



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10-08-2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

and

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P(MD).No.11111 of 2016

M.Rathinavel

.. Petitioner

Vs.

1.The Registrar General,
Madras High Court of Judicature,
Chennai.

2.The Registrar (Administration),
Madurai Bench of the Madras High Court,
Madurai District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to post the petitioner in any one of the vacancy in the post of Assistant Section Officer in the Hon'ble Madras High Court of Judicature by giving effect to the order of promotion of the petitioner dated 03.12.2009 in consideration of the petitioner's representation dated 12.05.2016.

For Petitioner

: Mr.G.Prabhu Rajadurai

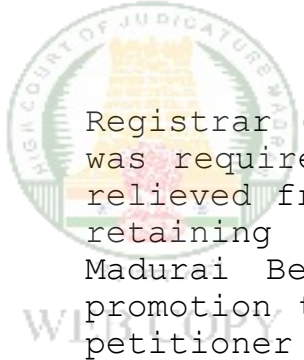
For Respondents

: Mr.N.Mohideen Basha

ORDER

NOOTY.RAMAMOHANA RAO, J

The petitioner herein claims to have been appointed as Office Assistant by the Supreme Court on 06.02.1991. He was subsequently appointed as Office Assistant in the Madras High Court on 19.06.2000. His service in the Supreme Court is counted for the purpose of pensionary benefits. It is asserted by him that he wrote the Entrance Examination for studying B.A (History) Degree Course in the Open University system of education. He passed the B.A. (History) Degree Course in the year 1995. On 09.07.2001, he was promoted to the post of Reader/Examiner based on the above qualification. On 05.07.2005, he was promoted to the post of Assistant. Again, by proceedings dated 03.12.2009, he was promoted to the post of Assistant Section Officer with effect from joining duty in the Principal Seat of the Madras High Court and he was transferred as such from the Madurai Bench of Madras High Court. The



Registrar (Administration) of the Madurai Bench of Madras High Court was required to relieve him on 04.12.2009. But however, he was not relieved from the Madurai Bench. On 23.12.2009, an order was passed retaining the writ petitioner in the post of Assistant at the Madurai Bench itself until further orders as Assistant, as his promotion to the post of Assistant Section Officer is pending. The petitioner made certain representations for giving effect to the order of promotion dated 03.12.2009. Since no action is forthcoming, he has instituted this writ petition.

2. During the pendency of this writ petition, an order was passed on 13.07.2016, cancelling the order of promotion dated 03.12.2009, for the reason that the petitioner has obtained his B.A. (History) Degree Course through Open University System without undergoing the Higher Secondary Course (H.S.C) and the State Government passed orders in their G.O.Ms.No.107, P & AR (M), dated 18.08.2009, directing to recognise the Degrees obtained through Open Universities after having passed the S.S.L.C (10th Standard) and H.S.C. (+2) alone, for appointments/promotions in public services.

3. Therefore, the questions, which require to be answered in this writ petition, are:

(i) Whether the order of promotion granted to the writ petitioner is in accordance with law or not?

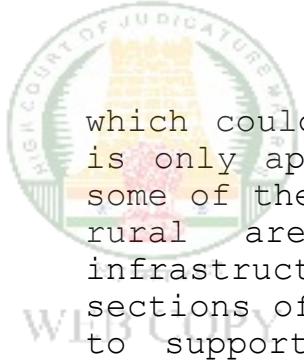
(ii) Whether the order of cancellation of his promotion passed on 13.07.2016, is valid or not?

4. In exercise of the powers conferred by Article 229 of the Constitution of India, the Honourable Chief Justice, with the approval of the Governor of Tamil Nadu, made Rules to regulate the method of recruitment, conditions of service, salaries and allowances, leave and pensions of the Madras High Court Service. Rule 3 of these Rules, organised various posts in the service into various Divisions, Categories and Sub-categories. Rule 14 of the Rules dealt with promotions and as to how they shall be made. Rule 6 dealt with the qualifications to be possessed and it specifies that no person shall be eligible for appointment to the service by direct recruitment, unless he satisfies the appointing authority that he satisfies all those conditions specified therein. Among other things, the academic qualifications required for recruitment to the post, organised to fall in categories 2 to 9 of Division 2, specified that one must hold B.A., B.Sc. or B.Com. or any other Bachelor's Degree of the Madras University or equivalent thereto of a recognised University. Though Rule 6 dealt with the prescription of qualifications for direct recruitment, but however, the same qualifications are also specified as required to be possessed even for the other methods of recruitment, namely recruitment by transfer or promotion under Rule 7-a(2). Even for promotion or for recruitment by transfer, apart from the qualifications prescribed for direct recruitment under Rule 6, additionally, one is required to possess the qualifications prescribed in the schedule annexed to the said Rules.



5. When Rules 6 and 7 are read together, it emerges that even for purpose of promotion, the in-service candidates are also required to possess the same qualifications, such as possessing B.A., B.Sc., B.Com. or any other Bachelor's Degree of the Madras University or equivalent thereto of a recognised University. While there may not be any difficulty in so far as understanding the requirement of Rule that the candidates are required to possess B.A., B.Sc., B.Com. or any other Bachelor's Degree of the Madras University or equivalent thereto of a recognised University, but the problem arises with regard to the meaning of the expressions touching the Degrees awarded by other recognised Universities. There may not be any difficulty for one to gather that the requirement of the Rule is that the Bachelor's Degree possessed by the candidate is the one, which should be awarded by a recognised University, in the sense that the University awarding the Degree must get necessary recognition, though the Rule has not specified as to who should recognise, but, it can be gathered easily that the recognition of the University is not what is to be accorded by the High Court which framed these Rules, but the recognition mentioned in the Rules is the one, which is spelt out under Section 3 of the Universities Grants Commissions Act. (UGC Act). In other words, if the University awarding the Degree has been accorded recognition by the UGC, then, any Bachelor's Degree awarded by such University would be construed as valid Bachelor's Degree possessed by a candidate. Since the Rule has also talked of equivalence of such Degrees to those awarded by Madras University, it might be possible to construe that it is the Madras University alone which must recognise the Bachelor's Degree awarded by the other recognised Universities as equivalent thereto. If the Madras University were to recognise or treat the Bachelor's Degree awarded by any other recognised University as equivalent to any of the Bachelor's Degrees awarded by itself, then, all such Bachelor's Degrees awarded by the other recognised Universities other than Madras University, also render the candidates automatically eligible for recruitment/promotion.

6. This takes us to the arena of according recognition to the Bachelor's Degree awarded by the other Universities. In that context, it is well to remember that a University must be constituted as such pursuant to a Legislation of the State concerned or the one made by the Parliament. Some of the Universities which were established much prior to India obtaining Independence, stand automatically recognised as such in the Post-Independence era. But however, if the State has pursued a different line of thought-process, namely that the institutional infrastructure that was available in the country, was found to be inadequate to cater to the full needs of the country as a whole and that higher education shall not be made available only to a certain privileged sections of the society, such as those who reside in nearest urban agglomerations where the Universities are established etc., it has become necessary for establishing certain other kinds of Universities with the aim and objective of reaching out all those sections of the society



which could not derive the benefit of higher education earlier. It is only appropriate to notice that for a variety of good reasons, some of the sections of the society, particularly who live in remote rural areas, could not avail the benefit of educational infrastructure put in place by the State. Similarly, some of the sections of the society may not have financial resources or reserves to support their wards for pursuing higher education, such as Bachelor's Degrees or Master's Degrees at some stage of their lives, and, if an alternative facility is made available than the one which has been provided in the form of traditional Universities, such disadvantaged sections can also progress gradually. To reach out all those disadvantaged segments who may not have pursued seriously higher education beyond a particular point, the open schooling system has come to be recognised as a boon and they will be able to pursue the academic courses after they were tested preliminarily for their ability to cope with the academic curriculum and are found to possess adequate knowledge to be admitted to the academic programme concerned. Depending upon the age of a candidate and his ability to measure up to the required standards by clearing the eligibility examination, the candidate is granted admission to Bachelor's Degree courses, though they may not have passed or studied XII Standard or 10+2 pattern, which alone fetches them admission in a conventional University. By this method of granting admission to the students who may not have pursued 10+2 courses for whatever be the reasons, if they can clear the preliminarily eligibility/admission test, they are granted admission to the Bachelor's Degree course. Such students are imparted the necessary knowledge by various other methods such as making available course curriculum for study followed up by regular and periodical interactive and instructive sessions and, at the end, the candidates are tested for their knowledge, by conducting examinations, whereat, one is required to secure minimum prescribed marks, which alone fetches them ultimately the Bachelor's Degree. (emphasis is played by me)

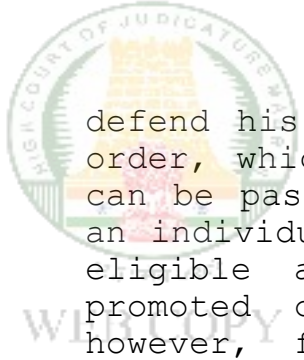
7. The whole question, therefore, is whether a Bachelor's Degree awarded by an Open University, can be regarded as falling outside the contours of Rule 7(2), when it has talked of equivalent Bachelor's Degree awarded by any University to that of the Bachelor's Degree awarded by the Madras University. In other words or to put it in a straight-jacket formula, can the Degrees awarded by the Open Universities be treated as not equivalent to the Bachelor's Degree awarded by Madras University, even without undertaking such study for the purpose of ascertaining or determining its equivalence. To our mind, the answer is that no one has got a right to deny the benefit of a Bachelor's Degree awarded by an Open University, particularly in the matter of employment. If the training and harnessing of skills imparted/acquired under the Open University education system is to be considered by the Madras University to be of any inferior quality in the matter of recognising them as equivalent to the academic standards of Bachelor's Degree of Madras University, it would be a different matter. But, apparently, the Madras University has never gone on



record that the standards of academic curriculum and training methods of Open Universities are inferior to the standards set and followed by the Madras University for the relevant Bachelor's Degree. Hence, we are of the opinion that the Open Universities also being the creatures of one statute or the other and are recognised as such by UGC, they have every right to award a Bachelor's Degree in favour of such of those candidates who have possessed demonstrably certain depth of knowledge which has been tested by way of examination of such candidates periodically and then finding them to have qualified and the standards of curriculum and testing being in no manner inferior in respect of the academic inputs in comparison with the ones applied or adopted by the Madras University. It is not in dispute that no effort whatsoever has been made by the State for the purpose of ascertaining as to whether a Bachelor's Degree awarded by the Open Universities is equivalent to a Bachelor's Degree awarded by the Madras University or not.

8. It appears that the State Government has gone ahead in declaring unilaterally that the Bachelor's Degrees, awarded by the Open Universities, are not equivalent to the Bachelor's Degrees of the Madras University. We are afraid, the said approach adopted is totally an erroneous one by the State Government. The reasons are not far to seek. The UGC has notified that the Bachelor's Degree awarded by the Open Universities is treated as eligible criteria for employment purposes, apart from academic purposes and the Central Government has also notified that the Bachelor's Degree awarded by the Open Universities as a recognised qualification for employment under it. As is too well known, if the Central Government can consider the Bachelor's Degrees awarded by the various Universities, including Open Universities, in the country as an eligibility criteria for employment therein, the State Government cannot take a different view in that regard. The ratio of the judgment of the Supreme Court reported in 2009 (4) SCC 590 (Annamalai University Vs. Secy. to Govt), has not been correctly followed by the State Government, and therefore, we are of the opinion, that notwithstanding the orders passed by the State Government not to recognise the Bachelor's Degree awarded by the Open Universities as equivalent to a Bachelor's Degree awarded by the Madras University and such holders of Bachelor's Degree are not eligible for employment under it, it is clearly an impermissible exercise. There is no valid basis behind any such declaration. Hence, we have no hesitation to hold and declare that all those who possess a Bachelor's Degree awarded by an Open University are equally eligible for recruitment and/or promotion as per the High Court Service Rules.

9. There is also another infirmity in the instant case, namely violation of principles of natural justice. The writ petitioner has been promoted as Assistant Section Officer, treating his qualification of Bachelor's Degree, as an equivalent one. But however, after passage of seven years, such an order of promotion has been cancelled even without providing him an opportunity to



defend his position. It is a fundamental principle of law that no order, which is likely to impair or impact the right of a person, can be passed, without providing an opportunity of hearing to such an individual. In the instant case, the petitioner is considered as eligible and suitable for promotion and he was, accordingly, promoted on 03.12.2009, as an Assistant Section Officer. But however, for administrative reasons, but not for any reasons attributable to him, he was not relieved by the Madurai Bench of Madras High Court to enable him to join as A.S.O., at the Principal Seat at Chennai, where he was posted. It is also stated that sine he was handling all important assignment, namely posting of cases and since any disturbance by way of dislocation of the individual is likely to cause some difficulties to the Administration, the Registrar (Administration) of the Madurai Bench appears to have made a request for retaining his services at Madurai. That is the precise reason as to why he was not relieved of the services at Madurai to report to duty at the Principal Seat of Madras High Court. The fault is not that of the writ petitioner. An employee cannot unilaterally relinquish the charge of his office, until he is relieved of such charge by his administrative superior or in case of certain offices such as Head of Office, by oneself. In larger institutional interest, he was not relieved. Therefore, before cancellation of his promotion, the High Court was expected to put him on notice and hear him, as any such cancellation, undoubtedly, would impair the right of the writ petitioner to secure further promotion as well and would also impact him financially. For sheer failure to apply the principles of natural justice, in particular, of affording an effective defence to the proposed action, the impugned order of cancellation of promotion of the individual cannot be sustained.

10. Accordingly, apart from holding that the Bachelor's Degree awarded by an Open University is also a requisite qualification for consideration for promotion under the High Court Service Rules, this Writ Petition is allowed, by quashing the impugned order, for the additional reason of violation of principles of natural justice. The petitioner is entitled to all consequential benefits, by treating him to have been promoted to the post of Assistant Section Officer with effect from the date of issuance of the said promotion order and he is also entitled to the benefit of pay fixation and payment of differential amount. He is also entitled for consideration of his case for promotion to the next higher post on par with his juniors, by undertaking an appropriate review of all such promotions ordered this-far. Costs easy.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar



To

1.The Registrar General,
Madras High Court of Judicature,
Chennai.

2.The Registrar (Administration),
Madurai Bench of the Madras High Court,
Madurai District.

+1cc to M/S.G.Prabhu Rajadurai, Advocate SR.No. 71868
+1cc to M/S.N.Mohideen Basha, Advocate SR.No. 71967

COPY TO:

1.The Section Officer,
Legal Cell,
Madras High Court, Madras.

2.The Section Officer,
Legal Cell,
Madurai Bench of Madras High Court, Madurai.

3.The Section Officer,
Establishment,
Madras High Court, Madras.

4.The Section Officer,
Establishment,
Madurai Bench of Madras High Court, Madurai.

Order in
W.P(MD).No.11111 of 2016
10-08-2017

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