

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 2425 of 2016****With****SPECIAL CIVIL APPLICATION NO. 1369 of 2016****With****SPECIAL CIVIL APPLICATION NO. 15587 of 2015**

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PURNA GUNVANTTARAY VYAS....Petitioner(s)

Versus

STATE OF GUJARAT & 4....Respondent(s)

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Appearance:

(SCA No.2425 of 2016)

MS.AVNI H PANDYA, ADVOCATE for the Petitioner(s) No. 1

MR UTKARSH SHARMA, AGP for the Respondent(s) No. 1

MR AD OZA, ADVOCATE for the Respondent(s) No. 5

NOTICE SERVED BY DS for the Respondent(s) No. 2 – 4

(SCA No.1369 of 2016)

MR VAIBHAV A.VYAS, ADVOCATE for the Petitioner.

MR UTKARSH SHARMA, AGP for the Respondent(s) No. 1

MR AD OZA, ADVOCATE for the Respondent(s) No. 3

(SCA No.15587 of 2015)

MR D.P.JOSHI, ADVOCATE for the Petitioner.

MR UTKARSH SHARMA, AGP for the Respondent(s) No. 1

MR AD OZA, ADVOCATE for the Respondent(s) No. 5

MRS SUMAN KHARE, ADVOCATE for the Respondent(s) No.6

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA****Date : 12/04/2016****COMMON ORAL ORDER**

Since the issues raised in all the captioned writ-applications are more or less the same, those were heard analogously and are being disposed of by this common judgment and order.

By these writ-applications under Article 226 of the Constitution of India, the writ-applicants desirous of seeking appointment on the post of higher secondary teachers have prayed for the following reliefs:

“(A) The Hon'ble Court may be pleased to issue a writ of mandamus or any other writ, order or direction for quashing and setting aside the communication dated 19.1.2016 and further directing the respondent authorities to issue an appointment order to the petitioner for the post of Shikshan Sahayak for English subject in general category in Government Higher Secondary School, Taluka : Muli, District Surendranagar and to further provide that such appointment shall be deemed to be from the date of the appointment of other similarly situated appointees.

(B) Pending final hearing and final disposal of the petition, the Hon'ble Court may be pleased to keep a post of Shikshan Sahayak vacant in Government Higher Secondary School, Taluka Muli, District Surendranagar.

(C) The Hon'ble Court may be pleased to grant such other and further relief/s as deemed just and proper by this Hon'ble Court in the interest of justice.”

The case of the writ-applicants may be summarised as under :

The writ-applicants, pursuant to the advertisement dated 24th August 2013 issued by the Gujarat State Secondary and Higher Secondary Education Board, applied for the post of higher secondary teachers. They could not make it as they fell short in merit. According to the writ-applicants, they could not make it in the final merit list as the authorities refused to consider the marks allotted for the purpose of a Post Graduate Degree in the Professional Subject i.e. M.Ed./M.P.Ed., etc.

It is the case of the writ-applicants that although they possess the Degree of M.A. (Education), yet the same has not been considered as a Post Graduate Degree in the Professional Subject. It is also the case of the writ-applicants that due weightage should have been given even to the Degree of M.A. (Education), which they possess. Hence, these writ-applications.

The learned counsel appearing for the respective writ-applicants vehemently submitted that the authorities are not justified in their stance that the Degree of M.A. (Education) is not a Post Graduate Degree in the Professional Subject and, therefore, the writ-applicants are not entitled to the weightage for the same. It has been submitted that the Degree of M.A. (Education) is equivalent to the Degree of M.Ed. They have relied on the rules, which govern the appointments, called the “Teachers of Government Secondary and Higher Secondary Schools (Procedure for Selection) (Amendment) Rules, 2013”.

According to the learned counsel, to be eligible for the appointment as a teacher in the Higher Secondary School, a candidate should possess a Master's Degree in the Arts or Science or Commerce and a Bachelor's Degree in Education obtained from any of the Universities or Institutions established or incorporated by an Act of Parliament or a State Legislature in India or any other Institutions recognized as such or declared to be deemed as University under Section 3 of the University Grants Commission Act, 1956, or possess an equivalent qualification recognized as such by the Government.

It is submitted that the relevant rules do not provide for a Post Graduate Degree in the Professional Subject. It is submitted that despite the same, in the Appendix-I attached to the Rules, an additional qualification has been prescribed i.e. a Post Graduate Degree in the Professional Subject i.e. M.Ed./M.P.Ed. with maximum five marks weightage for the same. They pointed out that the Appendix-I is with respect to rule 11(3) of the Rules. The learned counsel submitted that the authorities could not have prescribed an additional qualification for the post in question and that too in the Appendix when the statutory rules do not provide for the same.

The learned counsel submitted that assuming for the moment that it is within the powers of the authorities to prescribe an additional qualification, still the Degree of M.A. (Education) should have been considered as equivalent to M.Ed. i.e. a Post Graduate Degree in the Professional Subject.

The learned counsel further pointed out that the respective writ-applicants have been wrongfully denied the weightage of five marks allotted for the purpose of a Post Graduate Degree in the Professional Subject.

Thus, the learned counsel appearing for the writ-applicants submitted that the petitions merit consideration and they be allowed.

On the other hand, all the three writ-applications have been vehemently opposed by Mr.Utkarsh Sharma, the learned AGP appearing for the State Government. He submitted that it is within the powers of the State Government to prescribe a higher qualification than those prescribed by the National Council for Teacher Education under the National Council for Teacher Education Act.

He submitted that by no stretch of imagination the Degree of M.A. (Education) could be termed as equivalent to M.Ed. He further submitted that the Degree of M.A. (Education) is an academic degree, whereas the Degree of M.Ed. is a Professional Degree. The Government has thought fit to consider the Degree of M.Ed., which is a Post Graduate Degree, in the Professional Subjects with the weightage of five marks.

He submitted that the issue regarding equivalence of the two degrees should be best left to the experts and this Court, in exercise

of its writ-jurisdiction under Article 226 of the Constitution of India, may not go into such issue.

Mr.Sharma, the learned AGP, further submitted that the Supreme Court in the case of M.S.Mudhol and another v. S.D.Halegkar, (1993)3 SCC 591, has taken the view that M.A. (Education) is an academic degree and M.Ed. is a professional degree. He has also relied on the decision of the Supreme Court in the case of Dr.Prit Singh v. S.K.Mangal and others, 1993 Supp.(1) SCC 714, wherein the very same view has been taken.

He submitted that no illegality could be said to have been committed by the authorities in not considering the Degree of M.A. (Education) equivalent to M.Ed. for the purpose of weightage of five marks.

Mr.Sharma submitted that those holding professional degree in teaching may be entitled to the extra weightage in assessment of their merit in the selection process as compared to those holding an academic degree without any practical experience of teaching. He submitted that a professional trained in teaching would certainly be a better suitable person for teaching than the one holding an academic degree in the subject of Education, as such.

Mr.Sharma, in such circumstances referred to above, submitted that there being no merit in the writ-applications they be rejected.

Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is, whether the writ-applicants are entitled to the reliefs they have prayed for in these writ-applications.

Before advertng to the rival submissions canvassed on either

side, let me first have a look at the rules.

The State Government, by Notification dated 2nd April 2013, in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, framed rules, called the “Teachers of Government Secondary and Higher Secondary Schools (Procedure for Selection) (Amendment) Rules, 2013”. Rule 2 thereof reads as under :

“2. To be eligible for appointment as teacher in Higher Secondary School a candidate shall;

(a) not be more than 34 years of age;

(b) possess;

(i) a master's degree in Arts or Science or Commerce and a bachelor's degree in Education obtained from any of the Universities or institutions established or incorporated by an Act or Parliament or a State Legislature in India, or any other educational institution recognised as such or declared to be deemed as University under section 3 of the University Grants Commission Act, 1956, or possess an equivalent qualification recognised as such by the Government.”

The Teachers of Government Secondary and Higher Secondary Schools (Procedure for Selection) Rules, 2012 framed vide Notification dated 18th April 2012 by the State Government so far as selection of teachers is concerned, more particularly, rules 3, 4 and 11, read as under :

“3. Constitution of Selection Committee :-

(1) There shall be constituted a selection committee known as “The Gujarat State Secondary and Higher Secondary School Education Staff Recruitment Selection Committee”.

(2) The Selection Committee shall consist of the following members, namely :-

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|---|---------------------------------|
| <i>(i) The Commissioner, Mid-day-meals and ...
Schools, Gujarat State, Gandhinagar.</i> | <i>Chairman,
ex-officio</i> |
| <i>(ii) Vice-chairman, the Gujarat Secondary ...
and Higher Secondary Board, G'nagar.</i> | <i>Member,
ex-officio</i> |
| <i>(iii) A senior Government Officer, not below ...
the rank of Deputy Secretary appointed
by the Government.</i> | <i>Member</i> |
| <i>(iv) Two eminent educationists nominated by</i> | <i>... Member</i> |

the Government.

(v) *The Joint Director of Schools, Gujarat State,...* Member Gandhinagar.

(3) *The Joint Director of Schools, Gujarat State, Gandhinagar, shall be the Member-Secretary of the Selection Committee."*

"4. Selection of Teachers :-

The Selection Committee shall select persons for appointment to the posts of Teachers in the Government Secondary and Higher Secondary from amongst the persons who are qualified to be appointed as such in accordance with the provisions of these rules."

"11. Select List :-

(1) (a) *The selection committee shall prepare a list of successful candidates on the basis of weightage of 70% marks of the marks secured by the concerned candidate in TAT.*

(b) *The marks secured by the concerned candidate in TAT shall be valid for five years from the date of the result of the TAT.*

(c) *The candidate who has secured at least 50% marks in TAT shall be considered as qualified candidate for TAT weightage.*

(d) *A candidate shall be allowed to appear in TAT for three times. A candidate who after availing the first attempt also avails second or third successive attempt within the period of five years from the date of the result of the first attempt, the average marks obtained by such candidate in such attempts shall be considered for preparation of the select list, as explained in Appendix-II.*

(2) *The weightage of 30% will be given, out of the marks secured in the prescribed educational qualification for the respective post as specified in Appendix-II.*

(3) *The maximum marks for the qualification for the purpose of weightage of 30% shall be as prescribed in Appendix-II.*

(4) *The Selection Committee shall prepare subject-wise and category-wise lists on the basis of marks secured by the candidates as provided in clause (a) of sub-rule (1) and sub-rule (2).*

(5) *The Selection Committee shall prepare a list of the successful candidates in the order of merit on the basis of aggregate marks finally awarded to each candidate as provided under clause (d) of the sub-rule (1) to the extent of posts advertised by the selection committee.*

(6) *The Selection Committee shall prepare a separate list of successful candidates belonging to then Scheduled Castes, Scheduled Tribes, Socially and Educationally Backward Classes and women to the extent of the number of vacancies reserved for such categories;*

Provided that where the requisite number of candidates, belonging to Scheduled Castes, Scheduled Tribes, Socially and Economically Backward Class or, as the case may be, Nomadic Tribes and Denotified Tribes, could not qualify on the basis of the qualifying aggregate marks fixed for general

category, the Selection Committee may relax the qualifying aggregate marks to make up the deficiency in the reserved posts.

(7) The Selection Committee shall prepare subject-wise and category-wise waiting lists, of about 10% candidates of the list of successful candidates so prepared under sub-rules (4) and (5).

(8) The waiting lists referred to in sub-rule (7) shall be operative for a period of two years from the date of publication of the result or till the date of publication of the result of the next examination, which ever is earlier.

(9) The waiting list may be operative in the following circumstances :

(i) if the post of Secondary Teacher or Higher Secondary Teacher is not filled up due to non-joining of the selected candidate in the prescribed time limit.

(ii) if the selected candidate is disqualified for appointment for any of the reasons."

Appendix-I attached to the Rules, so far as the post of higher secondary teacher is concerned, reads as under :

"Appendix-I

(See rule No.11(3))

(1) For the post of Higher Secondary Teacher :-

No.	Qualification	Maximum Marks
1	Graduate degree in concerned subject	10
2	Post Graduate degree in concerned subject	10
3	Graduate degree in professional subject i.e. B.Ed./B.P.Ed. etc.	5
4	Post Graduate degree in professional subject i.e. M.Ed./M.P.Ed. etc.	5
	Total	30

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No.	Qualification	Weightage
1	Graduate Degree in concerned subject	10.00%
2	Post-Graduation Degree in concerned subject	10.00%
3	Graduation in Degree in professional subject i.e. B.Ed./B.P.Ed. etc.	5.00%
4	Post Graduation Degree in professional subject i.e. M.Ed./M.P.Ed. etc.	5.00%
5	TAT Exam (Concerned Subject)	70.00%
	Total	100

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Let me now look into the National Council for Teacher Education (Determination of Minimum Qualification for Persons To Be Recruited as Education Teachers and Physical Teachers in Pre-Primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014. These regulations were framed by the National Council for Teacher Education in exercise of the powers conferred under clause (dd) of sub-section (2) of Section 32 read with Section 12A of the National Council for Teacher Education Act, 1993 (73 of 1993). The First Schedule to the said Rules, so far as secondary/high school (for class IX-X) is concerned, provides for the following minimum qualifications :

“(a) Graduate/Post Graduate from recognized University with at least 50% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution.

Or

(b) Graduate/Post Graduate from recognized University with at least 45% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution (in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002 and National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007)

Or

(c) 4-year degree of B.A. Ed./B.Sc. Ed. from any National Council for Teacher Education recognized institution.”

The Notification published in the Official Gazette dated 31st March 2010 reads as under :

*“NOTIFICATION
New Delhi, the 31st March, 2010*

S.O. 750(E).- In exercise of the powers conferred by sub-section (1) of Section 23 of the Right to Children to Free and Compulsory Education Act, 2009, the Central Government hereby authorises the National Council for Teacher Education as the academic authority to lay down the minimum qualifications for a person to be eligible for appointment as a teacher.”

On 18th March 2016, this Court passed the following order in Special Civil Application No.15587 of 2015 and Special Civil Application No.1369 of 2016 :

"1. In the Special Civil Application No.15587 of 2015, an affidavit-in-reply has been filed for and on behalf of the respondent No.5 the Gujarat Secondary & Higher Secondary Education Board, Gandhinagar.

2. In the Special Civil Application No.1369 of 2016, an affidavit-in-rejoinder has been filed for and on behalf of the petitioner.

3. The issue falling for my consideration is whether the Degree in the Master of Arts (Education) could be construed as the Postgraduate Degree or not relevant for the purpose of recruitment of the Teachers in the Secondary and Higher Secondary Schools.

4. Mr. Oza, the learned counsel, in his affidavit-in-reply filed on behalf of the respondent No.5, invited my attention to Annexure : R/6 at page 221, which is a letter dated 9th March, 2016 addressed by the Board to the National Council for Teacher Education (N.C.T.E.), New Delhi, seeking necessary clarification guidance in this regard. Although the N.C.T.E. is not a party respondent in the proceedings before me, yet having regard to the issue which is arisen, I expect the N.C.T.E. to immediately respond to the letter of the Board referred to above. The clarification at the end of the N.C.T.E. will make the position more clear and will enable the Court to reach to an appropriate conclusion.

*5. The Registry is directed to communicate this order by Fax as well as by Speed Post to the National Council for Teacher Education, New Delhi, **today itself.***

6. The petitioner shall also take direct service of this order and serve the N.C.T.E., New Delhi, at the earliest.

*7. Post this matter on **7th April, 2016 on top of the Board.** I expect the N.C.T.E. to make its stance clear by the next date of hearing. The N.C.T.E. may reply to the letter of the Board so that the Board can place the letter on record."*

In response to the above referred order, Mr.P.S.Champaneri, the learned counsel appearing for the NCTE, placed on record a communication dated 6th April 2016 addressed by the Under-Secretary of the NCTE to the Secretary, Gujarat Secondary and Higher Secondary Education Board. The communication reads as under :

"To,

The Secretary

Gujarat Secondary and Higher Secondary Education Board
Gandhinagar
Gujarat

Sub : Equivalence of M.A. (Education) with M.Ed. - for grant of weightage in Recruitment to Principal/Teachers of Secondary/Senior Secondary Schools in Gujarat.

Sir,

I am directed to refer to your letter No.GS&HSEB/Research/6374 dated 9th March, 2016 and to inform you that M.A. (Education) and M.Ed. are two different programmes.

2. NCTE in its Regulation, 2014 brought in 15 teacher education programmes including M.Ed., but it does not cover M.A. (Education).

3. Hence, while formulating Norms for various teacher education programmes in the NCTE (Recognition Norms and Procedures) Regulation, 2014, NCTE has treated M.A. (Education) qualification at par with M.Ed. for teaching perspective in Education or Foundation Courses to various teacher education programmes such as D.El.Ed., B.Ed., B.Ed. (ODL), M.Ed., B.Sc., B.Ed./B.A., B.Ed. But for administrative position of Principal/HOD of TEI's and for Teachers to teach curriculum and pedagogic courses to various teacher education programmes M.Ed. qualification has been prescribed as essential.

4. It is, however, reiterated that contrary to the advice of UGC, NCTE is not competent to decide equivalence of M.A. (Education) qualification with M.Ed. as per the NCTE Act 1993 section 12(b) as the issue relating to equivalency does not come under the purview of NCTE and for this purpose Association of Indian Universities, New Delhi may be contacted, who may decide the issue.

Yours faithfully,
Sd/-
(Dr.Prabhu Kumar Yadav)
Under Secretary"

Mr.Shelat, the learned counsel appearing for the writ-applicant of Special Civil Application No.2425 of 2016 also invited my attention to a document, which reads as under :

"EQUIVALENT EDUCATION SYSTEM

The Universities in the country are autonomous and are free to establish regulations of their own, related to the acceptance of qualifications from countries other than India. The Association of Indian Universities (AIU) has been accepted as an accredited agency at the national level for undertaking the assessment of foreign academic credentials. Given below is a matrix of equivalent education system of various countries."

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Examination Recognized	Awarding Authority	Equivalent Exam in India

M.Ed. degree	University of Birmingham	M.Ed. degree or a Master of Arts degree in Education of Indian University. (EC dt.11.3.75)
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Thus, two questions fall for my consideration, first, whether the Degree of M.A. (Education) is equivalent to the Degree of M.Ed., and secondly, whether the Government could have prescribed higher qualifications than the one which has been prescribed by the NCTE so far as higher secondary teachers are concerned.

According to the State Government, the Degree of M.A. (Education) is an academic degree, whereas the Degree of M.Ed. is a professional degree. I had an occasion to consider a fine distinction between the two degrees in the case of Patel Umeshkumar Shantilal v. State of Gujarat (Special Civil Application No.15876 of 2013 decided on 13th October 2015). The issue therein was, whether the Degree of M.Phil. could be considered equivalent to the Post Graduate Degree in the Professional Subjects i.e. M.Ed./M.P.Ed. This Court, in paragraphs 21 to 24, observed as under :

“21. Many professionals find themselves struggling with the decision of whether to obtain an academic degree or a professional credential. Both academic and professional credentials indicate some form of achievement to allow the successful candidate to use certain initials after their name, but that is where their similarities end. The fundamental difference between the two is that a professional credential certifies that the bearer has the essential knowledge and skills of a specified area of expertise necessary for the safe and appropriate practice of a trade or profession. Academic credentials indicate that a person has successfully completed a non-standardized course of study with no certification of competence in a particular trade or profession. Unlike academic institutions, professional associations regulate and are accountable for the professional behaviour of their accredited members for the duration of their career through ethical codes of conduct and continuous professional development requirements. The academic institutions are concerned with student behaviour while they are earning the credential, but do not set out rules that graduates must abide by after graduation. Professional credentials can be revoked at any time for professional misconduct, where academic credentials are granted unconditionally after successful completion of studies.

22. According to Claude Balthazard, Ph.D., CHRP, Director, HR Excellence and Registrar, Human Resources professionals Association, both, academic and professional credentials are indicative of some form of achievement, and both entitle the bearer to use certain initials after their name, but

beyond that they are quite different. The most apparent difference is that with professional designations, one must pay dues to the professional association or the regulatory body on an annual basis in order to continue to have the right to use the designation of title, whereas with academic credentials, once the credential is conferred one does not need to pay anything to the academic institution to have continued use of the academic credential. Nonetheless, the differences are more fundamental than that.

The essential difference between professional and academic credentials is that professional credentials are warrants of competence or warrant of expertise whereas academic credentials are not. With professional designations, the certifying body is warranting that the certified worker (tradesperson or professional) has the essential knowledge and skills of a specified domain necessary for safe and appropriate practice of the trade or profession. With academic credentials, there is no such warrant of competence, an academic credential means that someone has successfully completed a particular course of study not that one is competent to practice a trade or profession.

Because professional designations are warrants of competence, it become important for certifying bodies to define specifically what certificants must be competent to do. Professional designations are always built upon a practice analysis which defines what certified individuals need to know or be able to do. Academic credentials are rarely based upon formal and systematic practice analysis. Although some educational institutions may make claims about the competence of their graduates, these are not warrants of competence in any true sense. For one, academic institutions do not assume responsibility of the actions of their graduates. By contrast, professional do have some ongoing responsibility for the behaviour of their members. Professional associations and regulatory bodies are accountable for their certification processes. Professional associations and regulatory bodies must be able to demonstrate that they demonstrated due diligence in their certification process. This does not mean that errors cannot be made, but professional associations and regulatory bodies must be able to demonstrate that their certification requirements and standards and assessment protocols provide reasonable protection to the public.

This on-going warrant of competence or expertise, points to another key difference between academic and professional credentials: recertification. Academic credentials are good forever, even when the knowledge and skills are either long-forgotten or made entirely obsolete by the passage of time. By contrast, the academic credentials have no expiry date. Many professional designations now require recertification in one form or another. The idea is that certified individuals must maintain the level of competence required for competent practice. With such professional designations, individuals who fail to maintain their knowledge and skills up to standards, or who fail to document their efforts at maintaining their knowledge and skills, will lose their certification. In some professions, members are subject to peer review or professional inspections. The idea here is that the professional association or regulatory body goes beyond periodic recertification to ensure that certified individuals maintain their knowledge and skills current.

Then there is the matter of recourse. Should a certified individual exhibit misconduct or fail to live up to the standards of the

profession, the professional association or regulatory body provides for complaints and discipline processes. Academic institutions do not have such mechanisms.

Professional associations and regulatory bodies have a concern about the ethics of their members that academic institutions do not. Academic institutions are concerned about academic misconduct and other forms of misbehaviour but only in relation to achieving the credential. Educational institutions do not set out rules of conduct that graduates must abide by after graduation. The terms warrant of competence or warrant of expertise are too narrow really. Professional associations and regulatory bodies are, in fact, offering warrants of appropriate professional behaviour, which includes not only competence but professional ethics and behaviour as well.

As part of their certification requirements, professional associations and regulatory bodies will often require a specific level of academic credential, or completion of a specific course of study. Although professional associations and regulatory bodies will sometimes provide some required training, the bulk of foundational knowledge and skills required for professional certification are delivered by educational institutions. What may blur the distinction between professional and academic credentials is the sometimes close cooperation between credentialing bodies and educational institutions. Educational institutions are well aware that an important reason students enroll in professional programs is to eventually achieve certification. Such programs are designed to meet the educational requirements of the relevant certifying body. Certifying bodies will, for their part, will publish lists of approved programs or courses. Despite this cooperation with educational institutions, most certifying bodies still conduct examinations. As the warrantors of competence, professional regulatory bodies are loathe to delegate the assessment of competence to some other body. That is why professional regulatory bodies will specify education as an eligibility requirement but still conduct their own assessments.

In addition to educational requirements, however, professional associations and regulatory bodies will require candidates to have some minimum amount of experience. Although some academic programs will include various practica and co-op terms, the experience requirements of professional and trade designations are typically much more extensive than academic programs.

Another difference between professional and academic credentials is that, in any given jurisdiction, there is only one professional association or regulatory body that will issue a given professional credential. Academic credentials, such as B.Comm., B.A., B.Sc., MBA, Ph.D., are granted by a number of different academic institutions each accredited to issue such credentials.

Another interesting difference between professional and academic credentials is in credential verification. Federal and Provincial legislations in Canada require permission to research any information identifiable to an individual. Verifying an individuals claim that they have been granted a will require this individuals usually in the form of a signed release. By contrast, verifying an individuals claim that they have a professional designation is usually as simple as consulting a public register on line. Indeed, professional registers are, by law, public documents. One does not need any kind

of authorization or release to verify a professional credential, and professionals cannot block the publication of such information.

23. The Supreme Court in the case of **Dr. Prit Singh v. S.K. Mangal and others [1999 Supp (1) SCC 714]**, while examining the validity of the appointment of the appellant as Principal of the college made certain observations which would give a fair idea about an academic qualification and a professional qualification:

“11. It need not be pointed out that the Degree of Master of Arts is an academic qualification, whereas Degree of Master of Education is a professional qualification. According to us, when the qualifications required a consistently good academic record with first or high second class (55% marks/grade B in the seven point scale) Masters Degree in any subject; (emphasis added) it shall mean an academic qualification like Master of Arts. The said requirement was prescribed with a consistently good academic record. That Masters Degree shall mean Degree of Master of Arts in any subject, is apparent also from the fact that apart from that degree the candidate was required to possess also Degree in Education which will mean B.Ed. or M.Ed. Normally if the expression Masters Degree was to include even the Masters Degree in Education (M.Ed.) there was no necessity of prescribing the third requirement of a Degree in Education”

24. In **Dr. M.S. Mudhol v. S.D. Halegkar and others [(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 2nd 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 1st respondent was appointed as the Principal of the school in the year 1981. The statutory rules prevalent at the relevant time prescribed the essential qualifications for the said post as follows:

- (i) Masters degree with at least 2nd Division from a recognised university or equivalent.
- (ii) A degree in teaching from a recognised university or equivalent.
- (iii) Experience of 10 years teaching as a Vice-Principal/P.G.T. (Post-graduate Teacher) in a Higher Secondary School or Inter-College.

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 recognised Higher Secondary School/Inter-College.
- (ii) Doctorate Degree.
- (iii) M.Ed. degree from a recognised university.”

“4. The contention of the respondents that M.Ed. (sic M.A.) 2nd Division was equivalent to M.A. (sic M.Ed.) 2nd Division is obviously fallacious. The former is the academic qualification while the latter a professional qualification. Secondly, the course of the former is whole-time spread over no less than two years while the course of the latter 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 1st 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 his behalf but except for the rigmarole, we do not find anything in the affidavit to enlighten us either on the interpretation 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 the Principal.”

On behalf of the writ-applicants, strong reliance has been placed on the observations made by the Supreme Court in para 32 in the case of State of Tamil Nadu v. Adhiyaman Educational Institute, (1995)4 SCC 104. Para 32 reads as under :

“32. As pointed out earlier, so far as technical institutions are concerned, the norms and standards and the requirements for their recognition and affiliation respectively that the State Government and the University may lay down, cannot be higher than or be in conflict and inconsistent with those laid down by the Council under the Central Act. Once it is accepted that the whole object of the Central Act is to determine and coordinate the standards of technical education throughout the country, to integrate its development and to maintain certain standard in such education, it will have to be held that such norms standards and requirements etc. will have to be uniform throughout the country. Uniformity for the purposes of coordinated and integrated development of technical education in the country necessarily implies a set of minimum standards the fulfillment of which should entitle an institution and its alumni, titles, degrees and certificates to recognition anywhere in the country. It is true that the higher than the minimum standard implies compliance with the minimum standard.”

From the above, it is sought to be contended that prescribing

higher qualifications would be bad. I am afraid that the interpretation placed on the observations as above is unsustainable and amounts to a misreading of the judgment which has to be considered in its entirety and not by referring to stray sentences out of context. In fact, in the later portion of the order, the Supreme Court dealt with the issue of the right of the State Government to prescribe higher standards or qualifications if more applicants were available than the number of seats. The Supreme Court held as follows :

"41. What emerges from the above discussion is as follows:

[i] The expression "coordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

[ii] To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

[iii] If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause [2] of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

[iv] Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

[v] When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

[vi] However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities derecognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although_ it satisfied the norms and requirements laid down by the central authority, the State authorities act illegally."

The Supreme Court, in the case of Visveswaraiah Technological University and another v. Krishnendu Halder and others, (2011)4 SCC 606, held that if the State/University, inspite of the vacancy, continues with the higher eligibility criteria to maintain better standards, same being part of the academic policy of the University, would be beyond the purview of judicial review, unless it is established that such standards are arbitrary or adversely affect the standards, if any, fixed by the central body in central enactment.

The writ-applicants herein have not been able to show as to how the prescribing of Post Graduate Degree in the Professional Subject i.e. M.Ed./M.P.Ed. is arbitrary and not in the interest of achieving excellence in higher education. It is also not shown by the writ-applicants that the prescribing of such higher qualifications or additional qualifications "adversely affect" the standards fixed by the central body i.e. NCTE, within the meaning of what is laid down in para 14(i) of the judgment of the Supreme Court in the case of Visveswaraiah Technological University (*supra*).

Mr.Shelat, the learned counsel appearing for one of the writ-applicants, laid much stress on what has been stated in the letter dated 6th April 2016 of the National Council for Teacher Education addressed to the Board, referred to above. Mr.Shelat pointed out that the NCTE has made itself very clear that the Degree of M.A. (Education) has been treated at par with the Degree of M.Ed. for teaching perspective in education or foundation courses to various

teacher education programmes, but for administrative position of Principal/HOD or for teachers to teach curriculum and pedagogic courses to various teacher education programmes, M.Ed. qualification has been prescribed as essential. According to Mr.Shelat, the opinion expressed by the NCTE should be accepted. I am afraid, it is not possible to accept the submission of Mr.Shelat, keeping in mind the well-settled position of law that the High Court should not embark upon such inquiry, more particularly, when it relates to equivalence of degree, etc.

In taking the aforesaid view, I am fortified by a Division Bench judgment of the Jammu & Kashmir High Court in the case of Shafeeqa Akhter and another v. State of J&K and others, (2010) 2 JKJ 1. In the case before the High Court of Jammu & Kashmir, the appellants challenged the empanelment of the respondent nos.5 and 6 therein as the Rehbar-e-Taleem in a primary school. A learned Single Judge of the High Court dismissed the writ petition holding that the qualification of M.A.(Education) did not deserve the weightage given to the M.Ed. degree and that their qualification was not equivalent to the respondents' qualification of B.Ed., which entitled them to preference in the matter of selection.

The issue before the Division Bench in the Letters Patent Appeal was, whether the qualification of M.A.(Education) entitled a candidate desirous of seeking consideration for selection as Rehbar-e-Taleem to the same extra weightage, as was available, in terms of the Government Order, to those holding B.Ed./M.Ed. Degrees.

In answering the said question, a Division Bench referred to the guidelines/norms for selection of Rehbar-e-Taleem formulated vide Government Order No.1503-EDU of 2003 dated 1st October 2008, which, for convenience, is reproduced herein under :

"In continuation to Government Order No.396-EDU of 2000 dated 28th April 2000, it is hereby clarified that:

1. *Beyond 10 Plus two, the first academically reckonable qualification is a graduate degree like (for instance) B.A., B.Sc., B. Com. etc.*

2. *In view of (1) above, the intermediate classes like B.A., B.Sc., B.Com. (Part I or II) will not get any extra weightage in working out the comparative merit of candidates even as exams of such classes are conducted by the University of Kashmir/Jammu.*

3. *M.A.(Education) and M.Ed. would be equivalent degrees, in academic terms (Candidates with M.A. Education or M.Ed. are, as per the Recruitment Rules, equally eligible for appointment/promotion as +2 Lecturers).*

4. *B.Ed./M.Ed. practically carry a professional edge vis-a-vis an (academic) P. G. degree. Extra weightage be allowed, therefore, to B.Ed./M.Ed. consistent with its role and relevance in the teaching-learning process.*

5. *C.P.Ed., B.P.Ed. and M.P.Ed. are job-specific requirements (for Physical Education slois). A candidate with C.P.Ed. will be eligible for R-e-T only if he/she has passed 10+2. Likewise, a candidate with B.P.Ed./M.P.Ed. will be sick with a graduate degree in any other discipline provided he/she has passed 10+2 - the minimum requirement prescribed under norms/rules for appointment as R-e-T/teacher save in respect of the Third Teacher for Primary schools, for which the minimum requirement is graduation).*

6. *Graduates in other disciplines like (for instance) Agriculture, Engineering, I.T., Ayurveda/Unani (systems), Pharmacy, Law, Management etc. will be at par with any other graduate Degree."*

The Division Bench, thereafter, observed as under :

"In terms of the Government Order referred to hereinabove, the first reckonable academic qualification beyond 10+2 is indicated to be a Graduate Degree like B.A., B.Sc., B.Com., etc and the intermediate classes like B.A., B.Sc., B.Com. (Part I or II) had not to be recognized for any extra weightage in working out comparative merit of the candidates.

Likewise, the second reckonable qualification is indicated as Master Degree and in this context, Degree of M.Ed. is indicated to be equivalent to that of Masters Degree in Education.

Clause-4 of the Government Order providing for extra weightage to candidates possessing B.Ed./M.Ed. Degrees on the ground that the

professional Degrees would be relevant in teaching and learning process, is an independent Clause and not controlled by Clause-III of the Government Order, as suggested by the Appellants' learned Counsel, for the academic Degree cannot, by any stretch of reasoning, match a professional Degree.

Looking to the Rehbar-e-Taleem Scheme and the intention underlying therein to impart education at the school level, those holding professional Degree in teaching, may be entitled to extra weightage in assessment of their merit in the selection process as compared to those holding academic Degree without any practical experience of teaching.

This is so because a professional trained in teaching would certainly be a better suited person for teaching than the one holding an academic Degree in Education Subject, as such.

In this view of the matter, Clause-3 of the Government Order cannot be read to mean that M.Ed. having been treated equivalent to M.A (Education), would entitle a person possessing Degree of M.A (Education) to the same extra weightage, as was available, to a candidate possessing B.Ed. or M.Ed. Degree.

The view taken by the learned Single Judge supported additionally by the Commissioner's Affidavit that the persons holding B.Ed./M.Ed. were entitled to extra weightage for selection as Rehbar-e-Taleem as compared to those holding Masters Degree in academics, which is found to be rational, cannot be faulted.

For all what has been said above, we do not find any error in the Writ Court's judgment, warranting interference in Appeal.

This Appeal is, accordingly, dismissed as without merit. "

In the overall view of the matter, I hold that it is not permissible to hold that the Degree of M.A. (Education) is equivalent to the Degree of M.Ed. At the same time, it is also not possible to accept the argument that higher qualification in the form of a Post Graduate Degree in the Professional Subject i.e. M.Ed./M.P.Ed. could not have been prescribed for the purpose of appointment on the post of higher secondary teacher.

As a result of the above discussion, all the writ-applications fail and are hereby rejected.

(J.B.PARDIWALA, J.)

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