

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Wednesday, the Twenty Fourth day of April Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE S.M. SUBRAMANIAM

WMP Nos.22979 and 22980 of 2018

IN WP.19535/2018

V.LEKHA

[PETITIONER IN BOTH THE PETITIONS]

Vs

1 THE CHAIRMAN, [RESPONDENTS IN BOTH THE PETITIONS]
UNIVERSITY GRANTS COMMISSION,
BAHADUR SHAH ZAFAR MARG,
NEW DELHI - 110002

2 THE SECRETARY
LAW DEPARTMENT,
FORT ST. GEORGE, CHENNAI - 9

3 THE MEMBER SECRETARY,
TEACHERS RECRUITMENT BOARD,
EVK SAMPATH BUILDINGS,
COLLEGE ROAD, CHENNAI - 6

4 THE DIRECTOR
DIRECTOR OF LEGAL STUDIES,
PURASAWALKKAM HIGH ROAD,
KILPAUK CHENNAI - 10

5 THE REGISTRAR,
THE TAMIL NADU DR. AMBEDKAR LAW UNIVERSITY,
NO. 5, GREEN WAYS ROAD, CHENNAI - 28

6 THE REGISTRAR,
THE TAMIL NADU NATIONAL LAW SCHOOL,
DINDIGUL MAIN ROAD, NAVALURKUTTAPPATTU,
TIRUCHIRAPPALLI - 620027

7 THE SECRETARY
BAR COUNCIL OF INDIA,
NO.21, ROUSE AVENUE,
INSTITUTIONAL AREA, NEW DELHI - 110002

8 THE SECRETARY

BAR COUNCIL OF TAMIL NADU & PUDUCHERRY,
MADRAS HIGH COURT CAMPUS, CHENNAI - 104

Petitions praying that in the circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to

(i) To grant an order of stay of operation of and all further proceedings pursuant to the impugned Notification No. 2/ 2018 dated 18.07.2018 issued by 3rd respondent the details of vacancies as per G.O.Ms.No. 464, Law (LS) Department, dated 17.07.2017 issued by the 2nd respondent (in WMP.22979/2018) and;

(ii) To direct the 3rd respondent to accept and produce the petitioner hard copy application for Direct Recruitment of Assistant Professors/ Assistant Professors (Pre-Law) in Government Law Colleges 2017-2018 and thereby issued hall ticket for written examination (in WMP.11980/2018) pending disposal of in the above WP.19534/2019 respectively.

Order : These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of M/S.G.MURUGENDRAN, Advocate for the petitioner in both the petitions and of MR.P.R.GOPINATHAN, Advocate for the 1st Respondent and of MRS.R.KAVITHA, GOVERNMENT ADVOCATE on behalf of the 2 & 4 Respondents and of MR.C.MUNUSWAMY, Special Government Pleader for the 3rd Respondent and of MR.M.NALLATHAMBI, Advocate for the 5th Respondent and of MR.S.R.RAGHUNATHAN, Advocate for the 7th Respondent and 6th Respondent not appearing either in person or by an Advocate the court made the following order:-

The relief sought for in the writ petition is to quash the recruitment notification No. 2 of 2018 dated 18.07.2018, more specifically, in respect of the qualification prescribed for appointment to the post of Assistant Professor (pre-law).

2. The learned counsel appearing on behalf of the writ petitioner states that the process of selection has already been commenced and the case of the writ petitioner has not been considered. However, the respondents have selected the candidates, who had not undergone the regular degree as post graduation courses as per the UGC regulations. It is contended that the candidates, who studied through correspondence courses and through open University system are being selected and going to be appointed. In the event of appointing such candidates, who acquired the degree and master degree through correspondence courses and open University system, then the standard of education as well as the UGC norms are violated.

3. This Court is of the considered opinion that in respect of the correspondence courses and open University degrees with reference to appointment in teaching faculty, even, during the year 2002, the Hon'ble Division Bench of this Court, passed an order on 25.04.2002 in W.P.Nos.1256 of 1999 and 5657 of 1999. While, speaking for the Division Bench his Lordship Justice.P.Shanmugam,J. as then he was, made an observation that the open University degrees are not eligible for appointment or promotion to the post in teaching faculty. The following paragraphs are relevant:

"11. Section 22 of the University Grants Commission Act, 1956 empowers the university to confer degrees. Sub-section (3) of Section 22 says that degree means any degree as may, with the previous approval of the Central Government, be specified in the half by the Commission by notification in the Official Gazette. The Central Government is empowered under Section 25 to define the minimum standards of instructions for the grant of any degree by any university. It is not clear whether M.A. Degree under the Scheme of Open University System has been approved by the Central Government and whether the university has conformed to the minimum standards for grant of the degree. However, it is clear that a mere expression 'degree' does not mean that it is to be treated as equivalent or to be accepted as a degree specified in the rules. Further, it is open to the Government to consider whether the M.A. Degree obtained from open university can be treated as a degree for the purpose of appointment. Understandably, the Government had passed an order in G.O. Ms. No.216 dated 26.8.1997 to treat the M.A. Degree from open university as equivalent to the Bachelor's Degree for appointment in public service. Therefore, it follows that the Government is entitled to clarify the qualifications prescribed under the rules. But for this clarification, the M.A. Degree would not have been treated as equivalent to the Bachelor's Degree for public employment. It further follows that the said Government Order can also be modified for reasons set out in the subsequent Government Order. The Government has given reasons to take a different view insofar as the appointment of teachers is concerned.

12. A Constitution Bench of the Supreme Court in SANTRAM SHARMA VS. STATE OF RAJASTHAN (A.I.R. 1967 S.C. 1910), while repelling the contention that in the absence of any statutory rule governing the promotions to selection grade posts, administrative instructions imposing restrictions not found in the rules already framed cannot be issued, has held that till statutory rules are framed in that behalf, the Government can issue administrative instructions regarding the principles to be followed. Their lordships held as follows:

"It is true that the Government cannot amend or supersede statutory rules by administrative instructions. But, if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not insistent with the rules already framed."

The argument of the learned counsel for the respondents is that while the Government rules did not impose any instructions in the rules already framed, the M.A. Degree cannot be denied as being equivalent to the Bachelor's Degree. But, in the circumstances of the case, it has to be stated that the rule is silent as to the eligibility of M.A. Degree from open university. The said degree was not thought of at the inception of the rule and therefore, it has to be held that there is a gap or an area requiring instructions to supplement the rules. In *CONTROLLER AND AUDITOR GENERAL OF INDIA VS. MOHANLAL MEHROTRA* (A.I.R. 1991 S.C. 2288), the Supreme Court held that administrative orders can be issued to supplement the statutory rules. In *KRISHNA CHANDRA S AHU VS. STATE OF ORISSA* (A.I.R. 1996 S.C. 352), it was held that if the rules are silent on any subject or point in issue, the omissions can be filled up and the rules can be supplemented by executive instructions. In *STATE OF ORISSA VS. MAMTARANI SAHU* [1998 (8) S.C.C. 753], it was held by the Supreme Court that if the rules are silent, administrative instructions can be issued to supplement the rules. The rules cannot be treated to have been abrogated and they continue to govern the recruitment and conditions of service of teachers.

13. A Division Bench of this court in *MEENAKSHI SUNDARAM VS. DIRECTOR OF LEGAL STUDIES*, has held that the expression "to lay down standards of such education" occurring in Section 7(1)(h) of the Advocates Act is capable of taking in every ingredient which will go to constitute the end or the ultimate level of education that is expected of a candidate who applies for enrolment as an advocate under the Act. The argument that "standards of such education" occurring in Section 7(1) of the Act refer only to the excellence of education aimed at and will not take in other matter, such as whether the course should be a regular one or may be a correspondence or as to how much attendance a candidate has put in, cannot be accepted. Their lordships also, while holding that the said restriction comes as a reasonable restriction in the interest of general public, held that the Constitution itself provides that any law, relating to the provisional qualification necessary for practising any profession or for carrying on any occupation, trade or business, will have to be followed and it cannot be said to be in any way derogatory to the right of a citizen guaranteed under Article 19(1)(g) of the Constitution. The prescription made by the Bar Council of India regarding attendance in a regular course in a college or the prescription regarding particular percentage of attendance in such lectures in law are saved by Article 19(6) of the Constitution and they are relevant to the standards of legal education as a qualification. The courts are not concerned with the wisdom of the competent body, but are concerned only with the competency or the constitutionality. Therefore, it cannot be stated that the Government is not empowered to supplement the statutory rule and clarify the qualification required for the post.

14. The M.A. Degree holders from open university acquire knowledge only in the relevant subjects in which the candidate appears for the graduate course and the course may be either through Tamil or English mediums. But, however, they do not have proficiency of English as a language in the degree level. The M.A. Degree holders from open university who do not study English as a language in degree level cannot have the ability in that language and they could not even have studied the language to the high school level. Since no formal education is required and that these candidates write the concerned subjects directly, they do not have any level of language study and therefore, they cannot be compared with the B.T. Assistants or Tamil Pandits or B.Ed . Degree holders. Therefore, they cannot be treated as having qualification to teach Standards VI, VII and VIII.

15. The contention that the Tamil Pandits who are considered for promotion by transfer do not have the knowledge in English cannot hold water since in all cases where Tamil Pandits are appointed as Headmasters, B.T. Assistants are appointed to handle English Language specifically.

16. In JUTHIKA VS. STATE OF UTTAR PRADESH (A.I.R. 1976 S.C. 2534), their lordships held that it is well settled that the question whether a provision is directory or mandatory depends upon the object and purpose and not merely on the use of any part or word or phrase and having regard to the object. It has to be seen whether the person possesses the requisite qualification for being appointed as Headmaster of a higher secondary school. As stated earlier, the requisite qualification as prescribed under Rule 13 of the General Rules refers only to a basic qualification. The argument that there is no exclusion of a Post Graduate Degree has to be considered in the context of the object and purpose of the requirement of a degree. In any event, the M. A. Degree is not the requisite qualification and while considering the equivalent of the said degree, the object and the purpose for which a degree has been insisted upon has to be looked into, and the Government, having taken into account the relevant factors, have decided not to consider the M.A. Degree obtained in an open university as equivalent to the Bachelor's Degree.

17. In RAMESH PRASAD VS. STATE OF BIHAR (A.I.R. 1978 S.C. 327), their lordships held that as is well known, the process of rule making is a protracted and a complicated one, involving consultation with various authorities and containing manifold for ties. It cannot also be disputed that exigencies of administration, at times, require immediate creation of posts and any procrastination in that behalf will only prove detrimental to the efficient functioning of public departments. In such like situations, the authorities concerned will have the power to appoint or terminate administrative personnel under a general power of administration vested in them. It follows, therefore, that in the absence of rules, the qualifications for a post can validly be laid down in a self-saving executive order. Therefore, though the

impugned Government Order has stated that the service rules have to be amended, it pre-supposes various procedural formalities to be completed. In the circumstances of the case, therefore, it cannot be stated that the Government has no authority to issue the instructions dealing with the subject and it cannot be stated that the said decision is unreasonable or arbitrary.

18. The contention of the counsel for the contesting respondents that the field is occupied by the existing service rules and that the Government Order is arbitrary, therefore, cannot be sustained. As stated earlier, the scheme of Open University S m is of a recent origin, i.e. of the year 1995 or so. In that context, and in the light of the various kinds of degrees and diplomas being conferred by different universities, it cannot be stated that the Government is not empowered to supplement the meaning to the degree or the equivalent of a degree. Considering the background and the context under which the Government has issued the order, we do not find anything unreasonable in excluding a direct M.A. Degree obtained from open university.

19. In A.K.E. SOCIETY VS. DIRECTOR OF SCHOOL EDUCATION (A.I.R. 1989 S.C. 183), the Supreme Court observed that the role of teachers is central to all processes of formal education. The teacher alone could bring about the skills and intellectual capabilities of students. He is the 'engine' of the educational system. He is the principle instrument in awakening the child to cultural values. He needs to be endowed and energised with the needed potential to deliver the yeoman service expected of him. His qualities should be such to inspire and to motivate into action of the benefitor. An ill-trained or substandard teacher will be detrimental to the education system, if not a punishment to our children. The Government and the universities were commanded to see that sufficiently qualified teachers are appointed.

20. A candidate who had not attended formal education even a single day is permitted to acquire M.A. Degree and the same is requested to be treated as equivalent to a degree. Unlike other appointments, the qualification of a candidate has got a dinexus with the job of teaching. The Teachers are meant to teach children of impressionable age. In NAGESHWARAMMA VS. STATE OF A.P. (A.I.R. 1986 S.C. 1188), their lordships held that we cannot let loose on the innocent and unwary children, teachers who have not received proper and adequate training. True, they will be required to pass the examination, but that may not be enough. Training for a certain minimum period "in a properly organised and equipped Training Institute is probably essential before a teacher may be duly launched". Even though their lordships were dealing with the Teachers Training Institute, formal education of a teacher cannot be over-emphasised. The qualification required for persons who handle the educational institutions should be necessarily higher than the qualification fixed for other jobs. The course of study and the qualification of a teacher are germane to the maintenance of efficiency and excellence in education. The State has got a duty to see that the efficiency and excellence of educational standards

are maintained."

4. So also the candidates, who studied in the correspondence courses and not attended the regular colleges are not eligible for appointment to the teaching faculty. Teaching is a noble profession wherein the skill of teaching is of paramount importance. The person who has not studied in the regular course in the college in the pattern prescribed by the UGC is undoubtedly, not eligible for appointment to the post of Assistant Professor (pre-law).

5. This apart, the Teachers Eligibility Test and National Eligibility Test must have been completed in the relevant subject for which the appointments are to be made. The candidates who have completed the TET and NET in the concerned subjects alone to be appointed to the post of Assistant Professor (pre-law) in Government Law colleges and Law University. It is needless to state that these are all the minimum educational qualification prescribed by the University Grants Commission in its regulations. It is a surprise that the officials competent, who all are well versed with the regulations of UGC as well as the State Act are recruiting candidates, who all are not qualified in accordance with the UGC regulations and as per the State Act.

6. Thus, the respondents are directed not to appoint the candidates who all are not possessing the requisite qualification strictly in accordance with the regulations of UGC as well as the Law University and also the State Act in this regard.

7. However, it is contended that the results in respect of the other candidates were already declared and therefore the results of the writ petitioner also shall be declared and if the petitioner is selected, she can also be considered along with other candidates in merits and in accordance with law.

8. Accordingly, the miscellaneous petitions are disposed of.

-sd/-

24/04/2019

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE CHAIRMAN,
UNIVERSITY GRANTS COMMISSION,
BAHADUR SHAH ZAFAR MARG, NEW DELHI - 110002

<https://hcservices.ecourts.gov.in/hcservices/>

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C.C. to M/S.G.MURUGENDRAN Advocate Sr.No.5808

The Government Advocate, High Court, Madras - 104. Sr.No.6085

सत्यमेव जयते Order
in

WMP Nos.22979 and 22980 of 2018

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Date :24/04/2019

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