

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 01.07.2019**

CORAM

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**W.P(MD)No.13114 of 2015**

M.Mahendra Brabu

... Petitioner

Vs

1.The Director of Elementary Education,
Chennai-06.2.The District Elementary Educational Officer,
Virudhunagar,
Virudhunagar District.3.The Assistant Elementary Educational Officer,
Thiruchuli @ M.Rediapatti,
Virudhunagar District.4.The Head Master,
Panchayat Union Middle School,
K.Velayuthapuram,
Thiruchuli Union,
Narikudi Post-626 607,
Virudhunagar District.

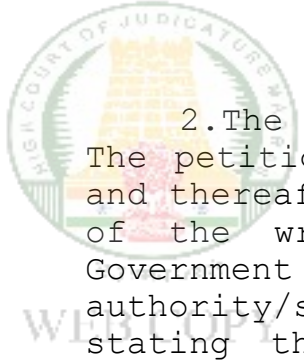
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned communication in A.Thi.Mu.No.1042/Aa1/2015, dated 05.05.2015 on the file of the Respondent No.4 and quash the same as illegal and consequently to direct the respondents No.3 and 4 to provide incentive increments to the petitioner for the petitioner's higher qualifications of M.Com., and B.Ed., within the time stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

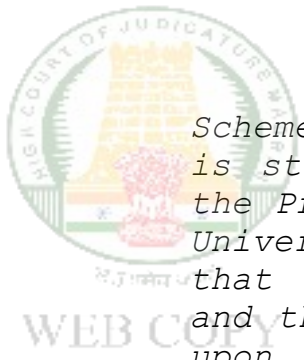
For R1 to R4 : Mrs.S.Srimathy
Special Government Pleader**ORDER**

The order of rejection, dated 05.05.2015, for grant of incentive increments for acquiring additional qualifications, is under challenge in the present writ petition.



2. The writ petitioner is working as Secondary Grade Teacher. The petitioner acquired higher qualification of M.Com., and B.Ed., and thereafter requested for grant of incentive increment. The case of the writ petitioner was considered with reference to the Government Order as well as the rules in force and the competent authority/second respondent issued impugned order dated 08.12.2009 stating that the writ petitioner while undergoing the regular education had obtained M.Com., degree during the same academic year. The writ petitioner while studying Diploma in Teacher Education simultaneously studied M.Com., and obtained degree. This Court is of the considered opinion that admission to M.Com., while undergoing regular course is impermissible. When a student is studying in regular college, such student is not eligible to be admitted in M.A., M.Sc., M.Com., and other PG course degree. A student has to undergo one course at one point of time and two degrees during same academic year is not only impermissible and such degrees are invalid in the eye of law. Obtaining two degrees during the same academic year is in violation of the University Grants Commission norms in force. University Grants Commission by virtue of the powers conferred under the University Grants Commission issued regulations stating that what are all the degrees, which are all permissible and what are all the degrees, which are all approved. Thus, the candidates, who have studied in the regular pattern 10+2+3+2 as per the University Grants Commission's regulations alone is eligible for promotion or for grant of other service benefits as per the rules in force. Invalidity of PG degree cannot be a ground for claiming promotions or appointment which is now settled by the Apex Court. The benefits cannot be granted based on such invalid degrees obtained by not undergoing the course in the regular pattern through regular classes. As far as the teaching faculty is concerned, even for appointment the candidates, who are all undergone regular courses alone must be appointed. Regarding the scope of the University Grants Commission Act with reference to the open university system even before the judgment of the Hon'ble Supreme Court of India in the case of **Annamalai University vs. Secy. To Govt. Information and Tourism Department reported in 2009 (4) SCC 590**, the Hon'ble Division Bench of the Madras High settled the principles in W.P.No.1256 of 1999, dated 25.04.2002 and His Lordship P.Shanmugam while sitting in the Division Bench elaborately discussed the provisions of University Grants Commission Act as well as the scope of the validity of the degrees obtained through open university system for the purpose of appointing teaching faculty. The relevant paragraphs are extracted hereunder:-

"10. The applicants before the Tribunal are teachers who acquired direct M.A. Degree qualification without having a Bachelor's Degree, which is the requisite qualification prescribed under the rules. Rule 13 of the General Rules did not specify M.A. Degree from open university as equivalent to B.A. or B.Sc. Degree. The Open University Scheme has come into operation long after the framing of the Special Rules in the year 1981 and the



Scheme is of a recent origin. As per this Scheme, which is stated to be a distant education programme and from the Prospectus of the Annamalai University under the Open University System, the eligibility for this course is that a candidate should have completed 25 years of age and that no formal educational qualification is insisted upon, which means that technically, a person who does not even know to read or write can be admitted to the course, provided he has completed 25 years of age and the person who undergoes this course has to take eight papers of the relevant subjects like History, Sociology, Economics, Public Administration and English. They offer courses both in English medium as well as in Tamil medium. The students need not undergo a course in languages.

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 this behalf 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 MANU/SC/0330/1967*, 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 inconsistent 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 MANU/SC/0495/1991*, the Supreme Court held that administrative orders can be issued to supplement the statutory rules. In *KRISHNA CHANDRA SAHU VS MANU/SC/0092/1996*, 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 VSMANU/SC/1383/1998*, 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 the English Language specifically.

16. In *JUTHIKA VS MANU/SC/0546/1976*, 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 particular 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 MANU/SC/0329/1977, 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 formalities. 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 System 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 benefitter. 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 direct nexus with the job of teaching. The Teachers are meant to teach children of impressionable age. In *NAGESHWARAMMA VS . STATE OF A.P.* MANU/SC/0100/1986 : AIR1986SC1188 , 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 overemphasised. 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.

3. In view of the fact that the writ petitioner has obtained double degree which is impermissible for the purpose of grant of service benefits including the incentive increments. The impugned order passed in this regard is in consonance with the Government Order in force as well as the legal principles settled by the courts.



4. Accordingly, the writ petition is devoid of merits and it is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Director of Elementary Education,
Chennai-06.
 2. The District Elementary Educational Officer,
Virudhunagar,
Virudhunagar District.
 3. The Assistant Elementary Educational Officer,
Thiruchuli @ M. Rediapatti,
Virudhunagar District.
 4. The Head Master,
Panchayat Union Middle School,
K. Velayuthapuram,
Thiruchuli Union,
Narikudi Post-626 607,
Virudhunagar District.
- +1 CC to SPL GP SR-72744.
+1 CC to Mr. T. LAJAPATHI ROY, Advocate SR-72866.

W.P(MD) No. 13114 of 2015

CS: 12/07/2019 8P 7C

01.07.2019