

(2011) 02 MAD CK 0135

In the Madras High Court

Case No : Writ Petition No. 18729 of 2010

T.L. Muthukumar and Others

APPELLANT

Vs

Registrar General, High Court and Another

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Constitution of India, 1950 — Article 148, 229

Government of India Act, 1935 — Section 241, 242(4)

University Grants Commission Act, 1956 — Section 12A(1), 12A(2), 26, 26(1)

Citation : (2011) 2 MLJ 785

Hon'ble Judges : M.Y. Eqbal, C.J.; T.S. Sivagnanam, J

Bench : Division Bench

Advocate : Vijay Narayan for V. Ajay Kumar, for the Appellant; J. Raja Kalifulla, Government Pleader and M. Sneha, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, C.J.—By this writ petition, the Petitioners have prayed for quashing the Government Order, being G.O. Ms. No. 107,

Personnel and Administrative Reforms Department, dated 18.8.2009, and further to direct the 1st Respondent, namely, the Registrar General,

High Court, Madras, to consider the Petitioners for promotion to the post of Assistant, Assistant Section Officer, etc., on the basis of the

education qualifications obtained by them.

2. The Petitioners case in brief is that all of them joined the service as Office Assistant, except the 2nd Petitioner, who joined as Record Clerk. The

service particulars of the Petitioners as described in the writ petition are as under:

SI. No. Name of the Date of Entry Date of Promoted Post

Petitioner Promotion

1. First Petitioner 15.6.1995 28.3.2007 Reader/Examiner

2. Second 22.9.2003 2.4.2007 Reader/Examiner

Petitioner

3. Third 18.8.200 1 28.3.2007 Reader/Examiner

Petitioner

4. Fourth 2 1.8.2001 30.3.2007 Reader/Examiner

Petitioner

5. Fifth Petitioner 8.9.1999 5.3.2007 Assistant

3. The Petitioners case is that the Petitioners 1 to 3 and 5 have obtained B.A. degree from the University of Madras and Annamalai University,

whereas the 4th Petitioner has obtained B.B.A. degree from the University of Madras. At the time of their initial appointment as Office Assistant

and Record Clerk, the Petitioners were having qualifications of SSLC, Plus One and I.T.I (N.C.V.T.) and the same was obtained by them before

joining the service and the same has also been entered in the service register. It is further submitted that the 2nd and 3rd Petitioners had completed

their degree course even prior to their appointment, while the 1st and 5th Petitioners, after joining the service, obtained permission from the

Registry for doing the course, which they completed successfully. The 4th Petitioner had joined the degree course for the year 1999-2002, which

is before his appointment, but on joining the service, he applied for permission for continuing his degree course, which was accordingly granted. In

a nutshell, the Petitioners case is that they have obtained their degrees before 2002 and are entitled to get promotion on the basis of their

qualification.

4. According to the Petitioners, although they are entitled to be considered for promotion as per UGC Regulations, they have been denied

promotion because of G.O. No. 107 dated 18.8.2009, which inter alia provides that those degrees issued by the Open University shall only be

recognized and accepted for appointment and promotion provided the said degree has been obtained after completing +2 (Higher Secondary)

Examination.

5. Indisputably, all the Petitioners have obtained B.A./B.B.A. degree through correspondence course, but they have not completed +2 course

(Higher Secondary).

6. Mr. Vijay Narayan, learned senior counsel appearing for the Petitioners firstly drawn our attention to the different provisions of the High Court

Rules and submitted that the promotion avenue to the post of Assistant in Category-6 is from Category 7, 8 and 9, namely, Typist,

Reader/Examiner/Proof Reader/Copyist/Chief Operator (Photostat Machines), etc. The rule further provides that the requisite qualification for

promotion to the post of Assistant is B.Sc. or B.Com. or any other Bachelor s Degree of the Madras University or equivalent thereof of a

recognized University.

7. Learned Counsel further submitted that the University Grants Commission (for short UGC) framed the University Grants Commission (the

Minimum Standards of instructions for the Grant of the First Degree through Non-formal/Distance Education in the faculties of Arts, Humanities,

Fine Arts, Music, Social Sciences, Commerce and Sciences) Regulations, 1985 (for short 1985 Regulations) in the year 1985 regarding the

minimum standard of instructions for the grant of first degree through non-formal/distance education. Referring to Regulation 2, learned senior

counsel submitted that although the Petitioners had not completed 12 years schooling, but they have passed the entrance test conducted by the

University and then they completed the correspondence degree course and obtained the degree. Hence, their degree has to be recognized.

Learned senior counsel further submitted that G.O. No. 107 dated 18.8.2009, is opposed to the aforesaid 1985 Regulation framed by the UGC

and, therefore, such Government Order cannot be sustained in law. Learned senior counsel relied upon the decision of the Supreme Court in the

case of Annamalai University rep. by Registrar Vs. Secy. to Govt. Infn. and Toursm Dept. and Others, and submitted that the UGC Regulation

shall prevail over any other Act and Rule framed by the State as also the Government Order issued by the State.

8. Learned Government Pleader, on the other hand, submitted that G.O. No. 107 dated and G.O. No. 116 dated the is in conformity with the

1985 Regulations, but in any case, successful completion of +2 examination is mandatory for obtaining a Bachelor's degree from a recognized

University. Learned Counsel put reliance on the Division Bench judgment of this

Court in the case of N. Ramesh Vs. Sibi Madan Gabriel, The
Secretary to Government, Information and Tourism Department, Govt. of Tamil
Nadu, The Director, Information and Public Relations and The
Tamil Nadu Public Service Commission, .

9. The short question that falls for consideration in this case is as to ""Whether a
candidate, who obtained B.A./B.Sc./B.Com. Degree without
successfully completing 12 years schooling can be a ground for promotion to the
higher post on the basis of having qualification of graduation
degree, that too through correspondence course.

10. As noticed above, UGC, in exercise of power conferred by Clause (f) of Sub-
section (1) of Section 26 of the University Grants Commission

Act, 1956, framed the 1985 Regulations. Clause 2 of the Regulation referred to in
the instant case reads as under:

2. Admission/Students:

1. No student shall be eligible for admission to the 1st Degree Course through
non-formal/distance education unless he has successfully completed

12 years schooling through an examination conducted by a Board/University. In
case there is no previous academic record, he shall be eligible for
admission if he has passed an entrance test conducted by the University
provided that he is not below the age of 21 years on July 1 of the year of
admission.

2. No student shall be eligible for the award of the first degree unless he has
successfully completed a three year course; this degree may be called

the B.A./B.Sc./B.Com. (General Honours/Special) degree as the case may be.

Provided that no student shall be eligible to seek admission to the Master's
Course in these faculties, who has not successfully pursued the first

Degree Course of three years duration.

Provided further that, as a transitory measure where the universities are unable
to change over to a three year degree course, they may award a

B.A./B.Sc./B.Com. (Pass) degree on successful completion of two year course,
but that no student of this stream shall be eligible for admission to

the Master s course unless he has undergone a further one year bridge course
and passed the same. The three year degree course after 10+2 stage

should in no case be termed as B.A./B.Sc./B.Com. (Pass) degree.

11. On the other hand, the qualification prescribed under the High Court Rules framed under Article 229 of the Constitution of India has

specifically provides that for promotion to certain posts, including Assistants, a candidate must hold B.A./B.Sc./B.Com/B.A. (Hons.)/ B.Sc.

(Hons.)/B.Com. (Hons.) degree of the Madras University or equivalent thereof of a recognized University.

12. Clause 2 of 1985 Regulations was considered by the Supreme Court in the case of Annamalai University, rep. by Registrar v. Secy. to Govt.

Infn. and Toursm Dept. and Ors. (supra). In that case, the question of interpretation and application of 1985 Regulations vis-a-vis Section 26 of

the UGC Act, 1956 and the Indira Gandhi National Open University Act, 1985 (for short Open University Act) fell for consideration. The facts of

that case was that the legality of the appointment of one Ramesh to the post of Principal in the Film and Television Institute was challenged on the

ground that he did not have the requisite essential qualification for the post of Principal. The challenge to the appointment was that he did not

possess the basic graduation degree and thus the post-graduate degree conferred on him by the Appellant, Annamalai University, is invalid in law.

Admittedly, the said candidate, Ramesh, was holding a Diploma in Film Technology and directly obtained M.A. degree through Open University

System in an examination held by the aforementioned University. A Division Bench of this Court held that the M.A. Degree obtained by the said

candidate through Open University System without their being a first Bachelor's Degree was not a valid one. The matter ultimately went to the

Supreme Court. Their Lordships upholding the decision of the High Court held as under:

33. Indisputably, the fact that the Appellant-University had been granting postgraduate degrees to the candidates concerned although they had not

completed three years' course in violation of the Regulation 2 of the 1985 Regulations came to the notice of the UGC as also IGNOU officials. A

meeting was held in March 2004. It was agreed in the said meeting that the admission to the Masters' Degree Programme under the OUS without

requiring the three years graduate degree qualification be discontinued with effect from July, 2004 as would appear from a letter issued by the

IGNOU to the Vice-Chancellor of the Appellant-University, the relevant portion whereof reads as under:

In the meeting, both the undersigned as Chairman DEC and Chairman UGC had emphasized the need to discontinue the Master's Degree

Programme without requiring 3 years graduate degree qualification under Open education stream, which is in practice in some Universities of Tamil

Nadu.

We drew your kind attention to the UGC Regulation 1985 regarding the minimum standard of instructions for the grant of the first degree through

non-formal/distance education dated 25.11.1985 according to which no student shall be eligible to seek admission to the Master's Degree

Programme who has not completed first degree course of three years duration. This clearly stipulates that the practice of admitting students of

Master's Degree Programme who have not undergone 3 years undergraduate programme successfully is against the provisions of the above

regulation. In view of this, it was agreed in the meeting of 11.3.2004 that new admission to the Master's Degree Programme under open education

scheme as prevailing in some Universities in Tamil Nadu should be discontinued with effect from the forthcoming session starting from July 2004. I

would feel grateful to receive your confirmation on this matter.

It is also worth to quote para 40, 42 and 50 of the judgment, which reads as under:

40. UGC Act was enacted by the Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India

whereas Open University Act was enacted by the Parliament in exercise of its power under Entry 25 of List III thereof. The question of

repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the statement of objects and reasons of Open University

Act shows that the formal system of education had not been able to provide an effective means to equalize educational opportunities. The system is

rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.

... ..

42. The provisions of the UGC Act are binding on all Universities whether conventional or open. Its powers are very broad. Regulations framed by

it in terms of Clauses (e), (f), (g) and (h) of Sub-section (1) of Section 26 are of wide amplitude. They apply equally to Open Universities as also

to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum

standards of instructions are required to be defined by UGC. The standards and the co-ordination of work or facilities in universities must be

maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature.

Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of the UGC

are all pervasive in respect of the matters specified in Clause (d) of Sub-section (1) of Section 12-A and Clauses (a) and (c) of Sub-section (2)

thereof.

... ..

50. The UGC Act, thus, having been enacted by the Parliament in terms of Entry 66 of List 1 of the Seventh Schedule to the Constitution of India

would prevail over the Open University Act.

13. After the decision rendered by the Supreme Court in the Annamalai University v. Secretary to Government, Information and Tourism Dept.

and Ors. (supra), the Government of Tamil Nadu, through its Personnel and Administrative Reforms Department, issued a circular being G.O. No.

107 dated 18.8.2009, recognizing those degrees obtained through Open University only after the person having passed Secondary School

Examination (10th Standard) and Higher Secondary Examination (+2) alone for appointment/promotion in public service. For better appreciation,

G.O. No. 107, dated 18.8.2009, is quoted herein below:

Public Services - Equivalent Qualification - Diploma/Degree/Post Graduate degrees obtained from open universities after passing Higher

Secondary School Education (+2) - Recognition to get employment in public services orders issued.

Personnel and Administrative Reforms (M)

Department

G.O. (Ms). No. 107 Date: 18.8.2009

Aavani 2,

Thiruvalluvar Aandu 2040

Read:

1. G.O. (Ms). No. 180, Personnel and Administrative Reforms Department dated 22.9.2000.
2. Letter No. R.E.D./301-6/2004, dated 17.7.2004, from Chief General Manager, Tamil Nadu, BSNL Ltd.
3. D.O. letter No. 1745/RND-F 1/2007 dated 5.4.2007 from the Secretary, Tamil Nadu Public Service Commission.
4. D.O. Letter No. 5280/RND F. 1/2007 dated 27.9.2007 from the Joint Secretary, Tamil Nadu Public Service Commission.

ORDER:

1. In the Government Order, first read above, orders have been issued granting approval for employment in Public Services considering the degrees conferred by Open Universities in Tamil Nadu recognized by the University Grants Commission, in respect of Diploma course, Under-Graduate course and Post-Graduate course as equivalent to that of the Diploma course, Under-Graduate course and Post-Graduate course given by the said universities through Regular stream.
2. The Chief General Manager, BSNL Tamil Nadu Circle, in the letter second read above, has requested for clarification as to whether the persons who have obtained a degree in B.Sc., B.A., etc., through Open Universities without a pass in higher secondary examination (+2) shall be considered as having passed the higher secondary examination, for the post for which the minimum educational qualification is fixed as a pass in Higher Secondary Education and can be considered for the promotion posts in government departments.
3. The Secretary, Tamil Nadu Public Service Commission was requested to forward the recommendation made by Equivalence Committee on the aforesaid proposal. The Equivalence Committee recommended that the persons who have obtained B.Sc., B.A. degree in Open Universities without having passed the higher secondary school examination, cannot be considered either for employment or promotion in government service by considering them to have passed the +2 examinations of the State Government. Even when the said proposal was sent again for the recommendation of the Equivalence Committee, it insisted on the decision already taken.
4. The Government carefully examined this recommendation and having decided

to accept the recommendation of the Equivalence Committee

issues an order recognizing the degrees in Diploma/Degree/Post-Graduate degree obtained through Open Universities only after having passed

secondary school examination (10th Std.) and higher secondary school examination (+2) alone for appointment/promotion in Public Services.

//By Order of the Governor//

K.N. Venkataraman

Secretary to Government.

14. From a perusal of Clause 2 of the 1985 Regulations and the ratio decided by the Supreme Court as quoted hereinbefore, it is manifest that for

the purpose of obtaining a Post Graduate Degree a candidate has to satisfy and comply the mandatory requirements provided therein. According

to the rule, no candidate shall be eligible for award of first degree unless he has successfully completed 12 years schooling. Similarly, no student

shall be eligible to seek admission to the Master's course in any faculty, who has not successfully pursued the first degree course of three years

duration.

15. In the instant case, the question is as to whether a candidate after obtaining such a degree from an Open University without completing 12

years schooling can claim, as a matter of right, promotion to the higher post, ignoring the service conditions prescribed under the service rules.

16. As stated above, in exercise of powers conferred by Article 229 of the Constitution of India, the High Court framed the rules providing service

conditions of its employees, including the condition for promotion. It is well settled that the object of Article 229 is to secure the independence of

the High Court and all powers vested in the Chief Justice and the High Court to run the High Court administration.

17. The object of Article 229 has been elaborately discussed by the Supreme Court in the case of M. Gurumoorthy Vs. Accountant-General,

Assam and Nagaland and Others, . The Supreme Court, in the said judgment, observed as under at p. 114 of LLJ:

8. The unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointment of

officers and servants of a High Court it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by

the executive except to the limited extent that is provided in the article. This is essentially to secure and maintain the independence of the High

Courts. The anxiety of the Constitution-makers to achieve that object is fully shown by putting the administrative expenses of a High Court

including all salaries, allowances and pension payable to or in respect of officers and servants of the Court at the same level as the salaries and

allowances of the Judges of the High Court nor can the amount of any expenditure so charged be varied even by the Legislature. Clause (1), read

with Clause (2) of Article 229 conferred exclusive power not only in the matter of appointments but also with regard to prescribing the conditions

of service of officers and servants of a High Court by Rules on the Chief Justice of the Court. This is subject to any legislation by the State

Legislature but only in respect of conditions, of service. In the matter of appointments even the Legislature cannot abridge or modify the powers

conferred on the Chief Justice under Clause (1). The approval of the Governor, as noticed in the matter of rules, is confined only to such rules as

relate to salaries, allowances, leave or pension. All other rules in respect of conditions of service do not require his approval. Even under the

Government of India Act, the power to make rules relating to the conditions of service of the staff of the High Court vested in the Chief Justice of

the Court u/s 242(4), read with Section 241 of the Government of India Act, 1935. By way of contrast, reference may be made to Article 148

relating to the Comptroller and Auditor General of India. Clause (5) provides:

Subject to the provisions of this Constitution and of any law made by Parliament the conditions of service of persons serving in the Indian Audit

and Accounts Department and the administrative powers of the Comptroller and Auditor General shall be such as may be prescribed by rules

made by the President after consultation with the Comptroller and Auditor General.

18. As discussed above, the rule framed by the High Court inter alia clearly lays down the qualification for the purpose of promotion from

Categories 7, 8 and 9 to Category 6. It is clearly mentioned that for the purpose of promotion, a person must possess and hold the

B.A./B.Sc./B.Com or other Bachelor's degree of the Madras University or of a recognized University. The rule does not recognize B.A. or

B.B.A. degree from an Open University obtained by a candidate without having the basic +2 qualification. The condition contained in the High

Court Service Rules, therefore, cannot in any way be superseded by other law not applicable to the employees of the High Court.

19. Admittedly, the Petitioners, although, obtained the first degree by correspondence course without having the basic +2 qualification. Such

degree having not been recognized under the Rules framed by the High Court in exercise of powers conferred under Article 229 of the

Constitution of India, the Petitioners cannot claim promotion on that basis.

20. In view of the discussions made above, we do not find any merit in this writ petition and, accordingly, the same is dismissed. However, there

shall be no order as to costs.