



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.03.2019

Delivered on: 04.04.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P. [MD]Nos.10166 of 2015 and 2583 of 2018andM.P. (MD)Nos.1 and 2 of 2015 andW.M.P. (MD)No.2781 of 2018W.P. [MD]No.10166 of 2015:

M.Abbas Ali

: Petitioner

Vs.

1.The Director of School Education,
College Road,
Chennai.

2.The Chief Educational Officer,
Ramanathapuram,
Ramanathapuram District.

3.The District Educational Officer,
Ramanathapuram,
Ramanathapuram District.

4.Syed Ammal Higher Secondary School,
represented by its Correspondent,
Velipattinam, Ramanathapuram,
Ramanathapuram District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of dismissal from service dated 11.06.2015 on the file of the fourth respondent and quash the same as illegal and consequently, to direct the respondents to reinstate the petitioner in the post of Physical Education Teacher (P.ET) with all consequential benefits.

For Petitioner

: Mr.T.Lajapathi Roy

For Respondents

: Mrs.S.Srimathy,

Special Government Pleader

W.P. [MD]No.2583 of 2018:

P.Johnny

: Petitioner

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

Vs.

1.The Chief Educational Officer,
Ramanathapuram District, Ramanathapuram.



2. The District Educational Officer,
Ramanathapuram District,
Ramanathapuram.

3. Syed Ammal Higher Secondary School,
Velipattinam, Ramanathapuram-623 504,
Rep. By its Correspondent.

4. M. Abbas Ali

[R-4 impleaded as per the order of this
Court dated 04.04.2019
in W.M.P. (MD) No. 3365 of 2018]

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari and Mandamus, to call for the records relating to the impugned order passed by the second respondent in his proceedings O.Mu.No.217/A2/2018, dated 23.01.2018 and quash the same as illegal and consequently, direct the respondent Nos.1 and 2 to approve the petitioner's appointment as Physical Education Teacher in the third respondent School with effect from 12.11.2015 and to release salary grant and other benefits thereon with arrears within the period that may be stipulated by this Court.

For Petitioner	: Mr.M.E.Ilango
For Respondents	: Mrs.S.Srimathy,
1 to 3	Special Government Pleader
For Respondent No.4	: Mr.T.Lajapathi Roy

COMMON ORDER

W.P. [MD] No. 10166 of 2015:

This Writ Petition is directed against the order dated 11.06.2015 on the file of the fourth respondent, whereby and whereunder, the petitioner was dismissed from service. The petitioner also seeks a direction to the respondents to reinstate him in the post of Physical Education Teacher (PET) with all consequential benefits.

2. The case of the petitioner, in brief, is as follows:

2.1. The petitioner completed his 10th standard in the year 1997 and preparatory course examination in the year 2005 at Alagappa University for getting admission to B.A. History Degree under Distance Education mode and in the year 2009, completed B.A. Degree and thereafter, B.Ped Degree. Having requisite qualification, he applied for the post of Physical Education Teacher in the fourth respondent School and on scrutiny of certificates, he was appointed as Physical Education Teacher at the fourth respondent school, which is a Minority Aided School. The proposal for approval of his appointment was pending with the third respondent, who, later on,



raised certain queries about the equivalence of his preparatory course certificate with Higher Secondary Course, vide proceedings dated 25.08.2014. Aggrieved over the same, he filed W.P.(MD)No.962 of 2015, which was disposed of by this Court on 28.01.2015.

2.2. The third respondent, after getting clarification from the fourth respondent and perusing the equivalence certificates, provided approval of the petitioner's appointment vide proceedings dated 27.02.2015, based on which, he received monthly salary and monetary benefits for his service as the Physical Education Teacher.

2.3. While so, the fourth respondent issued a communication dated 22.05.2015 asking the petitioner to submit his explanation as to how degree without the higher secondary course would be sufficient for appointment, for which, he gave a detailed reply dated 25.05.2015. Thereafter, the fourth respondent issued a communication directing the petitioner to appear before the enquiry officer on 04.06.2015. Despite appearance and explanation with regard to the course, the fourth respondent passed the impugned order dated 11.06.2015 dismissing him from service. The said order is under challenge in this Writ Petition.

3. With the above background, the learned counsel for the petitioner submits that initially the petitioner was appointed by the fourth respondent on scrutiny of certificates and when raised certain queries, the fourth respondent clarified the same in detail, but, thereafter, vide impugned order dated 11.06.2015, dismissed the petitioner from service. Thus, the impugned order is *per se* illegal, since the petitioner is removed from service without issuing charge memo and without conducting fair enquiry. As the punishment of dismissal is a major one, the petitioner should be issued with charge memo and show cause notice, before imposing such punishment, which cannot be done in the present case.

4. It is also submitted by the learned counsel that the impugned order was passed based on the report submitted by the Enquiry Officer, but, a copy of the report was not furnished to the petitioner, which would amount to violation of principles of natural justice.

5. Inviting the attention of this Court to the judgment reported in **2012(3) MLJ 717(SC) [Chandrakala Trivedi v. State of Rajasthan]**, and also the order of this Court dated **16.11.2015 in W.P. (MD)No.19958 of 2015 [V.Kavitha v. The State of Tamil Nadu]**, the learned counsel submits that the degree obtained by the petitioner in non-formal/distance education mode without a pass in +2 examination is valid one, if the candidate has underwent the preparatory course conducted by the University before being admitted into the degree course.

6. With the above submissions, the learned counsel prays to quash the impugned order.



7. Contrary, the learned Special Government Pleader, through the counter-affidavit filed by the third respondent, *inter alia* contended that the fourth respondent school is a religious minority institution receiving grants from the Government and governed by the Tamil Nadu Recognized Private Schools (Regulation) Act and Rules. Though the fourth respondent, which is a minority institution, could appoint any qualified teaching staff or non-teaching staff, approval of the said appointment is subject to the satisfaction of the respondents. In the case on hand, the petitioner was appointed as Physical Education Teacher with effect from 02.06.2014. Since the petitioner obtained degree without undergoing +2 course, some queries were raised regarding his educational qualification. Meantime, the petitioner approached this Court by filing W.P.(MD) No.962 of 2015, wherein this Court directed the respondents therein to pass orders on merits regarding approval of the petitioner's appointment, based on which, the third respondent granted approval to his appointment subject to certain conditions. As per condition No.3 of the proceedings dated 27.02.2015, in future, on verification, if the education certificates of the petitioner are found to be invalid or bogus one, then the approval granted would be summarily rejected as per the proceedings of the first respondent dated 05.11.2004. In the meanwhile, the fourth respondent sent a show cause notice and after getting explanation and enquiry report from the enquiry officer, dismissed the petitioner from service by way of impugned proceedings.

8. It is also contended that since the petitioner was imposed with a punishment of dismissal from service, he can very well file an appeal before the competent authority under Section 23 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 r/w Rule 18 of the Tamil Nadu Recognized Private Schools (Regulation) rules, 1974 and if the petitioner, on appeal, is aggrieved, a remedy of second appeal is also provided as per Section 24. When an appeal remedy is available to the petitioner, without exhausting such remedy, the petitioner straight-away approached this Court exercising writ jurisdiction, which cannot be countenanced.

9. To sum up, the learned Special Government Pleader contended that since the petitioner has not at all completed the regular stream of education i.e., SSLC, +2, Degree, which is the only scheme of education recognized by the Government for getting employment, the impugned order dismissing the petitioner from service is in accordance with law and the same need not warrant any interference at the hands of this Court under Article 226 of the Constitution of India.

W.P. [MD] No.2583 of 2018:

10. The challenge in this Writ Petition is to the order dated 23.01.2018, in and by which, the request of the third respondent to approve the appointment of the petitioner as Physical Education Teacher was rejected.



11. The case of the petitioner is that in the vacancy arisen due to dismissal of the petitioner in W.P.(MD)No.10166 of 2015, the petitioner was appointed by the third respondent on 12.11.2015. In spite of making communication seeking approval of his appointment and release of salary, the second respondent has not taken any steps in that regard, but, passed the impugned order rejecting the request citing pendency of W.P.(MD)No.10166 of 2015 filed by Abbas Ali (fourth respondent herein). Aggrieved over the said order, the petitioner is before this Court.

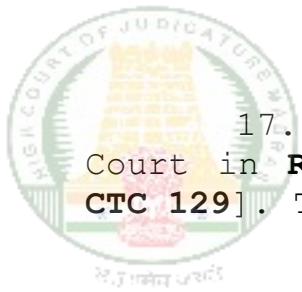
12. The learned counsel for the petitioner submits that in a matter like this, interest of the students should be the paramount consideration. The third respondent school could not keep the post vacant till the disposal of the writ petition filed by the delinquent teacher, who was dismissed for lack of requisite educational qualification. If the said post is not filled up with a suitable candidate, the ultimate sufferers are the students alone. It is pertinent to note that the fourth respondent was dismissed on account of non-possession of requisite qualification, but, whereas, the petitioner is having the qualification as required for the post of Physical Education Teacher. Moreover, the fourth respondent was dismissed from service after conducting a full-fledged enquiry and hence the pendency of the writ petition at his instance cannot be a reason to deny the approval of the petitioner's appointment, that too, in a sanctioned vacancy.

13. The second respondent filed a counter affidavit, wherein it is stated that the writ petition filed by the earlier incumbent, viz., Abbas Ali is pending before this Court and when that being the situation, the proposal for approval of the appointment of the petitioner herein cannot be considered. If the said Abbas Ali succeeds in his writ petition, he may claim reinstatement, that too, with monetary benefits, and in that event, the said post cannot be treated as vacant until the disposal of his Writ Petition. The third respondent cannot appoint any teacher in the post arising out of termination of Abbas Ali, when his case is pending disposal. Adding further, the learned Special Government Pleader submits that without exhausting alternative remedy available under the Act, the petitioner has straight-away approached this Court and hence, the Writ Petition is not maintainable. Thus, on the above grounds, she prays for dismissal of the Writ Petition.

14. Heard the learned counsel for the fourth respondent also on the above submissions.

15. I have considered the rival submissions made on either side and perused the materials available on record.

16. The moot question that arose for consideration in this case is as to whether the degree obtained by Abbas Ali after undergoing preparatory course instead of passing +2 is valid or not.



17. The related issue was elaborately dealt with by this Court in **R.Thirunavukkarasau vs. The State of Tamil Nadu [2012(5) CTC 129]**. The relevant paragraphs read as under:

"80. In 2001, the European Commission issued a communication for making life long learning, a reality in Europe. In October 2006, the European Commission published a communication titled "Adult learning It is never too late to learn". This communication defined adult learning as "all forms of learning undertaken by adults after having left initial education and training". The communication pointed out that investment in adult learning has both public and private benefits such as greater employability, increased productivity, better quality employment, reduced expenditure in areas such as unemployment benefits, welfare payments and early retirement pensions, increased social returns in terms of improved civic participation, better health, lower incidents of criminality and greater individual well being and fulfilment.

81. But a careful study of the history of evolution of Extension Education in the world would reveal that it was conceived with the noble intention of enhancing the skills and improving the knowledge of persons who did not or could not afford to go to Higher Educational Institutions. But unfortunately, after its adoption in India, in the form of Distance Education or Adult and Continuing Education, some of the Universities in the country started perverting the whole objective, by making available all kinds of Degrees, solely with a view to enable the acquirers of such Degrees to claim a right for being considered for appointment in Government Service. Eventually, the Supreme Court took note of such perversions in Annamalai University. A one year Degree, by whatever name called (either dual degree or second degree, if not a duplicate degree), is one another perversion of the system which was evolved more than a century ago as an Extension Programme with a noble objective. It will be interesting to note that persons who acquired such one year degrees or open university degrees, do not get employment in the Private Sector. It is only in Government Service that such persons seek appointments, promotions, incentive increments etc., on the basis of such degrees. Therefore, these degrees are actually specially designed and tailor made by Universities for serving or aspiring Government Servants.



82. It must be noted that the recruitment of teachers in schools, is being made by the Government, merely on the basis of seniority of registration in the Employment Exchanges, in the past few years. This itself has struck at the root of quality, in the matter of selection. If one year degrees are also recognised as equivalent to 3 year degrees, that would sound the death knell for the schools run by Government. Therefore, the stand taken by the Department in their communication dated 19.7.2012, not to recognise dual degrees, is a correct and appreciable step. In view of the above, the writ petitions are allowed and the official respondents are directed not to recognise, both for appointment as well as for promotion, the dual degrees obtained by candidates after undergoing a Course of a duration of one year, as equivalent to a degree obtained after undergoing a Course of a duration of 3 years."

18. A Division Bench of this Court reported in W.A.Nos.1496 to 1498 of 2015, dated 21.08.2018 [The Chairman, Teachers Recruitment Board, 4th Floor, EVK Sampath Building, DPI Campus, College Road, Chennai-600 006 vs. A.Valarmathi] observed thus:

"11. We have considered the rival submissions. The question that would arise in these appeals is as to whether, the three petitioners have the qualifications prescribed by the Teachers Recruitment Board in its advertisement dated 22.05.2013. It is the settled law that the Court cannot relax or substitute the qualifications that are prescribed by the employer viz., the Teachers Recruitment Board. The notification/advertisement dated 22.05.2013 in respect of B.T. Assistants is very clear, the same reads as follows:

"b. Candidates who have passed a Bachelor's Degree (B.A./B.Sc./B.Litt.) with Tamil, English, Mathematics, Physics, Chemistry, Botany, Zoology, History and Geography or a Degree with any one of the equivalent subjects (Regarding equivalent subject, Government orders issued prior to the date of this notification alone will be considered) from a Recognized University under 10+2+3 Pattern and a Bachelor's Degree in Education (B.Ed.) from a Recognized University and seeking an appointment as Teacher for classes VI to VIII can write paper II."

<https://hcservices.ecourts.gov.in/hcservices/> 12. In R. Tirunavukkarasu Vs. State of Tamil Nadu reported in MANU/TN/1094/2012 : 2012 (5) CTC 129, this Court had traced the various instances where the



persons with lesser qualification or degrees obtained by shortcut methods had attempted to get recruited as teachers and the same has been scuttled by the Teachers Recruitment Board and the Government. The learned Single Judge after considering the regulations of the Teachers Recruitment Board had held that,

- A student cannot be admitted to a 1st degree course unless he has successfully completed 12 years of schooling.
- No student will be eligible for 1st degree unless he has successfully completed a three years course.
- The students cannot seek admission to Masters course in any of the faculties unless he has successfully pursued the 1st degree of three years duration.
- Wherever a degree course of duration of less than three years was in existence at the time of 1985 regulations these institution can award degrees of a duration of two years only as a transitive measure. However, these persons will be eligible for admission to masters course only if they had undergone a one year bridge course.

13. The learned Single Judge also went on to conclude that in view of the statutory Rules that prescribe the qualification for appointment as B.T. Assistant, the same cannot be diluted by the Court in order to accommodate persons who are not otherwise qualified. The same learned Single Judge [Justice V. Ramasubramanian] had in S. Jagadeeswari vs. The Chairman, Teachers Recruitment Board, Chennai and another in W.P. No. 30299 of 2012 held that simultaneous acquisition of degrees or acquisition of a lower qualification after acquiring a higher qualification [reverse degrees] cannot be recognized as a proper qualification for the purpose of appointment as B.T. Assistants. The judgment in S. Jagadeeswari case in W.P. No. 30299 of 2012 was confirmed in Writ Appeal W.A. No. 845 of 2013.

14. Mr. K. Karthikeyan would also draw our attention to the judgment of a Division Bench in Chairman, TRB and another Vs. Kanimozhi, wherein, the Division Bench had after considering the judgment in W.P. No. 13572 of 2010, 13054 of 2010 batch [which has been followed by the learned Single Judge in the orders impugned in these appeals] held that unless the



candidate had obtained a Bachelor's Degree by going through regular education under the 10+2+3 system he/she will not be qualified for appointment as secondary grade teacher. The impact of University Grants Commission regulations which recognize these degrees issued by the Open Universities was also considered by the Division Bench. The Division Bench while rejecting the claim of the respondent in the said case to the effect that since the degree obtained by her has been recognized by the University Grants Commission, the Teachers Recruitment Board cannot deny her appointment on the basis that she is not qualified for being appointed, the Division Bench had observed as follows:

"5.6. The issue of recognition of a degree is different from a qualification fixed in service matters. An eligibility criteria fixed cannot be said to be an indirect way of de-recognizing a degree or diploma. To put in differently, such a degree cannot be termed as an eligible qualification for a particular post. Therefore, we are of the view that though scope and ambit of Regulation 2 of the University Grants Commission has not been considered by the learned Single Judge, the same is not required to be considered in favour of the respondent in view of the express terms as provided in the G.O. passed in G.O. (Ms.) No. 107 Personnel and Administrative Reforms (M) Department, dated 18.08.2009. In this connection, a useful reference can be made to the Full Bench Judgment of the Rajasthan High Court in Shanker Lal Verma and 13 others Vs. Rajasthan State Electricity (1993 (3) LLJ 796), wherein the following passage is apposite:

"32. It is also to be noted that these are not the cases of derecognition of a degree, diploma or certificate issued by a particular institution because of some fault on the part of the Institution awarding the same. The case of derecognition of particular Institutions and consequently derecognition of the degrees, diplomas and certificates issued by such Institutions have to be distinguished from service matters in which certain qualifications are deleted from the rules. Removing or deleting a qualification from eligibility criteria cannot be said to be derecognition of that qualification or a degree, diploma or certificate. It only means that the degree, diploma or certificate has ceased to be the eligibility qualification for a particular post. It



does not take away from the candidate, the degree, diploma or certificate conferred by the Institutions. For example, if the eligibility qualification for a particular post was earlier 'Graduate' and by amendment, it is raised to 'Postgraduate', it does not mean that degree possessed by the candidates are derecognised. What it simply means is that the eligibility qualification are enhanced and a higher qualification is now required. It is also to be taken into account that purpose behind amendment to the rule was not to derecognise any degree, diploma or certificate, it was only to delete certain qualifications from the eligibility criteria. This may be because of the changed situation in which the employer may find that candidates who have passed the Secondary School Examination from the Statutory Boards and Universities are available in sufficient numbers and it was not necessary to consider the candidates having equivalent qualifications. The respondents cannot be forced to accept equivalence of certain qualifications and to accept such equivalence for all times to come."

15. The Division Bench found that the respondent in the said Writ Appeal viz., Kanimozhi had obtained a B.A. Degree in the Open University System and after B.Ed she had obtained M.A. degree also. After passing M.A. she had realized that she would not be able to secure an appointment as a teacher unless she passes +2. Accordingly, with that new wisdom that had occurred to her she had completed +2 course after securing B.A., B.Ed., and M.A., degrees. It is this method which was termed as reverse degrees in R. Tirunavukkarasu case cited supra. G.O.Ms. 107 dated 18.08.2009 only seeks to curb this practice of completing bachelor's degrees and obtaining post graduation without completing XII Standard.

16. Insofar as the decision cited by the learned counsel for the respondents, the Full Bench judgment in P. Raji Vs. The Secretary, Bar Council of Tamil Nadu and Puducherry and another cited supra was not concerning recruitment. Further the Full Bench decision was based on the interpretation of Rules 5(a) and 5(b) of the Legal Education Rules which did not expressly require completion of 12th standard through regular stream. Further the Full Bench was concerned with the correctness of the decision of the Division Bench in S.R. Deepak v. The Tamil Nadu Dr. Ambedkar



Law University and another, reported in MANU/TN/0128/2016 : 2016-2-L.W. 64, wherein it was held that in respect of the candidates who had obtained Secondary School leaving Certificate or Higher Secondary School Leaving Certificate without pursuing a regular course would be ineligible to three years L.L.B. course even though the candidate had obtained a Secondary School leaving Certificate or Higher Secondary School Leaving Certificate from recognized board authorized to issue such certificates by appearing privately. While disagreeing with the Division Bench the Full Bench had observed as follows:

"54. With the greatest of respect to the Division Bench deciding S.R. Deepak, supra, we are unable to agree that a candidate who obtains the Secondary Certificate or Higher Secondary Certificate without prosecuting a regular course would be ineligible for admission to the Three Year LLB Course, even though the candidate might have obtained a Secondary Certificate and a Higher Secondary Certificate from a recognized Board authorized to issue such certificates and have graduated from a recognized university whose degree in Law is recognized by the Bar Council of India for enrolment by successfully completing a regular course."

19. We had extracted the qualifications of the respondents. The qualifications can be tabulated as follows:

Name	Case No.	Qualification	X	XII (HSC)
Bachelors Degree B.Ed., Valarmathy	W.A.No.1496/2015	Failed in one subject. (Cleared Mathematics paper in 2002)		
Pushpalatha	W.A.No.1497/2015	Passed HSC in 2011		
Devasena	W.A.No.1498/2015	Failed in Mathematics.		

20. From the qualifications extracted above it could be seen that none of the respondents have satisfied the requirement of the educational qualifications prescribed under the advertisement dated 22.05.2013. The advertisement very clearly states that the respondents should have obtained a bachelor's degree from a recognized University under 10+2+3 pattern along with a bachelor's degree in Education. While the respondent in W.A. No. 1498 of 2015 has not even attempted to complete Higher secondary the respondents in W.A. Nos. 1496, 1497 of 2015 have completed higher secondary course after having obtained their bachelor's degree.



21. Such a reverse qualification has been held to be invalid in R. Tirunavukkarasu case as well as in Kanimozhi case cited supra. We are in agreement with the views of the Division Bench as well as the learned Single Judge in R. Tirunavukkarasu case. We must also point out that the learned Single Judge in the orders impugned in these appeals had only followed the judgment of Justice Hariparandhaman in W.P. No. 13054 of 2010 batch case. The said judgment has been considered by the Division Bench in Kanimozhi case and has been specifically overruled.

22. We are therefore of the considered opinion that, the orders of the learned Single Judge made in the Writ Petitions which are impugned in these appeals should be set aside and accordingly the Writ Appeals are allowed setting aside the orders of the learned Single Judge made in the Writ Petitions. The Writ Petitions will stand dismissed, however in the circumstances we make no order as to costs."

19. The very same issue was dealt with in detail by another Division Bench of this Court in W.P.No.28040 of 2018, dated 26.10.2018 [T.Karikalan v. The Secretary, Government of Tamil Nadu, Law Department, Fort St. George, Chennai-9]. The relevant paragraphs read thus:

"30. In T.L.Muthukumar and Others vs. Registrar General, High Court, Madras and Another, reported in (2011) 2 MLJ 785, petitioners therein, were staff of this court. They did not undergo two year +2 course, but obtained degree, through open Universities. Government issued G.O.Ms No.107 dated 18.08.2009, which stated that those degrees issued by the Open University would be recognised and accepted for appointment and promotion, provided the said degree has been obtained after completing (10+2) Higher Secondary Examination. All the petitioners therein, obtained BA/BBA degree, through correspondence course, but not completed +2 course (Higher Secondary). T.L.Muthukumar and others challenged G.O.(Ms) No.107 Personnel and Administrative Reforms Department dated 18.08.2009 and consequently, prayed for a direction to the Registrar General, High Court, Madras to consider their case for promotion.

31. After considering the rival submissions, a Hon'ble Division Bench of this Court in T.L.Muthukumar's case held as follows:-

"9. The short question that falls for consideration in this case is as to Whether a candidate, who obtained B.A./B.Sc./B.Com. Degree without successfully completing 12 years schooling can be a ground for promotion to the



higher post on the basis of having qualification of graduation degree, that too through correspondence course.

10. As noticed above, UGC, in exercise of power conferred by clause (f) of sub-section (1) of Section 26 of the University Grants Commission Act, 1956, framed the 1985 Regulations. Clause 2 of the Regulation referred to in the instant case reads as under :

"2. Admission/Students:

1. No student shall be eligible for admission to the 1st Degree Course through non-formal/distance education unless he has successfully completed 12 years schooling through an examination conducted by a Board/University. In case there is no previous academic record, he shall be eligible for admission if he has passed an entrance test conducted by the University provided that he is not below the age of 21 years on July 1 of the year of admission.

2. No student shall be eligible for the award of the first degree unless he has successfully completed a three year course; this degree may be called the B.A./B.Sc./B.Com. (General Honours/Special) degree as the case may be.

Provided that no student shall be eligible to seek admission to the Masters Course in these faculties, who has not successfully pursued the first Degree Course of three years duration.

Provided further that, as a transitory measure where the universities are unable to change over to a three year degree course, they may award a B.A./B.Sc./B.Com. (Pass) degree on successful completion of two year course, but that no student of this stream shall be eligible for admission to the Masters course unless he has undergone a further one year bridge course and passed the same. The three year degree course after 10+2 stage should in no case be termed as B.A./B.Sc./B.Com. (Pass) degree.

11. On the other hand, the qualification prescribed under the High Court Rules framed under Article 229 of the Constitution of India has specifically provides that for promotion to certain posts, including Assistants, a candidate must hold B.A./B.Sc./B.Com/B.A. (Hons.)/B.Sc. (Hons.)/B.Com. (Hons.) degree of the Madras University or equivalent thereof of a recognized University.

12. Clause 2 of 1985 Regulations was considered by the Supreme Court in the case of Annamalai University rep. by Registrar Vs Secy. to Govt. Inf. and Tourism Dept. and Ors. (2009 (4) SCC 590). In that case, the question of interpretation and application of 1985 Regulations vis-vis



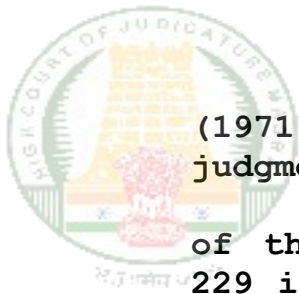
Section 26 of the UGC Act, 1956 and the Indira Gandhi National Open University Act, 1985 (for short Open University Act) fell for consideration. The facts of that case was that the legality of the appointment of one Ramesh to the post of Principal in the Film and Television Institute was challenged on the ground that he did not have the requisite essential qualification for the post of Principal. The challenge to the appointment was that he did not possess the basic graduation degree and thus the post-graduate degree conferred on him by the appellant, Annamalai University, is invalid in law. Admittedly, the said candidate, Ramesh, was holding a Diploma in Film Technology and directly obtained M.A. degree through Open University System in an examination held by the aforementioned University. A Division Bench of this Court held that the M.A. Degree obtained by the said candidate through Open University System without their being a first Bachelors Degree was not a valid one. The matter ultimately went to the Supreme Court. Their Lordships upheld the decision of the High Court.....

14. From a perusal of Clause 2 of the 1985 Regulations and the ratio decided by the Supreme Court as quoted hereinbefore, it is manifest that for the purpose of obtaining a Post Graduate Degree a candidate has to satisfy and comply the mandatory requirements provided therein. According to the rule, no candidate shall be eligible for award of first degree unless he has successfully completed 12 years schooling. Similarly, no student shall be eligible to seek admission to the Masters course in any faculty, who has not successfully pursued the first degree course of three years duration.

15. In the instant case, the question is as to whether a candidate after obtaining such a degree from an Open University without completing 12 years schooling can claim, as a matter of right, promotion to the higher post, ignoring the service conditions prescribed under the service rules.

16. As stated above, in exercise of powers conferred by Article 229 of the Constitution of India, the High Court framed the rules providing service conditions of its employees, including the condition for promotion. It is well settled that the object of Article 229 is to secure the independence of the High Court and all powers vested in the Chief Justice and the High Court to run the High Court administration.

17. The object of Article 229 has been elaborately discussed by the Supreme Court in the case of M. Gurumoorthy Vs. Accountant General, Assam (Nagaland),



(1971) 2 SCC 137. The Supreme Court, in the said judgment, observed as under :

11. The unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointment of officers and servants of a High Court it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by the executive except to the limited extent that is provided in the article. This is essentially to secure and maintain the independence of the High Courts. The anxiety of the Constitution-makers to achieve that object is fully shown by putting the administrative expenses of a High Court including all salaries, allowances and pension payable to or in respect of officers and servants of the Court at the same level as the salaries and allowances of the Judges of the High Court nor can the amount of any expenditure so charged be varied even by the Legislature. Clause (1), read with clause (2) of Article 229 conferred exclusive power not only in the matter of appointments but also with regard to prescribing the conditions of service of officers and servants of a High Court by Rules on the Chief Justice of the Court. This is subject to any legislation by the State Legislature but only in respect of conditions of service. In the matter of appointments even the Legislature cannot abridge or modify the powers conferred on the Chief Justice under clause (1). The approval of the Governor, as noticed in the matter of rules, is confined only to such rules as relate to salaries, allowances, leave or pension. All other rules in respect of conditions of service do not require his approval. Even under the Government of India Act the power to make rules relating to the conditions of service of the staff of the High Court vested in the Chief Justice of the Court under Section 242(4), read with Section 241 of the Government of India Act, 1935. By way of contrast reference may be made to Article 148 relating to the Comptroller and Auditor General of India. Clause (5) provides:

"Subject to the provisions of this Constitution and of any law made by Parliament the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor General."

18. As discussed above, the rule framed by the High Court inter alia clearly lays down the qualification for the purpose of promotion from Categories 7, 8 and 9 to Category 6. It is clearly mentioned that for the



purpose of promotion, a person must possess and hold the B.A./B.Sc./B.Com or other Bachelors degree of the Madras University or of a recognized University. The rule does not recognize B.A. or B.B.A. degree from an Open University obtained by a candidate without having the basic +2 qualification. The condition contained in the High Court Service Rules, therefore, cannot in any way be superseded by other law not applicable to the employees of the High Court.

19. Admittedly, the petitioners, although, obtained the first degree by correspondence course without having the basic +2 qualification. Such degree having not been recognized under the Rules framed by the High Court in exercise of powers conferred under Article 229 of the Constitution of India, the petitioners cannot claim promotion on that basis."

34. In G.S.Jagadeesh vs. Chairman reported in 2018 (4) CTC 337, the issue was whether the candidates who have obtained Secondary or Higher Secondary Certificate, from a Board recognised by the State through private study and not regular stream, and having a degree from a recognised university can be admitted to law course. While, considering the two conflicting judgments in S.R.Deepak v. Tamil Nadu Dr.Ambedkar Law University and another reported in 2016 (2) LW 64 (Mad) (DB) and the other rendered in Therthagiri v. Director of School Education and others reported in 2017 (1) CTC 160 (DB), a larger Bench of this court at paragraphs 40 to 44, Hon'ble Full Bench held that, graduates from open university not having Secondary and Higher Secondary Course certificate are not eligible for admission to law course. Decision of the Hon'ble Full Bench in G.S.Jagadeesh vs. Chairman reported in 2018 (4) CTC 337, relied on by the petitioner would not render any assistance to the prayer sought for in the instant writ petition, whereas, decisions in T.L.Muthukumar vs. Registrar General, High Court, Madras reported in (2011) 2 MLJ 785, and G.Kamalakanniah Vs. Registrar, CAT, Madras Bench and another in W.P.No.12532 of 2013, dated 21.08.2014, are applicable to the case on hand. In the former, High Court staff, have not been granted promotion and in the latter, it is the Railway staff.

35. Judicial notice is also taken note of on the decision rendered in W.A. No.529/2013 dated 05.02.2014, wherein the Hon'ble Full Bench, inter alia considered as to whether teachers with one year double degree or those who possess secondary Grade Teachers/Primary School Headmasters with 10+2+3, pattern, can be promoted as B.T. Assistants. Paragraph 20 of the judgement in W.A.



No.529/2013 dated 05.02.2014 dealing with the submission of the Government is reproduced hereunder:

"20. During the course of arguments in these batch of cases, Mr.P.H.Arvind Pandian, learned Additional Advocate General appearing for the official respondents prayed for leave of this Court to permit the Director of Elementary Education to file an affidavit and also filed the said affidavit dated 03.12.2013, which is taken on record. The contents of the affidavit filed by the Director of Elementary Education read that in view of the judgments passed by the Hon'ble Courts and various objections, one year double degree course is not considered for promotion and also for recruitment also and accordingly, the Director of Elementary Education has passed orders dated 19.07.2012 stating that while preparing the panel for promoting Secondary Grade Teachers/Primary School Headmasters to B.T. Assistants, only degree holders studied in the 10+2+3 pattern should be included and the names of the double degree and one year degree course holders should not be included. The Director of Elementary Education further took a stand that in the interest of students, the candidates with one year degree course would not have adequate exposure in the concerned discipline, and, they, in-turn, would not be in the position to do justice to the students while dealing with the subject and ultimately, the students studying in the Government schools would encounter an irreparable loss in the inadequacy of subject transaction and guidance and that the Department has taken a decision to promote only those Secondary Grade Teachers/Primary School Headmasters who studied in 10+2+3 pattern to B.T. Assistants and those with double degree and one year degree holders should not be considered for promotion."

37. After considering Annamalai University's case and other judgments, at paragraph Nos.39 to 42, the Hon'ble First Bench, held as follows:

39. The learned Judge has also held that First degree should not be decided with reference to the person acquiring it, but it should be determined with reference to the subject in which such a degree is sought to be obtained and in para 28, found that literal interpretation sought to be given by the contesting respondents would only dilute the standards and not improve the standards and held as follows:

"28. Let us have a look at the consequences that would flow out of the literal interpretation sought to be given by the contesting Respondents. A person who has done a 3 year degree in History, would be eligible, if the argument of the Respondents is accepted, for the grant of a B.Sc. degree in Mathematics, after undergoing



a course of a duration of one year or less. If such a person is held to be eligible to seek admission to a Master's Degree in Mathematics, by giving a literal interpretation to Regulation 2(3), that would mock at the provisos to Regulation 2(3). I am conscious of the fact that there are Universities which permit Graduates in a particular subject, to acquire Post Graduate Degrees in different subjects. But they have all been ingenious inventions of later years, for the purpose of taking the employers for a ride. Even then, to my mind, there is no University which offers a Post Graduate Degree in Mathematics or Chemistry or Physics for a person who studied B.A. (History) or the Literature or Economics at the degree level. Therefore, the interpretation to be given to the expression "first degree" appearing in Regulation 2(3) has to advance the cause of improvement of standards, for which the Commission itself framed the Regulations. The literal interpretation sought to be given by the contesting Respondents would only dilute the standards and not improve the standards and hence the contention of the contesting Respondents on the basis of the U.G.C. Act and the Regulations issued by the Commission has to fail."

This Court is in agreement with the said view taken by the learned Judge. It is also the policy decision of the Government in their affidavit dated 03.12.2013 not to take into consideration one year double degree for promotion as well as for recruitment and such a stand has been taken in the interest of the students. There is no question of referring the matter to Equivalence Committee for the reason that dual/double degree is not related to the allied subject, but entirely a new subject and therefore, the submission made in that regard is also liable to be rejected.

40. Though it is contended that the notification under Section 22(3) of the UGC Act would be in conflict with the Regulations under Section 26F, this Court is of the view that the said submission is also liable to be rejected for the reason that the underlying object is to maintain the standard of education and the facts of the case would also disclose that teachers/persons with one year additional/dual degree in the event of promotion/recruitment for taking classes for students studying in Government Schools/aided Schools and judicial notice can be taken note of the fact that most of them are hailing from economically backward sections and downtrodden community and by imparting quality education, they should also come up in their life and serve this country. The Hon'ble Supreme Court of India in Annamalai University case (cited supra) has also held that the



regulations framed by UGC are to determine the standard of education and are applicable to both Open Universities as well as conventional/formal Universities and alternative system was not in substitution of the formal system and lay down the mode and manner of imparting education.

41. In the considered opinion of the Court, the decision rendered by the Hon'ble Supreme Court of India in Annamalai University case (cited supra) is a complete answer to the points urged by the respective learned Counsel appearing for the parties, who advance the cause of persons who had undergone dual/additional degree of duration of one year. The stand of the Director of Elementary Education, Chennai, in the affidavit dated 03.12.2013, cannot be taken/considered as mala fide or abuse of power and taking into consideration the welfare of the students only, such a stand has been taken.

42. The learned Judge in the impugned judgment, on a threadbare analysis of the factual aspects and legal position, has come to the conclusion that the writ petitioners seek to agitate totally a different subject on the basis of a degree obtained after undergoing a course of one year duration and can be compared with the regular undergraduate degree of three years duration and therefore, directed the official respondents not to recognize the candidature of such persons both for appointment as well as for promotion. The Teachers Recruitment Board (TRB) has taken into consideration the said aspect and rightly rejected the claim of the writ petitioners that they are ineligible for TET on the ground that the claim made by them on the basis of the degree of one year duration is invalid and this Court finds no merit in the stand taken by TRB.

Thus it could be seen that, even in the case of recruitment of teachers in Government service, as well as promotion, a degree obtained under 10+2+3 pattern alone, has been permitted.

38. That apart, section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, is virtually the reproduction of G.O.Ms No.107 Personnel and Administrative Reforms Department dated 18.08.2009, which has been upheld by a Hon'ble Division Bench of this court. Needless to state decisions of a Coordinate Bench are binding.

39. In the light of the above discussion and decisions, we are of the view that the prayer sought for



cannot be granted. Writ petition is dismissed."

20. Now, turning to the cases at hand, admittedly, Abbas Ali completed 10th standard and thereafter, he did preparatory course examination for being admitted to B.A. Degree and thereafter, B.P.Ed course. Pursuant to the qualification, he applied for the post of Physical Education Teacher in the fourth respondent School [W.P.(MD) No.10166 of 2015] and got selected. Pointing out that the degree acquired by Abbas Ali, after completion of preparatory course examination conducted by the University is valid, the fourth respondent School sent a proposal seeking approval of his appointment. The District Educational Officer, on getting clarification and explanation with regard to the equivalence, approved the appointment vide proceedings dated 27.02.2015 and subsequently, he has drawn salary for few months. Thereafter, having sent the proposal for approval, taking 'U' turn, the fourth respondent School dismissed him from service, which is under challenge in W.P.(MD)No.10166 of 2015.

21. Due to the dismissal of the said Abbas Ali, in the vacancy arose, the third respondent School appointed one Johnny, the petitioner in W.P.(MD)No.2583 of 2018. Seeking approval of his appointment, the third respondent school sent a communication, but the same was rejected on account of pendency of the Writ Petition in W.P.(MD)No.10166 of 2015 at the instance of Abbas Ali. The said rejection order is put to challenge in W.P.(MD)No.2583 of 2018.

22. Applying the ratio laid down in the above referred cases to the cases at hand, if analyzed the facts and circumstances, the School concerned is a minority institution and initially, the educational qualification of the said Abbas Ali is subjected to scrutiny and on verification, approval was granted, that too, with certain conditions. Thereafter, a show cause notice was issued as to his educational qualification and after explanation and enquiry, the impugned order of dismissal from service was passed taking into account the fact that Abba Ali has not at all completed the regular stream of education i.e., S.S.L.C., +2, Degree, instead, he underwent preparatory course without passing +2, which is against the dictum laid down by this Court in the above cited cases and the same cannot be recognized as one of regular stream for getting employment as Physical Education Teacher. Therefore, considering all these aspects, the fourth respondent in W.P.(MD)No.10166 of 2015, has rightly dismissed him from service, which, in the considered opinion of this Court, is sustainable in law and the same does not require any interference at the hands of this Court, since he acquired degrees after undergoing preparatory course instead of passing +2 and got appointment, which is invalid in the eye of law.

23. Coming to W.P.(MD)No.2583 of 2018, the approval of the petitioner was rejected citing pendency of W.P.(MD)No.10166 of 2015. Now, since the said case is being disposed of by this Court today and in view of the order sustaining the dismissal of Abbas Ali,

there is no impediment for the official respondents to consider the claim made by Johnny and accordingly, the impugned order dated 23.01.2018 rejecting the approval of the appointment made to Johnny is liable to be set aside and accordingly, set aside. The respondent Nos.1 and 2 in W.P.(MD)No.2583 of 2018 are directed to give approval to the appointment made to the said Johnny as Physical Education Teacher forthwith, since he is having requisite qualification as prescribed under the relevant Rules and to release salary and other benefits thereon with arrears, within a period of twelve weeks from the date of receipt of a copy of this order.

24. In fine,

(i) W.P.(MD)No.10166 of 2015 is dismissed. No costs. Consequently, connected M.P.(MD)Nos.1 and 2 of 2015 are closed.

(ii) W.P.(MD)No.2583 of 2018 is allowed. No costs. Consequently, connected W.M.P.(MD)No.2781 of 2018 is closed.

Sd/-

Assistant Registrar (CS III)

/True Copy/

Sub Assistant Registrar (CS)

SML

To

1.The Director of School Education,
College Road, Chennai.

2.The Chief Educational Officer,
Ramanathapuram,
Ramanathapuram District.

3.The District Educational Officer,
Ramanathapuram, Ramanathapuram District.

4.The Correspondent,
Syed Ammal Higher Secondary School,
Velipattinam, Ramanathapuram, Ramanathapuram District.

+2 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-59198[F] dated 05/04/2019)

+1 CC to M/s.SPL GP (SR-59286[F] dated 05/04/2019)

Common Order made in

W.P.[MD]Nos.10166 of 2015 and 2583 of 2018

Delivered on:

04.04.2019