



IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 12.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.1618 of 2018
and
W.M.P.No.2035 of 2018

1.S.Deenadayalan
2.M.Ravi
3.T.Vasanthakumar
4.S.A.K.Narendrakumar
5.T.Paramasivam
6.S.Jacob
7.J.Jayaseelan
8.C.Kumar
9.T.Pakkirisamy
10.R.Saravanan

...Petitioners

Vs

1.The State of Tamil Nadu
Rep. by its Principal Secretary,
Personal and Administrative
Reforms Department,
St.George Fort, Chennai-600001.

2.The Chairman,
The Tamil Nadu State Apex Co-operative
Bank Ltd.,
No.4, NSC Bose Road,
Chennai - 600001.

3.The Managing Director,
The Tamil Nadu State Apex Co-operative
Bank Ltd.,
No.4, NSC Bose Road,
Chennai - 600001.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the respondents to consider the candidature of the petitioners for promotion to the post of Assistant Manager without reference to GO Ms.No.107 dated 18.08.2009 and promote the petitioners as Assistant Manager in the Respondent Bank.

For Petitioners	: Mr.C.K.Chandrasekaran for Mr.Antony Jesus
For Respondents	: Mr.L.P.Shanmugha Sundaram Special Government Pleader



O R D E R

This writ petition has been filed by the petitioners seeking to issue a writ of mandamus, directing the respondents to consider the candidature of the petitioners for promotion to the post of Assistant Manager.

2.The case of the petitioners is that the petitioners were appointed in the services of Tamil Nadu State Apex Co-operative Bank in the year 1996 and they are continuing to work till date. It is the further case of the petitioners that they were promoted as Assistants and the next level of promotion is to the post of Assistant Manager. There was a large vacancy to the said post and therefore, the petitioners made a representation for promoting them to the post of Assistant Manager. Since the same was not considered, the present writ petition has been filed before this Court.

3.The learned counsel for the petitioners submitted that the petitioners have all completed Under Graduation through Open University System from various universities. The learned counsel submitted that the UGC regulations provides for taking an entrance test and completing the Under Graduate course, even without completing 10+2. The learned counsel further submitted that the petitioners did the three year Under Graduation course only after taking permission from the Bank. The learned counsel submitted that the respondents cannot be allowed to rely upon G.O.Ms.No.107, dated 18.08.2009, since the petitioners became entitled to be considered for promotion, even in the year 2001-2006. The learned counsel submitted that this Government Order cannot be given retrospective effect and therefore, the request of the petitioners will have to be considered, by taking into consideration the rules that were provided as on 2001-2006.

4.The learned counsel further submitted that the petitioners were promoted to the post of Assistants, by virtue of 12(3) settlement and in the year 2017, a by-law was introduced in the Bank to the effect that in order to qualify for promotion to the post of Assistant Manager, the person must have completed his graduation in 10+2+3 pattern. The learned counsel submitted that this by-law will also apply prospectively and it cannot be put against the petitioners.

5.The learned counsel for the petitioners concluded his argument by submitting that this Court, in M.Rathinavel vs The Registrar General of High Court of Judicature, Chennai in W.P (MD).No.11111 of 2016 dated 10.08.2017, has categorically held that all degrees granted by recognised universities are valid and promotional opportunities should not be denied on the ground that it was obtained through open university. The learned counsel submitted that the petitioners are permitted to do the work of an Assistant Manager, but however, they are



denied the promotion as Assistant Manager. Therefore, the petitioners must be considered to the post of Assistant Manager and appropriate directions can be given by this Court.

6. Per contra, Mr. L. P. Shanmugha Sundaram, learned Special Government Pleader appearing on behalf of the respondents submitted that the petitioners do not satisfy the qualification that is prescribed under by-laws. The second and third respondents have filed a counter affidavit in this case. The learned counsel submitted that all the petitioners have only passed VIIIth Standard and all of them have obtained degree through open university. The learned counsel submitted that a Government Order came to be passed in G.O.Ms.No.107, dated 18.08.2009, wherein a person should possess the degree in 10+2+3 pattern. This Government Order was communicated to the Registrar of Co-operative Societies and in turn, the Bank was directed to amend its by-laws, by communication dated 29.10.2012. Accordingly, the Bank also amended the by-law in the year 2016 and the requirement, as it stands today, is that the person must be graduated in 10+2+3 pattern. The learned counsel submitted that the by-laws have come into force with effect from 05.07.2017. The learned counsel therefore submitted that the request made by the petitioners cannot be complied with and if any such promotion is granted, it will amount to violating the by-law and the directions that were issued by the Registrar of Co-operative Societies.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. There is no controversy with regard to the educational qualification of the petitioners. All the petitioners have completed the degree in the Open University Scheme, without completing 10+2. The only question is whether the petitioners can be considered for promotion with the qualification that is possessed by them.

9. It will be relevant to take note of G.O.Ms.No.107, dated 18.08.2009 in this regard. The relevant portion is extracted hereunder.

"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."

10. By virtue of the above Government Order, any graduation can be considered for appointment in public services, only if the candidate has completed the graduation in 10+2+3 pattern.



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11. This Government Order became a subject matter of challenge before this Court. Ultimately, the case reached the Division Bench by way of an appeal in W.A.No.805 of 2014. The relevant portions of the order passed in the appeal, dated 06.08.2014, are extracted hereunder.

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.

5.6. The issue of recognition of a degree is different from a qualification fixed in service matters. An eligibility criteria fixed cannot be said to be an indirect way of derecognising a degree or diploma. To put it differently, such a degree cannot be termed as an eligible qualification for a particular post. Therefore, we are of the view that though scope and ambit of Regulation 2 of the University Grants Commission has not been considered by the learned single Judge, the same is not required to be considered in favour of the respondent in view of the express



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terms as provided in the G.O. Passed in G.O.(Ms). No.107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009. In this connection, a useful reference can be made to the Full Bench Judgment of the Rajasthan High Court in Shanker Lal Verma and 13 others Vs. Rajasthan State Electricity (1993(3) LLJ 796), wherein the following passage is apposite:

'32. It is also to be noted that these are not the cases of derecognition of a degree, diploma or certificate issued by a particular institution because of some fault on the part of the institution awarding the same. The cases of derecognition of particular institutions and consequently derecognition of the degrees, diplomas and certificates issued by such institutions have to be distinguished from service matters in which certain qualifications are deleted from the rules. Removing or deleting a qualification from eligibility criteria cannot be said to be derecognition of that qualification or a degree, diploma or certificate. It only means that the degree, diploma or certificate has ceased to be the eligibility qualification for a particular post. It does not take away from the candidate, the degree, diploma or certificate conferred by the institutions. For example, if the eligibility qualification for a particular post was earlier 'Graduate' and by amendment, it is raised to 'Post graduate', it does not mean that degree possessed by the candidates are derecognised. What it simply means is that the eligibility qualifications are enhanced and a higher qualification is now required. It is also to be taken into account that purpose behind amendment to the rule was not to derecognise any degree, diploma or certificate, it was only to delete certain qualifications from the eligibility criteria. This may be because of the changed situation in which the employer may find that candidates who have passed the Secondary School Examination from the Statutory Boards and Universities are available in sufficient numbers and it was not necessary to consider the candidates having equivalent qualifications. The respondents cannot be forced to accept equivalence of certain qualifications and to accept such equivalence for all times to come.'

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



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authorities to re-consider 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.

5.8. After the judgment was reserved, on mentioning, learned counsel appearing for the respondent produced the following judgments:

'1. SURESH PAL AND OTHERS VS. STATE OF HARYANA AND OTHERS ((1987) 2 SCC 445);

2. Full Bench Judgment of the Punjab and Haryana High Court in NEELAM KUMARI VS. STATE OF PUNJAB AND OTHERS, ((1993 (1) SLR 666) and

3. CHANDRAKALA TRIVEDI VS. STATE OF RAJASTHAN AND OTHERS, ((2012) 3 SCC 129).'

5.9. In SURESH PAL AND OTHERS VS. STATE OF HARYANA AND OTHERS ((1987) 2 SCC 445), the issue involves derecognition of a degree course with retrospective effect. Merely because the respondent has obtained the degree earlier, the same cannot act as an estoppel on the appellants from exercising their power in fixing the qualification. Therefore, the said decision does not have any application to the present case. The other decisions relied upon by the learned counsel for the respondent in Full Bench Judgment of the Punjab and Haryana High Court in NEELAM KUMARI VS. STATE OF PUNJAB AND OTHERS, ((1993 (1) SLR 666) and CHANDRAKALA TRIVEDI VS. STATE OF RAJASTHAN AND OTHERS, ((2012) 3 SCC 129) would not help the case of the respondent. In (2012) 3 SCC 129, the Supreme Court was dealing with the question of equivalence. We are afraid, the issue of equivalence is not before us. On the contrary, we are dealing with the issue of requisite



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qualification and the power of the appellants in fixing the same for the purpose of appointing teachers. Hence, the said judgment also is of no help to the respondent.

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.

12. It is clear from the above Judgment that it is left open to an employer to fix the eligibility criteria for selection or promotion to a post. Therefore, it is not the question as to whether such a degree, which was obtained in the open university, is valid or not. The question is whether such a stipulation can be made by the Government, wherein candidates will be considered, only if they complete the graduation in 10+2+3 pattern. The Division Bench has upheld such a stipulation and has categorically found that the candidature can be rejected on this ground.

13. In the Division Bench Judgment that was relied upon by the learned counsel for the petitioners in *M. Rathinavel vs The Registrar General of High Court of Judicature, Chennai* referred supra, the Division Bench has not gone into this issue and it has not considered the effect of G.O.Ms.No.107, dated 18.08.2009. Therefore, the said Judgment will not help the petitioners in the present case.

14. After the Government Order was passed, the same has been directed to be implemented by the Bank, through the communication of Registrar of Co-operative Societies on 29.10.2012. Accordingly, the Bank has also amended the by-laws in the year 2016 and it has come into effect on 05.07.2017. The Bank cannot now promote the petitioners by virtue of the existing law and if any such promotion is given, the same will be in violation of both G.O.Ms.No.107, dated 18.08.2009 and also the by-laws of the Bank. This Court cannot give a direction to the respondent Bank to promote the petitioners to the post of Assistant Manager de hors the rules. The continued services rendered by the petitioners will not in any way give them a right to be considered for promotion to the post of Assistant Manager, if they do not fulfill the qualification.



15. In the result, this Court does not find any ground to allow this writ petition and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1. The Principal Secretary,
Personal and Administrative Reforms Department,
St. George Fort, Chennai-600001.
2. The Chairman,
The Tamil Nadu State Apex Co-operative Bank Ltd.,
No.4, NSC Bose Road,
Chennai - 600001.
3. The Managing Director,
The Tamil Nadu State Apex Co-operative Bank Ltd.,
No.4, NSC Bose Road,
Chennai - 600001.

+1cc to Mr.L.P.Shanmugha Sundaram , Advocate SR.No. 103957
+1cc to Mr.J.Antony Jesus , Advocate SR.No. 103961
+1 cc to Spl Government Pleader Sr.No.104481

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and
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A.SK(24/01/2020)