

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:17-07-2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.12309 of 2014

1. G.Arjunan
2. A.Jagadiesan
3. E.Mohanraj
4. M.Durairaj
5. S.Amanullah
6. N.Joseph

..Petitioners

-Versus-

1. The State of Tamil Nadu,
rep. by the principal Secretary,
Personnel & Administration Reforms,
Secretariat, Chennai-600 009.

2. The Secretary,
Finance (OP.I) Department,
Fort St.George, Chennai-09.

..Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the 2nd respondent letter NO.25068/ OP.1/ 2010-5 dated 11.10.2010 and letter NO. 76560/OP.1/ 2013-4 dated 14.2.2014 to quash the same and consequently direct the respondents to promote the petitioners as Section Officer on par with their juniors at the appropriate place in the respective panel forthwith and to extend all benefits both service and monetary accrued thereon.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.J.Pothiraj, Spl.G.P.

ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to the 2nd respondent letter NO.25068/ OP.1/ 2010-5 dated 11.10.2010 and letter NO. 76560/OP.1/ 2013-4 dated 14.2.2014 to quash the same and consequently direct the respondents to promote the petitioners as

Section Officer on par with their juniors at the appropriate place in the respective panel forthwith and to extend all benefits both service and monetary accrued thereon.

2. All the petitioners herein are the employees of the Secretariat. They were initially appointed in last grade service and subsequently, on their requisite qualification, they were promoted to the higher post in the secretariat service. According to the petitioners, all of them have acquired Degrees in various subjects after going through Pre-foundation and Foundation courses conducted by the Open University. Since they acquired Degree qualification during their service, they were promoted as Assistant Section Officers and in the said posts, the petitioners are working as on date.

3. The next avenue of promotion to the post of Assistant Section Officer is the post of Section Officer. As far as the first and second petitioners were concerned, they came within the zone of consideration for the panel year 2010-2011 for promotion to the post of Section Officer. As far as other writ petitioners 3 to 6, they came within the zone of consideration for the panel year 2011-12. When the promotions were effected during the panel years 2010-11 and 2011-12, the names of the petitioners came to be omitted.

4. On their names being omitted for promotion to the post of Section Officer for the aforesaid panel years, all the petitioners have represented to the authorities concerned, seeking clarification as to why they were not promoted and why many of their juniors were promoted for the said panel years. In response to the representations, by proceedings dated 11.10.2010, the claim of the petitioners came to be rejected on the ground that these petitioners have acquired their B.A./M.A. Degree without completing 10+2 standard and therefore, they were not qualified after the issuance of G.O.Ms.No.107 P & AR Department dated 18.8.2009. Subsequently, by another proceedings dated 14.2.2014, the authorities have reiterated the same reason that Equivalence Committee had not accepted the qualification acquired by the petitioners for the purpose of their promotion to the post of Section Officer. The rejection order dated 11.10.2010 and the consequential order dated 14.2.2014 are put challenge in the present Writ Petition.

5. Mr.L.Chandrakumar, learned counsel appearing for the petitioners at the out set would submit that the rejection of the request of the petitioners for promotion to the post of Section Officer was on erroneous appreciation of the claim of the petitioners. According to the learned counsel, at the relevant point of time, when the petitioners came within the zone of consideration for promotion, their qualification was recognized by the Government and they satisfied the eligibility criteria as laid down in the recruitment rules governed.

According to the learned counsel, G.O.Ms.No.107, dated 18.8.2009 cannot be applied to the promotion of the petitioners since the relevant Rules governing the promotion of the petitioners had not been amended in the light of the said G.O. According to the learned counsel, the Rules were amended only in 2012, 2013 and 2014 prospectively in respect of appointment to the post of Section Officer in various Departments in the Secretariat including Law and Finance. According to the learned counsel, the crucial date for consideration for promotion was 1.6.2010 and 1.6.2011 in respect of all the petitioners and on the said date, the Rules had not been amended. The learned counsel would further add that the claim of the petitioners is fully covered by the decision of the First Bench of this Court in W.A.No.1372 of 2013, dated 12.7.2013. According to the learned counsel, the Division Bench has dealt with the similar issue in respect of promotion from the post of Section Officer to the post of Under Secretary in the Secretariat Service. The learned counsel would draw a specific reference to the finding of the Division Bench as found in paragraphs 9 to 18, which are extracted hereunder:

"9. Learned Single Judge upon hearing the rival submissions and on a perusal of the materials placed before him, found that the crucial date for promotion to the post of Under Secretary for the panel 2010-2011, is 1.9.2009 and the panel covers the period from 11.2.2010 to 10.2.2011 and on that date, the petitioner fulfills the eligibility criteria and therefore, upheld the contention put forth by the writ petitioner, and ordered the writ petition as prayed for. Challenging the legality of the same, the present writ appeal is filed.

"10. Mrs. A. Sri Jayanthi, learned Special Government Pleader appearing for the appellant/official respondent, would submit that the respondent/writ petitioner did not fulfill the eligibility criteria in terms of G.O.Ms.No.107, P & AR (M) Department, dated 18.9.2009, and pendency of the writ petition, an amendment also came into being by retrospectively amending Clause XII of the Special Rules for the Tamil Nadu General Service with effect from 16.12.2011 and in the light of the above said Government Orders, it cannot be said that the writ petitioner is qualified for promotion to the post of Under Secretary and the said factual and important aspect has been overlooked by the learned Single Judge while allowing the writ petition and hence, prays for interference.

"11.Per contra, Mr.R.Thiagarajan, learned Senior Counsel appearing for the respondent/writ petitioner, would contend that on the crucial date i.e., 1.9.2009, the writ petitioner has fulfilled the eligibility criteria and the said aspect has been taken into consideration by the learned Single Judge and consequently, the writ petition was allowed and in the absence of any infirmity, interference may not be warranted at the hands of this Court while exercising its appellate jurisdiction and hence, prays for dismissal of the writ appeal.

"12.This Court considered the rival submissions and also perused the typed-set of documents.

"13.The writ petitioner passed Secondary School Leaving Certificate Course during March 1977 and thereafter, underwent Open University Foundation Course and successfully passed in the year 1984. As per G.O.Ms.No.528, Personnel & Administrative Reforms (Personnel R.) Department, dated 18.5.1985, the recognition of qualification in respect of the persons, who had undergone Pre-Foundation and Foundational Courses of Madurai Kamaraj University was considered and the following order was issued:

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

"14. The petitioner on the basis of the said qualification, was given regular promotion as Assistant Section Officer and subsequently, promoted to the post of Section Officer also.

"15. Insofar as the submission made by the learned Special Government Pleader appearing

for the appellant/official respondent, that a degree is the qualification for promotion to the post of Under Secretary is concerned, this Court is of the view that with regard to promotion to the post of Under Secretary, the Annexure to the Tamil Nadu General Service (corrected upto 20.9.2010) prescribes necessary qualification and the respondent/writ petitioner has fulfilled all the necessary qualifications. Only in the event of recruitment by transfer from other service, the qualification prescribed, is a degree and in respect of the writ petitioner, it is not applicable.

"16. G.O.Ms.No.107, P & AR (M) Department, dated 18.8.2009, speaks about the employment in Public Services and it also states that the Government have accepted the recommendation of the Equivalence Committee and thereby, recognized 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) for appointment/promotion in Public Services. Though heavy reliance was placed by the learned Special Government Pleader upon the subsequent amendment to Clause XII of Special Rules for the Tamil Nadu General Service, in the considered opinion of this Court, the said Rule was retrospectively amended with effect from 16.12.2011 vide G.O.Ms.No.92, P & AR (C) Department, dated 20.6.2012, and therefore, it is not applicable to the case on hand.

"17. On the crucial date i.e., 1.9.2009, for promotion to the post of Under Secretary, the respondent/writ petitioner, in terms of Annexure to the Tamil Nadu General Service, has fulfilled all the necessary qualifications and therefore, the appellant/official respondent ought to have considered his claim. A reading of the affidavit filed in support of the writ petition, would also disclose that he was included in the panel for promotion to the post of Under Secretary and later on only, his name was dropped on the misconception that G.O.Ms.No.107, P & AR (M) Department, dated 18.8.2009, and G.O.Ms.No.92, P & AR (C) Department, dated 20.6.2012, would be applicable to the case on hand. In the considered opinion of the Court, the learned

Single Judge has rightly taken into consideration the legal as well as the factual aspects and rightly arrived at a decision that the writ petitioner is eligible to be considered for promotion to the post of Under Secretary and accordingly, granted the relief. This Court is of the view that there is no error apparent or infirmity in the reasons assigned by the learned Single Judge for allowing the writ petition and finds no merit in this writ appeal.

"18. In the result, this writ appeal is dismissed and the impugned order dated 30.7.2012, made in W.P.No.14658/2011, is confirmed. No costs. Consequently, connected MP is also dismissed"

6. According to the learned counsel, originally the Government Order in G.O.Ms.No.528 P&AR Department dated 18.5.1985, the degrees obtained after undergoing the Pre-foundation and Foundation courses, had been recognized by the Government while promoting the petitioners as Assistant Section Officers. Once the degree had been recognized and accepted for the purpose of promotion to the post of Assistant Section Officer, it is not open to the respondents to insist upon a degree recognized by the University Grants Commission (UGC) for the purpose of promotion to the next higher cadre, namely, Section Officer. The Rules had not been amended by then. In which event, the original G.O.Ms.No.528 dated 18.5.1985 was holding the field at the relevant point of time. More over, the learned counsel would also submit that the original qualification prescribed for the post of Section Officer is only six years experience as Assistant Section Officer + one year experience in preparation of budget in the Finance Department in respect of appointment in the Finance Department. The petitioners having satisfied such statutory requirement, cannot be deprived of their due promotion in 2010-11 and 2011-12 when admittedly, they were qualified as per the then existing Rules. According to the learned counsel, the above decision of the learned Division Bench would squarely apply to the present case as well. The learned counsel in addition to the above submissions would also rely yet another decision of this Court dated 10.8.2017 passed in WP (MD) No.11111 of 2016, wherein, the learned Division Bench has held in paragraph 8 as follows:

"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."

7. According to the learned Division Bench, not recognizing the Bachelor Degree awarded by the Open Universities was not legally permissible and there was no such valid basis to treat the degrees as invalid. In any event, the learned counsel would submit that the degree was not the qualification which was prescribed during the relevant time and therefore, a decision is required to be taken only on the basis of the then existing recruitment rules and whether these petitioners had valid degrees or not, need not be gone into.

8. Upon notice, Mr.J.Pothiraj, learned Special Govt.Pleader entered appearance. A detailed counter affidavit has been filed on behalf of the respondents, wherein, it is sated that the Division Bench of this Court in its order dated 4.2.2008 in W.A.Nos.1221 of 2005, 82 of 2006 and WP No.36307 of 2004 which was reported in "(2008) 3 MLJ (N.Ramesh and others versus Sibi Madan Gabriel and others) has held that the degrees obtained through Open University were considered equivalent to a traditional degrees obtained through regular system provided

that such degrees are in conformity with relevant statutory provisions including Rules and Regulations holding the field. According to the learned Special Government Pleader, the degrees obtained by the petitioners herein were not recognized since they did not originally clear 10+2 standard and for the persons who had obtained PG, they did not obtain regular undergraduate degree. Therefore, their cases were considered with reference to G.O.Ms.No.107 dated 18.8.2009. Once the degree has been provided as a qualification for promotion to the post of Section Officer, unless these petitioners' qualification is recognized with reference to the said G.O., they cannot stake any claim for promotion contrary to the Rules and Regulations. The learned Special Government Pleader would further submit that in fact, they were not eligible to be promoted as Assistant Section Officer and they ought to have been reverted on the basis of the qualification provided in the relevant recruitment rules. However, the Government took a sympathetic view and allowed them to work as Assistant Section Officer. Therefore, it is not open to the petitioners to further claim for promotion to the next higher post of Section officer, for which, they are not qualified.

9. On behalf of the respondents, various G.Os. have been made available for this Court to consider the scope of the same. The first G.O., issued in G.O.Ms.No.88, dated 15.6.2012 which was put into effect from 16.12.2011, wherein, an amendment was introduced providing a Degree as a qualification obtained from any recognized University and recognized by the University Grants Commission. Another G.O. was issued in G.O.Ms.No.92 P & AR Department, dated 20.6.2012, providing a degree as a qualification recognized by the University Grants Commission and as regards the Finance Department is concerned, a further G.O. was issued in G.O.Ms.No.420 dated 31.10.2013 introducing amendment namely, that degrees only in certain subjects were recognized, namely, B.Com., B.A. (Economics) and B.Sc. (Statistics). However, the said G.O. was revised by subsequent G.O.Ms.No.127, Finance (OP-1) Department, dated 21.05.2014 stating as follows:

"Provided that nothing contained in the above rule shall adversely affect the persons in service in Finance Department including Planning, Development and Special Initiatives Department who were recruited and allotted to Finance Department holding any degree as on date."

10. From the above G.Os., it can be seen that the qualification as prescribed in the aforesaid G.Os., had come into force only in 2012-13 and 2014 as the case may be. These Government Orders were issued governing the appointments to Tamil Nadu General Service in various Departments other than Law and Finance and also Law and Finance separately. One notable feature that has to be seen in all these G.Os. is only in 2012,

2013 and 2014, the amendments were brought about providing degree as a qualification.

11. Be that as it may, the original Recruitment Rule was produced as it stood before amendment and according to which, the qualification prescribed for appointment to the post of Section Officer in the Finance Department is as follows:

"Must have worked as Assistant (now Assistant Section officer with effect from the 30th November 1984) in the sections dealing with matters relating to Budget for a period not less than one Budget session."

12. In respect of other Departments than Law and Finance, one is required to have experience of working not less than six years as Assistant Section Officer. From these materials, the only conclusion that is possible for this Court to arrive is, on the date when these petitioners came within the zone of consideration in 2010-11 and 2011-12, the crucial date being 1st June of 2010 and 1st June of 2011, the petitioners were qualified with reference to the then existing recruitment rules. Much emphasis has been placed on behalf of the respondents by the learned Special Government Pleader in regard to various rulings of this Court and the Hon'ble Supreme Court in regard to the validity of the degrees obtained from the Open University. According to the learned Special Government Pleader, such degrees obtained without passing regular 10th standard + 2 examination, were held to be invalid and these petitioners having obtained degrees from the Open University without basic regular qualification, were rightly omitted to be included in the promotion panel. However, this Court is of the view that the said argument as being extraneous and not relevant for the simple reason that firstly at the relevant point of time, when the petitioners came within the zone of consideration, the degree was the qualification as prescribed in the Recruitment Rules. Even assuming that the degree was the qualification at the time when the petitioners were considered for promotion, the Rules were amended only after 2012 and in such event, the petitioners were covered by the ruling of the learned Division Bench relied upon by the learned counsel for the petitioners rendered in W.A.No.1372 of 2013 (cited supra). In fact, as per G.O.Ms.No.528 P&AR Department, dated 18.8.1985, the degrees obtained after Pre-foundation course and Foundation course had been recognized by the Government and that position came to be resiled by the Government in view of the Hon'ble Supreme Court decision reported in "(2009) 4 SCC 590 (Annamalai University, rep. by the Registrar versus Secretary to Govt., Information and Tourism Department and others)" by G.O.Ms.No.107 P & AR Department dated 18.8.2009. In any event, from the facts and materials as produced, would disclose that whether the degree obtained by the petitioners was valid or not was not germane to the issue raised in the present Writ Petition and the same is

not particularly relevant for the understanding the basis of the claim of the petitioners herein.

13. To put the entire issue in proper perspective without getting embroiled in the needless controversy as to whether the degrees obtained by the petitioners were valid or not in view of the rulings of this Court as well as the Hon'ble Supreme Court, this Court has to see as to whether these petitioners were qualified for consideration for appointment to the post of Section Officer at the time when they came within the zone of consideration in 2010-11 and 2011-12 with reference to the then existing recruitment rules.

14. From the materials as disclosed on the strength of the above narrative, this Court has to necessarily come to the conclusion that the petitioners were qualified during the relevant years in terms of the then existing recruitment rules. In fact, in the then existing recruitment rules, no where at that point of time, degree was prescribed as qualification. The degree as a qualification was introduced subsequently. The degrees as obtained by the petitioners were recognized to be valid by G.O.Ms.No.528 dated 18.8.1985 at that relevant point of time. Further, this Court is of the considered view that the accrued right of the petitioners for promotion to the post of Section Officer cannot be taken away by any subsequent amendment. Further, it is pertinent to note that when on earlier occasion, the petitioners were considered for promotion to the post of Assistant Section officer with the same qualification, this Court does not see any ground for denying the same recognition only for the purpose of promotion to the post of Section Officer.

15. The petitioners' claim in the opinion of this Court is fully established and therefore, this Court has no hesitation in allowing the Writ Petitions. Accordingly, the Writ Petition is allowed. The impugned orders in letter No.25068/OP.1/ 2010-5 dated 11.10.2010 and letter No. 76560/OP.1/ 2013-4 dated 14.2.2014 are hereby set aside. The respondents are directed to grant promotion to the petitioners in the post of Section Officers on par with their juniors for the panel years 2010-11 and 2011-12 on the basis of the then existing rules which governed the said promotion and grant all other attendant benefits, like seniority, monetary, etc. The respondents are directed to pass appropriate order in compliance of this order, within a period of eight weeks from the date of receipt of copy of this order. No costs.

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Sd/-

Assistant Registrar (CS-IX)

// True Copy//

Sub Assistant Registrar

To

1. The principal Secretary,
The State of Tamil Nadu,
Personnel & Administration Reforms,
Secretariat, Chennai-600 009.

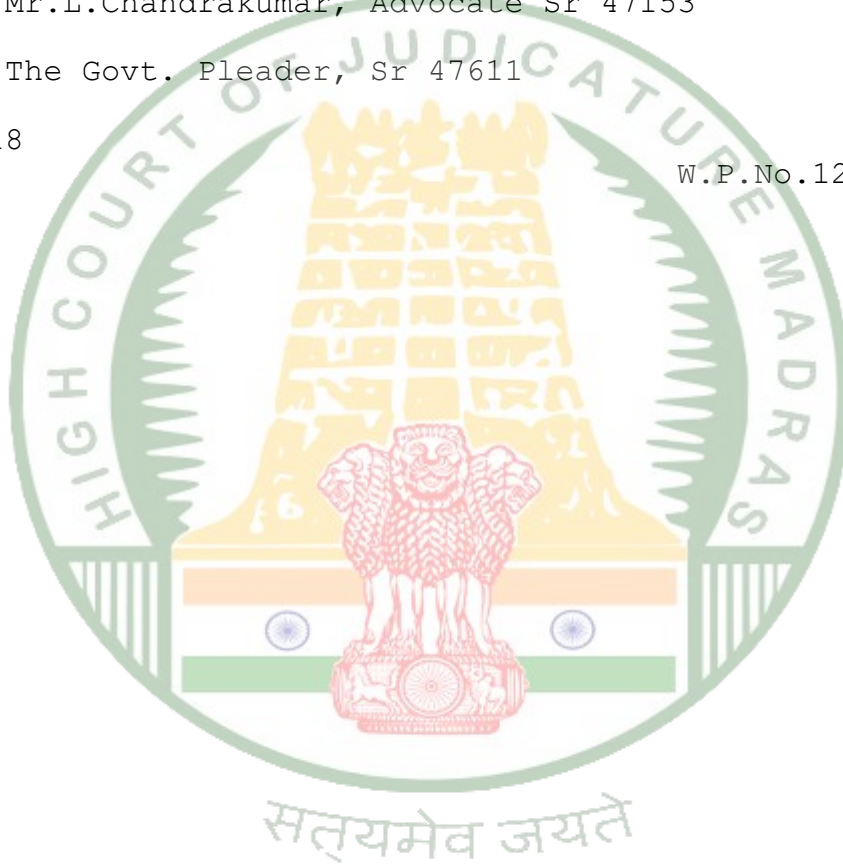
2. The Secretary,
Finance (OP.I) Department,
Fort St.George, Chennai-09.

+ 1 cc to Mr.L.Chandrakumar, Advocate Sr 47153

+ 1 cc to The Govt. Pleader, Sr 47611

KR/11/10/18

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