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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 251 OF 2017

Mrs. Anala Pandit, aged 54 years)
 E-3, Prashant Co-operative Housing)
 Society, Senapati Bapat Marg,)
 Mahim, Mumbai – 4000016) Petitioner.

Versus

1] Director, Directorate of Technical)
 Education, Maharashtra, 3,)
 Mahanagarpalika Marg,)
 Mumbai – 400 001)
)
 2] State of Maharashtra, Through the)
 Secretary, Higher and Technical)
 Education Department, Mantralaya,)
 Mumbai.)
)
 3] Veermata Jijabai Technological)
 Institute, Through the Principal,)
 H.R. Mahajani Marg, Matunga (East))
 Mumbai – 400019)
)
 4] The Registrar,)
 University of Mumbai,)
 Fort, Mumbai – 400 032)
)
 5] All India Council for Technical)
 Education, Nelson Mandela Marg,)
 Vasant Kunj, New Delhi-110067) Respondents.

Mr. Mihir Desai, Senior Counsel alongwith Ms Saranga Ugalmugle, Mr Vinamra Koparia for the Petitioner.

Mr. A.L. Patki, Additional Govt. Pleader for Respondent Nos. 1 and 2/State.

Mr. Ashuthosh M. Kulkarni alongwith Mr. Sarthak Diwan for Respondent No.3.

Mr. P.M. Palshikar for Respondent No.4.

CORAM: B. R. GAVAI &
B. P. COLABAWALLA, JJ.

DATE: 8th JANUARY, 2018

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

1] Rule. Rule is made returnable forthwith. Respondents waive service. Heard finally, by consent of parties.

2] Petitioner has approached this Court, praying for quashing and setting aside the orders dated 05/11/2012 and 26/07/2016 passed by Respondent No.1, whereby Respondent No.1 refused to grant sanction to the appointment of the Petitioner as Assistant Professor.

3] Facts, in brief, giving rise to the present Petition are as under:-

4] Petitioner passed B.Sc. in Physics in First Class from Bombay University in 1981. Petitioner passed M.Sc. in Physics (Electronics) from Bombay University in First Class in 1983. She also obtained degree of M.S. in Electrical Engineering from University of Louisville, Kentucky, U.S.A in 1985. She further obtained degree of M.S. in Computer Science from the same University in U.S.A. in 2012. She obtained Ph.D. in Computer Science from the same University in U.S.A. in 2014.

5] Petitioner initially worked with Private Industry for a period of 10 years from 1985 to 1995. She joined Respondent No.3 – Central Technological Institute in Maharashtra State, which is an autonomous Institute, affiliated to University of Bombay, as a visiting faculty from August, 1995. She worked as full time lecturer with the said Institute from 1996 to 1999. On 10/05/1999, an advertisement was issued by the said Institute for the post of lecturer in Computer Applications. Petitioner was selected and appointed by duly constituted Selection Committee on 13/03/2000. However, since the post on which the Petitioner was appointed, was reserved for Scheduled Caste, the Petitioner was appointed on year to year basis. The appointment of the Petitioner was also approved by Respondent No.1. Petitioner was also granted two additional increments on 24/03/2000, since the Master Degree obtained by the Petitioner in the U.S.A. was treated as equivalent to Degree of Master of Electrical Engineering of Respondent No. 4 – University. Since the Petitioner was granted approval on year to year basis, she was required to undergo selection process every year. She therefore approached this Court by way of Writ Petition No.1456 of 2003. In the said Petition, in Notice of

Motion No.339 of 2003, an order came to be passed on 12/08/2003 that the Petitioner cannot be replaced by another ad-hoc candidate. In the said Petition, again, vide order dated 04/02/2005 in Notice of Motion No.20 of 2005, this Court observed that since an open category post was advertised, Petitioner should be continued on that post till disposal of the Petition. Petitioner was granted approval by the University vide Order dated 01/04/2005 with effect from 15/03/2000. Respondent No.1 also granted approval to the Petitioner vide order dated 11/07/2005 with effect from 03/03/2003, subject to final outcome of the Petition.

6] In the meantime, on 18/08/2007, Respondent No.3 – Institute issued an advertisement for the post of Assistant Professor in general category in the subject of Computer Applications. Petitioner came to be selected by duly constituted Selection Committee for the said post on 18/12/2007. As per selection, Petitioner came to be appointed from 07/01/2008. However, vide order dated 7/11/2012, the proposal for grant of approval to the Petitioner's appointment was rejected by Respondent No.1. Since Respondent No.3 – Institute was of the view that post-graduate degrees obtained by the Petitioner from

the University in U.S.A were equivalent to the Post-graduate degrees of Respondent No.4 – University, it forwarded the Certificates of the Petitioner to Respondent No.1. However, vide order dated 26/07/2016, approval again came to be rejected on the ground that the Petitioner's basic qualification of B.Sc. was not in the subject concerned. In this premises, the Petitioner has approached this Court, challenging the aforesaid two orders.

7] Heard Mr. Mihir Desai, learned Senior Counsel, appearing on behalf of the Petitioner, Mr. Ashutosh Kulkarni, learned Counsel appearing on behalf of Respondent No.3 as well as Mr. A.L. Patki, the learned Additional Government Pleader appearing on behalf of Respondent Nos. 1 and 2.

8] In the present case, Petitioner as well as the University and employer of the Petitioner i.e. Respondent No.3 – Institute have taken a stand that the Petitioner is duly qualified as per the norms laid down by Respondent No.5, which is a apex body in the field of technical education. They therefore submitted that the Petitioner, having been duly selected by duly constituted Selection Committee and the

Petitioner's appointment having been approved by Respondent No.3 – University, the impugned orders are not sustainable in law.

9] Mr. Patki, learned AGP appearing on behalf of the State, vehemently opposes the Petition. He submits that, Respondent No.3 – College is receiving grant-in-aid from the State Government. Learned AGP therefore submits that Respondent No.3 is bound to follow the Rules laid down by the State Government with regard to qualification prescribed by the State Government vide its Notification dated 05/09/2000. Learned AGP submits that though the Petitioner possesses requisite post-graduate degree and Ph. D. degree in the subject concerned, since she does not possess basic degree of B.Sc. in the subject concerned, approval has rightly been rejected. Learned AGP fairly submits that, if there is a conflict between the provisions framed by Respondent No.5 – AICTE and the State Government, the norms laid down by Respondent No.5 shall prevail. However, he submits that there is no apparent conflict between the provisions framed by the State Government and the rules framed by Respondent No.5.

10] A perusal of the Notification dated 05/09/2000, would reveal that the said Rules are titled as “ 'the Professor, Assistant Professor and Lecturer in Computer Engineering and Computer Science for post-graduate degree course in Master in Computer applications in Government Engineering Colleges (Recruitment) Rules, 2000”. Not only that, the Preamble of the said Rules itself, would reveal that the said Rules are framed for making appointment to the Maharashtra Engineering College Teacher's Service Group A in Government Engineering Colleges under the Higher and Technical Education Department of the Government of Maharashtra. Admittedly, Respondent No.3 – Institute is not a Government Engineering College as defined under the said Rules, though it may be receiving grant-in-aid from the State Government. Respondent No.3 is a Central Technological Institute in Maharashtra State, having an autonomous status and affiliated to Respondent No.4 – University.

11] We are therefore of the considered view that the said Notification would not be applicable to the appointment to be made by Respondent No.3. However, Respondent No.3 would be bound to follow the norms laid down by Respondent No.5 – AICTE, which is an

Apex Body in the field of technical education. It will be relevant to refer to the qualification prescribed by the AICTE for the first time by a Notification dated 05/03/2010. A perusal of the same, would reveal that the said Rules shall apply to technical institutions and Universities including deemed Universities imparting technical education and such other courses / Programs and areas as notified by the Council from time to time. In so far as subject is concerned, the relevant qualification would be found in the said Regulations as under:-

Faculty Norms

Programme	Cadre	Qualifications	Experience
.....			
MCA	Asstt. Professor	BE/BTech and ME/M. Tech in relevant branch with First Class or equivalent either in BE/BTech or ME/MTech OR BE/BTech and MCA with First Class or equivalent in either BE / BTech or MCA OR MCA with first class or equivalent with two years relevant experience.	

Not only this, Respondent No.5 – AICTE has also issued further Notification dated 04/01/2016, the relevant portion of which, reads

thus :-

A. ISSUES RELATED TO QULAIIFICATION

Sr No	Issue	Clarification
1	Whether a person with under mentioned qualification is eligible for CAS and/or for Appointment as faculty in Degree and Diploma level Technical Institutions. (a) MC/M.Sc in Mathematics/ Physics/ Electronics / Computer Science and allied subjects with ME/M. Tech/Ph. D in Computer Science/ Information Technology to teach in Computer Science, IT & Engg. Courses. (b) M. Sc. (Electronic Science) and M.E. (ET&T) qualification. (c) Master of Science in Information Technology (M.Sc. IT) to teach in CSE program.	The Institutions should not consider these qualification for direct recruitment for faculty position, at any level of post from the date of publication in Official Gazette (i.e. AICTE Regulations, 2010). However, existing incumbents recruited as a faculty with these basic minimum qualifications prior to the issue of AICTE Regulations 2010 are to be considered for Career Advancement Scheme (CAS), subject to fulfilment of other eligibility criteria and higher qualification prescribed, if any, for various levels of posts.

12] It could thus be seen that the relevant qualification as prescribed by Respondent No.5 – AICTE for the post of Assistant Professor is that, either the candidate should have BE/BTech and ME/M. Tech in relevant branch with First Class or equivalent either in BE/BTech or ME/MTech. The candidate would also be qualified if he has BE/ BTech and MCA with First Class or equivalent in either BE / BTech or

MCA. It further provides that the candidate possessing Degree of MCA with first class or equivalent with two years relevant experience would also be qualified. Not only that, 2016 clarification would further reveal that the Institutions are required not to consider these qualifications for direct recruitment for faculty position, at any level of post from the date of publication in Official Gazette (i.e. AICTE Regulations, 2010). However all existing incumbents recruited as faculty with basic minimum qualifications, provided in clause -1 prior to the issue of AICTE Regulations, 2010 are to be considered for Career Advancement Scheme (CAS), subject to fulfilment of other eligibility criteria and higher qualification prescribed, if any, for various levels of posts.

13] In this background, it will be relevant to refer to the communication addressed by Respondent No.4 – University to the Petitioner on 05/03/2005, which reads as under:-

“With reference to your letter dated 3rd March 2005 requesting to issue equivalence certificate equating the M.Sc Physics (Electronics) degree course of this University as equated to the M.Sc degree course in Electronics, I am to inform you that the M.Sc degree in Physics (with specialisation in

Electronics) passed by you has been treated as equivalent to the M.Sc. Electronics degree.”

It could thus be clearly seen that Respondent No.4 – University has clearly certified that M.Sc. Degree in Physics with specialisation in Electronics passed by the Petitioner has been treated as equivalent to the M.Sc. Electronics degree. It will further be relevant to refer to the another communication of the University dated 16/12/1999 addressed to the Petitioners, which reads thus:-

“With reference to your letter dated 3rd November, 1999 in the matter of equivalence of the M.Sc in Electrical Engineering of the University of Louisville, U.S.A. with the M.E. Degree examination of this University, I am to inform you that the Master of Science in Electrical Engineering of the University of Louisville, U.S.A. is recognised as equivalent to the M.E. degree examination of this University for admission to the Higher course of study in this University.”

It could thus be clearly seen that Respondent No. 4 – University has, in unambiguous terms, certified that M.Sc in Electrical Engineering of the University of USA is equivalent with the M.E. Degree examination of Respondent No.4 – University. Not only that, the Association of Indian Universities has also granted similar certificate. However, we

need not go into the said certificate inasmuch as Respondent No.4 – University to which Respondent No.3 – College is affiliated has, in unambiguous terms, held degree obtained by the Petitioner to be equivalent to the degree of Respondent No.4 – University.

14] It will also be relevant to refer to the advertisement issued by Respondent No.3 in response to which the Petitioner has applied. The relevant portion of which reads as under:-

“ASSISTANT PROFESSOR

. **Qualification:** Ph. D. degree in any branch of Science / Engineering / Technology with first class degree at Bachelor's or Master's level in Computer Engineering / Technology

or

Ph.D. Degree in Computer Science with First Class in MCA

(desirable Ph D in Computer Science / Engineering / Technology)

. **Experience :** Three years experience or equivalent after Ph D”

It could thus be seen that the qualification prescribed by Respondent No.3 was Ph.D. Degree in any branch of Science / Engineering / Technology with first class degree at Bachelor's or Master's level in

Computer Engineering / Technology or Ph. D. Degree in Computer Science with First Class in MCA.

15] It is pertinent to note that the Selection Committee, which had selected the Petitioner, consisted of Respondent No.1 himself as well as his additional nominee in addition to other members of the Committee. The Selection Committee duly constituted, unanimously recommended name of the Petitioner for the post of Assistant Professor, subject to her completing Ph.D. within a stipulated period as per AICTE norms. Resolution would further reveal that since Respondent No.3 is an autonomous Institute, qualification as provided by Board of Governance of Respondent No.3 was found to be possessed by the Petitioner. It is not in dispute that the Petitioner has obtained a Degree of Ph.D. within a period prescribed by the AICTE. The only ground on which, according to Respondent No.1, the Petitioner is not qualified is that she does not possess B.Sc. Degree in the subject of Computer Applications.

16] As discussed hereinabove, Rules on which learned AGP relies, are the Rules governing the service conditions of the employees to be

employed in Maharashtra Engineering College Teacher's Service Group A in Government Engineering Colleges under the Higher and Technical Education Department of the Government of Maharashtra. Admittedly, Respondent No.3 is neither a Government Engineering College nor the post to which the Petitioner is selected falls in the Cadre of the Maharashtra Engineering College Teacher's Service Group A. We are therefore of the considered view that the relevant qualification would be as per the norms laid down by Respondent No.5 -AICTE, which Petitioner undisputedly possesses. Not only that, Respondent No.4 – University to which Respondent No.3 is affiliated, has already granted approval to the Petitioner's appointment on 29/04/2016 with effect from 07/01/2008. In this premises, we find the action of Respondent No.1 in refusing to grant approval to the Petitioner's appointment would not be sustainable.

17] In the result, the impugned orders dated 05/11/2012 and 26/07/2016 are quashed and set aside. Respondent No.1 is directed to grant approval to the appointment of the Petitioner, which was made from 07/01/2008 in pursuance to the recommendation of the Selection Committee dated 18/12/2007. The same shall be done

within a period of two weeks from today.

18] Rule is made absolute in the aforesaid terms.

19] At this stage, Mr. Patki, learned AGP, prays for stay to the order passed by this Court for a period of six weeks. Taking into consideration the view that we have taken, prayer is rejected.

(B. P. COLABAWALLA, J.)

(B. R. GAVAI, J.)