

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.225 of 2020

K.Elumalai

.. Appellant

vs.

1.The State of Tamil Nadu,  
rep. by its Principal Secretary to Government,  
P & AR Department,  
Secretariat, Fort St. George,  
Chennai – 600 009.

2.The State of Tamil Nadu,  
rep. by its Principal Secretary to Government,  
Higher Education Department,  
Secretariat, Fort St. George,  
Chennai – 600 009.

3.All India Council for Technical Education (AICTE),  
No.1, Nelson Mandela Marg,  
Pocket 10, Section B, Vasant Kunj,  
New Delhi, Delhi-110 070.

4.The Registrar,  
Anna University,  
Guindy, Chennai – 600 025.

.. Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent against the order dated 28.01.2020 passed by the learned Single Judge in W.P.No.7184 of 2018.

For Appellant : Mr.G.Sankaran

JUDGMENT

THE HON'BLE CHIEF JUSTICE

We have heard Mr.G.Sankaran, learned counsel for the appellant at length.

2. The sole contention of the learned counsel for the appellant is that in a matter related to grant of equivalence, the respondent State has not undertaken any valid exercise to consider the equivalence of the qualification possessed by the appellant and, therefore, the decision of the fourth respondent/University that he does not possess the requisite qualification for teaching the course for which he was engaged is erroneous. Learned counsel contends that the learned Single

Judge has not correctly appreciated this issue, for which he has raised his submissions.

3. The contention is that Electrical and Electronics Engineering (EEE) is the Undergraduate qualification required and so far as the Madras Institute of Technology (Anna University, Chennai) is concerned, it is the Department of Electronics Engineering that runs B.E. (Full Time) and (Part Time) courses of Electronics and Communication Engineering (ECE), for which subject the appellant was appointed on a contractual basis and he has been continuing as such on the strength of qualifications possessed by him, the first letter of appointment issued was on 23.9.2013. It is urged that this appointment came after Expert Committee has scrutinized the eligibility conditions in the year 2013 itself. Another Expert Committee was set up, which met on 15.5.2017, and the said Committee made certain recommendations for the qualification status of the Teaching Fellows, referring to the notification of the All India Council for

Technical Education (AICTE) dated 24.8.2017 as well.

4. The contention of the learned counsel for the appellant is that the exercise that was required to be undertaken by the Equivalence Committee, and the competent authority, the State of Tamil Nadu, through its concerned Secretary, was not undertaken for assessing the correct status of qualifications. The grievance of the appellant is that in the absence of any such exercise having been undertaken to find out the status of the qualification of the appellant as being equivalent for the post held by him, the conclusion to treat him as unqualified is erroneous. Learned counsel contends that this aspect has been totally overlooked by the learned Single Judge and hence, the impugned judgment is vitiated.

5. Learned counsel contends that the appellant had only sought for a mandamus for such consideration for declaring the B.E. (EEE) Degree, as possessed by the appellant, for

appointment to the post of Assistant Professor in the Department of Electronics and Communication Engineering (ECE) in the light of the representation moved by the appellant on 6.5.2017. The learned Single Judge instead of calling upon the concerned authority to assess the said qualification, has himself recorded a finding that Electrical and Electronics Engineering (EEE) is not the relevant or appropriate Undergraduate Degree for the discipline of Electronics and Communication Engineering (ECE), which is a separate department altogether. The learned Single Judge has recorded that separate Undergraduate Degree qualification is required for the said department as per the brochure and hence, the claim of the appellant is unacceptable.

6. The argument of the learned counsel in essence is that in the absence of any such consideration by the competent authority, the learned Single Judge ought to have remitted the matter to the concerned Committee for such assessment and any

conclusion drawn by the learned Single Judge himself was not desirable. According to the learned counsel, this decision was taken by the learned Single Judge solely relying on the averments contained in the counter affidavit, which were not sufficient in themselves, as nothing was disclosed about an application of mind, more particularly in the light of the contention that in the University of Mumbai the said qualifications have been considered equivalent keeping in view the provisions made in this regard by the AICTE. Consequently, the appellant in spite of having been appointed and worked in the same capacity with the same qualification is now found to be unfit on the strength of a 2017 decision taken, which in effect is not an appropriate stand, and as a matter of fact is not even a conclusive decision.

7. To examine the same, we have also gone through the pleadings in the writ petition. The affidavit filed in support of the writ petition nowhere lays any such foundation that any exercise

by the competent authority was not undertaken to ascertain the equivalence of the qualifications. To the contrary, support is sought to be drawn from the notification and circular of the University of Mumbai dated 10.2.2012 and the information received under the Right to Information Act from AICTE that such qualifications as possessed by the appellant are accepted for being appointed as a faculty in the Electronics and Communication Engineering (ECE) Department. The petition has been filed only for a mandamus to declare the B.E. (EEE) Degree along with the Post Graduate Degree of M.Tech qualification as possessed by the appellant to be an eligible qualification for appointment to the post of Assistant Professor in the Department of Electronics and Communication Engineering (ECE) in the light of his representation dated 6.5.2017.

8. The respondents came up with a clear stand in paragraph (7) of the counter affidavit that the Expert Committee, which was constituted, considered the relevant technical qualification data

and the norms of the AICTE, and then submitted a status report accordingly making recommendations along with the qualification status of the Teaching Fellows. The entire contention in paragraph (7) of the counter affidavit has nowhere been factually disputed by a rejoinder affidavit or a challenge raised to the status report submitted by the Committee on 15.5.2017.

9. On a specific query being raised by the Court, learned counsel for the appellant submitted that this was a legal argument and, therefore, such submissions were advanced contradicting the stand taken in the counter affidavit.

10. We are unable to accept this submission in as much as a factual averment about the status report being submitted, as contained in paragraph (7), either ought to have been challenged or rebutted by an appropriate affidavit, and should not have been left unattended or only subjected to oral arguments. In our opinion, unless the factual foundation laid in the counter affidavit

was either rebutted or had been contradicted in some form in the writ petition itself, the Court cannot presume the rebuttal on the strength of an oral argument to the effect that no exercise had been undertaken to ascertain the status of the qualification possessed by the appellant. As a matter of fact, the said stand taken in the counter affidavit is categorical and hence, we do not find any substantial challenge having been raised, which is now sought to be made through oral arguments.

11. The oral submission of the learned counsel for the appellant does not take away the impact of the factual assertion made with regard to the status of the qualifications ascertained by the respondents and the exercise undertaken by them. Thus, the contention of the learned counsel for the appellant that there was no such exercise undertaken at all cannot be accepted in the light of the said facts, which were brought forth in the counter affidavit and which remain unrebutted.

12. Apart from this, even though the learned Single Judge has observed that this was a contractual appointment and the Court did not want to go into this issue, yet we find that the nature of appointment being contractual, once the contract of appointment terminates on the expiry of the period of the contract itself, then any subsequent qualification being prescribed or status of qualification altered, cannot be made inapplicable merely because the first appointment had been made on the basis of the former qualification possessed by the appellant. The ascertainment of the qualification in such contractual appointment does not regularize the appointment if it was made on the basis of a different qualification earlier, which was not in conformity with the status of the qualification determined later on. The status of contractual appointment also has a bearing on the issue.

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13. Learned counsel for the appellant, however, submitted that he does not dispute this position that in a matter of

contractual appointment, after the expiry of the previous contract, if subsequently other qualifications or the correct qualification has been indicated, the fresh contract can be reviewed and offer of appointment can only be made if such qualifications are fulfilled, but in the instant case the qualifications are available with the appellant and, therefore, the mandamus sought for was justified.

14. Having found that the assessment of the correct qualification through the status report submitted by the Committee in 2017, as applicable to the case of the appellant, renders him disqualified, having not been successfully disputed, the conclusion drawn by the learned Single Judge, in our opinion, does not suffer from any infirmity.

The appeal lacks merit and is accordingly rejected. However, in case any declaration of equivalence is granted by the competent authority in future on any approach by the appellant

or otherwise, that may have an effect on any such claim, then it will be open to the appellant to seek employment if offered to him. Consequently, C.M.P.No.3532 of 2020 is closed. The judgment has been pronounced in the presence of Mr.M.Vijayakumar, learned counsel for the fourth respondent/ Anna University.

(A.P.S., CJ.) (S.K.R., J.)  
04.06.2020

Index : Yes/No  
sasi

To

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