



W.P.(MD) No.16640 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2022

CORAM:

**THE HON'BLE MR.MUNISHWAR NATH BHANDARI, THE CHIEF JUSTICE
and
THE HON'BLE MRS.JUSTICE S.ANANTHI**

W.P.(MD) No.16640 of 2022

M.Suresh

... Petitioner

-VS-

- 1.The Union of India,
Rep. by Ministry of Ayurveda, Yoga &
Naturopathy, Unani, Siddha & Homeopathy,
Ayush Bhavan, B-Block,
GPO Complex, INA,
New Delhi – 110 023.
- 2.The State of Tamil Nadu,
Rep. by its Secretary,
Health & Family Welfare Department,
Fort St.George, Chennai – 600 009.
- 3.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St.George, Chennai – 600 009.



W.P.(MD) No.16640 of 2022

WEB COPY

4.The Tamil Nadu Dr.MGR Medical University,
Rep. by its Registrar,
No.69, Anna Salai,
Guindy, Chennai.

5.The Director of School Education,
College Road,
Chennai – 600 006.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the third respondent State Government to take steps to make necessary changes to Page 13 of 1st edition - 1st issue of 'Kalloori Kanavu' under the 'Naan Mudhalvan' Scheme by adding Bachelor of Naturopathy & Yogic Sciences (BNYS) course in the list of courses available under the category of Medicine and Allied Health Sciences and consequently inform the students who have completed their 12th standard about the BNYS course and the list of institutions offering the course.

For Petitioner : Mr.T.Cibi Chakraborty

For Respondents : Mrs.Victoria Gowri
Additional Solicitor General of India for R1
Mr.S.Shaji Bino
Special Government Pleader for R2, R3 & R5



W.P.(MD) No.16640 of 2022

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ORDER

[Order of the Court was made by The Hon'ble The CHIEF JUSTICE]

This writ petition has been filed seeking a direction to the third respondent to take steps to make necessary changes in Page 13 of the 1st edition issued under 'Kalloori Kanavu' under 'Naan Mudhalvan' Scheme by adding the Bachelor of Naturopathy & Yogic Sciences (BNYS) course in the list of courses available under the category of Medicine and Allied Health Sciences and consequently, inform the students about BNYS course.

2. The learned counsel for the petitioner submits that the aforesaid course was omitted, despite having significance not only within the country but even, recognised all over the world. Yoga science is one of the courses taken everywhere, so as naturopathy. Significance of those courses, which were available earlier was recognized, but, thereafter, omitted to be included in the list of courses. The aforesaid course would be useful for the students in the rural areas and therefore, a representation was made by the petitioner to include the said course.



W.P.(MD) No.16640 of 2022

WEB COPY

3. The petitioner has referred to the courses to be included by referring to the relevant page placed on record where other than the course of Bachelor of Naturopathy & Yogic Sciences, the courses like Ayurvedic medicine, Homeopathy medicine and Bachelor of Surgery, apart from Bachelor of Siddha Medicine and Surgery have been included, apart from the other courses, leaving a significant course of Naturopathy & Yogic Sciences. The reference of the other courses which has been given requires consideration for teaching those courses in the rural areas to make the said courses useful for them. Hence, this writ petition deserves to be allowed.

4. We have considered the submissions of the learned counsel for the petitioner and perused the records.

5. The prayer is to direct the respondents to include the course of Bachelor of Naturopathy & Yogic Sciences in the list of courses available under the category of Medicine and Allied Health Sciences to the students, who have completed 12th standard.



W.P.(MD) No.16640 of 2022

WEB COPY

6. The issue for our consideration is *qua* the jurisdiction of this Court, i.e., whether this Court can decide as to which courses should be included in the syllabus or which courses should be omitted.

7. It is a settled proposition of law that Court is not an expert to venture to find out which courses should be included and which courses should be omitted from the syllabus. A decision in this regard has to be taken only by the experts and not by the Courts. Interference of Courts can be permitted only when illegality or unconstitutionality is demonstrated. In the case on hand, no illegality or unconstitutionality has been demonstrated by the petitioner by the omission to include the course of Bachelor of Naturopathy & Yogic Sciences in the list of courses. It cannot be ordered by the Courts that whatever courses are available in the country should also be included in the syllabus. An appropriate decision has to be taken only by the authority concerned. The jurisdiction of the Courts is very limited in matters such as this.

8. The Apex Court, in the case of ***P.M.Lata v. State of Kerala [JT 2003 (2) SC 423]***, has taken the view that fixation of qualification for a



W.P.(MD) No.16640 of 2022

particular post is a matter of recruitment policy. Relevant extract of the said judgement is being quoted below:

“We find absolutely no force in the argument advanced by the respondents that B.Ed qualification is a higher qualification than TTC and therefore, the B.Ed. candidates should be held to be eligible to complete for the post. On behalf of the applicants, it is pointed out before us that Trained Teacher's Certificate is given to teachers specially trained to teach small children in primary classes whereas for B.Ed degree, the training imparted is to teach students of classes above primary B.Ed degree holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or B.Ed. qualification, is a matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for the post of primary teaches as only TTC and not B.Ed. Whether B.Ed qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed candidates for the present vacancies advertised as eligible.”

9. The Apex Court again, in the case of **Yogesh Kumar v. Government of NCT Delhi [JT 2003 (2) SC 453]**, has taken the view that it is



W.P.(MD) No.16640 of 2022

open to the recruiting authorities to evolve a policy of recruitment and to decide the source from which the recruitment is to be made. Paragraph 8 of the aforesaid judgment clearly mentions that fixation of qualification is a discretion of recruiting authority, as the recruiting authority knows the sources from which recruitment is to be made. Relevant paragraph-8 of the aforesaid judgement is being quoted below:

“8. This last argument advanced also does not impress us at all. Recruitment to Public Services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the Rules allows entry to ineligible persons and deprives many others who could have competed for the post. Merely because in the past some deviation and departure was made in considering the B.Ed. candidates and we are told that was so done because of the paucity of TTC candidates, we cannot allow a patent illegality to continue. The recruitment authorities were well aware that candidates with qualification of TTC and B.Ed. are available yet they chose to restrict entry for appointment only to TTC pass candidates. It is open to the recruiting authorities to evolve a policy of recruitment and to decide the source from which the recruitment is to be made. So far as B.Ed. qualification is concerned, in the connected appeals [CA No. 1726-28 of 2001] arising from Kerala which are heard with this appeal, we have already taken the view that B.Ed. qualification cannot be treated as a qualification



W.P.(MD) No.16640 of 2022

WEB COPY

higher than TTC because the natures of training imparted for grant of certificate and degree are totally different and between them there is no parity whatsoever. It is projected before us that presently more candidates available for recruitment to primary school are from B.Ed. category and very few from TTC category. Whether for the aforesaid reasons, B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed. candidates for the present vacancies advertised as eligible. In our view, the division bench of the Delhi High Court was fully justified in coming to the conclusion that B.Ed. candidates were rightly excluded by the authorities from selection and appointment as primary teachers. We make it clear that we are not called upon to express any opinion on any B.Ed. candidates appointed as primary teachers pursuant to advertisements in the past and our decision is confined only to the advertisement which was under challenge before the High Court and in this appeal.”

10. The Apex Court, in the case of **Sanjai Kumar Manjul v. Chairman UPSC, [AIR 2007 SC 254]**, has taken the view that it is the statutory authority alone which is entitled to frame Rules as well as the qualification and Courts have no authority to prescribe qualification or to



W.P.(MD) No.16640 of 2022

supplant or supplement the same. Relevant paragraphs 23 to 26 of the said judgment is being extracted below.

“23. The aforementioned contention of the Fourth Respondent herein has specifically been denied and disputed. It has been contended that recruitment rules of the Deputy Superintending Archaeologist are different from the Superintending Archaeologist. Whereas in the case of the former, two years' research experience in various subjects including Epigraphy was considered to be sufficient, in the case of latter, what was necessary was field experience of five years in Archaeology and knowledge of monuments and antiquities.

24. The statutory authority is entitled to frame statutory rules laying down terms and conditions of service as also the qualifications essential for holding a particular post. It is only the authority concerned who can take ultimate decision therefore.

25. The jurisdiction of the superior courts, it is a trite law, would be to interpret the rule and not to supplant or supplement the same.

26. It is well settled that the superior courts while exercising their jurisdiction under Article 226 or 32 of the Constitution of India ordinarily do not direct an employer to prescribe a qualification for holding a particular post.”

11. In view of the above, we find that no jurisdiction lies with us to issue a direction to the respondents to include a particular course or to omit a



W.P.(MD) No.16640 of 2022

course and it is rather left open for the administration to take appropriate decision thereupon.

12. With the aforesaid, the writ petition is disposed of. No costs.

[M.N.B., C.J.] [S.A.I., J.]
28.07.2022

Index : Yes / No
Internet : Yes / No

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