



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:09.07.2019

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

W.P. (MD) No.13488 of 2014

and

M.P. (MD) Nos.1 and 2 of 2014

Meenakumari

... Petitioner

-vs-

1. The State of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
Secretariat, Chennai.
2. The Chairman,
Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
College Road, Chennai-6.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 2nd respondent in his proceeding no.nil dated nil and quash the same as illegal and consequently to direct the 2nd respondent to appoint the petitioner as P.G.Assistant (Geography) taking into consideration of his qualification in B.Sc. (Geography) M.Sc, (Geography) and B.Ed., within the period that may be stipulated by this Court.

For Petitioner : Mr.K.N.Govardhanan

For Respondents : Mrs.S.Srimathy
Special Government Pleader
(for R-1)
Mr.VR.Shanmuganathan
Special Government Pleader
(for R-2)

ORDER

The order of rejection in respect of the selection to the post of Graduate Assistants for the year 2012-13 is under challenge in the present writ petition.



2.The learned counsel appearing for the writ petitioner states that the writ petitioner passed his High School and Higher Secondary in April 1992 and in March 1995 respectively. Thereafter, the petitioner has completed B.Sc., (Geography) in April 1999 and B.Ed., course in June 2009 in regular course. Subsequently, the writ petitioner has completed M.Sc., (Geography) course with a duration of two years through correspondence course in May 2010. Subsequently, the petitioner also has completed M.Ed., in June 2011. Therefore, the petitioner claims that she has studied in the regular stream of 10, +2, +3, +2 and accordingly, she is entitled for appointment to the post of Graduate Assistant.

3.The learned counsel for the writ petitioner states that the writ petitioner has not acquired simultaneous degree and therefore, the case of the writ petitioner should be considered for the appointment to the post of Graduate Assistant.

4.The learned counsel appearing on behalf of the respondents states that as per the Government Orders in force any candidate, who has acquired simultaneous degrees are not eligible for appointment to the post of Graduate Assistant. Simultaneous degrees are impermissible and therefore, the writ petitioner is not qualified for appointment to the post of Graduate Assistant as per the Government Orders in force.

5.The learned counsel for the writ petitioner referred the judgment of this Court, dated 13.02.2015 passed in W.P.(MD)No.1677 of 2013, he referred Paragraph No.9 of the judgment which reads as under:

"9.Considering the above stated facts, I am of the view that the respondent is not correct in stating that the petitioner studied M.A., and B.Ed., in the same year. As already pointed out, the petitioner after passing the B.Ed., degree in the month of April 2008, joined the M.A., course in the academic year and however, completed the course and became successful only in the month of April 2010, for which, examination was conducted in the month November 2009. Therefore, it cannot be said that the petitioner has studied both the B.Ed., and M.A., in the same year."

6.Plain reading of the orders passed by this Court reveals the fact that the petitioner in that writ petition studied B.Ed., degree in the month of April 2008 and joined M.A., course in the very same academic year. Therefore, it is made clear that on completion of B.Ed., degree in the month of April 2008, the writ petitioner joined in M.A., degree in June 2008. The said factual position cannot be compared with the case of the present writ petitioner, as the present writ petitioner studied two courses



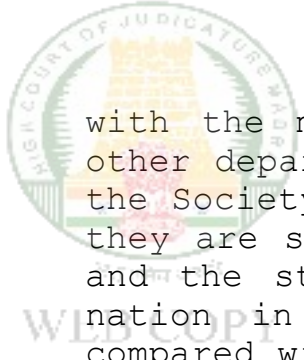
during the same academic year. Thus, the judgment relied upon by the writ petitioner is of no avail to him as the facts are distinct are different.

7. As far as the case of the writ petitioner is concerned even as per the affidavit filed in support of the writ petition, the petitioner joined the B.Ed., course in June 2008 and completed the B.Ed., course in June 2009 in the regular course. When a student is studying B.Ed., regular course in a college cannot seek admission for Post Graduation Course at all. The transfer certificate issued to the writ petitioner was submitted at the time of securing admission to B.Ed., course in the regular college, therefore, a student studying in a regular B.Ed., course cannot undergo the Master degree course in any other University. This being the University Grants Commission Regulation, the writ petitioner secured admission for M.Sc., (Geography) course during June 2008 itself. The writ petitioner completed the M.Sc., (Geography) two years course in May 2010. Therefore, it is apparently clear that during the same academic year in June 2008, the writ petitioner secured admission for B.Ed., course in a regular college and secured admission for M.Sc., (Geography) course from the university. Therefore, during the same academic year of 2008-09, the writ petitioner had undergone one year B.Ed., course as well as first year M.Sc., (Geography) course. This being the factum of the case, the writ petitioner has acquired the simultaneous degree which is impermissible and not valid for the purpose of securing appointment to the post of Graduate Assistant.

8. The learned counsel for the writ petitioner cited the judgment of the Hon'ble Division Bench of this Court reported in **2016 Writ L.R. 844**. However, the said judgment was in relation to the Tamil Nadu Public Service Commission appointment. Therefore, the same cannot be equated with the appointments in the Education Department.

9. The Department of Education has got certain restrictions and therefore, the appointments made to the ministerial posts in other departments cannot be compared with the teaching posts in Education Department. The teaching posts in Education Department has got a distinct character and requires some specialized education for the purpose of imparting education to the children and students studying in schools and colleges. Therefore, comparison of the ministerial posts, administrative post with teaching post cannot be equated.

10. Teaching is a skill. Teaching is a noble profession. A Teacher, who knows the class room alone can handle the students in the class room effectively. A teacher is treated as a noble man of building the nation. The respect towards the Teachers in our country or throughout the world are un-comparable



with the ministerial staffs or administrative staffs working in other departments. The Teachers are enjoying the special status in the Society by virtue of their position. In view of the fact that they are sharing the knowledge for the upliftment of the children and the students, who are all the nation builders of our great nation in future. Thus, the post of teaching can never be compared with the ministerial posts at all.

11.The recent growing trend is that the quality of teachers and the appointments in teaching posts are not upto the mark and the selections are done in a mechanical and routine manner. Selections to the teaching post must be done by verification of character and antecedents and also the capability of a person to teach the students in the class room. Teaching being a skill, the assessment of skill regarding the teaching of a person is of paramount importance. However, no such scrutiny or interview is conducted in this perspective. Contrarily, merely based on the verification and qualifications teachers were appointed. That is the reason why the Government Schools are facing so many issues and difficulties.

12.In recent years, even in High Schools and Higher Secondary Schools, large scale of sexual harassment allegations are made against the Teachers. Large number of harassment by the Teachers are brought to the notice of the department. Many number of such allegations are in the public domain, Teachers are involved in private business. The Teachers are soliciting the students for tuition. The Teachers, who are taking classes are soliciting the students to attend private tuition classes in their home. They are not only commercializing the education, they are always acting for unlawful enrichment. This being the recent trend being developed in our great nation, it is a high time where the system of selection and appointment to the teaching posts must be reviewed and appropriate policy is to be framed for the purpose of selecting and appointing the teachers in schools, more specifically, in the State of Tamil Nadu.

13.Even the Hon'ble Division Bench of this Court in W.P.(MD) No.1256 of 1999 dated 25.04.2002, considered the similar issue of entertaining the degree obtained through correspondence courses for appointment to the teaching posts, the Hon'ble Division Bench consist of Hon'ble Mr. Justice P.Shanmugam and Hon'ble Mr. Justice F.M.Ibrahim Kalifulla as he then was and Mr. Lordship P.Shanmugam while speaking for the Bench elaborately considered the provisions of the University Grants Commission Act and the relevant paragraphs are usual to understand the importance of the regular course for appointment to the teaching posts. The degrees obtained through Open University system as well as the ~~services provided by~~ correspondence courses were also considered by the Hon'ble Division Bench with reference to the provisions of the University Grants Commission Act.



"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



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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 VS MANU/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 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



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 sufficient number of qualified teachers are appointed.

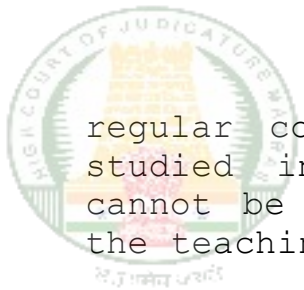
20. A candidate who had not attended formal education even



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.

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. Degree, 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."

14. In paragraph No.21 of the judgment, the Hon'ble Division Bench made an observation that "whatever may be the purpose for which the Open University provides M.A., degree, in so far 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". Therefore, the Hon'ble Division Bench was of the opinion that the teaching post must be filled up from the candidates, who have undergone the



regular course by attending the college. The candidates, who studied in Open University system or correspondence courses, cannot be considered as a suitable candidate for appointment to the teaching post.

15. Assessment of suitability is also the criteria to be followed while undertaking the process of selection. While considering the suitability of a candidate, the manner in which the degrees are obtained by such candidates are also to be scrutinized. The candidates, who had undergone the regular classes will be the better persons to handle the classes in schools and colleges. Thus, the candidates, who studied in regular courses in accordance with the pattern of education prescribed by the University Grants Commission alone must be the eligible candidates with reference to the rules for appointment to the teaching post in schools and colleges. This being the principles to be followed this Court is of the considered opinion that the writ petitioner admittedly had secured admission for two courses in the same academic year namely B.Ed., course as well as M.Sc., (Geography) course. The admission was secured during the academic year 2008-2009 more specifically, in June 2008. This being the factum, it is made clear that the writ petitioner has secured simultaneous degree which is not a valid qualification for the purpose of securing appointment to the post of Graduate Assistant.

16. Under these circumstances, this Court has no hesitation in coming to the conclusion that the decision taken by the respondents are in consonance with the legal principles settled and accordingly, the Writ Petition is devoid of merits and dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar (CS)

To

1. The Secretary,
State of Tamil Nadu,
School Education Department,
Secretariat, Chennai.



2. The Chairman,
Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
College Road, Chennai-6.

+1 CC to Mr.K.N.GOVARDHANAN, Advocate (SR-74388[F] dated
10/07/2019)

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M.P.(MD) Nos.1 and 2 of 2014
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