

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.40374 of 2015

M.Ganesan

.. Petitioner

-vs-

1. The Principal Secretary to Government
Finance Department
Secretariat, Chennai 600 009
2. The Principal Secretary to Government
Personnel and Administrative Reforms
Department
Secretariat, Chennai 600 009
3. The Commissioner of Treasuries & Accounts
Panagal Building
Saidapet, Chennai 600 015 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records passed by the third respondent viz., the Commissioner of Treasuries and Accounts, Panagal Building, Chennai-15 dated 27.06.2013 in Rc.No.22327/2013/A2, quash the same and consequentially direct the respondents to include the petitioner's name in the current panel of Accounts Officer for the year 2015-2016 under preparation and also promote the petitioner as Accounts Officer in the Treasuries and Accounts Department.

For Petitioner :: Mr.P.M.Subramaniam

For Respondents :: Mr.A.Kumar
Special Government Pleader

ORDER

Mr.M.Ganesan, who is presently working as Assistant Accounts Officer and having been denied promotion to the post of Accounts Officer by the panels drawn for the years 2012-13, 2013-14 & 2014-15, has come to this Court challenging the impugned order. The sum and substance of the objection raised by the third respondent in the impugned order would show that the petitioner

had passed the B.Com. Degree after undergoing the two year Foundation Course without passing the S.S.L.C. and +2 and hence he does not satisfy the conditions laid down in G.O.Ms.No.107, Personnel and Administrative Reforms Department dated 18.8.2009 for being considered for promotion to the higher post.

2. Assailing that portion of the order, the learned counsel for the petitioner submitted that the petitioner, after passing the S.S.L.C. under old pattern in March, 1976, got an appointment as Driver on 23.3.83 and posted in the office of the District Communication Officer, Pudukkottai and while serving as Driver, completed the two year Foundation Course conducted by Madurai Kamaraj University, which is equivalent to +2 course and passed the same in the year 1987. Thereafter, he was appointed as Junior Assistant on 15.10.91 in the Tamil Nadu Ministerial Service by transfer and posted to the District Project Office, Dindigul. Subsequently, he completed the B.Com., Degree course through distance education in Annamalai University in December, 2009. In the meanwhile, he was promoted as Assistant in the year 1997 and further promoted as Superintendent and posted at the Integrated Child Development Project Office, Thalaigayiru, Nagapattinam District and his services were also regularised in the said post with effect from 18.8.2004. Thereafter, he was promoted as Assistant Accounts Officer on 9.3.2011 and posted in the office of the Joint Director of Agriculture, Pudukkottai and his services were also regularised in the said post on 7.3.2012, since the B.Com., graduates need not pass the Accountancy Lower Grade. For the reason that the petitioner has fulfilled the eligibility requirements to the post of Accounts Officer, a seniority list of Assistant Accounts Officer for the year 2012 was made by including his name in the said list. The third respondent also sought for particulars from the Head of the Department specifically asking whether any departmental proceeding was pending against the petitioner and also to say whether he had passed the Accountancy Higher/B.Com. Degree and fulfilled all the eligibility conditions for promotion to the post of Accounts Officer. After considering the service particulars of the petitioner, the particulars were sent. But the third respondent has not considered his name for promotion. Therefore, the petitioner gave a representation on 31.5.2013 to the third respondent requesting him to include his name in the panel for the year 2012-13 stating that he possessed all the requisite qualification and his name should be included in the list of Assistant Accounts Officers. Finally the third respondent, wrongly presuming that the petitioner has failed to possess the requisite qualification, passed the impugned order denying to include his name in the panel of promotion to the post of Accounts Officer.

3. Continuing his arguments, the learned counsel for the

petitioner, placing on record the G.O.Ms.No.528, Personnel and Administrative Reforms Department dated 18.5.85, further submitted that when the Government has already passed the Government Order treating the two year Foundation Course as equivalent to +2 course and when the petitioner had already passed the B.Com., Degree course in December, 2009, the stand taken by the respondents in the counter affidavit that the petitioner has acquired the Degree without passing the S.S.L.C., and +2 courses is factually incorrect. Again bringing to the notice of this Court an order passed by this Court in W.P.No.14658 of 2011 dated 30.7.2012 (S.Mathavan Pillai v. The Secretary to Government, Personnel and Administrative Reforms Department), in which case a similar and identical issue was decided holding that obtaining the two year Foundation Course after passing the S.S.L.C., and obtaining the B.Com., degree thereafter would not be an impediment for the petitioner therein to be included in the panel for promotion to a higher post, deserves to be applied in the case on hand also, because the said order, on being questioned by the respondents in Writ Appeal No.1372 of 2013, has been confirmed by the Hon'ble Division Bench by order dated 12.7.2013 and the further challenge in S.L.P(C) No.14718 of 2014 has also been negatived. On this basis, he pleaded that the impugned order is liable to be set aside.

4. Per contra, the learned Special Government Pleader for the respondents, seriously objecting to the prayer of the petitioner, reiterated the stand taken by the respondents in the counter affidavit and sought for dismissal of the writ petition.

5. At the outset, the erroneous stand taken by the respondents in the counter affidavit shows that the petitioner had obtained the B.Com. Degree after passing the two year Foundation Course, without passing the 10th Standard and +2 examination. However, paragraph-6 of the counter affidavit reads as follows:-

"6. With regard to the averment made by the petitioner in paragraph 10 of the affidavit, it is submitted that the petitioner was given regular promotion as Assistant Accounts Officer since he has completed Accountancy Junior Grade test and fulfilled the qualification requirement for promotion at that stage. The required qualification for the Assistant Accounts Officer promotion is either the candidate should have completed B.Com., degree or passed the Accountancy Junior / Higher Grade. Since the petitioner has passed Accountancy Junior Grade, he was promoted as

Assistant Accounts Officer based on the said qualification and the necessity of having undergone 10+2+3 pattern of education did not arise at that time. Also for promotion as Superintendent no additional qualification is required."

A mere reading of the above would show that the respondents have proceeded as though the petitioner has obtained the B.Com., degree after undergoing the two year Foundation Course without passing the S.S.L.C., which is factually incorrect. As highlighted above, at the cost of repetition, it may be mentioned that the petitioner has passed the S.S.L.C., in the year 1976 under the old pattern and thereafter had undergone the two year Foundation Course, for which also he was issued with the Open University Foundation Course Certificate during April, 1987 and thereafter has obtained the B.Com., degree during December, 2009. Moreover, when a similar and identical issue has also been decided by this Court in Mathavan Pillai's case cited supra, the reason assigned by the respondents that the petitioner has not got the requisite qualification for promotion to the post of Accounts Officer is wholly untenable. In the light of the same, the impugned order is set aside and the writ petition stands allowed. Consequently, M.P.Nos.1 & 2 of 2015 are closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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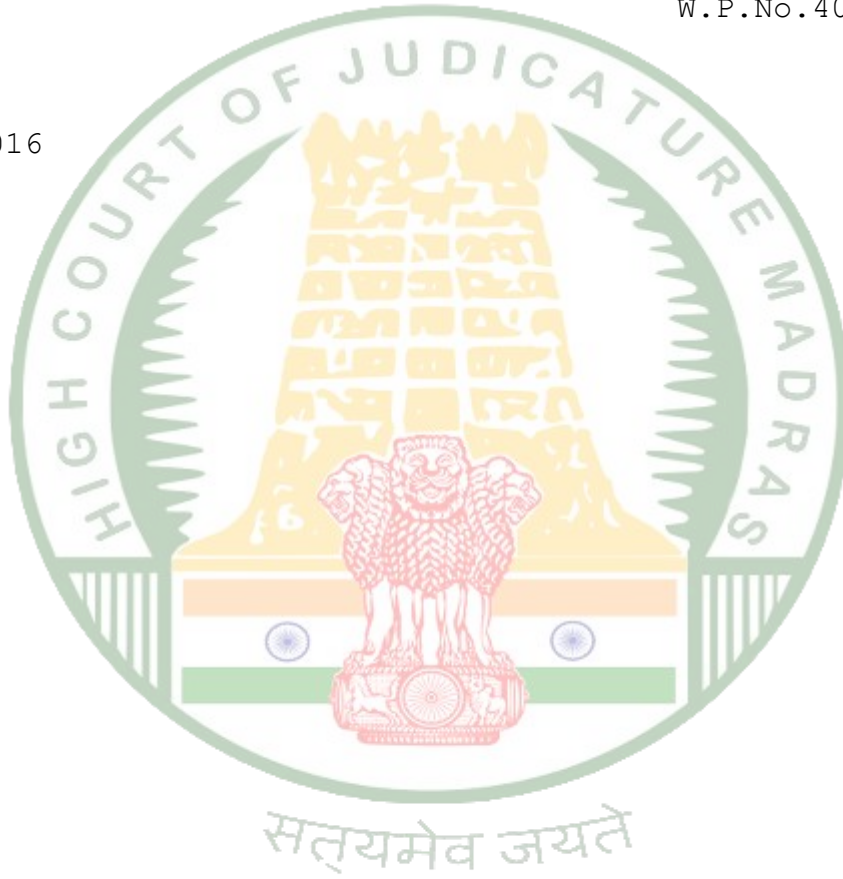
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Chennai 600 015

+1 cc to Mr.P.M.Subramaniam Advocate sr.23652
+1 cc to Government Pleader sr.23886

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