



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A. (MD) Nos.1345 and 500 of 2017 and
CMP (MD) Nos.9546 and 4272 of 2017 in
W.P. (MD) No.1319 of 2017

WA (MD) No.1345 of 2017:

The Secretary,
The Arul Anandar College (Autonomous)
Karumathur,
Madurai - 625 514.

... Appellant/6th Respondent**vs.**

1. A.Michaelraj
Assistant Professor of Commerce,
Arul Anandar College,
Karumathur, Madurai.
 2. The Secretary to the Government,
Higher Education Department,
Fort St. George, Chennai - 6.
 3. The Director of Collegiate Education,
College Road, Chennai - 6.
 4. The Joint Director of Collegiate Education (Finance),
Collegiate Education, Chennai.
 5. The Joint Director of Collegiate Education,
Madurai Region, Madurai.
 6. The Madurai Kamaraj University,
rep.by its Registrar,
Palkalai Nagar, Madurai.
- : Respondents/1 to 5 Respondents

WA (MD) No.500 of 2017:

A.Michaelraj
Assistant Professor of Commerce,
Arul Anandar College,
Karumathur, Madurai.

.. Appellant/Petitioner



vs.

1. The Secretary to the Government,
Higher Education Department,
Fort St. George, Chennai - 6.

2. The Director of Collegiate Education,
College Road, Chennai - 6.

3. The Joint Director of Collegiate Education (Finance),
Collegiate Education, Chennai.

4. The Joint Director of Collegiate Education,
Madurai Region, Madurai.

5. The Madurai Kamaraj University,
rep.by its Registrar,
Palkalai Nagar, Madurai.

6. The Arul Anandar College (Autonomous)
rep.by its Secretary,
Karumathur, Madurai.

... Respondents/Respondents

Common Prayer : Appeals filed under Clause 15 of the Letter Patent Act against the order passed in W.P.(MD)No.1319 of 2017 dated 03.03.2017.

Prayer in WP(MD). 1319/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the communication of the 3rd respondent made in Na.Ka.No. 35044/G4/2016 dated 28.11.2016 to the 5th respondent and consequential order passed by the 5th respondent university made in Ref. Dean CDC/MKU/2016 dated 15.12.2016 as well as the communication of the 4th respondent made in Na.Ka.No. 8515/Oo2/2016 dated 12.01.2017 to the 6th respondent and quash the same.

WA(MD)No.1345 of 2017

For Appellant :	Mr.M.Ajmalkhan Senior Counsel for Mr.S.Saji Bino
For R1 :	Mr.D.Sadiq Raja
For R2 to R5 :	Mr.K.Saravanan Government Advocate
	Mr.K.P.Krishnadoss

**WA(MD)No.500 of 2017:**

For Appellant : Mr.G.Prabhu Rajadurai
for Mr.D.Sadiq Raja
For R1 to R4 : Mr.K.Saravanan
Government Advocate
For R6 : Mr.M.Ajmalkhan
Senior Counsel
for Mr.S.Saji Bino
For R5 : Mr.K.P.Krishnadoss

COMMON JUDGMENT

[Judgment of the Court was delivered by M.M.SUNDRESH, J.]

Since these two appeals arise out of the order passed by the learned Single Judge at the instance of two appellants, we propose to dispose them by a common judgment.

2.For the sake of brevity, the appellant in WA(MD)No.500 of 2017 is taken up as such.

3.The appellant cleared M.Com., with 50.6% in the year 1998 after completing B.Com., in the year 1995. Thereafter he did his M.Phil., simultaneously. He started his Ph.D., course along with another M.Com., degree. For the Ph.D., course he has applied in the year 2009. He had obtained 63.1% in M.Com., and while acquiring P.hd., in the year 2012, he was appointed as an Assistant Professor with the appellant in W.A(MD)No.1345 of 2017 by the order dated 17.09.2012.

4.The appellant's appointment was approved by the respondent university. However, based upon the query raised by the Government authorities, the stand was reversed. Challenging the orders passed by the university and Government authorities, the writ petition was filed.

5.The learned Single Judge while holding that the second post graduate degree is equivalent to the one obtained earlier, as the decision to make it equivalent would relate back retrospective effect, nonetheless, dismissed the writ petition on the ground that the appellant did not obtain his Ph.D., with the qualification at 55% in the post graduation completed in the year 1998. In other words, notwithstanding the subsequent post graduation done with 63.1%, earlier Ph.D., was completed with the first post graduation which was cleared with 50.6%, the appellant is not eligible to the post of Assistant Professor.

6.To consider the issue, let us place on record the



relevant regulation governing, which reads as under:

"4.4.0. Assistant Professor:

4.4.1. Arts, Humanities, Sciences, Social Sciences, Commerce, Education, Languages, Law, Journalism and Mass Communication

(i) Good academic record as defined by the concerned university with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign university.

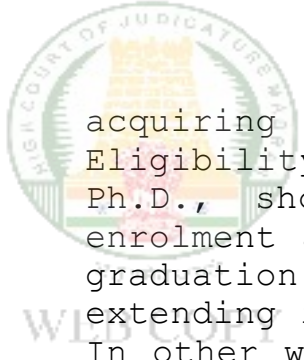
(ii) Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET.

(iii) Notwithstanding anything contained in sub-clauses (i) and (ii) to this Clause 4.4.1, candidates, who are or have been awarded a Ph.D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for award of Ph.D. Degree) Regulations, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions.

(iv) NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not conducted."

7. On a reading of the aforesaid provision, two things are clear. One is the eligibility of 50% in the post graduation along with the clearance of National Eligibility Test. The other is dispensing with the National Eligibility Test, when a candidate acquires Ph.D., degree. Therefore, when Ph.D., degree is obtained, qualification required by acquiring the National Eligibility Test which is no longer warranted. Therefore, acquiring Ph.D., will have the effect of giving exemption to the clearance of National Eligibility Test. To put it differently, there is no qualification required as Ph.D., but such acquisition will have the effect of not having the qualification acquiring National Eligibility Test.

8. The learned Single Judge by reading the aforesaid provision, has held, in our considered view wrongly, that mandates a Ph.D., degree obtained with the qualification of 55% in the post graduation. We are unable to find such clause, as sought to be interrupted. To be noted, for the eligibility to make an entry to Ph.D., what is required is 50% at the post graduation level. There is no doubt that qualification is a matter between the employer and employee. However, such a qualification is governed by the rules and regulations applicable. Once we hold that



acquiring Ph.D., merely exempts the clearance of National Eligibility Test, there is no difficulty in holding that such a Ph.D., should be preceded with 55% to be obtained for its enrolment at the post graduation level. Acquiring 55% at the post graduation level to be made eligible for the post is one thing and extending it, thereafter reading it into Ph.D., course is another. In other words, if interpretation sought to be given is accepted, notwithstanding the Ph.D., degree obtained, the same will not be taken note of for dispensing with the clearance of National Eligibility Test, since the candidate concerned has secured 55% for admitting as Ph.D., student. We are quite conscious of the fact that in academic matters role of the Court is limited. However, there cannot be any insistence of a qualification which is not available in specific terms. In the case on hand, admittedly, the appellant has obtained 63.1% in the post graduation course. Secondly, this post graduation was accepted as an equivalent as rightly held by the learned Single Judge. The appellant has been working as an Assistant Professor from the year 2012 onwards. Thus, looking from any perspective, we are of the view that the order of the learned Single Judge cannot be sustained in the eye of law.

9. Accordingly, the orders impugned which are the subject matter in the writ petition stand set aside. Consequently, the respondents are directed to approve the appointment of the appellant. The needful shall be done within a period eight weeks from the date of receipt of a copy of this order.

10. The writ appeals are allowed. No costs. Consequently, CMP(MD) Nos. 9546 and 4272 of 2017 are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Secretary to the Government,
Higher Education Department,
Fort St. George, Chennai - 6.
2. The Director of Collegiate Education,
College Road, Chennai - 6.
3. The Joint Director of Collegiate Education (Finance),
College Road, Chennai - 6.



4. The Joint Director of Collegiate Education,
Madurai Region, Madurai.

+ 1 CC TO Mr.S.SAJI BINO, ADVOCATE IN SR No. 86264

+ 1 CC TO Mr.D.SADIQ RAJA, ADVOCATE IN SR No. 86122

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 86378

MJ

TE/PM/SAR-4 : 01/11/2018 : 6P/8C

W.A. (MD) Nos.1345 and 500 of 2017
24.09.2018