



WEB COPY

0 IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.03.2022

Pronounced on : 28.04.2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. No.2091 of 2021

and

C.M.P. Nos.13238 and 13239 of 2021

M.Gowthaman

...Appellant/2nd Respondent

Vs.

1.Dr.Ramesh

2.Dr.S.Ramkumar

3.Dr.S.Kanakaraj

...1 to 3 Respondents/1 to 3 Petitioners

4.The Registrar,

Bharathiar University,

Coimbatore-641 046.

...4th Respondent/1st Respondent

Prayer:Writ appeal is filed under clause 15 of the Letter Patent praying to set aside the order of this Court in W.P.No.24202 of 2017 dated 30.04.2021.

Prayer in W.P.No.24202 of 2017: Writ of Certiorarified Mandamus, call for the records of the 1st respondent in proceeding No.E2/Tech. Appoint/2007 dated 30.4.2007 appointing the 2nd respondent as the Assistant Technical Officer (Library) and the consequent order of the 1st respondent promoting the 2nd respondent into the post of Technical Officer by order in Proceeding No.E6/27935/2017 vide dated 10.8.2017 and to quash the same has being illegal and unsustainable in law and for a consequential direction to the 1st respondent to remove the 2nd respondent from the post who is completely ineligible for the said post based on the enquiry report dated 13.4.2017 which shows that the 2nd respondent is completely ineligible for the post of Assistant Technical Officer (Library)



WEB COPY

For Appellant : Mr.K.C.Karl Marx
For Respondents : M/s.N.Kavitha
1 to 3
For Respondent 4 : Mr.C.Vigneswaran

J U D G M E N T

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

This intra court appeal is filed challenging the order of the learned Single Judge insofar as the appointment of the appellant to the post of Assistant Technical Officer (Library) and the consequential promotion to the post of Technical Officer was held to be illegal, inasmuch as the learned Judge was of the view that the appellant did not possess the requisite qualification for his appointment as Assistant Technical Officer (Library) and further directed re-computation of the pension and to recover excess amount paid to the appellant and also deny the increments in the post of Technical Officer (Library). The learned single Judge further directed that the appellant shall not be entitled to his experience as Library Officer to take future appointment. Aggrieved, the appellants have challenged the order of the learned Single Judge in this appeal.

2. Brief facts:

The appellant was appointed as Office Assistant in the 4th Respondent/ University on 27.05.1993. The Respondents 1 to 3 were also working in the 4th Respondent/ University, while so, a notification was issued by the 4th Respondent/ University inviting applications from eligible in-service candidates for various technical posts which amongst others included Assistant Technical Officer (Library). Qualification for Assistant Technical Officer (Library) as set-out in the notification was Bachelor's Degree in any subject with Certificate in Library Science along with Type writing (Lower) in English and Tamil and previous experience in any recognised Library was considered desirable.

The 4th Respondent/ University did not invite the appellant for interview. On enquiry with the Assistant Registrar, it was informed that Norms Committee had decided that Bachelor of Library Science to be a necessary qualification for appointment to the post of Assistant Technical Officer (Library). The appellant after applying for the post of Assistant Technical



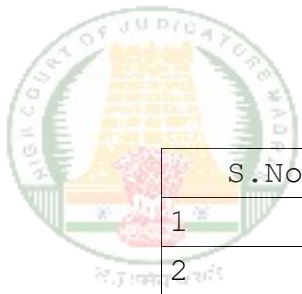
Officer (Library) had vide letter dated 27.04.2007 submitted a representation to Registrar, Bharathiyar University/ 4th Respondent stating that he has acquired Degree with Certificate in Library Science and also has done Typewriting (Lower) in Tamil and English and thus eligible for being considered/appointed to the post of Assistant Technical Officer (Library). The appellant requested that he may be appointed as Assistant Technical Officer (Library) in terms of the suggestions/ recommendations of the Syndicate members subject to the condition that he completes Bachelor in Library Science within a period of one year. Pursuant thereto, the appellant along with Respondents 1 to 3 were appointed as Assistant Technical Officer (Library) by the 4th Respondent/University vide proceedings No.E2/Tech.Appoint/2007 dated 30.04.2007, however, with a condition that the appellant should complete Bachelor's Degree in Library Science course within a period of one year failing which his further increments will be stopped.

The appellant has since been upgraded as Technical Officer (Library) with effect from 02.05.2017, vide proceedings of the 4th Respondent/ University in Proceedings No.E6/27935/2017 dated 10.08.2017.

The writ petitions were filed by Respondents 1 , 2 and 3 on the premise that the appellant did not possess the requisite qualification for being appointed to the post of Assistant Technical Officer (Library) and thus the appellant's initial appointment being bad, his promotion/ upgradation as Technical Officer is also invalid. In this regard, it was submitted that the appellant on the date of his appointment as Assistant Technical Officer (Library) did not possess a Degree in any subject nor a Degree in Library Science and on the date of appointment, the appellant possessed only the following qualifications viz.,

1. +1/ 11th Standard.
2. M.A.History and
3. Certificate course in Library and Information Science.

Importantly, M.A.History degree was obtained from Open University, and the appellant passed Higher Secondary/ +2 examination only subsequent to acquiring the aforesaid Degrees through Open University on March, 2012. The following Table discloses the qualifications of the appellant in chronological order:



WEB COPY

S.No	Qualification	Year of Passing
1	XI standard	October 1979
2	M.A. (History)	December 2001
3	Certificate course in Library and Information Science	May 2002
4	Bachelor's Degree in Library Science (B.Lib.Sc)	May 2007
5	Master's Degree in Library Science (M.Lib.Sc)	May 2008
6	Bachelor of Literature in Tamil (B.Lit(Tamil))	December 2010
7	Higher Secondary Examination	March 2012
8	M.A. (Tamil)	May 2013
9	Type writing (English) Lower Grade	November 1980
10	Type writing (Tamil) Lower Grade	November 1983

The above chronology of qualifications would show that the appellant had admittedly obtained all the degrees viz., Bachelor's Degree and Master's Degree from Open University and had passed his Higher Secondary Examination only subsequently i.e., in March, 2012. Importantly, on 24.04.2007, when the notification calling for applications for the post of Assistant Technical Officer (Library), the appellant had passed 11th standard and M.A.History (through Open University). The appellant was not in possession of Bachelor's Degree in Library Science which would be evident from the fact that in the proceedings for appointment, a condition was imposed that the appellant would complete Bachelor's Degree in Library Science within a year of his appointment which itself would indicate that he was not in possession of the said degree.

3. Order of the Learned Single Judge:

a. That the appellant has been appointed to the post of Assistant Technical Officer (Library) by the 4th Respondent/ University though he did not possess the necessary/ requisite qualification, as evident from the fact that the appointment order itself imposes a condition that the appellant must complete his B.Lib. Sc. within a year.

b. That the Minutes of the Syndicate Meeting of the University dated 31.07.2013 would show that it had resolved that the appellant's request for promotion to the Post of Technical



Officer (Library) may be considered only after submission of original certificates with regard to the educational qualification for the said post. However, the 4th Respondent has not complied with the said resolution. Pursuant to the representations by the Respondents herein, enquiry was conducted and an enquiry report dated 13.04.2017 was filed by the Enquiry Committee, wherein it was stated that G.O.Ms.No.107 dated 10.08.2009 made it clear that any degree would be recognised only if it is obtained after completion of 10+2. However, the service register of the 4th Respondent does not reveal the mode of study as to whether Open University/ Distance education or conventional education to verify the qualification of the appellant.

c. That qualifications that are prescribed in the notification inviting application are mandatory and goes to the root of any public appointment. Appointments contrary to the qualifications prescribed as mandatory would fall foul of Article 14 and 16 of the Constitution of India.

d. That the appointment of the appellant was illegal inasmuch as he did not possess the requisite qualification, the consequence of which was denial of opportunity to other eligible candidates.

f. That the appellant had enjoyed the benefits of his illegal appointment until and also post his retirement on the basis of his appointment, which was obtained fraudulently and that the appellant's pension shall be computed on the basis of his scale of pay as Assistant Technical Officer (Library) for which he is eligible and pay the same to him.

The learned Judge expressed his anguish/ angst over the manner in which appointments are made in gross disregard to the condition of appointment and found that the above menace has increasingly become routine/ custom and can no longer be said uncommon or an aberration and proceeded to issue a slew of directions to the 4th Respondent/University to ensure that the appointments are made in compliance with and in keeping with the Constitutional mandate contained in Article 14 and 16 of the Constitution of India.

4. Case of the appellant:

Aggrieved by the above order of the learned Single Judge, the appellant had challenged the same inter alia on the following amongst the other grounds:

i) That G.O.Ms.No.107 dated 18.08.2009 would not apply to the appointment made on 30.04.2007.

ii) That the qualifications would be governed by G.O.Ms.No.180 dated 11.09.2000. The 4th Respondent/ University has fixed the qualification for the post of Assistant Technical Officer (Library) as Bachelors Degree in any subject with Certificate in Library Science on the basis of the decision of the Norms Committee dated 24.04.2007.



iii) The notification dated 24.04.2007 issued by the University also provided that the qualification for the post of Assistant Technical Officer (Library) is Bachelor's Degree in any subject with Certificate in Library Science.

WEB COPY

5. Case of the Respondents:

a. The appellant on 24.04.2007, was in possession of the following educational qualification, namely:

i) Pass in 11th standard/ +1.

ii) M.A. (History) Degree (Open University).

iii) Certificate Course in Library and Information Science.

b. It was only in May 2007, that the appellant had acquired Bachelor's Degree in Library Science. Importantly, the appellant had completed his Higher Secondary examination/ +2 in March, 2012.

c. A Master's Degree awarded in violation of Regulation 2 of University Grants Commission Regulations, 1985 by a University under Open University system without 3 years Graduate Degree is void.

6. Against the above background, the following questions arise for consideration:

a. Whether possession of a Master's Degree from an Open University without completing Bachelor's Degree is valid, if so, whether possession of Master's Degree in Open University would automatically mean that Bachelor's Degree was also acquired.

b. Whether the study pattern of 10+2+3 is essential/ mandatory for appointment/ promotion and thus the appellant who passed Higher Secondary in the year 2012, after obtaining M.A.History Degree Certificate in December 2001 would render him eligible in terms of G.O.Ms.No.107 dated 18.08.2009.

7. In the instant case, admittedly, the appellant has obtained Master's Degree without obtaining Bachelor's Degree, which is held to be invalid by the Hon'ble Supreme Court in the case of Annamalai University vs. Information and Tourism Department and others reported in (2009) 4 SCC 590, wherein it was held as under:

"29.

Provisions of the 1985 Regulations:

"2.Admission/students.-(1) No student shall be eligible for admission to the first 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



WEB COPY

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 BA/BSc/BCom (general/honours/special) degree as the case may be:

Provided that no student shall be eligible to seek admission to the Masters 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 BA/BSc/BCom (pass) degree on successful completion of two year course, but that no student of this stream shall be eligible for admission to the Masters 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 BA/BSc/BCom (pass) degree.

.....

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 the 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."

(emphasis supplied)

Thus, on the date when the appellant was appointed, he was in possession of only 11th standard/ +1 certificate and Certificate in Library Science, which clearly falls short of the



qualification prescribed in terms of notification of the 4th Respondent/ University inviting application, dated 24.04.2007.

8. Importantly, the appointment was made by way of relaxing the conditions relating to essential qualification. No doubt, the notification calling for application also provided that "relaxation applicable as per Government norms to the respective community" however, there is no averment nor any suggestion made even faintly that there were relaxations in terms of the Government norms on the basis of which, the appellant was eligible. In any view, any attempt to suggest relaxation after commencement of the selection process is impermissible, as such a practice has been frowned upon by the Courts. In this regard, it may be useful to refer to the following judgments wherein the importance of essential qualification and the absence of power to relax the same has been clarified:

a. Mohd. Shohrab Khan vs. Aligarh Muslim University reported in (2009) 4 SCC 555:

"27. The Selection Committee during the stage of selection, which is midway could not have changed the essential qualification laid down in the advertisement and at that stage held that a Master's degree-holder in Industrial Chemistry would be better suited for manning the said post without there being any specific advertisement in that regard. The very fact that the University is now manning the said post by having a person from the discipline of Pure Chemistry also leads to the conclusion that the said post at that stage when it was advertised was meant to be filled up by a person belonging to Pure Chemistry stream.

28. In A.P. Public Service Commission v. B. Swapna, at para 14 it was held by this Court that norms of selection cannot be altered after commencement of selection process and the rules regarding qualification for appointment, if amended, during continuation of the process of selection do not affect the same."

b. In the case of Bharathiar University vs. A.Parvathy in W.A.Nos.1488 and 1502 of 2009 dated 30.10.2009 :

"(e) It is also considered by the Supreme Court as to whether the Selection Committee can relax the eligibility condition in favour of any candidate without the power of relaxation mentioned in the notification, in the decisions reported in (2005) 4 SCC 154 (Secretary, A.P. Public Service Commission v. B.Swapna) and (1995) 6 SCC 1 (Krushna Chandra Sahu (Dr) v. State of Orissa). In the said cases it is



WEB COPY

held that unless the power of relaxation is mentioned in the very advertisement, the Selection Committee cannot grant relaxation by invoking inherent jurisdiction or assuming power by necessary implication."

(f) In the decision reported in (2008) 7 SCC 153 (Pramod Kumar v. U.P. Secondary Education Services Commission & Others) the Supreme Court held that the qualification prescribed are to be obtained by the candidate selected. In paragraphs 16 to 18 the Supreme Court held thus,

"16. The qualifications for holding a post have been laid down under a statute. Any appointment in violation thereof would be a nullity.

17. It is a matter of some concern that appointments are being offered by the authorities of the State without verifying the fact as to whether the degree(s) possessed by the candidate(s) are valid or not. It was an adhoc appointment. Why despite the same, he was allowed to obtain degree from another university is not known.

18. If the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute/statutory rules would be void in law."

It is thus clear that the appointment to the appellant which is admittedly by relaxing the essential qualification as would be evident even from the order of his appointment dated 30.04.2007, wherein it was stated as under.

Order of the 4th Respondent / University dated 30.04.2007

"He should complete B.Lib. Science course within a period of one year. Otherwise his further increments will be stopped."

The above would clearly show that the appointment itself was made by relaxing the condition and conditional, which was clearly in excess of the jurisdiction of the 4th Respondent/ Selection Committee of the University and contrary to the Statute thereby rendering the initial appointment itself a nullity and void ab initio. We are in agreement with the order of the learned Single Judge on the above aspect.

The attempt by the appellant to suggest that the learned Judge had erred in relying upon G.O.Ms.No.107, which is dated 18.08.2009 and thereby giving retrospective effect to the said Government Order may not be necessary to examine in view of the fact that the appellant did not even possess a Bachelor's Degree on the date of application.



9. The learned Judge after deciding that the appointment of the appellant is bad has proceeded to issue the following directions on the premise that the appointment being illegal, the appellant cannot retain the benefits of his illegal appointment :-

i) That the appellant's pension shall be computed on the basis of his scale of pay for which he is eligible, and that the excess amount paid be recovered from the appellant.

ii) That the appellant shall not be entitled to take future appointments based on his experience as Library Officer inasmuch his appointment in itself is illegal.

iii) The learned Judge also proceeded to direct that the 4th respondent/ University shall proceed against the Members in the Selection Committee, who caused the illegal appointment of the appellant to the post of Assistant Technical Officer (Library) against the norms of the University. We think that the above directions of the learned Judge are appropriate and warranted.

10. We also find that the learned Judge after expressing anguish and anxiety over the manner in which illegal appointments were made and finding that such acts have become rampant, issued a slew of directions. Pursuant thereto, the Principal Secretary to the Government has also issued a communication dated 09.06.2021 to the Registrar of all Universities to take necessary action towards implementation of the learned Judge's order and to send the action taken report, on the compliance of the same. We hope that the Universities would implement the directions of the learned Judge and take steps to ensure that appointments are made in compliance with the Constitutional and Statutory mandate.

11. For all the reasons stated above, the writ appeal is dismissed. No costs. Consequently, the connected miscellaneous petitions stand closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mka



To:

The Registrar,
Bharathiar University,
Coimbatore-641 046.

WEB COPY

+1cc to M/s.Kavitha Rameshwar, Advocate SR. No. 29713

+1cc to Mr.K.C.Karl Marx, Advocate SR. No. 29500

W.A. No.2091 of 2021

and

C.M.P. Nos.13238 and 13239 of 2021

CA (CO)

PR (24/05/2022)