
(2012) 02 MAD CK 0297

In the Madras High Court

Case No : Writ Petition No. 19396 of 2011 and M.P. No. 1 of 2011

D. Ganesan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 23-02-2012

Acts Referred:

Advocates Act, 1961 — Section 24, 24(1), 49, 49(1), 7
Legal Education Rules, 2008 — Rule 2, 4, 8

Citation : (2012) 2 CTC 177

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : K. Rajasekaran, for the Appellant; N. Srinivasan, Additional Government Pleader, For Respondents 1 and 2, Mr. D. Gnanasekaran, For Respondent 3, Mr. V.M.G. Ramakkannan, For Respondent 4, Mr. S.R. Rajagopal, For Respondents 5 and 6 and Mr. P.R. Gopinathan, For Respondent 7, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice V. Ramasubramanian

1. The petitioner has come up with the above writ petition, seeking the issue of a Writ of Quo Warranto to direct the third respondent to show cause on what authority he holds the post of Principal of Dr. Ambedkar Government Law College, Chennai. I have heard Mr. K. Rajasekaran, learned counsel for the petitioner, Mr. N. Srinivasan, learned Additional Government Pleader for respondents 1 and 2, Mr. D. Gnanasekaran, learned counsel for the third respondent, Mr. V.M.G. Ramakkannan, learned counsel for the fourth respondent, Mr. S.R. Rajagopal, learned counsel for respondents 5 and 6 and Mr. P.R. Gopinathan, learned counsel for the seventh respondent.

2. The third respondent was appointed temporarily as a Junior Professor in Sociology, on 17.1.1985 in the Government Law College, Chennai. The appointment was ratified by the Government on 22.1.1985. Later adhoc rules

were framed for the post of Junior Professor in Non-Law subject, as per which a degree in M.L., with 50% marks and enrolment as an Advocate was made compulsory. The third respondent challenged the said rule in W.P. No. 192 of 1987 unsuccessfully. His writ appeal was also dismissed.

3. Therefore, the Government, by order dated 16.12.1988, directed the regularisation of the services of the third respondent in the category of Assistant Professor in Tamil Nadu Collegiate Education Services (not in the Tamil Nadu Legal Education Service). Thereafter, the third respondent acquired a B.L., Degree from the Madurai Law College (Evening College). Subsequently, a Saving Clause was introduced to the adhoc rules by an amendment issued on 5.3.1993. Based upon the Saving Clause, the services of the third respondent and similarly placed persons, were regularised in the Tamil Nadu Legal Education Service.

4. In 1995, the third respondent acquired M.L., Degree from Annamalai University through Correspondence Course. In the year 2008, the Bar Council of India issued Rules of Legal Education, stipulating that the Principal of a Law College should be a Professor of Law as per UGC stipulation. However, the Government amended the adhoc rules on 12.3.2010, making Lecturers in Law and Non-Law subjects, both eligible for promotion to the post of Principal. Based upon the said amendment and also based upon the common seniority list issued on 17.6.2011, the third respondent was appointed as the Principal of the Dr. Ambedkar Government Law College. Challenging the said appointment, the petitioner is before this Court.

5. The third respondent has filed a counter affidavit, which confirms the following facts:

(i) that he was appointed through Employment Exchange to the post of Assistant Professor in Government Law College to teach Non-Law subject viz., Sociology, with effect from 17.1.1985;

(ii) that though the adhoc rules issued under G.O.Ms. No. 1349, Education Department, dated 19.11.1985, prescribed the qualifications of M.A., with not less than 50% marks, M.L., with not less than 50% marks and enrolment in the Bar Council, as qualifications for the post of Junior Professor to teach Non-Law subjects, the services of the petitioner were regularised under G.O.Ms. No. 307, Law Department, dated 6.8.1993, in view of the Saving Clause introduced to the adhoc rules under G.O.Ms. No. 67, Law Department, dated 5.3.1993;

(iii) that the petitioner studied B.L., in the Evening College in Government Law College, Madurai and acquired the degree in 1990;

(iv) that he pursued M.L., Degree Course in Annamalai University through Correspondence and acquired the Degree in 1995 with 55% marks;

(v) that thereafter, he also taught Law subjects and evaluated answer papers on Law subjects;

(vi) that as per G.O.Ms. No. 66, Law Department, dated 12.3.2010, experience in teaching Law subjects is not included as one of the qualifications for promotion to the post of Principal; and

(vii) that since the third respondent also has experience in teaching Law subjects and he is also due to retire on 30.6.2012, the question of setting aside his appointment would not arise.

6. The Director of Legal Studies, who is the second respondent herein, has filed a counter affidavit both on his behalf and on behalf of the State Government (first respondent). The counter affidavit proceeds on the following lines:

(i) Till the academic year 1982-83, only a 3 year Law Course was conducted in all Government Law Colleges in the State and hence all sanctioned posts of Junior Professor and Professor, were only in Law subjects.

(ii) In the 5 year Law Course introduced in the State from the academic year 1983-84, Non-Law subjects such as English, Economics, History, Political Science and Sociology, were to be taught in the first 2 years. Therefore, posts of Assistant Professor to teach Non-Law subjects were sanctioned in various Government Law Colleges and teachers from the Department of Collegiate Education were appointed to these posts on deputation basis, in the first instance.

(iii) Simultaneously, the Professional and Executive Employment Exchange was also addressed, for sponsoring a list of candidates for recruitment. While M.A., Degree in relevant subject was prescribed as essential qualification, a Degree in Law was prescribed as a desirable qualification.

(iv) From the list of candidates sponsored by the Employment Exchange, 5 persons were selected and appointed. One of them was the third respondent herein. All the 5 possessed a Master's Degree in the relevant subject (Non-Law subject), but none of them possessed a Degree in Law. Their appointments were ratified by the Government in G.O.Ms. No. 311, Education, dated 28.3.1985, G.O.Rt. No. 505, Education, dated 9.4.1985 and G.O.Ms. No. 58, Education, dated 22.1.1985.

(v) Subsequently, adhoc rules for the above posts in Non-Law subjects were issued in G.O.Ms. No. 1349, Education, dated 19.11.1985. These rules are deemed to have come into force on 1.6.1984. Rule 4 (b) of the adhoc rules prescribed 3 qualifications as essential qualifications. They are (1) M.A. Degree in the relevant subject with at least a second class (2) M.L. Degree with at least a second class and (3) enrolment in the Bar Council.

(vi) The qualifications prescribed by the adhoc rules were challenged unsuccessfully by the third respondent in W.P. No. 192 of 1987 and W.A. No. 105 of 1987. Thereafter, the services of the third respondent were regularised in Tamil Nadu Collegiate Education Service as Assistant Professor in G.O.Ms. No. 1840, Education, dated 16.12.1988.

(vii) Thereafter, the Government issued an amendment to the adhoc rules in G.O.Ms. No. 67, Law Department, dated 5.3.1993. By this amendment, a Savings Clause was inserted as Rule 8, to the effect that nothing contained in the rules shall adversely affect any persons holding the post on 19.11.1985.

(viii) Granting the benefit of the amendment to the third respondent, the Government issued G.O.Ms. No. 307, Law Department, dated 6.8.1993, regularising the services of the third respondent and 4 others, in the post of Junior Professor (Pre-Law) in the Legal Education Service. This Government Order was issued in supersession of the earlier order in G.O. Ms. No.1840, Education, dated 16.12.1988, by which the services of the third respondent was regularised in the Collegiate Education Service. The nomenclature of the post was changed to that of Lecturer (Senior Scale) with effect from 1.1.1986, as per the UGC recommendations.

(ix) Two persons by name C. Sujatha and M.S. Soundarapandian, who were appointed through Tamil Nadu Public Service Commission as Lecturers (Senior Scale) (Pre-Law) filed an application in O.A. No. 5873 of 1994 on the file of the Tamil Nadu Administrative Tribunal, challenging the Savings Clause introduced under Rule 8 to the adhoc rules with a consequential prayer to send back the third respondent and 4 others to the Collegiate Education Service. But the said application was dismissed by the Tribunal by an order dated 18.9.1996.

(x) Though the third respondent was originally appointed to teach Non-Law subjects, he was also teaching Law subjects after obtaining a Master's Degree in Law.

(xi) The adhoc rules for the post of Principal of Government Law Colleges, were issued in G.O.Ms. No. 2043, Education, Science and Technology, dated 22.10.1983. Appointment to the post of Principal is to be made, as per the adhoc rules, by way of promotion from category-1 of Class II (Professors). If no qualified and suitable candidate is available for promotion, direct recruitment is to be resorted to. The qualifications prescribed by the adhoc rules for promotion to the post of Principal, are as follows:

(1) Must have obtained a first or a second class M.L. degree of a University in the State of Tamil Nadu or a degree of equivalent standard.

Provided that in the case of candidates possessing the second class M.L. degree they should have obtained not less than 50% of marks in the M.L. degree examination. Provided further that the possession of 50% of marks not be insisted in the case of persons holding the post of Professor on Regular basis on 31.3.1981. Provided also that if suitable candidates with even second class degree are not available for promotion, candidates who have obtained the M.L. degree with a pass class shall be considered.

(2) Must have experience as Professor in Law College for a period of not less than three years.

(xii) At the time of issue of the above adhoc rules, there was no post of Professor (Pre-Law) or the post of Lecturer (Selection Grade) (Pre-Law), as Pre-Law posts came only from 1985. Therefore, it was not included in category-1 of class II. In other words, a teacher in Non-Law subject (later came to be known as "Pre-Law") was not one of the feeder categories for the post of Principal, as per the adhoc rules issued in G.O.Ms. No. 2043, dated 22.10.1983.

(xiii) Therefore, a candidate by name M.S. Soundarapandian, who was selected through Tamil Nadu Public Service Commission and appointed as Lecturer (Senior Scale)(Pre-Law) filed a writ petition in W.P. No. 17216 of 2008 on the file of this Court, seeking a direction to include the post of Lecturer (Selection Grade)(Pre-Law) as a feeder category to the post of Principal.

(xiv) In the writ petition, the Government agreed on principle to include the post as one of the feeder categories. Therefore, the writ petition was disposed of on 10.11.2009, directing the Government to frame and amend the rules suitably to fill up the posts of Principals in Government Law Colleges and complete the process within a period of 4 months.

(xv) Pursuant to the said order, the Government issued G.O. Ms. No. 66, Law, dated 12.3.2010, including the post of Lecturer (Selection Grade) (Pre-Law) as one of the feeder categories for the post of Principal. As per this order, the holders of the post of Lecturer (Selection Grade) (Pre-Law) as on 24.3.1999, who possess not less than 50% marks in M.L. Degree are eligible to be appointed to the post of Principal.

(xvi) As per the amended adhoc rules, a single common seniority list is to be prepared for Lecturers (Selection Grade) (Law) and Lecturers (Selection Grade) (Pre-Law), in terms of Rule 4 of the General Rules for Tamil Nadu State and Subordinate Services.

(xvii) Therefore, a panel of Lecturers (Selection Grade) (Law) and Lecturers (Selection Grade) (Pre-Law) for promotion to the post of Principal was prepared and published in G.O.Ms. No. 240, Law Department, dated 17.6.2011. The third respondent was placed at Rank No.1 in the said panel, as per his seniority position and as per the amended adhoc rules. Consequently, he was promoted as Principal by G.O.Ms. No. 241, Law, dated 17.6.2011.

(xviii) The stipulation contained in G.O.Ms. No. 66, Law, dated 12.3.2010, including the post of Lecturer (Selection Grade) (Pre-Law) as a feeder category to the post of Principal merely prescribes a M.L. degree with not less than 50% marks as essential qualification. The rules do not make ineligible for promotion, a person holding a M.L. degree obtained through Correspondence Course. Therefore, the promotion is in accordance with the adhoc rules and cannot be taken exception to.

7. The Bar Council of India and the Bar Council of Tamil Nadu (R-5 and R-6) have filed separate counter affidavits. On factual aspects, they have not passed any

remark since they do not have first hand knowledge. On legal aspects, their contentions are as follows:

(i) While the Bar Council of Tamil Nadu is only a statutory body regulating the profession and also exercising disciplinary control, the Bar Council of India prescribes standards for legal education and grants recognition to Universities, which offer degree courses that would qualify for enrolment.

(ii) The Bar Council of India had prescribed rules of standard known as "Legal Education Rules, 2008", in exercise of the powers conferred by Sections 7 (1) (h) and (i), 24(1)(c)(iii) and (iii-a), 49(1)(af)(ag) and (d) of the Advocates Act, 1961.

(iii) Para 16 of Schedule III of Legal Education Rules, 2008 prescribes that there shall be a Principal for each constituent or affiliated Centre of Legal Education of a University and a Dean for the University Department, who shall have a minimum prescribed qualification in Law as prescribed by the UGC for respective position like Principal of a Centre for Legal Education or a Professor of Law to hold Deanship, as the case may be.

(iv) Therefore, it is evident that the Principal should possess a Master's degree in Law.

(v) On the question whether the Master's Degree in Law should have been obtained through regular stream or through distance education, the answer would be that only those who had done the Master's Degree in the regular stream can impart and train students in the best possible manner.

(vi) The Bar Council of India does not approve a degree in Law obtained through Correspondence Course, for the purpose of enrolment, as is evident from Rule 2(iv)(a) and its proviso. The Bar Council of India would not also approve a Master's Degree in Law obtained through Correspondence Course, for the purpose of teaching Law.

8. The Tamil Nadu Dr. Ambedkar Law University and the University Grants Commission, who are the respondents 4 and 7 respectively, have not filed counter affidavits. However, the learned counsel appearing for both of them filed a copy of the UGC Regulations. These Regulations are called "UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education 2010". The qualifications prescribed by these Regulations for direct recruitment to the post of Principal could be found in paragraph 4.2.0 of the Annexure. They read as follows:

4.2.0. PRINCIPAL

(i) A Master's Degree with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) by a recognised University.

(ii) A Ph.D. Degree in concerned/allied/relevant discipline(s) in the institution concerned with evidence of published work and research guidance.

(iii) Associate Professor/Professor with a total experience of fifteen years of teaching/research/administration in Universities, Colleges and other institutions of higher education.

(iv) A minimum score as stipulated in the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS), as set out in this Regulation in Appendix III for direct recruitment of Professors in Colleges.

9. Since the UGC Regulations 2010 uses the phrase "Master's Degree with at least 55% marks by a recognised University", the third respondent has taken a stand that inasmuch as he has secured a Master's Degree from Annamalai University, which is a recognised University, he fulfils the qualifications. This contention of the third respondent is in tune with the stand taken by the State Government in paragraph 12 of their counter affidavit. The stand of the State Government is on the basis of the adhoc rules for the post of Principal as amended by G.O.Ms. No. 66, Law Department, dated 12.3.2010. The relevant portion of G.O.Ms. No. 66 dated 12.3.2010, by which a new provision was introduced against the entry "promotion" in column (2) in the table under Rule 4, reads as follows:

(i) Must have obtained M.L. Degree with not less than 55% marks or a degree of equivalent standard of any other University and recognised as equivalent thereto by the Tamil Nadu Dr. Ambedkar Law University.

10. The Tamil Nadu Dr. Ambedkar Law University has taken a stand that they would go by para 4.2.0 of the Annexure to the UGC Regulations 2010. The UGC Regulations 2010, not only prescribes a Master's Degree with at least 55% marks by a recognised University, but also prescribed a Ph.D. Degree. The third respondent admittedly does not have a Ph.D. Degree. Therefore, the third respondent is not qualified as per the UGC Regulations 2010. The adhoc rules framed by the Government and amended by G.O.Ms. No. 66, dated 12.3.2010, cannot have overriding effect upon the UGC Regulations. The validity of the UGC Regulations have already been upheld by a Division Bench of this Court to which I was a party, in *The Secretary, Kamaraj College Vs. D.S. Arulmani, Reader and Head of Department of Tamil, Kamaraj College and Others*, . Therefore, neither the third respondent nor the Government can give a go by to the UGC Regulations 2010 and rely upon the adhoc rules.

11. Apart from the insistence of Tamil Nadu Dr. Ambedkar Law University to follow the UGC Regulations 2010, the Bar Council of India has also made it clear that the qualifications should be as prescribed by the UGC. The Rules of Legal Education, 2008, made by the Bar Council of India, stipulates under paragraph 16 of Schedule III that there shall be a Principal for each Constituent or affiliated Centre of Legal Education of a University and a Dean for the University Department, who shall have minimum prescribed qualification in Law as prescribed by the UGC for respective position like Principal of a Centre of Legal Education or a Professor of Law to hold Deanship, as the case may be.

12. Thus, the University Grants Commission, the Tamil Nadu Dr. Ambedkar Law University and the Bar Council of India have spoken in one voice that the qualifications prescribed by UGC Regulations 2010 are mandatory. Paragraph 4.2.0 of the Annexure to the Regulations require a Ph.D. Degree. Even admittedly the third respondent does not have a Ph.D. Degree. Therefore, he does not fulfil the qualifications essential for appointment to the post of Principal and his reliance upon the adhoc rules framed by the State Government is of no avail, as these rules would stand eclipsed by the UGC Regulations 2010.

13. In any case, the Master's Degree secured by the third respondent cannot be relied upon by him, as the same was obtained through Correspondence Course. The Bar Council of India has made it clear in the counter affidavit filed by them that the Master's Degree should have been obtained through a regular course and only then the Principal will be able to impart and train students well. This stand taken by the Bar Council of India has to be given due weight as held by the Supreme Court in Bar Council of India Vs. Board of Mang. Dayanand Coll. of Law and Others, The said case arose out of the appointment of a person as the Principal of a private Law College, despite the fact that he did not have the qualification in Law. The qualifications possessed by him satisfied the prescription contained in the University Act, 1973. But the Bar Council of India withdrew the recognition granted to the College on the ground that the Principal did not have a qualification in Law. When the decision was challenged before the High Court, the High Court held that going by the Uttar Pradesh State Universities Act, 1973, the appointment was valid notwithstanding anything contained in the Advocates Act, 1961 or the rules framed by the Bar Council of India. But the Supreme Court reversed the decision and held in paragraph 15 that notwithstanding the procedure prescribed by the University Act and the Statute, it is necessary for the recommending authority and the State Government, to adhere to the requirements of the Advocates Act and the Rules of the Bar Council of India. Therefore, the stand taken by the Bar Council of India that a Master's Degree obtained through Correspondence Course will not serve the purpose, cannot be overlooked.

14. The learned counsel for the third respondent relied upon the following decisions:

- (i) Suresh Pal and Others Vs. State of Haryana and Others,
- (ii) M.S. Mudhol and Another Vs. S.D. Halegkar and Others,
- (iii) Sri Raj Pal Verma and others Vs. Chancellor of Meerut University (renamed as Ch. Charan Singh University), Raj Bhawan, Lucknow and others,
- (iv) State of U.P. and Others Vs. Bhupendra Nath Tripathi and Others,

15. The decision in Suresh Pal, has no connection with the issues raised in the present writ petition. It was a case where the petitioners joined a Certificate Course in Physical Education in an Institute in Amaravati, when the Institute had

recognition by the State Government. Subsequently the State de-recognised the Certificate Course, resulting in the candidates who had already undergone the Course, losing the validity of the Course already undergone. This case has nothing to do with the case on hand.

16. In Dr. M.S. Mudhol, a person who did not have a Master's Degree with a second division, was appointed to the post of Principal of a Senior Secondary School. He also did not have the required experience of 10 years of teaching. Therefore, his appointment was challenged by way of a Writ of Quo Warranto. The Supreme Court dismissed the Writ of Quo Warranto on the short ground that the appointment of the person concerned was the mistake of the Selection Committee and that the appointed candidate had already put in 9 years of service before the filing of the writ petition and continued in the post for 3 more years during the pendency of the writ petition. The Supreme Court made it clear in paragraph 8 that it shall not be taken for future guidance. Therefore, the third respondent cannot seek inspiration from this decision.

17. Raj Pal Verma's case was also of a similar nature. Despite finding that the candidate concerned in that case was also not qualified for appointment, the Supreme Court did not disturb his appointment, only on the ground that he had already served for 18 years and was also on the verge of retirement. But in the case on hand, the third respondent was appointed only in June 2011 and had just put in 8 months of service, though he is due to retire shortly. Therefore, this case also will not go to his rescue.

18. In Bhupendranath Tripathi, the question that arose was as to whether the State Government could restrict the eligibility for appointment to the post of teachers, only to those candidates who have passed B.Ed., from the institutions recognised by the National Council for Teacher Education. The Supreme Court found that even prior to the enactment of the NCTE Act, degrees such as B.Ed., were being awarded by the Universities recognised by the University Grants Commission. Therefore, it was held in the said decision that the degrees obtained from the Universities recognised by the UGC cannot be undermined. But in this case, the third respondent does not fulfil even the prescription contained in the UGC Regulations. Therefore, the said decision will also not go to his rescue.

19. Contending that a public interest litigation does not lie in service matters, the counsel for the third respondent relied upon the decision of the Supreme Court in Hari Bansh Lal Vs. Sahodar Prasad Mahto and Others, . But the said decision goes against the third respondent, as seen from the principles of law summarised in para 34 of the decision, which read as follows:-

34. From the discussion and analysis, the following principles emerge:

- (a) Except for a writ of quo warranto, PIL is not maintainable in service matters.
- (b) For issuance of a writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules.

(c) Suitability or otherwise of a candidate for appointment to a post in Government Service is the function of the appointing authority and not of the Court unless the appointment is contrary to statutory provisions/rules.

20. The present writ petition is not a public interest litigation. It is filed for the issue of a Writ of Quo Warranto. The appointment of the third respondent is contrary to the UGC Regulations 2010, which has been adopted by the Tamil Nadu Dr. Ambedkar Law University and accepted by the Bar Council of India in the Rules of Legal Education, 2008. The adhoc rules framed by the Government should only be read in tune with UGC Regulations 2010. Therefore, the writ petition is maintainable and the appointment of the third respondent is liable to be set aside. Accordingly, the writ petition is allowed and the order in G.O.Ms. No. 241, Law (LS) Department, dated 17.6.2011, promoting the third respondent to the post of Principal of the Government Law College is set aside. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.