

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

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WRIT PETITION NO. 11178 of 2018
WITH
CIVIL APPLICATION No. 4163 of 2019
IN
WRIT PETITION NO. 11178 of 2018

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1. Dr. Naveed-Us-Sahar,
age 56 years occupation service
R/o Plot No. 71, National Colony,
Opposite Maulana Azad College,
Harsool road, Aurangabad
2. Smt. Khan Waheeda Haroon,
age 51 years occupation service
R/o N-13, Plot No. 2/13/60, Geeta Nagar,
opposite Baitul Aman, National Colony,
opposite Maulana Azad College,
Harsool road, Aurangabad
3. Dr. Mirza Mahefooz Baig S/o Qamer Baig,
age 43 years occupation service
R/o Flat No. 8, second floor, Akhtar Plaza,
Azam Colony, Roshan Gate, Aurangabad
4. Dr. Talat Naseer Mohd. Naseer Ahmed,
age 56 years occupation service
R/o Jubilee Park, Aurangabad

...Petitioners

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Versus

1. Maulana Azad Education Society,
Rauza Baug, Aurangabad
through its President.
2. The Principal,
Maulana Azad Education Society's
Marathwada College of Education,
Rauza Baug, Aurangabad

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3. The Joint Director of Higher Education (Grants),
Aurangabad Region, Station road,
near Deogiri College, Aurangabad
- 5 4. The Director of Higher Education,
Maharashtra State, Central Building,
Camp, Pune 411 001
- 10 5. The State of Maharashtra
through its Principal Secretary,
Higher & Technical Education Department,
Mantralaya, Mumbai 400 032
- 15 6. The University Grants Commission,
Bahadurshah Jafar Marg,
New Delhi 110002
through its Secretary. ..Respondents.
- 20 *Mr. Ajay S. Deshpande, Advocate for petitioners*
Mr. Amol N. Kakade, Advocate for respondents No.1 & 2
Mr. S.P. Tiwari, Asstt. Govt. Pleader for Respts.No.3 to 5
Mr. S.B. Deshpande, Asstt. Solicitor General for Respt.No.6
Mr. Sushant V. Dixit, Adv. for applicant in C.A. No. 4163/2019
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CORAM : S.V. GANGAPURWALA &

AVINASH G. GHAROTE, JJ.

30 **Reserved on : 28 November, 2019**

Pronounced on : 3 December, 2019

35 **J U D G M E N T : (Per : AVINASH G. GHAROTE, J.)**

1. Rule. Rule made returnable forthwith. Heard learned
Counsel for the parties finally with their consent.

2. The Marathwada College of Education provides courses in Education i.e. Bachelor of Education and Master of Education. The petitioners were appointed as Assistant/Associate Professors in Education. Approval was granted by the concerned Authorities to their appointments. Services of the petitioners were terminated by the management. Challenge by way of appeals before the University and College Tribunal, Aurangabad, vide judgment dated 27/04/2017 was successful with directions that the petitioners be reinstated with full back wages. The contention that the petitioners were not qualified for being appointed as per the University Grants Commission (hereinafter referred to as "UGC" for short)/National Council for Teacher Education(for short "NCTE") Regulations, as they did not have 55% marks in the Master's Degree level in the relevant subject, was rejected, on the ground that all of them had more than 55% marks in M.Ed. Degree. Challenge to the judgment of the University and College Tribunal by the management, by way of writ petitions, was given up on account of the compromise between the management and the petitioners. No petition has been filed by the respondents No. 3 to 5 against the judgment of the University and College Tribunal, though a statement is made that they intend to do so.

3. The management, consequent to the judgment of the Tribunal, reinstated the petitioners on duties as Assistant/Associate Professor in Education, vide orders dated 16/02/2018, to which approval has been accorded by the Dr. Babasaheb Ambedkar Marathwada University, Aurangabad. Thereafter inspite of requests that the names of the petitioners be included in *Sevarth Pranali* (सेवार्थ प्रणाली), the same having not been done, resultant to which, they are not getting their salary, therefore, the present petition has been filed.

4. Mr. S.P. Tiwari, learned Assistant Government Pleader appearing for the respondents No. 3 to 5, and Mr.S.V. Dixit, learned Counsel for the applicant in Civil Application No. 4163/2019 relying upon the case of ***Prit Singh Vs. S.K. Mangal and others, 1993 (Supplement) 1 SCC 714***, and ***Dr. M.S. Mudhol and another Vs. S.D. Halegkar and others (1993) 3 SCC 591***, have opposed the petition on the ground that the UGC/NCTE Regulations require 55% marks at the Master's Degree level in the relevant subject, which being absent, the petitioners were not qualified to be appointed. They lay great stress on the difference between 'Academic Qualification' and 'Professional Qualification' and submit that one cannot replace the other. They contend that marks secured by the petitioners in M.Ed. Degree ought not to have been

considered by the Tribunal for holding the petitioners qualified.

5. By an order dated 29.04.2019, we had requested Mr. S.B. Deshpande, learned A.S.G. to assist us with regard to qualification for the post of erstwhile lecturer, now Assistant Professor as the qualification as required prior to 2009 i.e. those appointed upto the year 2008 was in dispute. We had requested the learned A.S.G. to file an affidavit on behalf of the UGC clarifying qualification for the post of lecturer and elucidating the clause 1.3.3 of UGC Regulations, 2000, in pursuance to which, the respondent No.6 / UGC has filed affidavit in reply on 6th November 2019. Paras 2 to 5 of the same being material are reproduced as under :

15 "para -2. I say and submit from perusal of the petition, it appears that the petitioner No.2 joined service on 28.04.2008, petitioner No.3 joined service on 02.07.2005 and petitioner No.4 joined service with respondent No.2 College on 26.06.2017. I say and submit that at that particular point of time, the UGC Regulations, 2000, regarding minimum qualification were applicable. Subsequently, the National Council for Teachers Education framed Regulations in the year 2005.

25 Para-3. I say and submit that UGC Regulations, 2000 in clause 1.3.0 onwards provided as below :
HUMANITIES, SOCIAL SCIENCES, SCIENCES,
COMMERCE EDUCATION, PHYSICAL EDUCATION,
FOREIGN LANGUAGES AND LAW.

30 Para-4. I say and submit that in UGC Regulations 2000 "Education" is considered a separate faculty. This can be gathered from the fact that other faculties such as Humanities, Social Sciences, Sciences,

Commerce and Law and separately defined in addition to "Education" and "Physical Education". IN UGC Regulations 2000, Clause 1.3.3 '*in the relevant subject*' is mentioned. In the faculty of Education, many subjects considering education may fall. I, therefore, submit that "Education" should be considered as relevant subject and, therefore, if a person qualifies with at least 55% marks at the Master's Degree level in "Education", he is eligible to be appointed as lecturer. I humbly say and submit that no other interpretation is possible.

Para-5. M.A. & M.Ed are the UGC specified degrees as per UGC Notification on Specification of Degrees and Equivalency of Degrees is not determined by UGC. In this regard has issued a Public Notice No. F.9-3/2016 (CPP-II) dated 19.06.2016).

6. There cannot be any digression with the law as laid down by the Hon'ble Apex Court in **Prit Singh** and **Dr. M.S. Mudhol** (supra), regarding the distinction between an 'Academic Qualification' and 'Professional Qualification', however, considering that the Marathwada College of Education imparts education in B.Ed. and M.Ed. courses, for which the petitioners are appointed, 'Education' has rightly been held to be a separate subject by the Tribunal, and the petitioners having secured more than 55% marks therein, have been correctly held to be duly qualified. The NCTE Regulations also prescribe 55% marks in M.Ed./M.A. (Education) as the qualifying criteria. The respondent No.6 has also taken the stand that 'Education' is considered as a separate faculty and the expression 'in the relevant subject' would mean 'Education' and if a

person qualifies with at least 55% marks at the Master's Degree level in 'Education', he would be eligible to be appointed as a Lecturer, which supports the findings as rendered by the Tribunal. The expression 'Master's Degree....in one of the subjects taught in the college...' has been considered by the Hon'ble Apex Court in a case of **Dr. Ram Sevak Singh Vs. Dr. U.P. Singh and others, (1999) 2 Supreme Court Cases 189**, as under:

"7. Therefore, the principal question that falls for consideration is whether M.Ed degree possessed by the appellant was a qualification for the purpose of appointment as Principal. In **Dr. Prit Singh** the qualification required was a Master's Degree in any subject and also a degree in education, whereas in the present case the qualification required is Master's Degree or an equivalent degree in one of the subjects taught in the college or in a subject allied or interconnected therewith. The distinction between the requirement of qualification in these two cases is obvious. In **Dr. Prit Singh** the required qualification as a Master's Degree and a degree in education as an additional qualification. In the present case, the College imparts education in teaching as well and, therefore, Master's Degree in Education is a degree in respect of a subject taught in the College. We cannot apply the ratio settled in **Dr. Prit Singh** irrespective of the qualifications required for a

particular post. In the present case a Master's Degree required can include a teaching subject and, therefore, M.Ed degree possessed by the appellant was held to be a sufficient qualification by the Commission. It cannot be said that the principles stated by this Court in **Dr. Prit Singh** can be applied in the present case because in **Dr. Prit Singh** the qualifications were a Master's Degree and degree in education, whereas in the present case a Master's Degree in any subject taught in the college was the requisite qualification. We think the appellant satisfied the same. In regard to other qualification of "consistently good academic record" which has been relaxed, this has not been seriously disputed."

7. In the present case, the NCTE Regulations, 2002 prescribe the qualifying criteria to be :

" 5. Qualifications of teaching staff:

(b) Lecturer : Good academic record with M.Ed./ M.A. (Education) with 55% marks;

OR

Good academic record with Master's Degree with 55% marks in the relevant school subject and M.Ed./M.A. (Education) with 50% marks (B.Ed. in 2002 Regulations);

OR

Which clearly is fulfilled by the petitioner, considering 'education' to be a subject.

8. It will be apt to consider the objective of the National Council for Teacher Education.

"The National Council for Teacher Education, in its previous status since 1973, was an advisory body for the Central and State Governments on all matters pertaining to teacher education, with its Secretariat in the Department of Teacher Education of the National Council of Educational Research and Training (NCERT). Despite its commendable work in the academic fields, it could not perform essential regulatory functions, to ensure maintenance of standards in teacher education and preventing proliferation of substandard teacher education institutions. The National Policy on Education (NPE), 1986 and the Programme of Action thereunder, envisaged a National Council for Teacher Education with statutory status and necessary resources as a first step for overhauling the system of teacher education. The National Council for Teacher Education as a statutory body came into existence in pursuance of the national Council for Teacher Education Act, 1993 (No. 73 of 1993) on the 17th August, 1995). The main objective of the NCTE is to achieve planned and coordinated development of the teacher education system

throughout the country, the regulation and proper maintenance of Norms and Standards in the teacher education system and for matters connected therewith. The mandate given to the NCTE is very broad and covers the whole gamut of teacher education programmes including research and training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools, and non-formal education, part-time education, adult education and distance (correspondence) education courses."

9. This is further asserted from the Preamble to the National Council for Teachers Education Act, 1993, which reads as under:

"An Act to provide for the establishment of a National Council for Teachers Education with a view to achieving planned and co-ordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith."

Section 2(l) defines "Teacher Education" as under:

"2. Definitions

(l) "Teacher Education" means programmes of

5 education, research or training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools, and includes non-formal education, part-time education, adult education and correspondence education.” ;

and “teacher education qualification” in section 2(m) is defined as under:

10 “(m) “teacher education qualification” means a degree, diploma or certificate in teacher education awarded by a University or examining body in accordance with the provisions of this Act.”

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Under section 12(e) of the National Council for Teacher Education Act, 1993, one of the functions of the Council established under Section 3 of the Act of 1993, is to lay down norms for any specified category of courses or training in ‘teacher education’ including the minimum eligibility criteria for admission thereof and the method of selection of candidates, duration of the course, course contents and mode of curriculum. Under section 14 of the Act of 1993, the mode and method of recognition of institutions offering course or training in teacher education is laid down. Thus, it would be apparent that the NCTE under the Act of 1993, is primarily concerned with the imparting of education to teachers with a view to improve their

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standards in imparting education to students in turn. Thus, the contention of respondent No.6 that 'education' under the Regulations is a 'separate subject', is clearly borne out from the above.

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10. The reliance by the learned A.G.P. on the Shetkar Committee Report, is clearly misplaced, for the reason that the report ignores the above position, regarding the qualifications as prescribed for the post of Associate / Assistant Professor, which position stands admitted by respondent No.6, who in law is authorised to prescribe the qualifications. The reply on behalf of respondent No.6, categorically asserts that for the present purpose, "education" is considered as a separate faculty.

15 11. In the instant case, it is not in dispute that the petitioners have passed M.Ed. Degree with more than 55% marks. The respondent No.6 / UGC which is the Authority prescribing the qualifications, has stated 'education' to be a separate subject for the present matter. The petitioners have been appointed by the concerned Authorities as Assistant/Associate Professor in Education, as per their appointment order, approval to which has been granted by the concerned Authorities. The Marathwada College of Education, where they have been appointed, offers courses in B.Ed.

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and M.Ed. Degrees, in view of which, the pleas, as canvassed by the respondents No. 3 to 5 and learned Counsel Mr. S.V. Dixit, appearing for the applicant in C.A. No. 4163/2019, cannot be accepted.

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12. The petitioners, thus, having been reinstated in service, as per the judgment of the University and College Tribunal, Aurangabad, and considering that the challenge thereto on behalf of the management has been given up and no challenge has been raised at the behest of the respondents No.3 to 5, inspite of a statement of intent to do so, and so also the reinstatement having been approved by the concerned Authorities and the petitioners having commenced working on their respective posts, are clearly entitled to salary, which is due and payable as per the posts held by them.

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13. In the result, the petition succeeds and the respondents No. 3 to 5 are directed to include the names of the petitioners in the on-line system and further take steps to disburse their salaries, as due and payable to them.

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14. Rule is made absolute in the above terms.

15. In view of disposal of the writ petition, pending civil application stands disposed of.

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(AVINASH G. GHAROTE)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

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Madkar