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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.03.2022

Pronounced on : 29.04.2022

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. No.361 of 2022

The Registrar,  
The Tamil Nadu Dr.J.Jaylalalitha Fisheries University,  
Vettar River View Campus,  
Nagapattinam 611 002. ... Appellant/1<sup>st</sup> Respondent

Vs.

1. M. Vasantharajan  
2. The Principal Secretary to Government,  
Government of Tamil Nadu  
Animal Husbandry ( Diary and Fishery)  
Chennai. ... Respondents/Petitioner &  
2<sup>nd</sup> Respondent

Prayer:Writ appeal is filed under clause 15 of the Letter Patent praying to set aside the order dated 12.01.2022 in W.P.No.32624 of 2019 and allow this writ appeal.

Prayer :in W.P.No.32624 of 2019

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the respondents to consider the application of the petitioner dated 31.07.2019 and as per the interview dated 12.09.2019 conducted by the Respondents and appoint the petitioner to the post of Assistant Professor of Fisheries Biology and Resource Management in Most Backward Community quota in Tamil Nadu Dr.J.Jayalalitha Fisheries University (the first respondent) forthwith.

For Appellant : Mr.V. Vijaya Shankar.

For Respondent-1 : Mr.S.Hameed Ismail

For Respondent -2 : Mr.V. Nammaran  
Additional Government Pleader



## JUDGMENT

S.VAIDYANATHAN, J.  
and  
MOHAMMED SHAFFIQ, J.

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This intra-Court Appeal has been filed by the Tamil Nadu Dr. J. Jayalalitha University (herein after referred as University), aggrieved by the order of the learned single Judge dated 12.01.2022 in W.P.No.32624 of 2019, insofar as the University was directed to issue appropriate appointment letter to the 1<sup>st</sup> Respondent herein by creating supernumerary post by 16.02.2022 and to treat the 1<sup>st</sup> Respondent herein as senior to candidates appointed pursuant to Advertisement No.01/2020 dated 06.12.2020.

2. Brief facts relating to the case are set out hereunder:

A. The 1<sup>st</sup> Respondent was working as technical officer on contractual basis in the Appellant - University for more than 2 years during the period 2015-2018. The 1<sup>st</sup> Respondent was relieved from his duties on the after-noon of 31.05.2018 by the Appellant - University.

B. The Appellant - University issued a Notification dated 27.06.2019 for filling up the post of Assistant Professor in various disciplines including that of "Fisheries Biology and Resource Management".

C. The Notification dated 27.06.2019 provided for No. of Posts ( Discipline wise), communal reservation, scale of pay and qualification as per the Regulations of the University for recruitment to the post of Assistant Professor in the faculty of Fisheries Sciences with regard to Fisheries Biology and Resource Management. Relevant portions of the said notification is extracted hereunder:

| Discipline                                | No. of regular vacancies with REservation |                 | No.of backlog Vacancies with Reservation |         |
|-------------------------------------------|-------------------------------------------|-----------------|------------------------------------------|---------|
|                                           |                                           |                 | SCA                                      | MBC/DNC |
| Fisheries Biology and Resource Management | 4                                         | --              |                                          | 1       |
|                                           |                                           | GT (W)          |                                          |         |
|                                           |                                           | SC-1            |                                          |         |
|                                           |                                           | MBC/DN C (W) -1 |                                          |         |



The qualification was prescribed as under:

A. Good Academic record as defined by the University with atleast 55 marks ( or an equivalent grade in a point scale wherever grading system is followed) at the Master's degree level in a relevant/concerned subject or an equivalent degree from an accredited foreign University. A minimum Overall Grade Point Average of 2.25/4.00 or 6.50/10.00 or its equivalent is essential. The candidates should possess the basic degree of B.F.Sc.

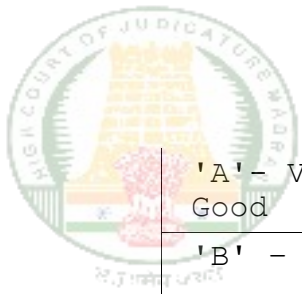
B. For the candidates having Master's degree, National Eligibility Test (NET) conducted by the ASRB, UGC, CSIR or similar test accredited by the UGC shall remain compulsory along with one publication in NAAS ( National Academy of Agricultural Sciences, New Delhi) rated referred journal for recruitment to the post of Assistant Professor and equivalent in the disciplines in which Net is conducted.

C. Essentially of NET can be waived off, for the candidates holding the Ph.d., degree provided it has been done with course work as prescribed by the UGC Regulations 2009, and the candidate has atleast two full length publications having NAAS rating not less than 4, on the last day of submission of application. Those candidates with Ph.d degree without course work will not qualify for NET exemption.

D. NET/SLET/Set in related field shall be required for such Masters Programmes in disciplines for which NET/SLET Set is not conducted.  
Percentage equivalence of grade points:

4. It is hereby clarified that where the University/College/Institution declare results in grade points which is on a Scale of Seven, Ten and Four, the following mechanism shall be referred to ascertain equivalent marks in percentage.

| Grade            | Grade Point (7 point ) | Grade Point (10 point) | Grade Point (4 point) | Perc enta ge Equi vale nt |
|------------------|------------------------|------------------------|-----------------------|---------------------------|
| 'O'-Outstand ing | 6.3 and above          | 9.0 and above          | 3.76 and above        | 90 and abov e             |



|                     |         |           |           |       |
|---------------------|---------|-----------|-----------|-------|
| 'A' - Very Good     | 5.6-6.2 | 8.0 - 8.9 | 3.25-3.74 | 80-89 |
| 'B' - Good          | 4.9-5.5 | 7.0-7.9   | 2.75-3.24 | 70-79 |
| 'C' - Average       | 3.5-4.8 | 6.5-6.9   | 2.25-2.74 | 55-69 |
| 'D' - Below Average | -       | -         | -         | -     |
| 'E' - Poor          | -       | -         | -         | -     |
| 'F' - Fail          | -       | -         | -         | -     |

The desirable criteria was set out as under in the notification

Desirable:

1. Ph.d in the relevant discipline with good academic performance

2. Two publications in Journals with NAAS rating above 6

3. Working experience in sponsored research projects in the level of SRF of JRF in any organization.

4. Willing to work anywhere in the State.

G. It may be relevant to note that the University Grant Commission has clarified vide communication dated 18.07.2018 that Ph.d Degree shall be mandatory for direct recruitment to the post of Assistant Professor in Universities only w.e.f from 01.07.2021.

H. The 1<sup>st</sup> Respondent applied for the post against the vacancy in the MBC quota and was also called for interview on 12.09.2019. However, the 1<sup>st</sup> Respondent was not appointed to the post of Assistant Professor, in view of the fact that the Appellant- University while making appointment for the year 2019 had decided to appoint only Ph.d Degree holders, which the 1<sup>st</sup> Respondent admittedly did not possess.

3. Aggrieved by the same the 1<sup>st</sup> Respondent filed a writ of Mandamus in W.P.No.32624 of 2019 to direct the Appellant- University to consider his application dated 31.07.2019 and as per the interview dated 12.09.2019 conducted by the Respondents appoint him to the post of Assistant Professor of Fisheries Biology and Resource Management in Most Backward Community quota.

4. The writ petition was filed inter-alia on the following



grounds viz.,

a. That the 1st Respondent was eligible to be appointed for the post of Assistant Professor in Fisheries Biology and Resource Management and also possessed previous experience for 3 years in the concerned course.

b. The Advertisement No. 03/2019 dated 27.06.2019 by which applications were called for did not specify that Ph.D Degree is mandatory. On the other hand it only stated that Ph.D Degree was desirable. Thus the decision to not select/recruit/appoint the applicant who possessed the eligible qualification was arbitrary.

c. For the subsequent year Notification was issued Vide Advertisement No. 01/2020 dated 06.12.2020 was issued for recruitment to the post of Assistant Professor. Importantly the above Notification/Advertisement also provided that Ph.d Degree holders in the relevant discipline were preferred under the caption "Desirable". However the appointments were made without insisting on Ph.Degrees, thus the insistence on Ph.Degree for the relevant year viz., 2019 is unsustainable.

5. Order of the learned single Judge:

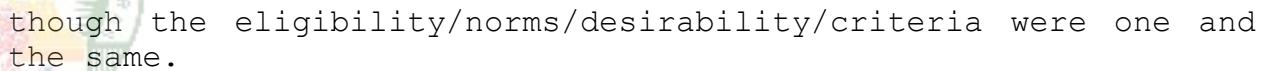
A. The Notification/Advertisement merely specified that the person with Ph.d Degree will be considered as "Desirable".

B. That for the year 2020 while appointing Assistant Professors, the Appellant-University had appointed candidates who did not possess Ph.D qualification though the eligibility and desirability norms fixed for the year 2019 and 2020 were one and the same, thus there cannot be different yardsticks for the two years.

C. The right of the 1<sup>st</sup> Respondent to be appointed cannot be diluted if there are no other qualified candidates during the year 2019 unless the 1<sup>st</sup> Respondent himself suffered from any other disqualification.

D. Importantly the Appellant-University having prescribed the minimum qualification vide Notification/Advertisement No.03/2019 dated 27.06.2019, it was not open for the University to reject the candidature and the 1<sup>st</sup> Respondent merely because he did not possess a Ph.d Degree.

E. The denial of appointment of the 1<sup>st</sup> Respondent was found to be capricious and arbitrary, inasmuch as the candidates with Ph.d degree has been appointed in the subsequent year all



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B. That the learned single Judge failed to see that it was permissible for the Appellant-University to fix a higher qualification than eligibility while making appointments.

D. That the learned single Judge failed to see that in any event there are 2 other candidates who had secured higher marks than the Respondent viz., C.Sudhan- 48 marks: K.Karuppasamy - 43 marks, belonging to MBC, while the 1st Respondent had secured only 41.93 marks. That the appointment of non-Ph.D Degree holders in the subsequent year viz., 2020 is again pursuant to a policy decision to consider non Ph.D Degree Candidates.

The 1<sup>st</sup> Respondent was fully eligible to be appointed for the post of Assistant Professor in Fisheries Biology and Resource Management and also had previous experience for 3 years in the concerned course. Further the Advertisement No. 03/2019 dated 27.06.2019 by which application were called for did not specify that Ph.D Degree is mandatory. On the other hand it only stated that Ph.D Degree was "Desirable". Thus the decision to not select/recruit/appoint candidates who possessed the eligible qualification was arbitrary. For the subsequent year Notification was issued Vide Advertisement No. 01/2020 dated 06.12.2020 for recruitment to the post of Assistant Professor.

9. We find that the order of the learned single Judge is liable to set aside for the following reasons:

A. The reservation in terms of the notification dated 26.07.2019 for MBC/DNC is only for women as would be evident from the following table:



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| Discipline                                | No. of regular vacancies with REservation |                 | No.of backlog Vacancies with Reservation |         |
|-------------------------------------------|-------------------------------------------|-----------------|------------------------------------------|---------|
|                                           |                                           |                 | SCA                                      | MBC/DNC |
| Fisheries Biology and Resource Management | 4                                         | --              |                                          | 1       |
|                                           |                                           | GT (W)          |                                          |         |
|                                           |                                           | SC-1            |                                          |         |
|                                           |                                           | MBC/DN C (W) -1 |                                          |         |

Thus the 1st Respondent may not be eligible to claim the benefit of said reservation.

B. The 1st Respondent even amongst MBC Candidates had only secured the 3<sup>rd</sup> rank in terms of the marks and the same would be evident from the following table:

| S.No.                                     | Name of the Candidate | Status   | Store card marks of Screening Committee |
|-------------------------------------------|-----------------------|----------|-----------------------------------------|
| Fisheries Biology and Resource Management |                       |          |                                         |
| 1                                         | M. Sri Hari           | Eligible | 41.0                                    |
| 2                                         | Jyothi Saroj          | Eligible | 49.0                                    |
| 3                                         | C.Sudhan              | Eligible | 48.2*                                   |
| 4                                         | M.Vasantharajan       | Eligible | 41.93*                                  |
| 5                                         | K. Karupasamy         | Eligible | 43.0*                                   |

\*MBC

The reservation is for women, in any event the reservation is only for one post and there are other 2 other candidates in MBC quota who have secured more marks than the 1<sup>st</sup> Respondent. Thus the 1<sup>st</sup> Respondent in terms of the marks secured may not be entitled to appointment, on the basis of MBC reservation.

D. The learned single Judge ought to have seen mere possession of academic qualification which satisfies the eligibility criteria/norms would not confer any right of appointment and it was well within the power/authority of the appointing authority namely the Appellant-University to select candidates who satisfied the desirability Criteria/qualification. In this regard it may be relevant to refer the following Judgments :



A. In the case of State of Gujarat and others Vs Arvindkumar Tiwari and another reported in (2012) 9 Supreme Court Cases 545 and the relevant portion is extracted hereunder:

"9. The eligibility for the post may at times be misunderstood to mean qualification. In fact, eligibility connotes the minimum criteria for selection, that may be laid down by the executive authority/legislature by way of any statute or rules, while the term "qualification", may connote any additional norms laid down by the authorities.... ( Vide Preeti Srivastava V State of M.P)

10. The appointing authority is competent to fix a higher score for selection, than the one required to be attained for mere eligibility.....

B. In the case of Maharashtra Public Service Commission v. Sandeep Shriram Warade, reported in (2019) 6 Supreme Court cases 362 .

The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.

C. In the case Government of Andhra Pradesh Vs. P.Dhilipkumar reported in (1993) 2 SCC 310 and the relevant portion is extracted hereunder:

The matter may be looked at from another viewpoint. The word 'preference' as understood in ordinary parlance



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means preferring or choosing as more desirable, favouring or conferring a prior right. What then is the purpose and object sought to be achieved by the insertion of the preference clause in the rule? There is no doubt that preference was sought to be granted under Note 1 to post-graduates in the larger interest of the administration. How would the interest of the administration be served by granting preference to post-graduates? It is obvious that it was thought that on account of their higher mental equipment the quality of performance that the State will receive from highly qualified engineers would be better and of a high order. In other words the State considered it necessary to strengthen the engineering service by recruiting post-graduates to the extent available so that the State may benefit from their higher educational qualifications and better performance”

It thus appears that the order of the learned Judge is contrary to the above decision that it is permissible for the appointing authority to appoint people with desirable norms which is higher than the minimum prescribed qualification. The above principle would apply a fortiori when it comes to appointment for any Educational institutions for it would enable promoting higher standards and achieving excellence in education. The appellant has also set-out the following reasons for appointing only Ph.D degree holders as under:

i). The University is offering many PG and Ph.D programmes now. These PG and Ph.D students can be taught only by Phd holders or teachers without Ph.D, but with minimum 5 years of experience. But they can be guided only by teachers with Ph.D qualification.

ii). The Ph.D degree holders with their research experience and high order research works can submit and obtain research funding from various funding agencies as most of the funding agencies demand only persons possessing Ph.D to submit the proposals.

iii). The presence of PhD holders not only help the PG and Phd students but also help the University in getting high quality research projects and other support from funding agencies, which the non-PHD holders can bring only after 5 to 8 years of their services.

E. Further it is trite law that there is no right to appointment even if found eligible. In this regard it may be relevant to refer the following Judgments.



i) In the case of Maharashtra Public Service Commission vs. Sandeep Shriram Warade, reported in (2019) 6 SCC 362 and the relevant portion is extracted hereunder:

"It is now well settled that merely because a candidate is eligible when the advertisement was issued or that a candidate's name is included in the selection list does not confer any right to the candidate to be appointed. It is also well settled that it is for the rule-making authority or the appointing authority to prescribe the qualifications for recruitment and the courts will not interfere with the qualifications prescribed by such authority "

ii) In the case of Shankarsan Dash Vs Union of India reported in (1991) 3 SCC 47 and the relevant portion is extracted hereunder:

7... Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post.....

F.The reliance on the fact that the University had appointed non Ph.d Degree holders for the subsequent year though the eligibility and desirability were one and the same and thus application of different yardstick is not permissible overlooks settled position that policy decisions are beyond the ken of judicial view and policy by itself is inherently dynamic and in nature and need not rather cannot remain static. It may be useful to refer to the following Judgments.

a. In the case of T.N. Education Deptt. Ministerial & General Subordinate Services Assn. v. State of T.N. Reported in (1980) 3 SCC 97 and the relevant portion is extracted hereunder:

16. Aware of our jurisdictional limitations we do not agree that the court can analyse such minutiae to fault the policy and quash the order of government i.e GO No. 1968. For argument's sake, let us assume that there is a volte face on the part of the Government in shifting its stand in the matter of computation of seniority with reference to length of service. Surely, policy is not static but is dynamic and what weighed with the Government when panchayat institutions were amalgamated with the District Board institutions might have been given up in the light of experience or changed circumstances. What was regarded as administratively impractical might, on later thought and activist reconsideration, turn out to be feasible and fair. The court cannot strike down a GO, or a



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policy merely because there is a variation or contradiction. Life is sometimes contradiction and even consistency is not always a virtue. What is important is to know whether mala fides vitiates or irrational and extraneous factor fouls. It is impossible to maintain that the length of service as District Board employees is irrational as a criterion. Let us assume for argument's sake that the mode of selection by the District Boards is not as good as by the Public Service Commission. Even so it is difficult to dislodge the Government's position that the teachers with mostly the same qualifications, discharging similar functions and training similar students for similar examinations cannot be equated from a pragmatic angle without being condemned as guilty of arbitrariness.

b. In the case of Union of India and others Vs. Mohinder Singh & Ors reported in 2016 SCC OnLine Del 1434 and the relevant portion is extracted hereunder:

....Policy may change and need not be static, for exigencies and experience do matter. Correction and emendation, which is not arbitrary and discriminatory or violative of constitutional rights, should not be interfered with and struck down. The Courts in policy matters interfere when Article-14, fundamental or constitutional rights and mandate is violated and not otherwise. ...

G. Finally the direction of the learned Judge to create a supernumerary post also cannot be countenanced, insomuch as it is contrary to the law laid down by the Supreme Court regarding creation of supernumerary post wherein in the case of Himachal Road Transport Corporation Vs. Dinesh Kumar reported in (1996) 4 Supreme Court cases 560 it was held it would amount to gross abuse of power by the public authority to appoint persons when vacancies are not available and that it is mere misuse of public funds, the relevant portion is extracted hereunder:

"10..... In the absence of a vacancy it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries, it will be a mere misuse of public funds, which is totally unauthorised.

.... It is not open to the Tribunal either to direct the appointment of any person to a post or



direct the authorities concerned to create a supernumerary post and then appoint a person to such a post. "

11. For all the above reasons this Writ appeal is allowed and the order of the learned single Judge is set aside. However, we intend to make it clear, this order will not preclude the contesting respondent from challenging the subsequent notification, if so advised.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

smn

To.

The Principal Secretary to Government,  
Government of Tamil Nadu  
Animal Husbandry ( Diary and Fishery)  
Chennai.

+1cc to Mr.V. Vijaya Shankar, Advocate, S.R.No.30217  
+1cc to Mr.S.Hameed Ismail, Advocate, S.R.No.31043

W.A. No.361 of 2022

SR(CO)  
CT 26/05/2022