

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.11.2017

Delivered on : 14.03.2018

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition No.33964 of 2013

K.Bommi ... Petitioner
Vs.

1.Teachers Recruitment Board,
Represented by its Director,
4th Floor, EVK Sampath Building,
College Road,
Chennai - 600 006.

2.The Principal Secretary to the Government
of Tamil Nadu,
Higher Education Department,
Fort St. George,
Chennai - 600 009.

... Respondents

(2nd respondent impleaded as per order
Dt. 5.4.2016 in M.P.No.1 of 2015)

PRAYER : Petition under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records of the second respondent in G.O.Ms.No.412, Higher Education Department, dated 07.12.2009 and G.O.Ms.No.32, dated 08.03.2013 issued by the second respondent and quash the same in so far as the same grants 9 marks to the holders of Ph.D. and consequently direct the respondents 1 and 2 to either reduce the marks awarded to Ph.D holders from 9 to 5 marks or in the alternative grant 9 marks to the M.Phil holders with SLET/NET qualifications for appointment as Assistant Professors in Tamil Nadu Collegiate service for Government Arts and Science Colleges and grant the marks for the Teaching experience as Assistant Professor in the Rajan Serfoji Government College (Autonomous), Thanjavur from 01.07.2005 in respect of the selection to the post of Assistant Professor and consequently appoint the petitioner in the said post. (Prayer amended as per the order dated 27.02.2015 in M.P.No.2 of 2015)

For Petitioner : Mr.P.Srinivas
For Respondents : Mr.K.Venkatramani
Additional Advocate General
Assisted by
Mr.R.Govindasamy
Special Government Pleader

ORDER

This writ petition has been filed seeking issuance of a writ of certiorarified mandamus calling for the records of the second respondent in G.O.Ms.No.412, Higher Education Department, dated 07.12.2009 and G.O.Ms.No.32, dated 08.03.2013 issued by the second respondent and quash the same in so far as the same grants 9 marks to the holders of Ph.D. and consequently direct the respondents 1 and 2 to either reduce the marks awarded to Ph.D holders from 9 to 5 marks or in the alternative grant 9 marks to the M.Phil holders with SLET/NET qualifications for appointment as Assistant Professors in Tamil Nadu Collegiate service for Government Arts and Science Colleges and grant the marks for the Teaching experience as Assistant Professor in the Rajan Serfoji Government College (Autonomous), Thanjavur from 01.07.2005 in respect of the selection to the post of Assistant Professor and consequently appoint the petitioner in the said post.

2. The case of the petitioner is that she obtained M.Phil. degree from Alagappa University in the subject of Computer Science through Distance Education System in the year 2005 after completing his PG degree in M.Sc. Computer Science. The petitioner applied for the post of Assistant Professor in Computer Science in response to the Advertisement No.4 of 2013 dated 28.05.2013 of the first respondent and she was called for certificate verification on 04.12.2013. During the evaluation of the certificates, it is alleged that, due weightage for her educational qualifications were not given.

3. According to the petitioner, she has not been given the correct marks, in view of the fact that the marks for the Ph.D. have not been included on the ground that the degree was obtained in correspondence mode and not in the regular stream and that the petitioner has been awarded only 7 marks in the recruitment process apart from the marks in the interview. Due to the aforesaid act of the first respondent, her chances for selection to the post of Assistant Professor are affected. According to the petitioner, she is entitled to 15 marks for experience in teaching and 6 marks for the educational qualification, totalling 21 marks. On the other hand, she was awarded only 7 marks. The petitioner's experience in teaching being consequent upon the M.Phil degree, the same has been totally ignored.

4. The grievance of the petitioner is that prior to 2006, the Universities have been offering the courses in M.Phil and Ph.D in correspondence stream and the said degrees are accepted for all purposes. Only after the instructions dated 29.08.2006 of the Government issued to the Universities and based on the said instructions the Universities seem to have stopped the offer for the said degrees in the distance education stream and thereafter, the said degrees are not issued. In respect of the degrees issued prior to the said instructions, for all purposes, the degrees have to be accepted. The degrees issued prior to the instructions/letter dated 29.8.2006 are binding upon the State. Now, the first respondent, being an instrumentality of the second respondent, the Government cannot turn around to say that all the Ph.D. and M.Phil degrees obtained under the distance education stream cannot be honoured.

5. Pending writ petition, the petitioner sought amendment of the prayer and the same was allowed by this Court. As per the amended prayer, the petitioner sought to quash G.O.Ms.No.412, dated 07.12.2009 and G.O.Ms.No.32, dated 8.3.2013 and consequently seek appointment in the post of Assistant Professor.

6. Resisting the writ petition, the first respondent filed the counter stating that awarding of marks for education qualification is the policy decision of the Government and the averments of the petitioner to quash G.O.Ms.No.412, dated 07.12.2009 is not feasible of compliance either on merits or in accordance with law. The Government vide G.O.Ms.No.32, dated 08.03.2013, issued orders prescribing the criteria for awarding of marks during conduct of the interview for selection of Assistant Professors in Government Arts and Science Colleges and Colleges of Education through Teachers Recruitment Board apart from awarding marks for teaching experience (15 marks) and higher qualification (9 marks) as per G.O.Ms.No.412, dated 07.12.2009. It is stated that in a similar writ petition being W.P.No.3474 of 2011 filed by the NET/SLET Association challenging the G.O.Ms.No.412, dated 07.12.2009 was dismissed by this Court. It is also stated in the counter that in W.A.Nos.126 and 127 of 2015 against the orders of this Court in W.P.Nos.25114 and 25621 of 2014, dated 18.11.2014 filed by V.Vidhya and 3 others for the similar prayers, a Division Bench of this Court had dismissed both the writ appeals.

7. I heard Mr.P.Srinivas, learned counsel for the petitioner and Mr.K.Venkatramani, learned Additional Advocate General Assisted by Mr.R.Govindasamy, learned Special Government Pleader appearing for the respondents. Perused the materials available on record.

8. Learned counsel for the petitioner submitted that the impugned Government Orders have been passed without adhering to

the UGC norms that are governing standards for filling up of the posts of Professors and Assistant Professors etc. in higher education. He further submitted that awarding of marks to the Ph.D. holder higher than the candidates who hold the additional qualification of SLET/NET is illegal. Learned counsel would further submit that while the M.Phil holders are required to have the SLET/NET qualification, they are given only 6 marks, whereas the Ph.D. candidates despite not having the SLET/NET qualification are given higher marks of 9. This results in an illegal advantage to the Ph.D. holders.

9. In the case on hand, the petitioner obtained M.Phil Degree from the Alagappa University in the year 2005, of course in the Distance Education System. It is beyond any cavil that prior to 2006, the Universities have been offering the courses in M.Phil. and Ph.D. in correspondence stream and the said degrees were accepted for all purposes. It is seen from the records that only after issuance of Letter (Ms) No.268, Higher Education (K2) Department, dated 29.08.2006, the Universities have stopped to offer the said degrees by distance education stream. Thereafter, by another government order in G.O.Ms.No.91, Higher Education (K2) Department, dated 03.04.2009, the Government declared M.Phil. and Ph.D. Degrees obtained through Correspondence/Distance Education/Open University system as ineligible for appointment.

10. Admittedly, the petitioner obtained the Degree of M.Phil. in Computer Science during March, 2005 from Alagappa University, prior to the issuance of Letter (Ms) No.268, Higher Education (K2) Department, dated 29.08.2006 and consequential G.O.Ms.No.91, Higher Education (K2) Department, dated 03.04.2009. It is specifically stated in the counter affidavit that the petitioner was admittedly granted six marks for her M.Phil. Degree. That apart, she was granted 14 marks for teaching experience and 8 marks for interview. In all, the petitioner was awarded 28 marks. Therefore, the non consideration of his M.Phil Degree cannot really be agitated by the petitioner, as due weightage of marks was already given having regard to the said qualification.

11. In any event, it is the grievance of the petitioner that when the petitioner who possesses M.Phil. with SLET/NET is being awarded six marks, the candidate with Ph.D., even without SLET/NET is being granted 9 marks and such condition is violative of Article 19(1)(g) of the Constitution of India.

12. This Court is at a loss to understand as to what is the rationale behind placing a person with M.Phil with SLET/NET below a person with Ph.D. without SLET/NET. It is true that the UGC Regulations provide that holders of Ph.D. need not pursue SLET/NET, but that, in itself, does not confer added advantage

to Ph.D. holders in claiming three marks over and above candidates with M.Phil. with SLET/NET. No record or particulars have been placed before this Court giving details as to on what basis such marks for candidates with M.Phil. with SLET/NET or Ph.D. have been prescribed. The difference in marks ought to have been one or two, instead of three, which protects the right of a person, who is also highly qualified with M.Phil. with SLET/NET.

13.In the above circumstances, the writ petitioner has make out the case before this Hon'ble Court and his candidature should be considered by giving appropriate marks to the petitioner for M.Phil. degree in Computer Science issued by the Alagappa University by awarding marks for the teaching experience, the Assistant Professor, Raja Bahadur College (Autonomous), Thanjavur from 01.07.2005.

14.In the result:

(a) this writ petition is allowed;

(b) the respondents are directed to give appropriate marks to the petitioner for the M.Phil. degree in Computer Science issued by the Alagappa University and also award marks for the Teaching experience as Assistant Professor in Rajah Serfoji Government College (Autonomous), Thanjavur from 01.07.2005 in respect of the selection to the post of Assistant Professor and appoint the petitioner as Assistant Professor under the 1st respondent;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, all connected miscellaneous petitions are closed.

vs

Sd/-

सत्यमेव जयते
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

To

1.The Director,
Teachers Recruitment Board,
4th Floor, EVK Sampath Building,
College Road,
Chennai - 600 006.

2.The Principal Secretary to the Government
of Tamil Nadu,
Higher Education Department,
Fort St. George,
Chennai - 600 009.

+1CC to Mr.P.Srinivas, Advocate in SR.NO. 19378

Pre-Delivery order made in
W.P.No.33964 of 2013

MLT-27/03/2018



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