

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.07.2017

Date of Verdict : 07-09-2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.7120 of 2011

D.Mohamed Hasan Refayee

.. Petitioner

versus

1. Tamil Nadu Public Service Commission,
rep. by its Chairman,
Commercial Tax Annexe Building,
No.1, Greams Road,
Chennai-600 006.

2. Government of Tamil Nadu,
rep. by its Secretary,
Department of Personnel &
Administrative Reforms (P & AR),
Fort St.George,
Chennai-600 009.

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in connection with the letter bearing Letter No.33448/M/2010-4 Personnel and Administrative Reforms (M) Department dated 03.12.2010 and quash the same and direct the 1st respondent to declare the result of the petitioner in respect of his participation in the Combined Subordinate Services Examination -1 and in the event of the petitioner having been selected direct the 2nd respondent to issue an order of appointment with the consequent benefits.

For petitioner : Mr.V.Prakash, SC for
Mr.K.Sudalaikannu

For respondents: Dr.M.Devendran, SC for R1
Mr.K.Venkatramani, AAG for R2
assisted by Mr.T.M.Pappiah,
Spl.G.P.

ORDER

The petitioner has filed the present Writ Petition, seeking the following relief:

<https://hcservices.ecourts.gov.in/hcservices/>

"To issue Writ of Certiorari of Mandamus, to call for of the 2nd respondent in connection with the letter bearing Letter No.33448/M/2010-4 Personnel and Administrative Reforms (M) Department dated 03.12.2010 and quash the same and direct the 1st respondent to declare the result of the petitioner in respect of his participation in the Combined Subordinate Services Examination -1 and in the event of the petitioner having been selected direct the 2nd respondent to issue an order of appointment with the consequent benefits."

2. The case of the petitioner is as follows:

2.1. The petitioner applied and participated in the examination conducted for recruitment of posts included in Combined Subordinate Services Examination-I. After becoming successful in the said examination, the petitioner also appeared for the interview on 7.10.2009. However, the results of the petitioner was withheld, which on enquiry, he came to know that it was on account of not satisfying the eligibility criteria in regard to his school completion. The petitioner made a detailed representation stating that he could not continue his XI standard due to sickness, however, he completed a course, called 'Foundation Course' conducted by Madurai Kamaraj University, which is equivalent to Plus Two course, recognized by the Tamil Nadu Government vide G.O.Ms.No.528 Personnel and Administrative Reforms (P&AR) dated 18.5.1985. After completion of the said Foundation Course, he joined Bachelor of Commerce and also completed the same in the year 1989. However, despite his representation, as no results were declared, the petitioner was constrained to approach this Court by way of a Writ Petition in W.P.No.13574 of 2010. This Court, while disposing the said Writ Petition, has observed as follows:

"3. Since the Writ petition was filed to declare the results, the learned counsel for the petitioner was directed to serve notice to the learned counsel for the first respondent. Today, the learned counsel for the first respondent produced a communication issued by the first respondent to the second respondent dated 12.07.2010 and requested to clarify as to whether the qualification possessed by the candidate, namely, pre-Foundation Course of Madurai Kamaraj University - Open University be recognized as equivalent to the 10th standard SSLC examinations of the Tamil Nadu Government for the purpose of entry in to service in the State and whether the two years Foundation Course of the Madurai Kamaraj University - Open University be recognized as equivalent to Higher

Secondary course of the Tamil Nadu Government for the purpose of entry in public services in the State and whether the persons possessed of the said qualifications may be considered as satisfying the requisites of the Government Order in G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009, in view of the orders issued in G.O.Ms.No.528, dated 18.05.1985.

"4. In the light of the clarification sought for by the first respondent from the second respondent as early as on 12.07.2010, the second respondent is directed to consider the said issues and give the clarification as sought for by the first respondent within a period of four weeks from the date of receipt of a copy of this order and on receipt of the clarifications from the second respondent, the first respondent is directed to decide accordingly. The second respondent is also directed to communicate the copy of the clarification to be issued to the petitioner while communicating the same to the first respondent."

2.2. While so, the 2nd respondent has issued impugned proceedings, dated 03.12.2010, in and by which, it has been clarified that a degree awarded by the Open Universities after passing pre-foundation course and two year foundation course through Open University cannot be recognized as a degree as per University Grants Commission norms for the purpose of employment/promotion in Public Service since such courses are not contemplated in the UGC Regulations and therefore, those who obtained the degree through Open University System after passing pre foundation course, without passing 10th standard and +2 examination, do not satisfy the conditions laid in G.O.Ms.No.107 dated 18.8.2009 which is consonance with the orders of the Supreme Court of India. In view of this clarification, the respondents have not considered the claim of the petitioner, which prompted the petitioner, to approach this Court, seeking to quash the impugned proceedings.

3. Upon notice, Mr.M.Devendran, learned standing counsel for the 1st respondent/TNPSC entered appearance and filed counter affidavit and reiterated the averments contained therein, that the Government issued G.O.Ms.No.107 dated 18.8.2009, to the effect that Diploma, UG Degree, PG Degree obtained from open universities after passing SSLC examination (10th Standard) and the HSC examination (12th Standard) are recognized for the purpose of public appointments/promotion. However, based on the marks obtained in the written examination and oral test by the petitioner, he was provisionally considered to the post of Accountant in Treasuries and Accounts Department, but his result was withheld subject to acceptance of his

qualification after getting clarification from the Government. Subsequently, a clarification was also sought for from the Government in this regard and vide letter dated 3.12.2010, the Government had clarified as follows:

"A degree awarded by the Open Universities after passing pre-foundation course and two year foundation course through Open University cannot be recognized a degree as per University Grants Commission norms for the purpose of employment/promotion in Public Services, since such pre-foundation courses are not contemplated in the University Grants Commission Regulations.

"Therefore, those who obtained a degree under Open University System, after passing the pre-foundation course and two year Foundation Course without passing 10th standard and +2 examination, do not satisfy the conditions laid in G.O.Ms.No.107 P & AR (M) Department, dated 18.8.2009 which is in consonance with the orders of Supreme Court of India."

4. It is further stated that the Government had once again clarified vide letter dated 8.8.2013 that the pre-foundation and foundation courses were considered as not equivalent to SSLC and HSC. Since the petitioner had passed Foundation Course through Open University, which cannot be considered as equivalent to HSC and as such, his bachelor degree obtained without passing SSLC and HSC could not be considered as a valid one and hence, his application is liable to be rejected. However, the application was not rejected in view of the pendency of the writ petition. For these reasons, the first respondent sought for dismissal of the writ petition.

5. On behalf of the second respondent also, a counter affidavit has been filed, inter alia, stating that though in G.O.Ms.No.528, dated 18.5.1985, orders were issued to the effect that the pre-foundation course and two year foundation course through Open University be recognized as equivalent to SSLC and HSC respectively for the purpose of entry into public services, however, based on the recommendation of the Equivalence Committee that a degree obtained through Open University System is not equivalent to +2 and in consonance with the orders of this Court and the Hon'ble Supreme Court, the Government issued G.O.Ms.No.107, dated 18.8.2009 recognising the Diploma/Degree/P.G.Degree obtained through Open University System after passing the SSLC and HSC for the purpose of employment/promotion.

6. While so, the Hon'ble Supreme Court in Civil Appeal Nos.4173 of 2008 & 4189-4191, in its judgment, has held that the recognition of decree from the Open University system could be only on the anvil that such degree must be in accordance with the Regulations of the UGC and not in direct conflict with such

regulations. Therefore, the individuals who have obtained a degree through Open University System after passing the pre-foundation course or two years foundation course without passing 10th and 12th standard examinations, do not satisfy the conditions laid down in G.O.Ms.No.107 dated 18.08.2009 which was issued in consonance with the orders of the Hon'ble Supreme Court.

7. It is further stated that as per the provision of 1986 UGC Regulations, no student shall be eligible for admission to 1st year degree course through non-formal/distance education unless he has successfully completed 12 years schooling through an examination conducted by a Board/University. Hence, a degree awarded by the Open University after passing pre-foundation course and two year foundation course through Open University cannot be recognized as a degree as per UGC norms for the purpose of employment/promotion in public services. Keeping in view of the same, the Government vide letter dated 03.12.2010 impugned in the writ petition, has rightly clarified the position, which requires no modification or re-consideration. Therefore, the second respondent sought for dismissal of the writ petition.

8. Mr.V.Prakash, learned senior counsel appearing for the petitioner would rely upon the following decisions, rendered by the Hon'ble Supreme Court and this Court.

- i) (2009) 4 SCC 590 (Annamalai University, rep. by Registrar versus Secretary to Government, Information and Tourism Department & others);
- ii) 2014 SCC OnLine Mad 1009 (P.Raman versus The Govt.of Tamil Nadu, rep. by the Chief Secretary and others);
- iii) MANU/TN/3283/2014 (C.Dharuman and others versus Govt.Tamil Nadu & others).

9. In the decision cited 3rd supra, the learned Judge of this Court has extensively adverted to the various provisions of the University Grants Commission (UGC) and relevant Government Orders and finally held that the degree obtained in the circumstances, is valid. A similar view has been taken by the same Judge in his decision rendered in W.P.Nos.13054, 13055 of 2010, etc., cited 2nd supra. In the circumstances, he would impress upon this Court that the petitioner having gone through the foundation course before obtaining the degree from Madurai Kamaraj University is valid and therefore, he is entitled to be appointed on the basis of his selection. The learned senior counsel would also place heavy reliance upon G.O.Ms.No.528 Personnel and Administrative Reforms (P&AR) dated 18.5.1985 wherein, the Government has directed that a pass in foundation course is equivalent to pass in +2 course. According to the learned senior counsel, the completion of first year of foundation course is equivalent to pass in 10th standard and completion of second year foundation course is equivalent to

pass in +2 course. This Court's attention was drawn to the said G.O. which is filed in the typed set of papers relied upon by the petitioner.

10. No doubt, the Syndicate of the University of Madras had resolved that the foundation course of the Open University System of Madurai Kamaraj University be recognized as equivalent to pass in the +2 of the 10+2 pattern for the purpose of admission to the degree course of the University of Madras subject to usual conditions. Therefore, there cannot be any quarrel with regard to the position that the foundation course conducted by the Madurai Kamaraj University is recognized as pass and equivalent to pass in the +2 course.

11. However, as far as facts of the present case on hand, it has to be considered whether the petitioner's pass in the foundation course can be recognized as pass and equivalent to pass in the +2?

12. This Court cannot lose its sight to the fact that admittedly the petitioner pursued the school education in the old pattern up to XI standard, but could not complete the same due to his sickness, which meant that the petitioner did not take any public examination under the old XI pattern. Subsequently, the pattern of higher school education has been changed from 1978 and 10+2 pattern was introduced. As far as the petitioner is concerned, he did not pass his X standard in the new pattern and therefore, there was no occasion for him to undergo public examination under the old pattern because, under the old pattern, public examination was made applicable only at XI standard. In all, it must be seen that without undergoing public examination, either in Class IX under the old pattern or X standard in the new pattern, mere undergoing foundation course by the petitioner cannot entitle him to get a valid degree from the correspondence course. The petitioner ought to have qualified himself in pre foundation course and thereafter, he ought to have qualified in foundation course before he could get a degree through Open University System of Madurai Kamaraj University. This peculiar fact has been lost sight both by the petitioner and also the respondents and all the points which were canvassed by the respective senior counsels only with regard to whether the foundation course is valid enough for the purpose of obtaining degree through Open University System and such degree obtained through the said system is whether valid for earning public employment.

13. Since this Court is of the view that the petitioner, first of all, is not qualified directly to be admitted in the foundation course in view of his non appearance in any of the public examinations conducted by the Director of School Examinations either under the old pattern XI standard or new pattern X standard and now he cannot claim to have undergone the foundation course with valid participating and passing in the

public examination, atleast once i.e. at higher secondary school level. In the said circumstances, this Court does not wish to be drawn into the legal controversy whether pre foundation/foundation course is valid enough to earn a valid degree through the Open University System for the purpose of public employment or not. Since the foundation course undergone by the petitioner without undergoing the pre foundation course in the facts of the case, itself is not valid, his subsequent degree obtained through the Open University System from Madurai Kamaraj University, cannot be held to be valid for any purpose.

14. However, the learned senior counsel appearing for the petitioner placed heavy reliance upon G.O.Ms.No.528 Personnel and Administrative Reforms (P&AR) dated 18.5.1985, particularly, the relevant portion in para 3 , which is extracted herein below:

"3. The Government, after careful consideration, direct that the pre foundation course of the Madurai Kamaraj University Open University be recognized as equivalent to the 10 years S.S.L.C. of the Tamil Nadu Government for purpose of entry into service in this State. The Government also directs that the two years Foundation course of the Madurai Kamaraj University-Open University be recognized as equivalent to Higher Secondary (+2) course of the Tamil Nadu Government for purpose of entry in Public Services in the State."

15. According to the above decision of the Government, it is very clear that the Pre foundation course is treated as equivalent to 10 years S.S.L.C. and the foundation course is equivalent to Higher Secondary (+2) course. Therefore, the averment in the affidavit filed in support of the Writ Petition that the completion of first year of foundation course is equivalent to passing of X standard and completion of second year of foundation course is passing of + 2 course, may not be correct. Therefore, the said submission of the learned senior counsel is devoid of merit and the same is brushed aside.

16. In the light of the above discussion, this Court finds no merit in the Writ Petition and therefore, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

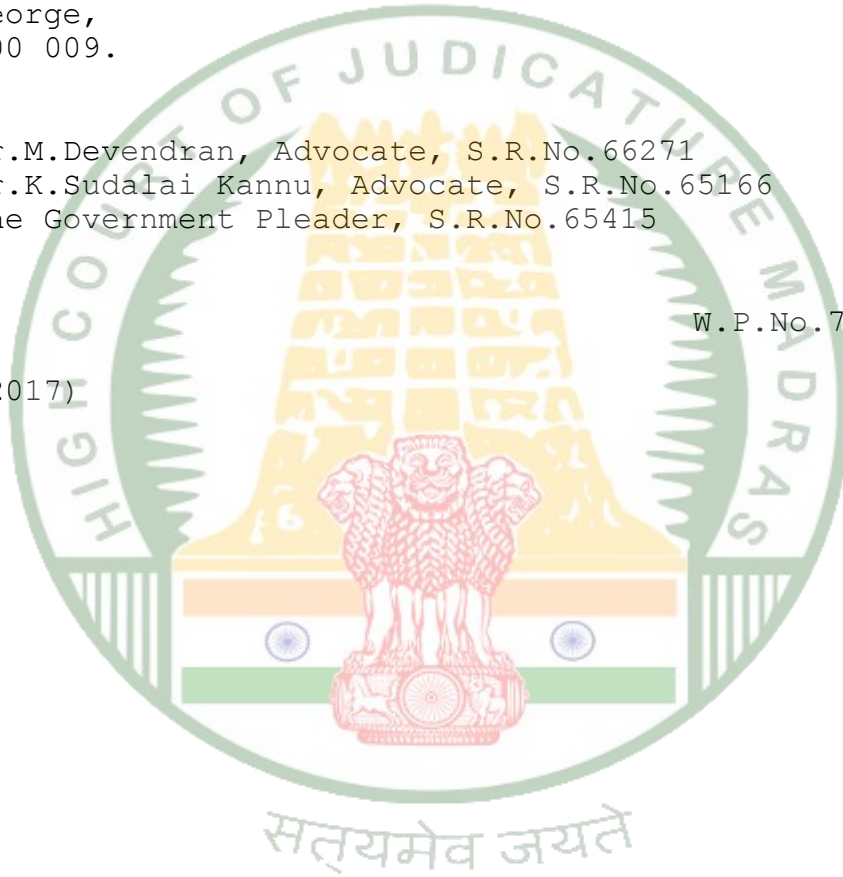
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+1cc to Mr.M.Devendran, Advocate, S.R.No.66271
+1cc to Mr.K.Sudalai Kannu, Advocate, S.R.No.65166
+1cc to the Government Pleader, S.R.No.65415

W.P.No.7120 of 2011

GN(26/10/2017)



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