

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 30662 & 30663 OF 2013

Alayee

.. Petitioner in both petitions

- Vs -

1. The Secretary to Government
Government of Tamil Nadu
School Education Department
Secretariat, Chennai.
2. The Chairman (School Education)
Teachers Recruitment Board
4th Floor, EVK Sampath Maaligai
College Road, Chennai - 6.
3. The Equivalence Committee
The State Council for Higher Education
Lady Wellington College Campus
Chennai.
4. Annamalai University
rep. By its Registrar
Annamalai Nagar
Chidambaram 608 002.

.. Respondents in both petitions

W.P. No.30662 of 2013 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 2nd respondent relating to the orders dated 23.10.13 issued to the petitioner stating that the petitioner is ineligible for the post of Post-Graduate Assistants since she has not produced equivalence certificate for M.Com., degree and quash the same and direct the 3rd respondent to submit a report that M.Com (Co-operative Management) is equivalent to M.Com accepting the proposal of the 4th respondent Annamalai University to enable the 1st respondent to issue a Government Order based on the report of the Equivalence Committee of the 4th respondent and consequently direct the 2nd respondent to issue appointment orders to the petitioner appointing them as Post Graduate Assistants in

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commerce subjects in any of the Government or aided schools.

W.P. No.30663 of 2013 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified declaration declaring that clause 6 in the notification/advertisement dated No.02/2013 dated 9.5.13 issued by the 2nd respondent insofar as it states that "equivalence G.O. Issued by the Government of Tamil Nadu prior to the date of notification alone be considered" as illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India.

For Petitioner : Mr. N.Umapathi

For Respondents: Mr. C.Munusamy, Spl. GP for R-2

Mr. S.Sureshkumar, GA for RR-2 & 3

Mr. V.R.Kamalanathan for

Ms. Yogapriya for R-4

COMMON ORDER

It is the case of the petitioner that she completed B.Com. Degree and, thereafter, completed M.Com. (Co-operative Management) in the year 2002 from the 4th respondent and, thereafter, obtained B.Ed. Degree as well.

2. In pursuance to the Adversitement/Notification No.02/2013 dated 9.5.13 issued by the 2nd respondent calling for applications for direct recruitment to the post of Post-Graduate Assistants for the vacancies of the year 2012-2013, wherein qualification prescribed for the above post was M.Com., with a further rider that in cases of qualification other than M.Com., possessed by an individual, Government Order certifying its equivalence should be produced and that the said Government Order should have been issued prior to the date of the notification, which alone would be considered.

3. The grievance of the petitioner herein is that though she is possessed of qualification of M.Com. (Co-operative Management) obtained from Annamalai University and further the 4th respondent has also addressed the Government to certify that M.Com. (Co-operative Management) is equal to M.Com., however, the 3rd respondent has not passed any order on the equivalence of the degree obtained by the petitioner as equivalent to M.Com. Though the 4th respondent had addressed the 2nd respondent way back on 19.8.13 asking for grant of equivalence certificate, however, no orders have been passed on the equivalence of the

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two degrees, which is in detriment to the claim of the petitioners for appointment as PG Assistant.

4. It is the further grievance of the petitioner that the notification issued by the 2nd respondent inviting application for the direct recruitment of PG Assistants mandates production of equivalence certificate, dated before the date of notification, which is per se impermissible and the same is arbitrary and illegal and the same deserves to be set aside. Since no orders have been passed either on the equivalence of the two degrees as also the notification issued being arbitrary and illegal, the present petitions have been filed for the relief supra.

5. Learned counsel appearing for the petitioner submits that the insistence of an equivalence certificate prior to the date of notification is arbitrary and illegal and very much against the equality and violative of Articles 14 and 16 of the Constitution of India. It is the submission of the learned counsel that prescription of condition that the equivalence certificate prior to the date of notification would be very much against the interests of persons, who had just completed certain courses for which equivalence is granted in the normal course as very many courses are being introduced in the present day to accommodate persons and strengthen the intellect and intelligence of the individuals by imparting education on very many aspects. In such a case, persons who had undergone new courses, which are equivalent to various general courses, are being granted and, therefore, making a prescription that the said certificate should be prior to the date of the notification is against the well settled principles of equality.

6. It is the further submission of the learned counsel for the petitioner that though the 4th respondent had addressed the 2nd respondent regarding equivalence and asking for equivalence certificate to be issued, however, for reasons best known, the 3rd respondent has not issued the equivalence certificate till date and the silence of the 3rd respondent in not acting diligently cannot be put against the petitioner. It is further submitted that this Court, vide its interim order, has already directed the respondents to keep one post vacant and, therefore, direction may be issued to the 3rd respondent to give equivalence certificate and the 2nd respondent may be directed to appoint the petitioner in the post, which has been kept vacant, by declaring that the condition imposed in the notification is arbitrary and illegal.

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7. On the above contentions, this Court heard the learned counsel appearing for the official respondents as also the 4th respondent and perused the materials available on record.

8. This Court gave its anxious consideration to the submissions advanced on the side of the petitioner and also perused the materials available on record.

9. The facts in issue are not in dispute. The petitioner is possessed of qualification of M.Com. (Co-operative Management), which she completed in the year May, 2002. Equally, it is accepted that the notification issued by the 2nd respondent mandates that the prescribed qualification for the post of PG Assistant in Commerce is M.Com. simpliciter. Definitely M.Com. (Co-operative Management) and M.Com. simpliciter, are two different degrees and it is for the experts in the field, who as the members of the equivalence committee constituted by the Government, who are to deliver a verdict as to the equivalence of the two degrees.

10. Notification calling for recruitment was issued on 9.5.13, which is not in dispute. However, the grievance of the petitioner is only to the extent that the notification prescribing that Government Order as to equivalence of two degrees should have been issued prior to the date of the notification is arbitrary and illegal.

11. Be that as it may. Before deciding on the submission as to whether the notification prescribing such a condition is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India, it is relevant to look at certain undisputed facts, which are important for deciding the issue.

12. As already stated above, the petitioner had completed the course of M.Com. (Co-operative Management) in the year 2002 and the notification calling for application for direct recruitment was issued on 9.5.13. Between May, 2002 and May, 2013, there is nothing on record, placed by the petitioner, to show that equivalence of the two degrees was sought for either by the petitioner or by the 4th respondent. The first of the communication, as placed in the typed set of records by the petitioner, had emanated only on 3.7.13 from the 4th respondent followed by another communication on 19.8.13. Prior to the said date, neither the 4th respondent nor the petitioner were interested to have the equivalence of M.Com. (Co-operative Management) certified as equivalent to that of M.Com. Simpliciter. For over a decade, both the petitioner as well as the 4th respondent kept silent for the 4th respondent to wake up

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after a decade and address respondents 1 and 2 claiming equivalence of M.Com. (Co-operative Management) as equivalent with M.Com. simpliciter. The petitioner, having completed M.Com. (Co-operative Management) way back in May, 2002, had equally kept silent till May, 2013, i.e., till the date of the notification, to have the equivalence of both the degrees determined.

13. It is further evident from the G.O. Ms. No.72 dated 30.4.13, which finds place in the typed set of documents placed by the petitioner that the equivalence committee had recommended for equivalence of many courses conducted by the various Universities and based on the said resolution, on the recommendation of the 2nd respondent, the 1st respondent had issued the above Government Order showing the various degrees which are recommended to be equivalent. Though Master's degree was obtained by the petitioner in M.Com. (Co-operative Management) in the year 2002, however, the said degree has not been forwarded by the 4th respondent for being considered as equivalent to M.Com. simpliciter, and only after issuance of the notification by the 2nd respondent calling for applications for direct recruitment to the post of PG Assistant in Commerce, the 4th respondent had addressed the Government and the petitioner also, based on the said communication of the 4th respondent, claims that the act of the 2nd respondent in incorporating the condition of obtaining an equivalence certificate prior to the date of issuance of the notification is in violation of Articles 14 and 16 of the Constitution.

14. It is to be pointed out that fixation of condition for recruitment is within the domain of the recruiter and so long as it is in consonance with the equality clause, the same cannot be found fault with. In the case on hand, the 2nd respondent, while issuing the notification has incorporated the clause, wherein, equivalence should have been granted prior to the date of the notification, as a condition for recognising the qualification. While doing the degree and even after completing the same, the petitioner kept silent for more than a decade and only when necessity arose, the petitioner wants the equivalence of the degrees to be determined and also attacks the notification issued by the 2nd respondent as one in violation of Articles 14 and 16 of the Constitution of India. In that scenario it is the considered opinion of this Court that the said clause does not suffer the vice of inequality for it to be declared as arbitrary and illegal. The silence and inaction on the part of the petitioner as also the 4th respondent cannot be put against the 2nd respondent to hold the said condition is violative of Articles 14 and 16 of the Constitution.

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15. Insofar as the case of the petitioner relating to grant of equivalence to the degree obtained by her, it is to be pointed out that this Court cannot substitute its views to that of the expert to decide on the question of equivalence of two degrees. It has been time and again held by the Courts that insofar as matters pertaining the equivalence of degrees, it is always left to the opinion of the experts to decide on the matter and it is not within the domain of the Court to substitute its views to that of the experts, more so, when equivalence has not been sought for by the 4th respondent for the M.Com. (Co-operative Management) degree as equivalent to M.Com. simpliciter, prior to issuance of the notification.

16. If two degrees are identical, there is no question of equivalence. The issue of equivalence only arises when there are two different degrees and what is to be decided is that whether for certain purposes they can be treated as equivalent. In the case on hand, no steps have been taken by the 4th respondent to have M.Com. (Co-operative Management) degree to be considered as equivalent to M.Com. simpliciter. That being the factual position, this Court cannot step into the shoes of the experts and try to determine the equivalence and at this distant point of time, merely because an interim direction was given by this Court to keep one post vacant, this Court cannot direct the respondents to decide on the equivalence of the two degrees, when the fact remains that the petitioner as also the 4th respondent University have not shown any interest to have the equivalence of the two degrees established at any point of time prior to the issuance of the notification. As already stated above, the first of the communication in this regard had emanated from the 4th respondent only in July, 2013. Therefore, at this distant point of time, the petitioner cannot seek the indulgence of this Court to direct the respondents to decide on the equivalence of the degrees. In the absence of diligent action on the part of the petitioner and the 4th respondent University, this Court cannot issue any direction to the 3rd respondent to decide on the equivalence of the two degrees. Further, as already stated above, this Court also cannot enter into the domain of the experts, viz., the equivalence committee to decide on the equivalence of the two degrees. In such a backdrop, the prayer of the petitioner for a direction to the 3rd respondent to submit a report as to the equivalence of the two degrees cannot be acceded to.

17. For the reasons aforesaid, no relief, as sought for in these writ petitions could be granted and, accordingly, both the writ petitions are dismissed. Consequently, connected

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miscellaneous petitions are also dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

GLN

To

1. The Secretary to Government
Government of Tamil Nadu
School Education Department
Secretariat, Chennai.
2. The Chairman (School Education)
Teachers Recruitment Board
4th Floor, EVK Sampath Maaligai
College Road, Chennai - 6.
3. The Equivalence Committee
The State Council for Higher Education
Lady Wellington College Campus
Chennai.
4. The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram-608 002.

+1cc to Mr.V.R.Kamalanathan, Advocate SR.33644
+1cc to the Government Pleader, SR.33885

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