

**(2012) 08 MAD CK 0140**

**Madras High Court (Madurai Bench)**

**Case No:** Writ Petition (MD) No. 9700 of 2011

Dr. T. Malarvili

APPELLANT

Vs

The Chancellor and 2 Others

RESPONDENT

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**Date of Decision:** Aug. 27, 2012

**Acts Referred:**

- Constitution of India, 1950 - Article 14

**Citation:** (2013) WritLR 312

**Hon'ble Judges:** Vinod K. Sharma, J

**Bench:** Single Bench

**Advocate:** M. Ajmal Khan, for Mr. C. Venkatesh Kumar, for the Appellant; V.R. Shanmuganathan, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Vinod K. Sharma, J.

The petitioner passed the graduation in Bachelor of Science in Chemistry in the year 1987, and got a degree of Post Graduate in Bio-Chemistry in the year 1989 and M. Phil., in 1994 in Applied Chemistry. The petitioner was conferred with Ph. D., (Bio Chemistry). She also qualified in State Level Educational Test. The petitioner has put in total service of 19 years in teaching field, and working as Lecturer and Head, Department of Bio-Chemistry, J.J. College of Arts and Science, Pudukkottai, which is affiliated to the second respondent University. Now, the petitioner is working as an Assistant Professor, Department of Bio-Chemistry in Raja Sarfoogi Government College, Thanjavur, and is also Chairman and Member of Board of Studies, Chairman/Chief Examiner and Member of Board of examination of Bharathidasan University. In addition, the petitioner holds other position in Alagappa University, Tamil University in different capacity.

2. In view of the qualification of the petitioner, and more than ten years of experience, the petitioner is entitled to be considered as holding a post equivalent to Selection Grade Lecturers working in the Government Colleges.

3. Bharathidasan University invited applications for faculty position in the constituent Colleges at Orathanadu, Perambalur and Lalkudi. The qualification prescribed for the Cadre of Principal read as under:-

A Master's Degree with at least 55% of the marks or its equivalent grade of B in the 7 point scale with letter grades O, A, B, C, D, E & F. Ph. D., or equivalent qualification.

Professor in an University or Lecturer (SG), Reader in a College with at least 15 years of teaching experience at UG / PG level. Administrative experience preferred.

4. The petitioner was also called for personal interview for the post of Lecturer on 03.06.2009. The petitioner was selected for the post of Principal of Lalkudi College, but thereafter no communication was received by the petitioner. The petitioner was also forwarded a Resolution adopted by the Syndicate in its 187th meeting held on 10.06.2009, approving the appointment of the petitioner. A decision was also taken to issue offer of appointment to the petitioner as Principal of Lalkudi College under general turn category in the scale of pay of Rs. 16400-450-2240.

5. In spite of the approval by the Syndicate of the University, the petitioner has not been issued any appointment letter. The petitioner filed a representation on 01.10.2009, to the first respondent, which was followed by the representation dated 29.10.2009, to the second respondent for issuance of appointment letter in pursuance to her selection.

6. On the inaction of respondents, the petitioner filed W.P. (MD) No. 11601 of 2009, with a prayer for issuance of a Writ, in the nature of Mandamus, to direct the respondents to appoint the petitioner, as Principal, Lalgudi College, Lalgudi.

7. It was during the pendency of the writ petition, that the petitioner was informed, that even though the petitioner was duly selected, but as she was only working as Lecturer, the appointment letter could not be issued.

8. In response to the comments called for by the first respondent, in response to the representation of the petitioner, it was informed, that the petitioner was not eligible for the post of Principal, and that decision has been taken to fill up the post of Principal through re-advertisement.

9. It is admitted case of the parties, that reason non-issuance of appointment letter to the petitioner is, only that, at the time of interview, the petitioner though was working as, a Lecturer, but was not in Selection Grade, even though she had experience of 19 years in the, post of Lecturer. Therefore the reason for refusal to issue appointment letter is G.O.Ms. No. 345 Higher Education (H1 Department) dated 03.10.2005.

10. The relevant portion of the G.O. reads as under:-

2. PRINCIPALS (GRADE-I)

i. A Masters Degree with at least 55% of marks of its equivalent grade "B" in the seven point scale.

ii. Ph.D., or equivalent qualification A minimum total experience of 15 years of teaching / research in Universities / Colleges and other institutions of Higher Education.

PRINCIPALS (GRADE-II)

i. A Master Degree with at least 55% of marks or its equivalent Grade "B" in the seven point scale.

ii. Ph.D. or equivalent qualification

iii. A minimum total experience of 10 years of teaching / research in Universities / Colleges and other institutions of Higher Education.

Explanation:-

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ii. Appointment to the post of Principals is being made from among the holder of posts of Lecturers (Selection Grade / Reader) in Colleges. The seniority as Selection Grade Lecturer is the criteria for promotion.

11. It is the submission of the petitioner, that Thiru. Dr. R. Mathivanan, who was identically placed as petitioner, and had 20 years experience as Lecturer and Head, Department of Commerce in Thandhai Hans Rover College, Perambalur, without being placed in Selection Grade was appointed as Principal of Bharathiyan University College of Arts and Science, Valparai.

12. It is also the case of the petitioner, that in pursuance to the directions issued by this Court in the writ petition filed by the petitioner, the representation of the petitioner was treated to be an Appeal u/s 10(3) of the Bharathidasan University Act, the Appeal also stands dismissed, by confirming the order of University, in declining the appointment to the petitioner.

13. The impugned order of refusing, to issue appointment letter to the petitioner has been challenged by the learned counsel for the petitioner, by contending that according to the Rules and Regulations governing the service conditions of the University, the qualification prescribed for the post of Principal is a Master's Degree with at least 55% marks or equivalent grade "B" in the seven point scale with letter Grades O, A, B, C, D, E & F, Ph. D., or equivalent qualification and a Professor in an University or Lecturer (SG), Reader in a College with at least 15 years of teaching experience at UG/PG Level.

14. Even according to the G.O., the minimum qualification prescribed for appointment is a Master's Degree with at least 55% of marks or its equivalent Grade of B in the 7 point scale with Ph. D., or equivalent qualification with a minimum total experience of teaching / research in University / Colleges and other institutions of higher education.

15. Whereas Principal Grade II, the qualification is a Master Degree with 55% of marks or its equivalent Grade "B" in the seven point scale, Ph. D., or equivalent qualification with minimum experience often years teaching / research in University / Colleges and other institutions of higher education.

16. The explanation on which reliance has been placed is only applicable for appointment by promotion and not in the case of direct appointment.

17. The contention of the learned counsel for the petitioner was that the basis for rejection of appeal of the petitioner therefore on the face of it is, arbitrary and thus not maintainable in law.

18. The learned counsel for the petitioner also contended, that the respondents failed to notice, that the petitioner will be deemed to be a Selection Grade, as according to the Rules governing the service conditions, the Selection Grade / Special Grade is granted automatically on completion of 10 / 20 years of service on the same post.

19. Therefore, the petitioner having completed 19 years of service is deemed to be in Selection Grade.

20. The impugned action therefore is totally arbitrary and amounts to colourable exercise of power, for the reason, that Selection Grade or Special Grade is applicable to the Government Colleges, whereas teachers working in the Private Colleges are not conferred with Selection Grade. This criteria therefore cannot be a basis to deny the right of appointment to the selected candidate as the condition will be impossible to be achieved by the lecturers working in the private colleges.

21. The order passed on Appeal u/s 10(3) of the Act is also challenged being arbitrary and a non-speaking order.

22. The writ petition is opposed by the respondents, on the ground, that the petitioner cannot claim to be serving in Selection Grade to be eligible for the post of Principal, as in the Advertisement it was clearly stipulated that the qualification requested is as per UGC / AICTE Norms, which stipulated that for being eligible to the post of Principal, the eligible candidates should be Lecturer (SG).

23. It is submitted, that the petitioner was short listed by over sight based on the information of Dr. Malarvili in her application. Therefore, out of 19 candidates, who appeared for selection of three posts, Dr. Malarvili was found suitable by the Selection Committee as she had more than 15 years teaching, and administrative

experience and her performance during interview.

24. That it was the Teachers" Association, which brought to the notice of the University, that the petitioner was only a Lecturer, therefore, could not be appointed as a Principal. This information resulted in stoppage of issuance of appointment order to the petitioner. It was also decided to fill up the post through re-advertisement.

25. In the counter, it is denied the petitioner fulfills the qualification. It is submitted, that in the G.O., the explanation applies to both Grade I and Grade II Principals, therefore, it is not open to ignore the explanation to Government Order.

26. On consideration, I find that this writ petition deserves to succeed.

27. The minimum qualification for the post of Principal for direct recruitment as per UGC guidelines is the Master"s Degree with at least 55% marks or its equivalent grade "B" in the seven point scale with letter Grades O, A, B, C, D, E & F, Ph. D., or equivalent qualification, and a Professor in an University or Lecturer, Reader in a College with at least 15 years of teaching experience at UG / PG Level. The petitioner admittedly fulfills this qualification. The qualification prescribed by the UGC is binding on the College and in case of conflict of the qualification prescribed by the State Government and the University Grants Commission, it is UGC Guidelines, which prevails.

28. It may also be noticed here, that there is no post of Selection Grade Lecturers in the private colleges whereas in the Government Colleges, according to Government instructions, a person is placed in the Selection Grade on completion of 10 years of service, without any further additional qualification.

29. The petitioner, admittedly, has put in more than 19 years of service, therefore, cannot be said, to be not eligible for appointment. Once the petitioner is held to be qualified to the post of Principal, the question to be considered will be whether this Court can direct the respondents to appoint the petitioner as Principal.

30. The Hon"ble Supreme Court, in the case of Shankarsan Dash Vs. Union of India, while holding that inclusion of candidates name in merit list does not confer any right to be selected, in this very case, the Hon"ble Supreme Court held that this position of law does not authorizes the State Government to act in arbitrary manner, as the decision not to fill up the vacancy has to be taken bona fide for appropriate reason.

31. The Hon"ble Supreme Court in the case of Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others, was pleased to lay down that it was open to the Government not to fill up all the vacancies, but the selection cannot be arbitrarily restricted to few candidates notwithstanding the number of vacancies and the availability of qualified candidates as there has to be a conscious application of mind by the government before any appointment is restricted. It was also held

that the State can not act in arbitrary manner.

32. In this case, it is not only that the petitioner was selected for the post, but also her appointment was duly approved by the competent authority i.e., the Syndicate. It was only a ministerial act of issuance of an appointment letter, which was left to be completed. The action of the respondents, in not issuing the appointment letter, therefore, on the face of it, is arbitrary and amounts to colourable exercise of power. After the approval of appointment of the petitioner by the Syndicate, the petitioner had acquired vested right to appointment, which could not be defeated, without following principle of natural justice in an arbitrary manner, to hold that the petitioner was not qualified, even though under the U.G.C. guidelines the petitioner is fully eligible for appointment.

33. The action of the respondents, therefore being arbitrary and amounting to colourable exercise of power, is hit by Article 14 of the Constitution of India. Consequently, this writ petition is allowed. The impugned orders are set aside. A writ in the nature of Mandamus is issued directing the respondents to appoint the petitioner to the post of Principal in pursuance of the approval by the Syndicate, which is the final authority to make the appointment.

The needful be done within 15 days of receipt of copy of this order.

No costs.