

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition No. 7166 of 2013
and M.P. Nos.2 and 3 of 2013

O.K. Gopalan

... Petitioner

vs.

1. The Secretary
Tamil Nadu Public Service Commission
Chennai 600 006.

2. K. Velayutham

3. The Secretary
Department of Higher Education
Fort St. George, Chennai.

4. R. Ganapathy
.. R3 and R4 impleaded as per order
dated 02.09.2014 in M.P.No.1/2014
in W.P.No.7166/2013.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the selection list for the post of Assistant Director of Industries and Commerce (Industrial Co-operatives) 2010-2011 as far as Register No.00103014 belongs to 4th respondent on 05.09.2012, quash the same and consequently direct the first respondent to appoint the petitioner for the post of Assistant Director of Industries and Commerce (Industrial Co-operatives) 2010-2011.

For Petitioner : Mr. L. Chandrakumar
for Mr. E.D. Sethupathy

For Respondents : Ms. C.N.G. Niraimathi
Standing Counsel for R1
Mr. N. Subramaniam for R4
No Appearance for R2 & R3

O R D E R

By consent of both sides, the main writ petition itself is taken up for final disposal. Heard Mr.L.Chandrakumar, learned counsel for the petitioner, Ms.C.N.G.Niraimathi, learned Standing Counsel for the first respondent/Tamil Nadu Public Service Commission and Mr.N.Subramaniyan, learned counsel for the fourth respondent.

2. In this writ petition, the petitioner seeks for a Writ of Certiorarified Mandamus to quash the selection of the fourth respondent to the post of Assistant Director of Industries and Commerce (Industrial Co-operatives) 2010-2011 and to consequently direct the first respondent to appoint the petitioner in the said post.

3. The case of the petitioner is that he has completed M.Phil in Economics and he is eligible to the Notification issued by the TNPSC dated 02.05.2012 calling for applications from the eligible candidates for direct recruitment to the post of Assistant Director of Industries and Commerce (hereinafter referred to the 'said post'). The petitioner participated in the written examination conducted on 23.06.2012. The results were published on 05.09.2012 and the name of the fourth respondent was withheld pending acceptance of his educational qualification. One R.Ganapathy was placed in the reserve list on the ground of pending acceptance of his educational qualification. The petitioner would challenge the selection/short listing of the fourth respondent on the ground that he did not possess the requisite qualification as per the Notification. Therefore, the petitioner would state that the selection of the fourth respondent requires to be set aside and he should be posted in the said post as he is having the requisite qualification.

4. Mr.L.Chandrakumar, learned counsel appearing for Mr.E.D.Sethupathy, learned counsel for the petitioner contended that the relevant date for the purpose of considering the requisite qualification is 02.05.2012 as per the Notification issued by the TNPSC. It is stated that as on the said date the applicants/candidates should possess any one of the qualifications provided under 3(B) of the Notification dated 02.05.2012. It is submitted that the petitioner possessed a Master's Degree in Economics, whereas the fourth respondent did not have a Master's Degree in Commerce with Co-operation as a subject and since he did not possess the requisite qualification as on 02.05.2012, he was ineligible to apply to the said post and consequently, his selection

is bad in law. Learned counsel would state that the reply dated 19.12.2012 obtained under the Right to Information Act, one of the petitioner's associates one R.Sivamanikandan was informed that the fourth respondent did not possess a Master's degree in Commerce with Co-operation as a subject. Therefore, it is stated that the selection of the fourth respondent has to be held as illegal.

5. Further, with regard to the benefit of G.O.Ms.No.24, Micro, Small and Medium Enterprises [EI(1)] Department, dated 22.05.2014 is concerned, it is submitted that by virtue of the Government Order, the decision of the Equivalence Committee in its thirty fifth Meeting held on 06.09.2012 was approved and even such approval was granted, the same should be only prospective and if at all the fourth respondent is eligible, he would be eligible only on or after the date of the said Government Order. Further, the learned counsel for the petitioner submitted that once the process of selection starts, the prescribed selection criteria cannot be changed and this is so because a person who did not apply for certain criterion can make a legitimate grievance if the same is stated to be lowered. In support of his contention, reliance has been placed on the decision of the Honourable Supreme Court in Mohd. Sohrab Khan v. Aligarh Muslim University and others [(2009) 4 SCC 555].

6. Ms.C.N.G.Niraimathi, learned Standing Counsel for TNPSC, while seeking to sustain the selection of the fourth respondent, submitted that as per the Notification dated 02.05.2012, the candidates who applied should possess the prescribed qualification under 3(B) or its equivalent qualification awarded by University/Institution recognised by the University Grants Commission for the purpose of its grant and the fourth respondent was found to be possessed the requisite qualification prescribed in the Notification in terms of the decision of the Equivalence Committee and as accepted by the Government of Tamil Nadu. Further, it is submitted that the decision of the Government with regard to the validity of the degrees has been settled by the Full Bench of this Court in W.P.(MD) Nos.16181 of 2012 etc. dated 29.12.2013. It is also submitted that as per the Notification dated 02.05.2012, the candidates are advised to carefully go through the instructions given to them and in terms of instructions given to the candidates by TNPSC, Clause 9 deals with equivalent qualifications and it states that the degree is awarded by any University/Institution recognised by the University Grants Commission for the purpose of its grant that qualification will be generally accepted and as per the Notification and the Government Order, the acceptance shall be subject to the decision of the Equivalence Committee. Therefore, it is submitted that the procedure

adopted by the TNPSC is proper and the selection of the fourth respondent is in accordance with law.

7. Mr.N.Subramaniyan, learned counsel appearing for the fourth respondent also sought to sustain the selection of the fourth respondent and submitted that the stand taken by the TNPSC is perfectly justified and the decision of the Equivalence Committee that the degree obtained should be deemed to be retrospective in operation and this issue is well settled by the Full Bench of this Court in W.P.(MD) Nos.16181 of 2012 etc. dated 29.12.2013, which was being followed by a Division Bench of this Court in W.A. Nos.2234 to 2238 of 2013 dated 17.02.2014 (The State of Tamil Nadu and another vs. The Director of School Education and others) and a learned Single Judge in Writ Petition No.33995 of 2012 dated 31.01.2014 (A.Evanjalin Mary vs. The Government of Tamil Nadu).

8. Heard the learned counsel for the parties and perused the materials available on record.

9. The short issue that arises for consideration is as to whether the selection of the fourth respondent could be held to be vitiated on the ground that he did not possess the requisite qualification as prescribed in the Notification dated 02.05.2012. At this stage, it would be relevant to take note of the Clause 3(B) of the Notification, which reads as follows:

(B) EDUCATIONAL QUALIFICATION: (as on 02.05.2012)

Candidates should possess the following or its equivalent qualification awarded by an University or Institution recognised by the University Grants Commission for the purpose of its grant:

A Master's Degree in Commerce with Cooperation as a subject

Or

A Master's Degree in Economics

Or

A Master's Degree in Mathematics

Or

A Master's Degree in Statistics

Or

A Master's Degree in Cooperation

Or

A Diploma of Associate Members of the Institute of Chartered Accountants

Or

Post Graduate Diploma in Agricultural Economics and

Cooperation awarded by the National Council for Rural
Higher Education

Note: The qualification prescribed should have been obtained after passing the SSLC, HSC, UG Degree and PG Degree/Diploma as the case may be."

10. The aforesaid educational qualification shows that the candidates should possess any one of the qualifications enumerated or its equivalent qualification awarded by any University or Institution recognized by the University Grants Commission for the purpose of its grant. Therefore, the candidates should possess the qualification prescribed as well as the the candidates who possess equivalent qualification are entitled to apply for the said post. Therefore, the Notification provides for equivalent qualification being also considered for appointment. It is made clear in the instructions to candidates in clause 9, which read as follows:

"9. Equivalent Qualifications:

The degree is awarded by any University/Institution recognised by the University Grants Commission for the purpose of its grant that qualification will be generally accepted.

Candidate who apply for a particular post should possess the prescribed qualification for the post or such other qualification which have been declared to be higher than or equivalent to the said qualification by the State Government in consultation with the Committee constituted under the Chairmanship of the Chairman, Tamil Nadu Public Service Commission for the purpose.

"if a candidate claims that the educational qualification possessed by him/her is equivalent to though not the same as those prescribed for the appointment, the onus of proof rests with the candidates. In such case, the letter evidencing equivalence of qualification can be obtained from the university which awarded the degree to the candidates. However, the same would be subject to the decision of the Equivalence Committee constituted as per G.O.Ms.No.441, P&AR(R) Department, dated 20.12.1993 and the decision of the Government. The evidence for the proof of equivalence of qualification should be enclosed along with the application form and the original of the same should be produced at the time of Oral Test or when called for, otherwise, the application will be summarily rejected."

11. In terms of the aforesaid instructions, the degree awarded by any University/Institution recognised by the University Grants Commission for the purpose of its grant will be generally accepted. In the instructions, it is held that the equivalent qualification will be accepted only when the University issues such certificate. However, as per the instructions given by the TNPSC, the competence of such certificate shall be subject to the decision of the Equivalence Committee constituted as per G.O.Ms.No.441, dated 20.12.1993. Thus, the impugned Notification provides for consideration of equivalent qualification in accordance with the provisions laid down and therefore, I am not inclined to accept the contention of the petitioner that the Notification does not provide for scope for consideration of equivalent qualification. Having held so, the next point to be considered is as to whether the Government Order in G.O.Ms.No.24, dated 22.05.2014, approving the decision of the Equivalence Committee at its 35th meeting held on 06.09.2012, would be made available retrospectively and its benefit be extended to the fourth respondent. This issue is no more res integra, as the same has been concluded by the Honourable Full Bench of this Court in WP(MD) No.16181 of 2012 etc. dated 29.11.2013. While considering the said question, the Full Bench observed as follows:

"25. In view of the above settled position and for the foregoing reasons, we hold that the equivalence certificate issued by the committee constituted by the Government declaring that the degrees obtained from one University is equivalent to the degrees obtained from yet another University cannot be held to be only prospective in operation but will have its effect and validity right from the date of issuance, therefore, with due respect to the Hon'ble Division Bench, the view taken in N.Geetha's case is incorrect. Accordingly, the reference is answered."

12. In terms of the decision of the Hon'ble Full Bench, the declaration by the Government as regards the equivalence to a degree qualification will be retrospective. This is more so because the qualification having already obtained, all that is seen by the Equivalence Committee is as to whether two qualifications are comparable based on the instructions of the TNPSC and therefore, it has to necessarily date back to the date on which the qualification has been secured by the candidate. The decision of the Honourable Full Bench has been followed by a Division Bench in W.A.Nos.2234 to 2238 of 2013 dated 17.02.2014. Therefore, the second contention raised by the learned counsel for the petitioner also does not merit acceptance.

13. Learned counsel for the petitioner placed reliance on the decision of the Honourable Supreme Court in Mohd. Sohrab Khan v. Aligarh Muslim University and others (cited supra) in support of his contention that the rules of selection cannot be changed midstream and if once the process of selection starts, the prescribed selection criteria cannot be changed. In the said case, among other posts which are advertised by Aligarh Muslim University, one of the posts was the post of Lecturer in Chemistry in University Polytechnic and the qualification that was laid down by the University as essential qualification was a first class Master's degree in the appropriate branch of teaching post in Humanities and Sciences. The candidates applied for selection and in the course of interview, one of the candidates who is said to have possessed a Master's degree in Industrial Chemistry and the competent authority found that a person having Master's degree in Industrial Chemistry was better suited for teaching the said subject. Therefore, the Hon'ble Supreme Court held that the post advertised was meant for a person belonging to Pure Chemistry Department for if it was otherwise, then it would have been so mentioned in the advertisement itself that a person holding a Master's degree in Industrial Chemistry can also apply along with other persons. Having noticed the factual background of the decision of the Honourable Supreme Court, it is to be pointed out that the said decision does not in any manner support the case of the petitioner. As observed earlier, the Notification issued by the TNPSC clearly indicates that candidates possessing qualifications listed out therein or its equivalent qualification were eligible to apply. Therefore, the decision of the Hon'ble Supreme Court is distinguishable on facts.

14. For the aforesaid reasons, the petitioner has not made out any ground to interfere with the selection of the fourth respondent and consequently the writ petition fails and the same is dismissed. No costs. Consequently, M.P. Nos.2 and 3 of 2013 are also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ATR

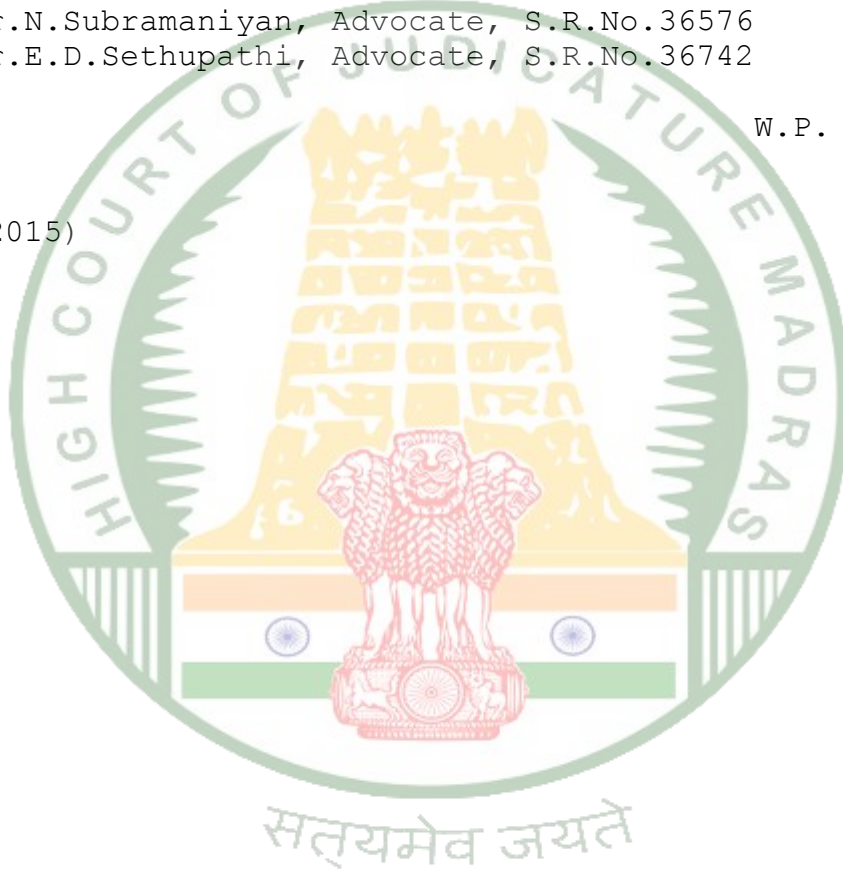
Copies to;

1. The Secretary
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Chennai 600 006.
2. The Secretary
Department of Higher Education
Fort St. George, Chennai.

+1cc to Mr.N.Subramaniam, Advocate, S.R.No.36576
+1cc to Mr.E.D.Sethupathi, Advocate, S.R.No.36742

W.P. No. 7166 of 2013

LRS (CO)
CA(18/08/2015)



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