

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

WRIT PETITION No.18977 of 2015

C.S.Srinivasan

... Petitioner

vs.

1. The Vellore Central Co-operative Bank Limited,
represented by its Deputy Registrar,
No.3, Officers Line,
Vellore - 632 001.
2. The Joint Registrar of Co-operative Societies,
Vellore Region,
Vellore - 632 009.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records of the 2nd respondent herein in Revision Petition No.5/2014/A2, Na.Ka.No.835/2014/A2, dated 12.08.2014 and the order confirming the same in Na.Ka.No.7168/2014/A2 (M.A.M.No.3/2014/A4), dated 02.01.2015 and quash the same and consequently direct the 1st respondent herein to promote the petitioner to the post of Assistant forthwith by accepting the educational qualification of the petitioner as valid.

For Petitioner : Mr.Balan Haridass

For 1st Respondent: Mr.L.P.Shanmugasundaram,
Special Government Pleader

For 2nd Respondent: Ms.T.Girija
Government Advocate

O R D E R

Seeking to call for the records of the 2nd respondent in Revision Petition No.5/2014/A2, Na.Ka.No.835/2014/A2, dated 12.08.2014 and to quash the order confirming the same in Na.Ka.No.7168/2014/A2 (M.A.M.No.3/2014/A14), dated 02.01.2015

and for a consequential direction to the 1st respondent herein to promote him to the post of Assistant forthwith by accepting his educational qualification as valid, the petitioner has come up with this Writ Petition.

2. According to the petitioner, he was originally appointed as Sub-Staff (Office Assistant) in the year 1997 and his probation was declared vide proceedings dated 05.05.1999. He completed 10th standard in the year 1994 and studied 12th standard during the academic years 1994-1996. But, he did not pass all papers in the 12th standard and had four arrear papers. During his service in the respondent Bank, he completed B.Com (Co-operation) through Open University in 2004 and also completed B.C.A. in the year 2011. Since, the petitioner had continuously been working in the same post for 17 years and that he is eligible for promotion to the post of Assistant, as he is qualified with a B.Com. degree, he made a representation dated 01.03.2013 to the authorities concerned.

3. The petitioner's request for promotion was rejected by the 1st respondent vide proceedings in Na.Ka.No.43/2013, E1, dated 16.04.2013 on the ground that the petitioner had not completed XII standard before joining the Undergraduate programme, i.e. B.Com. (Co-operation). It is the case of the petitioner that he completed all arrear papers in XII standard during September 2013 and again sought promotion to the post of Assistant. Even the subsequent representation for promotion was turned down by the 1st respondent vide proceedings in Na.Ka.No.43/2013/E1, dated 03.01.2014, on the ground that he had not completed his education in 10+2+3 pattern as laid down by the Government vide G.O.Ms.No.107, dated 18.08.2009.

4. Hence, the petitioner filed a Revision Petition under Section 154 of the Co-operative Societies Act and vide order dated 02.01.2015, the 2nd respondent rejected the petitioner's request. Being aggrieved by the said order, the petitioner is before this Court.

5. The 1st respondent has filed counter affidavit, wherein, he has stated that the petitioner ought to have availed the statutory remedy available to him by filing Revision Petition under Section 153 of the TNCS Act, 1983 to the Government against the impugned order passed by the 2nd respondent and as such the writ petition filed by the petitioner is not maintainable. He has further stated that the petitioner, even before passing the four arrear papers in XII Standard, completed B.Com. through Open University during 2001 and 2004. However, he came to pass XII standard only during 2013. Pointing to the Government Order vide G.O.Ms.No.107 P & AR (M) Department, dated 18.08.2009, he stated that the Degree obtained through Open University Scheme will be acceptable for

appointment, provided the candidate had done 10th Standard followed by 12th Standard before obtaining the Under Graduate Degree.

6. It is further stated in the counter that in the Registrar's Circular No.37/2009 (Rc.166830/2009 SF3, dated 13.11.2009), it was instructed that "the Management of Co-operative Societies, in matter of posts to be filled up by direct recruitment or by promotion, should consider the degree, diploma, Master Degree obtained through Distance Education and awarded by Open Universities/regular Universities, as eligible educational qualification, only if such persons have successfully passed the School Examination in the 10th and Plus 2 scheme. In other words, an individual having a Degree obtained through Distance Education method from Open University/regular Universities will be eligible for a post where degree is a necessary qualification, unless he has studied in regular school and the 12th Class examination." Thus, according to the 1st respondent, in view of the specific condition prescribed in the Government Order and in the Registrar's Circular, the petitioner who has not obtained the degree after passing 10th and XII standard is not eligible for promotion to the post of Assistant.

7. Learned counsel for the petitioner submitted that a Division Bench of this Court in Writ Appeal No.370 of 2015 by considering the validity of the undergraduate programme without passing +2 has drawn a distinction and held that a candidate, who has undergone +2 programme, but with arrears and has subsequently passed +2 shall be considered as having satisfied G.O.Ms.No.107, dated 18.08.2009, which prescribes 10+2+3 as requisite qualification. He further submitted that in a similar circumstance, this Court in the case of V.Kanimozhi vs. The Director of School Education and another in W.P.No.1068 of 2014 decided on 11.03.2014, set aside the impugned order and allowed the Writ Petition and prayed that a similar order be passed in the present case also.

8. Learned Special Government Pleader appearing for the 1st respondent submitted that the contention of the petitioner that G.O.Ms.No.107, dated 18.08.2009 is not applicable to the Co-operative Societies is not tenable and that the Registrar's Circular which was issued in 2009 is to be adhered by all the Co-operative Societies.

9. Learned Government Advocate appearing for the 2nd respondent also submitted that the petitioner ought to have studied degree only after 10th and +2, and only then his Degree qualification will become the eligible qualification for promotion.

10. Heard the submissions made by the learned counsel on either side and perused the material documents available on record.

11. For better appreciation of the case, relevant portion of the order passed by this Court in W.P.No.1068 of 2014 on 11.03.2014 is extracted hereunder:

"6. For the sake of convenience, let me first consider the Division Bench judgment of this Court in T.L.Muthukumar Vs. The Registrar General, Madras High Court (cited supra). That was a case where G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009 referred to above was challenged. While upholding the said G.O.Ms.No.107, dated 18.08.2009, in paragraphs 18 and 19, the Division Bench held as follows:

"18. As discussed above, the rule framed by the High Court inter alia clearly lays down the qualification for the purpose of promotion from Categories 7, 8 and 9 to Category 6. It is clearly mentioned that for the purpose of promotion, a person must possess and hold the B.A./B.Sc./B.Com or other Bachelor's degree of the Madras University or of a recognized University. The rule does not recognize B.A. or B.B.A. degree from an Open University obtained by a candidate without having the basic +2 qualification. The condition contained in the High Court Service Rules, therefore, cannot in any way be superseded by other law not applicable to the employees of the High Court.

19. Admittedly, the petitioners', although, obtained the first degree by correspondence course without having the basic +2 qualification. Such degree having not been recognized under the Rules framed by the High Court in exercise of powers conferred under Article 229 of the Constitution of India, the petitioners' cannot claim promotion on that basis."

7. A perusal of the above judgment, more particularly paragraphs 18 and 19 would go to show that while upholding G.O.Ms.No.107, dated 18.08.2009, this Court has taken the view that the degrees obtained from an Open University scheme from Annamalai University cannot be accepted for the purpose of appointment in the Madras High Court because as per the Madras High Court Service Rules, it is clearly stated that for the purpose of promotion, a person must possess and hold B.A./B.Sc./B.Com. or other Bachelor's degree of the Madras University or of a recognised University and the Rule does not recognise B.A. or B.B.A. Degrees from an Open University obtained by a candidate without having the basic +2 qualification. The Division Bench has however held that the conditions contained in the Madras High Court Service Rules cannot be in any way superseded by other law not applicable to the employees of the Madras High Court.

8. In my understanding, the above judgment of the Division Bench applies more specifically to the Madras High Court Service Rules. The Division Bench had no occasion to examine the question as to whether completing 12th Standard (+2) after having already obtained B.A. degree course would satisfy G.O.Ms.No.107, dated 18.08.2009.

9. In the other judgment relied on by the learned counsel for the petitioner in J.Joseph Irudayaraj Vs. Joint Director of School Education, Chennai the other Division Bench of this Court had exactly examined the above issue. In paragraphs 8 and 9 the Court has recorded the facts as follows:

"8. Originally, even though the appellant has obtained degree only through open university, the appellant had subsequently appeared for the higher secondary examination and completed the same in June, 2010. The management sent the proposal on 07.08.2010 to the second respondent for approval as the appellant has completed his higher secondary examination in June, 2010. By the order dated 16.12.2010, the second respondent has again returned the proposal on the ground that the appellant has not studied

in the pattern of 10 +2+3 as per G.O.Ms.No.107 P&AR Department dated 18.08.2009.

9. The learned senior counsel for the appellant submitted that since the appellant has completed his higher secondary examination in June, 2010, proposal for approving the appointment of the appellant may be approved at least from June, 2010."

In paragraph 11, the Division Bench has held as follows:

"11. We are of the view that the second respondent is to reconsider the matter in the light of para 4 of G.O.Ms.No.107 P&AR Department dated 18.08.2009. While so reconsidering the matter, the second respondent shall take into account that the appellant has been working from 2006, much prior to the judgment of the Honourable Supreme Court in Annamalai University v. Secretary to Government, Information and Tourism Department, Chennai ((2009) 4 SCC 590) and he has completed his higher secondary examination in June, 2010."

10. Thus, it is crystal clear that as per the law laid down by the Division Bench in J.Jospeh Irudayaraj's case (cited supra), the requirements of G.O.Ms.No.107, dated 18.08.2009 shall stand satisfied if the candidate has studied 12th Standard (+2) after completing B.A. degree course. In other words, because courses are done in reverse order, it is no matter at all.

11. The learned counsel has relied on yet another judgment of a learned Single Judge in S.Ashalatha Vs. The Director of School Education, Chennai in W.P.No.6870 of 2013 dated 25.03.2013, wherein, in paragraph 4, more or less in similar circumstances, this Court has held as follows:

"4. But, by virtue of G.O.Ms.No.361, Education, dated 31.12.1999, persons who had secured a Post Graduate Degree in a different

subject than the subject in which Under Graduate Degree course was undergone, were made ineligible for appointment to the post of P.G. Assistants. Therefore, the petitioner went back to an Under Graduate course, as it has not become routine for people to do courses in all orders, not necessarily in the chronological sequence, but in the reverse or even in perverse sequence. Anyway, the petitioner completed three year B.Litt. from Madras University. Therefore, on the date on which she applied for appointment, the petitioner had an Under Graduate Degree as well as a Post Graduate Degree in the same subject, undergone in the regular stream, from the University of Madras. In such circumstances, the rejection of her candidature on the ground that it was obtained in a reverse order is not correct. Hence, this writ petition is allowed and the respondents are directed to pass orders, appointing the petitioner, within a period of four weeks, if all other certificates are in order. There shall be no order as to costs. Consequently, M.P.Nos.1 and 2 of 2013 are closed."

12. The Annamalai University's case (Annamalai University Vs. Secretary to Government reported in (2009) 4 SCC 590) has been referred to by the two Division Benches in their respective judgement. That was a case where, a Post Graduate degree obtained directly under the Open University system without doing Under Graduate degree was valid or not came up for consideration. In that case, the Hon'ble Supreme Court has held that before obtaining M.A. degree, as per UGC regulations, a candidate should have completed +2, followed by Under Graduate degree course. The Post Graduate degree obtained through Open University scheme directly without having obtained a Under Graduate degree cannot be considered for the purpose of appointment as a Principal in a College. In that judgment, the Hon'ble Supreme Court had no occasion to consider as to whether if a candidate completes a Under Graduate degree course after having obtained his Post Graduate degree under the Open University

system will be eligible. This question was virtually examined by the Division Bench in J.Joseph Irudayaraj's case (cited supra). As a matter of fact, the Division Bench in J.Joseph Irudayaraj's case (cited supra) has extensively considered the judgment of the Hon'ble Supreme Court in Annamalai University's case (cited supra)."

12. In view of the above, this Writ Petition is allowed and the impugned order of the 2nd respondent rejecting the promotion of the petitioner is hereby set aside and the 2nd respondent is directed to consider the petitioner for promotion to the post of 'Assistant' and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected M.P.No.2 of 2015 is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

The Joint Registrar of Co-operative Societies,
Vellore Region,
Vellore - 632 009.

+1cc to the Government Pleader Sr.60134
+1cc to M/S.L.P.Shanmugasundaram, Advocate Sr.59110
+1cc to M/S.Balan Haridas, Advocate Sr.59091

W.P.No.18977 of 2015

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