

(2017) 03 MAD CK 0096
In the Madras High Court
Case No : Writ Petition (MD) No. 1319 of 2017

Dr. A. Michaelraj

APPELLANT

Vs

The Secretary to the Government, Chennai-6

RESPONDENT

Date of Decision : 03-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 3 MLJ 653

Hon'ble Judges : Mr. S. Vaidyanathan, J.

Bench : Single Bench

Advocate : Mr. D. Sadiq Raja, Advocate, for the Petitioner; Mr. P. Krishna Doss, Govt. Advocate, for the Respondents No. 1 to 4; Mr. M. Muthugeethayan, Advocate, for the Respondent No. 5; Mr. Issac Mohanlal, Senior Counsel for Mr. T. Cibi Chakraborty, Advocate, for the Respondent No. 6

Final Decision : Disposed Off

Judgement

Mr. S. Vaidyanathan, J.—This writ petition has been filed, seeking to quash the communication of the 3rd respondent dated 28.11.2016 in Na.Ka.No.35044/G4 of 2016 sent to the 5th respondent and the consequential order passed by the 5th respondent University in Ref.Dean CDC/MKU of 2016 dated 15.12.2016 as well as the communication of the 4th respondent made in Na.Ka.No.8515/Oo2 of 2016 dated 12.01.2017 to the 6th respondent.

2. The 3rd respondent vide communication dated 28.11.2016 informed the 5th respondent that the petitioner has not fulfilled the qualification as per the norms of UGC and the 5th respondent, in turn passed an order dated 15.12.2016, refusing to approve the qualification of the petitioner as per the letter dated 28.11.2016 of the Directorate of Collegiate Education. Based on these, the 4th respondent sent a letter to the 6th respondent / College asking for explanation on these irregularities pointed out by various authorities.

3. The case of the petitioner is as follows:

i) He has secured 52.7% in B.Com. and completed his Post Graduation in M.Com by obtaining 50.6% in the year 1998; that he did his M.Phil in 2007 by securing 54.8%; that for appointment to the post of Assistant Professor in the 6th respondent Autonomous College, which is a private aided college affiliated to the 5th respondent University, the petitioner has to secure 55% in P.G., namely M.Com. and M.Phil to be appointed in the said post; that since the petitioner did not have 55% in M.Com., he has once again undergone M.Com. in Co-operative Management through distance education in Annamalai University and obtained 63% and thereafter, pursued his Ph.D. and completed the same in the year 2012.

ii) There was a vacancy arisen on 17.09.2012 in the 6th respondent college on account of the retirement of one Assistant Professor and the 6th respondent, after obtaining necessary approval, has appointed 16 teaching staff, including the petitioner herein, but however, the 5th respondent has not approved the qualification; that the College filed a writ petition in W.P. (MD) No.5376 of 2014 for grant of approval to the said 16 teaching staffs and this Court directed the 5th respondent to consider and dispose of the proposals submitted by the 6th respondent college on merits and as per law; that 4th respondent sent a communication to the 6th respondent college on 30.03.2015 asking for certain information, namely, the details of the extension of the minority status of the college and the reasons as to who vacancies of the Assistant Professor were filled up without their prior permission; that the 6th respondent college, being a minority institution, questioned the said communication dated 30.03.2015 of the 4th respondent by filing W.P.(MD) No.17645 of 2015; that in the meanwhile, the educational qualification of the petitioner was approved by the 5th respondent University, subject to the sanction of post by Directorate of Collegiate Education, Chennai; that subsequently, for grant of approval of the petitioner's appointment, the 6th respondent again sent a communication dated 02.06.2015 to the Joint Director of Collegiate Education / 4th respondent, who in turn sent a communication to the 6th respondent College informing that the approval of appointment of the petitioner could be considered only on receipt of the additional details sought for in the communication dated 30.03.2015, which is under challenge in the writ petition in W.P.(MD) No.17645 of 2015, mentioned supra; that challenging the order dated 16.06.2015, the 6th respondent college filed W.P.(MD) No. 20936 of 2015 before this Court and the same is pending before this Court and by means of interim order, provisional approval was granted and the 4th respondent was directed to disburse provisional salary to all 16 staffs of the college, including the petitioner with effect from 04.12.2015.

iii) Though, on 02.06.2016, the 4th respondent has granted approval to the appointment of the petitioner, to his shock, 5th respondent issued a communication to the 6th respondent dated 15.12.2016 that the petitioner has not fulfilled the qualification as per the UGC norms, as he has done M.Com, course simultaneously along with Ph.D. Course and in pursuant thereof, the 4th respondent issued a communication to the 6th respondent on 12.01.2017 to stop his salary till contradiction as to his qualification approval issued by the 5th

respondent is clarified.

iv) The petitioner has contended that no opportunity of hearing was afforded to him before passing the impugned order; that the 5th respondent approved his qualification as early as on 21.05.2015 itself and therefore, it is erroneous to contend that he has not fulfilled the qualification as per UGC norms; that provisional approval has been granted and salary has also been disbursed in pursuant of the interim order of this Court and therefore, the 4th respondent cannot direct the 6th respondent to stop salary to the petitioner for the fault of the 5th respondent;

v) According to the petitioner, for registering Ph.D., programme, a candidate should have a Bachelor Degree as well as Master Degree in any discipline with not less than 50% of marks in the P.G.Degree; that since the petitioner has secured only 50.6% marks in P.G.Degree, the petitioner registered for Ph.D. Degree as a part time research scholar from 16.07.2009 and for appointment to the post of Assistant Professor, it is mandatory to have both Master Degree with 55% and Ph.D. and therefore, the petitioner joined M.Com. in Co-operative Management through distance education in Annamalai University and completed the same in the year 2011 with first class; that there is no prohibition prior to 08.06.2012 to undergo two programmes simultaneously and the clarification issued by the UGC dated 09.02.2015 clearly shows that there was no policy regarding simultaneous pursue of two programmes prior to the notification dated 08.06.2012 and therefore, the communication dated 28.11.2016, the consequential order dated 15.12.2016 and the subsequent communication dated 12.01.2017 of the 4th respondent have all got to be quashed.

4. Learned counsel appearing for the 5th respondent / Madurai Kamaraj University would vehemently contend that the petitioner cannot challenge the communications dated 28.11.2016 and 12.01.2017, as these were not addressed to him and when the 6th respondent has not chosen to challenge the said communication, the petitioner has no locus standi to challenge the same; that even though the petitioner has contended that the petitioner had nine years of teaching experience, commencing from 2000 till the date of application for appointment to the post of Assistant Professor, the petitioner should possess 55% in P.G.Degree apart from Ph.D.; that though the petitioner has stated that he has completed B.Com., M.Com., M.Phil., Ph.D., and again M.Com. in M.Com. in Co-operative Management, for the reasons best known to him, in the affidavit, he has not stated as to whether he has acquired above qualifications either in regular stream or distance education and the non disclosure of the above said material facts with regard to acquiring his educational qualifications before this Court is nothing, but suppression of material facts and therefore, the petitioner has not approached this Court with clean hands;

4.1. Learned counsel appearing for the 5th respondent / Madurai Kamaraj University would further contend that it is relevant to reproduce the UGC regulations of the year 2000 and 2010 with regard to the appointment of

Lecturer and Assistant Professors and the qualification contemplated therein as follows:

"The University Grants Commission (Minimum Qualifications required for the Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) Regulations, 2000.

1.3.0 Humanities, Social Sciences, Commerce, Education, Physical Education, Foreign Languages and Law.

1.3.3 Lecturer

Good Academic record with at least 55% of the marks or an equivalent grade of B in the 7 Point Scale with latter grades O, A, B, C, D, E and F at Master's degree level, in the relevant subject from an Indian University, or an equivalent degree from a foreign University.

Besides fulfilling the above qualifications, candidates should have cleared the eligibility Test (NET) for Lecturers conducted by the UGC CSIR or similar test accredited by the UGC.

Note: NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidate who have completed M.Phil degree or have submitted Ph.D.thesis in the concerned subject upto 31st December, 1993 are exempted from appearing in the NET examination.

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

3.0.0 Recruitment and Qualifications

3.3.0 The minimum requirements of a good academic record, 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the master's level and qualifying in the National Eligibility Test (NET) or an accredited Test (State Level Eligibility Test - SLET/SET), shall remain for the appointment of Assistant Professors.

3.3.1 NET/SLET/SET shall remain the minimum eligibility condition for recruitment and appointment of Assistant Professors in Universities / Colleges / Institutions. Provided however, that candidates, who are or have been awarded a Ph.D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009 shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET FOR recruitment and appointment of Assistant Professor for recruitment and appointment of Assistant Professor or equivalent position in Universities / Colleges / Institutions.

3.9.0 The period of time taken by candidates to acquire M.Phil and / or Ph.D. Degree shall not be considered as teaching / research experience to be claimed

for appointment to the teaching positions.

4.4.0 Assistant Professor:

4.4.1 Arts, Humanities, Sciences, Social Sciences, Commerce, Education, Languages, Law Journalism and Mass Communication.

(I) Good academic record as defined by the concerned University with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree.

(ii) Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET.

(iii) Notwithstanding anything contained in sub-clauses (i) and (ii) to this Clause 4.4.1 candidates, who are or have been awarded a Ph.D degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009 shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor for recruitment and appointment of Assistant Professor or equivalent position in Universities / Colleges / Institutions.

(iv) NET/SLET/SET shall also not be required for such Masters programmes in disciplines for which NET/SLET/SET is not conducted."

4.2. According to the 5th respondent, the petitioner has completed M.Phil under distance education and also Ph.D. under Part Time in the 5th respondent university based on the 50.6% marks acquired in M.Com. degree in the year 1998 under distance education in the 5th respondent university; that the petitioner has simultaneously pursued his studies in the 5th respondent university from 2009 onwards and also pursued M.Com. Cooperative Management in Annamalai University and completed 1st year in May, 2010 and completed 2nd year in May, 2011, which is evident from the mark statements given by the Annamalai University and he completed Ph.D. Degree in the 5th respondent university on 14.09.2012; that it is very clear that the petitioner obtained Ph.D.degree on 14.09.2012 and immediately, on 17.09.2012, within a period of three days of acquiring Ph.D. degree, he was appointed as Assistant Professor in the Department of Commerce with effect from 17.09.2012 in the 6th respondent college. The 5th respondent has reiterated that the petitioner did not have requisite qualification in terms of UGC Regulation, 2010 and therefore, he cannot try to usurp the public office against the UGC norms.

5. Heard the learned counsel for the petitioner, learned Government Advocate appearing for R1 to R4, learned Standing Counsel for the 5th respondent / University and learned Senior Counsel for R6 / College.

6. A close scrutiny of the averments made herein above would unravel that the petitioner has admittedly completed his Ph.D. in the year 14.09.2012 and thereafter, he has been appointed as Assistant Professor in the Department of Commerce on 17.09.2012 in the 6th respondent college. It is seen that the 6th respondent college, while issuing appointment order to the petitioner dated 17.09.2012, has mentioned that the appointment is subject to approval of the Madurai Kamaraj University and the Directorate of Collegiate Education, Chennai. Likewise, on 21.05.2016, the 5th respondent University, while approving his appointment, stipulated that the said appointment is subject to the sanction of post by Directorate of Collegiate Education, Chennai. However, the 3rd respondent, by communication dated 28.11.2016 informed the 5th respondent University that the qualification of the petitioner is not in consonance with the UGC norms, based on which, the 5th respondent refused to approve his appointment and the 4th respondent also directed the 6th respondent not to disburse monthly salary to the petitioner. Contending that the act of the respondents is in complete violation of the principles of natural justice and per se illegal and arbitrary, the petitioner would vehemently contend that he has obtained his M.Com. in the year 2011 with first class.

7. The core issue to be decided in this writ petition is, as to whether the petitioner should possess 55% of marks in his P.G. Degree on the date of appointment and thereafter, obtain Ph.D. or one P.G. and Ph.D. degrees regardless of sequence are enough to become eligible to the post?

8. It is an admitted fact that he joined the service of the 6th respondent on 17.09.2012 based on the application submitted by him for the post of Assistant Professor. For acquiring Ph.D.degree, it is sufficient to have 50% of marks in the P.G.degree, whereas it is incumbent on the petitioner to be in possession of 55% of marks in P.G.degree along with Ph.D. to become eligible to the said post. Though Rules are silent on this issue, there is no confusion with regard to compulsory possession of 55% of marks to qualify for the post and therefore, out of compulsion, the petitioner was constrained to undergo second M.Com. in Co-operative Management through distance education in Annamalai University, as he had not scored requisite percentage of marks in his 1st P.G.degree, namely, M.Com. Now, another question, which arises is that his 2nd M.Com. in Co-operative Management is equivalent to his 1st ordinary Master of Commerce degree.

9. At this juncture, learned Senior Counsel for the 6th respondent has produced the Government Order in G.O.(Ms.)No.27 dated 13.02.2014 to show that M.Com. in Co-operative Management is equivalent to ordinary Master of Commerce degree. The said Government Order has come into force only on 13.02.2014, which has no retrospective effect, whereas the petitioner has been appointed in the 6th respondent college on 17.09.2012. The counsel for the 5th respondent University fairly conceded that in view of equivalence in terms of the Government Order, he cannot take a stand that M.Com. and M.Com Co-operative

Management cannot be equated.

10. Learned counsel for the 5th respondent would submit that UGC has passed a Resolution, introducing simultaneous degree programmes to encourage education among students and the same will not enure to the benefit of an employee and in support of his submission, he has relied on a judgment of the Hon"ble Division Bench of this Court in the case of K. Gomathi v. The Secretary to Higher Education, Chennai and others [W.A.(MD) No.1316 of 2015], decided on 09.12.2015, wherein it has been held as under:

"9. We have our own doubts about the validity of the said Resolution. But, in any case, that Resolution enures to the benefit of the students. The persons who are in employment, may not even find out time to pursue one course, if they pursue it really. Therefore, the Resolution cannot be taken as advantage. Hence, the writ appeal is dismissed."

11. The contention put forth by the learned Senior Counsel for R6 is that based on the remarks of the 3rd respondent, the 5th respondent has simply communicated to the College that the qualification of the petitioner cannot be approved, even though previously approval was granted to the college for appointment of the petitioner.

12. To reciprocate the above contention, learned counsel for the 5th respondent has drawn the attention of this Court to the letter dated 10.08.2016 sent by the 5th respondent / University to the 2nd respondent to offer his remarks for approval of qualification of the petitioner and provisional approval cannot be treated as permanent approval for ever.

Perusal of the said letter would go to show that the University, having smelt a rat in the qualification, addressed a letter to the 2nd respondent for offering his remarks and at the instance of the 2nd respondent, the 3rd respondent has communicated to the 5th respondent University, disapproving the qualification of the petitioner. Therefore, this Court is of the view that the decision to disapprove has not been taken on one fine morning in a hasty manner without application of mind, but based on the reminder of the 5th respondent, which cannot be faulted with. It was the 5th respondent University, which raised a doubt on the qualification initially on 09.12.2014 and sought for clarification from the 2nd respondent.

13. It is pertinent to note here that the petitioner has undergone M.Phil. and Ph.D.courses based on the marks obtained in his 1st M.Com. in the year 1998, i.e., below 55% of marks, which is sufficient for doing the said courses and in order to qualify himself to become eligible to the post of Assistant Professor, he has once again undergone M.Com. in different Branch, namely Co-operative Management. Once the marks obtained 1st M.Com. are not recognised suitable for appointment, the subsequent courses done based on the same cannot withstand, in other words, once the root is damaged, there is no possibility of the tree to grow.

14. It is the next contention of the learned Senior Counsel for R6 that one P.G.Degree with 55% of marks and mere possession of Ph.D. degree are enough to qualify for the post of Assistant Professor, irrespective of the year of completion of the course. This contention lacks merits acceptance, because for the purpose of academic interest, there is no need to bother about the percentage and sequence of completion of the course, whereas in the case of appointment, the provisions of UGC Regulations, 2010 will come into play. According to the Regulation under Clause 4.4.1, a Master's Degree with 55% marks, followed by Ph.D. degree is mandatory for consideration of appointment. If the submission of the learned Senior Counsel for R6 is accepted blindly, it would give a reversal interpretation, as if Ph.D. degree with P.G.Degree with 55% can be taken into account to become qualified for the said post. Both the degrees are interlinked and connected to each other, insofar as appointment to the post of a teacher is concerned.

15. It is also relevant to point out that those, who are in possession of NET/SLET certificate, would be generally preferred by the college and also given priority for appointment to the post of Lecturer / Assistant Professor as per the guidelines given by the UGC and even for applying to the said NET/SLET examination, it is obligatory on the part a student to have secured 55% of marks in his/her P.G.Degree first and even a pass in P.G.Degree with 54.9% dis-entitles him/her to appear for the said examination. In terms of the Government Order in G.O.Ms.No.111 Higher Education, dated 24.03.1999, candidates must possess requisite qualification as prescribed by UGC followed by the State Government and in this case, though the petitioner has requisite qualification, chronological order of completion of courses is not proper.

16. Though there is no quarrel with the proposition that once approval has been granted to an employee (who was appointed against a regular vacancy), later on it cannot be refused to accord approval of the appointment. This dictum is applicable only to those, who have proper sequential educational qualification and were denied for want of vacancy to fill up the post, but certainly not to the case similar to the one on hand. When there is a clear mention in the appointment order that the appointment would be subject approval of the concerned authorities, a different stand cannot be taken now that the service of the petitioner has been ousted all of a sudden.

17. Apart from the above, the petitioner's appointment is also hit by acquirement of simultaneous degrees and this Court, vide judgment referred to supra, posed a poignant question as to the validity of the Resolution passed by the UGC, allowing even students to pursue such degrees simultaneously. In this case, the petitioner has done his 2nd M.Com. and Ph.D. simultaneously, which can be regarded as good for career orientation, but cannot be taken advantage for the purpose of employment, that too for ratification of his lapses.

18. Learned counsel for the petitioner affirms the submission made by the learned Senior Counsel for the College / R6 and since the petitioner is employed

in the 6th respondent college, both the petitioner and the sixth respondent are standing on the same footing.

18.1. Learned Government Advocate appearing for the respondents 1 to 4 has also reiterated the very same contention taken by the learned counsel for the 5th respondent / University.

19. The Hon^{ble} Supreme Court in the case of Preeti Srivastava (Dr.) v. State of M.P., reported in [(1999) (7) SCC 120] held that "It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education...."

20. The teachers, who perform the duties of shaping future generations, should be beyond controversy and there should not be any compromise with regard to the quality of teachers and should have a good academic record with requisite qualification. Education is intended to provide knowledge, skills, and discipline and educated students are prepared for careers, personal fulfilment, interpersonal relations, and general life navigation. Sometimes, however, a school or instructor distorts those objectives intentionally or not, and physically or ethically obstructs the goals of education. A teacher is expected to fill many roles in and out of the classroom. These roles of a teacher can manifest as educator, caregiver, community leader, colleague, and even student. All of these roles work together to help the teacher provide the best education for his or her students.

21. In view of the foregoing discussions, this Court finds no error or illegality in the impugned orders dated 28.11.2016, 15.12.2016 and 12.01.2017 and therefore, the writ petition is liable to be dismissed.

22. Accordingly, this writ petition fails and the same is dismissed as devoid of merits. The 3rd and 4th respondents are at liberty to recover the amount paid in terms of salary to the petitioner from the date of his appointment on regular vacancy from the 6th respondent college. No costs.

Consequently, connected miscellaneous petitions are closed.