

HIGH COURT OF JAMMU & KASHMIR

AT JAMMU

SWP No.1563 / 2005 & connected MPs.

Date of Order : 26. 07.2016

Ajeet Kumar

vs.

State and ors.

Coram :

Hon'ble Mr. Justice B.S.Walia, Judge

Appearing counsel :

**For Petitioner(s) : Mr. S.S.Lehar Sr. Advocate
with Mr. Aditya Sharma, Advocate.**

**For Respondent(s) : Mr. Ravinder Gupta AAG for R-1.
Mr. F.A.Natnoo Advocate for R Nos. 2&3.
Mr. S.K.Shukla Advocate for R-4.**

**i/ Whether to be approved for reporting : Yes
in Digest/Journal**

**ii/ Whether to be approved for reporting : Yes / No
in Press/Media.**

Judgment.,

1. Instant writ petition has been filed with a prayer for the issuance of a writ of Certiorari for quashing Annexure D bearing No. PSC/DR/+2/Sanskrit/04 dated 18.08.2005 (intimating selection, besides recommending appointment of respondent No. 4 as Lecturer in Sanskrit (10+2) in School Education Department), as also for the issuance of a writ of Mandamus, directing the respondents to consider / appoint the petitioner as Lecturer, Sanskrit.

2. That brief facts of the case leading to the filing of the instant writ petition are that vide advertisement Annexure B dated 10.09.2003, applications were invited by the Jammu & Kashmir Public Service Commission (hereinafter referred to as the Commission) from eligible

candidates possessing amongst other qualifications, Master' Degree in the relevant subject for the post of Lecturer in Sanskrit (10+2) under the RBA category. Petitioner, respondent No. 4, besides other candidates applied for the said post. Pursuant to conduct of selection process, respondent No. 3, vide Annexure D, bearing No. PSC / DR / +2 / Sanskrit / 04 dated 18.08.2005, while intimating selection of respondent No. 4, recommended his appointment as Lecturer in Sanskrit (10+2) in School Education Department. Pursuant thereto, respondent No. 4 was appointed as Lecturer, Sanskrit (10+2), School Education. Although, the order of appointment is not on record, however, pursuant to his appointment as Lecturer, Sanskrit (10+2), School Education in 2005, respondent No. 4 continues to be in service.

3. That grievance of the petitioner is that despite his possessing the essential qualifications for the post of Lecturer in Sanskrit (10+2) i.e. Master' Degree in the relevant subject i.e. Sanskrit as evident from certificate Annexure A, consequentially being eligible for the post, yet he was ignored, instead, respondent No.4 who was not possessing Master' degree in the relevant subject and was merely Acharya (Master of Arts) in Jyotisha, therefore, not eligible to be appointed as Lecturer in Sanskrit, was illegally selected and appointed pursuant to recommendation by respondent No. 3 vide order Annexure D dated 18.08.2005.

4. That learned counsel for the petitioner submitted that :

- i) Post advertised was of Lecturer in Sanskrit (10+2) ;
- ii) Essential qualifications for the post as per advertisement was Master' Degree in the relevant subject i.e. Sanskrit, therefore only a candidate possessing Master' degree in the relevant subject could be said to be

possessing eligibility for consideration and appointment as Lecturer in Sanskrit ;

iii) Respondent No. 4 was not MA in Sanskrit but an Acharaya i.e. MA in Jyotisha (Sanskrit Traditional subjects) therefore, not eligible for consideration and appointment as Lecturer in Sanskrit ;

iv) Sanskrit and Jyotisha were two different subjects ;

v) Difference in the two subjects was evident not only from the admission of respondent No. 4 in paragraph No. 11 of the objections, but also from Annexure E as per which UGC while conducting National Eligibility Test for Lecturership in Indian Universities and Colleges in seventy seven different subjects treated Sanskrit and Traditional Sanskrit subjects as two different subjects by assigning separate codes for the two subjects ;

vi) The points in issue were squarely covered by the decision of the Hon'ble Supreme Court in case titled as Ganapath Singh Gangaram Singh Rajput vs Gulbarga University - (2014) 3 SCC 767.

5. That the State filed objections taking up the stand that :

i) Stand on merits of the case was to be addressed by the Commission since it was merely the appointing authority and selection had been made by the Commission ;

ii) Academic issues must be left to be decided by an expert body and the Court ought not to act as an appellate authority in the selection made by the Commission.

6. That the Commission also filed objections, defending the selection, consequentially its recommendation for appointment of respondent No.4 as Lecturer in Sanskrit (10+2) on the ground :

- i) Of respondent No. 4 possessing Master' Degree in Jyotisha ;
- ii) Qualification of Acharaya in Jyotisha having been treated equivalent to MA Sanskrit by it in view of the University of Jammu informing vide Annexure R-1 dated 28.06.2005 of recognition of the examination of Acharya in Sidhant Jyotisha and Acharya in Phalit Jyotisha as equivalent to MA in Sanskrit by it.

7. That respondent No. 4 defended his selection and appointment as Lecturer in Sanskrit (10+2) by filing objections / written submissions, contending therein that :

- i) Qualification prescribed for the post of Lecturer in Sanskrit (10+2) was not “MA Sanskrit” but Master' Degree in the “relevant subject”, therefore, a distinction had to be drawn between the term, Master’s Degree in ‘relevant subject’ and ‘M.A Sanskrit or Master' Degree in ‘ concerned subject’ ;
- ii) As per Annexure R-3 i.e. office memorandum dated 10th July 1973 issued by the Govt., of India, examination of Shastri and Acharaya conducted by the Rashtriya Sanskrit Sansthan, New Delhi had been treated equivalent to B.A. and M.A. respectively for the purpose of employment under the Central Government ;
- iii) As per Annexure R-4 i.e. communication from the Deputy Registrar, University of Jammu dated 27th October 1992 and the list attached thereto addressed to Shri Ranbir Kendriya Vidyapeeth, Jammu, it had been clarified that examination of Acharya in Phalit Jyotish of the Rashtriya

Sanskrit Sansthan, New Delhi amongst other examinations had been recognised equivalent to the degree of MA in Sanskrit / Sahityacharya of the Jammu University.

iv) University of Jammu having taken the view that Acharya i.e. Master of Arts in Jyotisha was equivalent to a Master' Degree in the relevant subject for the post of Lecturer Sanskrit, therefore, in view of settled law, the same could not be interfered with by the Court ;

v) Commission had treated him eligible on the basis of clarification given by the Jammu University vide Annexure R-1 dated 28.06.2005 intimating equivalence of examination of Acharaya in Sidhant Jyotish and Acharaya in Phalit Jyotish with the examination of MA Sanskrit of Jammu University ;

vi) Sanskrit and Traditional Sanskrit subjects were equivalent since the petitioner had done Shastri (equivalent to BA) in traditional subjects, whereafter he did MA Sanskrit and had the two subjects not been equivalent, then in that eventuality, the petitioner would not have got admission in MA Sanskrit ;

vii) There was no challenge to the order specifically appointing him as Lecturer in Sanskrit ;

viii) The petitioner's name figured at serial No. 5 of the merit list, of there being three candidates in between the selected candidate and the petitioner, who had better merit than the petitioner and were possessing the prescribed qualifications, therefore, even if the writ petition was allowed, the petitioner would not get any relief on account of his inferior merit, therefore, the writ petition was not maintainable in view of the decision of the Hon'ble Supreme Court in case reported as (2013) 4 SCC 465.

ix) Having been selected and appointed in the year 2005, he had served for more than a decade, got married in the interregnum, raised a family, was over aged to get employment elsewhere in the event of his selection and appointment being set aside.

In the light of the aforesaid stand / submissions, prayer was made that the writ petition be dismissed with exemplary costs.

8. I have heard learned counsel for the parties, perused the pleadings and considered the record referred to.

9. A perusal of the qualifications stipulated in the advertisement reveal that in order to be eligible for appointment as Lecturer, Sanskrit (10+2), a candidate was required to possess 'Master' degree in the relevant subject'. Applications were invited for filling up the posts of Lecturer in different subjects including Sanskrit. Since the advertised post was Lecturer in Sanskrit, therefore, relevant subject for appointment to the post of Lecturer in Sanskrit would mean a Master' Degree in Sanskrit i.e. MA Sanskrit.

10. Respondent No. 4 is not MA in Sanskrit but Acharaya in Jyotisha. Sanskrit and Jyotisha are different and distinct subjects. While Jyotisha is the Sanskrit name for Indian astrology and astronomy, Sanskrit, on the other hand as per definition by the Free Dictionary means 'perfected' or 'refined', being one of the oldest, if not the oldest, of all attested human languages, 'the mother of all languages,' the dominant classical language of the Indian subcontinent and one of the 22 official languages of India, also the liturgical language of Hinduism, Buddhism, and Jainism and that originally, Sanskrit was considered not to be a separate language, but a refined way of speaking, a marker of status and education, a form of language studied and used by Brahmins.

11. The fact that Sankrit and Jyotisha are different and distinct subjects is also evident from the advertisement, Annexure E issued by the University Grants Commission for the conduct of National Eligibility Test, inter alia for Lecturership in Indian Universities and Colleges in seventy seven different subjects where Sanskrit is assigned code 25 and Sanskrit Traditional subjects (including Jyotisha / Sidhanta Jyotisha / Navya Vyakarna / Vyakarna / Mimarnsa / Navya Nayaya / Sankhya Yoga / Tulanatmaka / Darsana / Shukla Yajurveda / Madhav Vedanta / Dharma Sastra / Sahitya / Purana initihasa / Agama / Advaita Vedanta is assigned code 73 respectively for applying and appearing in the examination. Had both the subjects been one and the same, then there was no need for assigning different codes and conducting separate National Eligibility Test inter alia for Lecturership in Indian Universities and Colleges.

12. The difference between the two subjects becomes further clear from Annexure R-2 which reflects respondent No. 4 having qualified the National Educational Test for eligibility for Lectureship conducted by the UGC in December 1999 in Sanskrit Traditional subjects and not in Sanskrit. A candidate who qualifies the National Educational Test eligibility for Lectureship conducted by the UGC alone is eligible for consideration and selection as Lecturer in the subject he clears the test. On the basis of his qualifying the National Educational Test for eligibility for Lectureship conducted by the UGC in December 1999 in Sanskrit Traditional subjects, respondent No. 4 became eligible for Lecturership in Traditional Sanskrit Subjects and not in the subject of Sanskrit. It is therefore clear that the subject of Jyotisha and Sanskrit are different and distinct subjects.

13. The stand of respondent No. 4 that the classification given by the University Grants Commission for treating Sanskrit and Traditional Sanskrit as separate subjects in the conduct of National Educational Test Eligibility for Lectureship was irrelevant in view of the subject of Sanskrit and Traditional Sanskrit Subjects, both being subjects of Sanskrit, besides qualification of Acharya having been treated equivalent to MA in Sanskrit not only by the Government of India, but also by the University of Jammu, besides, controversy in respect thereto having been set at rest by the Hon'ble Supreme Court in case titled as Ram Palit Vyakaran Acharaya vs. Punjab University (1976) 3 SCC 282 is bereft of merit in view of the reasons given hereunder.

14. The issue with regard to difference / distinction of two subjects as determined by the University Grants Commission has been dealt with in paragraph No. 8(iv) above. As regards the plea of respondent No. 4 having been considered eligible by the Commission in view of the intimation by the University of Jammu to the Commission vide Annexure R-1 of the equivalence of examination of Acharya in Sidhant Jyotish and Acharya in Phalit Jyotish with MA Sanskrit, I am of the view that the plea is irrelevant as far as the controversy in issue in the instant case since the qualification possessed by respondent No.4 is neither of the two qualifications referred to above. Respondent No.4 is Acharya i.e. Master of Arts in Jyotisha. Annexure R-1 never equated Acharaya or MA in Jyotisha with MA in Sanskrit of Jammu University. Same dealt only with Acharaya in Phalit Jyotish and Acharaya in Sidhant Jyotish while Annexure R-3 merely recognized the examination of Acharya conducted by Rastritya Sanskrit Sansthan New Delhi as equivalent to MA in the general educational set up for purposes of employment. The same never equated degree of Acharaya

with MA in Sanskrit but only with MA. Annexure R-4 equated examinations of Acharaya in Sidhant Jyotish and Phalit Jyotish etc conducted by the Rashtriya Sanskrit Sansthan New Delhi with the examination of MA Sanskrit / Sahityacharya of Jammu University. However, the University of Jammu never treated examination of Acharya in Sidhant Jyotish and Acharya in Phalit Jyotish conducted by Rashtriya Sanskrit Sansthan New Delhi as MA in the relevant subject i.e. Sanskrit but merely equivalent to MA in Sanskrit. Acharya i.e. Master of Arts in Jyotisha has not been treated either equivalent to MA in Sanskrit nor has the same or any of the other two qualifications referred to above i.e. Acharya in Sidhant Jyotish and Acharya in Phalit Jyotish been treated as the qualification in the relevant subject i.e. Sanskrit. Since the post advertised was of Lecturer in Sanskrit, only a candidate possessing Master' degree in the relevant subject i.e. Sanskrit could be said to be possessing eligibility for appointment as Lecturer in Sanskrit. Therefore respondent No. 4 who is not Acharaya / MA in Sanskrit but an Acharaya i.e. MA in Jyotisha (Sanskrit Traditional subject), was not eligible for consideration and appointment as Lecturer in Sanskrit.

15. The decision in Ram Palit Vyakaran Acharaya' case was in the context of claim for pay scales as Acharyas. Hon'ble Supreme Court held that there was no need for the Acharayas to have additional degree of M.A. Sanskrit in order to be entitled to the grade claimed. The said decision is in a totally different context. Relevant extract of the judgment is reproduced hereunder :

"9.From the letter of the Registrar, Punjab University, dated November 6, 1969 quoted above, it is clear that Shastri plus B.A. or Shastri plus Prabhakar is one category and is inferior to Acharya which is at par with Shastri plus M.A. Sanskrit. It is, therefore, clear even from the above letter of the

University that Acharyas need not have in addition an M.A. degree in Sanskrit in order to be entitled to the grade of Rs 300-600 quoted above. It is, therefore clear that after their services have been taken over by the University, the appellants will be entitled to scales of pay appertaining to Acharyas and as available to them during the relevant period. Their claim to such scales cannot be defeated by the fact that they are not also in addition holders of M.A. degrees in Sanskrit."

16. Respondent No. 4 in paragraph No. 11 of the objections filed by him has also mentioned that although syllabus for the regular subject of Sanskrit and Traditional Sanskrit subjects may vary, but that would not take away the equivalence which had been conferred by the Government of India as well as the University of Jammu to Acharya' in different traditional subjects with MA in Sanskrit. Although equivalence does not confer eligibility, still, it needs mention that Acharaya in Jyotisha has not been granted equivalence with MA in Sanskrit and the equivalence granted by the Government of India is to Acharaya with MA while equivalence granted by University of Jammu is only qua Acharaya in Phalit Jyotisha and Sidhant Jyotisha with MA in Sanskrit. However, sine qua non for eligibility in the instant case is not the possession of qualification of a Master' Degree equivalent to the qualification in the relevant subject but possession of the qualification of Master' degree in the relevant subject.

17. In *Rajbir Singh Dalal vs. Chaudhari Devi Lal University* (2008) 9 SCC 284 Hon'ble Supreme Court dealt with question of eligibility of a candidate possessing Master's degree in Public Administration for the post of Lecturer in Political Science. Relevant extract thereof reads as under :

"29. It may be mentioned that on a clarification sought from UGC whether a candidate who possesses a Master' degree in Public Administration is eligible for the post of Lecturer in Political Science and vice versa, UGC wrote a letter dated 5-3-1992 to the

Registrar, M.D. University, Rohtak stating that the subjects of Political Science and Public Administration are interchangeable and interrelated, and a candidate who possesses Master' degree in Public Administration is eligible as Lecturer in Political Science and vice versa. Thus, this is the view of UGC, which is an expert in academic matters, and the Court should not sit in appeal over this opinion and take a contrary view.”

18. The Hon'ble Supreme Court in *Ganapath Singh Gangaram Singh Rajput vs Gulbarga University* - (2014) 3 SCC 767 while taking note of its aforementioned decision, held that there was no plea of the University that the Master' Degree in Mathematics and degree of Master' in Computer Applications were interchangeable, whereas in *Rajbir Singh Dalal'* case (supra), the position was that in the case of Reader, the requirement was Master' degree in 'appropriate subject', whereas for appointment as Lecturer it was 'relevant subject'. Hon'ble Supreme Court observed that *Rajbir Singh's* case related to the appointment of a Reader and it was on account of the use of different expressions, that the Court had come to the conclusion that Post Graduate degree holder in Political Science was eligible to be appointed to the post of Reader in Public Administration but that in *Rajbirs Singh's* case (Supra) it had not stated that Political Science was the relevant subject for appointment as Lecturer in Public Administration.

19. However, unlike in *Rajbir Singh's* case, Jyotisha and Sanskrit are not interchangeable subjects. The Commission or for that matter respondent No. 4 have not referred to any material that a candidate who is MA in Sanskrit is eligible for appointment as Lecturer in Jyotisha. In the absence of there being any material before the Commission / University of Jammu of interchangeability of the two subjects, action of the Commission in

treating Acharaya in Jyotisha eligible for the post of Lecturer in Sanskrit is unsustainable.

20. The matter may be examined from another angle also. Requirement is not possession of Master' degree in the 'appropriate subject', but in the 'relevant subject'. Requirement of Master' Degree in the relevant subject would, therefore, in the context of appointment to the post of Lecturer Sanskrit (10+2), mean, Post Graduate degree in Sanskrit. Therefore for appointment to the post of Lecturer, Sanskrit, Acharaya or Master's Degree in Jyotisha is not the requisite qualification in the relevant subject. The Commission had no material before it for treating Acharaya in Jyotisha either as a qualification equivalent to MA in Sanskrit besides it being the qualification in Sanskrit subject. Government of India never equated Acharaya i.e. MA in Jyotisha or for that matter Acharaya in any subject as equivalent to MA in a particular subject. It only treated Acharaya as equivalent to MA. Consequentially the action of the Commission in treating respondent No. 4 eligible for the post of Lecturer in Sanskrit (10+2) was in derogation of the factual and legal position.

21. The plea that an expert body having taken a view with regard to the eligibility of a candidate, the same not be interfered with by the Court was considered by the Hon'ble Supreme Court in Ganapath' case (Supra) wherein while considering its decision in the case of B.C.Mylarappa vs Dr. R. Venkatasubbaiah (2008) 14 SCC 306, the Hon'ble Supreme Court was pleased to hold as under :

"14..... There is no difficulty in accepting the broad submission that academic issues must be left to be decided by the expert body and the court cannot act as an appellate authority in such matters. It deserves great respect. When two views are possible and the expert body has taken a view, the same deserves acceptance. However, to say that expert body's

opinion deserves acceptance in all circumstances and is not subject to judicial review does not appeal to us. In our constitutional scheme the decision of the Board of Appointment cannot be said to be final and absolute. Any other view will have a very dangerous consequence and one must remind itself of the famous words of Lord Acton "power corrupts and absolute power corrupts absolutely".

22. Hon'ble Supreme Court by referring to paragraph No. 24 of its decision in Mylarappa's case (Supra) further held :

"17. As stated earlier, when the view taken by the expert body is one of the possible views, the same is fit to be accepted. Further, the yardstick would be different when it concerns eligibility conditions pertaining to "qualification" and "experience". In case of experience it is best known to the expert body in the field in regard to the actual work done and, therefore, its opinion is of higher degree deserving acceptance ordinarily. Hence, in our opinion, this judgment did not fetter the power of the High Court."

23. In Ganapath Singh's case, the University had invited applications for appointment to various posts including the post of Lecturer in Master' in Computer Application (MCA) with minimum qualification's for appointment to the post of Lecturer being good academic record with at least 55% of marks or an equivalent grade at the Master Degree level in the relevant subject from an Indian University or an equivalent degree from a foreign University. Appellant Ganapath Singh, private respondent Shivanand besides other persons applied for appointment to the post of Lecturer in MCA. The appellant was M.Sc. in Mathematics in first class with distinction, whereas Shivanand possessed a post graduate degree in MCA, therefore eligible in terms of the advertisement. The Board of appointment consisting of experts holding high positions in academic field, including a Professor each from the University of Pune, Bombay and Kuvempu

interviewed the candidates and ultimately made a recommendation for appointment of the appellant who admittedly did not have a post graduate degree in MCA, but a Master' degree in Mathematics. Recommendation for appointment of the appellant was approved by the Syndicate of the University.

Shivanand challenged the selection and appointment of the appellant by way of a writ petition on the ground that applications were invited for filling up the posts of Professor, Reader and Lecturer in the Department of different subjects including MCA, therefore relevant subject in the advertisement would mean the subjects for which applications were invited, that in the circumstances, the Board of appointment misdirected itself in going into the question as to whether Mathematics was a relevant subject or not in MCA. It was contended that Master' Degree in Mathematics would not make the appellant eligible in terms of the advertisement, therefore his selection and appointment to the post of Lecturer in MCA was illegal and since he alone possessed post graduate degree in MCA and fulfilled all other conditions, consequentially it was he who ought to have been selected for appointment. Appellant as well as the University resisted the prayer of Shivanand and contended that the expression 'relevant subject' used in the notification would mean any subject which was relevant for the purpose of holding the post of Lecturer in MCA. It was contended that in the syllabus for MCA, Mathematics was the core subject, therefore a candidate having a post graduate degree in Mathematics was eligible for appointment as Lecturer in MCA as a Master' degree in Mathematics was a degree in a relevant subject. It was also contended that an expert body like the Board of appointment had found that a post graduate degree in Mathematics was a relevant subject for the purpose of adjudging eligibility besides the same

had been approved by the Syndicate of the University, i.e. a body consisting of experts, therefore the same ought not to be interfered with by the High Court.

The learned Single Judge after considering the submissions advanced, dismissed the writ petition and upheld the appointment of the appellant. Aggrieved by the decision of the learned Single Judge, Shivanand preferred an appeal before the Division Bench of the High Court which allowed the appeal and quashed the appointment of the appellant as Lecturer in MCA.

The Hon'ble Supreme Court while upholding the order of the Division Bench setting aside the appointment of Ganpat directed that the case of Shivanand and all other candidates who had applied be considered in accordance with law and the selection already made be taken to its logical conclusion in view of the fact that it was only in exceptional cases that the Court issued Mandamus for appointment and the case in hand was not one of those cases where the High Court ought to have issued a Mandamus for appointment of Shivanand as Lecturer in MCA.

That in the context of advertisement requiring post graduate degree in the 'relevant subject', the Hon'ble Supreme Court in Ganapath' case (Supra) observed that relevant subject would in the context of appointment to the post of Lecturer Computers Application, mean the Post Graduate degree in MCA and that for appointment to the post of Lecturer, MCA, Master's Degree in Mathematics was not the relevant subject. While taking note of the fact that the advertisement required Master's degree in the 'relevant subject' and not 'appropriate subject' Hon'ble Supreme Court held that the Board of appointment not having stated that post graduate degree in Mathematics was the relevant subject for MCA, but equivalent to a post

graduate degree in MCA for the reason that Mathematics was one of the subjects taught in MCA, was beyond the power of the Board of Appointment and it would not make any difference even if Mathematics was taught in the Master's of Computer Application Course. Hon'ble Supreme Court held :

" **22.** It shall not make any difference even if Mathematics is taught in the Masters of Computer Application course. The learned Single Judge, in our opinion, gravely erred in upholding the contention of Ganpat and the University that "relevant subject" would mean "such of those subjects as are offered in the MCA course". If Mathematics is taught in a postgraduate course in Commerce, a Masters degree in Commerce would not be relevant for appointment in Mathematics or for that matter in MCA. There may be a situation in which Masters degree in MCA is differently christened and such a degree may be considered relevant but it would be too much to say that a candidate having postgraduate degree in any of the subjects taught in MCA would make the holders of a Masters degree in those subjects as holder of Masters degree in Computer Application and, therefore, eligible for appointment.

23. The language of the advertisement is clear and explicit and does not admit any ambiguity and, hence, it has to be given effect to. Since the appellant Ganpat did not have a Masters degree in Computer Application, in our opinion, he was not entitled to be considered for appointment as Lecturer in MCA. We are aghast to see that when a candidate possessing Masters degree in MCA is available, the Board of Appointment had chosen an unqualified and ineligible person for appointment in that subject. Its recommendations are, therefore, illegal and invalid. The natural corollary thereof is that the University acting on such recommendation and appointing Ganpat as Lecturer cannot be allowed to do so and that the Division Bench of the High Court was right in setting aside his appointment. In our opinion, an unqualified person cannot be appointed, whoever may be the recommendee. We are of the opinion that the Division Bench of the High Court was right in holding that Ganpat was not eligible for appointment of Lecturer in Masters of Computer Application."

24. That in the background of the aforementioned decision of the Hon'ble Supreme Court it is apparent that if subject of Jyotisha is taught in the post graduate course of Sanskrit, a Master' degree in Sanskrit would not confer eligibility for appointment against the post of Acharaya Jyotisha where the requirement is Master' Degree in the relevant subject. The position would be different where a Master' degree in Sanskrit is labelled differently. Such a degree may be considered relevant, but it would be too much to treat a candidate having post graduate degree in any of the subjects taught in Sanskrit i.e. holder of a Master' degree in those subjects as holder of Master' degree in Sanskrit, therefore eligible for appointment as Lecturer in Sanskrit. The advertisement is clear and explicit and does not admit any ambiguity and hence has to be given effect to. In the circumstances, the Commission misdirected itself in treating respondent No. 4 who was Acharaya in Jyotisha eligible for the post of Lecturer in Sanskrit by considering Acharaya in Jyotisha to be a qualification in the relevant subject i.e. MA in Sanskrit in terms of the clarification given by the University of Jammu though the same did not cover the examination of Acharaya in Jyotisha. Vide Annexure R-1, the University of Jammu merely equated examination of Acharaya Sidhant Jyotish and Acharaya Phalit Jyotish with examination of MA Sanskrit. It never equated the qualification of Acharaya in Jyotisha with MA in Sanskrit nor treated any of the aforesaid qualifications as the qualification in the relevant subject for appointment to the post of Lecturer in Sanskrit. It needs mention that the sine qua non for eligibility for appointment to the post of Lecturer Sanskrit (10+2) is Master of Arts in the relevant subject i.e. Sanskrit and not equivalent subject. The said qualification was not possessed by respondent No. 4 whereas petitioner is MA Sanskrit, therefore eligible having qualification of Master's degree in the relevant subject.

25. As regards the plea that on account of the petitioner not falling in the zone of selection, the writ petition was not maintainable in view of the decision of the Hon'ble Supreme Court in (2013) 4 SCC 465, I am afraid that the said decision is of no help to respondent No.4 in view of the fact that the petitioner is an aggrieved person since it is always open to a candidate, who competed for a particular post to agitate a grievance that the candidate selected and appointed against the advertised post lacks the essential advertised qualifications and the selection and appointment of such a candidate be quashed and selection be ordered to be made as per the criteria stipulated in the advertisement / he be appointed being the eligible candidate. The petitioner being an 'aggrieved person' is entitled to maintain the writ petition. However, the petitioner is not entitled to the issuance of a direction for his appointment after quashing of selection of respondent No.4 in the light of the decision of the Hon'ble Supreme Court in Ganpath Singh's case (supra). In view of respondent No. 4 not fulfilling the essential qualification prescribed for recruitment to the post of Lecturer in Sanskrit (10+2), the decision of the Commission treating him eligible, consequentially selecting him against the advertised post and recommending his appointment as well as his appointment are unsustainable and the same is accordingly held unsustainable and liable to be quashed. However, the petitioner is not entitled to a direction to appoint him. At best he is entitled to a direction to the official respondents to take the selection already conducted by it to its logical conclusion by considering and appointing a candidate from amongst the candidates, who had appeared in the selection process in accordance with merit determined by the Selection Committee in the light of eligibility as adjudicated above.

26. As regards the plea that the petitioner has not specifically challenged the appointment of respondent No.4, suffice it to say that writ of Certiorari has been sought seeking quashing of notice issued by the Commission vide No. PSC/DR/+2/Sanskrit/04 dated 18.08.2005 intimating all concerned of respondent No.4 having been found suitable for appointment and of recommendations having been communicated to the concerned Department for taking further action in the matter. It is also not in dispute that pursuant thereto, respondent No.4 was appointed and continues in service. Having come to a finding that the selection of respondent No. 4 is illegal on account of his not fulfilling the stipulated essential qualifications, the Court cannot shut its eyes and allow respondent No. 4 to continue on the post to which he was illegally appointed and has no right.

27. Another aspect which needs consideration is the plea of respondent No.4 that in view of his having rendered a number of years service, he has become overage for seeking fresh employment, had got married and raised a family after his appointment, his appointment be not set aside on the writ petition being allowed. Undoubtedly, the plea raised by respondent No.4 entails consideration on equitable grounds. Unfortunately, appointment of respondent No. 4 is vitiated on account of his not fulfilling the advertised essential qualifications, therefore of his selection and appointment being illegal. It would have been a different matter altogether if there was only an irregularity in the selection. Reference in this connection is made to the decision of the Hon'ble Supreme Court in *Vikas Pratap Singh v. State of Chhattisgarh* - (2013) 14 SCC 494. Relevant extract of the same is reproduced hereunder :

"21. Shri Rao would submit that the case of these appellants requires sympathetic consideration by this Court, since the appointment of appellants

on the basis of a properly conducted competitive examination cannot be said to have been affected by any malpractice or other extraneous consideration or misrepresentation on their part. The ouster of 26 appellants from service after having successfully undergone training and serving the respondent State for more than three years now would cause undue hardship to them and ruin their lives and careers. He would further submit that an irretrievable loss in terms of life and livelihood would be caused to eight appellants amongst them who have now become overaged and have also lost the opportunity to appear in the subsequent examinations. He would place reliance upon the decision of this Court in *Rajesh Kumar v. State of Bihar* wherein this Court has directed the respondent State to re-evaluate the answer scripts on the basis of correct model answers key and sympathetically considered the case of such candidates who, after having being appointed in terms of erroneous evaluation and having served the State for considerable length of time, would not find place in the fresh merit list drawn after re-evaluation and directed the respondent State against ousting of such candidates and further that they be placed at the bottom of the fresh merit list.

22. The pristine maxim of *fraus et jus nunquam cohabitant* (fraud and justice never dwell together) has never lost its temper over the centuries and it continues to dwell in spirit and body of service law jurisprudence. It is settled law that no legal right in respect of appointment to a said post vests in a candidate who has obtained the employment by fraud, mischief, misrepresentation or mala fide. (See *Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi*, *S.P. Chengalvaraya Naidu v. Jagannath* and *Union of India v. M. Bhaskaran*.) It is also settled law that a person appointed erroneously on a post must not reap the benefits of wrongful appointment jeopardising the interests of the meritorious and worthy candidates. However, in cases where a wrongful or irregular appointment is made without any mistake on the part of the appointee and upon discovery of such error or irregularity the appointee is terminated, this Court has taken a sympathetic view in the light of various factors including bona fide of the candidate in such appointment and length of service of the candidate after such appointment (see *Vinodan T. v. University of Calicut*; *State of U.P. v. Neeraj Awasthi*).

28. However, the protection granted in aforesaid case was in the background of appointment of appellants in aforesaid case having been

made on the basis of a properly conducted competitive examination and not being vitiated by any malpractice or other extraneous consideration or misrepresentation on their part. However, the said decision also notes that it was also settled law that a person appointed erroneously on a post must not reap the benefits of wrongful appointment jeopardising the interests of the meritorious and worthy candidates and that the Supreme Court had taken a sympathetic view in cases of wrongful or irregular appointment made without any mistake on the part of the appointee and service of such appointee having been terminated upon discovery of such error or irregularity. However, the same is not the position in the instant case. Firstly, the selection was not properly conducted. An ineligible was treated eligible on the basis of a cryptic communication of the University of Jammu i.e. Annexure R-1. The communication merely mentioned equivalence of qualification with the qualification in the relevant subject but did not include the qualification possessed by respondent No. 4 nor did it mention the qualification possessed by respondent No. 4 being the qualification in the relevant subject. In the circumstances there was no material before the Commission to have treated respondent No. 4 fulfilling the essential advertised qualification, but still the Commission for reasons best known to it treated respondent No. 4 eligible. Besides, the sine qua non for eligibility was Master' degree in the relevant subject and not equivalent subject.

29. Secondly, the decision itself notes that it was also settled law that a person appointed erroneously on a post must not reap the benefits of wrongful appointment jeopardising the interests of the meritorious and worthy candidates. Respondent No. 4 has been treated eligible, selected and appointed despite their being no material for holding him eligible and

fulfilling the advertised essential qualifications. Moreover, there is no reason as to why available eligible candidates be deprived their entitlement for consideration for selection and appointment. Lastly, it is not a case of irregular but illegal appointment. Consequentially, respondent No. 4 cannot be granted the protection sought on account of his selection and appointment being illegal on account of not fulfilling the advertised essential qualifications.

30. In the light of the position as noted above, it is held that the Commission misdirected itself by treating respondent No. 4 eligible and in selecting him despite availability of eligible candidates possessing requisite qualification i.e. Master degree in the relevant subject i.e. Sanskrit. Thus, the action of the Commission in selecting and recommending the candidature of respondent No.4 for appointment to the post of Lecturer in Sanskrit (10+2) leading to his appointment is legally unsustainable. Accordingly, writ petition is allowed. Selection and appointment of respondent No.4 is quashed. Official respondents are directed to carry out fresh selection from amongst the eligible candidates who had earlier appeared in the selection process in the manner indicated above. No costs.

Jammu
26 .07.2016
Sanjeev

(B.S.Walia)
Judge