

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2824 OF 2015

Miss Sanjivani Shripati Kamble
Age: 36 years, Occ: Service,
A/p. Shahunagar (Parite), Tal-Karvir,
Dist. Kolhapur

..... Petitioner.

V/s

- 1) The State of Maharashtra
Through the Secretary
Higher and Technical Education
Dept. Mantralaya, Mumbai.
- 2) The Joint Director
Higher Education, Mah. State,
Central Building, Pune.
- 3) Registrar,
Shivaji University Kolhapur
Through Director
Board of College and University.
- 4) The President
Parampoojya Swami Vivekanand
Sevarsharam Shikshan Sanstha, Shirala,
Tal. Shirala, Dist: Sangli.
- 5) The Principal
Baba Naik Mahavidhyalay, Kokrud,
Tal: Shirala, Dist: Sangli.
- 6) University Grants Commission
Bahadurshah Zafar Marg,
New Delhi-110002.

..... Respondents.

Mr. Mihir Desai, Senior Counsel i/b Mr. S. R. Ghanavat, Advocate for the
Petitioner.

Mr. C. P. Yadav, AGP for Respondent Nos. 1 and 2.

Mr. A. B. Borkar, Advocate for Respondent No.3.

Mr. S. D. Chavan i/b Mr. Vilas Zole-Patil, Advocate for Respondent Nos. 4 and 5.

Mr. R. A. Rodrigues, Advocate for Respondent No.6.

**CORAM : B. R. GAVAI &
SANDEEP K. SHINDE, JJ.
DATE : 6th NOVEMBER, 2017**

ORAL JUDGMENT (Per B. R. Gavai, J)

1] Rule. Rule made returnable forthwith. Heard by consent.

2] The Petitioner in the present Petition had initially approached this Court for a writ of mandamus for setting aside the communication dated 25th June 2014 and 16th February 2015 vide which it was held that the Petitioner was not eligible to be appointed as librarian. By way of amendment, the Petitioner has also challenged the order dated 1st August 2015 vide which the Respondent No.3 – University has decided that the Ph.D granted to the Petitioner by Manav Bharati University (Himachal Pradesh) cannot be considered to be equivalent with the Ph.D granted by the Respondent No.3 – University.

3] The facts in brief giving rise to the present Petition are as under :-

It appears that in response to the advertisement issued by the Respondent No.5 – college under the management of the Respondent No.4, the Petitioner had applied for the post of librarian. The necessary qualification for the said post was a clearance of NET/SET. However such of the candidates who acquired Ph.D. were exempted from the eligibility of NET/SET.

4] Admittedly, at the relevant time, the Petitioner had not cleared NET/SET. The Petitioner however had obtained Ph.D. from Manav Bharati University. The Selection Committee in its meeting dated 11th October 2012 found the Petitioner at Sr. No.1 in the list of merit. As such, the Respondent – Management had sought approval of the Respondent No.3 – University for appointment of the Petitioner. The approval was sought on the ground that the Petitioner possesses the Ph.D. degree. It is further pertinent to note that even prior to that appointment, the Petitioner was working in the Respondent No.5 college since 2009 on temporary basis. It appears that the Respondent No.3 – University did not decide the proposal as submitted by the Respondent No.5 college. It further appears that it was stand of the Respondent No.3

- University that the Ph.D. degree of the Petitioner was not equivalent to the Ph.D. granted by the Respondent No.3 – University. It appears that vide order dated 3rd August 2015 leave was granted by this Court to add University Grants Commission (“UGC”) as party Respondent. Vide subsequent order dated 21st March 2017 this Court directed the UGC to take a clear stand as to whether the Petitioner's Ph.D. degree is in conformity with UGC Regulations or not. It further appears that in the meantime the Respondent No.3 - University had referred the matter with regard to the equivalence of the Petitioner before the Equivalence Committee. Vide communication letter dated 1st August 2015, the Equivalence Committee found that the Ph.D. degree obtained by the Petitioner cannot be considered to be equivalent to the Ph.D. granted by Respondent No.3 – University.

5] In this background, we have heard the present Petition.

6] Mr. Mihir Desai, learned senior counsel appearing on behalf of the Petitioner referring to the judgment of the Division Bench of this Court, to which one of us (B. R. Gavai, J) was party in **Dr. Sanjay Tejbahadur Singh Vs. The Registrar, Savitribai Phule Pune University and others** in **Writ Petition No.6978 of 2015 decided on 26th July 2017** submits that the Respondent No.3 – University will have no jurisdiction to

go into the question of equivalence. He submits that in view of the aforesaid judgment, if Ph.D. degree is awarded by a University which is recognized by UGC, then the Respondent No.3 – University will have no other option, but to accept such a degree.

7] Mr. A. B. Borkar, learned counsel appearing on behalf of Respondent No.3 – University on the contrary would submit that the view taken by this Court in *Dr. Sanjay Tejbahadur Singh's* case is not a correct view. He submits that the Court has not noticed the judgment of the Apex Court in *Guru Nanak Dev University Vs. Sanjay Kumar Katwal and another reported in (2009) 1 SCC 610* and in the case of *Rajendra Prasad Mathur Vs. Karnataka University and another* reported in *1986 (Supp) SCC 740* while deciding the said case. It is therefore submitted that the view of this Court in *Dr. Sanjay Tejbahadur Singh's* case would be *per incurium* to the judgment in the *Guru Nanak Dev University's* case. He further submits that it is not clear from the judgment of the Division Bench of this Court in the case of *Dr. Sanjay Tejbahadur Singh's* case, as to whether the Pune University had similar powers, as are available with Respondent No.3 – University, in view of ordinance 14 and 15 of the ordinances.

8] We find considerable force in the submissions made by Mr. A. B. Borkar. It would be relevant to refer to ordinance 14 and 15 of the ordinances framed by the Respondent No.3 – University.

“O.14 There shall be a Standing Committee on Equivalence of Examination which shall consist of :

- 1) The Vice-Chancellor, Ex-officio (Chairman)
- 2) The Deans of Faculties.
- 3) The Registrar-Member-Secretary.

O.15 The Standing Committee on Equivalence of Examinations shall, on examining the syllabii and rules of admissions and standards of assessment of performance of examinees and standard of passing etc.; of the examinations of other Statutory Universities/Examining Bodies, consider the equivalence of Examinations with the corresponding examinations of this University and recommend to the Academic Council accordingly.”

9] It is further to be noted that in the case of *Guru Nanak Dev University's* case, Their Lordships observed thus in paragraph 15 :-

“15. The first respondent has passed his MA (OUS) from Annamalai University through distance education. Equivalence is a technical academic matter. It cannot be implied or assumed. Any decision of the academic body of the university relating to equivalence should be by a specific order or resolution duly published. The first respondent has not been able to produce any document to show that the appellant University has recognised MA (English) (OUS) of Annamalai University through distance education as equivalent to MA of appellant University. Thus, it has to be held that the first respondent does not fulfil the eligibility criterion of the appellant University for admission to the three year law course.”

It could thus be seen that the Apex Court in the said case has clearly held that the question of equivalence is the policy of academic expertise, the Court will not interfere in the said policy. A similar view is taken in the case of *Rajendra Prasad Mathur's* case.

10] In that view of the matter, we find that at least in so far as the Kolhapur University is concerned, in view of ordinance 14 and 15, it will have to be held that the Equivalence Committee appointed by the University will have a jurisdiction to go into the issue, as to whether the degree awarded by another University can be construed to be degree equivalent to the one issued by Respondent No.3 – University.

11] In that view of the matter, we have no hesitation in holding that Mr. A. B. Borkar is right in contending that the view taken in the judgment of this Court, to which one of us (B. R. Gavai, J) was a party, cannot be said to be a view, laying a correct proposition of law.

12] However, in view of the other developments, we find that it will not be necessary for us to go into the question as to whether the Ph.D. degree awarded to the Petitioner by Manav Bharati University can be considered to be equivalent to the one granted by the Respondent No.3 – University. Admittedly, even prior to the filing of the Petition, the

Petitioner had cleared her SET examination on 12th June 2014. It could thus be seen that the Petitioner possesses the necessary qualification to be appointed as librarian at least from 12th June 2014.

13] In that view of the matter, while not finding fault with the stand taken by the University, we find that in view of the peculiar facts and circumstances and also in the light of the course adopted by Their Lordships in the *Guru Nanak Dev University's* case, the Petitioner's appointment deserves to be approved from 12th June 2014. We are inclined to take this view, since the Petitioner has undergone the selection process conducted by a Selection Committee constituted as per law and found to be at Sr. No.1 in the order of merit. In that view of the matter, rule is made absolute by directing the University to grant approval to the Petitioner's appointment as a librarian with effect from 12th June 2014. The same shall be done within a period of four weeks from date.

[SANDEEP K. SHINDE, J.]

[B. R. GAVAI, J.]