

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.08.2018
Pronounced on : 06.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.10753 of 2008

V.Raju

.. Petitioner

.Vs.

1.Union of India represented by

The Secretary,
Ministry of Defence,
101, South Block, New Delhi.

2.State of Tamilnadu represented by

The Chairman,
Tamil Nadu Public Service Commission,
Omandurar Government Estate,
Anna Salai, Chennai 600 002.

.. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records pertaining to the Memorandum of the second respondent in Memorandum No.3266/PSD-A2/2007 dated 04.03.2008 and quash the same and consequently direct the second respondent to appoint the petitioner for the Assistant/Personal Clerk in the Department of Secretariat (other than Law and Finance Department) in the Tamil Nadu Secretariat Service in the Tamil Nadu Public Service Commission included in CSSI -I-2007-2008

For petitioner : M/s.D.Geetha
For 1st Respondent : Mr.J.Madana Gopal Rao
For 2nd Respondent : Dr.M.Devendran
Standing Counsel

JUDGMENT

The above writ petition has been filed for a writ of certiorarified mandamus to call for the records pertaining to the memorandum of the second respondent in memorandum No.3266 /PSD-A2/2007 dated 4.3.2008 and to quash the same and consequently direct the second respondent to appoint the petitioner for the post of Assistant/Personal clerk in the Department of Secretariat (other than Law and Finance Department). In the Tamil Nadu Secretariat service in the Tamil Nadu Public Service Commission included in CSS I-2007-2008 and to pass such other order the facts and circumstances of the case.

2. The petitioner completed high school in the year 1981 and higher secondary school in the year 1983. Thereafter, the petitioner served in the Artillery Depot Regiment of the Indian Army from 20.01.1984 till 31.01.2001 without any break from service.

3. The petitioner thereafter opted for voluntary retirement and was issued with the graduation certificate dated 31.1.2001 by the Commanding Officer, Artillery Depot Regiment on Behalf of the Indian Army. According to the petitioner, the Commanding Officer issued a Graduation Certificate to the Ex-servicemen who have completed matriculation which includes ex-servicemen who obtained the Indian Army Special Certificate of Education or corresponding Certificate in the Navy or the Air Force who have put in not less than 15 year of service in the Armed Forces of the Union of India.

4. This certificate entitles an Ex-serviceman to apply for appointment to any of the reserved vacancy in Group "C" post for which the essential qualification is graduation and where experience of technical or professional nature is not considered essential.

5. On 19.6.2006, the second respondent issued a notification calling for application for the post of Assistant/Personal Clerk in the Department of Secretariat (other than law And Finance Department) in the Tamil Nadu Secretariat/Service in the Tamil Nadu Public Service Commission included in CSSI-I-2007-2008. The minimum requirement for the aforesaid post is any degree from any College recognised to receive grants from UGC. According to the petitioner, he possessed graduation certificate issued by the Indian Army and was therefore eligible to apply for the aforesaid post.

6. According to the petitioner, he appeared for a written examination on 07.01.2007 and clear the same and was provisionally selected for the said post. The second respondent vide Memorandum No.5114/CSSE-I/MCD-B/2006 dated 30.5.2006 directed the petitioner to bring the original certificates on 5.06.2006 without fail.

7. The petitioner accordingly produced the required documents before the second respondent on 05.06.2007. On the same day the petitioner also received another communication from the second respondent confirming that the original documents produced were found to be in order and that a further communication regarding the unit to which he would be sent will be intimated shortly thereafter.

8. Since the petitioner did not receive any further communications he sent a representation to the Chief Minister's Special Cell on 31.01.2008. The petitioner required a response from the second respondent vide Memorandum

No.1011/RID/PSDA/2008 dated 4.3.2008 enclosing the impugned Memorandum, informing him that provisional selection to the post of the Assistant in the Tamil Nadu Public Service Commission has been cancelled by the first respondent for the reason that the petitioner did not possess prescribed qualification as per the notification dated 19.9.2006, since the qualification possessed by the petitioner cannot be equated to the decree given by the Universities.

9. The said memorandum also informed the petitioner that no further request would be entertained in this regard. In view of the said communication of the second respondent the petitioner filed the above writ petition before this court for the relief.

10. The second respondent has filed counter justifying the communication contained in the impugned order and has stated that as per notification dated 19.9.06 the prescribed qualification for the post are as follows:-

“(I) For the Post of Assistant:

(1) A Bachelors Degree from any University or Institution recognised by the University Grants Commission for the purpose of its grant.

(II) For the Post of Personal Clerk:

(1) A Bachelors Degree from any University Or Institution recognised by the University Grants Commission for the purpose of its grant: and

(2) A pass in the Government Technical Examination in Typewriting in Tamil and English both by the Higher Grade: and

(3) A pass in the Government Technical Examination in Shorthand in Tamil and English both by the Higher Grade.”

11. The second respondent had defended the cancellation of the provisional appointment of the petitioner on the ground that it received large number of applications for the combined Subordinate Service Examination 2007-2008 and initially prima facie scrutiny was done and based on the same, the petitioner was provisionally selected as per the Order No.59 dated 07.11.2006 and based on the claim (shading) in the OMR application and was allowed to write examination held on 07.01.2007 and was selected provisionally against BC (Ex-Ser) vacancy. However, the final appointment was withheld for want of clarification from the Government in respect of his qualification (IAF graduation Certificate).

12. It appears that communication were exchanged with the Government to confirm whether graduation certificate obtained by the petitioner from Indian Army/Navy may be considered for the post for which the petitioner had been provisionally selected.

13. The Government vide a letter No.65732/S/07-1 dated 25.01.2008 has clarified as under:

"No orders have been issued equating the degrees obtained in the Army, Navy and Air force with that of the degrees given by the Universities listed out in the schedule II to General Rules for Tamil Nadu State and Subordinate Services and hence the graduation certificate issued by the Army, Navy and Air force cannot be considered for the purpose of employment in public services."

14. It was only in the light of the above, the petitioner's provisional selection was cancelled.

15. From the records of this case, it is noted that the case was argued on an earlier occasion on 17.07.2018. On the said date the first respondent was directed to produce the Government letter which gives clarification on this point. The case was taken up for final hearing today i.e., 23.08.2018. However, the said letter has not been filed.

16. The first respondent represented by Mr.J.Madanagopal Rao, SCGSC has filed Ex-Service Rules and the clarification regarding equivalence bearing reference F.No.1-22/2013-EE-4 (P), dated 23.08.2017 Government of India, Ministry of Human Resource Development, Department of School Education & Literacy issued by the Under Secretary to the Government of India dated 23.08.2017. The same is reproduced hereunder:

"Subject: Clarification regarding equivalence to graduation certificate issued and requisite qualification to in-service teacher belonging to Ex-Servicemen category."

Sir/Madam,

This Ministry has received several representation on the determination of equivalency of qualifications in respect of personnel hailing from Ex-Servicemen category. It was requested to clarify whether an Ex-Serviceman who is a matriculate and possessing Indian Army Special Certificate of Education or its equivalent certificate in the Navy or Air Force and has put in not less than 15 years of service are issued with a Graduation certificate for re-employment purpose, as equivalent to Higher Secondary with 50% marks.

2.This Matter has been examined in light of various provisions of the Right of Children to Free and Compulsory Education (RTE) Act, 2009. DOPT's notification dated

minimum qualifications of teachers and recommendations of Expert Committee as formed by NCTE. The recommendations of the expert Committee of NCTE vide letter No.1769/NCTE/DGR/RES-8 dated 1st December 2014 is reproduced as below:

"An ex-serviceman who is a Matriculate and possessing Indian Army Special Certificate of Education or the corresponding certificate in the Navy and Air Force and has put in not less than 15 years service in the Armed Forces has been issued Corporal Certificate of Indian Air Force under Scheme-A should be treated as also having qualified 10, +2 with 50% marks. (The minimum eligibility qualification programme through ODL conducted by any institution providing training for untrained in-service teachers working in schools in accordance with approval of NCTE). It will enable the untrained in-service primary teacher from ex-serviceman category to undergo D.El.Ed. Programme through ODI mode."

3. It has been decided to accept the above recommendations of the Expert Committee of NCTE.

4. This is issued with the approval of Hon'ble Minister of Human Resource Department."

17. Mr. Devendran, learned standing counsel appearing for the second respondent reiterates the content of the counter and prayed for dismissal of the writ petition.

18. I have considered the arguments advanced by the learned counsel for the petitioner and the 1st respondent.

19. The Ex-Servicemen (Re-employment in Central Civil Services And Posts), Rules 1979 has been issued for preserving 10% of vacancies in the post of level of assistant commandment in all Paramilitary Forces, 10% post in each of Group C Posts and of such posting each Group C Services and 20% Posts and Such of Post in Each Group D Services.

20. Rule 6 of the aforesaid rules deals with open "Special Provision regarding Educational Qualification". Sub-Rule 5 of rule 6 reads as under:-

" (5) For appointment to any reserved vacancy in Group C and Group D post where the prescribed minimum educational

qualification is matriculation, the appointing authority may, at his discretion relax the minimum educational qualifications in favour of an Ex-servicemen who has passed the Indian Army Class I Examination or equivalent examination in the Navy or the Air Force, and was put in at least 15 years of service in the Armed Forces Of the Union and is otherwise considered fit to hold the post in view of the experience and other qualifications.

Explanation-for the purpose of this rule in computing the period of three years service, there shall be added an service which and ex-servicemen has rendered while serving in a corresponding post or posts in a civil department or the public sector undertaking or an autonomous organisation, whether under the Central Government or any State Government or in a Nationalised Bank to the period of service rendered in the arm force of the union."

21. The certificate issued is in terms of the Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) OM No.15012/8/82/ES TT (D) dated 12.02.1986. As per this certificate ex-servicemen who are matriculate (which term includes ex-servicemen who have obtained the Indian Army Special Certificate of education or corresponding certificate in the Navy or the Air Force and have put in not less than 15 years of service in the armed forces Of the Union may be considered eligible for appointment to any reserved vacancy In Group C posts for which the essential qualification is graduation and were experience of technical or professional nature is not essential. The certificate certifies that for being appointed is to be considered the educationally qualified for reserved group "C" posts were prescribed qualification is graduation.

22. As per the clarification dated 23.08.2017, the Indian Army Special Certificate of Graduation or corresponding Certificate are treated on a par with the person having qualified 10 and +2 with 50% marks. The same has issued in the context of in-service primary teacher from ex-service category to enable them to go for D.El.Ed. through ODI mode. The said clarification is not relevant to the facts and circumstances of the present case.

23. As per the above rules and clarification of the Ministry of Human Resource and Development, Department of School Education and Literacy it is evident that the trained ex-servicemen are also entitled to be considered for being appointed in the category of primary teachers.

24. The Rules cited by the first respondent has been issued in the context of the employment of Ex-serviceman not of the Central Civil Services and Posts, Group "C" and Group "D" and to the posts of the level of Assistant Commandant in all para-military forces. Therefore, the aforesaid Rules are also of no relevance as the aforesaid Rules deals with only Central Services. However, from time to time special reservation for Ex-servicemen are announced for various post by the Central Government.

25. In *Atter Singh V. State of Tripura* 2015 SCC Online Tri 844, while dealing with the Indian Army Graduation certificate issued as per Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) OM No.15012/8/82/ESTT (D) dated 12 Feb, 1986, it was held that the said certificate merely confers the status and that the status cannot be equated with the graduation conferred by a recognised University, unless it is so recognised.

26. In *Capt. Subir Bhattacharya vs. State of West Bengal and Others* 2000 (1) L.L.N.216, while dealing with the case of persons like the petitioner who has been originally in absorbed in the service in the Directorate of Diary Development under the Animal Husbandry and veterinary Services of the Government of West Bengal, unfortunately fall ill due to which he was recommended for light duty by the Physicians. The Court after considering certain decisions including the decisions of the Hon'ble Supreme Court in *Narendra Kumar Chandla Vs. State of Haryana and others* 1994 (2) L.L.N. 746, observed that there were two channel of appointment to the post of U.D.C, one by promotion and another by direct recruitment. For a direct recruitment a graduation or post-graduation or law graduation was the minimum educational qualification, which the petitioner did not possess. However, since the petitioner was Matriculate from the Union Armed Services, he also could be offered post of carrier attendant as was sought to be done by the respondent. Ultimately, the Court directed that the petitioner could be considered for the post of lower division work he being a matriculate. The Court held that the petitioner therein should be absorbed in any administrative post involving desk work and having similar pay-scale to the post of Security Officer.

27. In *Chief Executive Officer, NSSO and others Vs. Biswa Bhusan Nandi*, (2008) 10 SCC 161, the respondent therein was permitted to appear in a written examination as well and interview for the post of Data Entry Operator, like the petitioner in the present case. The respondent there was also a matriculate with 15 years' of experience and had applied for the post being considered for appointment to Group "C" post subject to fulfilment of certain conditions, for which prescribed educational qualification was graduation. The candidature was objected like in the present case on the ground that the qualification for Data Entry Operator was

graduation with mathematics and statics as one of the subject and that the respondent had not studied either of the two subjects.

28. The High Court had directed the appellant's organization to accommodate the respondent therein to the post of Data Entry Operator and if it, was not possible, to accommodate him in a suitable alternative post. Thereafter, Special Leave Petition was filed against the direction of the High Court while seeking extension for implementation of its direction. The appellant had given a firm assurance to the High Court that its order would be implemented.

29. The Hon'ble Supreme Court after considering the nature of work involved held as under:

" It is not a case where work experience of technical or professional nature was essential. Even in a case, where experience in non-technical professional work was although prescribed as essential yet in a case where the appointing authority was satisfied that the Ex-serviceman is expected to perform his duties in the post by undergoing "on-job training" for a short duration in terms of Rule 6(4), as amended, such appointment could have been made. It was not the appellant's stand that even upon grant of some training, the respondent would not be able to perform the job of a Data Entry Operator. It is also not the case that there was no vacancy in any other post. The appellant also does not say that they committed any mistake in verifying the respondent's application for recruitment. He was permitted to appear in written examination as well as interview."

30. The Hon'ble Supreme Court upheld the direction for appointment in view of specific undertaking/assurance of the appellant that they would accommodate the respondent. The Court has held as under:

"In view of the exceptions carved out, the eligibility clause and as the post is non-technical in nature and, thus, no experience on technical side was necessary, we do not think that the appellant should be permitted to come out of the representation made by it before the High Court."

31. The predicament of an Ex-serviceman in the present case and the case before the High Court of Kolkata which was the subject matter of the appeal before the Hon'ble Supreme Court is almost identical.

32. Since the petitioner has necessary qualification for undertaking Group "C" as a Group "C" employees the respondent ought to have appointed him and not turned on his application merely on the ground that he did not possess necessary degree from a college University.

33. In fact, the very purpose of conferring such certificate by the Indian Army is to facilitate Ex-serviceman to be considered for employment as a graduate and therefore, the Government of India has clarified in its Government Order that Ex-serviceman having served in the Armed Forces who are matriculate (which term includes ex-serviceman who have obtained the Indian Army Special Certificate of Education or the corresponding certificate in the Navy or the Air Force), and have put in not less than 15 years of service in the Armed Forces of the Union may be considered eligible for appointment of any reserved vacancy in Group "C" posts for which essential qualification is graduation and where experience of technical or professional nature is not essential.

34. Recently on 23.01.2018 vide G.O.(M.S)No.77 the Government of Tamil Nadu published the resolution of Thirty Sixth Equivalence Committee Meeting of TNPC held on 15.11.2012 which reads as under :-

Resolution 4 :

"Considering the stand of Government of India, the State Government of Punjab, Karnataka, Maharashtra, Goa, Jammu and Kashmir, Orissa, Tripura and Government of Pondicherry in the subject, this Committee recommends that the Government may consider, as this being a policy decision."

35. In para 3 it has been clarified as under :-

" 3. After careful examination, the Government have decided to accept the proposal of the Director of Ex-Serviceman's Welfare, Chennai and accordingly, direct that for appointment to any reserved vacancy in " Group-C" posts, a Matriculate Ex-Servicemen, (which term includes an Ex-Servicemen, who has obtained the Indian Army Special Certificate of Education or the corresponding certificate in the Navy or the Air Force), who has put in not less than 15 years of service in the Armed Forces of the Union shall be considered

eligible for appointment to the posts for which the essential qualification prescribed is Graduation. They are eligible for promotion to all Group 'A' and 'B' posts in routine course excepting for those posts for which graduation is prescribed as a prescribed qualification for promotion."

36. In view of the above, the respondents are directed to suitably accommodate the petitioner in Group "C" Post with effect from the date of his provisional selection already made, together with the increment in the salary he would have been eligible, had he been appointed pursuant to his provisional selection vide order dated 04.03.2008.

37. Accordingly, this writ petition is allowed. Consequently, connected miscellaneous petition is closed. No cost.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

kkd
To

1. The Secretary,
Ministry of Defence,
101, South Block, New Delhi.

2. The Chairman,
Tamil Nadu Public Service Commission,
Omandurar Government Estate,
Anna Salai, Chennai 600 002.

+ 1 cc to Mr. D. Geetha, Advocate Sr.61703
+ 2 ccs to Dr.M. Devendran, Advocate Sr.61616

W.P.No.10753 of 2008
and M.P.No.1 of 2018

RSI (CO)
EU(16/10/2018)