

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 16.06.2017

JUDGMENT PRONOUNCED ON:21.09.2017

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.52 of 2015

1. The Secretary to Government
Home (Pol-II) Department,
Fort. St.George, Chennai -9.

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 4.

...Appellants/Respondents

.. Vs ..

C.Pichandi
Inspector of Police (Adjutant)
TSP V Battalion,Avadi,
Chennai – 109.

...Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 07.04.2014 made in W.P.No.2303 of 2014 on the file of this Court.

For Appellants : Mr.P.S.Sivashanmugasundaram
For Respondent : Mr.M.Muthappan

JUDGMENT**RMT.TEEKAA RAMAN,J.**

Challenging the correctness of the order passed in W.P.No.2303 of 2014, dated 05.02.2014, the State has preferred this appeal.

2. The respondent herein filed the above Writ Petition for seeking the relief for a Writ of Certiorarified Mandamus to call for the records of the second respondent (second appellant herein) in connection with the impugned order passed by him in RC.No.191917/GBIII(2)/2012 dated 22.10.2013 and quash the same and further direct the respondents (appellants herein) to consider the claim of the respondent/writ petitioner for promotion as Assistant Commandant, Category-III by taking into consideration the educational qualification of a pass in SSLC and promote him as Assistant Commandant for 'C' List of the year 2012-2013 and grant him all consequential service and monetary benefits within a reasonable time.

3. The brief facts leading to the filing of the above writ petition are as follows:-

a) The respondent/petitioner entered into service as a directly recruited Grade-II Police Constable in TSP II Battalion, Avadi on 15.09.1981. After joining the Police force, he opted to serve in armoury branch. He was promoted as Sub Inspector of Police in Armuory Branch in the year 1985. He

was further promoted as Inspector of Police in the year 1998 and Adjutant on 23.04.2005.

b) The next avenue of promotion to the writ petitioner is Assistant Commandant from the feeder category post of Adjutant , for which he is fully qualified by seniority as well as by educational qualification. The relevant Rules viz., Rule 4(c) of the Special Rules reads as follows:-

"No Inspector/Inspector (Adjutant) of Tamil Nadu Special Police Service shall, except in very special circumstances, be eligible for promotion as Assistant Commandant or Assistant Commandant (Small Arms) as the case may be by recruitment by transfer unless,

- (i) he has completed 5 years of service in that category, officiating or permanent;
- (ii) he is the holder of SSLC eligible for college course of study.

C) According to the writ petitioner, while he entered into service as a Police Constable in TSP Battalion, he completed SSLC (10 years course). But, subsequently, the writ petitioner, by appearing privately, passed SSLC (10 years standard by new syllabus) in June, 2011 in three attempts and has obtained the Secondary School Leaving Certificate by private study. Hence, he is fully qualified for promotion as per the educational qualification. As per the service rules for promotion to the post of Assistant Commandant, which is

equivalent to DSP category-III, a person must have passed SSLC, which is eligible for college study. The writ petitioner is fully qualified since he has passed SSLC by private study.

d) Though the writ petitioner was fully qualified, both educationally and as well as by service, his claim was not considered, whereas his juniors were promoted. Hence, he made a detailed representation to the respondents on 23.07.2012. Subsequently, he made another representation dated 12.12.2013 praying for promotion as Assistant Commandant, for which there is no response. In the meanwhile, his junior by name Ulaganathan, who has passed SSLC under new syllabus, was promoted as Assistant Commandant by the proceedings of the third respondent (third appellant) dated 15.09.2012 and he is serving as Assistant Commandant, whereas, the writ petitioner, who is also a similarly placed person, was not promoted. The writ petitioner's junior one V.Kannan was also promoted as Assistant Commandant by relaxation of Rules in G.O.(2D) No.377, Home (Pol.II) Department, dated 28.02.2010.

4. The learned counsel for the respondent/writ petitioner has submitted that though the writ petitioner is fully qualified, since he has passed S.S.L.C by private study, he was not considered and hence, he made a representation. In the meanwhile, his junior Ulaganathan, Kannan and Ganesan, who have passed under S.S.L.C new pattern, like that of the writ

petitioner, were considered and promoted by relaxation of Rules on various dates. However, in the case of the writ petitioner /respondent herein, the Department is showing a discrimination and hence, he moved the above writ petition.

5. Challenging the impugned order passed by the second appellant herein on 22.10.2013, the writ petitioner has also sought for the consequential direction to consider his claim for the promotion in the list for the post for the year 2012-2013 with consequential service benefits.

6. The learned Special Government Pleader appearing for the appellants made a submission that the Writ Petitioner /respondent herein has not passed the S.S.L.C as per old pattern and hence, his educational qualification was not considered by the learned single Judge and with regard to plea of promotion, since he has stated that it is distinguishable on the point that they have passed the elective subject though they have failed in the elective subject, they have scored marks in all the other subjects and hence, the writ petitioner seeks to set aside the order of the learned single Judge dated 05.02.2014.

7. After consideration of both rival submissions and perusing the records, the learned single Judge has come to the conclusion that he is not accepting the reason assigned by the second appellant/second respondent for rejecting the claim of the writ petitioner and as per G.O.No.337, Education

Department, dated 24.02.1981, a person must have obtained 35% of marks in all the subjects. In the instant case, the learned single Judge has observed that the Writ Petitioner has completed 10 years of schooling introduced in the year 1978 and appeared S.S.L.C as per new pattern of examination and has passed in all the subjects by securing more than 35% in all the subjects and further held that the reason assigned in the impugned order that the writ petitioner has not passed the old S.S.L.C pattern, as per the Rules, is not legally sustainable.

8. After hearing the rival contentions and perusing the typed set of papers, we concur with the findings of the learned single Judge as to the issue of educational qualification which remains to be stated that the old pattern namely 11+1+3 has been abolished and new educational pattern namely 10+2+3 was introduced in the year 1978 and on and from 1978, the S.S.L.C stands for Secondary School Leaving Certificate and the writ petitioner entered into the service as Grade-III Police Constable in T.S.P.II Battalion, Avadi on 15.09.1981 and subsequently obtained two promotions relying upon the sub-rule 4(c) of the Rules.

9. The learned Special Government Pleader has submitted that the writ petitioner has not completed S.S.L.C as per the old pattern even on the date of his joining into the service. The new pattern 10+2+3 has been introduced way back in 1978 and in the new pattern, he has got more than 35% in all

subjects.

10. Therefore, We are of the considered view that the finding of the learned single Judge cannot be interference with. It appears that though the new educational pattern has been adopted in the State of Tamil Nadu as early as in 1978. Even after passing of 38 years, the sub-rule was not amended taking note of the new pattern adopted in this State and by passage of time, the Rule has become particularly redundant, since of late, it has become obsolete and taking advantage of the obsolete pattern of the Rules, the appellants-State seems to have granted exemption and promotion to Ulaganathan, Ganesan, etc. While it comes to the case of the respondent/writ petitioner, it has been put against him and hence, this Court finds that in view of the non-amendment of the sub-rules even after the adoption of the new pattern in 10+2+3 which has given room to favour the favoured few and hence, while we concur with the findings of the learned single Judge regarding the educational qualification, fit for promotion of the writ petitioner, we also observe that it is for the appellants-Department to make necessary amendment in the above said Rules at the earliest and the Law Secretary of the State is hereby required to look into the redundant Rules have been duly corrected and updated due to change in education pattern adopted, for nearly 4 decades ago.

11. The further direction issued by the learned single Judge in the impugned order for considering the claim of the writ petitioner for promotion

to category III is also hereby confirmed and we hold that the writ petitioner has to be promoted as per 'C' list for the year 2012-2013 and he is also entitled for all consequential service and monetary benefits and the appellants shall comply with the above said direction within a period of eight weeks from the date of receipt of a copy of this judgment.

12. With the above observations and direction, this Writ Appeal is dismissed as devoid of merits and order passed in W.P.No.2303 of 2014 is hereby confirmed whereby impugned order dated 22.10.2013 which was set aside in the writ petition, is hereby confirmed. No costs.

[H.G.R.,J.] [T.K.R.,J.]

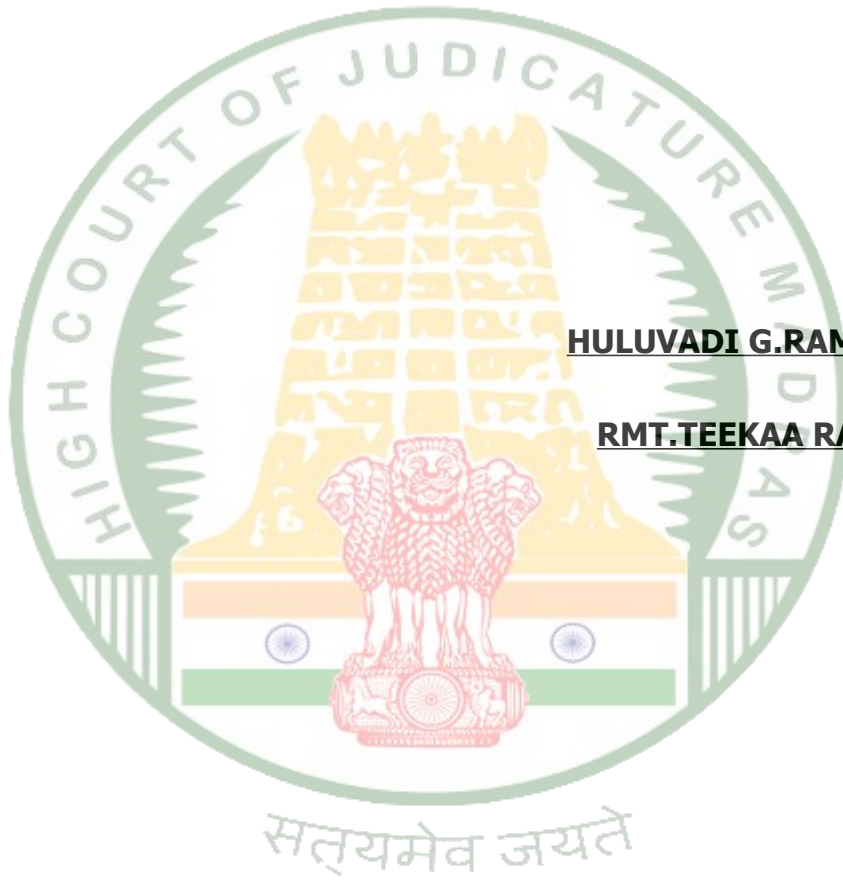
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To

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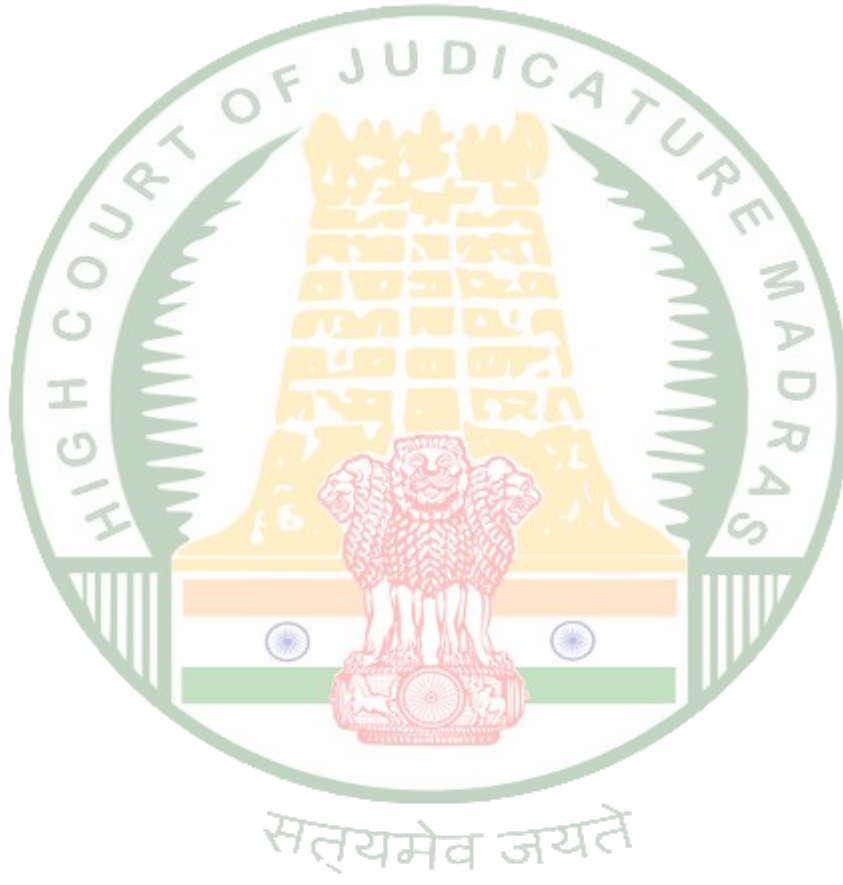
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