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W.P.No.1968 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.1968 of 2019

&

W.M.P.Nos.2189,2191,2192 of 2019

Dr.D.Elamparuthi

... Petitioner

Vs.

1.Annamalai University
rep by its Registrar
Annamalai University
Chidambaram

2.The University Grants Commission
Rep by its Secretary
No.9 Bahadurshah Zafar Marg
New Delhi-110022

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in his proceedings in Office Order No.92/2017(c) dated 23.02.2017 quash the same and consequently direct the 1st respondent to



W.P.No.1968 of 2019

declare that the petitioner has the requisite educational qualification as per UGC norms to hold the post of Assistant Professor in the Department of Business Administration and consequently forbear the respondents from in anyway disturbing the services of the petitioner.

For Petitioner : Mr.N.G.R.Prasad
for
Mr.B.Barathkumar

For Respondents : Mr.R.C.Ramesh, Standing Counsel for R1
Mr.B.Rabu Manohar for R2

ORDER

The Writ Petitioner has approached this Court seeking issuance of a Writ of a Certiorarified Mandamus calling for the records on the file of the 1st respondent in office order No.92/2017(c) dated 23.02.2017 and quash the same and consequently direct the 1st respondent to declare that the petitioner has the requisite educational qualification as per UGC norms to hold the post Assistant Professor in the Department of Business Administration and consequently forbear the respondent from in anyway disturbing the services of the petitioner.



W.P.No.1968 of 2019

WEB COPY

2. The brief facts as set out in the Writ Petition are as follows:

The petitioner is a Post Graduate in MBA with specialisation in Human Resource Management. He holds a Doctorate in the area of valuation of Quality of work life in Chemical Industries. Besides that he also holds a Master of Philosophy in Business Administration. He was initially appointed to the post of Lecturer on temporary basis in the Management Wing, Directorate of Distance Education (shortly known as DDE) Annamalai University by the 1st respondent vide appointment order No.1156/2006(c) dated 08.08.2006. The petitioner joined service on the very next day i.e., 09.08.2006.

3. The petitioner further submits that in the year 2006, an advertisement was issued by the 1st respondent University calling for the post of Lecturers. Petitioner applied for the said post, he was called for an interview by way of a call letter vide proceedings dated 16.03.2007. The UGC (Minimum qualification) Regulations, 2000 also stipulates the minimum qualification for the post of Professors, Principals etc. UGC Regulations, 2000



W.P.No.1968 of 2019

WEB COPY

stipulates that National Level Eligibility Test (NET) conducted by it or such other National level Higher Educational Regulatory Bodies like Council for Scientific and Industrial Research (CSIR) is an essential qualification for appointment to the said post. The UGC Regulations, 2000 however, according to the petitioner, exempts NET for the post of Professor, Principals, Readers and Lecturers in the subjects of Fine Arts, Management etc., The petitioner being a Post Graduate in MBA, comes under 'Management' as set out in the UGC Regulations, 2000. The petitioner was appointed a Lecturer in the Management Wing on 19.04.2007. The petitioner registered for M.Phil degree for the academic year 2006 to 2007 on 27.12.2006 and got permission from the University to pursue the same and he also completed M.Phil degree in March 2009. The services of the petitioner came to be confirmed by the 1st respondent on 18.12.2008. Subsequently, vide proceedings dated 03.07.2017, due to the merger of the teaching staff of the DDE with respective regular on campus department, the petitioner was relieved from the Management Wing, DDE to enable him to join duty in the Department of Business Administration. While matters stood thus, the petitioner was shocked to



W.P.No.1968 of 2019

receive a show cause notice on 23.02.2017, which is impugned in the present Writ Petition. According to the said show cause notice the petitioner was not qualified to hold the post as both the minimum qualifications prescribed were not fulfilled or met by the petitioner. The petitioner submitted his explanation to the said show cause notice on 20.04.2018. Thereafter, the petitioner has approached this Court seeking to quash the said show cause notice.

4. Heard Mr.N.G.R.Prasad for Mr.B.Barathkumar, learned counsel appearing for the petitioner and Mr.R.C.Ramesh, Standing Counsel for the 1st respondent (Annamalai University) and Mr.B.Rabu Manohar, learned counsel appearing for the 2nd respondent.

5. The 1st respondent has filed a counter stating that the petitioner has already given his explanation to the show cause notice and that the University is yet to take a decision. The counsel for the 1st respondent submits that the Writ Petition is premature and the University would shortly take a final decision taking into account the explanation offered by the Writ Petitioner.



W.P.No.1968 of 2019

WEB COPY

6. Per contra, learned counsel for the petitioner submits that though it is only a show cause notice, despite having given his explanation he was under the threat of termination and therefore he was constrained to approach this Court and this Court has also granted an interim stay at the time of the Writ Petition being moved. Learned counsel also relied on the judgment of the Hon'ble Supreme Court reported in **(2013) 8 SCC 271, Association of Management of Private Colleges Vs. All India Council for Technical Education and Others**, the Hon'ble Supreme Court discussed the definition of Technical Education under Sec. 2(g) of the AICTE Act, 1987 with reference to MBA course and held that MBA course is not a technical course within the definition of AICTE Act. In another pronouncement reported in the case of **University of Kerala and Ors etc., Vs. Merlin J.N and Anr etc.**, reported in **2022 13 SCR 323**, the Hon'ble Supreme Court held as follows:

“26. The logic pervading all the versions of the UGCR from 1993-2018 (as discussed above) to exempt M. Phil. / Ph.D. holders from qualifying in the NET was perhaps premised on the



WEB COPY



W.P.No.1968 of 2019

understanding that such a doctorate in one's chosen subject, involving years of study, would render a greater understanding of the subject compared to most other candidates taking the NET who have only obtained a Master's degree. Such qualification (M. Phil. or Ph. D.) is undoubtedly awarded for a proven proficiency of the candidate in the concerned subject or discipline. This is apparent from the minimum qualification requirements of different positions as well - for e.g., while a Master's degree is sufficient for application to the post of Assistant Professor, a Ph.D. is required for applying to the post of Associate Professor onwards.²⁷ To interpret the 2018 UGCR prospectively would imply that a pre-2009 Ph.D. holder's appointment would be rendered illegal, and after having taught for several years, he/she would lose his/her seniority and all accrued benefits and would now have to take the NET in order to teach - which is clearly unwarranted. This court therefore, holds that Dr. Jayakumar's appointment is protected by the 2016 UGCR, which is applicable retrospectively."



W.P.No.1968 of 2019

WEB COPY

Applying the ratio laid down by the Hon'ble Supreme Court to the facts of the present case, this Court finds that the petitioner herein has finished his M.Phil in March 2009. Admittedly, he also belongs to Schedule Caste community. Even in the counter these facts are not disputed. However, from a perusal of show cause notice, it is seen that two issues have been put against the Writ Petitioner. One, he has not obtained the minimum marks of 55% for being eligible and two, he has also not cleared NET. In so far as the issue of minimum percentage of marks, even the show cause notice clearly stipulates that “ A relaxation of 5% may be provided, from 55% to 50% of the marks, at the Master Level for the SC/ST categories”.

7. When the respondents do not deny the fact that the petitioner belongs to SC community, there can be no second opinion that the marks secured by the petitioner would certainly qualify for his appointment. Admittedly, he has obtained 52.5% and as against the required 50% for candidates belonging to the SC community.



W.P.No.1968 of 2019

WEB COPY

8. With regard to the condition requiring qualification in NET, the answer is given by the Hon'ble Supreme Court and the petitioner having completed his M.Phil well before the cut off date viz., December 2009 would be squarely covered and he cannot be compelled or required to pass NET to continue his services as an Assistant Professor. Normally, Courts are slow in interfering with show cause notices. However, in this case, requiring the petitioner to go back and appear before the authorities is only going to be an empty formality when the facts are clearly borne out and admitted on the side of the petitioner as well as the respondents. Further, this Court is unable to appreciate the stand of the respondents in contending that they will pass final order after considering the explanation offered by the petitioner. The show cause notice was issued on 23.02.2017 and the petitioner submitted his explanation on 20.04.2018 itself. This Writ Petition was filed on 23.01.2019 and an interim order was also granted. The respondents never took any earnest steps to proceed in furtherance of the show cause notice and explanation offered by the petitioner as early as in April 2018. For all the reasons, this Court is inclined to allow the Writ Petition as prayed for. No



W.P.No.1968 of 2019

costs. Consequently, connected Writ Miscellaneous Petitions are closed.

WEB COPY

08.06.2023.

Internet:Yes
Index:Yes/No
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To
1.The Registrar
Annamalai University
Chidambaram

2.The Secretary
University Grants Commission
No.9 Bahadurshah Zafar Marg
New Delhi-110022

P.B.BALAJI, J.,
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WEB COPY



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