



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

WEB COPY

W.P. (MD) No.19910 of 2017

and

W.M.P. (MD) Nos.16184, 16185 & 16186 of 2017

A.Gnanakkan

... Petitioner

vs.

- 1) The Secretary to Government,
Department of Higher Education,
Fort St.George, Secretariat,
Chennai.
- 2) The Secretary to Government,
Department of School Education,
Fort St.George, Secretariat,
Chennai.
- 3) The Chairman,
Teachers Recruitment Board,
EVK Sampath Maaligai, DPI Campus,
College Road, Chennai 600 006
- 4) The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C. Nagar, Park Town,
Chennai 600 003
- 5) The Director of School Education,
DPI Campus, College Road,
Nungambakkam, Chennai 600 006
- 6) The Registrar,
Madurai Kamaraj University,
Palkalai Nagar,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned selection list dated Nil relating to the petitioner and quash the same and consequently direct the 3rd respondent to select him for the post of 'Post



Graduate Assistant' in Commerce discipline in pursuance of the Notification/ Advertisement No.03 dated 09.05.2017 issued by the 3rd respondent and direct the 5th respondent to appoint the petitioner in the above post.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For R-1 : Mr.M.Jeyakumar,
Special Government Pleader

For RR-2 & 5 : Mr.M.Karuppasamy,
Government Advocate

For R-3 : Mr.V.R.Shanmuganathan,
Standing Counsel

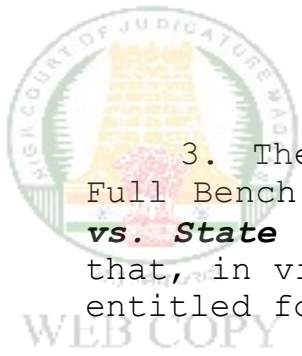
For R-4 : Mr.K.K.Senthil

For R-6 : Mr.K.Ragatheesh Kumar,
For M/s Isacc Chambers

O R D E R

The petitioner herein, who possess a decree in B.Com (Advertising Sales Promotion Management) through Madurai Kamaraj University, in the year 2008 was provisionally selected for the post of Post Graduate Assistant in Commerce, out of 99 vacancies, in the selection process held by the third respondent herein as per the notification dated 09.05.2017. During the course of the certificate verification, his degree of B.Com (Advertising Sales Promotion Management) was considered not to be equivalent to B.Com and in the absence of an Equivalence Certificate, his selection was kept in abeyance. After the certificate verification, the petitioner was provisionally placed in the selection list at Sl.No.11. As such, the only obstruction raised by the third respondent herein was the absence of the Equivalence Certificate. Challenging the said action, the present writ petition has been filed.

2. According to the learned counsel for the petitioner, the degree of B.Com (Advertising Sales Promotion Management) is equivalent to B.Com degree as prescribed as a qualification for selection to the post of Post Graduate Assistant in Commerce. In support of his contentions, the learned counsel had also produced the Equivalence Certificate issued by the Higher Education(K2) Department in G.O.Ms.No.65 dated 24.04.201. In view of such an equivalence Government Order issued, he would submit that he is entitled for selection for the post of Post Graduate Assistant in Commerce.



3. The learned counsel also relied upon the decision of the Full Bench of this Court in the case of **Nadar Thanga Shubha Laxman vs. State of Tamil Nadu** reported in **2014 (3) CTC 433** and submitted that, in view of the Equivalence Certificate now issued, he would be entitled for selection to the said post of Post Graduate Assistant.

4. The learned standing counsel appearing on behalf of the third respondent, by relying upon the counter affidavit filed by them, submitted that, as on the date of the certificate verification, the petitioner was not able to produce the Equivalence Certificate from the Equivalence Committee and in view of the fact that the recruitment for the post of Post Graduate Assistant for the year 2016-17 has been completed and all the vacancies filled, the petitioner's candidature cannot be considered at this point of time. He would also submit that whenever, vacancies arise in future, the petitioner would be entitled to participate in such selection process.

5. I have given careful consideration to the submissions made by the respective counsel appearing on either side.

6. The Government Order No.65, Higher Education (K2) Department, dated 24.04.2019 was issued pursuant to the resolution passed by the Equivalence Committee holding that the degree of B.Com (Advertising Sales Promotion Management) is equivalent to B.Com. This fact is not in dispute. The Hon'ble Full Bench of this Court in **Nadar Thanga Shubha Laxman vs. State of Tamil Nadu** (cited supra) had held that, on issuance of an Equivalence Certificate, its status would be traced retrospectively from the date on which the degree had been obtained. The relevant portion of the said judgement reads as under:

"23. Also, in the present case, neither the Equivalence Committee nor the Government Orders in G.O.Ms.Nos.72, dated 30.04.2013 and 117, dated 02.07.2013, confined the validity of the degree obtained by the candidates to operate prospectively, therefore, as per the above judgments, when the vested rights are created from the date of their acquisition of equivalent degrees, the respondents cannot take a stand that the degrees obtained by the petitioners will only have prospective effect from the date of issuance of Equivalence Certificate. When both the Equivalence Committee and the Government Order have consistently not mentioned the effect of the validity of the degree, it is not proper to hold prospective by any one, more so, by the Court. That apart, a degree or a certificate issued by any University or competent educational authorities always have the effect on par with a decree issued by a competent civil court. Besides, it is well settled legal



position that even an executing court cannot go behind its decree and this principle will mutatis mutandis undoubtedly apply to the case on hand as well. "

7. In view of the decision of the Full Bench of this Court cited above, it should necessarily follow that the degree held by the petitioner, namely B.Com (Advertising Sales Promotion Management) was always deemed to be an equivalent degree to B.Com from the date on which the petitioner had obtained the degree from Madurai Kamaraj University (i.e.) from November 2008. If the law laid down by the Hon'ble Division Bench is applied to the facts of the present case, the petitioner would be deemed entitled for selection to the recruitment held pursuant to the notification issued by the third respondent on 09.05.2017.

8. Nevertheless, it is stated by the learned standing counsel for the third respondent that the selection process has already been completed and all the vacancies have been filled up. Had the Equivalence Certificate been brought to the knowledge of the third respondent by the petitioner, even prior to the filling up of the vacancies, the same would have been considered by them and the petitioner would have also been selected for the post. At this juncture, if the respondents are directed to appoint the petitioner for the recruitment that took place for the year 2016-17, it would disrupt the entire selection panel. However, in view of the fact that the petitioner had already undergone selection process and is also now assisted by the Equivalence Certificate and taking into account that he was also provisionally selected in the recruitment process held for the year 2016-17, it would be appropriate to direct the respondents herein to appoint the petitioner for any future vacancies for the same post that may arise, without subjecting him to the ordeal of a selection process.

9. At this juncture, the learned standing counsel for the third respondent submitted that 99 similar posts have already been identified and also notified for filling up the post of Post Graduate Assistant in Commerce and the selection process is in progress.

10. In the light of the above observations, it is hereby declared that the petitioner herein is fully qualified and is deemed to have been selected for the post of Post Graduate Assistant in Commerce. The third respondent herein, shall forward the petitioner's candidature to the fifth respondent herein, without subjecting the petitioner to any further test or certificate verification and on receipt of such recommendation from the third respondent, the fifth respondent herein shall issue the appointment order to the petitioner for the post of Post Graduate Assistant in Commerce forthwith, in any event atleast within a period of four(4) weeks from the date of receipt of a copy of this order. In view of



Equivalence Certificate in time, he shall not be entitled to claim seniority from among the selected candidates from the present notification dated 09.05.2017.

11. The Writ Petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1) The Secretary to Government,
Department of Higher Education,
Fort St.George, Secretariat,
Chennai.
- 2) The Secretary to Government,
Department of School Education,
Fort St.George, Secretariat,
Chennai.
- 3) The Chairman,
Teachers Recruitment Board,
EVK Sampath Maaligai, DPI Campus,
College Road, Chennai 600 006
- 4) The Director of School Education,
DPI Campus, College Road,
Nungambakkam, Chennai 600 006

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-103792[F] dated 06/12/2019)

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-104055[F] dated 09/12/2019)

Order made in
W.P. (MD) No.19910 of 2017

Dated: **05.12.2019**

JMN(26.12.2019) 5P : 7C