

**(2010) 09 MAD CK 0323**

**In the Madras High Court**

**Case No : Writ Petition No. 12742 of 2009**

H. Ramachandran

APPELLANT

Vs

Secretary to Government and Others

RESPONDENT

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**Date of Decision : 13-09-2010**

**Acts Referred:**

Constitution of India, 1950 — Article 309

**Citation : (2011) 4 Crimes 374**

**Hon'ble Judges : K. Chandru, J**

**Bench : Single Bench**

**Advocate :** Veerakathiravan for Mr. R.P. Karuppasamy, for the Appellant; S.C. Herold Singh G.A. Advocate for the Respondent No. 1 and 2 Ms. Nisha Banu for the Respondent No. 3, for the Respondent

**Final Decision : Dismissed**

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## **Judgement**

K. Chandru, J.—Heard Mr. Veerakathiravan, learned counsel appearing for the petitioner, Mr. S.C. Herold Singh, learned Government Advocate appearing for respondents 1 and 2 and Ms. Nisha Banu, learned counsel appearing for the third respondent.

2. The short question that arises for consideration is whether the respondent State was justified in holding that whether a candidate who possesses B.Sc. Degree course in Applied Chemistry Offered by Annamalai University Under the Distance Education Programme before 15/2/ 2007 is eligible to be considered as equivalent for holding the Post of Food Inspector and Whether/the Government was right in cancelling its earlier order, dated 5/14/2007 in this regard?

3. The petitioner is working as a Sanitary Inspector in Tiruppur Municipality. According to the petitioner, as per Rule 8(c) of the Prevention of Food Adulteration Rules, he is entitled to get appointed as a Food Inspector. Initially, the State Government by G.O.(D), No.452, Health and Family Welfare Department, dated 5/4/2007 allowed Diploma course in Food Technology granted

by the Vinayaga Mission Research Foundation, which is a deemed University at Salem. Though this court upheld the validity of the G.O., when it was put to challenge, the matter was taken on appeal before a division bench. The division bench vide its judgment in W.A.(MD) Nos. 236 and 237 of 2007 dated 11/10/2007 in Tamil Nadu Graduate Food Inspector's Association v. The Director-cum- State Food Health Authority and others reversed the said judgment and held that since the said diploma course offered by the Vinayaga Mission was not recognised by the AICTE and that the diploma under the Distance Education Programme was not approved by the Distance Education Council as well as University Grants Commission and the order of the State Government was invalid.

4. Subsequent to the said judgment, the State Government accepted the said order and issued the impugned Government Order vide G.O. Ms. No.215, Health and Family Welfare Department, dated 3/7/2008. While the petitioner has no quarrel over the implementation of the said order, with reference to the diploma offered by Vinayaga Mission, the deemed University, his grievance was that B.Sc. Degree offered by the Annamalai University under the Distance Education cannot be brought within the scope of the G.O. and to that extent, the G.O. was invalid. The respondents must be directed to consider the case of the petitioner. The counsel for the petitioner further submitted that his client must be considered for the said post.

5. When the matter came up on 23/12/2009, this court directed respondents to keep one post vacant. On taking notice, the first and second respondents have filed a counter- affidavit, dated 30/6/2010. In the counter affidavit, it was stated that they had followed the earlier division bench order with reference to the Distance Education Programme. While issuing the impugned G.O. by granting the post dated approval, the question of considering B.Sc. degree offered by the Annamalai University will not arise. It was also stated that a writ petition is pending in the principal Bench and therefore, no such direction can be issued.

6. Though Mr. Veerakathiravan, learned counsel forcibly submitted that this degree issued by the University was approved by the University Grants Commission, this court is unable to accept such a contention. Unless and until the authorities recognized a particular degree as a degree coming within the scope of relevant service rule, the petitioner by approaching this court cannot make the court to give a direction so as to bind the authorities to approve such degrees as equivalent to the degrees which are required under law. The division bench in its order, while commenting on the validity of the diploma canvassed before the court, in paragraph 21 had observed as follows:

21. In the facts and circumstances stated above, the crucial question that arises to be answered is whether a diploma course offered by a deemed to be university can be recognised to be equivalent to other diplomas, more particularly when the said diploma course comes under the definition of technical education as defined under the provisions of the AICTE, and such course does not conform to the norms prescribed by the AICTE regarding duration of course.

Simply because a deemed to be university need not get prior approval of AICTE for starting a diploma course in technical education, it does not mean that such a course has to be recognised, even though the same has not been approved by the AICTE. Requirement of prior permission to start a course is one thing and requirement of approval of the diploma certificates issued by the Institution is another thing. In this case, obviously the diploma certificate issued by the Vinayaga Mission Research Foundation is not recognised by the AICTE as a diploma course conforming to its prescriptions.

7. The petitioner had nowhere in his affidavit stated that the degree obtained under the Distance Education Programme was approved by the authorities. In this context, it is necessary to refer to the judgment of the Supreme Court in *Annamalai University rep. by Registrar Vs. Secy. to Govt. Infn. and Tourism Dept. and Others*, In that case, similar argument relating to the same University granting M.A. Degree was sought to be pressed into service as equivalent to the qualification prescribed by the State in terms of statutory rule made under Article 309 of the Constitution of India. Such a plea was negatived and the Supreme Court emphasised that a person who was aspiring to enter into any service must possess necessary qualification prescribed under the said Rule.

8. In the light of the above, the writ petition will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions stand closed.