In addition, she has also done Ph.D. in Law, which could not have been permitted sans a Master's degree in Law. She has not abandoned her job and gone on leave. The contention of the learned Senior Counsel for the appellant University that the appellant University has closed down the Department is factually incorrect, inasmuch as one Yogamala has been recruited as Assistant Professor and the Department still continues.

21 Mr. B. Ravi, learned counsel for Jayan, Ravisharma, Vanishree, Bhaskar Basu and Anita Rao, would contend that they were duly selected by the Selection Committee and were also served with letters of appointment. Hence, subsequent withdrawal of appointment without affording them an opportunity of hearing and also without assigning any reason is violative of the Constitutional provisions. Dr. Jayan had already joined service and his appointment was cancelled without setting down reasons, except stating that the selection was found defective on the basis of Capt. Mohan Committee's report. The learned counsel would further urge that the Selection/Screening Committee was duly constituted after approval of the Executive Council. The same could not have been set at naught subsequently, without sufficient reasons.

22 The learned counsel would next contend that the learned Single Judge has found that the constitution of the Capt. Mohan Committee itself was unauthorised and illegal and as such, on the basis of observations made in the Capt. Mohan Committee's report, the impugned order was bad in law. The appellant University has accepted the finding and observations of the learned Single Judge in respect of nine writ petitioners and had chosen to challenge the order in respect of seven writ petitioners who are the private respondents herein. Thus, the

appellant University is estopped from adopting discriminatory and arbitrary stance and the same is contrary to the well settled principle of law as laid down by the Supreme Court in Sri Gangai Vinayagar Temple and another vs. Meenakshi Ammal and others⁴. It is also urged that the ground taken by the appellant University qua lack of qualification is an after thought as the impugned orders were not issued on the basis of lack of qualification. In fact, certain other candidates having the same qualification have been appointed.

23 Mr.R.Subramanian, learned counsel for Vasudevan would submit that Vasudevan was appointed on tenure basis, as, in his application and appointment order, it was clearly stated. He disclosed factum of his retirement from service. However, the termination order was passed stating that the deputation was made after he had retired from service. The termination order was not passed on the ground of lack of qualification and as such, the appellant University may not be permitted to add or supplement the grounds stated in the termination order.

24 We have heard the learned Senior Counsel appearing for the appellant University and the learned counsel for the private respondents and also perused the pleadings and documents appended thereto.

25 In the conspectus of the aforestated factual matrix, it is eloquent that both the orders, whether it be the orders withdrawing the appointment or orders cancelling the selection process, leading to appointment are premised on the Capt. Mohan Committee's report on the ground that the selection process was defective and deficient. As many as 16 appointees to the post of Associate Professor/Assistant Professor and Finance Officer preferred the instant writ petitions, which were taken up together for hearing and decided by a common order.

26 Incontrovertibly, the reason for withdrawing the appointment orders or cancelling the appointment orders was not lack of qualification or any other reason. In the orders withdrawing the appointment, no reason was assigned at all. But, in case of orders cancelling the appointment, the reason stated was, defective selection process, as aforestated.

27 The learned Single Judge, examining the various provisions of the Act,, came to the conclusion that appointment of the Capt. Mohan Committee itself was illegal and as such, any decision made on the basis of the said report was bad in law, being contrary to the scope and objects of the enactment. On the question of lack of qualification, the learned Single Judge held that the same was a disputed question of fact.

28 The appellant University had chosen to assail the impugned order qua 7 writ petitioners and had accepted the observations and directions rendered by the learned Single Judge qua other writ petitioners. In the instant appeals, the learned Senior Counsel appearing for the appellants has advanced his arguments on two premises, firstly lack of qualification and secondly, closure of course in W.A.Nos.591 and 596 of 2015.

29 We will first decide the issue as to whether after having accepted the finding and directions of the learned Single Judge in respect of 9 writ petitioners, whether it is open to the appellant University to assail the same finding and directions in case of other seven writ petitioners.

30 The identical issue came up for consideration in Sri Gangai Vinayagar Temple (supra), wherein, when a single appeal was preferred against a common judgment, the Supreme Court held as under:

"27. Procedural norms, technicalities and processual law evolve after years of empirical experience, and to ignore them or give them short shrift inevitably defeats justice. Where a common judgment has been delivered in cases in which consolidation orders have specifically been passed, we think it irresistible that the filing of a single appeal leads to the entire dispute becoming sub judice once again. Consolidation orders are passed by virtue of the bestowal of inherent powers on the courts by Section 151 CPC, as clarified by this Court in Chitivalasa Jute Mills v. Jaypee Rewa Cement. In the instance of suits in which common issues have been framed and a common trial has been conducted, the losing party must file appeals in respect of all adverse decrees founded even on partially adverse or contrary speaking judgments. While so opining we do not intend to whittle down the principle that the appeals

are not expected to be filed against every inconvenient or disagreeable or unpropitious or unfavourable finding or observation contained in a judgment, but that this can be done by way of cross-objections if the occasion arises. The decree not assailed thereupon metamorphoses into the character of a "former suit". If this is not to be so viewed, it would be possible to set at naught a decree passed in Suit A by only challenging the decree in Suit B. Law considers it an anathema to allow a party to achieve a result indirectly when it has deliberately or negligently failed to directly initiate proceedings towards this purpose. Laws of procedure have picturesquely been referred to as handmaidens to justice, but this does not mean that they can be wantonly ignored because, if so done, a miscarriage of justice inevitably and inexorably ensues. The statutory law and the processual law are two sides of the judicial drachma, each being the obverse of the other. In the case in hand, had the tenant diligently filed an appeal against the decree at least in respect of OS No. 5 of 1978, the legal conundrum that has manifested itself and exhausted so much judicial time, would not have arisen at all.

28. Adverting in the impugned judgment to the decision of this Court in Sajjadanashin Sayed v. Musa Dadabhai Ummer, the Division Bench delineated the distinction between an aspect of the litigation that is collaterally and incidentally, as against one that is directly and substantially focal to the question the determination of which is the immediate foundation of the decision. Reference was also drawn to enunciation of what constitutes res judicata in Hoag v. New Jersey, namely, that this important legal principle is attracted;

"if the record of the formal trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties". (Sajjadanashin Sayed case, SCC p. 359, para 17) (emphasis in original)

The Division Bench also garnered guidance from the observations of this Court in Isher Singh v. Sarwan

Singh requiring the examination of the pleadings and the issues in order to ascertain whether the question was directly and substantially litigated upon. The Division Bench also considered Asrar Ahmed v. Durgah Committee and Pragdasji Guru Bhagwandasji v. Ishwarlalbhai Narsibhai, before concluding that Issue 2 framed in OS No. 5 of 1978 was wholly unnecessary and faulty. The Division Bench held that the findings on that issue were unnecessary, did not constitute the minimum foundation for the ultimate decision and, therefore, would not constitute res judicata.

31 In the common order, which is sought to be impugned in the case of seven writ petitioners alone, the learned Single Judge had recorded the finding that the constitution of Capt. Mohan Committee was illegal and as such, the consequential decision of cancelling the appointment and also quashing the selection process leading to appointment was bad in law. The appellant University had accepted the said findings and observations of the learned Single Judge and also granted relief to the petitioners in ten writ petitions (nine writ petitioners). Thus, at this stage, the appellant University may not assail the findings and directions rendered by the learned Single Judge in respect of other writ petitioners. The stand of the appellant to impugn the common order in respect of the seven writ petitioners would create inconsistency and the appointment of other petitioners pursuant to the order passed by the learned Single Judge would continue to be subjudice. The observations and directions of the learned Single Judge in the common order are binding in all respects. In such view of the matter, the appellant University is estopped from assailing the same in this group of appeals preferred against a common order which has been accepted in case of 10 writ petitions. In fact, the learned Senior Counsel did not canvass this submission with full force. He confined his submission only on two issues, viz., lack of qualification and closure of courses.

32 Coming to the aspect of lack of qualification, Mr. Ravi, learned counsel for Jayan, Ravisharma, Vanishree, Bhaskar Basu and Anita Rao, has submitted details of qualifications in respect of those persons who have been found suitable and allowed to join service, after the instant writ petitions were filed.

Sl. No.	Name and W.P. No.	Position	Prescribed qualification	Possession qualification	Experience
4	Dr.A. Mourougane W.P. No.21940 of 2013	Associate Professor School of Maritime Management	Management including Accounting & Finance, Marketing, Communication, Economics, Information Technology, Quantitative Methods, Logistics & Supply Chain, Organisational Behaviour, Social Sciences, Public Policy, Infrastructure, Ports and Transportation, Maritime History, Risk Management,, Insurance and related discipline P.G. with 55% marks with NET/SLET or Ph.D. 3 yrs teaching experience as Assistant Professor.	i. M.Com ii. M.B.A. iii. M.Phil iv. Ph.D and SLET	i. 2 years as Lecturer D.G. Vaishnava College, Chennai ii. Faculty Member/Acting Head, School of Business at Papua New Guinea iii 2 years as Assistant Professor at Sir Thiagaraja College iv. Assistant Professor at Indian Maritime University for 4 years.

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S1 No	Name and W.P. No.	Position	Prescribed qualification	Possession qualification	Experience
5	Avinash Godey W.P. No.22376 of 2013	Assistant Professor - Naval Architectu re and Ocean Engineerin g (Vishakapa tnam Campus)	Master's degree with 55% marks or equivalent grade. Good academic record with doctoral degree	i. B.Tech in Mechanical Engineerin g ii. M.Tech. in Naval Architectu re and Ocean Engineerin g	Worked as Scientist - B Grade at IMU, Vishakapatn am
6	Dr. Nasar W.P. No.22335 of 2013	Assistant Professor- Naval Architectu re and Ocean Engineerin (Coching Campus)	Same as above	i. B.Tech. - Civil. Engineerin g ii. M.E. Structural Engineerin g from College of Engineerin g, Guindy, Anna University iii. Ph.D. in Ocean Engineerin g, IIT- Madras	i. Guided 4 Ph.D. Students ii. Published various articles in National and Internation al journals iii. Attended many internation al conferences held in Dubai, Portugal, Hawai (USA) and IIT, Madras.

33 On the other hand, the appellant University has pointed out the lack of qualification qua private respondents in the following manner:

W.A. No.591 of 2015 (W.P. No.14265/2013)	Post: Assistant Professor in Maritime Law - Dr. Selvi Ganesh
Qualification required	Possessed by candidate
Master degree in respective discipline with 55%	LL.B., M.Com., M. Phil and Ph.D. No P.G. in Law (No. LL.M.)
W.A. No.592 of 2015 (W.P. No.14266/2013)	Post: Assistant Professor in Maritime Management Dr. P.A. Jayan
Qualification required	Possessed by candidate
Post Graduation in Maritime Law	a. P.G. in Politics b. M.Phil. in Politics c. Ph.D. Political Science and Social Science
W.A. No.593 of 2015 (W.P. No.18657/2013)	Associate Professor in Naval Architecture and Ocean Engineering - Dr. M.S. Ravi Sharma
Qualification required	Possessed by candidate
P.G. in Naval Architecture or P.G. in Ocean Engineering or P.G. in a related subject	B.E. Civil M.E. Civil
W.A. No.594 of 2015 (W.P. No.19915/2013)	Dr. J. Vanishree - Assistant Professor in Maritime Management
Qualification required	Possessed by candidate
P.G. in Maritime Management or in a related subject	M.A. Development Administration M.A. Public Administration Doctorate in Gender Governance
W.A. No.595 of 2015 (W.P. No.20164/2013)	Associate Professor in Management - Dr. Baskar Basu
Qualification required	Possessed by candidate
P.G. in Maritime Management or in a related discipline	P.G. in Production Engineering Ph.D. in Knowledge Management System

W.A. No.596 of 2015 (W.P. No.21228/2013)	Professor of Maritime Law - Dr. Anita Rao
Qualification required	Possessed by candidate
P.G. (LL.M.) in Maritime Law	LL.M. in International Law
W.A. No.597 of 2015 (W.P. No.21939/2013)	Finance Officer - S. Vasudevan
Qualification required	Possessed by candidate
P.G. in Commerce with 55% marks in P.G.	B.Com. and I.C.W.A. He claims I.C.W.A. is higher than M.Com.

34 On an analysis of the aforesaid details given by both the parties, it is manifest that the appellant University has not strictly adhered to the prescribed qualification under the advertisement in case of all the candidates. Thus, the reliance of the learned Senior Counsel on Ganapath Singh Gangaram Singh Rajput (supra) is of no assistance, for, in that case, there was no dispute qua the requisite qualification and also understanding of the said qualification by the employer as well as the candidate, wherein, it was held as under:

"23. The language of the advertisement is clear and explicit and does not admit any ambiguity and, hence, it has to be given effect to. Since the appellant Ganpat did not have a Masters degree in Computer Application, in our opinion, he was not entitled to be considered for appointment as Lecturer in MCA. We are aghast to see that when a candidate possessing Masters degree in MCA is available, the Board of Appointment had chosen an unqualified and ineligible person for appointment in that subject. Its recommendations are, therefore, illegal and invalid. The natural corollary thereof is that the University acting on such recommendation and appointing Ganpat as Lecturer cannot be allowed to do so and that the Division Bench of the High Court was right in setting aside his appointment. In our opinion, an unqualified person cannot be appointed, whoever may be the recommendee. We are of the opinion that the Division Bench of the High Court was right in holding that Ganpat was not eligible for appointment of Lecturer in Masters of Computer Application."

35 In this batch of cases, the Selection Committee, duly constituted, has accepted the qualifications of the respondent

as more suitable. Subsequently, if on closer scrutiny, it is found that the qualifications were deficient, it was open to the appellant University to examine the same, but after affording an opportunity of hearing to the candidates, who have acquired right on acceptance of the qualification by the duly constituted Selection Committee approved by the Executive Council. Thus, the observation of the learned Single Judge that the factum of qualification is a disputed question of fact cannot be faulted. Even otherwise, lack of qualification was not the reason stated either in the orders withdrawing appointment or in the orders cancelling appointment, leading to termination of the private respondents.

36 In *Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others*⁵, a Constitution Bench of the Supreme Court, qua supplementing fresh reasons, observed as under:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji*:

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older."

37 In another decision in *Dipak Barbaria and another vs.*

5 (1978) 1 SCC 405

State of Gujarat and Others⁶, cited by Mr. B. Ravi, learned counsel, it is held as under:

"64. That apart, it has to be examined whether the Government had given sufficient reasons for the order it passed, at the time of passing such order. The Government must defend its action on the basis of the order that it has passed, and it cannot improve its stand by filing subsequent affidavits as laid down by this Court long back in *Commr. of Police v. Gordhandas Bhanji* in the following words: (AIR p.18, para 9)

"9. ... public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

This proposition has been quoted with approval in para 8 by a Constitution Bench in *Mohinder Singh Gill v. Chief Election Commr.* wherein Krishna Iyer, J. has stated as follows: (SCC p. 417)

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

38 In the facts of these cases, the appellant University has added a new ground to justify the orders of withdrawing the appointments and the orders of cancelling the appointments. The lack of qualification and closure of the course was not the

grounds stated in the impugned orders, as aforestated.

39 Both the aforestated grounds were neither stated in the orders withdrawing the appointments nor in the orders cancelling the appointments. It was also not averred in the counter affidavits filed by the appellant University before the learned Single Judge. Thus, the appellant University is not permitted to supplement reasons subsequently to the impugned decisions. If it is so, the appellant University, as aforestated, may always examine the qualification and also look into the factum of closure of course, after affording an opportunity of hearing to the concerned affected parties.

40 The Supreme Court, referring and discussing several judicial pronouncements on principles of natural justice, in *Mahipal Singh Tomar vs. State of U.P.*⁷, reiterated the exposition of law as under :

"15. In administrative law, the "rules of natural justice" have traditionally been regarded as comprising audi alteram partem and nemo judex in sua causa. The first of these rules requires the maker of a decision to give prior notice of the proposed decision to the persons affected by it and an opportunity to them to make representation. The second rule disqualifies a person from judging a cause if he has direct pecuniary or proprietary interest or might otherwise be biased. The first principle is of great importance because it embraces the rule of fair procedure or due process. Generally speaking, the notion of a fair hearing extends to the right to have notice of the other side's case, the right to bring evidence and the right to argue. This has been used by the courts for nullifying administrative actions. The premise on which the courts extended their jurisdiction against the administrative action was that the duty to give every victim a fair hearing was as much a principle of good administration as of good legal procedure."

41 In the aforestated premises, the private respondents are entitled to an opportunity to explain as to how the qualifications possessed by them have been found as requisite and suitable by the duly constituted Selection Committee and subsequently, it was held by the authorities as lack of qualification.

42 Coming to the case of Vasudevan, indisputably, he was appointed as Finance Officer on tenure basis in accord with the requirements of the advertisement dated 29 July 2012. The said advertisement itself provides for appointment on deputation / tenure basis. It is pertinent to note that the appointment order mentions the nature of appointment as tenure basis, which was subsequently cancelled on some extraneous ground, contrary to facts. But, in the cancellation order, it was stated that the appointment of S. Vasudevan on deputation was not proper because he was not in service and has already retired from service. Thus, it can safely be held that both the orders are contradictory to each other. Vasudevan's appointment was made on tenure basis noting the factum of retirement from service, as projected by him. The subsequent order dated 05 August 2013 terminating his appointment was on the ground of appointment on deputation. In such view of the matter, which clearly indicates lack of application of mind and passing of termination order without examining the factum of appointment and also without giving an opportunity of hearing to him, we are of the considered view that the order dated 05 August 2013 was rightly quashed by the learned Single Judge.

43 Resultantly, for the analysis and reasons mentioned hereinabove, all writ appeals are dismissed. No order as to costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Registrar
Indian Maritime University
Chennai 600 119
- 2 The Director
Chennai Campus
Indian Maritime University
Chennai 600 1192

3 The Secretary to Government
Ministry of Shipping
New Delhi - 1

+2 ccs to Mr.K.P.Tamilmani, Advocate, sr.247 & 16410
+1 cc to Mr.R.Subramani, Advocate, sr.16572
+5 ccs to M/s.B.Rani, Advocate, sr.16570
+1 cc to Mr.D.Muthukumar, Advocate, sr.16399
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W.A. Nos.591 to 597 of 2015

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