

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No. 6627 of 2006

* Sangita d/o Shrikant Kulkarni,
Age 36 years,
Occupation : Lecturer,
R/o 5-Janaki Manas Vidyanagar,
Nanded. .. **Petitioner**

Versus

- 1) Union of India,
Ministry of Human Resources,
New Delhi.
- 2) Secretary,
University Grants Commission,
N.E.T. Division, University of
Delhi, South Campus,
Bento Juarz Marg, New Delhi.
- 3) Secretary General, Association of
Indian Universities, A.I.U. House,
16, Kotla Marg, New Delhi 110002.
- 4) Swami Ramanand Teerth Marathwada
University, Through Registrar,
Nanded.
- 5) Sri Sharda Bhuvan Education Society
Through its; Secretary, Nanded.
- 6) Yashvant Mahavidyalaya,
Through the Principal.
- 7) Akhil Bharatiya Gandharva
Mahavidyalaya Mandal, Bombay,
Having its Registered Office at
Gandharv Niketan Bramhapuri,
Miraj, Taluka Miraj, Dist. Sangli.

- 8) State of Maharashtra
Through Secretary, Health
and Education Department,
Mantralaya, Mumbai. .. **Respondents.**

Shri. M.V. Deshpande, Advocate, for petitioner.

Miss. D.S. Ansingekar, Standing Counsel, for
respondent No.1.

Shri. Alok Sharma, Standing Counsel, for
respondent No.2.

Shri. V.P. Latange, Advocate, for respondent
no.4.

Shri. R.R. Mantri, Advocate, for respondent Nos.5
and 6.

Shri. V.N.Upadhye, Advocate, for respondent No.7.

Shri. A.R. Borulkar, Assistant Government
Pleader, for respondent No.8.

Respondent No.3 - served.

**Coram: R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

Judgment reserved on : 21ST AUGUST, 2017

Judgment pronounced on : 20TH SEPTEMBER, 2017

JUDGMENT (Per R.D. Dhanuka, J.):

1] By this petition filed under Article 226
of the Constitution of India, petitioner seeks a
writ of mandamus directing the University Grants

Commission and Secretary General, Association of Indian Universities, respondent Nos.2 and 3 herein, to issue certificate of passing National Eligibility Test (N.E.T.) for Lecturer in favour of the petitioner in view of the implied recognition by University Grants Commission since 1976 and the petitioner having passed the N.E.T. held in July, 2000. Petitioner also seeks a writ of certiorari, *inter alia*, praying for quashing and setting aside the letter dated 4th September, 2006, addressed by the University Grants Commission declaring the petitioner as disqualified in the N.E.T. held on 2nd July 2000 on the ground that the petitioner had not fulfilled the minimum eligibility condition laid down for the test i.e. of Diploma/Degree in Sangeet Alankar from Akhil Bharatiya Gandharva Mahavidyalaya Mumbai was not equated with Post Graduate degree of any Indian Universities.

2] The petitioner has also prayed for an order and direction to the respondent Nos.1 to 3

to recognize the certificate of Sangeet Alankar granted by respondent No.7 as equivalent for the purpose of qualifying N.E.T. for Lecturer and directing the respondent No.7 to get certificate of course conducted by it for Sangeet Alankar recognised as equivalent to M.A. by following requisite procedure contemplated by respondent Nos.2 and 3 and equivalent to M.A. in Music. Some of the relevant facts for the purpose of deciding this petition are as under :

3] Some time in the year 1985 the petitioner passed S.S.C. examination. She passed H.S.C. Examination in the year 1987 and secured First Class. She joined the undergraduate course in Music known as "Sangeet Visharad" conducted by Akhil Bharatiya Gandharv Mahavidyalaya Mandal Mumbai, respondent No.7 herein. She completed the said course by November 1989 in Second Class. It is the case of the petitioner that she thereafter completed postgraduate in Music i.e. Sangeet Alankar by

November 1993 in Second Division with respondent No.7. It is the case of the petitioner that the State of Maharashtra has recognized the certificates awarded by the respondent No.7 for the first time in the year 1962 by passing a resolution / recognition letter dated 24 January 1962.

4] By the said Resolution, the State Government had granted recognition to the certificates of Sangeet Alankar and Sangeet Visharad awarded by respondent No.7 for the purpose of appointment of Lecturer in educational institutions in Maharashtra State.

5] In so far as the area of Marathwada is concerned, it had only one University at Aurangabad which was Marathwada University. By an ordinance issued under the provisions of the Marathwada University Act, 1974, the then University had prescribed minimum qualification for teacher in Indian Music to teach

undergraduate students in which Second Class Master's degree of Indian Music from any of the institutions named in the said Ordinance clearly prescribing Sangeet Alankar under the head of "Name of Degree and the Name of Institution" shown was Gandharva Mahavidyalaya Mandal, Bombay/Pune.

6] It is the case of the petitioner that the said Marathwada University had clearly recognized the said postgraduate certificate in Music i.e. Sangeet Alankar issued by respondent No.7 as equivalent to postgraduate degree. The said Marathwada University was later on renamed as Dr. Babasaheb Ambedkar Marathwada University. The said Dr. Babasaheb Ambedkar Marathwada University also had equated the course of other institutions or other Universities including the qualification of Sangeet Visharad and Sangeet Alankar granted by respondent No.7 with B.A. and M.A. respectively.

7] Prior to 1994, Swami Ramanand Teerth Marathwada University. Nanded was established. The State Government had issued an order directing that statutes, ordinances, regulations and rules made by Dr. Babasaheb Ambedkar Marathwada University, Aurangabad shall continue in force and deemed to have been made under the Maharashtra Universities Act and will be applicable to Swami Ramanand Teerth Marathwada University till they are superseded.

8] The said Swami Ramanand Teerth Marathwada University Nanded thereafter framed or elected its own statutes, ordinance, regulations and rules and granted equivalence of Sangeet Visharad and Sangeet Alankar with that of B.A. and M.A. respectively. The respondent No.7-institution regularly conducts examinations and grants various certificates including Sangeet Visharad and Sangeet Alankar which are recognised with that of Graduate degree and Post Graduate degree in Music respectively prescribed by almost

all the Universities in Marathwada. The list annexed at Page 124 of the writ petition shows that 10 of such Universities have accepted the certificates in Music such as Sangeet Visharad and Sangeet Alankar as equivalent to B.A. and M.A. respectively and have granted recognition to said certificates.

9] It is the case of the petitioner that since the certificates granted by the respondent No.7 are also recognised by the University Grants Commission and also by State of Maharashtra, the question of any doubt in the mind of the petitioner about authenticity of the equivalence of the courses and the certificates granted by respondent No.7 with gradate and post graduate degree in Arts did not arise.

10] It is the case of the petitioner that the respondent No.7 had called for advise from the University Grants Commission 'whether it could grant certificates as degrees or something

of that sort'. The respondent No.2 by its letter dated 2 June 1976 informed the respondent No.7 that the University Grants Commission had advised that institutions like respondent No.7 were not considered as University within the University Grants Commission Act and thus was not competent to award degrees and to use name of the University. It was however made clear that institutions like respondent No.7 were competent to award certificates and diplomas. Respondent No.7 was further informed that no advise has been given by the University Grants Commission to any University to the effect that they should not appoint persons who had taken diploma or certificate from Non-University institutions which may be considered by the Universities as equivalent to degrees awarded by the Universities which may be considered by the Universities as equivalent to degrees awarded by the Universities.

11] It is the case of the petitioner that

the respondent No.2 had allowed the employment and appointment on the ground that certificate issued by the institution like respondent No.7 was valid. There was no examination like N.E.T. at that time. It is the case of the petitioner that the syllabus prescribed for Sangeet Visharad and Sangeet Alankar in respondent No.7 is much more than the syllabus prescribed for B.A. and M.A. in Music by various Universities in Maharashtra State. The graduate and post graduate in B.A. and M.A. in Music in the concerned University and taught by colleges affiliated to the University are recognised by the U.G.C. He submits that these two courses i.e. Sangeet Visharad and Sangeet Alankar are also included in the list of subjects by various Universities and, therefore, automatically gets recognition at par with those degrees granted by Universities.

12] In the year 1995, respondent No.6 had advertised a post for Music against reserved post

for Scheduled Tribe (women). No candidate from Scheduled Tribe (women) category was available. The petitioner was found to be eligible and was accordingly selected for the said post. The petitioner was once again given order of appointment dated 1st August, 1998, when candidate from Scheduled Tribe category was not available though the said post was advertised by respondent No.6. The said post was subsequently advertised every year for further five years from 2000. Since candidate from Scheduled Tribe female category was not available, the petitioner has been continued on the said post.

13] In the year 2000 acquiring the qualification of State Eligibility Test (S.E.T.) for Lecturer and N.E.T. for Lecturer was made compulsory. The National Eligibility Test for the subject of Music was available. There was no State Eligibility Test for the subject of Music. The petitioner accordingly applied for appearing for National Eligibility Test (N.E.T.) for Music

with the qualification of Sangeet Alankar certificate granted by respondent No.7. It is the case of the petitioner that University Grants Commission permitted the petitioner to appear for the said test without raising objection for the qualification claimed by the petitioner. The petitioner was given Hall Ticket number as A-190382. Only three candidates for the subject of Music passed out all-over India including the petitioner.

14] On 6 January 2001 the petitioner received a communication from University Grants Commission congratulating the petitioner for successfully passing the U.G.C. N.E.T. held in the month of July 2000 for eligibility of Lectureship only in the subject of Music.

15] On 27th March 2001, the respondent No.2 informed the petitioner that she had been declared as qualified in UGC test for eligibility of lectureship as on 2nd July, 2000, subject to

fulfillment of minimum eligibility condition laid down for the said test. The petitioner was informed by the said letter that on screening of her application form, it was noticed that she has not obtained her post graduate degree and was accordingly requested to submit copies of various documents including post graduate mark-sheet, matriculation certificate etc.

16] The respondent No.5 society (management) addressed a letter to the Association of Indian Universities informing that the petitioner had been working as Lecturer in Music w.e.f. 23rd January, 2001, till the date of addressing the letter. The management stated in the said letter that the petitioner has passed 'Sangeet Alankar', which was equivalent to M.A. (Music). The management informed that the petitioner had already passed National Eligibility Test (NET) examination in July 2000 with seat No.190382, but had not received the passing certificate. The management conveyed to the Association of Indian

Universities that the NET Division had stated that the said examination 'Sangeet Alankar' certificate was not equivalent with All India University. The management accordingly requested the Association of Indian Universities to send the equivalence of 'Sangeet Alankar' to M.A. (Music) to enable the petitioner to get the certificate from University Grant Commission's NET Office at the earliest.

17] The petitioner vide letter dated 30th May, 2001 informed the respondent no.2 that she had already sent the prescribed form duly filled in all respect along with attested copies of matriculation certificate and post graduation mark sheet i.e. 'Sangeet Alankar' in music on 7th April, 2001, by registered post. However, she had not received the eligibility certificate for lectureship. The petitioner requested the respondent no.2 to send the certificate at the earliest.

18] On 31st July, 2006, the respondent No.5 society (management) addressed a letter to the respondent No.2, University Grant Commission informing that the petitioner was working as Lecturer of Music w.e.f.23rd January, 2001, till the date of addressing the said letter and had passed 'Sangeet Alankar', which was equivalent to M.A.(Music). The management also forwarded copies of the relevant Ordinances, Government Resolutions from Dr.Babasaheb Ambedkar Marathwada University, Aurangabad. The management informed that though the petitioner had passed NET examination in the month of July, 2000, with seat No.190382, the petitioner had not received the passing certificate. The management requested the respondent No.2 to send the certificate of NET examination at the earliest.

19] The management also forwarded the representations made by the petitioner to the Vice Chancellor of the Swami Ramanand Teerth Marathwada University and also to the University

Grants Commission (UGC). The Petitioner vide her letter dated 16th February, 2006, made a representation to the respondent No.2 and informed that Swami Ramanand Teerth Marathwada University, Nanded was following Ordinances of Dr.Babasaheb Ambedkar Marathwada University, Aurangabad, which was the parent University. The petitioner informed that she had appeared for NET examination in July, 2000. The result was also declared. The petitioner also informed that the petitioner had appeared for M.A.(Music) from Amravati University, Amravati and had passed the said examination in first division. The petitioner forwarded copies of various documents including copy of the mark-sheet of the petitioner of M.A.(Music) passed from Amravati University to the respondent No.2 for consideration, and once again requested to send NET examination certificate at the earliest, which was required for getting confirmation in service. Similar representation was made by the petitioner also to the Vice Chancellor of Swami

Ramanand Teerth Marathwada University, Nanded on 10th February, 2006.

20] On 4th September, 2006, the University Grants Commission addressed a letter to the Director, Board of College and University Department, Swami Ramanand Teerth Marathwada University, Nanded informing that the petitioner had been declared disqualified for the University Grants Commission's NET held on 2nd July, 2000, due to non-fulfillment of minimum eligibility condition laid down for the test i.e. diploma/degree certificate in 'Sangeet Alankar' from Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai was not equated with post graduate degree of Indian Universities. The petitioner, therefore, filed this writ petition, inter-alia, praying for a Writ of Mandamus, for an order and direction against the University Grants Commission and the Secretary, General Association of Indian Universities to issue the certificate of passing eligibility test-NET for Lecturers in

favour of the petitioner in view of implied recognition by University Grants Commission since 1976 and also seeking a Writ of Certiorari for quashing a communication dated 4th September, 2006, from the University Grants Commission.

21] Mr.M.V.Deshpande, learned counsel for the petitioner invited our attention to various annexures to the petition. He submitted that the petitioner at the relevant time had already passed the examination and was issued certificate by Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai on 10th February, 1994, in the subject 'Sangeet Alankar' and had passed in the said examination in second class. Learned counsel invited our attention to the Resolution dated 24th January, 1962, from the Government of Maharashtra, Education and Social Welfare Department, Mumbai. He submits that by the said Government Resolution, the Government had informed the Gandharva Mahavidyalaya Mandal, Mumbai that the Government had accorded

recognition to the certificates of 'Sangeet Alankar' and 'Sangeet Visharad' awarded by the Gandharva Mahavidyalaya, Mumbai, and 'Visharad' and 'Parangat' awarded by the Bharat Gayan Samaj, Pune for the purpose of appointment of persons as music teachers in educational institutions in the State of Maharashtra.

22] Learned counsel for the petitioner invited our attention to the Ordinance issued in the month of September 1977 by the Dr.Babasaheb Ambedkar Marathwada University prescribing the minimum qualification for a teacher for Indian music to teach undergraduate students. He submits that under Clause (b)(ii) the degree of 'Sangeet Alankar' obtained from Gandharva Mahavidyalaya Mandal, Mumbai, Mumbai/Pune, has been considered as a valid degree for the purpose of appointment of a teacher for Indian music to teach undergraduate students. He submits that the said certificate in 'Sangeet Alankar' has been recognized by Dr.Babasaheb Ambedkar

Marathwada University.

23] Learned counsel for the petitioner invited our attention to the Circular issued by Dr.Babasaheb Ambedkar Marathwada University in the month of July, 1994 enclosing the list of examination of other Universities/examining bodies, which were recognized as equivalent to the corresponding examinations of that University. A copy of the said Circular was sent to various Universities. In so far as the degree of 'Sangeet Visharad' obtained from Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai, is concerned, the said degree was considered as equivalent to B.A. The degree obtained in 'Sangeet Alankar' from the said Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai was considered as equivalent to M.A.(Music).

24] Learned counsel for the petitioner invited our attention to an order issued by the State Government, Higher and Technical Education

and Employment Department, while exercising powers under Section 112(C) of the Maharashtra Universities Act, 1994 directing that the Statutes, Ordinances, Regulations, Rules made by Dr.Babasaheb Ambedkar Marathwada University, Aurangabad shall in, so far as they were not inconsistent with the provisions of the Maharashtra Universities Act, 1994, continue in force and deemed to have been made under the Maharashtra Universities Act, 1994 by Swami Ramanand Teerth Marathwada University, Nanded until they were superseded or modified by exercising the powers under the Maharashtra Universities Act, 1994 by Swami Ramanand Teerth Marathwada University, Nanded.

25] Learned counsel for the petitioner invited our attention to the copy of letter dated 10th July 1976 from the University Grants Commission to the Chairman, Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai in response to the letter of the said Akhil Bhartiya

Gandharva Mahavidyalaya Mandal, Mumbai informing that the University Grants Commission had advised that institution like Akhil Bhartiya Gandharva Mahavidyala Mandal, Mumbai, which were not considered as Universities within the University Grants Commission Act and were not competent to award degrees and to use name of University. By the said letter, it is made clear that the institutions like the said Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai were competent to award certificates in diplomas. It was further mentioned in the said letter that no advice has been given by the University Grants Commission to any University to the effect that they should not appoint any person who had taken diploma from non-University institutions, which may be considered by universities as equivalent to degrees awarded by universities.

26] The learned counsel submits that University Grants Commission had thus conveyed its no objection, to such institution appointing

person who had taken diploma certificate from non-University institutions, which may be considered equivalent to degrees awarded by the universities. He submits that admittedly, the Marathwada University had already issued an Ordinance prescribing degree of 'Sangeet Alankar' obtained from Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai as qualified degree and Dr.Babasaheb Ambedkar Marathwada University having issued a Circular to the effect that the degree of 'Sangeet Alankar' issued by Akhil Bhartiya Gandharva Mahavidyala Mandal, Mumbai is equivalent to M.A.(Music). He submits that the University Grants Commission could not have refused to issue certificate of NET examination though the petitioner had appeared for the said examination on the ground that the diploma/degree in 'Sangeet Alankar' from Akhil Bhartiya Gandharva Mahavidyala Mandal, Mumbai was not equated with post-graduate degree of Indian Universities.

27] Learned counsel for the petitioner invited our attention to the order of appointment dated 1st August 1998 issued by Shri Sharada Bhavan Education Society's Yeshwant Mahavidyalaya, Nanded as a Lecturer in music at senior college level in accordance with the State Government Rules in force. He submits that at that stage, the petitioner had not acquired qualification of NET.

28] It is submitted by the learned counsel for the petitioner that 14 Universities had granted recognition to the degree of 'Sangeet Alankar' as equivalent to a post-graduate degree issued by Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai. The management of the college had supported the case of the petitioner and had stated that though various representations were made to the authorities, the University Grants Commission refused to issue NET examination certificate to the petitioner.

29] Mr.Alok Sharma, learned counsel for the University Grants Commission, on the other hand, invited our attention to the Notification issued by his client prescribing the conditions for making an application for appearing in NET in the month of July, 2000. He placed reliance on clause 3 of the said Notification and submitted that it was made clear that the candidates, other than the scheduled caste and scheduled tribes categories, who had secured 55% marks without grace in master's degree or equivalent examination in humanities including languages and social sciences, computer applications etc., for considering their application as eligible for the test.

30] It is submitted that in the said advertisement, it was made clear that their candidature was provisional and the mere fact that admission cards were issued to candidates will not imply that the commission had accepted his/her candidature. The candidates were

directed to note that their candidature would be deemed final upon verification of eligibility condition with respect to the documents enclosed with their applications as may be called for. He submits that the subject music was prescribed at Sr.No.16 in the said list. Merely because the petitioner was issued admission card and was allowed to appear for the said NET test, would not create any right in favour of the petitioner and the same was specifically made subject to the petitioners satisfying the eligibility condition.

31] It is submitted that the University Grants Commission has rightly refused to issue certificate of NET examination to the petitioner in view of the fact that the said degree in 'Sangeet Alankar' issued by Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai was not recognized as University by the University Grants Commission. It is submitted that the petitioner was not even eligible to appear for the said NET examination in view of the fact that the degree

in 'Sangeet Alankar' relied upon by the petitioner was not a recognized degree. He submits that the impugned order passed by University Grants Commission holding that the diploma/degree in 'Sangeet Alankar' from Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai being not equated with post graduate degree of the universities recognized by the University Grant Commission, is thus justified and not illegal.

32] Learned counsel for the respondent no.2 invited our attention to the definition of University defined under Section 2(f) of the University Grants Commission Act, 1956 and would submit that since the said Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai was not recognized by the University Grants Commission in accordance with the provisions of University Grants Commission Act, the University Grants Commission had rightly refused to issue NET examination certificate to the petitioner. He

submits that the said NET examinations were to be conducted only by the University Grants Commission and not by any of the universities and thus the prescribed qualification for appearing in the said NET examination by any of the candidates could be prescribed only by the University Grants Commission and not by the universities.

33] Learned counsel for the University Grants Commission relied upon the University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of the University and Institutions affiliated to it) Regulations, 1991 and in particular Regulation No.2 and 3(c), which provides for qualifications for Lecturer in Music. He submits that since the said degree in 'Sangeet Alankar' is not an equivalent degree to a degree from any Indian University, the petitioner was not eligible to appear for the said NET examination.

34] Learned counsel appearing for the University Grants Commission invited our attention to a letter dated 11th September 2001 from his client informing various candidates including the petitioner that they were declared disqualified in the University Grants Commission's test for lectureship held on 2nd July, 2000 for not fulfilling minimum eligibility condition laid down for the test in view of her degree/diploma being not equated with post-graduate degree of Indian universities. He also invited our attention to the impugned communication dated 4th September 2006 from the University Grants Commission to the Board of College and University Development, Swami Ramanand Teerth Marathwada University, Nanded informing the said University that the petitioner herein have been declared disqualified in NET held on 2nd July 2000 due to non-fulfilling of minimum eligibility condition laid down for the test in view of the diploma/degree obtained by her in 'Sangeet Alankar' from Akhil Bhartiya

Gandharva Mahavidyalaya Mandal, Mumbai, was not equated with post-graduate degree of Indian universities.

35] It is submitted that even the Association of Indian Universities had not granted any recognition to the degree of 'Sangeet Alankar' issued by Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai. He submits that under the provisions of the University Grants Commission Act, 1956, the University Grants Commission has to maintain and preserve the quality and to maintain uniformity in the field of education and thus cannot permit a candidate to appear for NET examination, who did not have post-graduate degree conferred by a University recognized and approved by the National Grants Commission.

36] Mr.M.V.Deshpande, learned counsel for the petitioner in the rejoinder placed reliance on Section 5 of the Maharashtra Universities Act,

1994 and would submit that under Section 5(17), (19) and (20), the University defined under Section 2(36) which are mentioned in Schedule, only are empowered to institute degrees and post graduate diplomas, post higher secondary diplomas and other academic distinctions on the basis of examinations prescribed by the universities, or by other tests or otherwise. It is submitted by the learned counsel that Statutes are required to be found by the universities. He also placed reliance on Section 76 of the Maharashtra Universities Act, 1994 under which the procedure is prescribed for the appointment of the University teachers. He submits that it is not in dispute that the petitioner had appeared for NET examination and had passed in the said examination.

37] In so far as the Schedule appended to the Maharashtra Universities Act, 1994 is concerned, he submits that the name of Dr.Babasaheb Ambedkar Marathwada University,

which was constituted under the Marathwada University Act, 1974 for the University area for the Districts of Aurangabad, Jalna, Beed and Osmanabad, is already included in the said Schedule at Sr.No.4 and was thus empowered to accept the degree in 'Sangeet Alankar' issued by the Akhil Bhartiya Gandharva Mahavidyalaya Mumbai, Mumbai as equivalent to a post-graduate degree of M.A.(Music).

38] It is submitted that even under the Statute of the Marathwada University under the provisions of Marathwada University Act, 1974, the said degree in 'Sangeet Alankar' issued by Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai, has been considered as equivalent to M.A. (Music). He submits that the University Grants Commission thus cannot interfere with the powers of the universities, whose names are described in the Schedule appended to Maharashtra Universities Act, 1994 and the University defined under Section 2(36) of the Maharashtra Universities

Act, 1994.

39] Learned counsel for the petitioner placed reliance on Section 51(8) of the Maharashtra Universities Act, 1994 and would submit that the Statutes, which are issued by the universities under the provisions of the said Act, can provide for qualifications, recruitments, duties and conditions of service of teachers/officers and other employees of the universities and the affiliated colleges, the provisions of pension and gratuity and provident fund etc. He submits that under Section 53 of the said Maharashtra Universities Act, 1994, the Management Council is empowered to issue Ordinances to provide for the qualification and classification of the teachers in the University's departments and colleges and recognized institutions. He submits that under Section 54(4) of the Maharashtra Universities Act, 1994, the Ordinance issued by the Management Council has effect from such date as

it may direct.

40] It is submitted that there is a clear distinction between the powers of the universities to confer degrees and to decide about the qualification for grant of such degrees by the universities to the candidates and to prescribe conditions governing the appointment of the teachers in the University departments, colleges and recognized institutes whereas the powers of the University Grants Commission are to prescribe the conditions for appearing for NET examination after such degrees are granted by the concerned universities under the provisions of Maharashtra Universities Act, 1994. He invited our attention to the said Ordinance at page No.28 of the Writ Petition to the effect that the degree in 'Sangeet Alankar' issued by Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai is equivalent to M.A.(Music). Learned counsel invited our attention to the advertisement issued by the University Grants Commission and submits

that the petitioner has complied with all the terms and conditions of the said advertisement issued by the University Grants Commission and thus, a certificate of passing the NET examination in favour of the petitioner could not have been withheld by the University Grants Commission for the erroneous reasons.

41] In so far as submission of the learned counsel for the respondent no.2 that even the Association of All Indian Universities has not recognized the degree in 'Sangeet Alankar' as equivalent to a post-graduate degree of a recognized University is concerned, it is submitted by the learned counsel for the petitioner that no affidavit in reply is filed by the said Association of All Indian Universities in this Writ Petition though served. Both the parties placed reliance on two separate communications from Association of All Indian Universities taking a different stand in the matter of the issue 'whether the degree in

'Sangeet Alankar' was approved and recognized by the Association of All Indian Universities or not'.

Reasons and Conclusion:-

42] A perusal of the record indicates that the petitioner had joined undergraduate course in music as 'Sangeet Visharad' conducted by the Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai and had completed the said course by November, 1989 in second class. The petitioner had completed post-graduate in music i.e. 'Sangeet Alankar' by November, 1993 and passed in second division. The copies of the certificate issued by the Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai in favour of the petitioner are annexed to the Writ Petition. On 24th January, 1962, the Government of Maharashtra conveyed a Resolution passed by the Government to the Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai, according recognition to the

certificates of 'Sangeet Alankar' and 'Sangeet Visharad' awarded by Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai and the certificates of 'Sangeet Visharad Parangat' awarded by the Bharat Gayan Samaj, Pune for the purpose of appointment of the persons as music teachers in educational institutions in the State of Maharashtra.

43] Under the provisions of Marathwada University Act, 1974, the Marathwada University had prescribed minimum qualification for a teacher for Indian music to teach the undergraduate students. The said ordinance clearly provides that the degree in 'Sangeet Alankar' issued by Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai is considered as qualified for a teacher to teach Indian music to undergraduate students. Dr. Babasaheb Ambedkar Marathwada University also had issued a Circular in the month of July, 1994 recognizing various certificates/diplomas as equivalent to a post-

graduate degree. It clearly indicates that the certificate in 'Sangeet Alankar' issued by Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai was made equivalent to M.A. in music.

44] On 21st November, 1994, the Higher and Technical Education and Employment Department, Mantralaya issued an order by exercising powers conferred under Section 112(C) of the Maharashtra Universities Act, 1994 directing that the Statutes, Ordinances, Regulations and Rules made by Dr.Babasaheb Ambedkar Marathwada University, Aurangabad, shall in so far as they are not inconsistent with the provisions of Maharashtra Universities Act, 1994 continue in force and deemed to have been made under the said Maharashtra University Act, 1974 by Swami Ramanand Teerth University, Nanded until they are superseded or modified by exercising the powers under the said Maharashtra Universities Act, 1994 by Swami Ramanand Teerth University, Nanded.

45] It is thus clear that the State Government had recognized the certificates of 'Sangeet Alankar' and 'Sangeet Visharad' awarded by Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai by passing a Resolution for the purpose of appointment of persons as music teachers in education institutions in the State of Maharashtra. Ordinances issued by the Marathwada University and the Circular issued by Dr. Babasaheb Ambedkar Marathwada University clearly indicate that by exercising powers under the Maharashtra Universities Act, 1994 and under the Marathwada University Act, 1974, the degree in 'Sangeet Alankar' issued by Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai, has been approved as equivalent to M.A.(Music). Large number of universities all-over India have accepted the said degree in 'Sangeet Alankar' issued by the Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai as equivalent to M.A.(Music).

46] A perusal of Section 76 of the Maharashtra Universities Act, 1994 provides for selection and appointment of University teachers subject to the provisions of the said Maharashtra Universities Act, 1994 Statutes and Ordinances till the University Grants Commission's scheme of recruitment becomes operative. Under Section 51(8) of the Maharashtra Universities Act, 1994, the universities are authorized to issue Statutes, which may provide various matters including the matters in respect of qualification, recruitment, duties and conditions of service of the teachers, officers and other employees of the University and the affiliated colleges etc. Section 52 of the Maharashtra Universities Act, 1994 provides the manner in which the Statutes may be made, amended or repealed by Senate and also prescribes the powers of the Management Council to pass such Statutes. Under Section 54(4) of the said Maharashtra Universities Act, all such Ordinances made by the Management Council has effect from such date as

may direct.

47] It is not the case of the University Grants Commission that the Statutes and Ordinances issued by the Marathwada University and Dr.Babasaheb Ambedkar Marathwada University are inconsistent with the provisions of the Maharashtra Universities Act, 1994. The University Grants Commission Act does not provide any powers for conferring any degrees on any of the candidates appearing for examination for any undergraduate or graduate course, which can be conferred only by the universities within the meaning of Section 2(36) of the Maharashtra University Act, 1994 and such universities mentioned in schedule appended in the said Act. However, there is no dispute that University Grants Commission is empowered to conduct NET examinations under the provisions of the University Grants Commission Act and under various Regulations framed by the University Grants Commission by exercising powers conferred

under the provisions of University Grants Commission Act.

48] In our view, the powers exercised by the university under the provisions of Maharashtra Universities Act, 1994 and powers exercised by the University Grants Commission under the provision of University Grants Commission Act, are not overlapping and are distinct in nature. The University Grants Commission does not have power to decide as to which degree issued by any of the institutions or by universities within the meaning of Section 2(36) of the Maharashtra Universities Act, 1994, is equivalent to any degree issued by a recognized University or not. Such powers vest with the respective universities defined under Section 2(36) of the Maharashtra Universities Act, 1994, whose names are prescribed in schedule appended to the Maharashtra Universities Act, 1994. It is not in dispute that Dr.Babasaheb Ambedkar Marathwada University constituted under the provisions of

Marathwada University Act, 1974 for the Districts of Aurangabad, Jalna, Beed and Osmanabad, is one of the University mentioned in the said Schedule, which is empowered to issue various Ordinances and Statutes to prescribe the conditions for qualification and other service conditions for the purpose of appointment of teaching and non-teaching staff in the colleges affiliated to such University.

49] A perusal of the Communication dated 10.07.1976 from the University Grants Commission to the Chairman of Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Bombay also clearly indicates that though in the said letter, it was conveyed that the said institution must not be considered as University within the meaning of University Grants Commission and was not competent to award degrees and use the name of University, such institution was competent to award certificates or diplomas. The University Grants Commission in the said letter did not take

any stand that the degrees/Certificates granted by such institutions could not have been made equivalent or accepted as Post-Graduate Degree of any recognized University under the provisions of University Grants Commission Act. On the contrary, it was made clear that no finding was given by the University Grants Commission to any University to the effect that they should not appoint persons who have taken Diploma/Certificates from non-university institutions which may be considered by the University as equivalent to degrees awarded by the Universities.

50] It is thus clear that no condition is imposed by the University Grants Commission not to appoint a candidate, who had taken diploma or certificates from non-university institution, which may be considered by the University as equivalent to degrees awarded by the Universities. In view of this communication also from the University Grants Commission to the

Akhil Bhartiya Gandharva Mahavidyala Mandal (Bombay), we are of the view that Dr. Babasaheb Ambedkar University having accepted the Certificate in Sangeet Alankar as equivalent to M.A. in Music, the University Grants Commission could not have refused to issue certificate of passing in N.E.T. Examination to the petitioner on the ground that such Certificate in Sangeet Alankar could not have been considered as Sangeet Alankar to a Post Graduate Degree. The order passed by the University Grants Commission is contrary not only to the provisions of Maharashtra Universities Act 1994, the University Grants Commission Act, 1926, but also contrary to their own decision dated 10th July 1976 conveyed to the Chairman of Akhil Bhartiya Gandharva Mahavidyala Mandal (Bombay).

51] In so far as submission of the learned counsel for the University Grants Commission that the candidates were made clear in the advertisement/notification issued by the

University Grants Commission that even if an admission card granted to a candidate, it would not be implied that an University Grants Commission had finally accepted his Master's Degree and the same was subject to the eligibility criteria is concerned, it is not the case of the petitioner that the petitioner is seeking eligibility certificate of passing N.E.T. Examination on the ground that though the certificate of Sangeet Alankar cannot be considered as equivalent to M.A. in Music, since she was issued the admission card by the University Grants Commission for appearing for the N.E.T. Examination, she should be issued N.E.T. Examination Certificate by the University Grants Commission.

52] The conditions of eligibility prescribed in the Notification/Ordinance issued by the University Grants Commission also mentioned that the candidate should have secured 55 % marks in Master's Degree or equivalent examination in

various subjects are eligible for appearing in the said N.E.T.Examination. The conditions prescribed in the said Notification/Ordinance does not indicate that the only candidate who had obtained Post-graduate degree from university defined under Section 2(f) of the University Grants Commission Act 1956 were qualified to appear for the said N.E.T. Examination conducted by the University Grants Commission. Section 22 of the University Grants Commission Act 1956 is extracted as under:-

"22 Right to confer degrees.

(1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or

itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, 'degree' means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette."

53] In our view, in view of Section 22 of the University Grants Commission Act 1956, the power or right of conferring to grant degrees was under the provisions of Maharashtra Universities Act 1994 and conferred on the universities mentioned in the Schedule as prescribed under section 2(36) of the Maharashtra Universities Act 1994 which includes name of Dr. Babasaheb Ambedkar Marathwada University constituted under the Marathwada University Act 1994 for the Districts of Aurangabad, Jalna, Beed and Osmanabad. Under the provisions of Maharashtra Universities Act 1994, such Universities are empowered to consider the certificates or degrees of other universities or institutions as

equivalent by issuing ordinances and statutes. In our view, the submissions made by the learned Counsel for the University Grants Commission are thus contrary to the provisions of the Maharashtra Universities Act 1994 and also the provisions of University Grants Commission Act 1956.

54) In so far as the submission of the learned Counsel for the University Grants Commission that the Association of Indian Universities also has not recognized the Certificate in Sangeet Alankar as equivalent to Master's Degree in Music of recognized University is concerned, it is not in dispute that though Association of Indian Universities who is impleaded as respondent No. 3 to this Writ Petition and was served with the papers and proceedings and the notices, none appeared for the said Association. No affidavit has been filed. In our view, the Association of Indian Universities is not empowered to recognize or not

to recognize any degree or certificate of non-university or institution to recognize or not to recognize certificate or degree issued by the non-university or institutions as equivalent to a degree and more particularly Post- Graduate Degree of a University within the meaning of Maharashtra Universities Act or within the meaning of 'University' as defined under the provisions of Universities Grants Commission Act 1956. Learned counsel for the University Grants Commission could not point out any provisions of law in support of this submission.

55) Learned Counsel appearing for the petitioner and learned Counsel for the University Grants Commission placed reliance on two separate communications of the Association of Indian Universities. In so far as the letter dated 29th November 2001 from the Association of Indian Universities to the University Grants Commission is concerned, a perusal of the said letter indicates that the University Grants Commission

has been conveyed that All India Association of Indian Universities had not given equivalence to Sangeet Alankar, Sangeet Nipun, and Sangeet Praveen of Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Bombay, and other three institutes as equivalent to Master's Degree in Music. However, vide a letter dated 26.07.2006 addressed by the Association of Indian Universities to Principal of the Yeshwant Mahavidyalaya, Nanded, which letter is relied upon by the learned Counsel for the petitioner is concerned, the said Yeshwant Mahavidyala was informed that association of Indian Universities had not granted recognition to Sangeet Alankar of Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai with Master's Degree in Music. The Association of Indian Universities has further informed that as per information of the said Association of Indian Universities, few universities in the country have recognized Sangeet Alankar Examination of Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai as equivalent to Master's Degree in Music. Dr.

Babasaheb Ambedkar Marathwada University has also recognized the said examination as equivalent to Master's Degree in Music. The candidate was allowed to appear in the UGC Examination. The Association of Indian Universities accordingly requested the Yeshwant Mahavidyala to decide the case in the context of the facts summarised in the said letter.

56) By a separate letter dated 3rd October 2006 the Association of Indian Universities had forwarded a copy of the said letter dated 26.07.2006 issued by the Association of Indian Universities to the Principal of Yeshwant Mahavidyalaya, Nanded to the petitioner herein in response to her letter dated 29.08.2006 addressed by her to the Association of Indian Universities. A perusal of the aforesaid correspondence clearly indicates that though Association of Indian Universities had conveyed that it had not granted equivalence to Sangeet Alankar of Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai, the said

association of Indian Universities has acknowledged the fact that some of the Universities in India have been recognizing the said Certificate in Sangeet Alankar Examination of Akhil Bhartiya Gandharva Mahavidyalaya Mandal, Mumbai including Dr.Babasaheb Ambedkar Marathwada University to Master's Degree in Music.

57] Regulation 2 of the University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of the University and institutions affiliated to it) Regulations, 1991, provides that no person shall be appointed to a teaching post in University or in any of institutions including constituent or affiliated colleges recognized under Clause (f) of Section 2 of the University Grants Commission Act, 1956, or in an institution deemed to be a University u/s 3 of the said Act in a subject if it does not fulfill the requirement as to the qualifications for the appropriate subjects as provided in the Schedule I. The proviso to said

Regulation provides that any relaxation in the prescribed qualifications can only be made by a University in regard to the post under it or any of the institutions including constituent or affiliated colleges recognized under Clause (f) of Section 2 of the said Act or by an institution deemed to be a University u/s 3 of the said Act with the prior approval of the University Grants Commission.

58] Schedule I prescribes the minimum qualifications for the post of Professors, Readers, Lecturers in subjects other than Fine Arts, Management, Engineering and Technology in Universities or colleges for appointment of persons through open advertisement and for promotion of persons as Reader and placement in Selection Grade Lecturer and Senior Scale Lecturer. Clause 3(c) of the Schedule I provides the minimum qualification insofar as the post of Lecturer in Music is concerned. The qualification provided is as under:-

“(c) Music - Good academic record with at least 55% marks or an equivalent grade at Master's degree level in relevant subject or an equivalent degree from an Indian / Foreign University.

Candidates besides fulfilling the above qualifications should have cleared the eligibility test for Lecturers conducted by UGC, CSIR or similar test accredited by the UGC.

A traditional or a professional artist with a highly commendable professional achievement in the subject concerned.”

59] A conjoint reading of the aforesaid provision clearly indicates that the qualification for a teaching post in the University is clearly provided in the said Regulations, which can be decided only by the University. The concerned University has already accepted and declared the certificate/degree in 'Sangit Alankar' issued by the respondent no.7—Akhil Bhartiya Gandharva Mahavidyalaya Mandal,

Bombay, as equivalent to post graduate degree of M.A. in Music. The learned counsel for the University Grants Commission could not point out any other provision in support of his submission that the qualification for a Lecturer or any other teaching faculty to be appointed by the respective Universities could also be decided only by the University Grants Commission and more particularly a condition for eligibility for appearing in the NET test being conducted by the University Grants Commission.

60] We are of the view that the University in this case had clearly decided the qualification and the equivalence of the certificate issued by the respondent no.7 as equivalent to post graduate degree of M.A. in Music and thus the University Grants Commission could not have refused to issue a certificate of passing the NET test by the petitioner.

61] In our view, the petitioner has thus

made out the case for grant of reliefs as prayed in the writ petition. We therefore, pass the following order :-

ORDER

(I) Writ Petition No.6627 of 2006 is allowed. Rule is made absolute in terms of prayer Clauses (A),(B),(D) and (E).

(II) In view of disposal of Writ Petition No.6627 of 2006, Civil Application Nos.16045 of 2015 and 12693 of 2016 do not survive and are accordingly disposed of.

(III) No order as to costs.

(SUNIL K. KOTWAL, J.)

(R.D. DHANUKA, J.)

spt