

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2015

CORAM

THE HONOURABLE MR. JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P.No.27799 of 2015

D.Selvi Sarojini Bai

...Petitioner

v.

State of Tamil Nadu rep. By
Its Principal Secretary to Government,
Personnel and Administrative
Reforms Department,
Fort St. George,
Chennai - 600 009.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration declaring that the amendment of rule in G.O.Ms.No.88 Personnel and Administrative Reforms (C) Department dated 15.06.2012 as null and void and consequently direct the respondent to include a proviso protecting the interest of the petitioner exempting her from qualifying degree or accept the degree qualifications obtaining by Madras University through Institute of Correspondent Course and consequently direct the respondent to pay all attended benefits to the petitioner.

For Petitioner : Mr.A.R.Nixon

For Respondent : Mr.I.Arokiasamy,
Government Advocate

O R D E R

(Order of the Court was made by S.MANIKUMAR,J)

Petitioner has been appointed on 10.12.1983 in Rural Development and Local Administration Department. Vide G.O.Ms.No.996 Personnel & Administrative Reforms Department dated 22.09.1984 her services have

been regularized. Subsequently, she has rendered 24 years of service in the said post. By G.O.Ms.No.4(D) 22 Personnel & Administrative Reforms dated 17.10.2006, she was promoted as Assistant Section Officer on 20.10.2006. According to the petitioner, she finds place in the seniority list for the year 2010-2011, for promotion to the post of Section Officer. However, the Government have issued G.O.Ms.No.205 Finance (Office Proceedings 1) Department dated 12.08.2014, approving the names of eligible candidates, for promotion to the post of Section Officer and that, the petitioner has not been considered. Non inclusion of the name of the petitioner, in the above said Government Order, is due to introduction of a higher educational qualification namely, Bachelors degree of any University recognized by the University Grants Commission for the purpose of its grant and have that the person should rendered service for a period of not less than six years in the category of Assistant Section Officer in the Departments of Secretariat other than Law and Finance.

2.The Relevant portion of G.O.Ms.No.88 Personnel and Administrative Reforms (C) Department dated 15.06.2012, prescribing the qualifications for the post of Section Officer is extracted below:-

"In the said Special Rules, in Class - XII, in the Annexure, referred to in rule 3, for the entry "Must have rendered service for a period of not less than six years in the category of Assistant Section Officer in the departments of Secretariat other than Law and Finance" in column (3), against the entry "Section Officers in any department other than Law and Finance" in column (1) and the entry "Recruitment by transfer from the Assistant Section Officer in the Tamil Nadu Secretariat Service in any Department other than Law and Finance" in column (2) thereof, the following entries shall be substituted, namely:-

"(i)Must hold a Bachelor's Degree of any University recognized by the University Grants Commission for the purpose of its grant;

(ii)Must have rendered service for a period of not less than six years in the category of Assistant Section Officer in the Departments of Secretariat other than Law and Finance."

3.The grievance of the petitioner is that, by introducing the above said new qualifications, without providing for an exemption, to the existing personnel who were earlier considered for promotion up

to the post of Assistant Section Officers, and included in the seniority list, they are now deprived of an opportunity for further promotional avenues in the Department.

4. In addition to the above averments, Mr. A.R. Nixon, learned counsel for the petitioner submitted that while amending the Special Rules, for the post of Section Officers, the Government ought to have provided sufficient safeguard to those existing personnel, by including a proviso in G.O. Ms. No. 88 Personnel and Administrative Reforms (C) Department dated 15.06.2012. Thus, in the absence of providing sufficient safeguard to them, G.O. Ms. No. 88 Personnel and Administrative Reforms (C) Department dated 15.06.2012 should be set aside, as null and void and consequently, this Court should direct the respondent to include a proviso in the G.O., to protect the interest of the petitioner by exempting her from the application of the new additional educational qualification, namely, degree obtained from University recognized by University of Grants Commission. The petitioner has also sought for a prayer to accept the degree qualifications obtained by her, through the Madras University correspondence course.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. The Government have issued G.O. Ms. No. 163 Personnel and Administrative Reforms (H) Department dated 16.12.2011 prescribing the qualifications for appointment to the post of Section Officer. Relevant portion of G.O. Ms. No. 163 Personnel and Administrative Reforms (H) Department dated 16.12.2011 is extracted:-

"Under category 3 in the annexure referred to in rule 3 of the Special Rules for the Tamil Nadu General Service (Class XII), it has been prescribed that one must have rendered service for a period of not less than six years in the category of Assistant Section Officer in the departments of Secretariat other than Law and Finance for appointment to the post of Section Officer in any department other than Law and Finance by recruitment by transfer. No education has been prescribed in the above said rules.

2. The Government after careful examination have decided to prescribe a Bachelor's degree' as the requisite educational qualification under category 3 in the annexure referred to in Rule 3 of the Special Rules for the Tamil Nadu General Service (Class XII), for appointment to the post of Section Officer in any department other than law and Finance by recruitment by transfer from the category of Assistant Section Officer in the

departments of Secretariat other than law and Finance in the Tamil Nadu Secretariat Service and Order accordingly.

3.Necessary amendments to the Special Rules for the Tamil Nadu General Service (Class XII) will be issued separately. "

7.Subsequently, the Government have issued orders in G.O.Ms.No.88 Personnel and Administrative Reforms (C) Department dated 15.06.2012, making amendment to the Special Rules, for the post of Section Officers.

8.Contention of the petitioner is that under the then existing Rules, for the post of Section Officer, she was found qualified and included in the seniority list of eligible candidates, for the year 2010-2011. But, by virtue of the amendment, issued in G.O.Ms.No.88 Personnel and Administrative Reforms (C) Department dated 15.06.2012, introducing the above said educational qualifications, she has not been considered and thus in G.O.Ms.No.205 Finance (Office Proceedings 1) Department dated 12.08.2014 the petitioner's name has not been included for promotion to the post of Section Officer.

9.Direction sought for in this writ petition to issue a Writ of Declaration declaring amendment to the Rule vide, G.O.Ms.No.88 Personnel and Administrative Reforms (C) Department dated 15.06.2012 as null and void, cannot be granted for the reason that, it is the prerogative of the Government to frame recruitment rules to any post. Reference can be made to the decision of the Hon'ble Supreme Court of India in P.U.Joshi and others vs. Accountant General Ahmedabad and others reported in (2003) 2 Supreme Court cases 632 Courts do not have the power to issue a writ of mandamus to the Government to frame recruitment Rules, to suit the convenience of any person.

10.From the materials on record and the submissions made by the learned counsel for the petitioner, it appears that the petitioner has acquired a Bachelor's degree from the Madras University, Correspondence Course. Even in G.O.Ms.No.163 Personnel and Administrative Reforms (H) Department dated 16.12.2011, the Government have decided to prescribe, Bachelor's degree, as a requisite qualification under category 3, in the annexure referred to in rule 3 of the Special Rules for the Tamil Nadu General Service (Class XII). Rules also mandate that, one must have rendered service for a period of not less than six years in the category of Assistant Section Officer, in the departments of Secretariat, other than Law and Finance for appointment to the post of Section Officer, in any department other than Law and Finance by recruitment by transfer and thus, G.O.Ms.No.88 Personnel and Administrative Reforms (C) Department dated 15.06.2012 has been issued amending the service rules.

11.The Government, after careful examination have decided to prescribe a Bachelor's degree' as the requisite educational qualification under category 3 in the annexure referred to in Rule 3 of the Special Rules for the Tamil Nadu General Service (Class XII), for appointment to the post of Section Officer in any department other than law and Finance by recruitment by transfer from the category of Assistant Section Officer in the departments of Secretariat other than law and Finance in the Tamil Nadu Secretariat Service and Order accordingly.

12.Amendments have been made in the year 2012 and challenge has been made in the year 2015. Rules have been explained that it should be a degree qualification from any University recognized by the University Grants Commission for the purpose of its grant. According to the petitioner, she had acquired a degree qualification from the open University System through Madras University correspondence course. If the said degree qualification obtained by her is recognized and falls within the amendment to the Rules, she may be eligible to be considered for promotion to the post of Section Officer, as it is her contention that she had rendered service in the post of Assistant Section Officer for not less than six years. If she does not possess the qualification recognized by the University Grants Commission, she can only seek for exemption of the applicability of the Special Rules prescribing educational qualifications under Rule 48 of the Tamil Nadu State Subordinate Service Rules which again can be done only by the Governor of Tamil Nadu.

13.At this juncture, the prayer to direct the respondent to include a proviso protecting the interest of the petitioner exempting her from the prescribed qualification cannot be granted or for the matter the further prayer to accept the degree qualification obtained from Madras University through Institute of Correspondence Course, cannot be granted by this Court but, at the same time, if the said qualification is obtained from the University recognized by the Grants Commission, it is for the respondent to consider the said qualification and consequently, consider the case of the petitioner for inclusion of her name in the panel of Section Officers, if she is otherwise qualified.

14.In this context, a representation dated 03.05.2013 is stated to have been made by the petitioner along with the similarly affected persons to the Hon'ble Minister, Municipal Administration & Rural Development, Government of Tamil Nadu, Secretariat, Chennai - 600 009, is enclosed at page Nos.4 to 13 in the typed set of papers but, there is no proof that the petitioner and other similarly placed persons have requested the Competent Authority to add any proviso to G.O.Ms.No.88 Personnel and Administrative Reforms (C) Department dated 15.06.2012 and to protect their legitimate rights for promotion as Section Officers, giving exemption from acquiring a Bachelor's degree in respect of Assistant Section Officers already in service

and to revise the panel of Section Officers for the year 2010-2011 and 2011-12 and consequently to include their names for promotion. Prayer sought for in the representation to make a suitable proviso cannot be granted by the Court. However, as discussed earlier, the petitioner can seek for relaxation of the qualification. Here again the question as to whether the educational qualification prescribed for the post of Section Officers in the services of the State, can be relaxed, is a matter to be decided only by the Authority concerned.

15. In the light of the above discussion, we permit the petitioner to make a fresh representation to the competent authority to grant exemption of any qualification prescribed in the Special Rules for the post of Section Officer and if any such representation is made, the Appointing Authority/Competent Authority shall consider and pass orders on the same, subject to the Rule which provides for limitation, for revision of seniority/promotion, in the Special Rules, within a period of four weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of. No costs.

-s/d-

Assistant Registrar(CO)

dt:28/09/2015

True Copy

Sub-Assistant Registrar

jbm

To

The Principal Secretary to Government,
Personnel and Administrative
Reforms Department,
Fort St. George,
Chennai - 600 009.

+1 cc to Mr.A.R.Nixon, Advocate sr.48308

+1 cc to Government Pleader sr.4879

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