

(2011) 10 MAD CK 0115

In the Madras High Court

Case No : Writ Petition (MD) No. 2142 of 2007 and M.P. (MD) No's. 1, 2, 4 of 2007 and 1 of 2009

D. Kathiravan

APPELLANT

Vs

Manonmaniam Sundaranar University, St. John's College and
University Grants Commission

RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 15, 16

Citation : (2011) 10 MAD CK 0115

Hon'ble Judges : K. Chandru, J; Honourable Mr. Justice K. Chandru, J

Bench : Division Bench

Advocate : S.S. Sundar, for the Appellant; M.P. Senthil For Respondent No. 1, Mr. S. Kadarkarai For Respondent No. 2, Mr. S. Chandrasekaran For Respondent No. 3 and Mr. B. Vijay Karthikeyan For Respondent No.4, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner has come forward to file the present Writ Petition challenging the order passed by the first respondent Manonmaniam Sundaranar University, dated 12.02.2007. By the impugned order, the University addressed the second respondent College that their proposal sent for verifying the qualification of the petitioner as being suitable for holding the post of Lecturer in the department of Economics was not complied with. It was further informed that the petitioner's M. Phil dissertation was not in the subject relating to Economics. The letter addressed to the Secretary was also marked to the Principal of the College. The petitioner, unmindful of the existence of the letter, filed a Writ Petition before this Court being W.P.(MD)No.1261 of 2007, seeking for a direction to grant approval to the petitioner's qualification to hold the post of Lecturer in Economics in the College by treating the petitioner's M. Phil degree in education as interdisciplinary. In that Writ Petition, notice of motion was ordered and even by then,

the communication of the University came to the knowledge of the petitioner and hence, he had filed the present Writ Petition seeking to challenge the said communication.

2. When the Writ Petition came up for admission on 09.03.2007, this Court ordered notice of motion on the Writ Petition and ordered private notices to the respondents. Pending the notice, an order of interim injunction was granted restraining the second respondent from terminating the service of the petitioner. Initially, it was granted for a limited period and subsequently, it was extended. It was, thereafter, the petitioner took out applications for impleading the third respondent one Stalin Kamaraj as well as the fourth respondent University Grants Commission and that applications were ordered by this Court on 27.11.2007 in M.P.(MD)Nos.3 and 5 of 2007. In the application filed in M.P. (MD)No.1 of 2009, seeking for a direction to disburse the salary pending the Writ Petition, no orders have been passed.

3. On notice from this Court, on behalf of the second respondent College, a counter-affidavit dated 18.04.2007 was filed. On behalf of the first respondent University, a counter-affidavit dated 30.10.2007 was filed. The impleaded University Grants Commission had also filed a counter-affidavit dated 10.12.2008. The petitioner had also filed an additional affidavit dated 20.06.2008 stating that on the same day of appointment of the petitioner, one Mrs. Juliet Shanthi Jothi was appointed as a Lecturer in the Department of Botany and she had completed her M. Phil only in Life Science inter-disciplinary and in Marghoshius College, Nazareth, one Dr. Prem Arasan was appointed as the Lecturer, who has no M. Phil degree and has Ph.D., degree in education. Therefore, the University was making contradictory stand.

4. Aggrieved by the interim order obtained by the petitioner, the third respondent had filed an application for vacating the interim injunction in M.P.(MD)No.4 of 2007. In that application for vacating the interim injunction, which is supported by an affidavit dated-June, 2007, it was stated that he had also attended the interview for the said post in the respondent-college on 22.08.2006 and the post is kept vacant, since he is a qualified person. By the grant of injunction, the post is being kept vacant and no one is benefited. Therefore, he sought for vacating the interim order. However, the said application was not taken up till date. In the meanwhile, at the request of the petitioner, the order dated 15.12.2008 was also passed stating that the petitioner should submit a copy of the dissertation work to the counsel for the University Grants Commission for getting instruction from the University Grants Commission.

5. The facts leading to the case are as follows:

The petitioner claims that he has got M.A. Economics from the Madurai Kamaraj University and subsequently, he had acquired M. Phil degree and registered the same with the Alagappa University and M. Phil dissertation was done, based upon inter-disciplinary approach. The petitioner was also, from time to time,

appointed against leave vacancies in the Popes College at Sawyerpuram for short periods. Subsequently, when the petitioner was appointed as a substitute Lecturer in Economics by the second respondent College and proposals were sent to the University for qualification approval, the University, by its communication sent by the Registrar, dated 26.05.1997, informed the College that the petitioner's appointment as a substitute Lecturer in their College was not approved, as he did not have M. Phil in Economics. The College also warned that before sending any proposal to the University for qualification approval, they should see that the incumbent for the posts fulfills all the required qualifications as per the norms of the University Grants Commission. Though the petitioner disowned the said letter stating that it was not communicated to him, but the fact that he worked in the College during the relevant period is not denied by him, in effect, he had also produced a service certificate dated 19.06.1997 given by the Principal & Secretary of the College stating that he was a Part-time Lecturer in the College from 22.07.1996 to 04.04.1997. For the reasons best known, he had not disclosed the rejection of the approval of his qualification and he has also not stated, as to why the rejection was never challenged by him.

6. On the contrary, the second respondent College, in their counter-affidavit filed before this Court, acknowledged the receipt of the said communication and also the decision of the College not to challenge the same. In paragraph Nos.4 and 5 of the counter-affidavit, it was stated as follows:

4. It is submitted that in previous occasions when the writ petitioner was appointed in leave vacancies in the colleges run by the Triunelveli Diocese, his qualification was duly approved by the first respondent and the petitioner was paid the salary. But in the year 1997 when the petitioner was appointed as Lecturer in Economics in St.John's College in one month leave vacancy, the first respondent denied approval of the qualification of the petitioner herein. That denial was not questioned by the petitioner or the Management. The petitioner was not paid the salary for that month.

5. It is submitted that the petitioner pointed out that he got M. Phil degree from Alagappa University in the subject Education (Interdisciplinary) which is related to Economics. He studied Economics of education as optional subject which is an inter disciplinary subject. But the first respondent declined approval on the ground that the petitioner has not obtained M. Phil degree in the same subject namely Economics.

7. It is not clear as to why notwithstanding the University's disapproval of the qualification of the petitioner in holding the post of Lecturer in Economics, the petitioner's name was considered once again on the regular vacancy arose for the post of Lecturer in Economics and the petitioner's name was also considered by the College and he was given provisional appointment on 29.08.2006. In the provisional appointment given to the petitioner, a copy of which found enclosed in page No.25 of the typed-set of papers, it was stated that his appointment was subject to the approval of the University and the Department of Education and he

will be paid salary as and when the amount is received from the Department of Education. It is in this context, a counter-affidavit filed by the University assumes importance. In the counter-affidavit filed by the University, viz., the first respondent, it was stated that there were as many as 24 candidates with M. Phil in Economics, who had attended the interview and disregard of all the candidates, the petitioner was appointed. This was notwithstanding the fact, ten years before, the very same qualification produced by the petitioner for the very same post, though in a substitute vacancy, was disapproved by the University and the College was also warned not to send such names in future. In such circumstances, the College will have to explain their conduct in having allowed an unqualified candidate to participate in the selection process and also selecting him for the very same post, which was declined by the University. This action of the College had resulted in an unnecessary litigation and also a wasteful expenditure and exercise on the part of the writ petitioner.

8. In any event, the contention of the petitioner was that there is no impediment for a person from doing a higher course in inter-disciplinary method and also for the course of recognition of such a inter-disciplinary approach in getting academic education. In this context, the learned counsel for the petitioner placed reliance upon a judgment of this Court in *Dr. M. Ponnuswamy, Professor, Department of Tamil Language, University of Madras Vs. University of Madras*, and a reference was made to paragraph No.5, which is as follows:

5.Respondent filed counter affidavit contending as follows:

(a) The University of Madras is introducing quite a number of inter-disciplinary course in various branches of studies and it may not be in a position to appoint required number of faculty persons for all these inter-disciplinary courses. The University also has started Centres of Excellence viz., Population studies, Ocean studies, Disaster Management Studies, Environmental Studies, etc., and the curriculum of various branches of studies are expanding and the University has to cope up with the growing needs of dissemination of knowledge to the student community.

(b) To achieve the same, teaching man-power has to be inevitably transferred from one department to another to handle inter-disciplinary and cross-disciplinary nature of studies of various branches in the department of University and for that purpose the University decided to post teaching faculties from one department to another.

(c) It is also stated in the counter affidavit that in the appointment order issued to the faculty members, it is stated that they are liable to be transferred including to the Institute of Distance Education as a general condition and the impugned resolution was passed to avoid financial commitment on the part of the University by appointing fresh candidates.

(d) For the contention that by effecting transfers from one department to another, there will be dilution of standards, it is submitted that there are many

inter disciplinary programs such as Bio-Chemistry, Bio-Physics, Bio-Informatics, Corporate Sociology, Actuarial Sciences and Hospital Management and to cope up the demands for teaching these faculties, a situation has arisen to transfer the faculty from one department to another to handle inter disciplinary nature of subjects related to them.

(e) It is further stated that the Syndicate, as early as in March, 1988, had approved the transfer of teaching faculties in approving norms evolved by the T&RD Committee for inter departmental transfers. A Sociology teacher or a Psychology teacher or an Economics teacher is as much required in offering a master degree program in management as those of management experts. Similarly, a Mathematics Teacher is required not only in Computer Science and Statistics but also Physics and it is impossible for the University to appoint as many teacher as much of inter disciplinary courses are introduced.

(f) An assurance is given in the counter affidavit that while transferring faculty members, "the University would carefully examine the issues of transfer with regard to subject curriculum, compatibility in consultation with the competent faculty members in the respective areas of studies. The University would also evolve certain strategies to see that the transferees are not put to any disadvantages.

9. In paragraph No.5 of the judgment, the counter-affidavit of the University was referred to and it was observed that inter-disciplinary approach can be introduced by the University and there is no watertight compartmentalization of subjects.

10. However, before going into the merits of the case, it must be noted that Section 15 of the Tamil Nadu Private Colleges (Regulation) Act, 1976 gives power to the University to make regulations, statutes, or ordinances specifying the qualifications required for the appointment of teachers employed in any private College and Section 16 is an injunction against the Management from appointing anybody other than persons who are having qualification u/s 15 of the Tamil Nadu Private Colleges (Regulation) Act, 1976. It is perhaps only because of this, the Government expects the approval of qualification of any teacher appointed in a private College for the purpose of releasing grant and in this arrangement, the Colleges are sending proposals to the University and the University gives an advisory opinion regarding the qualification. In the case of the petitioner, such an opinion was granted as early as on 26.05.1997 and neither the College nor the individual had chosen to challenge the said communication.

11. Though the counsel for the petitioner may state that he is not aware of the existence of the said letter, in any event, in the absence of the College challenging the same, he could have done very little about the rejection of his qualification. After the said order came to be passed, there are no change of circumstances in the last ten years. It is not as if the petitioner acquired some additional qualification or some higher qualification so as to put forth his case

once again. But, it is strange to see the counter-affidavit filed by the College and in paragraph No.6, they have stated that the petitioner cannot hold the post, in view of non approval of his educational qualification and in the interest of the student and the College, the question of his qualification should be decided at an early date. Near ten years ago, the similar question has been answered by the University. It is unthinkable that the College should, once again, seek for some advisory opinion from the University. In the earlier circumstances, the University had warned the College that the petitioner does not have the qualification and the College should not send such names in future. It only shows that some how the College wanted to prop up the petitioner which had given rise to the entire litigation. Even if the decision in this Writ Petition goes against the petitioner, for all the agony undergone by the petitioner, it is the College which must compensate him, as they alone were responsible for sending his name for the second time. But, now, they have given up his case, after realising the futility of supporting the case put forth by the petitioner.

12. In the counter-affidavit filed by the University Grants Commission, after setting out the regulations framed by the University Grants Commission, in terms of the University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of a University and Institutions affiliated to it) Regulations, 1982, which had come into effect with effect from 01.07.1983 and after referring to the decision of the Supreme Court as to how the qualifications are important for any College to appoint a teacher, a reference was also made to a judgment of the Supreme Court in University of Delhi Vs. Raj Singh and others, .

13. Lastly, in the counter-affidavit of the University Grants Commission, it is stated that any qualification whether it is coming within the norms prescribed by the University Grants Commission will have to be done by a Selection Committee and the Selection Committee should formulate a proper opinion and in paragraph No.23, it was stated as follows:

"23..... It is further submitted that even if a candidate has earlier worked as Lecturer in any capacity including in the capacity of temporary or contract appointment or as a substitute teacher under the faculty improvement programme of the University Grants Commission, the same shall not confer any right or equity in favour of the petitioner herein, if he does not fulfill the minimum qualification prescribed by the University Grants Commission for the post of Lecturer and if he is not found suitable for the post in question by the selection committee."

14. This above quoted passage is a sufficient explanation to meet the petitioner's contention that on the earlier occasions, when he was appointed by the Popes College, Sawyerpuram for a limited period working as a substitute Lecturer in temporary vacancies, his name was approved, is not a ground for considering the petitioner's qualification as being required for holding the post of Lecturer in Economics.

15. In the University's counter-affidavit, the University had clearly stated that for appointment of a Lecturer in Economics, the candidate must have M. Phil in Economics. The claim of the petitioner that he has an M. Phil in Education (inter-disciplinary) and hence, he is eligible for appointment as a Lecturer in Economics, in terms of the topic chosen by him, was not acceptable by the University. His M. Phil, dissertation does not satisfy the norms of the University Grants Commission. It was also stated that if only the candidates have M. Phil degree in the concerned subject, they alone exempted from writing the National Eligibility Test (NET). It is also stated that for holding the post of Lecturer in Economic, both at the UG level and the PG level including M. Phil level, it should be the same subject and finally, it was pointed out that the College having called for more than 24 candidates for interview and all of them having M. Phil in Economics, they have omitted to consider anyone of them. As to whether the inter-disciplinary approach conducted by the petitioner satisfies the qualification prescribed, in paragraph No.11 of the counter-affidavit, it was stated as follows:

"11. I submit that the petitioner's M. Phil qualification is not in core Economics. Since the M. Phil education (inter-disciplinary) is an ancillary qualification and the same is not equivalent to M. Phil Economics. The respondent University has not adopted different policy in respect of petitioner."

16. With reference to the allegation of certain other candidates being adopted, the same has been denied in paragraph No.9 of the counter-affidavit. It is in the light of the counter-affidavit, Mr. M.P. Senthil, learned counsel appearing for the first respondent University brought to the notice of this Court the two judgments of the Supreme Court, which have a bearing on this matter. The first decision relates to Bihar Public Service Commission and Others Vs. Kamini and Others, . In that judgment, the Supreme Court has held that in any recruitment process, the eligible conditions including qualification will have to be satisfied and merely because in remote past some candidates possessing a particular qualification had been erroneously considered by the Public Service Commission to be eligible for a post, it cannot be a ground for a candidate possessing the same qualification to claim appointment to that post in subsequent recruitment process. In such circumstances, the equality doctrine cannot be invoked for perpetuating any illegality. It is necessary to refer to the following passage found in paragraph No.10 of the said judgment, which is as follows:

"10..... Therefore, even if in 1993, some ineligible candidates were wrongly treated as eligible, the first respondent cannot insist that she also must be treated eligible though she is ineligible. In our considered opinion, such an action cannot give rise to equality clause enshrined by Article 14 of the Constitution. It is well settled and needs no authority that misconstruction of a provision of law in one case does not give rise to a similar misconstruction in other cases on the basis of doctrine of equality. An illegality cannot be allowed to be perpetuated under the so-called "equality doctrine". That is not the sweep of Article

14. Even that contention, therefore, has not impressed us."

17. The second decision relied on by the counsel relates to Mohd. Sohrab Khan Vs. Aligarh Muslim University and Others, . It was held that in the matter of selection of candidates, opinion of the Selection Committee should be final, but, at the same time, the Selection Committee cannot act arbitrarily and cannot change the criteria/qualification in the selection process during its midstream. If such post was meant for a person belonging to Pure Chemistry Department, then they should have mentioned the same in the advertisement, so that persons, who are having Master degree in Industrial Chemistry, could also apply and as such, in the said judgment, the Supreme Court is of the view that once the post is advertised, it should be strictly filled up by a person having qualification and if any relaxation is given in favour of a particular person, then the same benefit should have been found notified in the original advertisement and in the midstream, no such deviation can be made. If any relaxation is made, such a selection process will be vitiated and in those circumstances, the wisdom of the Selection Committee cannot be considered to be above the rule of law. If it is seen in the light of the legal precedent and the factual matrix involved, the petitioner has not made out any case.

18. The Supreme Court while considering the UGC guidelines in the matter of appointment to the post of Lecturer in an University considered the scope of as to what is meant by the term "relevant subject" prescribed by them even in cases where the University was having single department of Political Science and Public Administration. When an advertisement was made for the post of Lecturer in Political Science, it was considered that relevant subject must be only that subject which was advertised and degree from any other discipline cannot be entertained. The UGC rejecting the request of the University was accepted by the Supreme Court vide its judgment in Dr. Bhanu Prasad Panda Vs. The Chancellor, Sambalpur University and Others, . It is relevant to refer to paragraph 5 of the said judgment, which reads as follows:

"5. We have carefully considered the submissions of the learned counsel appearing on either side. The stipulation regarding the minimum academic qualification reads, "good academic record with at least 55 per cent marks or an equivalent grade of Master's degree level in the relevant subject from an Indian university or an equivalent degree from a foreign university". Though the Department concerned for which the appointment is to be made is that of "Political Science and Public Administration", the appointment with which we are concerned, is of Lecturer in Political Science and not Public Administration and subject-matterwise they are different and not one and the same. It is not in controversy that the posts of Lecturers in Public Administration and in Political Science are distinct and separate and on selection the appellant could not have been appointed as Lecturer in Public Administration, be it in the Department of Political Science and Public Administration since the advertisement was specifically to fill up the vacancy in the post of Lecturer in Political Science.

Merely because the Department is of Political Science and Public Administration - the essential requirement of academic qualification of a particular standard and grade viz. 55%, in the "relevant subject" for which the post is advertised, cannot be rendered redundant or violated by ignoring the relevant subject and carried away by the name of the Department only which, in substance, encompasses two different disciplines. That merely depending upon the context he was being referred to or the post is referred to as being available in the Department of Political Science and Public Administration, is no justification to do away or dispense with the essential academic qualification in the relevant subject for which the post has been advertised. Consequently, Resolution No. 6.2 dated 18-2-1992 or extracts provided from the proceedings of the Board of Studies dated 2-3-1996 cannot be of any assistance to support the claim of the appellant. The rejection by UGC of the request of the Department in this case to relax the condition relating to 55% marks at post graduation level for Research Assistant having MPhil up to March 1991 or PhD up to December 1992, is to be the last word on the claim of the appellant and there could be no further controversy raised in this regard. In view of the above, no exception could be taken to the decision of the Chancellor and no challenge could be countenanced in this appeal against the well-merited decision of the High Court."

19. Once again dealing with the qualification prescribed by the UGC, the Supreme Court in *Dr. Rajbir Singh Dalal Vs. Chaudhari Devi Lal University, Sirsa* and *Another*, dealt with the case of essential qualification required for the post of reader. When the UGC regulations were silent as to the qualification for the post of reader, the Supreme Court has held that the regulations of UGC will have to be interpreted on the basis of *casus omissus* and if the post requires a particular qualification, it may be the intention of regulation making authorities to leave the higher post without insisting upon the same qualification. In that context, after disagreeing with *Bhanu Prasad Panda's* case (cited *supra*), the Supreme Court held that even the observation made in that case cannot be taken to be laying down the law on the subject. After saying so, it was observed in paragraphs 25 and 27 as follows:

"25. In our opinion, in the present case, the *anusanga* principle of *Mimansa* should be utilised and the expression "relevant subject" should also be inserted in the qualification for the post of Reader after the words "at the Masters degree level". Hence, we cannot accept the submission of Mr Patwalia in this respect. However, we agree with Mr Patwalia that since academic experts have regarded Political Science and Public Administration to be one discipline, it is not right for this Court to sit in appeal over the opinion of the experts.

27. In *Tariq Islam v. Aligarh Muslim University* following its earlier decision of the Constitution Bench of this Court in *University of Mysore v. C.D. Govinda Rao*, this Court observed that "normally it is wise and safe for the courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the courts generally are".

In his concurring opinion, Altamas Kabir, J, in paragraph 49 had held as follows:

"49. In my view, the omission in the Regulations cannot be said to be unintentional or a case of casus omissus. In my view, the expression "appropriate subject" was intended to cover the post of Reader and once the expert bodies had indicated that the appellant who held a postgraduate degree in Political Science was eligible to be appointed to the post of Reader in Public Administration and had been rightly appointed to such post, it is normally not for the courts to question such opinion, unless it has specialised knowledge of the subject."

(Emphasis added)

20. The Supreme Court while dealing with the qualification prescribed has held that the court cannot prescribe any academic equivalence by itself. The parameters of a judicial review in such matters was considered in such matters in State of Rajasthan and Others Vs. Lata Arun, and in paragraph 10, it was observed as follows:

"10. The points involved in the case are twofold: one relating to prescription of minimum educational qualification for admission to the course and the other relating to recognition of the Madhyama Certificate issued by the Hindi Sahitya Sammelan, Allahabad as equivalent to or higher than +2 or 1st year of TDC for the purpose of admission. Both these points relate to matters in the realm of policy decision to be taken by the State Government or the authority vested with power under any statute. It is not for courts to determine whether a particular educational qualification possessed by a candidate should or should not be recognized as equivalent to the prescribed qualification in the case. That is not to say that such matters are not justiciable. In an appropriate case the court can examine whether the policy decision or the administrative order dealing with the matter is based on a fair, rational and reasonable ground; whether the decision has been taken on consideration of relevant aspects of the matter; whether exercise of the power is obtained with mala fide intention; whether the decision serves the purpose of giving proper training to the candidates admitted or it is based on irrelevant and irrational considerations or intended to benefit an individual or a group of candidates."

(Emphasis added)

21. Perhaps, taking advantage of the limited judicial review permitted, Mr. S.S. Sundar, learned counsel appearing for the petitioner contended that the decision of the University was mala fide. However, a perusal of the affidavit does not show that there was any allegation of factual mala fide or any legal mala fide attributed to them. In a multi member body, like the University's Syndicate, unless mala fides are particularized, the Court cannot embark upon a roving enquiry to ascertain the question of mala fide.

22. Lastly, the learned counsel made a passionate plea that the matter should be

once again referred to another expert body. Such a question does not arise. Unless the decision taken by the University is vitiated, the question of this Court substituting the opinion of the University will not arise. In the present case, the University has not taken the view only in the year 2007 but it had only reiterated its earlier view taken in the year 1997. It is the second respondent College, which are perpetuated some illegality and for that reason, they must pay compensation by way of costs. But, on no ground, any further enquiry can be ordered to be conducted by this Court. This Court is satisfied with the counter-affidavit filed by the University in this regard.

23. In view of the above, the Writ Petition stands dismissed. However, the second respondent College is hereby directed to pay Rs.25,000/- (Rupees twenty five thousand only) as costs to the petitioner. The cost is ordered, as the Writ Petition came to be filed, due to the the illegality committed by the second respondent College. Despite being forewarned by the University ten years ago, it was they who had selected him and sent proposals for approving his name. Consequently, the connected miscellaneous petitions are closed. No costs.