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**(2014) 08 MAD CK 0050**

**In the Madras High Court**

**Case No :** Writ Appeal No. 805 of 2014 and M.P. No. 1 of 2014

Chairman, Teachers Recruitment Board

APPELLANT

Vs

V. Kanimozhi

RESPONDENT

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**Date of Decision :** 06-08-2014

**Acts Referred:**

**Citation :** (2014) 8 MLJ 344

**Hon'ble Judges :** Satish K. Agnihotri, J; M.M. Sundresh, J

**Bench :** Division Bench

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## **Judgement**

Brief facts:

1. The 1st appellant issued notification through advertisement No. 2/2013 dated 9.5.2013 inviting applications for direct recruitment to the vacancies for the post of Post Graduate Assistants/Physical Education Directors Grade-I for the year 2012-2013 in the Tamil Nadu Higher Secondary Educational Service. The respondent before us was one of the applicant. She attended the written examination held on 21.7.2013. Thereafter, she was called for the Certificate verification and accordingly her services were verified. However, in the provisional selection list published, the name of the respondent was not included. It was done so on the ground that the respondent has not studied plus 2 course before completing the Degree course as required under G.O.(Ms). No. 107, Personnel & Administrative Reforms (M) Department dated 18.8.2009. Challenging the publication of the provisional selection list in the Website on 3.1.2014 and seeking consequential prayer to direct the 1st appellant to select and appoint the respondent to the post of Post Graduate Assistant - Tamil for the year 2012-2013, a writ petition was filed in W.P. No. 1068 of 2014 before the learned single Judge and the writ petition as filed was allowed on 11.3.2014 by setting aside the provisional selection list published on 3.1.2014 with a direction to consider the case of the respondent for appointment to the post of Post Graduate Assistant Teacher in Tamil based upon her marks secured. Aggrieved by the said order, the appellants have filed the present appeal before us. Heard Mr.

D. Krishnakumar, learned Special Government Pleader (Education) appearing for the appellants and Mr. N.G.R. Prasad, learned counsel for Mr. Dakshayani Reddy for respondents.

## 2. Submissions of the appellants:

2.1. Learned Additional Government Pleader submitted that as mandated by the Government Order passed in G.O.(Ms). No. 107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009, only a candidate, who has cleared the plus 2 course and thereafter did Degree alone can be considered as eligible. The Government Order passed in G.O.(Ms). No. 107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009 has not been challenged by the respondent. The said G.O. has been upheld by the Division Bench of this Court in T.L. Muthukumar v. The Registrar General, High Court, Madras and Another Writ Petition No. 18729 of 2010 dated 10.2.2011.

2.2. The qualification prescribed is different from a valid degree recognised by the University Grants Commission. Admittedly, the respondent has completed her Degree course without completing the plus 2 course. The decisions relied on by the learned single Judge in allowing the writ petition are not applicable to the case on hand. When it comes to the academic matters, particularly, with respect to the standards required for teachers, the wisdom of the parties cannot be questioned. In support of his contention, reliance was made on the decision of the Supreme Court in Annamalai University rep. by Registrar Vs. Secy. to Govt. Infn. and Tourism Dept. and Others, , Order passed by the Division Bench of this Court in W.P. No. 18729 of 2010 dated 10.2.2011 and Order made by learned single Judge in W.P. No. 1843 of 2014 dated 13.3.2014. Learned Special Government Pleader also relied on a Full Bench judgment of the Rajasthan High Court in Shanker Lal Verma and Others Vs. Rajasthan State Electricity Board, .

## 3. Submissions of the respondent:

3.1. Mr. N.G.R. Prasad, learned counsel appearing for the respondent submitted that the respondent did complete the plus 2 course. Therefore, there is no bar for considering the case of the respondent on merit. The Government Order in G.O.(Ms). No. 107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009 has been satisfied. Even otherwise, the appellant has complied with clause (2) of the University Grants Commission Regulations, 1985 as she had passed in the entrance test conducted by the University concerned. The learned single Judge has correctly allowed the writ petition making reliance upon the decision of the Division Bench of this Court in Joseph v. Irudayaraj v. Joint Director of School Education W.A. No. 1064 of 2012 dated 6.11.2013. Reliance was also made on the Government Order passed in G.O.Ms. No. 217, Personnel and Administrative Reforms (K) Department, dated 8.9.2007.

3.2. Learned counsel further submitted that recently single Judge of this Court has also taken the view in W.P. No. 13054 of 2010 etc., batch, dated 21.4.2014 by taking note of clause 2(i) of the University Grants Commission Regulations,

1985, dated 25.11.1985 and the ratio laid down therein is applicable to the case of the respondent herein as well. In support of the submissions, learned counsel has also made reliance upon the judgment of the Supreme Court in Annamalai University v. Secretary to Government, Information and Tourism Department and Others (supra) and submitted that the ratio laid down therein, as rightly held by the learned single Judge, does not have any application to the case on hand. Therefore, the learned counsel submitted that the order passed by the learned single Judge requires no interference.

#### 4. Discussion:

4.1. The respondent obtained her degree in B.A. under Open University System. Thereafter she joined B.Ed. degree as a regular course and obtained B.Ed. Then, she obtained her M.A. Degree. Thereafter she realised that unless and until she passes the plus 2 examination she will not be eligible for appointment to the post of Post Graduate Assistant Teacher. Accordingly, with that new wisdom dawned on her, she completed her plus 2 course - after securing B.Ed. degree, B.A. Degree and M.A. Degree. Now, the question for consideration is the completion of plus 2 course after obtaining the three degrees can be termed as in consonance with the G.O. Passed in G.O.(Ms). No. 107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009. The second question, though not considered by the learned single Judge, is that inasmuch as the respondent did undertake entrance test before joining the first degree course, the said degree be considered as a valid one in terms of regulation 2(1) of the U.G.C. Regulations 1985 dated 25.11.1985.

4.2. Coming to the first issue, we would like to extract the relevant passage of the Government Order passed in G.O.(Ms). No. 107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009, which reads as under:

"The above recommendations were carefully examined by the Government and accordingly Government accepted the recommendations of Equivalence Committee and issue orders, that the Diplomas/Degrees/Post Graduation after possession of Xth Std., Higher Secondary (+2) obtained through Open Universities alone considered for appointment/promotion in Public Services."

On a reading of the above said paragraph, it is clear that a diploma/degree/post graduation can only be considered for appointment in public services after a candidate possesses Xth Standard as well as Higher Secondary (+2). This Government Order passed has been upheld by the Division Bench of this Court in W.P. No. 18729 of 2010 dated 10.2.2011.

4.3. Even otherwise, the binding nature of the said Government Order is not in dispute. The respondent has not challenged the said Government Order. As the appellants are the competent authorities to fix the qualification, that too, pertaining to the teachers of Higher Secondary schools, there is no difficulty in coming to the conclusion that the conditions prescribed are mandatory. In other words, unless and until a candidate satisfy the requirement as envisaged in G.O.

(Ms). No. 107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009, he or she cannot be considered for the post.

4.4. In the case on hand, admittedly, at the time of completing the degree, the respondent did not complete the plus 2 course. That is exactly the reason why she thereafter completed the plus 2 course. This fact has also been observed by the learned single Judge. While it is absolutely open to the respondent to do the same, the question for consideration is, as to whether the said action would cure the defect. In our respectful submission, the said attempt cannot be substitute to the Government Order passed in G.O.(Ms). No. 107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009. Any other interpretation would amount to re-writing the provisions of the said Government Order, which is impermissible in law, without there being a challenge.

4.5. Now, coming to the Regulations of the University Grants Commission with reference to admission of a student to a Degree, the said issue is irrelevant insofar as the insistence on the part of the appellants to comply with the Government Order passed in G.O.(Ms). No. 107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009. The appointment is to the post of Post Graduate Assistant Teacher in the Higher Secondary School. When the appellants thought it fit to make sure that only those who have completed plus 2 course and thereafter the degree course be eligible to be considered for a particular post of a teacher, then the wisdom and rationale behind the same cannot be questioned. As discussed above, the rationale has not been questioned before us and in any case, we do not find any arbitrariness in the Government Order, which has already been upheld.

4.6. The issue of recognition of a degree is different from a qualification fixed in service matters. An eligibility criteria fixed cannot be said to be an indirect way of derecognising a degree or diploma. To put it differently, such a degree cannot be termed as an eligible qualification for a particular post. Therefore, we are of the view that though scope and ambit of Regulation 2 of the University Grants Commission has not been considered by the learned single Judge, the same is not required to be considered in favour of the respondent in view of the express terms as provided in the G.O. Passed in G.O.(Ms). No. 107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009. In this connection, a useful reference can be made to the Full Bench Judgment of the Rajasthan High Court in *Shanker Lal Verma and 13 Others v. Rajasthan State Electricity* (supra) wherein the following passage is apposite:

"32. It is also to be noted that these are not the cases of derecognition of a degree, diploma or certificate issued by a particular institution because of some fault on the part of the institution awarding the same. The cases of derecognition of particular institutions and consequently derecognition of the degrees, diplomas and certificates issued by such institutions have to be distinguished from service matters in which certain qualifications are deleted from the rules. Removing or deleting a qualification from eligibility criteria cannot be said to be derecognition

of that qualification or a degree, diploma or certificate. It only means that the degree, diploma or certificate has ceased to be the eligibility qualification for a particular post. It does not take away from the candidate, the degree, diploma or certificate conferred by the institutions. For example, if the eligibility qualification for a particular post was earlier "Graduate" and by amendment, it is raised to "Post graduate", it does not mean that degree possessed by the candidates are derecognised. What it simply means is that the eligibility qualifications are enhanced and a higher qualification is now required. It is also to be taken into account that purpose behind amendment to the rule was not to derecognise any degree, diploma or certificate, it was only to delete certain qualifications from the eligibility criteria. This may be because of the changed situation in which the employer may find that candidates who have passed the Secondary School Examination from the Statutory Boards and Universities are available in sufficient numbers and it was not necessary to consider the candidates having equivalent qualifications. The respondents cannot be forced to accept equivalence of certain qualifications and to accept such equivalence for all times to come."

4.7. Coming to the other decisions relied on by the respondent as considered by the learned single Judge, we are of the view that they do not have any application to the case on hand. In Writ Appeal No. 1064 of 2012 dated 6.11.2013, the Division Bench of this Court merely directed the authorities to reconsider the matter. On a perusal of the Order passed by the learned single judge, it is seen that the ratio laid down in *Joseph v. Irudayaraj v. Joint Director of School Education (supra)* has been wrongly relied upon. The direction was specific to the effect that the entire issue will have to be considered in the light of paragraph No. 4 of G.O.(Ms). No. 107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009. We have already discussed the scope and ambit of paragraph No. 4 of the G.O. Therefore, we are of the view that the said decision does not throw any light on the issue raised before us, that too, in favour of the respondent. Similarly, we are of the view that the decision dated 21.4.2014 relied upon by the respondent as rendered by the single Judge of this Court in W.P. No. 13054 of 2010 etc., batch does not have any application to the case before us in view of the discussion made above, wherein, we have already held that fixing qualification is different from recognising a degree.

4.8. After the judgment was reserved, on mentioning, learned counsel appearing for the respondent produced the following judgments:

1. Suresh Pal and Others Vs. State of Haryana and Others, ;
2. Full Bench Judgment of the Punjab and Haryana High Court in *Neelam Kumari Vs. State of Punjab and Others*, and
3. *Chandrakala Trivedi Vs. State of Rajasthan and Others*, .

4.9. In *Suresh Pal and Others v. State of Haryana and Others (supra)* the issue involves derecognition of a degree course with retrospective effect. Merely because the respondent has obtained the degree earlier, the same cannot act as

an estoppel on the appellants from exercising their power in fixing the qualification. Therefore, the said decision does not have any application to the present case. The other decisions relied upon by the learned counsel for the respondent in Full Bench Judgment of the Punjab and Haryana High Court in *Neelam Kumari v. State of Punjab and Others* (supra) and *Chandrakala Trivedi v. State of Rajasthan and Others* (supra) would not help the case of the respondent. In *Chandrakala Trivedi v. State of Rajasthan and Others* (supra), the Supreme Court was dealing with the question of equivalence. We are afraid, the issue of equivalence is not before us. On the contrary, we are dealing with the issue of requisite qualification and the power of the appellants in fixing the same for the purpose of appointing teachers. Hence, the said judgment also is of no help to the respondent.

4.10. In the case on hand, the respondent has written the examination as a private candidate without undergoing Higher Secondary course of a duration of two years. It is the prime duty of the appellants to see to it that the quality of education is maintained for the purpose of imparting the same to the students. Certainly, there is a difference between a candidate, who had undergone a regular course as against the other who completes it by writing the examination privately. Therefore, even on that score, we do not find anything arbitrary in the decision of the appellants in rejecting the candidature of the respondent.

In the result, the writ appeal stands allowed and the order dated 11.3.2014 passed by the learned single Judge in W.P. No. 1068 of 2014 stands set aside. Consequently, the writ petition is dismissed. However, there is no order as to costs and the connected miscellaneous petition is also dismissed.