

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.04.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.32575 of 2018

and

W.M.P.No.37772 of 2018 & W.M.P.No.2730 of 2019

M.Pushpa

..Petitioner

vs

1.The Director of School Education,
DPI Campus, Chennai - 600 006

2.The Joint Director of School Education(Personnel)
DIP Complex, Chennai - 600 006

3.The Chief Educational Officer,
Kancheepuram District,
Kancheepuram.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the third respondent dated 28.11.2018 in Na.Ka.No.8095/A1/2015, quash the same and consequently direct the respondents to allow the petitioner in the Post of B.T.Assistant(Maths) with all consequential and other attendant benefits.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.A.Rajaperumal

Additional Government Pleader

O R D E R

The order of cancellation of appointment issued in proceedings dated 28.11.2018 is under challenge in the present writ petition.

2.The writ petitioner had completed S.S.L.C during the year 1991. The petitioner joined in the Diploma course in Computer Science and Engineering in Government Polytechnic for Women, Taramani, Chennai - 113 during the year 1993. However, the writ petitioner could not able to complete the Diploma Course on account of certain personal difficulties. Thus, the writ petitioner left the Polytechnic College and thereafter, joined B.Sc., (Maths) Degree Course through Distance Education Mode in Madras University and completed the said course in October 2004.

3.It is contended that the writ petitioner had undergone the preparatory course for securing the admission to B.Sc.(Maths) degree course. Thus, the writ petitioner has undergone the Under Graduation course in accordance with the University Grants Commission(UGC)Regulations, is the contention raised on behalf of the writ petitioner. Subsequently, the writ petitioner completed her B.Ed., degree in the year 2007 and thereafter passed +2 Course in September 2010.

4.The learned counsel for the writ petitioner states that the petitioner left the Polytechnic college on account of her illness and she could not able to attend the college. However, the fact remains that the writ petitioner had not undergone the educational courses in accordance with the University Grants Commission(UGC)Regulations. As per the regular pattern of education, the writ petitioner is bound to undergo the courses in the pattern of 10+2+3+2. However, the writ petitioner had studied the Under Graduation courses through Distance Education Mode and after completion of B.Ed., course, she studied +2 course in the year 2010. Such a course of acquiring qualification is impermissible under the University Grants Commission(UGC)Regulations. After verifying the educational qualifications of the writ petitioner, the authorities competent found that the writ petitioner had not acquired the educational qualifications in accordance with the University Grants Commission(UGC)Regulations and accordingly, issued the impugned order of cancellation of appointment.

5.The learned counsel for the writ petitioner states that the order impugned was issued without issuing any notice to the writ petitioner. However, this Court is of the considered opinion that a notice though not issued now, need not be directed to be issued by the respondent on account of the fact that the issues to be decided are apparent and very much available before this Court. In the event of remaining the matter back to the authorities, it will be an empty formality and even, if the notice is issued, there cannot be any other further possibility of re-adjudication of the issues by the respondents. Thus, the rights of the writ petitioner are not prejudiced by not issuing the notice to the writ petitioner before issuing the impugned order.

6.This being the legal principles, this Court is of an opinion that the cases cannot be remanded in a routine and mechanical manner. Cases can be remanded, only if the rights of the litigants are prejudiced. Thus, the educational qualifications now admittedly possessed by the writ petitioner is sufficient to decide the issues in respect of the fact that whether such qualifications are in accordance with the

University Grants Commission(UGC)Regulations or not. When the issue itself is decided in this writ petition, there is no point in sending the matter back to the respondents for reconsideration.

7.Even in the impugned order, it is categorically stated that the writ petitioner completed her S.S.L.C Course in April 1991, B.Sc., (Maths) in October 2004, B.Ed., in the year 2007 and +2 Course in September 2010. This apart, the writ petitioner had undergone the B.Sc., (Maths) through Distance Education Mode.

8.This being the factum, the appointment of the writ petitioner is contrary to the Government orders issued in G.O.Ms.No.107, Personnel and Administrative Reforms Department dated 18.08.2009, which was issued pursuant to the judgment of the Hon'ble Supreme Court of India in the case of Annamalai University Vs. Secretary to Government, Information and Tourism Department and others reported in (2009) 4 SCC 590 held as follows:

"42.The provisions of the UGC Act are binding on all universities whether conventional or open. Its powers are very broad. The Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-section (1) of Section 26 are of wide amplitude. They apply equally to open universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of UGC are all-pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12-A and clauses (a) and © of sub-section (2) thereof.

43.Indisputably, as has been contended by the learned counsel for the appellant as also the learned Solicitor General that the open University Act was enacted to achieve a specific object. It opens new vistas for imparting education in a novel manner. Students do not have to attend classes regularly. They have wide options with regard to the choice of subjects but the same, in our opinion, would not mean

that despite a parliamentary Act having been enacted to give effect to the constitutional mandate contained in Entry 66 of List I of the Seventh Schedule to the Constitution of India, activities and functions of the private universities and open universities would be wholly unregulated."

9. The Hon'ble Division Bench of this Court considered the validity of the Open University Degrees, with reference to the appointment to the Teaching posts in W.P.No.1256 of 1999 dated 25.04.2002 and the relevant paragraphs are extracted hereunder:-

"9. Petitioners before the Tribunal are Secondary Grade Primary School Headmasters who have acquired M.A. Degree under the Open University System. They do not come under the three categories of teachers eligible to be promoted, but only under the category of secondary grade teachers who are directed to be appointed. If no qualified teacher in the above three categories of teachers is available in the unit, the senior most among the persons working as secondary grade teacher, but qualified in B.Ed./Tamil Pandit is to be considered for promotion to the post of Middle School Headmaster. We are not here concerned with the other aspect of eligibility for promotion etc., since there were a number of litigations between the Secondary Grade Teachers B.Ed. Grade, Tamil Pandits and Middle School Headmasters, etc. The scope of controversy is limited to the consideration whether the open university degree is equivalent to the prescribed degree or a degree equivalent standard of B.A. or B.Ed. degree. The Government, in the impugned order, G.O. Ms. No.476 dated 19.11.1997, have considered this question, conscious of the other Government Orders in G.O. Ms. No.216 dated 26.8.1997, wherein the M.A. Degree obtained from open university was considered equivalent to a degree for appointment in public service. However, insofar as the posts created under the Special Rules for Tamil Nadu Elementary Education Service is concerned, they have considered the issue and decided that the teachers who obtained degree with the basic study and qualification only can teach the children effectively and in such a way to make the students understand the subject and persons who obtained M.A. Degree in open university without a basic degree cannot be appointed.

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 nsistent 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 enrollment 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 poiciency 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 di nexus 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.

21. It is argued that many of the contesting respondents have already studied upto high school level and therefore, technically, they would have gone through the system of formal education. While considering the scope of the equivalence of a M.A. ee, theoretically it is not possible to contend that a person who has not even gone into the shades of a school even during rain or sunshine would be able to become a headmaster of a middle school in case of direct recruitment. Such a contingency would cause great havoc to the system of education. Therefore, whatever may be the purpose for which the open university provides for M.A. Degree, insofar as the appointment of teachers is concerned, we are of the considered view that such degrees cannot be equated with a degree, which is the minimum qualification required for the post. In our view, the Government Order is reasonable and has been exercised appropriately as a supplement to the service rules. The Tribunal, in our view, had erred in interfering with the Government Order."

10. In view of the above facts and circumstances, it is made clear that the writ petitioner had not undergone +2 Course prior to admission to the Under-Graduation Course. This apart, the writ petitioner has completed his Under-Graduate Course of B.Sc. (Maths) through Distance Education Programme offered under the Open University System.

11. This being the factum of the case, the impugned order of cancellation passed by the 3rd respondent is in accordance with the Under-Graduate Course regulations as also in accordance with the legal principles settled by the Apex Court as well as by this Court.

12. Thus, there is no infirmity as such in respect of the impugned order passed by the 3rd respondent and accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Director of School Education,
DPI Campus, Chennai - 600 006
- 2.The Joint Director of School Education(Personnel)
DIP Complex, Chennai - 600 006
- 3.The Chief Educational Officer,
Kancheepuram District,
Kancheepuram.

+1cc to Mr.G.Sankaran, Advocate sr.36103
+1cc to Government Pleader sr.36337

W.P.No.32575 of 2018

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