

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 23-11-2020

Orders Pronounced on : 18-12-2020

Coram :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Review Application No. 44 of 2016
in
Writ Appeal No.980 of 2014

(Heard through video-conferencing)

P. Raman

.. Review Applicant

Versus

1. The Government of Tamil Nadu
rep. by the Chief Secretary
Secretariat
Chennai - 600 002

2. The Secretary to Government
Personnel and Administrative Reforms Department
Secretariat, Chennai - 600 002

3. The Secretary to Government
Higher Education Department
Secretariat, Chennai - 600 002

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

.. Respondents

Review Application filed under Order 47 Rule 1 read with Section 114 of Code of Civil Procedure to review the Judgment dated 15.12.2014 passed in Writ Appeal No. 980 of 2014.

For Review Applicant : Mr.Ar.L.Sundaresan, Senior Advocate
assisted by Mr. K. Rajendra Prasad
for Mr.P.Srinivas

For Respondent : Mrs.A.Srijayanthi
Special Government Pleader for RR1 to 3
Dr.M.Devendran
Standing Counsel for TNPSC/R4

ORDER

R. SUBBIAH, J

This review application has been filed to review the Judgment dated 15.12.2014 passed in W.A.No.980 of 2014 by a Division Bench of this Court, dismissing the Writ Appeal and confirming the order dated 21.04.2014 passed by the learned Single Judge in dismissing the prayer of the writ petitioner in WP No. 13055 of 2020.

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2. Brief facts which are necessary for consideration in this Review Application are as follows.

3. The Tamil Nadu Public Service Commission (TNPSC) issued a notification dated 15.12.2008 for filling up of 82 posts of Group-I Service for the year 2007-2010. A preliminary examination was conducted on 12.04.2009. The main examination for the same was held on 03.10.2009 and 04.10.2009. The selected candidates were called for an interview during December 2009. The Review Petitioner cleared the preliminary as well as main examination, he was also called for an interview and he attended it. The result was published on 05.02.2010 and the name of the Review Applicant was published in the with-held list. The Review Applicant made an enquiry, but no proper reply was forthcoming. The Review Applicant also made a representation under the Right to Information Act, but even that was not responded to. Later, the Review Applicant came to know that the result of the candidates who completed the PG course through Open University, was not declared, and the TNPSC is waiting for the approval of the State Government. Hence, he has filed the Writ Petition for a Mandamus to direct the respondents to confirm the selection of the petitioner, according

to the merit as well as in consonance with the Rules of reservation and consequently recommend the selection of the petitioner to the appropriate department for the issuance of appointment order in the said Group-I Services Examination 2007-2009.

4. The learned Single Judge dismissed the writ petition on 21.04.2014. Aggrieved by the same, Writ Appeal No.980 of 2014 was filed by him before the Division Bench of this Court. The Division Bench dismissed the writ appeal on 15.12.2014, by relying upon the Judgment reported in **N. Ramesh Vs. Sibi Madan Gabriel**, reported in **2008 (3) MLJ 255** and the Judgment of the Supreme Court in **Annamalai University, rep. by its Registrar Vs. Secretary to Government, Information and Tourism Department and others**, reported in **2009 (4) SCC 590**, holding that a candidate who obtained Post graduate degree through Open University, without undergoing the basic degree, is not valid. As the Review Applicant acquired Post Graduate degree without completing under-graduate course, he was not eligible for appointment to the post. The relevant paragraph of the judgement passed by the Division Bench in the said

Writ Appeal, reads as follows;

"6. The Tamil Nadu Public Service Commission issued a notification dated 15 December 2008 calling for applications for direct recruitment to the post included in Group - I Services. The notification contained the details of essential educational qualification. The appellant obtained Post Graduate Degree from Open University without undergoing Under Graduate Course.

7. The notification issued by the Tamil Nadu Public Service Commission refers to a post graduate degree meaning thereby it should be a valid degree after undergoing the basic course.

8. The question as to whether post-graduate degree obtained through Open University System without there being first/basic degree came up for consideration before a Division Bench of this Court. The Division Bench held that post graduate degree obtained through Open University without undergoing basic degree is not valid. The judgment is reported in N. Ramesh v. Sibi Madan Gabriel (2008) 3 MLJ 255. The said judgment was upheld by the Supreme Court in Annamalai University v. Secretary to Government, Information and Tourism Department (2009) 4 SCC 590. The legal position is therefore very clear that a candidate who obtained Post Graduate Degree would be considered as a Post Graduate only if he obtained the said degree after undergoing the first/basic degree.

9. The appellant is harping on the memorandum dated 12 August 2009 issued by the Tamil Nadu Public Service Commission wherein there is a stipulation that the candidates should disclose as to whether they have obtained Post Graduate Degree without undergoing Under Graduate course. The memorandum would not

give any right to those who have obtained Post Graduate Degree without undergoing the basic degree Course. As rightly pointed out by the learned Standing Counsel for Tamil Nadu Public Service Commission, it was only to understand as to whether a particular candidate has undergone Post Graduate Course without undergoing Under Graduate course, such a declaration was sought for by the commission.

10. The fact that amendments were made to the Tamil Nadu State and Subordinate Service Rules subsequent to the issuance of notification would not give a right to the appellant to claim appointment, not withstanding the fact that he obtained Post Graduate Degree without undergoing Under Graduate course. Law has already been declared by this Court and subsequently by the Supreme Court in the matter of obtaining post graduation without the basic degree.

11. The learned Single Judge considered this aspect and rightly rejected the contentions taken by the appellant. We do not find any reason to take a different view in the matter.

12. In the upshot, we dismiss the intra court appeal. Consequently, the connected MPs are closed. No costs. "

5. Aggrieved by the above said Judgment dated 15.12.2014 passed by the Division Bench of this Court, SLP (C) No. 7886 of 2015 was filed. The Special Leave Petition was withdrawn on 05.05.2015, with liberty to approach the High Court, by way of review. The order passed by the

Supreme Court reads as follows:-

"Learned Senior counsel seeks to withdraw the present Special Leave Petition reserving petitioner's liberty to approach the High Court by way of review. Learned Senior counsel also states that after the disposal of the review, if need be, the petitioner will work out his remedy as against the impugned order as well.

The Special Leave Petition is dismissed as withdrawn with liberty aforesaid."

6. The learned Senior Counsel appearing for the Review Applicant submitted that the Review Applicant passed S.S.L.C. during March 1987 and higher secondary during March 1991. He completed the B.Com degree course in May 1994. Due to family circumstances, he did not complete the arrears in the B.Com course. In the meanwhile, he completed M.A-History in Madurai Kamaraj University under the Open University System in the year 2000. On 15.12.2008, the TNPSC issued the notification, for which, the Review Applicant applied based on the Open University Degree he possessed. The prescribed educational qualification for the Group I examination was any degree granted by any University recognised by University Grants Commission. The Open University degree produced by

the Review Applicant was accepted and he participated in the selection process based on the standards prevalent on the date of notification. Though the Review Applicant was successful, his name was kept in the with-held list by relying upon subsequent Government Order. According to the learned Senior Counsel appearing for the Review Applicant, the Government issued G.O.No.107, Personnel & Administrative Reforms Department, dated 18.08.2009. By this Government Order, Open University Degree without S.S.L.C. followed by Higher Secondary was recognised. However, the claim of the Review Applicant was with-held by citing G.O.Ms.No.116, P & AR Department, dated 18.08.2010. But even prior to G.O.No.116, the selection had taken place and therefore the order passed in G.O. No.116 cannot be put against the Review Applicant to deny him the appointment. G.O.Ms.No.107 was issued for acceptance of Open University Degree, after completion of SSLC & HSC and therefore, the Review Applicant is eligible for appointment as per the said G.O. While so, the Equivalence Committee recommended not to accept the direct Post-graduate degree without SSLC and HSC for appointment. Based on the said recommendation, G.O.Ms.No.116 was issued on 18.08.2010. Even before

issuing G.O.Ms.No.116, dated 18.08.2020, all the Open University degrees were accepted by the respondents for appointment. If the subsequent event of the standard and parameters are to be applied, then the fact that Review Applicant had passed B.Com degree after completing post-graduate degree, is also to be taken into consideration, as they are in favour of the Review Applicant. In fact, a similarly placed person having direct M.A. Degree after Diploma in Mechanical Engineering, was held eligible in the selection of the year 2006-2007 by G.O.Ms.No.149, Co-operation, Food and Consumer Protection Depttment, dated 24.09.2009, which is subsequent to the issue of G.O.Ms.No.107, P & AR Department, dated 18.08.2009. Thus, the learned Senior Counsel appearing for the Review Applicant submitted that even before issuing G.O.No.116, the results were declared and therefore the same cannot be put against the Review Applicant. But a Division Bench of this Court, by relying upon the judgment of the Supreme Court in the case of *Annamalai University Vs. Secretary to Government, Information and Tourism Department*, reported in 2009 (4) SCC 590, held that a candidate who obtained Post graduate degree to be considered as a post graduate only if he obtained the said degree after undergoing the first/basic

degree and thus, dismissed the writ appeal.

7. The learned Senior Counsel appearing for the Review Applicant also submitted that the notification was issued on 15.12.2008, prior to the judgment of the Supreme Court in *Annamalai University* case, which was delivered on 25.02.2009. The selection process was only pursuant to the notification dated 15.12.2008. Further, by G.O.Ms.No.107, P & AR Department, dated 18.08.2009, the Government has decided to accept the recommendation of the Equivalence Committee and issued an order recognising the degrees in Diploma/Degree/Post-graduate degree obtained through Open Universities only after having passed secondary school examination (10th standard) and higher secondary school examination (+2) alone for appointment/promotion in public service. Thereafter, only on 18.08.2010, G.O.Ms.No.116, P & AR Department was issued. The Government accepting the subsequent recommendation of the Equivalence Committee, directed that those who possess PG-Degree through Open University Stream, without obtaining a basic degree, cannot be considered as obtaining post-graduate degree for appointment to a public service. Since the Government Order in GO.Ms.No.116, dated 18.08.2010 was

issued much later to the notification for appointment to the post, the same cannot apply to the Review Applicant. The Division Bench, without considering this aspect, dismissed the writ appeal and it calls for a review.

8. Countering the above submissions of the learned Senior Counsel appearing for the Review Applicant, the learned counsel for the fourth respondent-TNPSC contended that, no doubt, the notification was issued prior to the judgment of the Supreme Court in *Annamalai University* case, mentioned supra. But, subsequent to the order of the Supreme Court in *Annamalai University* case, delivered on 25.02.2009, the Government addressed to the TNPSC and the matter was placed matter before the Equivalence Committee. Based on the recommendation of the Equivalence Committee, G.O.Ms.No.116, P&AR Department dated 18.08.2010, was issued, ordering that those who possess a Post Graduate Degree through Open University Stream without obtaining a basic degree, cannot be considered as possessing a Post Graduate Degree for appointment in public service. The Review Applicant was in fact selected as Assistant Section Officer (other than Law and Finance Department) in Tamil Nadu Secretariat Service through the Recruitment of combined Subordinate Services

Examination - I (Group-II Services) for the year 2009-2011, as he was possessing the UG degree qualification on the date of said notification (Group-II). Further, based on the recommendation of the Equivalence Committee, the Government has issued order in G.O.Ms.No.180, P & AR Department, dated 11.09.2000, recognising the Diploma, Degree, P.G. Degree obtained through Open University System from the Universities recognised by the University Grants Commission as equivalent to the Diploma, Degree, P.G. Degree obtained through regular stream, awarded by those Universities for appointment to the Public Services. The Government also issued G.O.Ms.No.64, P & AR Department, dated 02.02.2006, ordering that Under Graduate/Post Graduate Degrees awarded under Open University System of the Madurai Kamaraj University, such as B.A., B.Sc., B.Com, B.B.A. and M.A., M.L.S., M.Com as equivalent to the corresponding Under Graduate/Post Graduate Degrees obtained through regular course of study for the purpose of employment in public services. Further, in G.O.Ms.No.217, P & AR Department, dated 08.09.2007, it was ordered that Diploma/Under Graduate/Post Graduate Degrees offered by the Tamil Nadu Open University shall be treated as equivalent to the degrees

awarded by other Universities in the State under regular stream for the purpose of employment in public service. According to the learned counsel appearing for the fourth respondent/TNPSC, the said Government Order in G.O.Ms.No.217 was issued as a clarification to clarify the order issued in G.O.Ms.No.180, P&AR Department dated 11.09.2000 and therefore G.O.Ms.No.217 has to be read along with the G.O.Ms.No.180. While so, on 04.02.2008, a Division Bench of this Court in W.A.No.1221 of 2005, has observed that it can only mean that the degrees obtained through the Open University system are considered equivalent to a traditional degree obtained through regular system, provided that such degrees are in conformity with relevant statutory provisions, including Rules and Regulations holding the field. Further, it was held that the Government intended only to recognise a degree of M.A. through Open University System without the benefit of the foundation degree or basic degree as equivalent to a recognised degree, even though the University Grants Commission Regulations never contemplated such a course. Therefore, according to the learned counsel appearing for the fourth respondent/TNPSC, recognition of a degree must be in accordance with Rules and Regulations of the University Grants

Commission and not in direct conflict with such Regulations. In effect, it is his submission that the Review Applicant is not eligible to seek admission to the Masters Course, when he has not pursued the first degree course of three years duration. As per U.G.C. Regulations, Post Graduate Degree obtained without the benefit of an under-graduate degree, cannot be regarded as valid qualification. As per G.O.Ms.No.116, P & AR Department, dated 18.08.2010, a direct Post Graduate degree is not valid for appointment to public service. Therefore, the writ petition filed by the Review Applicant was rightly dismissed by the learned Single Judge, which was also affirmed by the Division Bench of this Court. Hence, there is no ground made out by the Review Applicant to review the Judgment passed by the Division Bench of this Court.

9. By way of reply, the learned Senior Counsel appearing for the Review Applicant submitted that no doubt, subsequent to the notification dated 15.12.2008, the Judgment was delivered by the Supreme Court in *Annamalai University* case on 25.02.2009 and therefore, it cannot be applied to the case of the Review Applicant. Thereafter, G.O.Ms.No.116 was issued on 18.08.2010 stating that a direct post-graduate degree is not

valid for appointment in public service as per UGC Regulation in respect of formal system of education. The said Notification cannot be a bar for the appointment of the Review Applicant, since it was issued much later to the Notification dated 15.12.2008. Further, in the Notification in Clause 16(b), the educational qualification is contemplated, which states that "*a decree of any of the Universities incorporated by an Act of the Central or State Legislature in India or any other Educational Qualifications established by an Act of Parliament or declared to be deemed as a University under Section 3 of the University Grants Commission Act, 1956*". Therefore, the reliance made on the University Grants Commission Act, is not correct, because, the notification says the qualification falls within the State Legislature in India at the relevant time and it has to be adopted for the purpose of selection and appointment of the Review Applicant. The Review Applicant possess the qualification prescribed by the State Legislature and therefore, he is eligible for the appointment to the post applied for at the relevant point of time. The Open University Degree obtained by the Review Applicant is valid, as it was prescribed by the State Legislature. The submission made by the learned counsel appearing for the fourth respondent

based on U.G.C. Regulations, is liable to be rejected. Thus, the learned Senior Counsel appearing for the Review Applicant prayed for allowing this Review Application.

10. Keeping the submissions made by the learned counsel on either side, we have gone through the records. Though very many contentions have been raised by the counsel on either side, the present Review Application has been filed pursuant to the liberty given by the Supreme Court on 05.05.2015 in SLP (C) No.7886 of 2015.

11. The main contention of the Review Applicant is that the Notification for the Group-I service was issued by the TNPSC on 15.12.2008 for the year 2007-2009. The last date for submission of the application was 22.01.2009. The prescribed qualification is as follows:-

"Candidates should possess the following or such other qualification as have been declared to be higher than or equivalent to the said qualification by the State Government in consultation with the Committee constituted under the Chairmanship of the Chairman, Tamil Nadu Public Service Commission, for the purposes:-

A Degree of any of the Universities incorporated by an Act of the Central or State Legislature in India or any other Educational Institutions established by an Act of Parliament or

declared to be deemed as a University under Section 3 of the University Commission Act, 1956

Provided that other things being equal, preference will be given to the candidates, who possess the qualification mentioned against each of the following posts....

12. In the instant case, the Review Applicant has completed SSLC and +2 and thereafter he pursued B.Com., but did not clear the arrears exam. Thereafter, he pursued M.A. History and completed it through Open University. The Review Applicant was also selected for the post, but his result was with-held. According to the learned Senior Counsel appearing for the Review applicant, the degree obtained from Open University System is valid for the purpose of the appointment in public service at the relevant point of time. In support of his contention, the Review Applicant relied on G.O. Ms. No.107, P & AR Department, dated 18.08.2009, the relevant portion of which reads as follows:-

"4. The Government carefully examined this recommendation and having decided to accept the recommendation of the Equivalence Committee issues an order recognising the degrees in Diploma/Degree/Post-Graduate Degree obtained through Open Universities only

after having passed Secondary School Examination (10th standard) and higher secondary school examination (+2) alone for appointment/promotion in public services."

13. According to the TNPSC, the prescribed educational qualification for the post applied for by the Review Applicant, is a degree obtained from any University, which is recognised by University Grants Commission. As per the UGC norms, no student shall be eligible for the award of the first degree, unless he has completed a three year course. Therefore, the degree obtained by the Review Applicant become invalidated in terms of UGC norms.

14. It is seen that the Division Bench, in the Judgment under review, placed reliance on the Annamalai University case. It is the contention of the Review Applicant that the said Judgment was delivered only on 21.02.2009, pursuant to which, G.O.No.116 was issued on 18.08.2010. However, even prior to G.O.No.116, the interview was completed and the Review Applicant was selected to the post. Therefore, G.O. Ms. NO.116 cannot be put against the Review Applicant. On the contrary, as per G.O.Ms.No.107,

dated 18.08.2009, the Review Applicant is eligible for appointment.

15. We are of the view that the issue involved in this case is governed by the decision of the Supreme Court in *Annamalai University* case (cited supra), wherein, it has been held as follows:-

"58. The only point which survives for our consideration is as to whether the purported post facto approval granted to the appellant University of programmes offered through distance modes is valid. DEC may be an authority under the Act, but its orders ordinarily would only have a prospective effect. It having accepted in its letter dated 05.05.2004 that the appellant University had no jurisdiction to confer such degrees, in our opinion, could not have validated an invalid act. The degrees become invalidated in terms of the provisions of the UGC Act. When mandatory requirements have been violated in terms of the provisions of one Act, an authority under another Act could not have validated the same and that too with a retrospective effect."

16. Admittedly, the judgment in *Annamalai University* case was delivered by the Supreme Court on 25.02.2009. It is also an admitted fact that the order in G.O.Ms.No.116 was issued by the Government on 18.08.2010. It is also an admitted fact that on the date of delivering the judgment in *Annamalai University* case by the Supreme Court, the selection process was not over. The selection process was over only on 05.02.2010,

on which date, the results of the selected candidates were published. However, it is to be noted that the Review Applicant's selection was withheld pending clarification from the TNPSC. It is well settled that unless an order of appointment is issued, the Review Applicant cannot assert that he has a vested right to be appointed. The Review Applicant also cannot place reliance on the Order in G.O.Ms.No.107 dated 18.08.2009, (cited supra), as it was superseded by G.O.Ms.No.116, dated 18.08.2010. Therefore, G.O.Ms.No.107 dated 18.08.2009 will not enure to the benefit of the Review Applicant. When that be so, the submission of the learned Senior Counsel appearing for Review applicant that G.O.Ms.No.116 was issued much after the selection process was over, cannot be countenanced. Admittedly, the selection of the Review Applicant did not culminate in issuing an order of appointment. The said judgment of the Supreme Court will bind the selection authorities and therefore they have rightly withheld the selection of the appellant.

17. We wish to observe that the present Review Application has been filed to review the Judgment dated 15.12.2004 passed in W.A. No. 980 of 2014 mainly on the ground that the Division Bench did not consider the

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claim of the Review Applicant that much after the selection process was over, G.O.Ms.No.116 dated 18.08.2010 was issued and therefore it will not bind the Review Applicant. But we find that the very same plea was raised before the Division Bench also, which was recorded by the Division Bench in Para No.4 of the Judgment dated 15.12.2014. Further, in Para No.10, the Division Bench made reference to the subsequent amendments made to Tamil Nadu State and Subordinate Service Rules and held that merely because the Notification inviting applications was issued prior to the amendment, it would not give right to the appellant to claim appointment. Thus, the plea raised in the present Review Application have been raised before the Division Bench of this Court and the Division Bench of this Court had taken note of the same while rejecting the claim of the Review Applicant. While so, the very same plea cannot be urged before us in this Review Application, as it would amount to re-arguing the case, which is legally not permissible under the garb of a review. To arrive at this conclusion, we gain strength from the decision of the Supreme Court in the case of **Kamlesh Verma Vs. Mayawati and others**, reported in **2013 (8)**

SCC 320, wherein the Supreme Court, after examining various judgments, has laid down the circumstances, as to when the Court can review its own judgments. The relevant portion of the judgment is extracted as under:

"12. This Court has repeatedly held in various Judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only there is an error apparent on the face of record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient....."

... ..

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XL VII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the Judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned Judgment in the guise that an alternative view is possible under the review jurisdiction.

18. It is the specific case of the TNPSC that when the appellant became qualified to be short listed for oral test on the basis of his ranking in main written examination, he was put on notice that his admission to the oral test commencing from 4th December 2009 is purely provisional. When

that being the position, the Review applicant has no right to assert that the selection process was concluded which prior to G.O.Ms.No.116, P & A.R. Department, dated 18.08.2010. Therefore, we do not find any reason to review the Judgment of the Division Bench of this Court rendered in Writ Appeal No.980 of 2014, dated 15.12.2014.

19. For all the above reasons, the Review Application is dismissed. No costs. Consequently, all the connected miscellaneous petition (s) is/are closed.

(R.P.S.J.) (C.S.N.J.)
18-12-2020

rsh/cs

Index : Yes

Speaking Order: Yes

सत्यमेव जयते

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To

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Rev.A.No.44 of 2016
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R. SUBBIAH, J

and

C. SARAVANAN, J

CS



Pre-delivery Order in
Rev.Appln. No. 44 of 2016
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Orders pronounced on 18-12-2020