

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19 .07.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WA.No.213 of 2018

Mohamed Hasan Refayee

...Appellant/Petitioner

Vs

1. The Tamil Nadu Public Service Commission,
Rep. by its Chairman,
Commercial Tax Annex Building,
No.1, Greams Road, Chennai-600 006.
2. The Government of Tamil Nadu,
Rep. by its Secretary,
Department of Personnel and Administrative Reforms (P&AR)
Fort St.George, Chennai - 600 009.

...Respondents

Prayer:

Writ Appeal is filed under Clause 15 of the Letters Patent,
against the order made in W.P.No.7120 of 2011, dated 07.09.2017.

W.P.No.7120/2011:

Writ Petition filed under Article 226 of the Constitution of India praying this Court to call for the records of the 2nd respondent in connection with the letter bearing Letter No.33448/M/2010-4 Personnel and Administrative Reforms (M) Department dated 03.12.2010 and quash the same and direct the 1st respondent to declare the result of the petitioner in respect of his participation in the Combined Subordinate Services Examination -1 and in the event of the petitioner having been selected direct the 2nd respondent to issue an order of appointment with the consequent benefits.

For Appellant : Mr.V.Prakash, Sr.Counsel
for Mr.K.Sudalai Kannu

For Respondents: Mr. P.S.Sivashanmugasundaram
Special Govt. Pleader for R2
Mr.M.Devendran, SC for TNPSC for R1

O R D E R
SUBRAMONIUM PRASAD, J

The present Writ Appeal is directed against the order dated 07.09.2017, passed by a learned Single Judge of this Court in WP.No.7120 of 2011.

2. The appellant is the writ petitioner. He participated in the examination conducted for the recruitment for posts included in the Combined Subordinate Services Examination. The petitioner was successful in the written examination and appeared for the interview held on 07.10.2009. The petitioner results were withheld. He states that when he verified as to why the results were withheld, he found that the results were withheld on account of his not satisfying the eligibility criteria with regard to his school completion.

3. The petitioner states that, he gave a detailed representation stating that the petitioner had studied up to 10th standard. He could not complete his 11th standard, because he was not well. He stated that, there was change in the system, in as much as, the system of 11+3 had been converted in to 10+2+3, in the year 1978. He states that, he passed a foundation course of Madurai Kamaraj University, which according to the petitioner is equivalent to plus two course, and the same has been recognized by the Tamil Nadu Government order G.O.Ms.No.528, Personnel and Administrative Reforms (P&AR) dated 18.05.1985. He states that after completion of his foundation course, he joined B.Com., which he successfully completed in the year 1989. The petitioner therefore states that he fulfills all the eligibility criteria.

4. The petitioner states that, since the results were not declared, he filed a writ petition No.13574 of 2010. The said writ petition was disposed of by the following order:-

"3. Since the Writ petition was filed to declare the results, the learned counsel for the petitioner was directed to serve notice to the learned counsel for the first respondent. Today, the learned counsel for the first respondent produced a communication issued by the first respondent to the second respondent dated 12.07.2010 and requested to clarify as to whether the qualification possessed by the candidate, namely, pre-Foundation Course of Madurai Kamaraj University - Open University be recognized as equivalent to the 10th standard SSLC examinations of the Tamil Nadu Government for the purpose of entry in to service in the State and whether the two years Foundation Course of the Madurai Kamaraj University - Open University be recognized as

equivalent to Higher Secondary course of the Tamil Nadu Government for the purpose of entry in public services in the State and whether the persons possessed of the said qualifications may be considered as satisfying the requisites of the Government Order in G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009, in view of the orders issued in G.O.Ms.No.528, dated 18.05.1985.

"4. In the light of the clarification sought for by the first respondent from the second respondent as early as on 12.07.2010, the second respondent is directed to consider the said issues and give the clarification as sought for by the first respondent with in a period of four weeks from the date of receipt of a copy of this order and on receipt of the clarifications from the second respondent, the first respondent is directed to decide accordingly. The second respondent is also directed to communicate the copy of the clarification to be issued to the petitioner while communicating the same to the first respondent."

5. In compliance of the order, the Government of Tamil Nadu, by an order dated 03.12.2010, passed an order stating that a degree awarded by the Open Universities after passing Pre-foundation Course and two year Foundation Course through Open University cannot be recognized a degree as per University Grants Commission norms for the purpose of employment / promotion in Public Services, since such Pre-Foundation Course and 2 year Foundation Course are not contemplated in the University Grants Commission Regulations. It was stated that, those who obtained a degree under Open University System, after passing the Pre-Foundation Course and two year Foundation Course without passing 10th Standard and +2 , examination, do not satisfy the conditions laid in G.O.(Ms) No. 107 P & A R (M) Department, dated 18.08.2009 which is in consonance with the orders of Supreme Court of India.

6. It is this order dated 03.12.2010, which is challenged in the instant writ petition No.7120 of 2011.

7. The learned Single Judge held that the petitioner is not qualified directly to be admitted in the foundation course in view of his non appearance in any of the public examinations conducted by the Director of School Examinations either under the old pattern XI standard or new pattern X standard and now he cannot claim to have undergone the foundation course with valid participation and passing in the public examination, atleast once i.e. at higher secondary school level. The learned Single Judge did not go into question as to whether pre

foundation/foundation course is valid enough to earn a degree through the Open University System for the purpose of public employment or not. The learned Single Judge further held that, since the foundation course undergone by the petitioner without undergoing the pre foundation course in the facts of the case, itself is not valid, his subsequent degree obtained through the Open University System from Madurai Kamaraj University, cannot be held to be valid for any purpose.

8. The question that which falls for consideration is whether the proceedings in letter No.33448/M/2010-4 P&AR (M) Department, deserves to be struck down or not and whether the petitioner who has passed in the foundation course is entitled to be considered for a Government job on the basis of the degree which he obtained on the basis of the foundation course which according to the petitioner is equivalent to a pass in +2 examination.

9. The Public Service Commission filed its counter stating that the Government had once again clarified by an order dated 08.08.2013 and it reiterates that pre-foundation and foundation courses were considered as not equivalent to SSLC and HSC. Tamil Nadu Public Service Commission, therefore took a stand that the petitioner had passed foundation course through open university, the same cannot be considered equivalent to the HSC and as such the bachelor degree obtained without passing SSLC and HSC cannot be considered as a valid one and hence, the application is liable to be rejected.

10. The State of Tamil Nadu also filed a counter stating that, though by G.O.Ms.No.528, dated 18.05.1985, orders have been issued to the effect that the pre-foundation course and two year foundation course through open university were recognized as equivalent to SSLC and HSC especially for the purpose of entry in to public service examination, but based on the recommendation of the Equivalence Committee, the degree obtained through Open university system is not equivalent to +2 and in consonance with the orders of Hon'ble Supreme Court of India.

11. Heard Mr.V.Prakash, learned Senior Counsel appearing for the petitioner and Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader for the State of Tamil Nadu and Mr. M.Devendran, learned Standing Counsel for TNPSC.

12. The Tamil Nadu Public Service Commission issued a notification inviting applications for Combined Sub-Ordinate Services Examination for 2008-2009. Written examination was to be held on 22.03.2009 and oral test to be held on 15.10.2009. The petitioner applied for the recruitment. The petitioner obtained a Open University degree in commerce. He was issued a

hall ticket for the written examination. He cleared the written examination and was called for an oral test on 04.08.2009. Certificate verification was conducted. The petitioner had discontinued his schooling in 10th standard. He had not completed his 11th standard under the old pattern examination. After discontinuing his studies, he has passed two year foundation course conducted by the Madurai Kamaraj University. After completing two year foundation course, he joined the degree course through correspondence, conducted by the Madurai Kamaraj University and obtained his B.Com degree.

13. The result of the petitioner was withheld on the ground that the petitioner had not cleared SSLC (Old pattern examination) and had also not cleared 10th and 12th class under the new pattern examination.

14. Madurai Kamaraj University conducted a pre-foundation course to enable candidates to pursue their graduation studies. The prospectus for the year 1983 reads as under:-

FOR PRE-DEGREE COURSE

Detailed Report (Prospectus) - 1983

1. Education:

Madurai Kamaraj University is granting pre-degree courses under the Open University System.

2. Time Span:

This system of this course is of three stages:

- (i) Introductory Course - 6 months
- (ii) Pre-foundation Course - 1 year
- (iii) Foundation Course - 2 years

Note: The old System of SSLC; the 2 years old Pre-University

Course is equivalent to the new +2 second year course.

The Foundation Course is equivalent to the new pattern of Xth Std and the S.S.L.C.

3. Educational Qualification to join this Course:

Any person all over India whoever knows Tamil and who are the citizens of India are eligible to apply for this course.

(i) Foundation Course: No. Educational Qualification needed. On application of this Course a person must be of 14 years of age/ above as 1st October. Candidates must obtained and send a Age Certificate attested by a person

who is in the cadre of not below the rank of Deputy Tahsildar of Revenue Department/ to get the age Certificate from an authorized Notary Public. Persons whosoever have limited educational qualification can send a transfer Certificate or Record Sheet which will be sufficient.

(ii) Basic Requirement: Candidates whosoever has passed 8th Std/ Pre-Foundation Course.

For 1st Year Foundation Programme: 10th Std pass/ Persons whosoever has passed the Pre-Foundation

For 2nd Year Foundation Programme: Candidates whosoever has passed 11th S.S.L.C from Chennai, Madurai Kamaraj University Matriculation/Regular Pre- Foundation Course or 1st Year Foundation Course pass.

Note:

(a) Candidates whosoever was dropped from S.S.L.C. before 1978 and cleared the failed papers alone and have completed their S.S.L.C or the candidates whosoever have obtained compartmental pass would be eligible to join from the 2nd year foundation course.

(b) The candidates whoever failed in the old 11th Std (Old S.S.L.C) and have wrote and cleared the new pattern 10th Std S.S.L.C"

15. The Government of Tamil Nadu, Personnel Administrative Reforms (P&AR) Department, issue G.O.Ms.No.528, dated 18.05.1985, by which the Government came to a conclusion that the pre-foundation course in Madurai Kamaraj University be recognized equivalent to 10th standard or SSLC of the Tamil Nadu Government, for the purpose of entry in to the public service in the State. The Government order also holds that the two year foundation course in Madurai Kamaraj University is recognized as equivalent to higher secondary or +2 of State Government for the purpose of entry in the public employment in the State.

G.O.Ms.No.528, dated 18.05.1985, reads as under:-

GOVERNMENT OF TAMIL NADU

ABSTRACT

Public Services Recognition qualification Pre Foundation and Foundation Courses of Madurai Kamaraj University Equivalence orders issued.

PERSONNEL & ADMINISTRATIVE REFORMS (P & AR) DEPARTMENT

G.O.Ms.No.528

Dated:18.05.1985

Read:

1. From the Registrar, Madurai kamaraj Unviersity letter No.E.Recog-281, dated 03.03.1981.
2. From the Registrar, University of Madras letter No.CRIII Recog Foundation Course/MKU/848 39, dated 21.03.1984
3. From the Director of School Education letter No.R.C.123136/W16/81, dated 23.05.1984.
4. From the Secretary, Tamil Nadu Public Service Commission letter No.5463/BA5/84-85, dated 18.10.84.

Order:

1. The Registrar, Madurai kamaraj University, Madurai in his letter first read above has requested the Government to recognise the first year Foundation Course of the Open University system conducted by the above University as equivalent to the old 11 year SSLC Matriculation Examination and the second year Foundation course as equivalent to Pre-University course/12 year Higher Secondary Examination for purpose of employment in public service in this state.
2. The above request was examined in consultation with the Registrar, University of Madras, Director of School Education and Tamil Nadu Public Service Commission, Madras.

The Syndicate of the University of Madras, as its meeting held on 27.02.1984, resolved that the Foundation Course of the Open University System of Madurai Kamaraj University be recognised as equivalent to pass in the +2 of the 10 + 2 pattern for the purpose of admission to the degree course of the University of Madras subject to usual conditions. The Board of Higher Secondary Education has considered that there should be no objection to recognise the Pre-Foundation Course examination which corresponds to the 10th standard public examination conducted by the Director of Government Examination as an entrance qualification for admission to the first year Higher Secondary Course, i.e., Standard II.

As regards Foundation Course, the board has resolved to recognise this course equivalent to the higher secondary course in view of the fact that the Madras University has already recognised the course as an entrance qualification for admission to the degree course. The Tamil Nadu Public Service Commission, Madras which was consulted in the matter has expressed a view, after taking into account the opinion of the University of Madras and Director of School Education that a pass in the Foundation course of the Madurai Kamaraj University Open University be recognised as equivalent to a pass in the Higher Secondary Course of the Tamil Nadu Government.

The Commission is also of the view that a pass in the Foundation Course of the Madras Kamaraj University # Open University may be recognised as equivalent to a pass in the year S.S.L.C. Public examination of Tamil Nadu Government for purpose of employment into public service in the State.

3. The Government, after careful consideration, directs that the Pre-Foundation Courses of the Madurai Kamaraj University be recognised as equivalent to the 10 years S.S.L.C. of the Tamil Nadu Government for purpose of entry into service in this State. The Government also directs 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 the purpose of entry in Public Services in the State.

(BY ORDER OF THE GOVERNOR)

J.ANJANIDAYANAND

SPECIAL COMMISSIONER & SECRETARY TO GOVERNMENT"

16. The Government also issued G.O.Ms.No.587, Education Department, dated 23.10.1988, by which rules were issued regarding admission of candidates to the first year and second year of the Higher Secondary Course and the same reads as under:-

"1.(a) Candidates who have secured a minimum of 35% of marks in each subject in one or more sittings under the compartmental system in the Secondary School Leaving Certificate Examination (S.S.L.C.) or Oriental School Leaving Certificate Examination (O.S.L.C.) or Anglo Indian School Leaving Certificate Examination (A.I.S.L.C.) or the matriculation examination conducted in the Tamil nadu at the end of the X Standard any other examination recognised by the department as equivalent thereto are eligible for admission to the First Year of the Higher Secondary Courses.

2.(b) Candidates who have been declared eligible for University Courses or have secured a minimum of 35% of marks in each subject in one or more sittings under the compartmental system in the Secondary School Leaving Certificate (S.S.L.C.) or the Oriental School Leaving Certificate Examination (O.S.L.C.) or Anglo Indian School Leaving Certificate Examination (A.I.S.L.C.) or the matriculation examination conducted in the Tamil nadu at the end of the XI Standard or any other examination recognised as equivalent thereto by the department shall be admitted into Second year of the Higher Secondary Course."

13. Subsequent to the recommendation of the Board of Higher Secondary Education (endorsed by the Director of School Education and Tamil Nadu Public Service Commission), the Government issued orders in G.O.Ms.No.1110, Education (HS-2) Department, dated 17.09.1985 and directed that in addition to the qualifications prescribed above, following qualifications under the Open University System of Madurai Kamaraj University also considered equivalent to the qualifications specified against each for Academic Purpose, i.e, for admission to the I or II year of the Higher Secondary Course in Schools in Tamil Nadu.

Qualification under Open academic University System of Madurai Kamaraj University	Equivalent (for purpose) to
Pass in Pre-Foundation Standard Course (with 35% or more in admitted each subject) year Higher Secondary Class)	Pass in SSLC (X (Therefore can be in I
Pass in Foundation Course Higher First year Secondary Course can be admitted Higher Secondary	Pass in I year of (Therefore, in II year Class)"

17. A reading of the two Government orders makes it clear that the pass in pre-foundation course more than three year course is treated as SSLC old pattern and passing the foundation course is equivalent to a pass in HSC. After completing the foundation course, a candidate was entitled to take admission for graduation. A perusal of G.O.Ms.No.585 and the prospectus of the University would show that the position is that once the University imparts education, conducts an examination and issues a course completion certificate, it is to be accepted by the educational institutions/Universities enabling the Certificate/Diploma/Degree holder to pursue his higher studies and that the Government undertaking have to recognise the said certificates, degrees for the purpose of entry in public service in the State. In view of this matter, the petitioner had taken distance education of Madurai Kamaraj University and a course completion certificate of University was considered as equivalent to a pass in +2 examination and therefore, the degree obtained by him at that point of time was valid.

18. In fact, this position has been very succinctly explained in the case of S.Raj Kumar Vs. The Chairman, TNEB,

(authored by one of us namely Hon'ble Mr.Justice S.Manikumar) in WP.No.24636 of 2004, wherein after extracting the above said two Government orders, it has been observed as under:-

"14. A reading of the two Government Orders, makes it clear that a pass in Pre-Foundation Course with 35% or more in each subject is treated as pass in SSLC old pattern and a pass in Foundation Course is equivalent to pass in the Higher Secondary course. Admittedly, the petitioner had undergone one year Pre-Foundation course conducted by the Director of Distance Education, between July 2001 to April 2002 with following subjects, viz., Tamil, English, History, Economics and Politics. A course completion certificate dated 11.10.2002 has also been issued by the Director of the said University. In the examination conducted by the Directorate of Distance Education, the petitioner had appeared in all the subjects and passed out in three subjects and cleared the arrears in April 2003. As per G.O.Ms.No.1110, Education (HS 2) Department, dated 17.09.1985, a pass in the Pre-Foundation Course, is equivalent to pass in SSLC Standard and those, who had successfully completed the Pre-Foundation Course, can be admitted in the first year Higher Secondary Course.

15. While issuing the Course Completion Certificate dated 11.10.2002 to the petitioner, the Directorate of Distance Education has categorically mentioned that the Pre-Foundation course is equivalent to SSLC old pattern and Foundation course is equivalent to 12th Standard vide G.O.Ms.No.527, Personnel and Administrative Reforms (P & AR) Department, dated 18.05.1985 and G.O.Ms.No.1110, Education (HS 2) Department, dated 17.09.1985, respectively. The prospectus issued by the Madurai Kamaraj University states that there is no examination for the Introductory Course and it is not equivalent to VIII Standard. Those who have completed the Introductory Course will not be issued with a Equivalent Certificate, Transfer Certificate or Course Completion Certificate and the student has to compulsorily continue the Pre-Foundation Course. When no examination is conducted for the course undergone by the student, the University being the competent authority to issue certificates/diplomas/degrees is right in saying that they will not issue any certificate, much less equivalent certificate.

16. As per the Clause 2.1.2 of the prospectus, the eligibility to join pre-foundation course is a pass

in Eighth Standard or completion of Introductory Course/10th Standard fail. As per Clause 2.1.1 (5) of the Prospectus, those who have completed both one year Introductory Course and Pre-Foundation Course would be issued a certificate. An examining body such as the Directorate of Examination or University or any other competent authority authorised by law, issues a certificate only when the student undergoes a course, programme of study recognised by the Board of examination or concerned University or any other competent body authorised to issue a certificate/diploma/degree, so as to enable a student to pursue higher studies or enable the candidate to acquire a job suitable for that educational qualification. Therefore, once the University imparts education, conducts an examination and issues a Course Completion Certificate, the same has to be accepted by the Educational Institutions/University enabling the certificate/diploma/degree holder to pursue his/her higher studies and that the Government/Public Sector undertaking, Board etc., have to recognise the said Certificates, Degree for the purpose of entry in Public Service in this State. In the case on hand, the petitioner has completed the Pre-Foundation Course conducted by the Directorate of Distance Education of Madurai Kamaraj University and a Course Completion Certificate has also been issued. As stated supra, unless the student completes the Introductory Course he cannot pursue the Pre-Foundation Course which is recognised as equivalent to the 10 years SSLC for the purpose of entering into the public services of the State of Tamil Nadu.

17. As Pre-Foundation course has now been made equivalent to pass in SSLC, the logical conclusion that could be arrived at is that the petitioner, who had appeared in Pre-Foundation Course conducted by the Madurai Kamaraj University and failed, should be treated as SSLC failed candidate. As per the Board Proceedings (FB) No.46, dated 13.10.1995, 8th standard pass is the minimum educational qualification for entering into the Electricity Board.

18. In P.Rajamani's case cited supra, the Division Bench considered the case of the request of the petitioner's younger son for compassionate appointment, which was rejected on the ground that he had not completed 18 years within three years from the date of death of his father and not satisfied with the Educational Qualification ie., a pass in the 8th

Standard and that the application was not made within three years. In Paragraph 6 of the judgment, the Court held as follows:

"We hasten to state that the very purport of extending a helping hand to a destitute on the death of her husband by way of compassionate appointment would get defeated if such claims are turned down on such hyper technical ground."

19. Considering the fact that the petitioner had successfully completed the Pre-Foundation Course equivalent to SSLC within the few months after the expiry of three years period prescribed under the Board proceedings and the plight of the family of the deceased-employee of the Board, the impugned order rejecting the request of the petitioner for compassionate appointment is set aside. The respondents are directed to consider the case of the petitioner sympathetically and pass appropriate orders as per the scheme to provide ex gratia appointment to the legal representatives of the deceased-employee."

19. However, in the year 2009, the position changed. The Personnel Administrative Reforms Department, brought to the G.O.Ms.No.107 dated 18.08.2009. The said G.O reads as under:-

GOVERNMENT OF TAMIL NADU
ABSTRACT

Public Services - Equivalence of Educational Qualifications
- Post Graduation - Degrees - Diploma obtained through Open
Universities after completion + 2 - Appointment Public
Services orders Issued - Reg.

Personnel and Administrative Reforms (M) Department
G.O. (MS). No.107 Dated:
18.8.2009
Avani
Thiruvalluvar Andu 2044 Read:

i) G.O.(Ms).No. 180 P & A R (R) Department Dated:
11.9.2000

ii) From Chief General Manager, BSNL, T.Nadu circle Letter
No.RET/301-6/ 2004 Dated: 17.7.2004

iiih Secretary, T.N.P.S.C., D.O. Letter 1745 / RNT - F1 /
2007 Dated:5.4.2007

iv) D.O. Letter No.5280 / RNT - F1-2007,
Dated: 27.9.2007 ORDER:

In the G.O. 1st read above, orders were issued recognising

the Diploma, Degree and Post Graduation course offered by Open Universities on par with the Diploma, Degree and Post Graduation Courses conducted by Regular Stream for the purpose appointment in public services.

In the letter in reference 2nd cited Chief General Manager, BSNL, Tamil Nadu circle has sought a clarification as to whether, in cases where a pass in Higher Secondary Examination is prescribed as minimum Educational Qualification, persons without possessing Higher Secondary (+2) qualification and obtain degree / in Bachelor of Science, and Bachelor of Arts etc., may be considered on par with those who possess Higher Secondary education.

Secretary, Tamil Nadu Public Service Commission, has been requested to get the recommendation of Equivalence Committee on the above proposal. The Equivalence committee has recommended that persons having obtained degree in B.Sc., B.A. etc., without possession of Higher Secondary +2) shall not be considered on par with the persons having passed +2 (Higher Secondary course) for the purpose of appointment in Public Services or for promotion in Public services.

The Equivalence Committee once again reiterated its stand after examining the proposal resubmitted by Government.

The above recommendations were carefully examined by Government and accordingly Government accepted the recommendations of Equivalence Committee and issue orders, that the Diplomas /Degrees/ Post Graduation after possession of Xth std., Higher Secondary (+2) obtained through Open Universities alone considered for appointment/ promotion in Public Services."

20. The Government have also issued G.O.Ms.No.144, Personnel & Administrative Reforms Department, dated 20.11.2017, (though this is after the impugned proceedings dated 03.12.2010) quoting G.O.Ms.No.528, Personnel and Administrative Reforms Department, dated 18.05.1985, extracted supra. The said G.O.Ms.No. 144, Personnel & Administrative Reforms Department, dated 20.11.2017 reads as under:-

"1.G.O.(Ms.) No.528, Personnel and Administrative Reforms (Per.R) Department, dated 18.05.1985.

2. G.O.(Ms.)No.1110, Education (HS.2) Department, dated 17.09.1985

3. G.O.(Ms.)No.219, Personnel and Administrative Reforms (Per.R) Department, dated 30.03.1988.

4. G.O.(Ms.)No.50, Personnel and Administrative Reforms (Per.R) Department, dated 21.02.1997.
5. G.O.(Ms.)No.107, Personnel and Administrative Reforms (Per.R) Department, dated 18.08.2009.
6. G.O.(Ms.)No.116, Personnel and Administrative Reforms (Per.R) Department, dated 18.08.2010.
7. Letter No.33448/M2/2010-4, Personnel and Administrative Reforms (M) Department, dated 03.12.2010.
8. From the Secretary, Tamil Nadu Public Service Commission, D.O.Letter No.8705/RND-F/2015 dated 29.01.2016.
9. From the Secretary, Tamilnadu Public Service Commission, D.O.Letter No.5140/RND-F/2017, dated 01.11.2017

Order

In the Government Orders first and second read above, orders have been issued that the Pre-foundation Course and the two years Foundation Course of the Madurai Kamaraj University - Open University be recognized as equivalent to 10 years of SSLC and Higher Secondary Course (+2) of the Tamil Nadu Government respectively, for the purpose of entry into Public Services in this State.

2. In the Government Orders third and fourth read above, the Two Years Foundation Course and One year Foundation Course conducted by the Annamalai University have been considered as equivalent to +2 and 11 years SSLC respectively for the purpose of entry into Public Services in this State.

3. In the Government orders fifth and sixth read above, orders have been issued that the degree obtained after passing SSLC and +2 alone will be recognized for the purpose of employment / promotion in Public Services and that those who possesses a Post Graduate Degree through Open University System without obtaining a basic degree cannot be considered as possessing a Post Graduate Degree for appointment to Public Services.

4. Based on the orders issued in the Government Order fifth read above, the recognition of the Pre-foundation and the two year Foundation Courses awarded by various Open Universities were clarified in the letter seventh read above to the effect that-

'A degree awarded by the Open Universities after passing Pre-Foundation Course and two year Foundation Course through Open University cannot be recognized as degree as per University Grants Commission norms for the

purpose of employment / promotion in Public Services, since such Pre-foundation Course and two year Foundation Course are not contemplated in the University Grants Commission Regulations.

Therefore, those who obtained a degree under Open University System after passing the Pre-Foundation Course and two year Foundation Course without passing G.O.(Ms)No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009, which is in consonance with the Orders of Supreme Court of India'.

The above clarification was followed from the date of issue of orders in the Government Order fifth read above.

5. In the meantime, the Equivalence Committee in its recommendations in the letter eighth and ninth read above has also resolved that the Pre-foundation Course and the Foundation / Bridge Courses awarded by various Universities cannot be recognized as equivalent to SSLC and Higher Secondary Course (+2). The recommendations of the Equivalence Committee are in consonance with the clarification issued in the letter seventh read above, hence, the Pre-foundation Course and the Foundation / Bridge Courses awarded by various Universities cannot be recognized as equivalent to SSLC and Higher Secondary Course (+2).

6. As the recommendations of the Equivalence Committee confirms the clarification that the Pre-Foundation Course and Foundation Course offered by various Universities in the state are not equivalent to SSLC and Higher Secondary Course (+2) respectively, Government emphasise to follow the clarification issued in the Government letter seventh read above scrupulously."

21. A reading of the G.O.Ms.Nos.107 and 144 would show that the Diploma/Degree/Post Graduation after passing the 10th standard, Higher Secondary (+2) obtained through Open Universities are considered for appointment/promotion in public services. Government by the said G.Os had changed its position and clarified that the degree awarded by the Open Universities are valid only after passing 10th standard or Higher Secondary (+2). Degree without obtaining 10th standard or Higher Secondary (+2) is not valid. The Government of Tamil Nadu further clarified that, those who obtained degree under Open University system, after passing pre-foundation course or two year foundation course without passing 10th standard and HSC examination, do not satisfy the conditions laid in G.O.Ms.Nos.107 and 144, Personnel and Administrative Reforms Department.

22. This takes us to the judgment of the Hon'ble Supreme Court of India in (2009) 4 SCC 590 in the case of Annamalai University Vs. Secretary to Government, Information and Tourism Department. The said judgment was dealing with interpretation of application of UGC (the Minimum Standards instructions for the Grant of the degree through non-formal/Distance Education in the faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences) Regulations, 1985., viz a viz, the provisions of the Indira Gandhi National Open University Act 1985, while dealing with the issue as to when there is a conflict between the two which would apply, the Hon'ble Supreme Court of India, observed hereunder:-

"59. The provisions of the UGC Act are not in conflict with the provisions of the Open University Act. It is beyond any cavil of doubt that the UGC Act shall prevail over the Open University Act. It has, however, been argued that the Open University Act is a later Act. But we have noticed hereinbefore that the nodal Ministry knew of the provisions of both the Acts. The Regulations were framed almost at the same time after passing of the Open University Act. The Regulations were framed at a later point of time. Indisputably, the Regulations embrace within its fold the matters covered under the Open University Act also.

"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 5-5-2004 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.

60. Submission of Mr K. Parasaran that in terms of sub-section (2) of Section 5 of the Open University Act a non obstante clause has been created and, thus, would prevail over the earlier Act cannot also be accepted. Apart from the fact that in this case repugnancy of the two Acts is not in question (in fact cannot be in question having (sic not) been enacted by Parliament and a State in terms of the provisions of the Concurrent List) the non obstante clause contained in the Open University Act will be attracted provided the

statutes operate in the same field. The UGC Act, as noticed hereinbefore, operates in different field. It was enacted so as to make provision for the coordination and determination of standards in universities and for that purpose, to establish a University Grants Commission. Its directions being binding on IGNOU, sub-section (2) of Section 5 of the Open University Act would not make the legal position otherwise."

Thus the Hon'ble Supreme Court held that the decision of UGC will prevail over the Open University Act.

23. During the course of hearing, a status report was filed by State of Tamil Nadu. The said status report reads as under:-

"STATUS REPORT

The Hon'ble Division Bench of the High Court of Madras, during the hearing of Writ Appeal No.213 of 2018 in Writ Petition No.7120 of 2011 on 31.01.2018 has made the following observation:-

"4. It appears that as per G.O.(Ms.)No.528, Personnel and Administrative Reforms (Per.R) Department, dated 18.05.1985, the two year foundation course is equivalent to +2. There is no doubt about the equivalence of the foundation course to +2 is concerned, but, however, to become eligible to be admitted to the +2 course / foundation course, whether passing of 11th standard is also very much essential or not is to be clarified by the Department. In this regard, the learned Special Government Pleader is directed to seek instructions."

2. It is submitted that based on the National Policy of Education formulated in the year 1968, this Government changed the structure of 11+1+3 Pattern of Education in Tamil Nadu into that of 10+2+3 vide G O.(Ms.)No.2415, Education Department, dated 05.11.1976.

3. It is submitted that the learned Single Judge in Writ Petition No 7120 of 2011 had rightly held that though the petitioner in the Writ Petition had completed X standard as per the old pattern, which was not a Government Examination, that the petitioner should have completed 11^h standard which was the Government Examination under the old pattern for joining the Foundation Course. It may therefore be clarified that as per the Madurai Kamaraj University Bulletin for the year 1984-1985 eligibility for admission to the Foundation Course is as follows:-

(i) for 1st year - pass in 10th std (X std) or

pass in Pre-Foundation Course.

(ii) for 2nd year - pass in 11 year SSLC (old scheme)

Matric; fail in PUC or pass in 1st year

Foundation Course.

It may therefore be clarified that to become eligible to be admitted to the Foundation Course, passing of 11th standard Government examination is very much essential."

24. It was contended by the learned counsel for the respondent that the petitioner had completed his 10th examination in the old 11 year pattern school which is not a public examination. It is contended that, after introduction of G.O.Ms.No.107, dated 18.08.2009, which has been further clarified by the impugned order and re-enforced in order dated 08.08.2013 and G.O.Ms.No.144, dated 20.11.2017, the position is that unless a person has not passed the 11th standard public examination under the old pattern, or the +2 public examination in the new pattern is not eligible for getting appointment in public services. The petitioner has therefore become ineligible to participate in the examination conducted in the year 2009, because he does not satisfy the educational qualifications.

25. A Division Bench of this Court in judgment dated 10.02.2011 in WP.No.18729 of 2010, considering question as to whether the candidate who obtained B.A/B.Sc/B.com, degree without successfully completed 12 years schooling, can be considered to a higher post on the basis of acquiring qualification through correspondence course, after considering G.O.Ms.No.107, Personnel Administrative Reforms Department, dated 18.08.2009, observed as under:-

"14. From a perusal of Clause 2 of the 1985 Regulations and the ratio decided by the Supreme Court as quoted hereinbefore, it is manifest that for the purpose of obtaining a Post Graduate Degree a candidate has to satisfy and comply the mandatory requirements provided therein. According to the rule, no candidate shall be eligible for award of first degree unless he has successfully completed 12 years schooling. Similarly, no student shall be eligible to seek admission to the Master's course in any faculty, who has not successfully pursued the first degree course of three years duration.

15. In the instant case, the question is as to whether a candidate after obtaining such a degree from an Open

University without completing 12 years schooling can claim, as a matter of right, promotion to the higher post, ignoring the service conditions prescribed under the service rules.

16. As stated above, in exercise of powers conferred by Article 229 of the Constitution of India, the High Court framed the rules providing service conditions of its employees, including the condition for promotion. It is well settled that the object of Article 229 is to secure the independence of the High Court and all powers vested in the Chief Justice and the High Court to run the High Court administration.

17. The object of Article 229 has been elaborately discussed by the Supreme Court in the case of M. Gurumoorthy Vs. Accountant General, Assam (Nagaland), (1971) 2 SCC 137. The Supreme Court, in the said judgment, observed as under :-

#11. The unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointment of officers and servants of a High Court it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by the executive except to the limited extent that is provided in the article. This is essentially to secure and maintain the independence of the High Courts. The anxiety of the Constitution-makers to achieve that object is fully shown by putting the administrative expenses of a High Court including all salaries, allowances and pension payable to or in respect of officers and servants of the Court at the same level as the salaries and allowances of the Judges of the High Court nor can the amount of any expenditure so charged be varied even by the Legislature. Clause (1), read with clause (2) of Article 229 conferred exclusive power not only in the matter of appointments but also with regard to prescribing the conditions of service of officers and servants of a High Court by Rules on the Chief Justice of the Court. This is subject to any legislation by the State Legislature but only in respect of conditions of service. In the matter of appointments even the Legislature cannot abridge or modify the powers conferred on the Chief Justice under clause (1). The approval of the Governor, as noticed in the matter of rules, is confined only to such rules as relate to salaries, allowances, leave or pension. All other rules in respect of conditions of service do not require his approval. Even under the Government of India Act the power to make rules relating to the conditions

of service of the staff of the High Court vested in the Chief Justice of the Court under Section 242(4), read with Section 241 of the Government of India Act, 1935. By way of contrast reference may be made to Article 148 relating to the Comptroller and Auditor General of India. Clause (5) provides:

#Subject to the provisions of this Constitution and of any law made by Parliament the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor General.#

18. As discussed above, the rule framed by the High Court inter alia clearly lays down the qualification for the purpose of promotion from Categories 7, 8 and 9 to Category 6. It is clearly mentioned that for the purpose of promotion, a person must possess and hold the B.A./B.Sc./B.Com or other Bachelor's degree of the Madras University or of a recognized University. The rule does not recognize B.A. or B.B.A. degree from an Open University obtained by a candidate without having the basic +2 qualification. The condition contained in the High Court Service Rules, therefore, cannot in any way be superseded by other law not applicable to the employees of the High Court."

26. Similarly, another Division Bench of this Court by judgment dated 22.04.2009, in WP.No.18984 of 2018 in the case of P.Sivakumar Vs. The Registrar General, Madras High Court, after quoting various Government Orders observed as under:-

"28. In the instant case, though it is the plea of the Petitioners before this Court that during the service after obtaining permission from the Department joined in Pre-Foundation Course conducted by Annamalai University and Tamil University recognised by UGC and completed as early as before May, 2017, the 2nd Respondent / Principal District Judge, Thiruppur had categorically averred in the counter that none of the Petitioners had secured prior permission from the Head of the Department for joining the Pre-Foundation Course in Annamalai University and Tamil University. That apart, in terms of the ingredients of G.O.No.328, Personnel and Administrative Reforms (Per&A) Department dated 09.04.1983, the Government Servant, who joins the Correspondence Course conducted by various Universities should obtain prior permission of the Head of the Department concerned.

29. One cannot ignore a vital fact that except the Petitioners, viz., V.Selvamani, B.Indiragandhi and G.N.Mohamed Sathick Batcha, according to the 2nd Respondent, other Petitioners had not submitted their Original Certificates of passing. It is not known as to whether the Petitioners had intimated about the passing of their pre-foundation course to the respective Judicial Officer. Also one is at a loss to know whether departmental action was initiated against the concerned deviant Petitioners in regard to the violation of Rule 20 of Tamilnadu Government Servant Conduct Rules, 1973. In this connection, it is not out of place for this Court to make a relevant mention that the counter of 2nd Respondent / Principal District Judge, Thiruppur is conspicuously silent in this regard.

30. It appears that the 1 to 3 Petitioners, Applications seeking permission to attend 10th Standard Exam in the year 2016 to be conducted by the Annamalai University through the Correspondence and Distance Education were forwarded by the Learned III Additional District & Sessions Judge, Dharapuram to the Learned Principal District Judge, Tiruppur, vide D.No.719/2016 dated 26.10.2016. Also that, in respect of 1st Petitioner, viz., P.Sivakumar, his passing of Pre-Foundation Course through Annamalai University in May, 2017 with Registration Number was entered in his Service Register by the Subordinate Judge, Udumalpet [as seen from the xerox copy]

31. To put it precisely, notwithstanding the fact that the Petitioners come out with a plea after obtaining permission from the Department, they joined in the Pre - Foundation Conducted by Annamalai University and Tamil University recognised by UGC and completed well before May, 2017, they have not produced any documentary proof / evidence before this Court to substantiate the version about the prior permission being obtained from the Department, as per G.O.328, Personnel and Administrative Reforms (Per&A) dated 09.04.1983, as such, the prior permission being obtained by them, in the subject matter in issue, is not proved to the subjective satisfaction of this Court and accordingly, the said plea is negatived by this Court.

32. At this juncture, this Court cites the Division Bench Order of this Court between T.L.Muthukumar and Others V. Registrar General, High

Court, Madras and Another reported in (2011) 2 MLJ 785 at Special Page 791, wherein at Paragraph Nos.18 and 19, it is observed as under:

'As discussed above, the rule framed by the High Court inter alia clearly lays down the qualification for the purpose of promotion from Categories 7, 8 and 9 to Category 6. It is clearly mentioned that for the purpose of promotion, a person must possess and hold the B.A./B.Sc./B.Com or other Bachelors degree of the Madras University or of a recognized University. The rule does not recognize B.A. or B.B.A. degree from an Open University obtained by a candidate without having the basic +2 qualification. The condition contained in the High Court Service Rules, therefore, cannot in any way be superseded by other law not applicable to the employees of the High Court.

19. Admittedly, the petitioners, although, obtained the first degree by correspondence course without having the basic +2 qualification. Such degree having not been recognized under the Rules framed by the High Court in exercise of powers conferred under Article 229 of the Constitution of India, the petitioners cannot claim promotion on that basis'.

33. Also this Court aptly points out the Order dated 15.12.2016 in W.P.(MD) No.22071 of 2015 between A.Ponnusamy V. The State of Tamilnadu and Others, wherein at Paragraph Nos.9 and 10, it is observed as under:

'There is no dispute with regard to the entry of the petitioner into service, his participation and selection and that the petitioner has been ranked as 7th position in the vacancies of 7 earmarked for departmental quota out of the 36 total vacancies and that 20% of the 36 vacancies is meant for in-service candidates. The communication dated 08.08.2013 is very clear that G.O.Ms.no.528, Personnel and Administrative Reforms (Per.R) Department, dated 18.05.1985 referred to by the petitioner has been considered and it has been stated that G.O.Ms.No.528 has been issued following the procedure laid down in General Rule 19 as it stood prior to 18.08.1994, the matter need not again be placed before the Equivalence Committee. At the most, persons who have studied prior to that date alone can be considered as equivalent and not thereafter. It appears that it is an one time measure and not on permanent basis. In any event, it has been clarified that pre-foundation and foundation courses were considered as not equivalent to SSLC/HSC.

10. Though it appears to be sound on the part of the petitioner that 10th standard alone is sufficient for promotion to the post of Junior Assistant, but completion of 10th Standard through regular schooling system is a must for promotion. In the present case on hand, since the petitioner's qualification is not treated as equivalent, this Court is not inclined to accede to the prayer made by the petitioner.'

34. Furthermore, in the Order dated 21.04.2014, this Court in W.P.No.13054 of 2010 etc., batch between P.Raman and Ors. V. The Government of Tamilnadu and Others reported in MANU/TN/0495/2014, it is held that 'as provided in Clause 1 of Regulation 2 of Regulations that no student shall be eligible for admission to 1st Degree Course through non-formal / distance education unless he has successfully completed 12 years schooling through examination conducted by Board / Universitie's etc.,"

27. Similarly another Division Bench of this Court in Writ Appeal No.805 of 2014 in the case of The Chairman Vs. V.Kanimozhi, observed as under:-

"5.1. The respondent obtained her degree in B.A under Open University System. Thereafter she joined B.Ed degree as a regular course and obtained B.Ed. Then, she obtained her M.A. Degree. Thereafter she realised that unless and until she passes the plus 2 examination she will not be eligible for appointment to the post of Post Graduate Assistant Teacher. Accordingly, with that new wisdom dawned on her, she completed her plus 2 course # after securing B.Ed degree, B.A. Degree and M.A.Degree. Now, the question for consideration is the completion of plus 2 course after obtaining the three degrees can be termed as in consonance with the G.O. Passed in G.O.(Ms).No.107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009. The second question, though not considered by the learned single Judge, is that inasmuch as the respondent did undertake entrance test before joining the first degree course, the said degree be considered as a valid one in terms of regulation 2(1) of the U.G.C. Regulations 1985 dated 25.11.1985.

5.2. Coming to the first issue, we would like to extract the relevant passage of the Government Order passed in G.O.(Ms).No.107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009, which reads as under:

#The above recommendations were carefully examined by the Government and accordingly Government accepted the recommendations of Equivalence Committee and issue orders, that the Diplomas/Degrees/ Post Graduation after possession of Xth Std., Higher Secondary (+2) obtained through Open Universities alone considered for appointment/ promotion in Public Services.''

On a reading of the above said paragraph, it is clear that a diploma/ degree/post graduation can only be considered for appointment in public services after a candidate possesses Xth Standard as well as Higher Secondary (+ 2). This Government Order passed has been upheld by the Division Bench of this Court in W.P.No.18729 of 2010 dated 10.2.2011.

5.3. Even otherwise, the binding nature of the said Government Order is not in dispute. The respondent has not challenged the said Government Order. As the appellants are the competent authorities to fix the qualification, that too, pertaining to the teachers of Higher Secondary schools, there is no difficulty in coming to the conclusion that the conditions prescribed are mandatory. In other words, unless and until a candidate satisfy the requirement as envisaged in G.O.(Ms).No.107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009, he or she cannot be considered for the post.

5.4. In the case on hand, admittedly, at the time of completing the degree, the respondent did not complete the plus 2 course. That is exactly the reason why she thereafter completed the plus 2 course. This fact has also been observed by the learned single Judge. While it is absolutely open to the respondent to do the same, the question for consideration is, as to whether the said action would cure the defect. In our respectful submission, the said attempt cannot be substitute to the Government Order passed in G.O.(Ms). No.107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009. Any other interpretation would amount to re-writing the provisions of the said Government Order, which is impermissible in law, without there being a challenge.

5.5. Now, coming to the Regulations of the Unvieristy Grants Commission with reference to admission of a student to a Degree, the said issue is irrelevant insofar as the insistence on the part of

the appellants to comply with the Government Order passed in G.O.(Ms).No.107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009. The appointment is to the post of Post Graduate Assistant Teacher in the Higher Secondary School. When the appellants thought it fit to make sure that only those who have completed plus 2 course and thereafter the degree course be eligible to be considered for a particular post of a teacher, then the wisdom and rationale behind the same cannot be questioned. As discussed above, the rationale has not been questioned before us and in any case, we do not find any arbitrariness in the Government Order, which has already been upheld.

5.7. Coming to the other decisions relied on by the respondent as considered by the learned single Judge, we are of the view that they do not have any application to the case on hand. In Writ Appeal No.1064 of 2012 dated 6.11.2013, the Division Bench of this Court merely directed the authorities to reconsider the matter. On a perusal of the Order passed by the learned single judge, it is seen that the ratio laid down in W.A.No.1064 of 2012 dated 6.11.2013 (Joseph Vs. Irudayaraj Vs. Joint Director of School Education) has been wrongly relied upon. The direction was specific to the effect that the entire issue will have to be considered in the light of paragraph No.4 of G.O.(Ms).No.107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009. We have already discussed the scope and ambit of paragraph No.4 of the G.O. Therefore, we are of the view that the said decision does not throw any light on the issue raised before us, that too, in favour of the respondent. Similarly, we are of the view that the decision dated 21.4.2014 relied upon by the respondent as rendered by the single Judge of this Court in W.P.No.13054 of 2010 etc., batch does not have any application to the case before us in view of the discussion made above, wherein, we have already held that fixing qualification is different from recognising a degree.

5.10. In the case on hand, the respondent has written the examination as a private candidate without undergoing Higher Secondary course of a duration of two years. It is the prime duty of the appellants to see to it that the quality of education is maintained for the purpose of imparting the same to the students. Certainly, there is a difference between a candidate, who had undergone a regular course as against the other who completes it by writing the examination privately. Therefore, even on that score, we do not

find anything arbitrary in the decision of the appellants in rejecting the candidature of the respondent."

28. The impugned proceedings which has been challenged on 03.12.2010. The impugned proceedings only clarifies the G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009. The petitioner has not challenged the G.O.Ms.No.107. The petitioner therefore, cannot maintain the writ petition only against the letter bearing No.33448/M/2010-4 P&AR (M) Department. dated 03.12.2010, which clarifies G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009, without challenging the G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009.

29. A perusal of G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, shows that the Government had accepted the Equivalence Committee which recommended that, persons having obtained degree in BA/Bsc without possession of +2 (HSC) shall not be considered on par with the persons having passed +2 (HSC) for the purpose of appointment in public service or promotion in public service.

30. In fact, no clarification was necessary at all. The Government order automatically excluded the pre-foundation course or the two year foundation course obtained through the Open University for the purpose of appointment in public service or for promotion in public service.

31. It is settled law that, it is for the Government to decide the essential qualifications for the purpose of appointment in Government service. A person might be eligible to be considered for appointment on a particular given date, but, he cannot claim that right to be considered for appointment has a vested right. It is always open to the Government to change the eligibility conditions. The Hon'ble Supreme Court of India in the case of P.Suseela Vs. University Grants Commission (2015), reported in (2015) 8 SCC 129, observed as under:-

"14. The other interesting argument made is that such regulations should not be given retrospective effect so as to prejudicially affect the interests of any person to whom such regulation may be applicable. In order to appreciate this contention, it is necessary to distinguish between an existing right and a vested right. This distinction was made with great felicity in Trimbak Damodhar Rajpurkar v. Assaram Hiranman Patil [AIR 1966 SC 1758 : 1962 Supp (1) SCR 700] . In that case a question arose as to whether an amendment made to Section 5 of the Bombay Tenancy and

Agricultural Lands Amendment Act could be said to be retrospective because its operation took within its sweep existing rights. A Bench of five Hon'ble Judges of this Court held that Section 5 had no retrospective operation.

15. This Court held: (Trimbak case [AIR 1966 SC 1758 : 1962 Supp (1) SCR 700] , AIR pp. 1760-61, paras 8-10 : SCR pp. 707-09)

"8. Besides, it is necessary to bear in mind that the right of the appellant to eject the respondents would arise only on the termination of the tenancy, and in the present case it would have been available to him on 31-3-1953 if the statutory provision had not in the meanwhile extended the life of the tenancy. It is true that the appellant gave notice to the respondents on 11-3-1952 as he was then no doubt entitled to do; but his right as a landlord to obtain possession did not accrue merely on the giving of the notice, it accrued in his favour on the date when the lease expired. It is only after the period specified in the notice is over and the tenancy has in fact expired that the landlord gets a right to eject the tenant and obtain possession of the land. Considered from this point of view, before the right accrued to the appellant to eject the respondents amending Act 33 of 1952 stepped in and deprived him of that right by requiring him to comply with the statutory requirement as to a valid notice which has to be given for ejecting tenants.

9. In this connection it is relevant to distinguish between an existing right and a vested right. Where a statute operates in future it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included. As observed by Buckley, L.J. in *West v. Gwynne* [(1911) 2 Ch 1 (CA)] , Ch at pp. 11, 12 retrospective operation is one matter and interference with existing rights is another.

'... If an Act provides that as at a past date the law shall be taken to have been that which it was not, that Act I understand to be retrospective. That is not this case. The question here is whether a certain provision as to the contents of leases is addressed to the case of all leases or only of some, namely, leases executed after the passing of the Act. The question is as to the ambit and scope of the Act, and not as to the date as from which the new law, as enacted by the Act, is to be taken to have been the law.'

These observations were made in dealing with the question as to the retrospective construction of

Section 3 of the Conveyancing and Law of Property Act, 1892 (55 and 56 Vict. c. 13). In substance Section 3 provided that in all leases containing a covenant, condition or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition or agreement shall, unless the lease contains an expressed provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent. It was held that the provisions of the said section applied to all leases whether executed before or after the commencement of the Act; and, according to Buckley, L.J., this construction did not make the Act retrospective in operation; it merely affected in future existing rights under all leases whether executed before or after the date of the Act. The position in regard to the operation of Section 5(1) of the amending Act with which we are concerned appears to us to be substantially similar.

10. A similar question had been raised for the decision of this Court in *Jivabhai Purshottam v. Chhagan Karson* [AIR 1961 SC 1491] in regard to the retrospective operation of Section 34(2) (a) of the said amending Act 33 of 1952 and this Court has approved of the decision of the Full Bench of the Bombay High Court on that point in *Durlabhai Fakirbhai v. Jhaverbhai Bhikhabhai* [1955 SCC OnLine Bom 183 : (1956) 58 BOM LR 85]. It was held in *Durlabhai* case [1955 SCC OnLine Bom 183 : (1956) 58 BOM LR 85], that the relevant provision of the amending Act would apply to all proceedings where the period of notice had expired after the amending Act had come into force and that the effect of the amending Act was no more than this that it imposed a new and additional limitation on the right of the landlord to obtain possession from his tenant. It was observed in that judgment that: (*Jivabhai Purshottam* case [AIR 1961 SC 1491], AIR p. 1493, para 4)

'4. ... A notice under Section 34(1) is merely a declaration to the tenant of the intention of the landlord to terminate the tenancy; but it is always open to the landlord not to carry out his intention. Therefore, for the application of the restriction under sub-section 2(a) on the right of the landlord to terminate the tenancy, the crucial date is not the date of notice but the date on which the right to

terminate matures; that is, the date on which the tenancy stands terminated.'"

16. Similar is the case on facts here. A vested right would arise only if any of the appellants before us had actually been appointed to the post of Lecturer/Assistant Professors. Till that date, there is no vested right in any of the appellants. At the highest, the appellants could only contend that they have a right to be considered for the post of Lecturer/Assistant Professor. This right is always subject to minimum eligibility conditions, and till such time as the appellants are appointed, different conditions may be laid down at different times. Merely because an additional eligibility condition in the form of a NET test is laid down, it does not mean that any vested right of the appellants is affected, nor does it mean that the regulation laying down such minimum eligibility condition would be retrospective in operation. Such condition would only be prospective as it would apply only at the stage of appointment. It is clear, therefore, that the contentions of the private appellants before us must fail."

32. In view of the above, it cannot be stated that the clarification runs contrary to the G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009. It cannot also be said that the clarification dated 03.12.2010, impugned herein is arbitrary or is contrary to any service Rule.

33. In view of the above said discussion and in view of the changed situation, the petitioner cannot now after 2009, claim to be eligible, to be considered for selection to the posts included in the Combined Subordinate Services Examination-I, because his graduation degree now cannot be considered to be a valid, in view of the fact that he has not either passed the 11th standard public examination under the old pattern or the 12th standard public examination under the new pattern and because of the fact that the Government in the year 2009 have issued G.O.Ms.No.144, Personnel & Administrative Reforms Department, dated 20.11.2017 and in subsequent clarifications, taken a consistent stand that graduation degrees obtained on the basis of foundation courses conducted by Madurai Kamaraj University would not be considered as valid degree, to be eligible for appointment in public services.

34. Accordingly, the Writ Appeal stands dismissed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

Pkn.

To

1. The Chairman,
Tamil Nadu Public Service Commission,
Commercial Tax Annex Building,
No.1, Greams Road, Chennai-600 006.
2. The Secretary,
Government of Tamil Nadu,
Department of Personnel and Administrative Reforms (P&AR)
Fort St.George, Chennai - 600 009.

+1 CC to Mr.M. Devendran, Advocate sr 61666.

WA.No.213 of 2018

PPA(CO)
SP(22/08/2019)