

Bombay High Court

Madhusingh Gulabsingh Jadhav vs Shri Samarth Vyaym Mandir on 9 April, 2013

Bench: S.J. Vazifdar, R.Y. Ganoo

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2550 OF 2012

Madhusingh Gulabsingh Jadhav  
301, Swami Samarth Prakash Apt.  
A-512-513, Ulhasnagar No.4,

District Thane

.. Petitioner

Versus

1. Shri Samarth Vyaym Mandir,  
Dadar,  
a trust, Kale Guruji Marg,  
Gokhale Road,

Dadar,  
Mumbai 400 028.

2. The Director,

Maharashtra State Education  
Research and Training Council,

Pune 30 through AGP,  
Bombay High Court,  
Mumbai.

3. Deputy Director of Education,  
Mumbai, Charni Road,  
Mumbai 04  
through AGP Bombay High Court,

Mumbai.

4. State of Maharashtra,  
through AGP,  
High Court, Mumbai.

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5. Shri Samarth Vyaym Mandir,  
Dadar, Mumbai through

its secretary, having office at  
Kale Guruji Marg,

Gokhale Road,  
Dadar, Mumbai 400 028.

6. Minal J. Pathak,

Age: Adult, res. At  
168/302, Madhuban Co-op. Hsg. Soc.  
Opp. Tilak Nagar Police Stn.,  
Chembur, Mumbai 89.

7. Bhopal Regional Director

Western Regional Committee,  
(NCTE), Manas Bhavan,

Shyamla Hills,  
Bhopal 462 002,  
Madhya Pradesh

..Respondent/s

Mr.Mihir Desai a/w. Mr.Kedar B. Dighe i/b. Mr.Vishal Khanavkar for

the Petitioner.

Mr.Mandar Soman for the Respondent nos.1 and 5.

Ms.Sindha Sreedharan AGP for the State- Respondent Nos.2 to 4.

Mr.S.C.Naidu a/w. Mr.Shaikh Nasir Mashih & Associates.

Mr.Uday Warunjikar for the Respondent No.7

CORAM : S.J.VAZIFDAR &

R.Y.GANOO, JJ.

Reserved for Order on : 18th March, 2013 Order Pronounced on : 9th April, 2013 pps 2/18  
JUDGMENT : (Per S.J. Vazifdar, J.)

1. Respondent no.1 is a trust which runs the 5 th respondent college Shri Samarth Dnyan Mandir. Respondent nos. 2, 3 and 4 are the Director- Maharashtra State Education Research and Training Council, Pune, the Deputy Director of Education, Mumbai and the State of Maharashtra respectively. Respondent no.6 is one Mrs. Minal J.

Pathak. Respondent no.7 is Bhopal Regional Director, Western Regional Committee of NCTE.

2. The petitioner seeks an order setting aside the impugned order dated 6.8.2012 passed by respondent no.2 and an order directing the respondent to permit him to continue as the Principal/head in the 5 th respondent college which is run by the first respondent.

3. The petitioner, in 1983, obtained a B.Com Degree from Marathwada University in second class. In 1986 he obtained a B.Ed.

(Physical) degree from the Bombay University. In 1993 he obtained a pps 3/18 M.P.Ed. post graduate degree from Marathwada University in first class.

4. On 16.6.1986 the petitioner was appointed by the first respondent as an Assistant Teacher in the 5th respondent which is a D.T.Ed. College. The appointment was approved by respondent no.3 on 2.8.1988. On 29.11.2007 he was appointed as the Principal/head of the 5th respondent college by the first respondent. On 7.4.2008 and 25.4.2008, respondent nos.2 and 3 respectively confirmed the appointment.

5. Respondent no.6 - Mrs. Minal Pathak was appointed as an Assistant teacher in the college in the year 1996.

6. Representations were thereafter made, including by politicians questioning the petitioner's appointment as the Principal of the college. The first respondent had supported the petitioners appointment as Principal. It is not necessary to refer to the pps 4/18 proceedings adopted by the petitioner and to the orders passed therein.

Admittedly, ultimately a show cause notice dated 24.5.2012 was issued and the petitioner's reply was considered. The only question is whether the petitioner had the requisite qualification for being appointed as the Principal of the 5th respondent college. The qualifications are contained in the "Norms and Standards for Elementary Teachers Educations Programme", clause 5 thereof.

7. The qualification in the present case reads as under :-

"5.a) Principal Head I. Academic and professional qualification will be as prescribed for the post of lecturer.

ii. At least five years experience of teaching in elementary teacher education institutions.

b) Lecturer Good academic record with M.Ed/M.A. (Education) with 55% marks, preferably with specialisation in elementary education.

OR Good Academic record with Master's Degree with 55% marks in the relevant school subject and Bachelor of Elementary Education (B.El.Ed.) or B.Ed. preferably with specialisation in elementary education, and with five years teaching experience in recognized elementary schools."

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8. As recorded by our order dated 26.2.2013, Mr. Naidu, the learned counsel appearing on behalf of respondent no.6 conceded for the purpose of this writ petition that the challenge to the petitioner's qualification in respect of "relevant school subject" would not be pressed. The order further recorded that, in other words Mr. Naidu stated that if the petitioner had the requisite qualification, it shall be deemed to be in the "relevant school subject".

9. As we noted earlier, the petitioner's qualifications are B.Com.

B.P.Ed, (Bachelor of physical education) and M.P.Ed. (Master of physical education). Even if B.P.Ed. is considered to be an additional degree as contended by the petitioner, it would make no difference to his case. The NCTE Act, 1993 came into force with effect from 25.12.1995. Simultaneously, the said norms and standards for elementary teachers education were issued. It was only thereafter, on 29.11.2007 that the petitioner was appointed as a Principal of the 5 th respondent college.

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10. It is necessary to note a few other aspects. Mr. Naidu invited

our attention to the fact that on 10.1.2008 itself i.e. within less than two months of the petitioner's appointment as the Principal, the Deputy Director sought instructions whether the same can be approved. The letter, in fact, indicates that the appointment could not be made. Thus, the petitioner's appointment as a member was questioned from the outset. That the approval was granted nevertheless on 7.4.2008 is another matter.

ig Mr. Desai invited our attention to the fact that respondent no.7 had by a letter dated 23.10.2009 stated that she was unable to perform certain duties due to an eye problem. Mr. Naidu contended that she did not thereby give up her claim to the post of Principal. Be that as it may, whether she did or did not is not relevant to the main question, namely whether the petitioner is qualified to hold the post of Principal. We do not intend by this order directing the respondents to appoint respondent no.6 as the Principal. The appointment to the post which would fall vacant as a result of this order would be made by the concerned respondents in accordance with law.

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11. The impugned order holds that the petitioner does not possess the Master's Degree in academic or professional qualification as prescribed by the NCTE and that he was therefore not qualified to be appointed as a Principal of the college. The petitioner did not contend that the above norms were not applicable. It is necessary, therefore, only to examine whether or not the petitioner was qualified to be appointed as the Principal as per the said norms.

12. Clause 5(a) stipulates that the academic and professional qualification for the post of Principal/head will be as prescribed for the post of lecturer. Clause 5(b) in turn stipulates the qualifications of a lecturer. The first part thereof admittedly does not apply to the petitioner. It is the second part that we are concerned with namely, whether the petitioner has a Master's Degree and a Bachelor of Education (B.El.Ed) or B. Ed.

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13. Clause 5, therefore, requires a person applying for the post of Principal/Head to have an "academic" as well as a "professional qualification". This is clear from the use of the words academic and professional. In a given case a professional qualification may well also fulfill the requirements of an academic qualification as we will indicate later. In this case however it does not as we shall indicate later.

14. Mr. Naidu firstly contended that the Masters degree referred to in the second part of clause 5(b) is an academic qualification and not a professional qualification. In other words, according to him, the masters degree referred to in clause 5(b) is to an academic degree and not a professional degree. He further submitted that the masters degree in physical education which the petitioner has is a professional qualification and not an academic qualification. The Master's degree in physical education is an essential qualification for a teacher to seek appointment as Principal in an institution offering physical education.

The 5th respondent however is a college of elementary education. The pps 9/18 submissions are well founded.

15. In the case of Dr.M.S.Mudhol vs. S.G.Halegkar reported in (1993) 3 SCC 591 the statutory rules prescribed the essential qualifications to the post of Principal of the School in question, inter alia, to be a Masters Degree with at least 2 nd Division from a recognized University or equivalent. The rules also required a degree in teaching from a recognized University or equivalent. The Supreme Court held that the Masters Degree was an academic qualification while an M.Ed. degree was a professional qualification. Paragraphs 1 and 4 of the judgment read as under:

"1. The controversy in the present petition relates to the eligibility of the 1st respondent to occupy the post of the Principal of the Delhi Kannada Senior Secondary School which is being run in New Delhi. The first respondent was appointed as Principal of the School in the year 1982. The statutory rules prevalent at the relevant time prescribed the essential qualifications for the said post as follows: I) Master's degree with at least 2nd Division from a recognized university or equivalent.

II) A degree in teaching from a recognized university or equivalent.

III) Experience of 10 years teaching as a Vice- Principal/P.G.T. (Post-Graduate-Teacher) in Higher Secondary School or Inter College.

pps 10/18 The condition with regard to the 2nd Division was relaxable in the case of the candidates belonging to the same school and also in the case of the Scheduled Caste and Scheduled Tribe candidates. The desirable qualifications were :

I) Experience in administrative charge of a recognized Higher Secondary School/College.

II) Doctorate Degree.

III) M.Ed. Degree from a recognized university."

"4. The contention of the respondents that M.Ed. (sic M.A.) 2 Division was equivalent to M.A. (sic M.Ed) 2 nd nd Division is obviously fallacious. The former is the academic qualification while the latter a professional qualification. Secondly, the course of the former is wholtime spread over no less than two years while the course of the later is part-time and is spread over one year. In any case, the statutory rule with regard to the essential qualifications is very clear inasmuch as it requires both academic Masters' degree and the teaching degree, the latter being not the substitute for the former. What is further, while laying down the qualifications with regard to the academic degree viz. The Masters' degree, the rule insists upon 2nd Division for such degree. It does not insist upon a 2nd Division Degree in teaching. A pass degree is sufficient in its eyes. It would, therefore, amount to distorting the requisite qualifications under the rules, to attempt to substitute the teaching qualification for the academic qualification and exchanging the divisions of the two. In fact, it appears that the Director of Education had himself at one time not approved the qualifications of the 1 st respondent for the post of the Principal since he did not have the 2nd Division degree in M.A. However, it is not known what transpired subsequently. After a lapse of few months, he acquiesced in the qualifications of the 1st respondent to hold the said post. It is for this reason that we had issued notice to the Director of Education who is the 2nd respondent to the petition. An affidavit has been filed on pps 11/18 his behalf but except for the rigmarole, we do not find anything in the affidavit to enlighten us either on the interpretations of the said rule or on the reasons which led him to change his earlier decision in the matter. We have, therefore, no doubt that the 1st respondent did not have the requisite educational qualifications to be selected for the post of Principal."

16. The judgment clearly applies to the case before us. In the case before us also, the academic qualification viz. Master's degree with 55% marks in the relevant school subject is different from and in addition to the professional qualification viz. B.El.Ed. or B.Ed.

Moreover the academic qualification must be with 55% marks in the relevant school subject whereas there is no stipulation regarding the marks obtained in the professional qualification B.El.Ed or B.Ed.

17. In Ramsevak Singh's case (1999) 2 SCC 189, (supra) the appellatant and the respondent had

applied for the post of Principal. The management appointed the appellant to the post. Respondent no.1 challenged the same before the Allahabad High Court. The High Court held that the appellant did not possess the requisite qualification as the Master's Degree in Education held by him was not an academic pps 12/18 qualification. The High Court held that M.Ed. Degree was a professional degree and not an academic degree and therefore the appellant lacked the appropriate qualification. Paragraphs 3 and 7 of the judgment read as under :

"3. Qualification required for appointment as Principal is as follows:

(a) A consistently good academic record (that is to say, the overall record of all assessments throughout the academic career of a candidate) with first or high second class (that is to say, with an aggregate of more than 54 per cent marks) Master's Degree or an equivalent degree of a foreign university in one of the subjects taught in the College or in a subject allied or interconnected therewith; and

(b) A doctorate degree in one of the subjects taught in the College, with 7 years' experience of teaching degree classes:

Provided that if a candidate possesses 15 years or more experience of teaching degree classes or 10 years or more experience of teaching postgraduate classes or if he is or has been a confirmed Principal of four years or more standing of any degree college, the Selection Committee may relax the requirement of doctorate degree: Provided further that if the Selection Committee is of the view that the research work of a candidate as evident either from his thesis or from his published work is of a very high standard, it may relax any of the qualifications prescribed in sub-clause (a).

.....

7. Therefore, the principal question that falls for consideration is whether M.Ed. Degree possessed by the appellant was a qualification for the purpose of appointment as a Principal. In Dr Prit Singh the qualification required was a Master's Degree in any subject pps 13/18 and also a Degree in Education, whereas in the present case, the qualification required is Master's Degree or an equivalent degree in one of the subjects taught in the College or in a subject allied or interconnected therewith. The distinction between the requirement of qualification in these two cases is obvious. In Dr Prit Singh the required qualification was a Master's Degree and a Degree in Education as an additional qualification. In the present case, the College imparts education in teaching as well and, therefore, Master's Degree in Education is a degree in respect of a subject taught in the College. We cannot apply the ratio settled in Dr Prit Singh irrespective of the qualifications required for a particular post. In the present case, a Master's Degree required can include a teaching subject and, therefore, M.Ed. Degree possessed by the appellant was held to be a sufficient qualification by the Commission. It cannot be said that the principles stated by this Court in Dr Prit Singh can be applied in the present case because in Dr Prit Singh the qualifications were a Master's Degree and a Degree in Education, whereas in the present case, a Master's Degree in any subject taught in the College was the requisite qualification. We think the appellant satisfied the same. In regard to the



other qualification of "consistently good academic record" which had been relaxed, this has not been seriously disputed."

18. It is clear from paragraph 7 that the appellant succeeded in that case in view of the relevant rules which prescribed the qualification to be a Masters Degree or equivalent degree in one of the subjects taught in a college or in a subject allied or interconnected therewith. In that case, the college imparted education in teaching as well and therefore pps 14/18 the Masters Degree in Education was a degree in respect of the subject taught in the college. Clause 5 in the present case however, is entirely different. It merely refers to a Masters Degree in the relevant school subject and not to an equivalent degree in one of the subjects taught in the college. Mr.Naidu had conceded that if the petitioner established that he had a Master's degree he would not contend that it was not in the relevant school subject. That however would not make a difference in this case as it has not been established that an M.P.Ed is in the case an educational qualification for any reason. Had that been established, it may well have been a different matter.

19. Thus, in the present case the petitioner lacks a Masters' Degree as an academic qualification. The reference to Masters Degree in clause 5 is to an academic qualification and not a professional qualification. Clause 5 requires both, an academic and a professional qualification. The petitioner's academic qualification is B.Com., which is not equivalent to M.Ed.Degree. The petitioner, therefore, lacks a Masters Degree as an academic qualification required by clause pps 15/18

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20. The petitioner also lacks the professional qualification prescribed in Clause 5. Clause 5 requires a person to have a Bachelor of Elementary Education or a B.Ed. The petitioner has only a B.Com.

As rightly contended by Mr. Naidu, a professional degree in physical education, which the petitioner has, is entirely different from a professional degree in Elementary Educational required by clause 5 viz. B.El.Ed. or B.Ed. Further, there is nothing to indicate that the petitioners B.P.Ed. or M.P.Ed. degree is equivalent to either a Bachelor of Elementary Education degree or a B.Ed. degree.

21. Mr. Naidu's reliance upon the judgment of Supreme Court in case of Pramod Kumar vs U.P. Secondary Education Services Commission reported in (2008) 7 SCC 153 in support of his submission that the qualification should have been possessed on the date of the appointment and not at a later stage unless the rules so permit, is also well founded. This was in answer to Mr. Desai's pps 16/18 reliance upon the subsequent rules relating to the qualification for the said post.

22. Faced with this, Mr. Desai relied on the judgment in the case of Dr.M.S. Mudhol (supra) to contend that as the petitioner had occupied the post for about four years, he ought not to be removed from the same. He relied upon paragraph 6 of the judgment which reads as under :-

"6. Since we find that it was the default on the part of nd the 2 respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualification as a result of which the

1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, in spite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2 nd respondent had chosen to acquiesce in the appointment, it would be inequitable to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same."

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23. The present case is clearly distinguishable. In that case the

petitioner occupied the position although he was not qualified to do so for about 12 years and the same was questioned/challenged after a delay of about 12 years. Firstly, in the present case, the delay, if any, is four years. Secondly, the approval was granted three years ago although the Deputy Director had by his letter dated 10.1.2008 i.e. within two months of the order of appointment stated that the appointment could not be approved. He drew the attention of the Director to the NCTE norms. Further, still by a letter dated 19.5.2009 the Director of Education filed a report to the effect that the petitioner did not have the requisite qualification.

24. In the circumstances, the writ petition is dismissed. The interim order shall continue upto and including 30th June, 2013.

[R.Y.GANOO, J.]

[S.J.VAZIFDAR, J.]

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