
(2018) 08 J&K CK 0053

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 1965 Of 2016

Ryhana Abdullah @APPELLANT@Hash State And Ors

Date of Decision : 24-08-2018

Acts Referred:

University Grants Commission Act, 1956 — Section 3, 22, 22(1)

Citation : (2018) 08 J&K CK 0053

Hon'ble Judges : M. K. Hanjura, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

In this writ petition, the petitioner, implores for the grant of a writ of Certiorari in quashing the selection of respondent No. 4 as Assistant

Professor, Home Science, notified vide impugned notification No. 35-PSC (DR-S) of 2016 dated 29-11-2016 attached as Annexure-D to the

petition. A writ of Mandamus is also sought to command the respondents to select and appoint the petitioner against the post of Assistant Professor,

Home Science under the RBA Category, with all consequential benefits.

02/ The facts, as pleaded in the petition on hand, are that in the year 2014, the respondent No. 2 "The J&K Public Service Commission,

Srinagar/Jammu, through its Secretary, invited applications from the permanent residents of J&K, having the prescribed academic qualification for

filling up the posts of Assistant Professors in various disciplines, including 01 post in the discipline of Home Science under the RBA category.

The said notification provided that the candidates must fulfil all the essential requirements laid down for the post as also the other conditions stipulated

in the advertisement notification itself, meaning thereby that the absence of any basic requirement, provided in the advertisement notification,

would entail the rejection of the application of the aspirant. It is further stated that the petitioner, fulfilled the eligibility criteria. She

responded to the advertisement notification and sought consideration against the post of Assistant Professor in the discipline of Home Science under

the RBA category. It is also pleaded that the respondent No.4 also responded to the notification but he was not eligible to hold the post for the

reason that he did not fulfill the criteria laid down for the post. It is further averred that on the 25th of November, 2016, the respondent No. 2 invited

all the candidates to take part in the interview including the respondent No. 4, though he was ineligible for being considered against the said

post and, consequently, he was selected as Assistant Professor in the discipline of Home Science under the RBA category vide

notification No.35-PSC (DR-S) of 2016 dated 29-11-2016.

03/ Aggrieved by the notification dated 29-11-2016, the petitioner has assailed the same in this writ petition on the grounds, inter alia, that the

respondent No. 4 lacked the prescribed qualification provided in the basic advertisement notification dated 29-05-2014 and, therefore, his application,

seeking selection/appointment, ought to have been rejected by the respondent No.2 at the threshold. It is further stated that the notification dated

29-05-2015, makes it manifestly clear that the qualification prescribed for being considered/selected for the post of Assistant Professor in the discipline

of Home Science was that a candidate, besides having other requisite qualifications, must possess a Masters Degree in the relevant subject. That

apart, the respondent No.4 has acquired his Masters Degree from Indira Gandhi National Open University -IGNOU, through Distance Education

Mode and that too in the discipline of Dietetics and Food Services Management (MSCDFSM) and not in the discipline of Home Science. Therefore,

the respondent No.4 having the degree of MSCDFSM could not apply for the post of Assistant Professor in the discipline of Home Science. The

petitioner has further stated that in terms of clause VI of the Government Order No. 252-HE of 2012 dated 30-05-2012, the degree obtained in the

science subject through Distance Mode is not recognized for the purpose of employment. Therefore, the selection of the respondent No. 4 as against

the post of Assistant Professor, Home Science, is illegal and in violation of the aforesaid Government order. Furthermore, in the decision dated 21-02-

2012 taken by the Equivalence Committee of the Registrar, University of Kashmir, Srinagar, it has been resolved that the degree of MSCDFSM,

obtained by the respondent No.4 from the IGNOU cannot be considered as equivalent to M.Sc. Dietics and Clinical Nutrition. This being the case, the

basic consideration as well as the selection of the respondent No.4 against the post of Assistant Professor, Home Science, suffers from an illegality

and deserves to be quashed. Besides this, the Circular dated 06-09-2012, issued by the respondent No. 3, through the Assistant Registrar (Academic),

confirms, in unequivocal terms, that the degrees awarded by the Universities in Science Stream through Distance Mode are not considered as

equivalent to the corresponding degrees of the University. It is also clarified in the said Circular that the degrees obtained from IGNOU in Non-

Science stream subjects are considered as equivalent to the corresponding degrees. It is further averred that in absence of any equivalence granted by

the State Universities to the degree, possessed by the respondent No.4, his candidature/selection against the post of Assistant Professor in the

discipline of Home Science, is illegal, unconstitutional and arbitrary and deserves to be struck down.

04/ It is stated further that the settled position of law is that unless and until a candidate fulfills the conditions of eligibility prescribed in the

advertisement notification, his/her application form cannot be considered, let alone his/her selection. In the instant case, the respondent No. 4, was not

holding the basic qualification for the post and, therefore, his selection against the post of Assistant Professor in the Department of Home

Science under the RBA category, in view of the above stated facts, is de hors the rules. The petitioner finally craves that the

writ petition be allowed and the impugned Notification No. 35-PSC(DR-S) of 2016 dated 29-11-2016 be quashed.

05/ The respondents have filed the objections, wherein it is stated that the petitioner has no cause of action to file the writ petition as the same

is grossly misconceived and based on surmises and conjectures. It is further stated that none of the rights of the petitioner has been violated and there

arises no occasion for her to approach this Court. It is pleaded that the only ground taken by the petitioner in her writ petition for assailing the

selection of the respondent No. 4 is that he has acquired his Masters Degree through the Distance Education Mode, which is not equivalent to a

regular Masters Degree, and therefore, he is not eligible to apply or get selected for the Post of Assistant Professor, Home Science.

06/ The respondents have further stated that the petitioner, on his own, has pleaded that in the Government order dated 30-05-2012, which she has

attached to the petition, it is made clear that the degrees obtained through Distance Mode in the Science Stream are equivalent to the

corresponding degrees awarded through regular mode by the State Universities subject to the condition that the said subject under the stream of

science is approved by the Distance Education Council and the practicals are a part of the curriculum and the same is conducted by the campuses of

the Universities recognized by the University Grants Commission (UGC) and established by the Legislature. It is contended in the objections that the

respondent No. 4 is a bona fide student of the IGNOU. He has obtained his Masters degree in the discipline of Dietetics & Food Science

Management Programme and the counselling and practical sessions of the said subject were undertaken by him at one of the study centres located at

the Department of Home Sciences, University of Kashmir from the years 2007-2012. So much so, he has also done his internship at SKIMS, Srinagar.

Therefore, the degree obtained by the respondent No.4 is to be treated equivalent to the corresponding degrees obtained through regular mode.

Respondents have further stated that the writ petition has been filed on frivolous grounds and is devoid of any merit. It is further stated that the

selection process was squarely based on the Recruitment Rules of 2014 and the respondent No. 4 has already joined the respondent department

before the Nodal Principal, Amar Singh College, on 24-12-2016 in pursuance of the impugned notification dated 23-12-2016. It is also pleaded that

the UGC, vide its Circular No. UGC/DEB/2013 dated 14-10-2013 as also vide its earlier Circular No. 52/2000 (CPP-II) dated 0505-2004 has made it

abundantly clear that the degrees/certificates, awarded by the Open Universities in conformity with the UGC notification of degrees, be treated

as equivalent to the corresponding awards of the traditional universities in the country. Therefore, in the light of what has been stated above, the

degree of the respondent No. 4 is recognized and is equivalent to the Masters Degree obtained through regular mode and on the face of the legal

position evolved above the writ petition deserves to be dismissed being misconceived and devoid of any merit.

07/Â Heard & considered.Â

08/ The meet of the matter herein this petition is whether the Masters Degree obtained by the answering respondent through Distance Mode is, or is

not, equivalent to a Masters Degree obtained under the regular mode and whether the answering respondent was, or, was not, eligible to apply or get

selected for the said post, under and in terms of the Rules in vogue and the conditions stipulated in the advertisement notice which provided that the

eligibility requirement for the post is Masters degree in the concerned subject along-with NET.

9/ The petitioner has attached a copy of the Government order dated 3005-2012 to her petition which is marked as Annexure â??Fâ?. Para (a)vi of

the said order deals with the Degrees obtained through Distance Mode in the subjects falling in and under the Science Stream. The said para makes it

obvious, explicit and indubitable that such Degrees are equivalent to the corresponding Degrees awarded through regular mode by the State

Universities with a rider that the said Science subject is approved by the Distance Education Council. It also stipulates that the practicals should be a

part of the curriculum and these should be conducted from the Campuses of the Universities recognized by the University Grants commission and

established by an Act of Legislature and para (a)i thereof does provide that it is the prerogative of the employer to prescribe the eligibility for the

post.Â The equivalence of the Degree has therefore to be decided on the strength and the touchstone of the Government order supra which has been

issued in pursuance of a Cabinet Decision dated 16-05-2012. In terms of the settled principles of law, the equivalence of degrees and their suitability

for any post is the prerogative of the employer and a court of law, not beingÂ theÂ expert in the field, has to abstain from interfering in such matters

as has been held in the case of The University of Mysore Vs. C.D. Govinda Rao reported in AIR 1965 SC 491. Therefore to put the things straight

this court by an order dated 11-10-2017, directed the employer, i.e. the Higher Education Department to decide and determine whether the degree of

the answering respondent is equivalent to the required degree. For the convenience of the ready reference the said order of the court is reproduced

herein below verbatim-et-literatim:-

â??The controversy raised by the petitioner is that the degree possessed by the

respondent No.4 is not relevant with the degree of M.Sc. in Home Science. It appears that the IGNOU has issued a certificate certifying there in that degree of M.Sc.(DFSM) is considered at par with the degree of M.Sc. in home Science offered by any other university in the Country but the said certificate appears to have been issued by some SO, SRD. On the other hand, petitioner has filed an application before the authorities of University of Kashmir who have constituted a board of experts consisting of nine members. They have examined the issue on 17th May, 2017 and opined as under:

Thus, the Master's degree in Dietetics & Food Service Management of IGNOU is not at par with general degree in Masters in Home Science as offered by other Universities.

Justifying the opinion, the experts also observed that there is 70% similarity in the theory syllabus of degree offered by IGNOU (Dietetics and Good Service Management) with one of the specialization Home Science offered by Kashmir University (Dietetics and Clinical Nutrition). They have also added that the practical component of course offered by Kashmir University regarding "Dietetics and Clinical Nutrition" is quite vigorous, time consuming and comprehensive whereas the practical component of IGNOU degree regarding "Dietetics & Food Service Management" is completed only in 14 sessions which spreads over a period of one week only.

Now the important question that emerges for consideration is as to whether the degree possessed by the respondent No.4 is at par with the degree of M. Sc. in Home Science which is a relevant degree because the post of Assistant Professor has to be filled in the discipline of Home Science.

a) Learned counsel for respondent Commission has justified the selection of respondent NO.4 on the ground that the IGNOU has certified the degree of respondent No.4 to be at par with M.Sc. Home Science offered by any other University in the Country. Further submitted that it was none of the business of Kashmir University to record any opinion about two degrees.

b) The University Grants Commission vide its No.F.93/2016(CPP-II) dated 19th July, 2016, has issued a public notice on equivalency of degrees, same is reproduced hereunder:

No. F.9-3/2016(CPP-II) 19th July, 2016

PUBLIC NOTICE ON EQUIVALENCY OF DEGREES

The University of Grants Commission specifies degrees as defined under section 22 of the UGC Act, 1956, Such degrees can be awarded only by a

University established or incorporated by or under a Central Act, a provincial Act or a State Act or by an institution Deemed to be University

established under section 3 of the UGC Act, 1956.

Equivalence of degrees, diplomas, certificates etc. are not determined by the UGC. In case of higher education, equivalence is decided by the

University concerned and in case of employment, promotion etc, equivalence is decided by the employing organization.

The UGC Act and Rules and Regulations made thereunder are available on UGC website www.ugc.ac.in.

Sd/

(Jaspal S. Sandhu) Secretary

The plain language employed in the said public notice suggests that in case of employment, promotion, etc. equivalence is to be decided by the employing organization.

The employing organization in the instant case is the Jammu and Kashmir Higher Education Department.

c) It is true that the certificate is shown to have been issued by IGNOU certifying degree of respondent No.4 to be at par with M.Sc. Home Science

but same has been issued by some SO, SRD, not by any expert. Equally true that University of Kashmir has issued the opinion to the effect that the

eligibility of the students for M.Sc. in Dietetics and Clinical Nutrition is graduation in Home Science only whereas IGNOU students for Masters in

Dietetics & Food Service Management are from different science subjects. They have also qualified that the Master's Degree in Dietetics &

Food Service Management of IGNOU is not at par with general degree in Masters in Home Science as offered by other Universities.

d) The question which arises for consideration is as to which of the opinion is correct. Answer is available in the public notice issued by University

Grants Commission, as quoted herein above.

e) Since the issue is regarding employment i.e. appointment of a candidate against the post of Assistant Professor in the discipline Home Science and the employing organization is Higher Education Department, therefore, in terms of above referred notice of University Grants Commission, it is the respondent No.1- Higher Education Department which has to take decision as to whether degree possessed by respondent No.4 is at par with the degree of M.Sc. Home Science.

f) In order to resolve the controversy finally, the matter is required to be examined by the Higher Education Department. Copy of this order be sent to the Higher Education Department who shall examine the issue in the afore-stated background and then to take final decision about position of degree of respondent No.4 being at par with degree of M.Sc. Home Science or not. This exercise shall be undertaken and completed within a period of three weeks.â??

10/ The circular issued by the UGC quoted in the aforesaid order of this Court makes it translucent, pellucid and unblurred that the equivalence is to be decided by the employer and the said issue has been settled by this Court in terms of order aforesaid after hearing both the parties. The employer responded to this order of the court and filed the compliance report paras 5, 6, 7 and 9 of which are relevant for consideration and these reproduced herein below word for word and letter for letter:

â??That it is humbly submitted by the answering respondents that in view of the above mentioned Govt. Order dated 30-05-2012 the degree of the respondent no.4 has been approved by the Distance Council and is recognized and equivalent to Masterâ??s Degree corresponding to regular degree for the purpose of employment as it is the prerogative of the employer to prescribe the eligibility for any post or service. That the case of the respondent no.4 is squarely covered in terms of clause (6) of the Govt. order dated 30.05.2012, wherein it is made clear that degrees in such of the Distance Education Council approved science subjects where practicals are part of the curriculum and are conducted from within the respective campuses of the University Grants Commission recognized Universities, established by an Act of the parliament or the State Legislative, shall also be recognized.

Â That the respondent no.4 has undertaken the practical sessions which were

conducted in one of the study centers of IGNOU in the department of Home Sciences, University of Kashmir. The internship required for the said course which is otherwise also approved by the Distance Education Council has been done by the respondent no.4 at SKIMS, Soura, Srinagar. Thus all the conditions of the Govt. order mentioned above are being clearly fulfilled by the respondent no.4 and there thus is no ambiguity with respect to the eligibility and subsequent appointment of the said respondent in the answering respondent department. That the certificates to the extent of above which had been submitted by the said respondent no.4 before the answering respondent department as well as the Govt. Order bearing no. : 252HE of 2012, dated: 30-05-2012: are annexed herewith this report and are marked as Annexure-C-1(Collectively) for ready reference.

That the degree obtained by respondent no.4 through Distance Mode has been considered as degree in the relevant subject mentioned in the advertisement notification dated 29-05-2014 issued by the J&K Public Service Commission. The degree obtained by the respondent no.4 has also been considered by the answering respondent department, UGC, & J&K PSC respectively. That the question of determining the equivalence of the degree obtained by the said respondent and the degree in regular mode does not arise at all in the facts and circumstances of the case. A copy of the equivalence of degree awarded by open & distance learning institutions (OLD) at par with conventional universities/Institutions issued by UGC is annexed herewith this report and is marked as Annexure C-2 for ready reference. Therefore in light of the above mentioned averments the degree possessed by respondent no.4 is at par with the degree obtained by regular mode and there is no infirmity with respect to the validity of the degree possessed by respondent no.4

That in light of the above said averments and in totality of arguments put forth by the answering respondents it is respectfully submitted that the selection and appointment of respondent no.4 on the basis of the recommendations of JK Public Service Commission is valid and has been made in accordance with the rules and regulations governing the subject and there is no ambiguity vis-à-vis the validity/equivalence of the degree possessed by the respondent no.4 which has been declared valid and equivalent by the IGNOU, UGC and the answering respondent department. The said

selection and appointment has been made in light of the certificates issued by IGNOU, UGC and also in light order bearing No. 252-HE of 2012, dated

30-05-2012. More ever to sum up the averments made herein above it is always the prerogative of the employer (Department of Higher Education) to

prescribe the eligibility criteria of the candidates and the validity of the degrees as per the requirement of the said department for the purpose of

employment.â??

11/ On the face of the report cited above nothing survives in this petition for the simple reason that the equivalence has been decided by the employing

organization, by stating that there is absolutely no infirmity in the degree obtained by the respondent No.4

12/ Selection aided and advised by experts having technical knowhow, once made cannot be interfered and tinkered with by the Courts and the opinion

of the experts cannot be disturbed unless there are allegations of mala fides against such experts as has been held in the case or Dr. M.C. Gupta Vs.

Dr. Arun Kumar Gupta (1979) 2 SSC 339 (Admittedly, no such case has been projected in the petition). Even if the Court is of the view that the

opinion of experts is not correct, the Court cannot substitute its own opinion for the opinion of the experts and the law envisages that the Courts should

hesitate in dislodging the decisions of academic bodies as is the import of the judicial dictum laid down in the case of Dr. J.P. Kulshreshtha Vs.

Chancellor Allahabad University (1980) 3 SCC 418;. This view has been reiterated in the case titled Maharashtra State Board of Secondary and Hr.

Sec. Education Vs. Paritosh B. Sheth (1984) 4 SCC 27 and Neelima Misra Vs. Harinder Kaur Paintal. (1990) 2 SCC 746).

13/ A court of law is not to hear appeals against the decisions of selection committee and to scrutinize relative merits and demerits of candidates.

Decisions of selection committees can be interfered with only on limited grounds like patent and material illegality in constitution of the committee itself

or its procedure or proved mala fides affecting the selection. Once experts arrive at a decision after due deliberations over all relevant material, the

same cannot be set aside by High Court and any interference would amount to exceeding the jurisdiction. A cue can be had in this behalf from the law

laid down in the cases of Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan (1990) 1 SCC 305) also See Dental Council of India v. Subharti K K B

Charitable Trust (2001) 5 SCC 486; Rajbir Singh Dalal V. Chaudhari Devi Lal University (2008) 9 SCC 284; Technical Education V. Surinder Kumar

Dhawan (2009) 11 SCC 284.

14/ The University of Kashmir is neither the employer nor the selection body in the case and has therefore no role to play in the matter. Its opinions

are neither binding on the respondent department nor can these be enforced by this Honâ??ble Court. Even otherwise, the Minutes of the meeting of

Equivalence Committee of the University held on 25-01-2012 have been recorded prior to the date of the issuance of the Government order dated

3005-2012 and have therefore no relevance to the issue. It need must be said that the University of Kashmir has issued a Circular dated 04-03-2014,

wherein it has been declared and settled that the equivalence of Degrees awarded by IGNOU through Distance Mode where Lab/Practical work

forms a part of curriculum has to be decided case wise on the basis of various parameters laid down in the Circular itself. Nevertheless, the

appointment has to be made by the State Government and the conditions laid down in the order dated 30-05-2012 have to be applied. Therefore, the

University of Kashmir has no role in the said cases and the decision of its Equivalence Committee cannot supersede the Cabinet Decision of the State

Government.

15/ That University Grants Commission has issued a circular dated 14-10-2013, (attached as Annexure R-3 to the objection filed by the respondent

No.4) wherein the importance of Distance Education System has been highlighted and all the Registrars/Directors of all the Indian Universities

including Deemed, State and Central Universities have been informed that the Degrees awarded through Distance Mode by recognized Institutes in

conformity with UGC Notification should be treated as equivalent to corresponding Degrees of Traditional Universities. The Degree of the petitioner

is therefore completely valid and equivalent to the corresponding regular Degree as Para 2 for the reason that the said circular clearly mentions and

envisages that the Degrees awarded by IGNOU are to be treated equivalent to the corresponding awards of the traditional Universities in the

Country. It is also relevant to mention here that the answering respondent has also qualified the National Eligibility Test (NET) which can only be done

by a candidate who has undergone masters Course and there is, thus no doubt

that the Degree of the petitioner has to be recognized at National and State level by all the concerned authorities. IGNOU is a Central University duly recognized by UGC and the syllabus of IGNOU is the same as offered by Aligarh Muslim University and Banaras Hindu University, both being central Universities. The Degree has been obtained through IGNOU which admittedly has been established in terms of the provisions of the University Grants Commission Act, having powers to award the Degrees in terms of Section 22(1) of UGC Act, 1956. The said Institution is recognized and approved by the Distance Education Council and there arises no question to enter into any controversy on this issue as IGNOU is the most well known Institution for Distance Education.Â

16/ The other requirement in terms of Government order dated 30-05-2012, i.e. the practicals must be a part of curriculum and must be conducted from within the respective Campuses of UGC recognized Universities established under an Act, is also satisfied in the present case as the answering respondent has pursued the Degree wherein practicals are a part of the syllabus and the same have been conducted from within the campus of the University of Kashmir itself, which has been established under an Act of the State Legislature. The certificate to this effect has been given by the Regional Centre of IGNOU and it has also been clarified that the internship has been done by the answering respondent at SKIMS Soura. Therefore, all the conditions laid down in the Government order supra have been clearly fulfilled in the case and no finger can be raised against the Degree obtained by the answering respondent.Â

17/ Viewed in the above context the writ petition is misconceived and meritless. It entails dismissal and is accordingly dismissed as a corollary to which the appointment of the answering Respondent No.4 to the Post of Assistant Professor in the discipline of Home Science is upheld and is held to be valid in the eyes of law. Disposed of accordingly .