

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.11.2015

Decided on : 27.11.2015

CORAM

The Hon'ble Mr.Justice K.KALYANASUNDARAM

W.P.Nos.19005 to 19009 of 2015
and 26531 of 2015 and M.P.Nos.1 and 2 of 2015

R.Easki Durai Petitioner in WP No.19005/2015
M.Pitchiayah ... Petitioner in WP No.19006/2015
R.Balakrishnan ... Petitioner in WP No.19007/2015
R.Kannan ... Petitioner in WP No.19008/2015
M.Kanniyan ... Petitioner in WP No.19009/2015
Tamil Nadu Sericulture Staff Association
(Regn.No.46/2012)
Represented by its General Secretary,
No.137/84, Sthabagar Amara L.Durai Raj
Manilamyam, Salem. Petitioner in WP No.26531/2015

vs

1.State of Tamil Nadu represented
by its Secretary to Government,
H.H.T.K. Department,
Fort St. George,
Chennai - 600 009.

2.The Director of Sericulture,
Anaimeedu,
Salem - 636 001.

... Respondents in all WPs

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India for issue of writ of certiorarified mandamus calling for the notification issued by the second respondent in Advertisement No.1 of 2015 published by Daily Thanthi News paper on 09.05.2015 and the consequential corrigendum to the said notification published by Daily Thanthi News paper on 16.05.2015 and quash the same so far as the notification with regard to the post of Junior Inspector of Sericulture is concerned and consequently direct the second respondent herein to select and appoint the petitioners to the

post of Junior Inspector of Sericulture.

For Petitioners : Mrs.Dakshayani Reddy
in all WPs for M/s.Mukund R Pandiyan

For Respondent : Mr.P.Arvinth Pandian
in all WPs Addl. Advocate General
assisted by Mrs.A.Sri Jayanthi,
Spl.Govt. Pleader and
Mr.C.Sailendran, Govt. Advocate
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COMMON ORDER

Writ Petition Nos.19005 to 19009 of 2015 have been filed by individuals who are working in the second respondent office as daily workers and the Writ Petition No.26531 of 2015 is filed by the Tamil Nadu Sericulture Staff Association (Regn.No.46/2012), represented by its General Secretary, No.137/84, Sthabagar Amarrar L.Duraiaraj Manilamyam, Salem.

2. Since all these writ petitions have been filed challenging the notification issued by the second respondent by Advertisement No.1 of 2015 dated 09.05.2015 and the subsequent corrigendum to the said notification issued on 16.05.2015 with regard to the appointment of Junior Inspector of Sericulture, these writ petitions are taken up together and disposed of by this common order.

3. The case of the petitioners is that they were originally appointed as daily workers in the year 1987. As they continuously worked since then, their services have been regularised on completion of ten years and they are now working as permanent employees under the second respondent for the past thirty years. The petitioners have completed pre-foundation course, which is equivalent to 10th standard and they are fully qualified to hold the post of Junior Inspector of Sericulture. However, without considering the candidature of the petitioners, the second respondent sought to appoint Junior Inspector of Sericulture by direct recruitment by issuing notification dated 19.08.2014.

4. The petitioners would further state that certain individuals like the petitioners have filed WP Nos.28206 of 2014 and 28193 of 2014 questioning the action of the second respondent calling for the names from the employment exchange alone and also the relaxation of qualification with regard to the experience of six months in Sericulture, which is mandatory as per special rules. This Court, vide order dated 29.10.2014, granted an interim order restraining the second respondent from making any selection based upon the notification. The second

respondent has filed counter in the earlier writ petitions admitting his mistakes in the notification and undertook to issue a fresh notification by including the service rules requiring six months experience and qualification in the field of Sericulture for appointment to the post of Junior Inspector of Sericulture.

5. In the impugned notification issued on 09.05.2015, the respondent has rightly called for applications to the posts of Junior Inspector of Sericulture from persons, who have requisite experience and qualification of six months in Sericulture or six months certificate course in Sericulture. However, in the corrigendum to the notification issued on 16.05.2015, the respondents have included the amendment whereby the requisite qualification of six months experience has been done away and the persons who do not possess the qualification were also permitted to apply to the said post.

6. The impugned orders are challenged mainly on the ground that the corrigendum issued is against the Special Rules and against the specific admissions made by the second respondent in the counter affidavit filed in WP Nos.28206 of 2014 and 28193 of 2014.

7. The second respondent filed his counter affidavit stating that the Department of Sericulture was bifurcated from Industries Department and it has been functioning as a separate department with effect from 01.04.1979. There is no separate rules for any of the posts in the Department of Sericulture and the rules of the Industries Department are being used as guidelines for all the posts of this Department. Though the pre-foundation programme studied by the petitioners is equivalent to Secondary School Leaving Certificate (SSLC), as the petitioners have not studied General Science as one of the subjects as per the rule which is followed at present for the recruitment to the post of Junior Inspector of Sericulture, they are not qualified for recruitment to the said post.

8. It is further stated by the respondents that they had published the notification in two widely circulated news papers calling for applications from qualified candidates to fill up vacancies of 157 posts of Junior Inspector of Sericulture, as per the procedure laid down by the Hon'ble Supreme Court of India, prescribing the following qualifications -

(1) Minimum General Educational Qualification as specified in Schedule - 1 to General Rules for Tamil Nadu State and Subordinate Service or the Secondary School Leave Certificate with declaration of eligibility for College course study with general

science as one of the subjects.

2 (a) Practical experience for a period of not less than six months in Sericulture (or)

2 (b) Successful completion of six months training for under graduates in the Sericulture Training School, Hosur.

and as per the notification, above 500 applications were received by the respondent in the first three days itself. The candidates have enclosed experience certificates approved from Private Chawkie Rearing Centres, Private Grainages and Sericulture Farmers. On enquiry and verification, it was found that most of the certificates were not genuine. Hence, to avoid the selection of candidates who have invalid experience certificates and to ensure fairness in selection, the Department decided to issue corrigendum thereby permitting those candidates who do not possess experience certificate to apply for the post of Junior Inspector of Sericulture.

9. However, the second respondent, in the additional counter would state that in the main counter, it was wrongly mentioned as if the pre-foundation course studied by the petitioner is equivalent to Secondary School Leaving Certificate (SSLC) and the same has been furnished based on the orders issued in G.O. (Ms) No.50 Personnel and Administrative Reforms Department, dated 21.02.1997 and as per letter No.23105/M2/2013-1 dated 08.08.2013, Government have clarified that the pre-foundation and foundation courses are not equivalent to Secondary School Leaving Certificate (SSLC) and Higher Secondary Course (HSC). Therefore, the petitioners should not be treated as if they possess the requisite educational qualification for securing to the post of Junior Inspector of Sericulture.

10. Mrs.Dakshayani Reddy, learned counsel appearing for the petitioners would contend that in the Special Rules prescribed for appointment of Junior Inspector of Sericulture, a practical experience for a period of six months in Sericulture or successful completion of six months training for under graduate in Sericulture training school at Hosur as a mandatory requirement and the respondents, without amending the Special Rules, have no authority to issue corrigendum relaxing the requisite qualification. The learned counsel further submitted that the second respondent, in his counter filed in WP Nos.28206 of 2014 has categorically admitted that even after bifurcation from the Industries Department, they follow the Special Rules for Industries Subordinate Service Rules at present for the purpose of recruitment and they also admitted to issue fresh notification with regard to requisite qualifications. However, in the present counter, the second respondent has taken a different stand that

the Special Rules for Industries Subordinate Service Rules are followed only as guidelines. Even with regard to educational qualification, inconsistent stand was taken by the respondent and hence the writ petitions have to be allowed.

11. The learned counsel for the petitioner has relied upon the following judgments in support of her contentions -

(1) 2004 (6) SCC 786 [Inder Prakash Gupta v. State of J&K and others]

(2) 2006 (9) SCC 507 [Malik Mazhar Sultan v. U.P.Public Service Commission and others]

(3) Judgment of the Hon'ble Supreme Court in Rajasthan Public Service Commission v. Kaila Kumar Paliwal & Anr.

(4) Division Bench Judgment of this Court dated 22.04.2008 in W.P.No.8482 of 2003 dated 22.04.2008 [P.Ganaselvaudayakumari v. The Registrar, Tamil Nadu Administrative Tribunal, Chennai and others]

(5) 2008 (3) MLJ 212 [Rajkumar v. Chairman, Tamil Nadu Electricity Board, Chennai and others]

(6) Judgment of this Court dated 21.04.2014 in WP Nos.13054, 13055 etc. batch [P.Raman v. The Govt. of Tamil Nadu & Ors.]

12. Per contra, Mr.P.H.Arvinth Pandian, learned Additional Advocate General appearing for the respondents submitted that since the petitioners in WP Nos.19005 to 19009 of 2015 do not have the requisite qualifications to hold the post of Junior Inspector of Sericulture, those writ petitions have to be dismissed on the ground of maintainability. The Principal Secretary to Government issued a clarification in letter No.23105/M2/2013-1 dated 08.08.2013 as per the order of this Court, which specifically states that the pre-foundation and foundation courses were considered as not equivalent to Secondary School Leaving Certificate and Higher Secondary Course. The learned Additional Advocate General reiterated the contentions raised in the counter affidavit and prayed for dismissal of the writ petitions. He also relied upon the unreported Division Bench judgment of this Court in W.A.No.805 of 2014.

13. Now, I would like to consider the judgments. In a judgment reported in 2004 (6) SCC 786 [Inder Prakash Gupta v. State of J&K and others], the Hon'ble Supreme Court has held that while going through the selection process, the Public Service Commission must strictly follow the statutory rules.

Relevant paras would run thus :

The Jammu & Kashmir Medical (Gazetted) Service Recruitment Rules, 1979 admittedly were issued under [Section 124](#) of the Jammu and Kashmir Constitution which is in pari materia with [Article 309](#) of the Constitution of India. The said rules are statutory in nature. Public Service Commission is a body created under the Constitution. Each State constitutes its own Public Service Commission to meet the Constitutional requirement for the purpose of discharging its duties under the Constitution. Appointment to service in a State must be in consonance with the constitutional provisions and in conformity with the autonomy and freedom of executive action. [Section 133](#) of the Constitution imposes duty upon the State to conduct examination for appointment to the services of the State. The Public Service Commission is also required to be consulted on the matters enumerated under [Section 133](#). While going through the selection process the Commission, however, must scrupulously follow the statutory rules operating in the field. It may be that for certain purposes, for example, for the purpose of short-listing, it can lay down its own procedure. The Commission, however, must lay down the procedure strictly in consonance with the statutory rules. It can not take any action which perse would be violative of the statutory rules or makes the same inoperative for all intent and purport. Even for the purpose of short-listing, the Commission cannot fix any kind of cut off marks. [See [State of Punjab & Ors. vs. Manjit Singh and Ors.](#) [2003 (11) SCC 559].

Rule 8 mandates that while selecting the teaching wing of the service, the Commission must have regard to the academic qualification of the candidate, teaching experience, research experience and previous record of work, if any.

Rule 8 does not speak of any viva voce test. It, however, appears that so far as academic qualification is concerned, the same had been laid in the advertisement and the requirement of M.D. (Medical/General Medical), MCRF, FRCP, Speciality Board of Internal Medicine (USA) or an equivalent qualification of the subject. So far as the teaching experience is concerned, two years experience as Registrar/Tutor/Demonstrator/Tutor or a Senior Resident in the discipline of medicine in

a recognised teaching medical institution recognised by the Medical Council of India was specified.

14. In 2006 (9) SCC 507 [Malik Mazhar Sultan v. U.P. Public Service Commission and others], the Hon'ble Supreme Court, in a similar circumstance has held that the service rules framed under Article 309 of the Constitution of India are statutory in nature and the advertisement inviting applications for filling up of vacancies cannot override the provisions of statutory rules. The relevant paragraph is usefully extracted as follows -

21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1st July, 2001 and 1st July, 2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules.

24. Now, to the present case, the only dispute is in respect of the age requirement. The resolution of the dispute would depend upon implementation of Rule 10 of the Rules. According to the main part of Rule 10, the minimum and maximum age requirement has to be as on 1st July next following the year in which the notification for holding the examination by PSC inviting applications is published. That publication inviting applications is dated 22-28th November, 2003. The next following year is '2004'. Therefore, on the plain reading of the main part of Rule 10, the age requirement is to be seen as on 1st July, 2004.

15. In the judgment of the Hon'ble Supreme Court in Rajasthan Public Service Commission v. Kaila Kumar Paliwal & Anr., the Hon'ble Apex Court has observed that the recruitment to a post must be made strictly in terms of the Rules operating in

the field and essential qualification must be possessed by a person as on the date of issuance of the notifications or as specified in the rules and only in the absence thereof, the qualification acquired till the last date of filing of the application would be the relevant date.

16. It is not in dispute that the Sericulture Department was originally attached with Industries Department. Though the Sericulture Department was made as separate department and functioning independently from 01.04.1979, however, no separate Service Rules have been framed so far and in the counter affidavit in W.P.No.28206 of 2014, the 2nd respondent had categorically admitted that the Tamil Nadu Industries Service Rules and Industries Subordinate Service Rules are being followed for the posts transferred from the Industries Department also and the proposal sent to the Government for approval of separate Rules for this Department is pending with the Government.

17. In view of the above undisputed facts, this court is of the considered view that the respondent are bound to follow the existing Rules till new Rules are approved by the Government.

18. Rule 6 of the Tamil Nadu Industries Subordinate Service Rules reads as follows -

6. Other Qualifications: No person shall be eligible for appointment to the Class and category mentioned in Col.(1) & (2) of the Annexure to these rules, unless he possess the qualifications specified in the corresponding entry in column (3) thereof. Provided that the degree holders in Engineering recruited on or after the 25th March, 1965 to the posts shall be liable to serve for a period of not less than four years (including the period spent on training) in Armed forces or on work relating to defence effort anywhere in India or abroad so required. The liability to serve in Armed Forces shall be limited to the first ten years of service of a candidate and shall not apply to graduate Engineers above forty years of age.

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Annexure
(Referred in Rule 6)

Class	Category	Qualifications
1.	2.	3.
VII	1) Inspector of Sericulture	By promotion from Asst. Inspector of Sericulture B.Sc., Degree in Botany or Zoology or Chemistry or Minimum General Qualifications as specified in Schedule I to General Rules for the Tamil Nadu State and Subordinate Services or the Secondary School Leaving Certificate with declaration of eligibility for college course of study with service for a period of not less than 5 years in the post of Assistant Inspector of Sericulture (vide G.O.1537 Industries Department dated 29.11.78)

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Class	Category	Qualifications
	2) Asst. Inspector of Sericulture	By promotion from Junior Inspector of Sericulture 1.Minimum General Educational Qualifications as specified in Schedule-I to General Rules for the Tamil Nadu State and Subordinate Services or the Secondary School Leaving Certificate with declaration of eligibility for college course study. 2.Service for a period of not less than five years as Junior Inspector of Sericulture; and 3.Should have passed Account Test for subordinate Officers, Part-I. 3b.By Direct recruitment or by recruitment by transfer. 1.A. B.Sc.degree in Botany or Zoology or Chemistry; and 2a) Practical experience for a period of not less than six months in Sericulture.

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Class	Category	Qualifications
	3. Junior Inspector of Sericulture	a) By promotion from Sericulture Demonstrators. 1.A pass in V Form or X standard and 2.Service for a period of not less than five years as Sericultural Demonstrator. b) Direct recruitment or by recruitment by Transfer 1.Minimum General Educational Qualification as specified in schedule I to General Rules for Tamil Nadu State and Subordinate Services or the Secondary School Leaving Certificate with declaration of eligibility for College Course study with general science as one of the subjects and 2a) Practical experience for a period of not less than six months in Sericulture.

19. The principles laid down by the Hon'ble Apex Court in the above referred judgments would show that the second respondent has to issue a notification in terms of the Special Rules holding the filed and the candidates, who are applying for the post should possess the requisite qualifications on the date of the notification or as specified in the Special Rules. In the instant case, for appointment to the post of Junior Inspector of Sericulture, the candidates shall possess, apart from educational qualification, practical experience for not less than six months in Sericulture. The original notification has been issued satisfying the requirement, but in the corrigendum, the persons who do not possess requisite qualifications were permitted to take part in the selection process, in contravention of the Special Rules.

20. In the Division Bench judgment of this Court, relied upon by the learned Additional Advocate General in W.A.No.805 of 2014 dated 06.08.2014, the issue was whether the degree obtained under Open University system without completing 10th Standard (SSLC) and HSC (+2) is valid in the light of G.O

(MS) No.107, Personnel & Administrative Reforms (M) Department dated 18.08.2009. This Court observed that that candidates who possess diploma / degree / PG after passing of 10th and HSC through open university alone can be considered for appointment and promotion on Public Service Commission. The clarificatory letter relied upon by the respondent also is to the effect that the candidates who obtained degree under Open University system without completing 10th standard and HSC (+2) will not be considered. Therefore, this Court does not find any force in the contention of the learned Additional Advocate General. Further the decisions of the Division Bench has no bearing on the facts of this case.

21. According to the petitioners, they are having minimum general educational qualification as specified in the Annexure. It is further contended that G.O.Ms.No.528 dated 18.05.1985 declared that completion of pre-foundation course as equivalent to SSLC, which position was also not seriously disputed by the respondents. The respondents resisted the case of the petitioners contending that they have no requisite qualifications as prescribed in the draft Special Rules have not been approved by the Government. Therefore, till the Special Rules are approved, the respondent cannot rely on draft Special Rules. However, I do not propose to decide the eligibility of the petitioners in this writ petition and it is left open.

22. In the light of the decisions of referred above, I am of the considered view that the notification issued by the 2nd respondent in Advertisement No.1 of 2015 is in accordance with the Special Rules, but the corrigendum issued to the notification is in the nature of overriding the Special Rules. Therefore, the corrigendum is liable to be set aside and the same is set aside.

23. In the result, all the writ petitions are partly allowed. The respondents are at liberty to recruit the eligible candidates for the post of Junior Inspector of Sericulture, as per Special Rules. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Secretary to Government,
H.H.T.K. Department,
Fort St. George,
Chennai - 600 009.

2.The Director of Sericulture,
Anaimeedu,
Salem - 636 001.

+1 cc to the Government Pleader
sr.66604

W.P.Nos.19005 to 19009 of 2015
and 26531 of 2015

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