

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 30062 OF 2013

AND

M.P. NOS. 2 & 3 OF 2013

Tmt. Geetha

.. Petitioner

- Vs -

1. The Principal Secretary to Government
Fort St. George, Chennai - 9.
2. The Secretary to Government
Higher Education Department
Fort St. George, Chennai - 9.
3. The Secretary
Tamil Nadu Public Service Commission
Chennai - 3.
4. The Secretary
Tamil Nadu State Council for
Higher Education, Chennai.
5. The Chairman
Teachers Recruitment Board
Chennai - 6.
6. The Registrar
Bharathidasan University
Trichy.
7. The Joint Director
Higher Secondary School Education
Chennai - 6.

.. Respondents

(R7 impleaded vide order of this court
dated 17.08.2017 and made in WMP No.13358/2017)

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the 1st respondent in G.O. Ms. N o.72, Higher Education (K2) Department dated 30.4.2013 and quash serial No.16 of Resolution No.3 and Serial No.36 of

Paragraph 3 of the said G.O., insofar as it relates to the petitioner and to direct the 5th respondent to appoint the petitioner to the post of Graduate Assistant, Physics, S.C.-Women Category in a Government Higher Secondary School in respect of the recruitment for the year 2012-2013.

For Petitioner : Mr.G.Jermaiah

For Respondents: Mr.Karthikeya Balan for R-1
Mr.S.Suresh Kumar, GA for RR-2, 4 & 7
Mr.C.Munusamy, Spl. GP for R-5
Mr.Karthik Rajan for R-3
Mr.V.Govardhanan for R-6

ORDER

It is the case of the petitioner that she belongs to Scheduled Caste community and after completion of her SSLC and HSC, she completed graduation in B.Sc. (Physics) and further completed her Post-Graduation in M.Sc., Applied Physics (Instrumentation) and further she also completed M.Phil in Physics and, thereafter, completed B.Ed. Course as well and registered all her qualifications with the Executive Employment Exchange at Chennai on 26.12.03.

2. It is the further case of the petitioner that she participated in the recruitment for Post-Graduate Assistant in Government Higher Secondary Schools in 2012-2013 conducted by the 5th respondent. In the written test, the petitioner scored 100 marks out of 150 and she was provisionally selected by the 5th respondent for the post of Post Graduate Assistant in Physics. The petitioner was called for certificate verification by the 5th respondent on 22.10.13 in which she appeared and during verification of the certificates, the 5th respondent came to the conclusion that the post-graduate degree obtained by the petitioner in M.Sc. Applied Physics (Instrumentation) is not equivalent to M.Sc. (Physics) and, therefore, rejected her candidature in the light of G.O. Ms. No.72 dated 30.4.13. It is the case of the petitioner that the said rejection is unsustainable and contrary to law and highly illegal, which prompted the petitioner to file the present petition for the relief stated supra.

3. The main bone of contention of the learned counsel for the petitioner is that M.Sc. Applied Physics (Instrumentation) completed by the petitioner is equivalent in all respects to M.Sc. (Physics) and, therefore, the inequivalence of the two courses, as mandated in the above Government Order is per se erroneous and impermissible and, therefore, she should be

considered for appointment to the post.

4. Per contra, learned counsel appearing for the 3rd respondent submitted that the equivalence between the two courses had been gone into by experts in the field of education and it has been categorised that the two courses are not equivalent and once the inequivalence between the two courses has been codified by the experts, it is not open to the Court, sitting under Article 226 to substitute its views to that of the experts to decide on the equivalency of the two courses. It is the further submission of the learned counsel that fixation of eligibility criteria vests with the employer and Courts shall not ordinarily dilute the said criteria. In support of his contentions, reliance was placed on the following decisions :-

- i) Dr. Basavaiah - VS - Dr. H.L.Ramesh (2010 (8) SCC 372)
- ii) Guru Nanak University - Vs - Sanjay Kumar Katwal (2009 (1) SCC 610)
- iii) TNPSC - Vs - Vijayaraj (2011 (7) MLJ 42)

5. This Court bestowed its best attention to the contentions advanced by the learned counsel for the respondents and also the grounds raised by the petitioner and perused the materials placed in the typed set of records.

6. The Supreme Court in Basavaiah (Dr.) - Vs - Dr. H.L. Ramesh, (2010 (8) SCC 372) after analysing the law in relation to the interference by the Courts in academic matters, held as under :

"24. In M.C. Gupta (Dr.) v. Dr. Arun Kumar Gupta [(1979) 2 SCC 339 : 1979 SCC (L&S) 168] , somewhat similar controversy arose for adjudication, in which the State Public Service Commission invited applications for two posts of Professors of Medicine in the State Medical Colleges. The two appellants as well as Respondents 1, 2 and 3 applied for the said post. Appellant 1 had teaching experience of about 6 years and 6 months as a Lecturer in Cardiology in the Department of Medicine and about 3 years and 2 months as Reader in Medicine in S.N. Medical College, Agra. Since there was no separate Department of Cardiology in that College, Cardiology formed part of General Medicine and as such he was required to teach General Medicine to undergraduate students and to some postgraduate students in addition to Cardiology. Similarly, Appellant 2 had one year's experience as post-doctoral teaching fellow in the Department of Medicine, State

University of New York, Buffalo, one year's teaching experience as Lecturer while posted as a Pool Officer and 15 months' teaching experience as post-doctoral research fellow in the Department of Medicine in G.S.V.M. Medical College, Kanpur and about 4 years and 6 months' teaching experience as Assistant Professor of Medicine, State University of New York, Buffalo. Cardiology is a part of Medicine and the teaching experience acquired while holding the post of Lecturer in Cardiology was teaching experience in a subject which substantially formed part of General Medicine over and above the same. The Commission was amply justified in reaching to the conclusion that he had the requisite teaching experience. The High Court was, therefore, in error in quashing its selection of the appellant in this case.

25. The teaching experience of foreign teaching institutions can be taken into consideration if it is from a recognised institution of repute. It cannot be said that State University of New York at Buffalo, where Appellant 2 served as an Assistant Professor would not be an institution of repute. The experts aiding and advising the Commission must be quite aware of institutions in which the teaching experience was acquired by him and this one is a reputed University. According to the experts of the Selection Board, both the appellants had requisite qualification and were eligible for appointment. If they were selected by the Commission and appointed by the Government, no fault can be found with the same. The High Court interfered and set aside the selections made by the Expert Committee. This Court while setting aside the judgment of the High Court reminded the High Court that it would normally be prudent and safe for the courts to leave the decision of academic matters to experts. The Court observed as under: [M.C. Gupta (Dr.) case [(1979) 2 SCC 339 : 1979 SCC (L&S) 168] , SCC pp. 344-45, para 7]

"7. ... When selection is made by the Commission aided and advised by experts having technical experience and high academic qualifications in the specialist field, probing teaching/research experience in technical subjects, the courts should be slow to interfere with the opinion expressed by experts unless there are allegations of

mala fides against them. It would normally be prudent and safe for the courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the courts generally can be.”-

26 In J.P. Kulshrestha (Dr.) v. Allahabad University [(1980) 3 SCC 418 : 1980 SCC (L&S) 436] the Court observed that the court should not substitute its judgment for that of academicians: (SCC p. 426, para 17)

“17. Rulings of this Court were cited before us to hammer home the point that the court should not substitute its judgment for that of academicians when the dispute relates to educational affairs. While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies.”

27. In Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth [(1984) 4 SCC 27] the Court observed thus: (SCC pp. 56-57, para 29)

“29. ... As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them.”

28. In Neelima Misra v. Harinder Kaur Paintal [(1990) 2 SCC 746 : 1990 SCC (L&S) 395 : (1990) 13 ATC 732] the Court relied on the judgment in University of Mysore [AIR 1965 SC 491] and observed that in the matter of appointments in the academic field, the court generally does not interfere. The Court further observed that the High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendation on which the Chancellor had acted.

29. In Bhushan Uttam Khare v. B.J. Medical College [(1992) 2 SCC 220 : 1992 SCC (L&S) 554 : (1992) 20 ATC 223] the Court placed reliance on the Constitution Bench decision in University of Mysore [AIR 1965 SC 491] and reiterated the same legal position and observed as under: (Bhushan Uttam case [(1992) 2 SCC 220 : 1992 SCC (L&S)

554 : (1992) 20 ATC 223] , SCC p. 223, para 8)

"8. ... the Court should normally be very slow to pass orders in its jurisdiction because matters falling within the jurisdiction of educational authorities should normally be left to their decision and the Court should interfere with them only when it thinks it must do so in the interest of justice."

30. Abasaheb Solunke v. Dr. B.S. Mahajan [(1990) 1 SCC 305 : 1990 SCC (L&S) 80 : (1991) 16 ATC 528] the Court in somewhat similar matter observed thus: (SCC pp. 309-10, para 12)

"12. ... It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinise the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection, etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so-called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction."

31. In Chancellor v. Dr. Bijayananda Kar [(1994) 1 SCC 169 : 1994 SCC (L&S) 296 : (1994) 26 ATC 570] the Court observed thus: (SCC pp. 174-75, para 9)

"9. This Court has repeatedly held that the decisions of the academic authorities should not ordinarily be interfered with by the courts. Whether a candidate fulfils the requisite qualifications or not is a matter which should be entirely left to be decided

by the academic bodies and the Selection Committees concerned which invariably consist of experts on the subjects relevant to the selection."

7. From the above decision, which is not only exhaustive, but has taken into consideration the law on the subject time immemorial, it is abundantly clear that the Courts should be very slow in interfering in academic matters, where the opinion of the experts form the basis for arriving at a subjective decision, the Courts shall not insert its view to that of the experts.

8. In the above backdrop of the legal position, the case on hands needs to be analysed. The facts in issue are not in dispute so also the qualification of the petitioner. The petitioner has done her post graduation in M.Sc. Applied Physics (Instrumentation). The 5th respondent had issued notification calling for application for the post of Post Graduate Assistant, wherein the qualification of the candidates is codified as M.Sc. (Physics). Therefore, from the above it is clear that while the qualification prescribed for the post is M.Sc. (Physics), the qualification of the petitioner is M.Sc. Applied Physics (Instrumentation).

9. A perusal of G.O. Ms. No.72 reveals that in pursuance to the resolution passed by the Equivalence Committee, the equivalency or otherwise with regard to the various degrees has been arrived at. Therein, the Equivalence Committee has resolved that "Physics with Instrumentation to M.Sc., Physics/ Bharathidasan University" is not equivalent. The above inequivalency has been codified in serial No.16 of Resolution No.3 and Serial No.36 of Paragraph 3 of the abovesaid Government Order. Therefore, the clear opinion, which has culminated in the resolution passed by the Equivalence Committee is that persons, who had undergone Physics with Instrumentation at Bharathidasan University cannot be equated with M.Sc. Physics. It is not disputed by the petitioner that she has completed her post-graduation in M.Sc. Applied Physics (Instrumentation) at Bharathidasan University. That being the factual position, when the equivalency committee consisting of academic experts while have unanimately resolved to hold that Physics with Instrumentation at Bharathidasan University cannot be equated with M.Sc. Physics, this Court cannot substitute its views to that of the academic experts to hold that both the degrees are equivalent, which would be against the well established precedent on the subject issue.

10. Further, it is to be pointed out that when the employer

has codified a particular degree as necessary for a particular post, this Court cannot step into the shoes of the employer to codify another degree, which has been held to be not equivalent by the Equivalence Committee, merely on the basis of the contention raised by the petitioner that both the courses are equivalent. Such a finding would not only be opposite to the well established legal precedents, but would be detrimental in the interests of the students. Therefore, this Court is of the considered view that the prayer as sought for by the petitioner cannot be acceded to.

11. For the reasons aforesaid, this writ petition, being devoid of merits, is accordingly dismissed. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

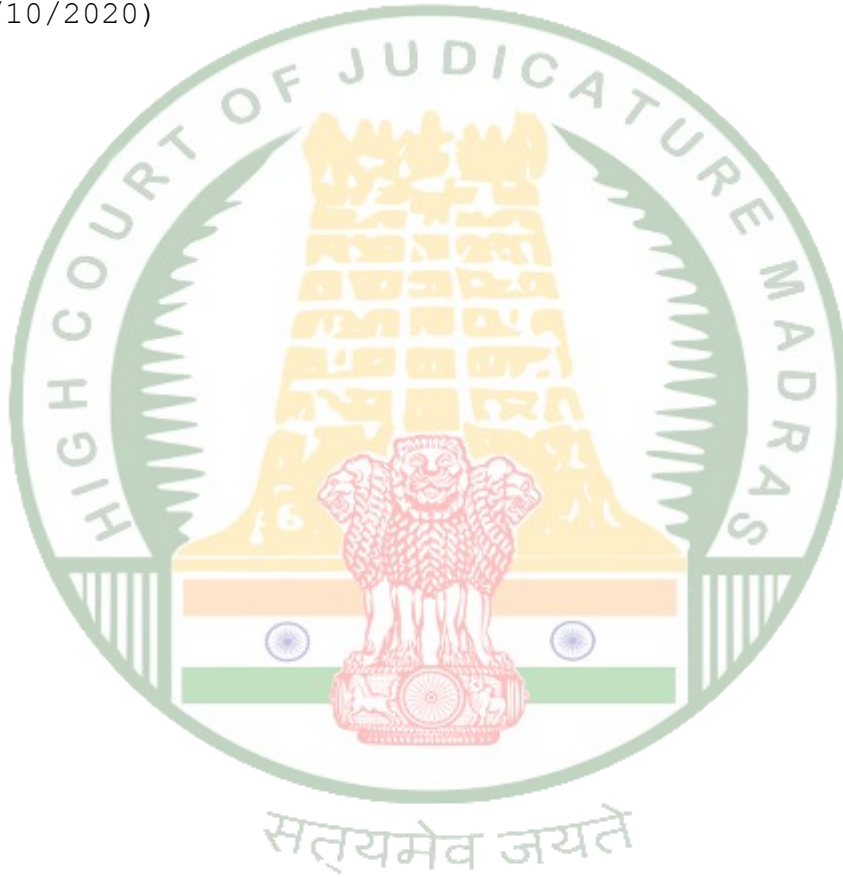
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+1cc to M/s.Row & Reddy, Advocates, Sr.No29293
+2cc to the Government Pleader, Sr.Nos.29509 & 29500

W.P. NO. 30062 OF 2013

gj (co)
rr ii (13/10/2020)



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