

(2002) 04 MAD CK 0073

In the Madras High Court

Case No : Writ Petition No's. 1256 and 5657 of 1999 and connected W.M.Ps.

K. Shanmugasundaram

APPELLANT

Vs

K. Dhanasekaran, Headmaster, Villivakkam Panchayat Union Elementary School, Poothabadu Nandambakkam, Chennai, Director of Elementary Education, Chennai, District Elementary Educational Officer, Kancheepuram, Assistant Educational Officer, Villivakkam Panchayat Union, Villivakkam, N. Kasthuribai, Headmistress, Panchayat Union Elementary School, Villivakkam, Chennai, Secretary to Government of Tamilnadu School Education Department, Fort St. George, Chennai and Registrar, Tamil Nadu Administrative Tribunal, Chennai
S. Puhazhendhi Socrates, R. Amudha Amaladevi, M. Karthikeyan, C. Selvarani, S. Kaviarasan Bharathi, S. Latha, V. Vimala, S. Sivakumar, P. Easwari, S. Thirunavukkarasu, P. Maithili, P. Alagesan, V. Valsamy, R. Josbin Rani, S. Savier, K. Sumathi, K. Martin and A. Anjala Mary Vs The Tamil Nadu Administrative Tribunal and Others

RESPONDENT

Date of Decision : 25-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 04 MAD CK 0073

Hon'ble Judges : P. Shanmugam, J;F.M. Ibrahim Kalifullam, J

Bench : Division Bench

Advocate : T. Sellapandian, for C. Selvaraju, V. Ramasubramanian and N. Paul Vasanthakumar, for the Appellant; Aravind Subramanian, Additional Government Pleader, V. Suguna, R. Saseetharan, M.V. Venkataseshan and R. Ganesan, for the Respondent

Final Decision : Allowed

Judgement

P. Shanmugam, J.—Petitioners, one in number in W.P. No.1256 of 1999 and 18 in number in W.P. No.5657 of 1999, have filed the above

writ petitions with a leave to challenge the common order of the Tamil Nadu

Administrative Tribunal, allowing about 60 applications and quashing the Government Order in G.O. Ms. No.476 dated 19.11.1997.

2. Petitioners are working either as Secondary Grade Assistants or B.T. Assistants in various panchayat union elementary or middle schools. All

the petitioners hold Bachelor's Degree in various subjects, besides having B.T. or B.Ed. Degree done either through regular course of study or

through correspondence course. They are all eligible to be considered for promotion to the post of Headmaster, Middle School, B.Ed. Grade by

virtue of their service and qualification. While so, the contesting respondents, who are Secondary Grade Teachers/Headmasters of elementary

schools and who have acquired M.A. Degree directly from the open university, claim to be included in the panel for promotion to the post of

Headmaster, Middle Schools. The Government, after considering the matter, by G.O. Ms. No.476, Education Department dated 19.11.1997, has

decided that the M.A. Degree obtained under the Open University System directly cannot be treated as equivalent to a degree for consideration as

qualification for promotion to the category of Headmasters. The said Government Order was assailed successfully before the Tribunal. The

Tribunal had taken the view that the Special Rules for the Tamil Nadu Elementary Education and Subordinate Service did not say that the degree

must be acquired only after undergoing a regular college course and that they have not excluded the degrees obtained from any open university. It

was further pointed out that the Government themselves have recognised the said qualification as sufficient for appointment in other departments. It

was also pointed out that while Tamil Pandits are eligible for promotion as Middle School Headmasters without the minimum educational

qualifications to teach English and in the absence of qualification in English language, on the same ratio, the degree holders from open university

should also be considered as being eligible for promotion. The writ petitions are against this order of the Tribunal.

3. The main question that arises for consideration in these writ petitions is whether the Government Order holding that persons who have obtained

Post Graduate Degree from open universities are entitled to be appointed as Middle School Headmasters.

4. We have heard the counsel for the petitioners and the counsel for the

contesting respondents as well as the Additional Government Pleader for Education. The learned Additional Government Pleader pointed out that they have also filed a separate writ petition challenging the order of the Tribunal, but the same was dismissed for default and that they are taking steps to restore the same. However, as a party to these writ petitions, he wants to support the case of the petitioners and submitted his arguments accordingly.

5. Rule 19 of the Tamil Nadu State and Subordinate Service Rules states that no person shall be eligible for appointment to any service, class, category or grade or any post borne on the cadre thereof unless he possesses such special qualifications and has passed such special tests prescribed in that behalf in the special rules. It further says that he must possess such other qualification as has been declared to be higher than or equivalent to the said special qualification. The explanation to this rule says that in case where the special rules prescribe a degree as a qualification, then a degree or diploma granted by any of the universities recognised by the University Grants Commission shall be recognised as the qualification. Rule 13 of the Subordinate Service Rules states that where special rules for service prescribe any of the degrees specified in the column of the table set out thereunder, a special qualification for appointment to any post includes therein, a person who holds a degree in the corresponding entry in column 2 therein shall be deemed to possess the special qualification. The M.A. Degree obtained from the open university is not included as a corresponding degree.

6. The Special Rules for the Tamil Nadu Elementary Educational Subordinate Service consist of the following categories :

THE SPECIAL RULES FOR THE TAMIL NADU ELEMENTARY EDUCATIONAL SUBORDINATE SERVICE

1. Constitution The Service shall consist of the following clauses and categories, namely :-

Class Category

I 1. Headmasters/Headmistresses of
Middle Schools (B.Ed. Grade)

2. Language Pandits Grade I (Tamil)

and Language Pandits Grade-I

(Other than Tamil)

II 1. Headmasters/Headmistresses of

Middle Schools (Secondary Grade)

III 1. Headmasters/Headmistresses of

Primary Schools (Secondary Grade)

2. Secondary Grade Teachers

Class Category Method of appointment

Headmaster/ (i) Promotion from Class II of the

Headmistress Service; or Class III of the of Middle Service. Schools

(B.Ed. Grade)

(ii) Transfer from Category 2

Language Pandit Grade-I of Class I

of the said service provided that

if no B.Ed., or Language Pandit

Grade I Teacher is available for

appointment to the category within

the unit, such vacancy shall be

filled by B.Ed. Teacher or Language

Pandits Grade I by transfer from

other units.

(iii) When no qualified and suitable candidate is available by

any of the methods specified in

item (i) and (ii) above, by direct

recruitment.

The appointment to the post of B.Ed. Grade Headmaster is by promotion from Class II of the service or Class III of the service. It can also be by

transfer from category 2 of Class I. Rule 6 sets out the qualifications required for the various categories and the Annexure to Rule 6 is as follows :

ANNEXURE

(Referred to in Rule 6(b)(i))

CLASS NAME OF CATEGORY METHOD OF QUALIFICATION

APPOINTMENT

(1) (2) (3) (4)

Class I Headmasters Promotion 1. A degree of any
Headmistresses and University in the
of Middle transfer State or a degree of
Schools equivalent standard
(B.Ed. Grade) and B.T. or B.Ed.
degree of any
University in the State.

7. From the above rules, it could be seen that the post of Headmasters can be filled up :

- (1) by promotion from Headmasters of Middle School Secondary Grade ;
- (2) by Headmasters of Primary Schools (Secondary Grade) ;
- (3) from Secondary Grade Teachers ;
- (4) by transfer from Language Pandits Grade I ; and
- (5) by direct recruitment.

The qualification prescribed under Rule 6 is a degree or a degree of equivalent standard of any university.

8. As per the Government Order in G.O. Ms. No.400, Education, Science and Technology Department dated 25.5.1995, the Government

ordered that the post of Headmaster, Middle School shall be filled up by promotion from among B.T. Assistants/Tamil Pandits appointed prior to

1.6.1998. If no such suitable and qualified persons are available, then it shall be filled up from among the following categories of teachers by

drawing a combined seniority list :

B.Ed. Grade Teachers appointed in the Middle School ;

Tamil Pandits appointed in the Middle School ; or

Primary School Headmasters qualified in B.Ed. or Tamil Pandits.

If no qualified teachers are available in the unit, the senior most among persons working as Secondary Grade Teachers or any other cadre of

teachers qualified in B.Ed. Tamil Pandit drawing a smaller scale of pay may be considered for promotion as Middle School Headmaster.

9. Petitioners before the Tribunal are Secondary Grade Primary School Headmasters who have acquired M.A. Degree under the Open University

System. They do not come under the three categories of teachers eligible to be promoted, but only under the category of secondary grade teachers

who are directed to be appointed. If no qualified teacher in the above three categories of teachers is available in the unit, the senior most among the

persons working as secondary grade teacher, but qualified in B.Ed./Tamil Pandit is to be considered for promotion to the post of Middle School

Headmaster. We are not here concerned with the other aspect of eligibility for promotion etc., since there were a number of litigations between the

Secondary Grade Teachers B.Ed. Grade, Tamil Pandits and Middle School Headmasters, etc. The scope of controversy is limited to the

consideration whether the open university degree is equivalent to the prescribed degree or a degree equivalent standard of B.A. or B.Ed. degree.

The Government, in the impugned order, G.O. Ms. No.476 dated 19.11.1997, have considered this question, conscious of the other Government

Orders in G.O. Ms. No.216 dated 26.8.1997, wherein the M.A. Degree obtained from open university was considered equivalent to a degree for

appointment in public service. However, insofar as the posts created under the Special Rules for Tamil Nadu Elementary Education Service is

concerned, they have considered the issue and decided that the teachers who obtained degree with the basic study and qualification only can teach

the children effectively and in such a way to make the students understand the subject and persons who obtained M.A. Degree in open university

without a basic degree cannot be appointed.

10. The applicants before the Tribunal are teachers who acquired direct M.A. Degree qualification without having a Bachelor's Degree, which is

the requisite qualification prescribed under the rules. Rule 13 of the General Rules did not specify M.A. Degree from open university as equivalent

to B.A. or B.Sc. Degree. The Open University Scheme has come into operation long after the framing of the Special Rules in the year 1981 and

the Scheme is of a recent origin. As per this Scheme, which is stated to be a distant education programme and from the Prospectus of the

Annamalai University under the Open University System, the eligibility for this course is that a candidate should have completed 25 years of age

and that no formal educational qualification is insisted upon, which means that technically, a person who does not even know to read or write can

be admitted to the course, provided he has completed 25 years of age and the person who undergoes this course has to take eight papers of the

relevant subjects like History, Sociology, Economics, Public Administration and English. They offer courses both in English medium as well as in

Tamil medium. The students need not undergo a course in languages.

11. Section 22 of the University Grants Commission Act, 1956 empowers the university to confer degrees. Sub-section (3) of Section 22 says that

degree means any degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by

notification in the Official Gazette. The Central Government is empowered u/s 25 to define the minimum standards of instructions for the grant of

any degree by any university. It is not clear whether M.A. Degree under the Scheme of Open University System has been approved by the Central

Government and whether the university has conformed to the minimum standards for grant of the degree. However, it is clear that a mere

expression "degree" does not mean that it is to be treated as equivalent or to be accepted as a degree specified in the rules. Further, it is open to

the Government to consider whether the M.A. Degree obtained from open university can be treated as a degree for the purpose of appointment.

Understandably, the Government had passed an order in G.O. Ms. No.216 dated 26.8.1997 to treat the M.A. Degree from open university as

equivalent to the Bachelor's Degree for appointment in public service. Therefore, it follows that the Government is entitled to clarify the

qualifications prescribed under the rules. But for this clarification, the M.A. Degree would not have been treated as equivalent to the Bachelor's

Degree for public employment. It further follows that the said Government Order can also be modified for reasons set out in the subsequent

Government Order. The Government has given reasons to take a different view insofar as the appointment of teachers is concerned.

12. A Constitution Bench of the Supreme Court in *Sant Ram Sharma Vs. State of Rajasthan and Another*, , while repelling the contention that in

the absence of any statutory rule governing the promotions to selection grade posts, administrative instructions imposing restrictions not found in the

rules already framed cannot be issued, has held that till statutory rules are framed in that behalf, the Government can issue administrative

instructions regarding the principles to be followed. Their lordships held as follows :

It is true that the Government cannot amend or supersede statutory rules by administrative instructions. But, if the rules are silent on any particular

point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

The argument of the learned counsel for the respondents is that while the Government rules did not impose any instructions in the rules already

framed, the M.A. Degree cannot be denied as being equivalent to the Bachelor's Degree. But, in the circumstances of the case, it has to be stated

that the rule is silent as to the eligibility of M.A. Degree from open university. The said degree was not thought of at the inception of the rule and

therefore, it has to be held that there is a gap or an area requiring instructions to supplement the rules. In *Comptroller and Auditor General of India*

and others Vs. *Mohan Lal Mehrotra and others*, , the Supreme Court held that administrative orders can be issued to supplement the statutory

rules. In *Dr. Krushna Chandra Sahu and others Vs. State of Orissa and others*, , it was held that if the rules are silent on any subject or point in

issue, the omissions can be filled up and the rules can be supplemented by executive instructions. In *State of Orissa and Others Vs. Mamtarani*

Sahoo and Another, , it was held by the Supreme Court that if the rules are silent, administrative instructions can be issued to supplement the rules.

The rules cannot be treated to have been abrogated and they continue to govern the recruitment and conditions of service of teachers.

13. A Division Bench of this court in *MEENAKSHI SUNDARAM VS. DIRECTOR OF LEGAL STUDIES*, has held that the expression ""to lay

down standards of such education"" occurring in Section 7(1)(h) of the Advocates Act is capable of taking in every ingredient which will go to

constitute the end or the ultimate level of education that is expected of a candidate who applies for enrolment as an advocate under the Act. The

argument that ""standards of such education"" occurring in Section 7(1) of the Act refer only to the excellence of education aimed at and will not take

in other matter, such as whether the course should be a regular one or may be a correspondence or as to how much attendance a candidate has

put in, cannot be accepted. Their lordships also, while holding that the said restriction comes as a reasonable restriction in the interest of general

public, held that the Constitution itself provides that any law, relating to the provisional qualification necessary for practising any profession or for

carrying on any occupation, trade or business, will have to be followed and it cannot be said to be in any way derogatory to the right of a citizen

guaranteed under Article 19(1)(g) of the Constitution. The prescription made by the Bar Council of India regarding attendance in a regular course

in a college or the prescription regarding particular percentage of attendance in such lectures in law are saved by Article 19(6) of the Constitution

and they are relevant to the standards of legal education as a qualification. The courts are not concerned with the wisdom of the competent body,

but are concerned only with the competency or the constitutionality. Therefore, it cannot be stated that the Government is not empowered to

supplement the statutory rule and clarify the qualification required for the post.

14. The M.A. Degree holders from open university acquire knowledge only in the relevant subjects in which the candidate appears for the

graduate course and the course may be either through Tamil or English mediums. But, however, they do not have proficiency of English as a

language in the degree level. The M.A. Degree holders from open university who do not study English as a language in degree level cannot have

the ability in that language and they could not even have studied the language to the high school level. Since no formal education is required and that

these candidates write the concerned subjects directly, they do not have any level of language study and therefore, they cannot be compared with

the B.T. Assistants or Tamil Pandits or B.Ed. Degree holders. Therefore, they cannot be treated as having qualification to teach Standards VI, VII

and VIII.

15. The contention that the Tamil Pandits who are considered for promotion by

transfer do not have the knowledge in English cannot hold water

since in all cases where Tamil Pandits are appointed as Headmasters, B.T. Assistants are appointed to handle the English Language specifically.

16. In AIR 1976 2534 (SC) , their lordships held that it is well settled that the question whether a provision is directory or mandatory depends

upon the object and purpose and not merely on the use of any particular word or phrase and having regard to the object. It has to be seen whether

the person possesses the requisite qualification for being appointed as Headmaster of a higher secondary school. As stated earlier, the requisite

qualification as prescribed under Rule 13 of the General Rules refers only to a basic qualification. The argument that there is no exclusion of a Post

Graduate Degree has to be considered in the context of the object and purpose of the requirement of a degree. In any event, the M.A. Degree is

not the requisite qualification and while considering the equivalent of the said degree, the object and the purpose for which a degree has been

insisted upon has to be looked into, and the Government, having taken into account the relevant factors, have decided not to consider the M.A.

Degree obtained in an open university as equivalent to the Bachelor's Degree.

17. In Ramesh Prasad Singh Vs. State of Bihar and Others, , their lordships held that as is well known, the process of rule making is a protracted

and a complicated one, involving consultation with various authorities and containing manifold formalities. It cannot also be disputed that exigencies

of administration, at times, require immediate creation of posts and any procrastination in that behalf will only prove detrimental to the efficient

functioning of public departments. In such like situations, the authorities concerned will have the power to appoint or terminate administrative

personnel under a general power of administration vested in them. It follows, therefore, that in the absence of rules, the qualifications for a post can

validly be laid down in a self-saving executive order. Therefore, though the impugned Government Order has stated that the service rules have to

be amended, it pre-supposes various procedural formalities to be completed. In the circumstances of the case, therefore, it cannot be stated that

the Government has no authority to issue the instructions dealing with the subject and it cannot be stated that the said decision is unreasonable or

arbitrary.

18. The contention of the counsel for the contesting respondents that the field is occupied by the existing service rules and that the Government

Order is arbitrary, therefore, cannot be sustained. As stated earlier, the scheme of Open University System is of a recent origin, i.e. of the year

1995 or so. In that context, and in the light of the various kinds of degrees and diplomas being conferred by different universities, it cannot be

stated that the Government is not empowered to supplement the meaning to the degree or the equivalent of a degree. Considering the background

and the context under which the Government has issued the order, we do not find anything unreasonable in excluding a direct M.A. Degree

obtained from open university.

19. In A.K.E. SOCIETY VS. DIRECTOR OF SCHOOL EDUCATION AIR 1989 S.C. 183, the Supreme Court observed that the role of

teachers is central to all processes of formal education. The teacher alone could bring about the skills and intellectual capabilities of students. He is

the "engine" of the educational system. He is the principle instrument in awakening the child to cultural values. He needs to be endowed and

energised with the needed potential to deliver the yeoman service expected of him. His qualities should be such to inspire and to motivate into

action of the benefitor. An ill-trained or substandard teacher will be detrimental to the education system, if not a punishment to our children. The

Government and the universities were commanded to see that sufficiently qualified teachers are appointed.

20. A candidate who had not attended formal education even a single day is permitted to acquire M.A. Degree and the same is requested to be

treated as equivalent to a degree. Unlike other appointments, the qualification of a candidate has got a direct nexus with the job of teaching. The

Teachers are meant to teach children of impressionable age. In N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another, ,

their lordships held that we cannot let loose on the innocent and unwary children, teachers who have not received proper and adequate training.

True, they will be required to pass the examination, but that may not be enough. Training for a certain minimum period ""in a properly organised and

equipped Training Institute is probably essential before a teacher may be duly launched"". Even though their lordships were dealing with the

Teachers Training Institute, formal education of a teacher cannot be over-emphasised. The qualification required for persons who handle the educational institutions should be necessarily higher than the qualification fixed for other jobs. The course of study and the qualification of a teacher are germane to the maintenance of efficiency and excellence in education. The State has got a duty to see that the efficiency and excellence of educational standards are maintained.

21. It is argued that many of the contesting respondents have already studied upto high school level and therefore, technically, they would have gone through the system of formal education. While considering the scope of the equivalence of a M.A. Degree, theoretically it is not possible to contend that a person who has not even gone into the shades of a school even during rain or sunshine would be able to become a headmaster of a middle school in case of direct recruitment. Such a contingency would cause great havoc to the system of education. Therefore, whatever may be the purpose for which the open university provides for M.A. Degree, insofar as the appointment of teachers is concerned, we are of the considered view that such degrees cannot be equated with a degree, which is the minimum qualification required for the post. In our view, the Government Order is reasonable and has been exercised appropriately as a supplement to the service rules. The Tribunal, in our view, had erred in interfering with the Government Order.

22. For all these reasons, the order of the Tribunal is hereby set aside and both the writ petitions are allowed. No costs. Consequently, W.M.P.

Nos.1761 and 1762 of 1999 in W.P. No.1256 of 1999 as well as W.M.P. Nos.21385 and 21386 of 2000 in W.P. No.5657 of 1999 are closed.