
**G. Bhaskar Vs The Government of Tamil Nadu, Secretary, Education
Department, The Directorate of Technical Education, Guindy and The
Chairman, Teachers Recruitment Board**

Writ Petition No. 29212 of 2012 and M.P. No. 1 of 2012

Court: Madras High Court

Date of Decision: Jan. 7, 2014

Acts Referred:

General Clauses Act, 1897 - Section 6

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: R. Achuthan, for Mr. A. Jenasenan, for the Appellant; V. Subbiah, Special
Government Pleader, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

M. Venugopal, J.

The Petitioner has focussed the instant Writ of Certorified Mandamus praying for an issuance of an order by this

Court in calling for the records on the file of the Third Respondent as regards to the provisional selection list of Chemistry
Lecturers in Government

Polytechnic College for the year 2010-2011 published in website on 18.10.2012 pursuant to the advertisement dated 27.02.2012 in
advertisement No. 02/2012 and to quash the same. Further, he has sought for passing of an order by this Court in resultantly to
appoint him as

Chemistry lecturer and pass any further or other orders as this Court deem it fit and proper. The Factual Matrix of the Writ Petition:

According to the Petitioner, he completed his Under Graduation during the year 1999 and Post Graduation in the year 2001 with
Chemistry as the

subject and Ph.D in Organic Chemistry in the year 2012 from the University of Madras. He secured II Class in Under Graduation
and I class in

Post Graduation.

2. It comes to be known that the First Respondent/Secretary, Government of Tamil Nadu, Education Department, Chennai through Third

Respondent/the Chairman, Teachers' Recruitment Board, DPI Compound, Chennai issued notification/advertisement dated 27.02.2012 in

Advertisement No. 02/2012 for direct recruitment for the post of lecturer (Engineering/Non-Engineering) for Government Polytechnic Colleges

under the Second Respondent. The total vacancies for which applications were called for were 139, out of which the vacancy for Chemistry was

28. In terms of the notification, the qualification for the post of lecturer in Non-Engineering subjects (English, Mathematics, Physics, Chemistry) is a

I Class Master's Degree in the appropriate branch of study and not more than 57 years of age. The selection is based on written test of 150

objective type questions of 190 maximum marks and certificate verification. At the time of certificate verification, if the candidate is found to

possess higher qualification, an additional of 3 marks is awarded and for the candidates possessing Ph.D an additional of 5 marks is awarded. He

possessed I Class in M.Sc. Chemistry and applied for the same under General Turn. He was issued with Hall Ticket bearing Roll No.

12PT13290201 for written examination to be held on 13.05.2012 between 10.00 a.m. and 1.00 p.m. at Rani Meyammal Girls Hr. Sec. School,

Mandaveli, Chennai-28. The results of the written examination were made available in the internet and he was placed first in the entire State in

Chemistry subject scoring 145 out of 190 marks.

3. The Petitioner was called for certificate verification through call letter dated 09.07.2012 to be held on 22.07.2012 at Presidency Hr. Sec.

School, Egmore, Chennai. Further, he was directed to bring all the certificates mentioned therein. In the said certificate list, he was directed to

bring Secondary School Leaving Certificate to ascertain his date of birth. He lost his Secondary School Leaving Certificate and consequently,

obtained certified copy of the mark issued by the Secretary, Board of Secondary Education dated 19.08.2010. He also applied for the duplicate

copy of the Secondary School Leaving Certificate through his School at Government High School, Pallipat on 18.07.2011 in application No.

78/2011. The said application was received in District Education Office on 04.08.2011 in Ref. No. 2650/A2/11 which in turn was sent to DPI,

B2 section on 05.08.2011 in Ref. No. 53 and the authorities had not issued him with the duplicate certificate. Subsequently, it transpires that the

Petitioner was issued with the Secondary School Leaving Certificate duplicate certificate which was received by him in March 2013 about which

there is no dispute.

4. The Petitioner appeared for certificate verification on 22.07.2012 with all the certificates [certified copy of the marks in regard to Secondary

School Leaving Certificate along with the xerox copy of the Secondary School Leaving Certificate]. However, the Third Respondent authorities

after verification got satisfied with the production of the certificates. However, they failed to grant him additional 5 marks for his Ph.D qualification

stating that Organic Chemistry is not equivalent without even considering the fact that Doctorate cannot be done in Chemistry which has many

branches.

5. The Petitioner was confident that he would be definitely selected since he stood first with 145 marks out of 190 marks. However to a shock and

dismay, the Third Respondent, selection authority through its website on 18.10.2012 released the provisional list of candidates selected for

appointment for the recruitment of lecturers in Government Polytechnic College for the year 2010-11 in which his name had not found a place. He

was shocked to find out that he was not selected because of the reason that he had not produced the Secondary School Leaving Certificate but

only produced the certified copy of marks obtained. Also that additional five marks was not awarded to him on the ground that Doctorate by him

is not in Chemistry but in Organic Chemistry without considering the fact that Doctorate can be obtained only in specialised subjects which has

numerous branches.

6. The stand of the Petitioner is that even if the said five marks was not awarded to him, he would be eligible for selection since he was the only

candidate who secured 145 marks out of 190 marks. Since his rightful selection was deprived by the Respondents, he has filed the present Writ

Petition before this Court.

7. Counter pleas of the Third Respondent:-

The Petitioner got the score of 145 marks in the written examination in Chemistry and he was called for certificate verification on 22.07.2012 as he

secured the eligible cut off marks in the GT communal turn. Also, his score after certificate verification was 145 marks only as he was not eligible

to be awarded weightage marks. At the time of certificate verification, he has not possess and produced the original certificate for verification as

per the provision of Clause 8 of the Notification dated 27.02.2012 and Clause 17 of prospectus and the call letter for certificate verification. The

Petitioner was not considered for further selection as he had not produced the original Secondary School Leaving Certificate for verification. The

Petitioner's name was not included in the provisional tentative list as lecturer in Government Polytechnic Colleges and the said list was uploaded on

the website on 18.10.2012.

8. The Petitioner's name was not included in the aforesaid list and the reason for his non inclusion for appointment is given under the "Remarks

Column". The Third Respondent Board in para 7 of the counter has stated that the Respondent/Board considered the case of the Petitioner and

selected him for appointment and recommended his name to the Principal Secretary to Government, Higher Education Department, Secretariat,

Chennai-9 to commence the process of issuing appointment order to him. He was included in General Turn and the last candidate in the General

Turn by name A. Ananda Jebakumar (Roll No. 12PT13030021) was moved to BC General Turn as he belongs to Backward Class community

and resultantly, the last candidate in BC General Turn by name M. Kannan (Roll No. 12PT13290655) was removed from the provisional selection

list for appointment. The above exercise was scrupulously done on the basis of marks secured by the Petitioner and by others after certificate

verification in the respective communal turn.

9. Inasmuch as the Petitioner was selected for appointment as a lecturer in Chemistry in Government Polytechnic College, he has no grievance or

cause of action to seek any more relief from this Court.

10. The Petitioner's contentions:-

The Learned counsel for the Petitioner submits that the Third Respondent miserably failed and erred in selecting the provisional list of candidates

for appointment for the recruitment of lecturers in Government Polytechnic College for the year 2010-2011 for the post of Lecturer in Chemistry in

its website on 18.10.2012.

11. The Learned counsel for the Petitioner urges before this Court that the Third Respondent/Chairman, Teachers' Recruitment Board, Chennai in

a mechanical fashion rejected the Petitioner's name for the post of lecturer in Chemistry on the ground that original Secondary School Leaving

Certificate was not produced instead he only produced the certified copy of marks.

12. It is seen from his arguments of the Learned counsel for the Petitioner that the Respondents failed to appreciate that the Petitioner stood first in

the State in Chemistry by securing 145 marks out of 190 marks. Also that the Petitioner was not awarded five marks for his Ph.D qualification

based on the reasons that he has done his Doctorate in Organic Chemistry without considering the fact that Doctorate could be done only in

specialised subjects.

13. During the last leg of his arguments, the Learned counsel for the Petitioner takes a forceful stand that certified copy of marks sheet was

produced by the Petitioner at the time of verification of certificates and the said certificate can be made use of by the Third Respondent only for the

purpose of date of birth verification. However, this factual aspects have not been looked into by the authorities concerned in a proper and realistic

fashion which has resulted in serious miscarriage of justice.

14. The Respondents' submissions:-

The Learned Special Government Pleader submits that the Petitioner scored 145 marks out of 190 marks in the written examination in Chemistry

and called for certificate verification on 22.07.2012 as he secured the eligible cut off marks in the GT Communal turn and at the time of certificate

verification, it was found that the Petitioner had not possessed and produced the original Secondary School Leaving Certificate for verification as

per the ingredients of Clause 8 of the Notification dated 27.02.2012 and Clause 17 of prospectus and also the call letter for certificate verification.

In this circumstances, the Petitioner was not considered for further selection as he has not produced the original Secondary School Leaving

Certificate for verification.

15. The Learned Special Government Pleader brings it to the notice of this Court that the Third Respondent in para 7 of his counter has averred an

undertaking that the Respondent Board considered the case of the Petitioner and selected him for appointment and recommended his name to the

Principal Secretary to Government, Higher Education Department, Secretariat, Chennai-9 to commence the process of issuing appointment order

to the Petitioner. It is pertinent to submit that the Petitioner was included in General Turn and the last candidate in the General Turn by name A.

Ananda Jebakumar (Roll No. 12PT13030021) was moved to BC General Turn as he belongs to Backward class community and consequently,

the last candidate in BC General Turn by name M. Kannan (12PT13290655) was removed from the provisional selection list for appointment. The

above exercise was scrupulously done on the basis of the marks secured by the Petitioner and others after certificate verification in the respective

communal turn.

16. Finally, the Learned Special Government Pleader while winding up his arguments contends that since the Petitioner was selected for

appointment in Chemistry, he has no grievance or cause of action to seek any more relief from this Court.

17. Analysis:-

It is not in dispute that the Petitioner had not produced his original Secondary School Leaving Certificate at the time of verification of his certificates

by the Third Respondent authorities equally there is no two opinion of the fact that at the time of verification of certificates of the Petitioner, he

produced certified copy of marks obtained at the Public examination held in April 1994. The said certificate bears the date 19.08.2010. But

however, the authorities have not accepted the said certified copy of marks.

18. At this stage, this Court aptly refers to the Division Bench judgment of this Court in W.A. No. 2778 of 2012 dated 19.12.2012 [S.K. Kannan

Vs. Teachers Recruitment Board, rep. by its Director, IV Floor, EVK Sampath Maligai, College Road, Chennai-600 006 and another] whereby

and wherein in para 6 and 7 it is observed and laid down as follows:-

6. Admittedly, the respondents have not disputed the correctness of the certified copy of the mark statement issued by the Board of Secondary

Education, Department of Government Education, Chennai. The only reason assigned by the first respondent, to reject the candidature of the

appellant, is on account of non-production of the original of the X standard mark statement. The appellant has stated that the original of the X

standard mark statement was missing and despite diligent search, he was unable to produce the original certificate. The appellant applied for a

certified copy of the mark statement through the Headmaster of the school in which he underwent his study and after complying with all formalities,

the authorities having been satisfied that the appellant is entitled for a certified copy had issued the same. Therefore, the respondents were not

justified in rejecting the appellants candidature solely on the ground that his X standard original mark statement was not available. If the

respondents had any material to show that the appellant had suppressed any fact and had secured a certified copy of the mark statement, the

situation would have been different. However, the respondents have not disputed the genuineness of the certificate. That apart, the appellant after

completing his X standard has completed his Higher Secondary course, thereafter completed his graduation and subsequently has also qualified

himself as a Tamil Pandit. Thus, non production of original of the X standard mark statement ought not to have been put against the appellant.

Therefore, in the light of the above facts, though the prayer sought for is only for issuance of a Writ of Mandamus, this Court is fully empowered to

mould the relief.

7. For all the above reasons, the writ appeal is allowed and the impugned order is set aside and the respondents are directed to consider the

candidature of the appellant for recruitment to the post of B.T. Assistant in Tamil in any of the backlog vacancies of 2008-09, 2009-10 and 2010-

11 and or in the vacancies in Minority Languages and subjects by following the State Level Employment Seniority to which post he was found

eligible for selection, without insisting upon the production of the original of the X standard mark statement and by accepting the certified copy of

the X standard mark statement issued by the Board of Secondary Education, Department of Government Examinations, Chennai. The respondents

shall pass appropriate orders in this regard, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently,

connected Miscellaneous petition is closed.

19. A cursory reading of the aforesaid judgment in W.A. No. 2778 of 2012 dated 19.12.2012 pellucidly makes it clear that by non production of

original of the X standard mark statement ought not have been put against the Petitioner by applying the aforesaid order to the facts of the present

case on hand, in the considered opinion of this Court.

20. That apart, in the aforesaid judgment in W.A. No. 2778 of 2012 dated 19.12.2012 as stated supra in para 6 it is observed that the appellant

applied for a certified copy of the mark statement through the Headmaster of the School in which he underwent his study and after complying with

all formalities, the authorities having been satisfied that the appellant is entitled to a certified copy had issued the same. Therefore, the respondents

were not justified in rejecting the appellants candidature solely on the ground that his X standard original mark statement was not available.

21. The said observation as in the aforesaid order in para 6 squarely applies to the present case on hand. It cannot be gainsaid in the instant case

on hand, that the Petitioner has produced the certified copy of marks in respect of Secondary School Leaving Certificate which he had not

produced admittedly at the time of verification of the original certificates by the authorities concerned. Since the certified copy of marks is a valid

certificate issued by the Secretary, Board of Secondary Education dated 19.08.2010 in respect of the Petitioner, this Court is of the considered

view that the rejection of the said certified copy of marks obtained by the Petitioner at the Public Examination held on April 1994 is clearly

unsustainable in the eye of law.

22. Dealing with the plea that the Petitioner was not awarded with an additional of five marks for his Ph.D qualification, it is to be pointed out that

the authorities have not taken into account the said Doctorate because of the simple reason that the Petitioner has not obtained the same in

Chemistry subject but only obtained in Organic Chemistry, it is to be borne in mind as per G.O.Ms. No. 72, Higher Education (K2) Department

dated 30.04.2013 speak of Public Services-Equivalence of Degree-Various educational qualifications possessed by the candidates as

equivalent/not equivalent to the courses offered by the various Universities-Recommendation of Equivalence Committee. It is clear that the First

Respondent has passed an order in S. No. 4 which runs as under: Resolution No. 2:

Public Services-Educational qualification-Consideration of various Educational qualifications possessed by the candidates as equivalent to the

qualification prescribed for the post of Teachers in the School Education Department.

S. No. Subject

4

M.Sc. Organic Chemistry, Analytical Chemistry, Inorganic Chemistry, Polymer Chemistry, Physical Chemistry, Industrial Chemistry and 5 year

integrated Chemistry to M.Sc. Chemistry

Equivalent

At this juncture, a mere running of the eye over the spirit and tenor of the G.O.Ms. 72 Higher Education (K2) Department dated 30.04.2013

latently and patently and also unerringly exemplify that M.Sc. Organic Chemistry etc., is equivalent to M.Sc. Chemistry. In the instant case on

hand, the Petitioner is possessing Doctor of Philosophy, Chemistry-Organic Chemistry. He having secured the said Degree Certificate in the year

2012 issued by the University of Madras.

23. It may not be out of place for this Court to make a pertinent mention that in the order of Full Bench of Madurai Bench of Madras High Court

dated 29.11.2013 in W.P.(MD) Nos. 16181, 16051, 16052, 15660 and 16780 of 2012 and 18793 of 2013 and Contempt Petition (MD) No.

637 of 2013 between Nadar Thanga Shubha Laxman A. Vs. The State of Tamil Nadu, Rep. by its Principal Secretary, Department of School

Education, Fort St. George, Chennai-9 and another [where one of us (M. Venugopal, J) was a party)] wherein in para 21 to 25 it is observed and

laid down as follows:

21. In yet another judgment of the Apex Court in Udai Singh Dagar and Others Vs. Union of India (UOI) and Others, , while considering almost a

similar issue with regard to protecting the rights and privileges of diploma and certificate holders in Veterinary Science, it was held that not only a

vested or accrued right but also inchoate right is protected. Strong reliance in this behalf has been placed on a decision in Court of Appeal in Chief

Adjudication Officer vs. Maguire, reported in (1999) 2 All ER 859 (CA) . It is relevant to extract paragraph 71 of the above said judgment:-

71. The expression unless a different intention appears contained in Section 6 of the General Clauses Act, thus, in this case, would be clearly

attracted. A right, whether inchoate or accrued or acquired right, can be held to be protected provided the right survives. If the right itself does not

survive and either expressly or by necessary implication it stands abrogated, the question of applicability of Section 6 of the General Clauses Act

would not arise at all. (See Bansidhar and Others Vs. State of Rajasthan and Others, and Thyssen Stahlunion GmbH Vs. Steel Authority of India

Ltd., .

22. The above observation of the Apex Court clearly answers the doubt raised in this Reference that a right whether inchoate or accrued or

acquired right can be held to be protected, provided the right survives. In the light of the said principle, if the case on hand is considered,

admittedly, the equivalence committee has considered and approved the equivalent nature of the degree and certificate obtained by the candidates.

Similarly, the Government Order issued by the Government also agrees with the validity of the degree, therefore, from the date the degree was

obtained by the candidate, the right is accrued, hence the same should be protected. While so, giving a different meaning that the validity of the

degree will have prospective effect or retrospective effect is uncalled for. To make it even further clear, we wish to mention at the risk of repetition

that when both the equivalence committee and the Government Order issued by the State Government have not chosen to restrict the validity of

the degree obtained in any one of their orders, it goes without saying that the validity of the degree from the date of acquisition will stand to benefit

the candidates, therefore, the question of introducing the prospective or retrospective ruling will tantamount to violent interpretation against the

settled legal position. In this context, it is useful to refer to the judgment of the Apex Court in the case of B.S. Vadera Vs. Union of India (UOI)

and Others, wherein, the law is well declared that an accrued and acquired right of a person cannot be taken away with retrospective effect.

23. Also, in the present case, neither the Equivalence Committee nor the Government Orders in G.O.Ms. Nos. 72, dated 30.04.2013 and 117,

dated 02.07.2013, confined the validity of the degree obtained by the candidates to operate prospectively, therefore, as per the above judgments,

when the vested rights are created from the date of their acquisition of equivalent degrees, the respondents cannot take a stand that the degrees

obtained by the petitioners will only have prospective effect from the date of issuance of Equivalence Certificate. When both the Equivalence

Committee and the Government Order have consistently not mentioned the effect of the validity of the degree, it is not proper to hold prospective

by any one, more so, by the Court. That apart, a degree or a certificate issued by any University or competent educational authorities always have

the effect on par with a decree issued by a competent civil court. Besides, it is well settled legal position that even an executing court cannot go

behind its decree and this principle will mutatis mutandis undoubtedly apply to the case on hand as well.

24. It must be stressed here that fairness demands that no court can afford to have more than one view on one or the same issue; lest, there will be

inconsistency. Consistency and Uniformity are the basic virtues inherent in every court proceedings. The law is meant to protect people from

inconsistency bred by any legal confusion and confrontation. When two of the learned single Judges' orders have not been addressed nor over-

ruled on the vital point, we are duty-bound to iron out the inconsistency to have uniformity and consistency on the issue involved. To uphold the

"one court-one view" principle, in turn, to restore the consistency and uniformity, we hereby hold that the view taken in Geetha's case is incorrect,

therefore, it is over-ruled.

25. In view of the above settled position and for the foregoing reasons, we hold that the equivalence certificate issued by the committee constituted

by the Government declaring that the degrees obtained from one University is equivalent to the degrees obtained from yet another University

cannot be held to be only prospective in operation but will have its effect and validity right from the date of issuance, therefore, with due respect to

the Hon'ble Division Bench, the view taken in N. Geetha's case is incorrect. Accordingly, the reference is answered.

24. Also that in the prospectus issued by the Teachers Recruitment Board in respect of direct recruit of lecturers in Government Polytechnic

Colleges for the year 2012, Clause 17 under the head "Certificate Verification" speaks as follows:-

17. Certificate Verification (CV): Candidates, short-listed as above, will be called for Certificate Verification issuing a Call Letter. Candidates

should bring the original and attested copies of all certificates to the Certificate Verification centre at Chennai, as stated in the call letter for

Certificate Verification. Weightage marks as shown below will be awarded after Certificate Verification.

(Table)

These marks will be added for preparing the final merit-cum-communal selection list. Teaching Experience Certificate, issued by Principal of the

Institution in the prescribed form (Specimen copy of the Teaching Experience Certificate is attached in Annexure-III) and countersigned by the

officer concerned, should be produced. The Teaching Experience Certificate could be obtained after the cut-off date (i.e., Last Date for the

Submission of Application Form 21.03.2012) only. The certificates for higher qualifications, shown above, should have been obtained before the

last date of submission of filled-in application forms.

From the tenor of Clause 17 of the Prospectus as mentioned supra, it is candidly clear that for Ph.D in the relevant subject Engineering and for non

Engineering subjects, five marks are to be awarded. Only for not producing the original Secondary School Leaving Certificate for verification, the

Petitioner was not considered for appointment by the Third Respondent. Eventhough the Petitioner at the time of verification of certificates by the

authorities of the Third Respondent had not produced the original Secondary School Leaving Certificate, but he produced the xerox copy of the

original Secondary School Leaving Certificate and apart from that, admittedly he had produced the certified copy of marks duly issued by the

Secretary, Board of Secondary Education dated 19.08.2010 in respect of the Public Examination held on April 1994 which clearly indicates the

marks obtained by him on the subjects mentioned therein. The certified copy of marks is a valid certificate issued by the Secretary, Board of

Secondary Education and even in the absence of original Secondary School Leaving Certificate admittedly not produced by the Petitioner at the

time of verification of certificates of the Third Respondent authorities, even then the Third Respondent authorities could have acted upon the

certified copy of marks produced by the Petitioner at the time of verification of his certificates. However, such a course has not been resorted to

by the Third Respondent authorities and as a result, the Petitioner has suffered hardship and inconvenience and also obviously lost his chance of

appointment as lecturer.

25. To put it succinctly, the action of the Third Respondent authorities in not taking into account the certified copy of marks produced by the

Petitioner at the time of verification of certificate is invalid and illegal one, in the considered opinion of this Court. Also that if the Petitioner had

produced the original certificate for verification, he would have been selected because of the momentary error committed by the Third Respondent

authorities the Petitioner had lost the chance of appointment.

26. In this connection, this Court pertinently points out that in M.P. 4 of 2012 in W.P. No. 29212 of 2012 as directed the Respondents to keep

one post vacant till the disposal of the Writ Petition. In fact in M.P. No. 4 of 2012, the Petitioner has sought for passing of an order by this Court

in directing the Respondents to reserve post for the Petitioner in Chemistry 2010-2011 etc., because of the orders passed by this Court in M.P.

No. 4 of 2012 in W.P. No. 29212 of 2012, the Petitioner is entitled to be considered for one post of Chemistry Lecturer in Government

Polytechnic College has opined by this Court.

27. It is to be noted that the Petitioner has been furnished with the reply of the Chief Minister Special Cell for his petition No. 2013/748113/MB

dated 25.09.2013 that based on the final direction of Hon"ble High Court, suitable action will be initiated vide TRB Rc. 307/A6/2013 dated

04.10.2013.

28. Even though the Third Respondent in para 7 of the counter has stated that the Respondent/Board considered the case of the Petitioner and

selected him for appointment and recommended his name to the Principal Secretary to Government, Higher Education Department, Secretariat,

Chennai-9 to commence the process of issuing appointment to him. The Learned counsel for the Petitioner brings it to the notice of this Court that

till date, the Petitioner has not been issued with the appointment order. In view of the fact that the certified copy of marks certificate of the

Petitioner is a valid one for the loss of his original Secondary School Leaving Certificate and if one takes into account the certified copy of marks

certificate of the Petitioner, in the considered opinion of this Court, the Respondents will have to take into account the said certificate and also to

pass necessary orders in considering the case of the Petitioner for appointment as Chemistry lecturer and the Respondents/authorities are also to

implement the averments made by the Third Respondent in para 7 of the counter filed by the Third Respondent in true letter and spirit and pass

necessary appropriate speaking orders on merits in the manner known to law and in accordance with law within a period of three weeks from the

date of receipt of a copy of this order. With the aforesaid observations, the Writ Petition is disposed of. Consequently, connected Miscellaneous

Petition is also closed. No costs.

Foot Note : This judgments has been sourced from the court website. The tables in the judgment may not be aligned.