

**(2013) 07 MAD CK 0058**

**In the Madras High Court**

**Case No : Writ Petition No. 5645 of 2010**

K. Muthukumaran

APPELLANT

Vs

The Teachers Recruitment Board and The District Elementary  
Educational Officer

RESPONDENT

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**Date of Decision : 18-07-2013**

**Acts Referred:**

**Citation : (2013) 07 MAD CK 0058**

**Hon'ble Judges : D. Hariparanthaman, J**

**Bench : Single Bench**

**Advocate : C. Uma, for the Appellant; P. Sanjay Gandhi, AGP, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

D. Hariparanthaman, J.—The petitioner passed Higher Secondary course in 1983. He passed B.Sc. (Statistics) in 1987 from Bharathidasan

University. In 1992, he passed B.Ed. He also passed M.Sc. (Statistics) in 1989 from University of Madras. The petitioner also passed M.Phil. and

PGDCA (Post Graduate Diploma in Computer Applications). In 1993, he registered with the Employment Exchange, Pudukkottai. The first

respondent decided to fill up the vacancies in the post of B.T. Assistant (Mathematics) in the Government schools for the year 2007-2008 and

2008-2009. The candidate possessing B.Sc. (Mathematics) with B.Ed. is eligible to be appointed as B.T. Assistant (Mathematics).

2. Since B.Sc. (Statistics) is equivalent to B.Sc. (Mathematics), the petitioner was directed to appear for certificate verification by letter, dated

20.10.2009, sent by the Teachers Recruitment Board. He was directed to appear on 02.11.2009 to verify his certificates. Accordingly, he

appeared at Raniar Government Girls Higher Secondary School, Pudukkottai, as directed in the letter dated 20.10.2009 for certificate verification.

3. When the results were published in the website, the petitioner's name was not found in the select list and he was not selected. When he

contacted the first respondent as to why he was not selected, he was orally told that since he was in possession of B.Sc. (Statistics) and he did not

possess B.Sc. (Mathematics), he was not selected as B.T. Assistant (Mathematics).

4. In these circumstances, the petitioner was constrained to file this writ petition seeking to quash the selection list of B.T. Assistant (Mathematics)

for the year 2007-2008 and 2008-2009 as published by the first respondent insofar as not including the name of the petitioner and has sought for a

consequential direction to the first respondent to appoint the petitioner as B.T. Assistant (Mathematics) in any one of the Government schools in

the State of Tamil Nadu as per the Special Rules for the Tamil Nadu Higher Secondary Educational Service as amended by G.O.Ms. No. 337

Education Department, dated 24.2.1986.

5. No counter affidavit was filed. However, a written submission on behalf of the Teachers Recruitment Board is filed.

6. In the written submissions, it is stated that when certificate verification took place, there was no equivalence Government Order, stating that

B.Sc. (Statistics) is equivalent to B.Sc. (Mathematics). It is stated further that G.O.Ms. No. 72, Higher Education Department, dated 30.4.2013

was issued after 3-1/2 years after the certificate verification. Though G.O.Ms. No. 72 declares B.Sc. (Statistics) is equivalent to B.Sc.

(Mathematics), the same could be applied for future selection.

7. Heard both sides.

8. The learned counsel for the petitioner has relied on my judgment, dated 21.12.2011 in W.P. Nos. 15485 and 15486 of 2010 and a judgment of

this court, dated 22.3.2013 in W.P. No. 35131 of 2013 (P. Vidya Vs. Director of School Education and another) for the proposition that

equivalence G.O. is only clarificatory and the same could be applied without reference to time. The petitioner has also relied on a judgment of the

Apex Court in Commnr. of Income Tax-I, Ahmedabad Vs. Gold Coin Health Food Pvt. Ltd., and more particularly, paragraphs 8 and 18 of the

said judgment.

9. On the other hand, the learned counsel for the Teachers Recruitment Board has relied on a judgment of the Apex Court in State of U. P. and

others Vs. Harish Chandra and others,

10. I have considered the submissions made by either side.

11. The petitioner has enclosed the certificate, dated 24.9.2008 issued by the Bharathidasan University. The certificate declares that the candidates

with B.Sc. (Statistics) and B.Ed. shall be considered on par with B.Sc. (Mathematics) to teach Mathematics in Schools.

12. The petitioner has also enclosed G.O.Ms. No. 337, Education Department, dated 24.2.1986 amending the special rules for the Tamil Nadu

Higher Secondary Educational Service. As per the amendment, the Post Graduate Degree in Statistics is equivalent to Post Graduate Degree in

Mathematics.

13. In fact, the petitioner has categorically pleaded in paragraph 8 of the affidavit that the special rules for Tamil Nadu Higher Secondary

Educational Service was amended to the effect that the Masters degree in Statistics of a University in the State is equivalent to the Masters degree

in Mathematics. But, no counter affidavit is filed and there is also no answer in the written submissions.

14. In fact, further on 30.4.2010, this court passed an order in M.P. No. 2 of 2010 to keep one post of B.T. Assistant (Mathematics) vacant.

15. Yet another significant development took place when the Government issued G.O.Ms. No. 72, Higher Education Department, dated

30.4.2013 declaring that B.Sc. (Statistics) is equivalent to B.Sc. (Mathematics) and the same is accepted by the Teachers Recruitment Board in

the written submissions. But their contention is that G.O.Ms. No. 72 could be applied only for future selection and the declaration of equivalence

cannot help the petitioner.

16. In my view, the Teachers Recruitment Board is not correct in stating that equivalence as declared in G.O.Ms. No. 72 could be applied only for

future selection. The declaration in G.O.Ms. No. 72 is only clarificatory. The clarification that is issued in G.O.Ms. No. 72 could be applied from

the date of the degree obtained by the petitioner in this case. G.O.Ms. No. 72 nowhere states that equivalence could be applied only hereinafter.

17. I have perused G.O.Ms. No. 72 also. There is nothing in G.O. to the effect that the declaration could be applied only for future selection.

18. Further, as rightly contended by the learned counsel for the petitioner, this court in paragraph 7 of the order, dated 22.3.2013 in W.P. No.

35131 of 2013 has held that equivalence G.O. is only a clarificatory one. Paragraph 7 of the said order is extracted hereunder:

It appears that the respondents had a doubt whether the said Government Order will only have prospective application. But, there is no scope for

such a doubt, in view of two things. The first is that what was ordered earlier in the year 2000 was only a change of nomenclature of the course. In

other words, the course contents were retained and the label was changed. Therefore, the question of equivalence itself should not have arisen.

The second thing is that the Equivalence Committee merely considers what had happened in the past. It is a recognition of one as equivalent to

another. It was not an order changing the curriculum of the course for future benefit, to be interpreted to have prospective effect.

19. Further more, paragraph 8 of the judgment of the Apex Court in Commissioner of Income Tax I, Ahmedabad (supra) also supports the case

of the petitioner that equivalence G.O. is only clarificatory. Paragraph 8 of the Apex Court judgment is extracted hereunder:

8. It would be of some relevance to take note of what this Court said in Virtual case. Pointing out one of the important tests at para 51 it was

observed that even if the statute does contain a statement to the effect that the amendment is clarificatory or declaratory, that is not the end of the

matter. The court has to analyse the nature of the amendment to come to a conclusion whether it is in reality a clarificatory or declaratory provision.

Therefore, the date from which the amendment is made operative does not conclusively decide the question. The court has to examine the scheme

of the statute prior to the amendment and subsequent to the amendment to determine whether amendment is clarificatory or substantive.

20. I have considered a similar issue in order dated 21.12.2011 in W.P. Nos. 15485 and 15486 of 2010. Paragraphs 5 to 9 of the order are

extracted hereunder:

5. Today, the Principal Secretary to Government, Higher Education Department, Chennai, has furnished a letter dated 18.10.2011, of the Tamil

Nadu State Council for Higher Education, to this Court, to the effect that, that had gone into the question of equivalence. The decision taken by the

State Council for Higher Education on the equivalence is as follows:

It was resolved that the syllabi of B.Sc. Statistics and B.Sc. Mathematics are not equivalent. However, the candidates who have studied B.Sc.

Statistics Major with Mathematics as Ancillary/Allied subject are eligible to teach the students studying in the schools up to 10th standard only.

6. It is stated that though B.Sc. (Statistics) is not equivalent to B.Sc., (Mathematics), the candidates, who have studied B.Sc., (Statistics) with

Mathematics as Ancillary subject, are eligible to teach the students studying in the schools up to 10th standard only.

7. The petitioners were not selected, when the list was published by the Teachers Recruitment Board in June, 2010, since the petitioners are

graduate in Statistics.

8. Now, the Tamil Nadu State Council for Higher Education/Expert Body, has decided that the candidates with B.Sc., (Statistics) qualification are

eligible to teach the students upto 10th standard. The petitioners applied for the post of Graduate Assistant (Maths) and the Graduate Assistants

(Maths) are to teach students from standard VI to X. Thus, the petitioners are entitled to appointment to the post of Graduate Assistant (Maths).

9. In these circumstances, the petitioners are to succeed in the present writ petitions. Accordingly, a direction is issued to the second respondent to

select the petitioners for the post of B.T. Assistant (Mathematics) within a period of six weeks from the date of receipt of a copy of this order, and

to submit the same to the first respondent for issuing the appointment order. Thereafter, the first respondent is directed to issue necessary

appointment order within a period of four weeks.

21. The judgment cited by the learned counsel for the Teachers Recruitment Board has nothing to do with the issue that has arisen in this case.

22. In this case, the petitioner has possessed B.Sc. (Statistics) with Mathematics as Ancillary. Further, as per the letter dated 18.10.2011 of the

Principal Secretary to Government, Higher Education Department, a candidate, who is in possession of B.Sc. (Statistics) Major with Mathematics

as Ancillary, is eligible to teach students studying in the school upto 10th standard. The petitioner was called for certificate verification for the post

of B.T. Assistant (Mathematics) to teach students upto 10th standard only.

23. For all the aforesaid reasons, the writ petitioner succeeds. A direction is issued to the first respondent to issue an appropriate order selecting

the petitioner as B.T. Assistant (Mathematics) for the year 2007-2008 and 2008-2009 within a period of three weeks from the date of receipt of

copy of this order. Thereafter, the second respondent is directed to issue an appropriate appointment order appointing the petitioner as B.T.

Assistant in Mathematics within a period of three weeks. Accordingly, the writ petition is allowed. No cost.