

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.1072 & 1077 of 2018

and

WMP Nos.1295 & 1297 of 2018

1. P.Sivakumar ... Petitioner in W.P.No.1072/18
2. K.Mageswari ... Petitioner in W.P.No.1077/18

vs.

1. The Agriculture Production Commissioner and
Secretary to Government,
Agricultural Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Director of Horticulture and Plantation Crops,
Chepauk, Chennai - 600 005.

3. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, V.O.C.Nagar,
Park Town, Chennai - 600 003. ... Respondents in both W.Ps.

Common Prayer: WRIT Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a writ of declaration, declaring that Annexure to Rule 6(b) of the Special Rules for Tamil Nadu Horticultural Service in so far as it prescribes a qualification for Assistant Director of Horticulture (Class-III Post) by Direct Recruitment without insisting upon a basic Degree in Horticulture being B.Sc., (Horticulture) apart from Post Graduate Degree of M.Sc. (Horticulture) is illegal, Arbitrary, unreasonable and unconstitutional and null and void and consequently (i) direct the 1st respondent to amend the Annexure to Rule 6(b) of the Special Rules for Tamil Nadu Horticultural Service in so far as it prescribes a qualification for Assistant Director of Horticulture (Class III Post) by Direct Recruitment, by incorporating a basic Degree in Horticulture being B.Sc.

(Horticulture) in addition to the Post Graduate Degree in Horticulture being M.Sc.(Horticulture) and (ii) forbear the 3rd respondent from conducting examination either on the scheduled dates of 24th and 25th February, 2018 or any other day pursuant to his Notification No.29/2017, dated 28.11.2017 regarding direct recruitment to the Post of Assistant Director Horticulture in the Department of Horticulture and Plantation Crops of the Tamil Nadu Government based on the qualification prescribed in Annexure to Rule 6(b) of the special Rules for Tamil Nadu Horticultural Service.

For Petitioners: Mr.Viduthalai, Sr. Counsel
in both W.Ps. for Mr.S.Rajendiran

For Respondents: Mr.T.N.Rajagopalan (for R1 & R2)
in both W.Ps. Government Pleader.

COMMON ORDER

(Order of the Court was delivered by S.MANIKUMAR, J)

Secretary, Tamilnadu Public Service Commission, Chennai, has issued a notification No.29/2017 dated 28.11.2017, calling for applications, for the post of Assistant Director of Horticulture in Department of Horticulture and Plantation Crops, Government of Tamilnadu. The last date for submission of the application was 27.12.2017.

2. Mr.P.Sivakumar, who has acquired B.Sc.(Horticulture) and thereafter, M.Sc. (Horticulture), has applied for the post of Assistant Director of Horticulture. Currently, he is working as Horticultural Officer (Class-IV Post), in the Department of Horticulture and Plantation Crops, Government of Tamilnadu. He has filed W.P.No.1072 of 2018.

3. Ms.K.Mageswari, who has acquired B.Sc. (Horticulture) and thereafter, M.Sc. (Horticulture) and not applied to the post of Assistant Director of Horticulture, has also filed a writ petition in W.P.No.1077 of 2018.

4. Prayer in both the writ petitions, is for a writ of declaration, to declare that Annexure to Rule 6(b) of the Special Rules for Tamil Nadu Horticultural Service in so far as it prescribes a qualification for Assistant Director of Horticulture (Class-III Post) by Direct Recruitment without insisting upon a basic Degree in Horticulture being B.Sc., (Horticulture) apart from Post Graduate Degree of M.Sc. (Horticulture) is illegal, Arbitrary, unreasonable and unconstitutional and null and void and consequently (i) direct the 1st respondent to amend the Annexure to Rule 6(b) of the

Special Rules for Tamil Nadu Horticultural Service in so far as it prescribes a qualification for Assistant Director of Horticulture (Class III Post) by Direct Recruitment, by incorporating a basic Degree in Horticulture being B.Sc. (Horticulture) in addition to the Post Graduate Degree in Horticulture being M.Sc.(Horticulture) and (ii) forbear the 3rd respondent from conducting examination either on the scheduled dates of 24th and 25th February, 2018 or any other day pursuant to his Notification No.29/2017, dated 28.11.2017 regarding direct recruitment to the Post of Assistant Director Horticulture in the Department of Horticulture and Plantation Crops of the Tamil Nadu Government based on the qualification prescribed in Annexure to Rule 6(b) of the special Rules for Tamil Nadu Horticultural Service.

5. Mr.T.N.Rajagopalan, learned Government Pleader was put on notice. As the relief sought for in both the writ petitions are one and the same, with the consent of both parties, writ petitions are taken up together and disposed of by a common order.

6. Referring to the qualification prescribed for the post of Horticultural Officer, Cl-IV in the Department of Horticulture and Plantation Crops, Government of Tamilnadu and the letter dated 16.12.2008 of the Public Information Officer, Tamilnadu Agricultural University, wherein, the said University, has stated that the curricula and syllabi for the degree programmes viz., B.Sc.(Agriculture) and B.Sc. (Horticulture) are different and that they are not equivalent degree programmes, non-analogous in nature, Mr.R.Viduthalai, learned senior counsel submitted that non stipulation of Under Graduate qualification B.Sc.(Horticulture), as a basic and requisite qualification for appointment to the post of Assistant Director of Horticulture by direct recruitment, is violative of Article 14 of the Constitution of India.

7. Learned senior counsel further submitted that persons, who were not qualified with the basic degree in Horticulture, cannot be said to have expertise or knowledge in the field of Horticulture and Plantation of Crops. Learned senior counsel, submitted that persons directly recruited as Assistant Director of Horticulture should have the basic knowledge in Horticulture and therefore, the Government ought to have prescribed the educational qualification M.Sc. (Horticulture), with the basic degree, B.Sc. (Horticulture), for the said post. According to him, in such circumstances, the rules are vague.

8. During the course of hearing, when attention of the Special Rules for the Tamilnadu Horticulture Service, was invited, that if a person possessing degree in B.Sc.

(Horticulture) with an experience of serving as Horticultural Officer, for a period of not less than three years is also eligible to be promoted as Assistant Director of Horticulture, and that there was stipulation in the rules, as to the basic degree in Horticulture, Mr.Viduthalai, learned senior counsel submitted that there were nearly 20 persons in the department with B.Sc. (Agriculture) and the said qualification was also taken into consideration for promotion, so as to enable them to be absorbed, in Horticultural department.

9. When attention of the eligibility criteria for Masters and Doctoral programme in the Tamilnadu Agricultural University, Coimbatore for the year 2017-18, was pointed out, to the learned senior counsel wherein, the university, in the admission guidelines have prescribed even B.Sc.(Agriculture) as eligible qualification for acquiring various branches / disciplines, in M.Sc. / M.Sc. (Horticulture) and posed with the question that even the academicians have recognised B.Sc.(Agriculture), as one of the eligible educational qualifications, for the Post Graduate qualification, M.Sc. / M.Sc. (Horticulture) and that therefore, when a competent authority, in particular, Agricultural University, has recognised B.Sc. (Agriculture) to be equivalent for B.Sc. (Horticulture), would it be proper on the part of an applicant to question the prescription of M.Sc. (Horticulture) without Under Graduate, B.Sc. (Horticulture), as eligible criteria, for the post of Assistant Director of Horticulture, Mr.Viduthalai, learned senior counsel reiterated that the Public Information Officer, Tamilnadu Agricultural University, in his reply dated 16.12.2008, to the application under the Right to Information Act, 2005 has clearly distinguished that both the educational qualifications viz., B.Sc.(Agriculture) and B.Sc. (Horticulture) are different and non-analogous in nature.

10. Sum and substance of the challenge is that the Government have omitted to prescribe, Bachelor degree in Horticulture, as a condition for the post of Assistant Director of Horticulture in Department of Horticulture and Plantation Crops, and therefore, there is violation of Article 14 of the Constitution of India.

11. Inviting the attention of this Court to the notification No.29/17 dated 28.11.2017, Mr.T.N.Rajagopalan, learned Government Pleader submitted that Mr.P.Sivakumar, writ petitioner and others who have applied for the post of Assistant Director of Horticulture in the Department of Horticulture and Plantation Crops, Government of Tamilnadu, are to be tested only on the subject Horticulture-Post Graduate degree standard, alongwith another paper-General Studies and therefore, for the purpose of recruitment to the abovesaid post, it is not required

that there should be B.Sc.(Horticulture) degree.

12. Heard Mr.Viduthalai, learned senior counsel for the petitioners and Mr.T.N.Rajagopalan, learned Government Pleader appearing for respondents 1 and 2 and perused the materials available on record.

13. Government vide G.O.(Ms.)No.271, Agriculture (AAI) Department dated 27.11.2015 have framed Special Rules for Tamilnadu Horticultural services. Constitution of Tamilnadu Horticultural Service is as follows.

Class I. Joint Director of Horticulture
Class II. Deputy Director of Horticulture
Class III. Assistant Director of Horticulture
Class IV. Horticultural Officer

14. Appointment to the abovesaid post is as follows:

Post. (1)	Method of Appointment (2)
(1) Joint Director of Horticulture	By Promotion from among the holders of the post of Deputy Director of Horticulture.
(2) Deputy Director of Horticulture	By Promotion from among the holders of the post of Assistant Director of Horticulture.
(3) Assistant Director of Horticulture	(i) By Direct recruitment; or (ii) By promotion from among the holders of the post of Horticultural Officers: Provided that appointment to the substantive vacancies shall be made by direct recruitment and by promotion in the ratio of 1:3 and shall be filled up in the following order of rotation, namely:- (i) Direct Recruitment. (ii) Promotion. (iii) Promotion. (iv) Promotion.
(4) Horticultural Officer	(i) By Director Recruitment: or (ii) By Recruitment by transfer from among the holders of the post of Deputy Horticultural Officer in the Tamil Nadu Horticultural Subordinate Service: Provided that appointment to the substantive vacancies shall be made by direct recruitment and by recruitment by transfer in the ratio of 9:1

15. Reading of the above, shows that insofar as the post of Assistant Director of Horticulture is concerned, the same shall be made by direct recruitment by promotion in the ratio of 1:3 and shall be filled up in the following order of rotation viz.,

- (i) Direct Recruitment.
- (ii) Promotion.
- (iii) Promotion.
- (iv) Promotion.

16. Annexure to rule 6(b), speaks about the qualifications prescribed for the post of Joint Director Horticulture (Class-I), Deputy Director of Horticulture (Class-II), Assistant Director of Horticulture (Class-III) and Horticultural Officer (Class-IV).

17. Annexure to Rule 6(b) is as hereunder

Classes of Posts (1)	Method of Appointment (2)	Qualifications (3)
(1) Class-I Joint Director of Horticulture	By promotion from the post of Deputy Director of Horticulture	Must have served as Deputy Director of Horticulture for a period of not less than two years
(2) Class-II Deputy Director of Horticulture	By promotion from the holders of the post of Assistant Director of Horticulture	Must have served as Assistant Director of Horticulture for a period of not less than three years.
(3) Class-III Assistant Director of Horticulture	(i) By direct recruitment (ii) By promotion among the holders of the post of Horticultural Officer	Must possess a Degree in M.Sc. (Horticulture) Must possess a degree in B.Sc (Agriculture) or B.Sc. (Horticulture). Must have served as Horticultural Officer for a period of not less than three years.

Classes of Posts (1)	Method of Appointment (2)	Qualifications (3)
(4) Class-IV Horticultural Officer	(i) By direct recruitment; (ii) By Recruitment by transfer from the post of Deputy Horticultural Officer in the Tamilnadu Horticultural Subordinate Service	Must possess B.Sc. (Horticulture) Must possess B.Sc. (Horticulture) A pass in the following tests: (i) Account test for Executive Officer; (ii) Tamil Nadu Government Office Manual test; (iii) Department test for officers of Tamil Nadu Horticulture Department : Provided that a pass in the Account Test for executive Officer shall not be necessary if he has already passed the Account test for Subordinate Officers Part I and II

18. Perusal of the Annexure makes it clear that in so far as direct recruitment to the post of Assistant Director of Horticulture Class-III is concerned, the requisite qualification is that one must possess a post graduate degree in Horticulture, whereas, for promotion, from the holders of the post of Horticultural Officer, the said rules do not mandate that one should compulsorily possess a B.Sc.(Horticulture) as the basic qualification. Rules recognise that even a person working as a Horticultural Officer with B.Sc.(Agriculture), and served as Horticultural Officer for a period of not less than three years is also, eligible for the post of Assistant Director of Horticulture.

19. Perusal of the notification No.29/17 dated 28.11.2017 shows that there are two subjects in the written examination. Paper 1, is on Horticulture (Post Graduate standard) and Paper 2, is on General studies.

20. As rightly pointed out by Mr.T.N.Rajagopalan, learned Government Pleader, the applicants to the post of Assistant Director of Horticulture are tested, in the subject

Horticulture-Post Graduate standard.

21. Though, Mr.Viduthalai, learned senior counsel strenuously contended that when the Public Information Officer, Tamilnadu Agricultural University, Coimbatore, in his letter dated 16.12.2008 has stated that both B.Sc. (Agriculture) and B.Sc. (Horticulture) degree programmes in the said University are not equivalent degrees, non-analogous in nature and therefore, a person without a basic degree, in Horticulture, has no basic foundation or knowledge, in the field of Horticulture and Plantation and therefore, the Government ought to have fixed the same, while framing the service rules, we are not inclined to accept the said contention, for the reason that, the said reply under Right to Information Act, 2005, is stated to have been given on the application made by Joint Secretary, Tamilnadu Horticultural Officers' Association, Nagercoil dated 14.11.2008. Reply dated 16.12.2008 will have to be construed as redundant, in view of the eligibility criteria for the Masters and Doctoral programme, fixed by Tamilnadu Agricultural University, Coimbatore, in the year 2017-2018. As regards the discipline (Horticulture), there are four masters degree programmes, (1) Fruit science, (2) Vegetable science, (3) Plantation, Spices, Medicinal and Aromatic Crops and (4) Floriculture and Landscape Architecture. The basic degree required to apply for the Post Graduate / Masters Programme in Horticulture, as per the information brochure Admission to Post Graduate Programme 2017-18 of Tamilnadu Agricultural University, is reproduced. Horticulture

22	Fruit Science B.Sc.(Hort.)/B.Tech. (Horti.) */B.Sc. (Agri)	Fruit Science M.Sc./M.Sc.(Hort) Fruit Science
23	Vegetable Science B.Sc.(Hort.)/B.Tech. (Horti.) */B.Sc. (Agri)	Vegetable Science M.Sc./M.Sc.(Hort) Vegetable Science
24	Plantation, Spices, Medicinal and Aromatic Crops B.Sc.(Hort.)/B.Tech. (Horti.) */B.Sc. (Agri)	Plantation, Spices, Medicinal and Aromatic Crops M.Sc./M.Sc.(Hort) Plantation, Spices, Medicinal and Aromatic Crops

25	Floriculture and Landscape Architecture B.Sc.(Hort.)/B.Tech. (Horti.) */B.Sc. (Agri)	Floriculture and Landscape Architecture M.Sc./M.Sc.(Hort) Floriculture and Landscape Architecture
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22. Scrutiny of the above indicates that Tamil Nadu Agricultural University, Coimbatore has treated B.Sc. (Horticulture) as equivalent to B.Tech (Horticulture) and B.Sc. (Agriculture). As per the Information Brochure, a person with B.Sc. (Agriculture) can also pursue Master's programme in M.Sc. / M.Sc. (Horticulture) Fruit Science / Vegetable Science / Plantation, Spices, Medicinal and Aromatic Corps / Floriculture and Landscape Architecture.

23. When Agricultural University, an Academic body itself has recognised B.Sc. (Agriculture) as one of the basic or fundamental courses to pursue masters programme in M.Sc. (Horticulture) in various disciplines extracted supra, it is not open to the petitioners to contend that person without B.Sc. (Horticulture) qualification cannot have knowledge in the field of Horticulture and Plantation Crops. Persons who have acquired M.Sc. (Horticulture) with B.Sc. (Agriculture), as the foundation course, cannot be said to be not qualified for the post of Assistant Director of Horticulture and that therefore, it is not open to the petitioners to contend that the Government have failed to prescribe B.Sc. (Horticulture) as the basic qualification, for the post of Assistant Director of Horticulture Cl-III; the rules as vague, and violative of Article 14 of the Constitution of India.

24. Contention that non prescription of the under graduation B.Sc. (Horticulture) for the post of Assistant Director of Horticulture in the Department of Horticulture and Plantation Crops, Government of Tamilnadu, would pave a way to nepotism, favouritism and arbitrariness, is untenable.

25. Special Rules for the Tamil Nadu Horticultural Service, are in force since 2015 onwards. Mr.P.Sivakumar, writ petitioner who has satisfied the educational qualification M.Sc. (Horticulture), alongwith other competitors, M.Sc. (Horticulture), but without a basic degree in Horticulture, are treated equally, and the standard of test, in the subject paper (Horticulture), is Post Graduate degree standard. Plea of violation of Article 14 of the Constitution of India is not tenable.

26. As per the notification of 29/17 dated 28.11.2017, the last date for submission of application to the post of Assistant Director of Horticulture, in the Department of Horticulture and Plantation Crops, Government of Tamilnadu, was 27.12.2017 and K.Mageswari, writ petitioner in W.P.No.1077 of 2018, who has not even applied to the said post, cannot maintain a writ petition. She cannot be said to be an aggrieved person.

27. When Tamilnadu Agricultural University, Coimbatore, has made it clear that B.Sc. (Horticulture) and B.Sc. (Agriculture), as equivalent degrees to pursue M.Sc. (Horticulture), and when the Government / employer have prescribed the educational qualification suitable to the post of Assistant Director of Horticulture, it is not open to the petitioners/applicants to the post, to find fault with the service rules, on the grounds that it is discriminatory and violative of Article 14 of the Constitution of India.

28. In P.U.Joshi and others vs. Accountant General Ahmedabad and others reported in (2003) 2 Supreme Court cases 632, the Hon'ble Supreme Court, held that prescription of educational / other qualifications is purely the prerogative of the Government and that it is not open to the petitioner or any other applicant to suggest what should be the educational or other qualifications required for the post. At paragraph No.10 of the judgement, the Hon'ble Supreme Court held as follows:

"Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment of eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments

into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

29. P.U.Joshi's case has been considered in Chandigarh Admn. v. Usha Kheterpal Waie, reported in (2011) 9 SCC 645 , wherein at paragraph No.12, the Hon'ble Supreme Court held thus,

"12It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. Courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the concerned authority so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of Constitution, statute and Rules."

30. In the light of the discussion and decisions, we find no force in the contention of the petitioners to declare Annexure to Rule 6(b) of the Special Rules for Tamil Nadu Horticultural Service, in so far as it prescribes the M.Sc. (Horticulture) qualification, for the post of Assistant Director of Horticulture (Class III Post) by Direct Recruitment, without incorporating a basic Degree, as unconstitutional. Petitioners are not entitled to the relief sought for. Hence, both the writ petitions are dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Agriculture Production Commissioner and
Secretary to Government,
Agricultural Department, Secretariat, Fort St. George,
Chennai - 600 009.

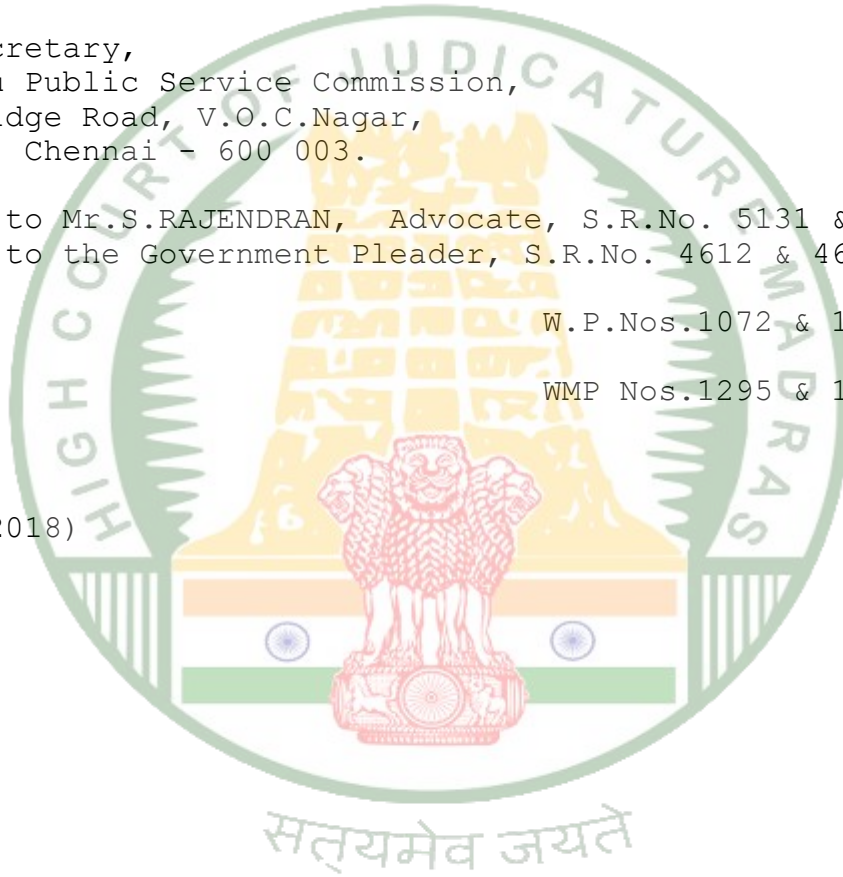
2. The Director of Horticulture and Plantation Crops,
Chepauk, Chennai - 600 005.

3. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, V.O.C.Nagar,
Park Town, Chennai - 600 003.

+2cc to Mr.S.RAJENDRAN, Advocate, S.R.No. 5131 & 5131
+1cc to the Government Pleader, S.R.No. 4612 & 4613

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and
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GJ(CO)
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