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**WP(MD) No.8337 of 2010**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.11.2019

Pronounced on : 03.01.2020

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD) No.8337 of 2010

and

M.P.(MD)No.2 of 2010

I.Sundararajan

...Petitioner

Vs.

- 1.The Director,  
Tamil Nadu School Education,  
College Road,  
Chennai - 600 006.
- 2.The Joint Director (Personnel),  
Tamil Nadu School Education,  
College Road,  
Chennai - 600 006.
- 3.The Chief Educational Officer,  
Tirunelveli District,  
Tirunelveli.
- 4.The Headmaster,  
Government High School,  
Periyakovilankulam - 627 953,  
Tirunelveli District.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent in his proceedings in Na.Ka.No.113205/C4/E2/09, dated 17.05.2010 and quash the same as devoid of merits so far as the petitioner is concerned and direct the respondents to consider the petitioner's promotion as Physical Education Director Grade - II without insisting the general qualification of Bachelor Degree.

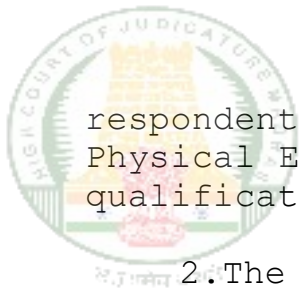
For Petitioner : Mr.Ananth C. Rajesh

For Respondents : Mr.N.Shanmugaselvam

Additional Government Pleader

**O R D E R**

This Writ Petition is filed to quash the impugned order dated 17.05.2010 by which the petitioner's name was included in the list of persons who are found ineligible to the post of Physical Education Director Grade-II and consequently to direct the



respondents to consider the petitioner's promotion to the post of Physical Education Director Grade-II without insisting the general qualification of Bachelor degree.

2.The brief facts that are admitted are as follows:

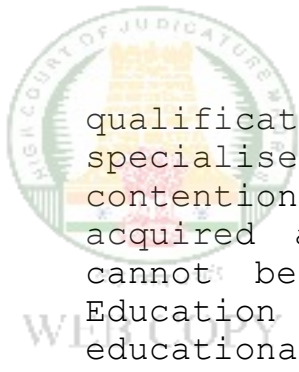
2.1.The petitioner passed S.S.L.C. examination in October, 1974. He completed a Certificate Course in Physical Education in April, 1979. He was found eligible to be appointed as Physical Education Teacher and appointed on 01.06.1988 in Government High School, Periyakovilankulam in Tirunelveli District.

2.2.It is admitted that the petitioner does not have a Bachelor degree. Though Bachelor degree is an essential qualification for joining post graduate course, the petitioner obtained M.A. degree in December, 1999 under Open University system, without passing or having any basic degree. With the M.A. degree obtained by the petitioner by distance education mode, the petitioner joined summer course for getting a degree in Bachelor of Physical Education (B.P.Ed.). The petitioner obtained B.P.Ed., degree in June, 2001.

2.3.When the petitioner was working as Physical Education Teacher in the Government High School, the second respondent sent a communication to all the Chief Educational Officers throughout the State to send the seniority list of all the Physical Education Teachers. It is admitted that the petitioner's name was not included in the list of Physical Education Teachers who are fit for promotion to the post of Physical Education Director Grade-II. It is submitted by the petitioner that the petitioner was informed that his name was included in the list of ineligible, on the ground that he did not have general qualification of bachelor degree. Challenging the communication of the second respondent, dated 17.05.2010, the above Writ Petition is filed.

3.The learned Counsel appearing for the petitioner submitted that the second respondent, without giving any notice to the petitioner and without giving any opportunity, had disqualified the petitioner to get promotion as Physical Education Director Grade-II. The learned Counsel further pointed out that the second respondent had not considered the basic qualification of the petitioner. It is submitted that the petitioner has acquired the degree in Bachelor of Physical Education, even in the year 2001. When the petitioner has the basic qualification as prescribed, the impugned communication is arbitrary and cannot be sustained.

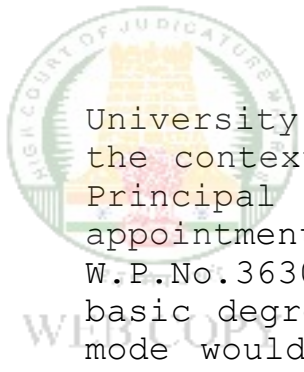
4.The learned Counsel for the petitioner submitted that all educational institutions are accepting the Open University degree as equivalent to regular degree and that the petitioner's basic



qualification need not be doubted by the respondents for pursuing specialised or higher education. To put it shortly, the contention of the petitioner is that the petitioner who has acquired a Master degree through distance education programme cannot be disqualified for the promotional post of Physical Education Director Grade-II when the petitioner has acquired the educational qualification i.e., Bachelor of Physical Education (B.P.Ed.,).

5. On the other hand, the third respondent filed a counter affidavit disputing the factual and legal submissions of the learned Counsel appearing for the petitioner, in tune with what were averred in the affidavit. It is relevant to quote Rule 9 of the Special Rules for the Tamil Nadu Educational Subordinate Service (Annexure II). It is evident that a degree in B.P.Ed., in any university of the State or a degree of equivalent standard is prescribed to the post of Physical Education Director Grade-II. It is contended by the respondents that a degree in general subject is necessary even for getting an admission into B.P.Ed., course. Since the petitioner got admission into Bachelor of Physical Education Teacher (B.P.Ed.,) summer course, by virtue of his M.A. degree, through Open University system, it is contended by the respondents that the petitioner is not even eligible to get admission into the Bachelor of Physical Education Course. Merely because the petitioner has obtained M.A. degree by Open University system, the fact that the petitioner had not undergone regular degree course will make him ineligible to get admission. It is, therefore, contended by the respondents that the Physical Education Teachers who have not acquired any basic degree is not entitled to compete to the post of Physical Education Director Grade-II.

6. The question, therefore, arises for consideration in this Writ Petition is whether the petitioner who got admission in B.P.Ed., course in Annamalai University on the basis of his M.A. degree obtained through Open University system and who had not acquired any basic degree through regular system can be considered as eligible for promotion to the post of Physical Education Director Grade-II. From the admitted facts, this Court is of the view that the issue is no more *res integra* in view of the judgment of the Hon'ble Supreme Court in **Annamalai University v. Secretary to Government** reported in **(2009) 4 SCC 590**. However, the learned Counsel appearing for the petitioner submitted that the judgment of the Hon'ble Supreme Court in Annamalai University case has no application to the facts of the present case relying upon two judgments of Hon'ble Division Bench of this Court. Having regard to the legal issues raised by the respective parties and the arguments advanced by the learned Counsels, this Court is of the view that the judgment of the Hon'ble Supreme Court in Annamalai



University has to be understood with reference to the facts and the context in which it was decided. One Ramesh was appointed as Principal in Film and Television Institute of Tamil Nadu. His appointment was challenged by one Gabriel in a Writ Petition in W.P.No.36307 of 2004 on the ground that Mr.Ramesh did not have a basic degree and hence, his master's degree by distance education mode would not make him eligible for the post. As against the interim order granting stay of operation of the order of appointment, the said Ramesh preferred an appeal before the Division Bench of this Court. While allowing the Writ Appeals, the writ petition preferred by Gabriel challenging the appointment of Ramesh was also dismissed by the Division Bench of this Court. However, on appeal before the Hon'ble Supreme Court in Civil Appeal No.3178 of 2007, the matter was remitted to the High Court for fresh consideration with the observation that the University Grants Commission as well as the university should also be impleaded as parties in the Writ Petition. Thereafter, the Writ Petition filed by Gabriel was allowed by the High Court and on a further appeal before the Hon'ble Supreme Court, the judgment of the Division Bench of this Court was confirmed by the Hon'ble Supreme Court.

7.In the case before the Hon'ble Supreme Court, the person who was appointed in the post of Principal had a Diploma in Film Technology. Though the said Ramesh had requisite experience of five years as Head of Section, he obtained M.A., degree only through Open University system in the examination held by Annamalai University which is the appellant before the Hon'ble Supreme Court. This Court held that the said Ramesh was not eligible to be considered for the post of Principal as the M.A., degree obtained by him through Open University system without there being a basic bachelor (degree) was not a valid one. Consequently, the Division Bench of this Court directed the State to take steps to fill up the post of Principal in accordance with law. Aggrieved by the judgment of the Hon'ble Division Bench, the University as well as the person who was appointed as Principal preferred appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court confirmed the judgment of the Division Bench of this Court.

8.Before the Hon'ble Supreme Court, the contentions of the University as well as the said Ramesh are recorded in paragraphs 12 and 13 of the judgments of the Hon'ble Supreme Court which are extracted below for convenience:

"12. Mr. K. Parasaran, learned Senior Counsel appearing on behalf of the appellant - University would submit:

(i) The system of imparting education between a conventional University and an Open University



being different and being governed by the UGC Act and the Open University Act respectively, the High Court committed a serious error in passing the impugned judgment.

(ii) The Regulations framed by the UGC both providing for the eligibility to seek admission to the Masters' degree as also information required to be furnished thereabout by the State Universities to the UGC, the later must be held to have relaxed the conditions as no direction in that behalf has been communicated to the University. In any event, as Distance Education Council (DEC) of IGNOU, being an authority constituted under Statute 28 of the Open University Act, having granted post-facto approval to the courses of studies of the University by a letter dated 21.7.2008 this Court should set aside the impugned judgment.

(iii) In view of the decision of this Court in Guru Nanak Dev University vs. Sanjay Kumar Katwal & Anr. reported in 2008 (13) SCALE 760, the decision of the High Court has been rendered erroneous as therein Master's degree under the OUS by the appellant - University has been held to be valid stating that although one University is entitled not to recognize the said degree as an equivalent to the qualification it may have prescribed for eligibility to a higher course.

(iv) The Regulations framed by UGC in any event being in conflict with the Open University Act must be held to be ultra vires the same particularly in view of the fact that sub-Section (2) of Section 5 of the Open University Act provides for a non-obstante clause. In any event, Open University Act being a later enactment and both statutes having been passed by the Parliament, the provisions of Open University Act would prevail over the UGC Act. v. In any view of the matter as from 1995 till 2005 several persons have received degrees issued by the University and if they are disqualified at this stage, a large number of persons would suffer irreparable injury, this Court should issue appropriate directions in this behalf.



behalf of the appellant - Ramesh would contend:

(i) Having regard to the provisions of the UGC Act and in particular Section 27 thereof providing for delegation of power to the authority, and as a Notification dated 1.3.1995 has been issued directing that the degrees issued by the Universities would stand automatically recognized for the purpose of employment to posts and services under the Central Government subject to approval of the DEC, IGNOU, the High Court must be held to have committed a serious error in holding contra.

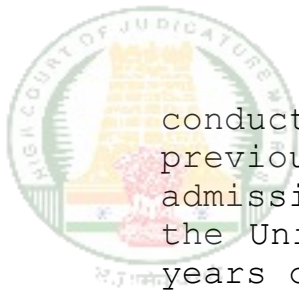
(ii) From various correspondences, it would appear that the UGC Regulations were amended only in the year 2003 and the Master's degree awarded upto 30.6.1989 were treated to be valid.

(iii) Many established Universities like that of Annamalai University across the country, having conducted such courses under OUS and such degrees having been accepted by Public Service Commission, the High Court's judgment even in equity should be set aside."

9.The Hon'ble Supreme Court considered the applicability of UGC Act and Regulations framed thereunder to Open Universities and the validity of the degree awarded by a Open University in violation of the standards prescribed by regulations framed by University Grants Commission. The Hon'ble Supreme Court held that the regulations framed by University Grants Commission to determine standards of education comes under Entry 66 of List-I under VII Schedule would prevail over IGNOU Act which comes under Entry 25 of List-III, despite non-obstante clause in Section 5 of IGNOU Act, 1985. In other words, the Hon'ble Supreme Court held that a post graduate degree obtained through distance education programme in contravention of the University Grants Commission Regulations, 1985 is not valid.

10.A notification was published by University Grants Commission on 25.11.1985 framing 1985 Regulations. The Regulations framed by the University Grants Commission is also extracted in the judgment of the Hon'ble Supreme Court which read as follows:

"2. Admission/Students:- (1) No student shall be eligible for admission to the 1st Degree Course through non-formal/distance education unless he has successfully completed 12 years schooling through an examination



conducted by a Board/University. In case there is no previous academic record, he shall be eligible for admission if he has passed an entrance test conducted by the University provided that he is not below the age of 21 years on July 1 of the year of admission.

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(2) No student shall be eligible for the award of the first degree unless he has successfully completed a three year course; this degree may be called the B.A./B.Sc./B.Com. (General/ Honours/ Special) degree as the case may be:

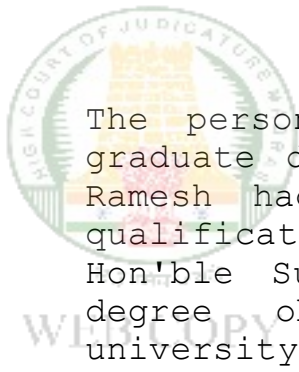
Provided that no student shall be eligible to seek admission to the Master's Course in these faculties, who has not successfully pursued the first Degree Course of three years duration:

Provided further that, as a transitory measure where the universities are unable to change over to a three year degree course, they may award a B.A./B.Sc./B.Com. (Pass) degree on successful completion of two years course, but that no student of this stream shall be eligible for admission to the Master's course unless he has undergone a further one year bridge course and passed the same. The three year degree course after 10+2 stage should in no case be termed as B.A./B.Sc./B.Com. (Pass) degree."

11.The Regulations framed by the University Grants Commission are also applicable to the case on hand. Despite the fact that the Open University has given a equivalence certificate and the University Grants Commission, has latter by a letter dated 30.12.1991, clarified that the students already registered should be allowed to complete their course and degree awarded to those candidates would be valid, the Hon'ble Supreme Court held that University Grants Commission Act enacted by Parliament in terms of Entry 66, List I under VII Schedule to Constitution of India would prevail over the Open University Act and that regulations framed by University Grants Commission Act are applicable to both regular and Open Universities. Any regulations framed by University Grants Commission in regard to the coordination, determination of standards in institutions for higher education prevail over any provision of State or Central legislature on subjects falling under List-I, Entry 66. It was held in unmistakable terms that a master's degree awarded in violation of Regulation 2 of UGC Regulation of 1985 by an University under open university system without requiring three years' graduate degree is void.

12.The conclusion of Hon'ble Supreme Court in Annamalai University case has resulted in disqualification of a Principal.

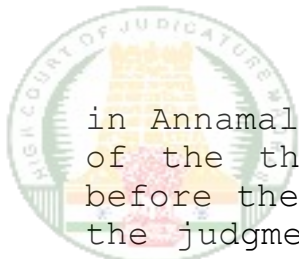
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The person appointed as Principal by name Ramesh had a post graduate degree through Open University system. Since the said Ramesh had no basic degree and basic degree is a requisite qualification for getting admission to any master's degree, the Hon'ble Supreme Court has found that the person with Masters degree obtained through distance education programme/open university system is invalid and that his master's degree will not cure the defect that he had no basic degree in any subject.

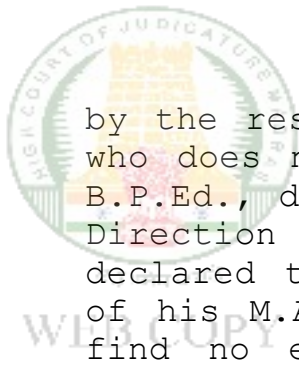
13. In the present case, the contention of the petitioner that he had acquired the degree in Bachelor of Physical Education (B.P.Ed.,) which is the requisite qualification cannot be accepted as the petitioner got admission by showing his master's degree obtained through Open University system. His master's degree through distance education programme is not valid as he has no basic degree. By applying the same analogy drawn by the Hon'ble Supreme Court, the petitioner is not eligible as the degree obtained by the petitioner in Bachelor of Physical Education (B.P.Ed.,) is also invalid and that any regulation framed by the State Government or the Central Government under Entry 25 of List III cannot save the degree of petitioner that is Bachelor of Physical Education (B.P.Ed.,).

14. The learned Counsel for the petitioner relied upon a judgment of the Hon'ble Division Bench of this Court in the case of ***K. Sakthi Rani v. Secretary, Bar Council of Tamil Nadu, Chennai*** reported in **(2010) 4 MLJ 849**. The question arose before the Hon'ble Division Bench of this Court was whether a person who obtained post graduate degree in Open Universities and joined the law course and completed the same are entitled to be enrolled in rolls of the Bar Council of Tamil Nadu. In other words, the question whether the persons who studied law without basic degree but obtained post graduate degree in Open Universities are entitled to be enrolled as Advocates was considered by the Hon'ble Division Bench. It is true that one of the questions formulated by the Hon'ble Division Bench was whether the judgment rendered by the Hon'ble Supreme Court in Annamalai University case reported in **(2009) 4 SCC 590** is applicable to the case of the petitioners therein. After referring to the provisions of Advocates Act, 1961, Bar Council of Tamil Nadu Rules, 1961, Legal Educational Rules, 2008, the Hon'ble Division Bench held that the principles laid down by the Hon'ble Supreme Court would be a binding precedent insofar as it holds that a degree obtained in the IGNOU Act, 1985, from an open university is not a valid degree in the eye of law and that the said judgment cannot be construed to hold that a person who after obtaining the said degree from the open university and completed law course would be barred from getting himself enrolled. Further, the Division Bench expressed in ***uneqia dms oad/hcstrces*** that the judgment of the Hon'ble Supreme Court



in Annamalai University case cannot be made applicable to the case of the the petitioners who have completed the law course long before the judgment. Though the Hon'ble Division Bench considered the judgment of the Hon'ble Supreme Court in a different factual situation, this Court is unable to accept that legal implication that may flow from the said judgment in view of the categorical pronouncement of Hon'ble Supreme Court in Annamalai University case.

15.The learned Counsel appearing for the petitioner also relied upon another judgment of the Division Bench of this Court in which I am also a member. In **M.Rathinavel v. Registrar General** reported in **(2017) 8 MLJ 278**, the Division Bench to which I am also a member has considered the issue in a similar case. The appellant therein was appointed as Office Assistant in the Madras High Court on 19.06.2000. The appellant's contention was that he wrote the entrance examination for studying B.A. History course in the open university system of education. He passed the B.A., degree in 1995. On 19.07.2000, the appellant was promoted to the post of Reader/Examiner based on the qualification he had acquired through distance education mode. He got promotion on 05.07.2005 as Assistant and thereafter, on 03.12.2009 as Assistant Section Officer by order dated 13.07.2016. The appellant's further promotion was cancelled by order dated 03.12.2009 on the ground that the appellant obtained his B.A. Degree through open university system without undergoing the higher secondary course. The Hon'ble Division Bench in paragraph 8 of its judgment held that the ratio of the Hon'ble Supreme Court reported in **Annamalai Univeristy v. Secretary to Government** reported in **(2009) 4 SCC 590** has not been correctly followed by the State Government. The judgment of the Division Bench of this Court is in respect of a single individual who claimed that he wrote entrance examination for studying B.A., degree course in Open University system. Since the University Grants Commission has recognised a bachelor's degree as valid if the person has undergone the degree through open university after writing a entrance examination specifically held by the university concerned, the judgment of the Division Bench cannot be cited as a precedent in this case. As pointed out earlier, the petitioner has not passed plus two examination and hence, he is not eligible to get admission for a basic degree. Without a plus two qualification or basic degree, the petitioner has acquired M.A., degree through open university system. Even though the degree obtained by the petitioner is valid in terms of any provisions or regulations of the University which is in accordance with the IGNOU Act, the degree obtained by the petitioner in Bachelor of Physical Education (B.P.Ed.,) cannot be accepted as valid as he has obtained the degree which is offered as a summer course and the petitioner has no valid basic degree to get admission into B.P.Ed., as per UGC Regulations. As contended



by the respondents, the petitioner who is not even qualified and who does not possess a basic degree is not eligible to show his B.P.Ed., degree to get promotion to the post of Physical Education Direction Grade-II. The second respondent has, therefore, rightly declared the petitioner as unqualified for appointment by virtue of his M.A., degree through Open University system. This Court find no error or irregularity in the order by including the petitioner in the list containing the names of those who are ineligible to be promoted to the post of Physical Education Director Grade-II. In view of the conclusion reached by this Court above, this Writ Petition stands dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

SRM

To

- 1.The Director,  
Tamil Nadu School Education,  
College Road,  
Chennai - 600 006.
- 2.The Joint Director (Personnel),  
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Tirunelveli.
- 4.The Headmaster,  
Government High School,  
Periyakovilankulam - 627 953,  
Tirunelveli District.

+1 CC to SPL.GP ( SR-271[F] dated 06/01/2020 )

+1 CC to MR.ANANTH C RAJESH, Advocate ( SR-257[F] dated 06/01/2020

Order made in

W.P. (MD) .No.8337 of 2010

03.01.2020

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