

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.37846 of 2015

and M.P.No.1 of 2015

R.Durai

.. Petitioner

vs.

1.The Government of Tamil Nadu,
Rep by its Secretary to Government,
Personnel & Administrative Reforms Department,
Fort St.George, Chennai-600 009.

2.The Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Chennai-600 002.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the respondents, especially the 2nd respondent relating to his proceedings made in Memorandum No.31006213/PSD-C3/2016, dated 28.09.2016, and quash the same as null and void, illegal and invalid and consequently directing the 2nd respondent to forthwith appoint the petitioner as "Assistant" including his name in the appropriate place in the seniority list of "Assistants" recruited in the year 2014 as per the order of his seniority with all service and monetary benefits together with suitable compensation this Court deems fit and proper for the improper rejection denying the petitioner's right of Equality Before Law and Equal Opportunity in Public Employment defying the authority of law of the land and settled position of law causing much hardship, inconvenience, mental agony and monetary loss to the petitioner.
(Prayer amended as per the order dated 24.10.2016 made in WMP.No.30703 of 2016 in WP.No.37846 of 2015)

For Petitioner : Mr.A.Amalraj

For Respondents : Mrs.M.E.Raniselvam,
Additional Government Pleader for R1

Mr.M.Loganathan for R2

O R D E R

The petitioner, challenging the rejection of his candidature for selection and appointment to the post of Assistant in pursuant to Notification No.1/2014 dated 06.02.2014, issued by the second respondent/Tamil Nadu Public Service Commission [TNPSC] on the ground that on the cut off date on 06.02.2014, he does not possess the required educational qualification certificate, has come forward with this writ petition.

2. The petitioner, in the affidavit filed in support of this writ petition, would aver that he passed S.S.L.C. Examination in October, 1990 and thereafter, passed Higher Secondary Course in March, 1993 and underwent B.A.[History] and passed the said examination during December, 2013 through Annamalai University Distance Education Programme and after completing the same, got his name registered with the District Employment Exchange, Krishnagiri and awaiting for employment opportunities. It is further averred by the petitioner that the second respondent, in pursuant to Notification No.1/2014 dated 06.02.2014 had notified 2269 vacancies for various posts and out of the same, 2189 vacancies for the post of Assistants to be filled up in various departments. According to the petitioner, he has satisfied the requisite educational qualification by passing B.A.[History] during December, 2013, much prior to Notification No.1/2014 dated 06.02.2014 issued by the second respondent and he is also entitled for reservation under Ex-Servicemen Quota. The petitioner would further aver that the second respondent had also issued another notification in Notification No.9/2014 dated 16.04.2014 inviting applications for Direct Recruitment to the posts included in Combine Civil Services Examination-II for the posts of Accountant in Treasuries and Accounts Department and Assistant in Forest Department and therefore, the second notification is the continuance of the earlier notification and since even prior to the date of the second notification, the petitioner has obtained B.A. degree, his candidature should have been considered.

3. The petitioner has applied for the written examination and performed well and secured 147 out of 200 marks and declared to have been passed on 29.06.2014 and was expecting appointment to the post of Assistant under Ex-Servicemen Quota under MBC category. The second respondent had issued a call letter calling upon the petitioner to appear for Certificate Verification and accordingly, he attended the same on 18.08.2015 and at that time, he furnished the Provisional Certificate dated 21.03.2014 and again the Original/Permanent Certificate dated 01.06.2015 and the officials of the second respondent had satisfied with the genuineness of all the certificates and informed that he has to wait for further counseling along with another set of copies of documents. However, the candidature

of the petitioner has been overlooked and the second respondent had issued a call letter to another candidate having Reg.No.270105131, who had secured much lesser marks viz., 135/200 and immediately, the petitioner approached the office of the second respondent to find out the reasons and he was informed that he has not passed B.A. degree prior to the notification dated 06.02.2014.

4. It is the case of the petitioner that Annamalai University had issued the Provisional Certificate dated 21.03.2014 after the original notification dated 06.02.2014, but prior to the Supplement Notification dated 16.04.2014 and the said certificate was also produced at the earliest and also at the time of Certificate Verification and it was also accepted and therefore, it is not open to the second respondent to reject the petitioner's candidature by citing untenable reasons and therefore, came forward with this writ petition.

5. Mr.A.Amalraj, learned counsel appearing for the petitioner would submit that the Original Notification No.1/2014 came to be issued on 06.02.2014 and the Supplement Notification No.9/2014 came to be issued on 16.04.2014 and admittedly, the petitioner has produced the Provisional Certificate dated 21.03.2014 at the time of Certificate Verification and the Supplement Notification No.9/2014 is to be considered as continuance of the Original Notification No.1/2014 dated 06.02.2014 and since B.A. degree has been produced in time, the second respondent cannot say that on the date of the notification, the petitioner did not possess the degree qualification/certificate. The learned counsel appearing for the petitioner has also drawn the attention of this Court to Ruling 2 of Rule 26(a) of Fundamental Rules and would submit that "In cases where the passing of an examination or test confers on a Government servant the title to any right, benefit or concession, such title should be deemed to have accrued on the day following the last day of the examination or test which he passed ; In cases where the examination or test can be passed in instalments, the title to the right, benefit or concession will be deemed to have accrued on the day following the last day of the examination in the subject or subjects in which he has passed" and admittedly, B.A. degree examination was held during December, 2013 and the results of the same was published on 21.03.2014 and the petitioner was also issued with the Provisional Certificate and it is much prior to the Supplement Notification No.9/2014 dated 16.04.2014 and would submit that the said aspect has also been considered by a Division Bench of this Court in the decision dated 27.02.2015 made in W.A.No.803 of 2013 [The Director of Elementary Education, Chennai-6 and another v. K.Nedumaran], wherein it has been held that passing of an examination would relate back to the date of examination and not the date of declaration of results and therefore, held

that the declaration of results by the Annamalai University cannot be put against the writ petitioner and prays for allowing of the writ petition.

6. Mr.M.Loganathan, learned counsel appearing for the second respondent has drawn the attention of this Court to the counter affidavit filed by the second respondent and would submit that in similar facts and circumstances, Madurai Bench of this Court, vide order dated 07.10.2016, made in W.P.(MD).Nos.21468 of 2015 etc., batch, has considered the scope of Ruling 2 under Rule 26 (a) of the Fundamental Rules and taking into consideration the various decisions rendered by the Hon'ble Supreme Court of India, held that a candidate must not only have been qualified, but he/she should have been possessed of his/ her qualification on the date of the application was made and admittedly, as per the original Notification, the petitioner possess the required qualification on 06.02.2014 and as per the Provisional Certificate, he has passed B.A. Degree examination only on 21.03.2014 and therefore, on the date of the original notification, the petitioner did not possess the essential qualification of B.A. Degree and therefore, his candidature was rightly rejected and prays for dismissal of the Writ Petition.

7. This Court paid its anxious consideration and best attention to the rival submissions and also scrutinized the entire materials placed before it.

8. The second respondent had issued Notification No.1/2014 dated 06.02.2014 inviting applications through online mode upto 05.03.2014 for admission to the written examination for direct recruitment against the vacancies for the year 2013-2014 in respect of posts included in Combined Civil Services Examination - II (Non-Interview posts) (Group-II A Services) and the petitioner had applied for the post of Assistant. Clause (B)(a) of the Notification deals with Educational Qualification and it says that a candidate should possess the following or its equivalent qualification on the date of the Notification viz., 06.02.2014:

Sl.N o.	Name of the Post	Educational Qualification	Technical Qualifica tion
...	...	...	...

Sl.No.	Name of the Post	Educational Qualification	Technical Qualification
5.	Assistant in Commissioner Revenue Administration	A degree of B.A., or B.Sc., or B.Com., of any University or B.O.L. of Annamalai University or B.B.A., of Madurai Kamarajar University or B.Litt., of Madras University or B.B.M., or B.Litt., of Bharathiyar University	



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Sl.N o.	Name of the Post	Educational Qualification	Technical Qualifica tion
6.	Assistant in the following Departments Prison, Police, Medical and Rural Health Services, Transport, Registration, Labour, Highways, Archives and Historical Research, Animal Husbandry and Veterinary Services, Hindu Religious and Charitable Endowments, National Cadet Corps, Public Health and Preventive Medicine, School Education, Social Defence, Social Welfare, Directorate of Vigilance and Anti-Corruption Departments, Tamil Nadu Public Service Commission and Divisions of Commercial Taxes	Any Degree	
...	...	...	...

9. In the typed set of documents, the petitioner has enclosed the Provisional Certificate as to the qualification for award of B.A. (History) Degree by Annamalai University and it is dated 21.03.2014. The said certificate would also indicate that the Degree examination was held during December 2013. It is an admitted fact that result of the said examination was announced on 21.03.2014 and therefore, on the date of issuance of Notification No.1/2014 dated 06.02.2014, which prescribes the cut off date for possessing the qualification as on 06.02.2014, the petitioner did not pass B.A. Degree examination. The learned

counsel for the petitioner has made a valiant attempt by submitting that subsequent Supplement Notification No.9/2014 was also issued on 16.04.2014 and on that date, the petitioner has possessed B.A. Provisional Certificate dated 21.03.2014 and as such, his candidature cannot be rejected for want of educational qualification. This Court has perused the above cited Supplement Notification No.9/2014 dated 16.04.2014 and the contents of the same would disclose that the second respondent, in continuance of the earlier Notification dated 06.02.2014, have invited applications for direct recruitment to the post of Accountant in Treasuries and Accounts Department, Assistant in Forest Department and the last date for submission of the application was 30.04.2014 and the date of the examination was fixed as 29.06.2014. It has also been indicated that all the other details and conditions notified in the commission's Notification No.1/2014 published on 06.02.2014 as well as in the website will remain unchanged and will apply with reference to this Notification/Advertisement.

10. Admittedly, the petitioner did not apply for the post of Accountant in Treasuries and Accounts Department, but Assistant in Forest Department and as such, the stand taken by the petitioner would not come to his aid. Even otherwise, even as per the Notification, cut off date for possessing the educational qualification is on 06.02.2014.

11. A Single Bench of this Court has elaborately considered the said issue in the order dated 07.10.2016 made in W.P.(MD). Nos.21648 of 2015 etc., batch [R.Muthuselvi Vs. The Secretary, TNPSC] wherein this Court, taking into consideration the various decisions, held as follows:

"...

15. Coming to the arguments advanced on the side of the petitioners that the cases of the petitioners are covered by the rulings under Rule 26(a) of the Fundamental Rules, but not under Rule 12(b)(iv) of the Tamil Nadu State and Subordinate Service Rules, it is pertinent to extract the said Ruling, as follows:-
?Rulings under Rule 26(a)--Increment admissible to a probationer. (1) Except where...

(2) In cases where the passing of an examination or test confers on a Government servant the title to any right, benefit or concession such title should be deemed to have accrued on the day following the last day of the examination or test which he passed. In cases where the examination or test can be passed in instalments, the title to the right, benefit of concession will be deemed to have accrued on the day following the last day of the examination in the subject or subjects in which he has passed. Note-2..The Service Rules shall be taken to embody and indicate fully all the provisions governing the services concerned. As laid down in the Service Rules the Fundamental Rules shall govern a service, only in the matter of leave, leave

salary, pension and other such conditions of service, as have not been provided for in the Service Rules. If any provision of the Fundamental Rules is repugnant to any provisions of the Service Rules, then the provisions of the Service Rules shall prevail and the provisions of the Fundamental Rules shall, to the extent of the repugnancy, be void from FR itself.?

16. A cursory reading of note 2 under Ruling 26(a) of the Fundamental Rules would clearly show that the Fundamental Rules shall govern a service only in the matter of leave, leave salary, pension and other such conditions of service as have not been provided for in the Service Rules. As the petitioners are not in service, they cannot seek to refer to the ruling under Rule 26(a) of the Fundamental Rules, as their case is related to recruitment to the post of Typist Group IV. Therefore, in my considered opinion, only clause (iv) of Rule 12(b) of the Tamil Nadu State and Subordinate Service Rules, which is meant for recruitment alone can be relied upon, which reads as follows:-
?(iv) that, notwithstanding anything contained in the Special Rules, such a person also possesses the qualifications including experience prescribed for a post, on the date of notification of the vacancy.?

As per the said Rule, as the petitioners have not possessed the qualifications including the technical qualification for the post in question on the date of notification of the vacancies, they are not eligible to apply as, indisputably, on the date of notification on 14.10.2014, they have not acquired the technical qualification of Senior Grade Typewriting in English and Tamil and they have acquired the same only after the notification on 24.10.2014. Therefore, their applications cannot be entertained at all.

17. To sum up, on the date of notification viz., 14.10.2014, a candidate must not only have been qualified but he/she should have been possessed of the qualification on the date the application was made.

Secondly, the notification has clearly mentioned the cut-off date for a candidate for possessing the educational qualification and also the technical qualification, merely for the reason that the cut-off date mentioned for common educational qualification being 14.10.2014 in Serial No.3(B)(i), the petitioners cannot say that the cut-off date has not been shown in Serial No.3(B)(ii) for possessing the technical qualification, for the reason that an incumbent is required to possess not only the educational qualification, but also the technical qualification, work experience on the last date fixed for submission of the application. In the present cases, the petitioners, having possessed only the educational qualification on 14.10.2014, had not acquired the technical qualification on 14.10.2014, since they acquired the same subsequently.

Thirdly, the issue whether the candidate must have the prescribed educational and other qualification as on the particular date specified in the advertisement is no longer res integra, holding that if the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public appointment is the date appointed by the relevant service rules, if there is no cut-off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for application and only if there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority."

In the said decision, it has been held that Ruling 2 under Rule 26 (a) of the Fundamental Rules would clearly show that the Fundamental Rules shall govern a service only in the matter of leave, leave salary, pension and other such conditions of service as have not been provided for in the Service Rules. In fact, the wording of the said Rule would also indicate that it applies only to Government servants and admittedly, the petitioner is yet to become a Government servant.

12. In Marripati Nagaraja and others Vs. Government of Andhra Pradesh and others [(2007) 11 SCC 522 : (2007) AIR SCW 6861] it has been held as follows:

"...

14. It is now a well settled principle of law that the rules which would be applicable for selecting the candidates would be the one which were prevailing at the time of the notification."

13. In N.T. Devin Katti Vs. Karnataka Public Service Commission, (1990) 3 SCC 157 : AIR 1990 SC 1233] it has been held as follows:

"...

Candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement, however he has no absolute right in the matter."

14. Admittedly, the petitioner did not possess B.A. Degree on the prescribed cut off date on 06.02.2014 as he has passed the examination after the cut off date on 21.03.2014 and in the light of the factual situation and legal aspects, the prayer sought for by the petitioner cannot be granted.

15. In the result, the Writ Petition is dismissed. No costs.
Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

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Sub Asst. Registrar

jvm

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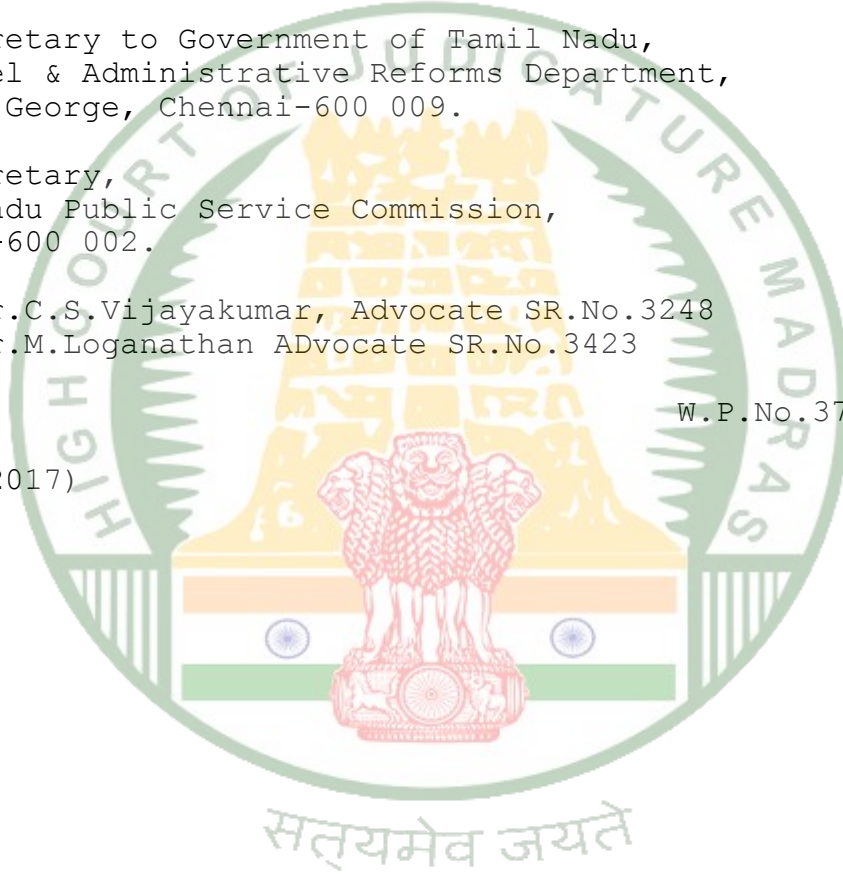
1.The Secretary to Government of Tamil Nadu,
Personnel & Administrative Reforms Department,
Fort St.George, Chennai-600 009.

2.The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 002.

+1cc to Mr.C.S.Vijayakumar, Advocate SR.No.3248
+1cc to Mr.M.Loganathan ADVocate SR.No.3423

W.P.No.37846 of 2015

RSK(CO)
GN(03/02/2017)



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