



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.6764 of 2021

and

W.M.P(MD)Nos.5205, 5206 & 8081 of 2021

WEB COPY

I.Preetha

... Petitioner

vs.

1.The University Grants Commission,
Rep. by its Secretary,
Bahadur Shah Zafar Marg,
New Delhi - 110 002.

2.The Manonmaniam Sundaranar University,
Rep. by its Registrar,
Abishekapatti,
Tirunelveli - 627 012.

3.The Chairman,
S.T Hindu College, Nagercoil,
Kanyakumari District - 629 002.

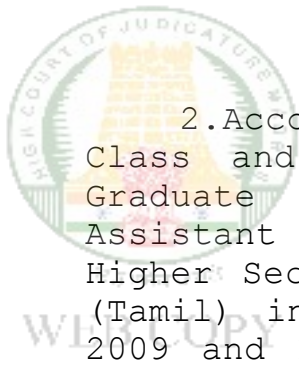
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the second respondent Manonmaniam Sundaranar University in MSU/R/CDC/A3/315/Q.A/A.P (S.F), dated 09.03.2021, quash the same and further direct the second respondent University to approve the qualification of the petitioner to the post of Assistant Professor in Tamil in the third respondent College, namely, S.T Hindu College, Nagercoil, Kanyakumari District.

For Petitioner	: Mr.S.Xavier Rajini
For R - 1	: Mr.Maharajan
For R - 2	: Mr.M.Mahaboob Athiff

ORDER

The petitioner has filed the present Writ Petition, to quash the impugned proceedings of the second respondent Manonmaniam Sundaranar University, dated 09.03.2021, and to direct the second respondent University to approve the qualification of the petitioner to the post of Assistant Professor in Tamil in the third respondent College, namely, S.T Hindu College, Nagercoil, Kanyakumari District.



2. According to the petitioner, she belongs to Other Backward Class and obtained 50% of marks in Under Graduate and Post Graduate Degree. She is fully eligible to be appointed as Assistant Professor. Further, she passed S.S.L.C in April 1997, Higher Secondary in March 1999, B.A (Tamil) in April, 2006, M.A (Tamil) in December 2006, B.Ed in April 2008, M.Phil in August 2009 and Ph.D in July 2015. The petitioner studied M.A (Tamil) alone under Distance Education Scheme and all other Degrees are under Regular scheme and hence, she is eligible to be appointed as Assistant Professor in Tamil in anyone of the recognized College.

3. While so, the petitioner was appointed as Assistant Professor in the third respondent College on 01.07.2017 under Self-Finance Scheme. After appointment of the petitioner, the third respondent College submitted a proposal to the second respondent University on 28.12.2020 for approval of qualification of the petitioner. Since no order was passed, the petitioner has sent a representation again on 02.02.2021, for approval of her qualification for appointment to the post of Assistant Professor in Tamil. The second respondent has not passed any order. Hence, the petitioner filed a Writ Petition in W.P(MD)No.4478 of 2021 for a direction to the second respondent University to approve the qualification of the petitioner to the post of Assistant Professor in Tamil in the third respondent College. This Court, by an order, dated 04.03.2021, directed the second respondent to consider the representation of the petitioner. The second respondent, by the impugned order, dated 09.03.2021, declined to approve the qualification of the petitioner. Challenging the same, the petitioner has come out with the present Writ Petition.

4. The learned counsel appearing for the petitioner submitted that the petitioner has studied M.A (Tamil) alone under Distance Education Scheme and the other Degrees are under Regular Scheme, which are as follows:-

Sl.No.	Studies	Completed the Degree in the Year
1.	S.S.L.C	April, 1997
2.	Higher Secondary School	March, 1999
3.	B.A (Tamil)	April, 2006
4.	M.A (Tamil)	December, 2006 (under Distance Education Scheme)
5.	B.Ed	April, 2008
6.	M.Phil	August, 2009
7.	Ph.D	July, 2015



The petitioner joined B.A (Tamil) in June, 1999 and completed the course in May 2002 itself. However, she has not passed one subject at the time of completing her course due to her marriage and subsequent birth of child. She passed the said subject in April, 2006. The petitioner joined M.A (Tamil) in June, 2003 under Distance Education Scheme (OUS) and completed the said course M.A (Tamil) in June 2005 and passed all the subjects in December, 2006. The petitioner has not studied B.A (Tamil) and M.A (Tamil) in the same academic year and simultaneously. The petitioner studied 10 + 2 + 3 pattern, as per the guidelines issued by the University Grants Commission and studied M.A (Tamil) under Distance Education Scheme in Annamalai University. The learned counsel appearing for the petitioner further submitted that M.A (Tamil) Degree obtained by the petitioner is valid, as she studied under the pattern 10 + 2 + 3. The first respondent University Grants Commission has not imposed any restriction for doing two degrees simultaneously. In view of the same, the impugned order, dated 09.03.2021, passed by the second respondent, is arbitrary and illegal and the same is liable to be set aside.

5. In support of his contention, the learned counsel appearing for the petitioner relied on the Judgments of the Division Bench of this Court reported in **2016 Writ L.R 844 [Tamil Nadu Public Service Commission Vs. K.V.Rajkumar and others]** and **W.A(MD)No.1433 of 2017, dated 28.11.2017 [Deepa @ Bhagavathi Vs. The Chairman, Teachers Recruitment Board]**.

6. Mr.M.Mahaboob Athiff, learned counsel appearing for the second respondent submitted that the petitioner obtained both B.A (Tamil) and M.A(Tamil) Degrees in the same year. Without basic Under Graduate degree, a person cannot join a Post Graduate degree. In the present case, the petitioner without passing B.A (Tamil), joined M.A (Tamil) course and obtained both the degrees in the year 2006. As per UGC norms and Judgment of this Court and the Hon'ble Apex Court, the petitioner is not qualified for being appointed as Assistant Professor. The expert of the second respondent University, considering the entire materials, has taken the decision, which is not illegal. In support of his contention, the learned counsel appearing for the second respondent relied on the Judgment of the Hon'ble Apex Court reported in **2009 (4) SCC 590 [Annamalai University Vs. Secretary to Government, Information and Tourism Department and others]** and the relevant portion of the said Judgment reads as follows:-

"29. Indisputably, UGC in exercise of the powers conferred upon it by clause (f) of sub-section (1) of Section 26 of the UGC Act, made the 1985 regulations. A



notification in this behalf was published by the UGC on 25.11.1985. It, however, was given effect from 1.1.1986. We may notice some of the provisions of 1985 Regulations.

"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. (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."

6. Information.- Every University providing instruction through non-formal/distance education shall furnish to the University Grants Commission information relating to the observance of these Regulations in the form prescribed for the purpose. The information shall be supplied to the University Grants Commission within 60 days of the close of the academic Year.

7. The University Grants Commission shall have the right to grant relaxation to a university in regard to the date of implementation or for admission to the first or second degree courses or to give exemption for a specified period in regard to other clauses in the regulations on the merit of each case."



Regulations 6 and 7 were renumbered as Regulations 7 and 8 at a later stage.

56. Grant of relaxation cannot be presumed by necessary implication only because UGC did not perform its duties. Regulation 2 of the 1985 Regulations being imperative in character, non compliance thereof would entail its consequences. The power of relaxation conferred on UGC being in regard the date of implementation or for admission to the first or second degree courses or to give exemption for a specified period in regard to other clauses in the regulation on the merit of each case do not lead to a conclusion that such relaxation can be granted automatically. The fact that exemption is required to be considered on the merit of each case is itself a pointer to show that grant of relaxation by necessary implication cannot be inferred. If mandatory provisions of the statute have not been complied with, the law will take its own course. The consequences will ensue.

57. Relaxation, in our opinion, furthermore cannot be granted in regard to the basic things necessary for conferment of a degree. When a mandatory provision of a statute has not been complied with by an Administrative Authority, it would be void. Such a void order cannot be validated by inaction.

58. The only point which survives for our consideration is as to whether the purported post facto approval granted to the appellant - University of programmes offered through distance modes is valid. DEC may be an authority under the Act, but its orders ordinarily would only have a prospective effect. It having accepted in its letter dated 5.5.2004 that the appellant - University had no jurisdiction to confer such degrees, in our opinion, could not have validated an invalid act. The degrees become invalidated in terms of the provisions of UGC ACT. When mandatory requirements have been violated in terms of the provisions of one Act, an authority under another Act could not have validated the same and that too with a retrospective effect."

7. Heard the learned counsel appearing on either side and perused the entire materials available on record.

8. The issue has to be decided in the Writ Petition is whether M.A (Tamil) Degree obtained by the petitioner through Open University System without possessing Under Graduate Degree B.A (Tamil) is valid for being appointed as Assistant Professor.



9. It is an admitted fact that the petitioner studied 10 + 2 + 3 pattern system, but the petitioner has completed B.A (Tamil) Degree course in the year 2002, but passed in all the subject only in April, 2006. Before passing B.A (Tamil), the petitioner joined M.A (Tamil) course in 2003 and completed the course in June, 2005 and the petitioner passed all the subjects and obtained Degree through Open University System in December, 2006. The validity of P.G Degree obtained without basic degree of B.A (Tamil) was considered by the Division Bench of this Court reported in **2008 (3) MLJ 255 [N. Ramesh vs Sibi Madan Gabriel and others]** and the Division Bench of this Court, after elaborate consideration, held that P.G Degree obtained through Open University Scheme without a basic U.G Degree is not valid. The matter went up to the Hon'ble Apex Court and the Hon'ble Apex Court confirmed the Judgment of the Division Bench of this Court reported in **2009 (4) SCC 590 [Annamalai University Vs. Secretary to Government, Information and Tourism Department and others]**. It is also relevant to extract paragraph Nos.42, 50 & 51 and 58 of the said Judgment herein:-

"42. The provisions of the UGC Act are binding on all Universities whether conventional or open. Its powers are very broad. Regulations framed by it in terms of clauses (e),

(f), (g) and (h) of sub-Section (1) of Section 26 are of wide amplitude. They apply equally to Open Universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the co- ordination of work or facilities in universities must be maintained and for that purpose required to be regulated.

The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of the UGC are all pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12A and clauses (a) and (c) of sub- section (2) thereof.

50. UGC Act, thus, having been enacted by the Parliament in terms of Entry 66 of List I of the Seventh Schedule to the Constitution of India would prevail over the Open University Act.

51. With respect, it is difficult to accept the submissions of learned Solicitor General that two Acts operate in different fields, namely, conventional



university and Open University. UGC Act, indisputably, governs Open Universities also. In fact, it has been accepted by IGNOU itself. It has also been accepted by the appellant - University.

58. The only point which survives for our consideration is as to whether the purported post facto approval granted to the appellant - University of programmes offered through distance modes is valid. DEC may be an authority under the Act, but its orders ordinarily would only have a prospective effect. It having accepted in its letter dated 5.5.2004 that the appellant - University had no jurisdiction to confer such degrees, in our opinion, could not have validated an invalid act. The degrees become invalidated in terms of the provisions of UGC ACT. When mandatory requirements have been violated in terms of the provisions of one Act, an authority under another Act could not have validated the same and that too with a retrospective effect."

10.The contention of the learned counsel appearing for the petitioner that a person can simultaneously undergo two Degrees, is not advancing the case of the petitioner, as in the Judgment relied on by the learned counsel appearing for the petitioner, the person pursued two Degrees simultaneously with necessary basic qualification and hence, the ratio in the Judgment are not applicable to the facts of the present case, as the petitioner studied M.A (Tamil) without basic Degree of B.A (Tamil). In view of the Judgment of the Division Bench of this Court reported in **2008 (3) MLJ 255 [N. Ramesh vs Sibi Madan Gabriel]**, confirmed by the Hon'ble Apex Court reported in **2009 (4) SCC 590 [Annamalai University Vs. Secretary to Government, Information and Tourism Department and others]**, there is no error in the impugned order passed by the second respondent, dated 09.03.2021.

11.For the above reasons, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar (CS)



ps

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

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Kanyakumari District - 629 002.

+1 CC to M/s.S.XAVIER RAJINI, Advocate (SR-20275[F] dated 25/06/2021)

W. P (MD) No. 6764 of 2021
25.06.2021

AS(05.07.2021) 8P 5C