

In the High Court of Judicature at Madras

Reserved on	09.04.2019
Pronounced on	22.04.2019

Coram:

The Hon'ble Mr.Justice M.VENUGOPAL
and
The Hon'ble Mr.Justice SENTHILKUMAR RAMAMOORTHY

W.P.No.18984 of 2018 and
W.M.P.Nos.22384 of 2018 and 4718 of 2019

1. P.Sivakumar
2. R.Raman
3. M.Balasubramanian
4. G.N.Mohamed Satick Batcha
5. M.Gurusamy
6. V.Selvamani
7. S.Bagyalakshmi
8. B.Indiragandhi
9. B.Mathiazhagan
10. C.Kanagaraaj
11. M.Madankumar
12. D.Sahabudeen
13. M.Vijaya
14. S.Jaice Daisy Kumari
15. V.Govindaraj
16. K.Kalaiselvi
17. T.Sekar
18. V.Karunakaran
19. R.Sivakumar

..Petitioners

Vs.

1. The Registrar General
Madras High Court,
Chennai - 600 104
2. The Principal District Judge,
Tiruppur District, Tiruppur
3. Subordinate Judge,
Sub-Court,
Udumalaipet, Tiruppur District
4. Subordinate Judge,
Sub-Court,
Dharapuram, Tiruppur District

5. District Munsif,
District Munsif Court, Kangeyam,
Tiruppur District

6. The Government of Tamilnadu
Rep. By its Secretary,
Public (Courts) Department,
Secretariat, Chennai - 9

[R6 impleaded vide Court Order dated
26.11.2018, made in W.M.P.No.30352
of 2018 in W.P.No.18984 of 2018
by MVJ & RPAJ]

...Respondents

Prayer: Writ Petition filed under Article 226 Constitution of India to issue a Writ of Mandamus directing the Respondents to give promotion to the Petitioners to the post of Senior Bailiff in the available vacancies at Subordinate Courts in Tiruppur District, on par with their juniors to whom promotions were given; without reference to the G.O.Ms.No.144, Personal and Administrative Reforms Department dated 24.11.2017 and without accommodating any other candidates, within a reasonable time to be fixed by this Court.

For Petitioners : Mr.R.Neelakandan

For Respondents : Mr.D.Kanagasundaram for
Mr.S.Kaithamalai Kumaran
for R1 to R5
Mr.A.Ansar
Government Advocate for R6

O R D E R

M.VENUGOPAL, J.

Heard both sides.

2. No Counter Affidavit is filed on behalf of Respondents 1,3 to 5. Counter Affidavit of 2nd Respondent is filed.
Factual Matrix

3. According to the Petitioners, they are serving as Junior Bailiffs in numerous Subordinate Courts in Tiruppur District and the details of their appointments and posts are as under:

Sl. No	Petitioners' Name	Date of Joining	Post
01	P.Sivakumar	03.02.1993	Masalji
02	R.Raman	14.08.2007	Office Asst.
03	M.Balasubramanian	23.11.2011	Office Asst.

Sl. No	Petitioners' Name	Date of Joining	Post
04	G.N.Mohamed Satick Batcha	25.03.1996	Junior Bailiff
05	M.Gurusamy	13.08.1998	Gardener
06	V.Selvamani	03.11.2008	Office Asst.
07	S.Bagyalakshmi	23.11.2011	Office asst.
08	B.Indiragandhi	03.11.2008	Office Asst.
09	B.Mathiazhagan	01.10.2007	Junior Bailiff
10	C.Kanagaraj	29.06.2011	Watchman
11	M.Madankumar	23.02.2012	Office Asst.
12	D.Sahabudeen	15.02.2012	"
13.	M.Vijaya	18.10.2013	"
14.	S.Jaice Daisy Kumari	01.10.2009	"
15.	V.Govindaraj	23.02.2012	"
16	K.Kalaiselvi	03.11.2008	"
17	T.Sekar	12.04.1999	"
18	V.Karunakaran	13.08.1998	"
19	R.Sivakumar	03.11.2008	"

At the time of appointment, the Petitioners had not completed S.S.L.C. However, they had obtained the required qualification for appointment to the aforesaid respective posts. Later, they were given promotions.

4. The Petitioners' case is that during service, they joined the pre-foundation course conducted by Annamalai University and Tamil University recognised by University Grants Commission and completed as early as before May 2017 and the details are as under:

Sl. No	Petitioners' Name	Year of completion of Pre-foundation Course	University
01	P.Sivakumar	May 2017	Annamalai
02	R.Raman	May 2017	Annamalai
03	M.Balasubramanian	May 2017	Annamalai
04	G.N.Mohamed Satick Batcha	Dec 2016	Tamil
05	M.Gurusamy	May 2017	Annamalai
06	V.Selvamani	May 2017	Annamalai
07	S.Bagyalakshmi	May 2017	Annamalai

Sl. No	Petitioners' Name	Year of completion of Pre-foundation Course	University
08	B.Indiragandhi	Dec 2016	Tamil
09	B.Mathiazhagan	May 2017	Annamalai
10	C.Kanagaraaj	May 2017	Annamalai
11	M.Madankumar	May 2017	Annamalai
12	D.Sahabudeen	May 2017	' '
13.	M.Vijaya	May 2017	' '
14.	S.Jaice Daisy Kumari	May 2017	' '
15.	V.Govindaraj	May 2017	' '
16	K.Kalaiselvi	May 2017	' '
17	T.Sekar	May 2017	' '
18	V.Karunakaran	May 2017	' '
19	R.Sivakumar	May 2017	' '

Petitioners Contentions

5. The plea of the Petitioners is that in terms of G.O.Ms.No.528, Personnel and Administrative Reforms (Per.R.) Department, dated 18.05.1985, the pre-foundation course completed through recognised Universities are treated to be equal to SSLC, until the said position was negated by way of Government Order in G.O.Ms.No.144 Personnel and Administrative Reforms (M) Department, 20.11.2017, as mentioned in the said order itself.

6. In this connection, the contention of the Learned Counsel for the Petitioners is that the Petitioners had completed the pre-foundation course conducted by Annamalai University and Tamil University, which is equal to S.S.L.C. before the date of G.O.Ms.No.144 Personnel and Administrative Reforms (M) Department dated 20.11.2017. Furthermore, most of the Junior Bailiffs, who passed the pre-foundation course on par with the Petitioners, but above in the seniority were given promotion as Senior Bailiff before the aforesaid Government Order. Because of the said Government Order only, they are not considered to the post of 'Seniority Bailiff'.

7. The Learned Counsel for the Petitioners brings it to the notice of this Court that the Petitioners made a representation on 05.06.2018 before the 2nd Respondent / Principal District Judge, Thiruppur requesting to grant promotion to the post of Senior Bailiff in the existing vacancies in the Thiruppur District, but the same was not considered.

8. The Learned Counsel for the Petitioners points out that the 2nd Respondent / Principal District Judge, Thiruppur District by means of a proceedings dated 19.06.2018 had directed the Subordinate Judges in Thiruppur District to furnish the 'List of Staff Members', who passed S.S.L.C in Regular [not Pre-foundation / Bridge Course] in the cadre of Junior Bailiff in respect of their Court along with service register of the concerned staff, enabling to make promotion to the post of Senior Bailiffs. If the promotion was given to those persons, then, the Petitioners would be put to hardship, since they are 'Seniors' in service and also completed the pre-foundation course equal to S.S.L.C. prior to the Government Order Ms.No.144 Personnel & Administrative Reforms (M) Department dated 20.11.2017. Under these circumstance, the Petitioners have filed the present Writ Petition praying for passing of an order by this Court in directing the Respondents to grant promotion to them to the post of Senior Bailiff in the available vacancies at Subordinate Courts in Thiruppur District on par with them to whom promotions were given without reference to G.O.Ms.No.144 P & AR Department dated 24.11.2017 without accommodating any other candidates within a reasonable time to be determined by this Court.

9. The Learned Counsel for the Petitioners refers to the Letter of University Grants Commission, Distance Education, Bureau, New Delhi bearing No.F.31-1/2016(DEB-III) dated 01.07.2016, wherein it is mentioned that 'it has been decided to accord recognition to the Tamil University, Vaigai Campus, Trichy Road, Thanjavur - 613 010 to offer certain programmes through distance mode for two years, i.e., 2016-17 and 2017-18 subject to strict adherence and compliance of the conditions mentioned in this letter. In fact, Sl.No.3 of the said Letter mentions as under:

'3. The recognition accorded to the institution will be valid only for the programmes/ courses as mentioned in the list attached with this letter.

(i) The University shall offer only those programmes through open and Distance Learning (ODL) mode, which are approved by the statutory bodies of the University as per norms and also by UGC and wherever necessary by the apex regulatory bodies in the country.

(ii) It is the responsibility of the University to follow the norms prescribed by the concerned regulatory body/ies such as UGC, AICTE/any other and also seek its / their prior approval, wherever required.

(iii) The University shall not start any new programme without prior approval of UGC and other concerned regulatory authorities in anticipation of recognition.

(iv) The nomenclature of all the programmes to be offered under distance mode shall be strictly as per UGC/AICTE Regulations.

(v) No teacher education programme shall be offered without prior approval of the NCTE (as per new NCTE regulations, 2014)

(vi) The Ministry of HRD's directions prohibiting B.E/B.Tech/ through distance mode vide it's letter dated 29.07.2009 shall be adhered to strictly.

(vii) The programmes in Engineering and Technology e.g. B.E/B.Tech/Diploma and courses in Medicines / Nursing / Physiotherapy etc. are not allowed and the University will not be offering the same.

(viii) The university shall refrain from offering such programmes that are not allowed to be offered, through distance mode by the respective apex body/ies/

(ix) No online programme leading to award of Degree / Certification shall be offered by the University, until a policy is framed and approved by UGC in this regard.

(x) The minimum duration of a programme, offered in ODL mode shall not be less than the minimum duration of similar programme offered through the regular mode. Nomenclature of programme and the minimum eligibility criteria for admission should be as per UGC norms and Regulations.

(xi) The University shall run its ODL programmes only in those subjects / fields which are offered by it through regular mode.

(xii) The university shall have at least one full time faculty member exclusively for coordinating each programme at the headquarters.

(xiii) The eligibility conditions for admissions to each course to be offered through distance learning mode shall be as per norms of UGC/AICTE and other regulatory bodies.

(xiv) The territorial jurisdiction in respect of University for offering programmes through distance mode will be as per the policy of UGC on territorial jurisdiction and opening of off campuses / centres / study centres as mentioned in the UGC notification no.F.27-1/2012 (CPP-II), dated 27th June 2013, a copy of which is also posted on the UGC website www.ugc.ac.in/deb.

(xv) The programmes in distance mode will not be offered through franchising arrangement and / or through any private institution / college

(xvi) The Institution will have necessary infrastructure at its HQ as well as its Study Centres (if any) for conduction of practical work, wherever required.

02.02.2017 between S.R.Maria Raja V. The Principal Secretary to the Government, Higher Education Department, Government of Tamilnadu, Secretariat, Chennai - 9 and Two Others wherein at Paragraph Nos.7 to 9, it is observed as under:

'7. I heard Mr.R.Murali, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader, appearing for the 1st respondent and Mr.R.M.Makesh Kumaravel, learned counsel appearing for the respondents 2 and 3 and gone through the affidavit, reply affidavit, typed set and additional typed set off papers filed by the petitioner and also the typed set off papers filed by the 2nd respondent. I have also considered the rival submissions on either side. It is seen from the records that the petitioner has completed his Pre-Foundation, Foundation course and degrees through Open University attached with Madurai Kamarajar University. The Pre-Foundation, Foundation course was recognized by the government and the same are given equivalent status of S.S.L.C, & H.S.C by issuing government order in G.O.Ms.No.528 Personnel and Administrative Reforms (PER.R) Department dated 18.05.1985. A perusal of the said government order clearly shows that those who have studied Pre-Foundation, Foundation course through Open University system are recognized as equivalent to S.S.L.C., H.S.C. courses of Tamil Nadu Government for the purpose of getting Government Employment. Therefore, the Government has recognized the studies of Foundation course through Open University and they are entitled to get Government appointment by virtue of the said government order.

8.This Court has considered the next point canvassed by the Learned Counsel for the petitioner. The petitioner is entitled to get promotion up to the post of Senior Deputy Registrar. At present the petitioner is working as Assistant and his next promotion is to the post of Superintendent. While so, by virtue of the syndicate resolution dated 17.03.2010 and 25.09.2010 for the existing clerks who are non-graduates are entitled to get promotion up to the cadre of Senior Superintendent. This court is not able to accept the above said resolution adopted by the syndicate and the said resolutions cannot be sustained under law for the reason that when the Government of Tamil Nadu after careful consideration of the case of the persons those who have completed their studies of Pre-Foundation course, Foundation courses and degree through Open University system be recognized as equivalent to S.S.L.C.,H.S.C., and further the Government of Tamil Nadu has clearly stated in the above said G.O.Ms.No: 528 Personnel and Administrative Reforms (PER.R) Department dated 18.05.1985 that the above said candidates are

entitled to get Employment in Public Services. Apart from that, this court could able to see the important of the courses offered by Open Universities and the important role played by the Open and Distance Educational System. In this regard, this court has closely perused the letter of the University Grand Commission, New Delhi, wherein this court could able to see that the establishment of Open Universities in the country by an Act of Parliament or State Legislation in accordance with the provisions of University Grand Commission Act 1956 and therefore the students who have studied their graduates and post graduates have to be treated and their degrees have to be recognized for getting Government Employment.

9. The learned Counsel for the 2nd respondent has placed reliance of the unreported Judgment in the case of T.L.Muthukumar and others vs- The Registrar General, High Court, Madras and another contented that the Division Bench of this Hon'ble Court has held in the said judgment that

"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."

With great respect to the Hon'ble Division Bench Judgment referred above, I am deferring from the said Judgment for the reason that the said Judgment is dealt with the service conditions of High Court Employees which is purely covered under the High Court Service Rules and therefore the said Judgment will have no application to the fact of present case on hand.'

11. The Learned Counsel for the Petitioners points out to the Common Order of this Court dated 02.02.2018 in W.P.Nos.2002 and 2003 of 2018 between S.Ranganathan V. The State of Tamilnadu, represented by its Principal Secretary to Government, School Education Department, Secretariat, Fort St.George, Chennai - 600 009 and another wherein at Paragraph Nos.2 and 3, it is observed as under:

'2. The learned counsel for the petitioners submitted that the issue raised in these petitions are covered by the Judgment in Suresh Pal and Others V. State of Haryana and others reported in (1987) 2 Supreme Court Cases 445, and in The Secretary to Government, Personnel and Administrative Reforms Department, State of Tamilnadu V. S.Mathevan Pillai, Writ Appeal No.1372 of 2013.

3. Considering the limited prayer of the petitioner, this Court, without going into the merits of these cases, directs the petitioners to submit a fresh representation along with the above referred judgments to the respondents forthwith. On receipt

of such representation, the respondents are directed to consider the same on merits, and in accordance with law and also in the light of the Judgements cited supra, within a period of four weeks thereafter.'

12. The Learned Counsel for the Petitioners adverts to the Regulations of the UGC, New Delhi dated 06.02.2018 coming into force on the date of their publication in the Official Gazette. This Regulations called as University Grants Commission [Open and Distance Learning] Second Amendment Regulations, 2018 deals with Amendment of UGC [Open and Distance Learning] Regulations, 2017.

Respondents Pleas

13. In response, the Learned Counsel for the Respondents 1 to 5 contends that the Writ Petitioners have no locus standi to project this Writ Petition before this Court, since all of them possess the qualification of pre-foundation course, i.e., not equivalent to regular stream of S.S.L.C., in terms of ingredients of G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017, as such, their plea for considering their case for promotion was rejected by the 2nd Respondent.

14. The Learned Counsel for the Respondents 1 to 5 brings it to the notice of this Court that order of the Government in G.O.Ms.No.328, Personnel and Administrative Reforms (Per-A) Department dated 09.04.1983 enjoins that the Government Servant, who joins the Correspondence Course conducted by various universities should obtain prior permission from the Head of the Department concerned. Also, the Learned Counsel for the Respondents 1 to 5 contends that none of the Petitioners had obtained prior permission for joining the Course of Pre-Foundation in Annamalai University and Tamil University from the Competent Authority.

15. It is represented on behalf of the Respondents 1 to 5 that the Writ Petitioners, who had passed pre-foundation course had not intimated the passing of the Course to the Officer concerned and had not submitted the original certificates / passing of the certificates till date, therefore, their service registers were not updated, except in the case of Petitioners, viz., V.Selvamani, B.Indiragandhi and G.N.Mohammed Sathick Basha.

16. It is the submission of the Learned Counsel for the Respondents 1 to 5 that from the date of issuance of G.O.Ms.No.144 P&AR Department dated 24.11.2017, no staff members, who possess pre-foundation qualification was promoted.

17. At this stage, this Court refers to the G.O.Ms.No.144 P& AR (M) Department dated 20.11.2017, which reads as under:
'G.O. (Ms)No.144 dated 20.11.2017

வேறுவிளம்பி வருடம். கார்த்திகை4.
திருவள்ளூர் ஆண்டு 2048.

Read

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.'

18. It is to be pointed out that the Government of Madras had issued a G.O.Ms.No.1341, Public (Services-A) Department, dated 27.08.1963 whereby and whereunder, interalia it is observed as under:

'....Government have had occasion to examine whether a Government Servant joining a part-time evening course conducted, out of office hours for acquiring additional technical qualification such as A.M.I.E.,, etc., should obtain prior permission of the Head of the Department. It is considered that cases may arise, where, while the Government servants joins a course with a view to obtain an additional qualification, in the belief that it will not be detrimental to his duties the Government may take a

different view of the matter. The Head of the Department will be able to decide whether it will be detrimental to the Government servant's Official duties or not. The Government therefore direct that a Government servant should obtain prior permission from the Head of the Department in all such cases'.

19. Further, the Government of Tamil Nadu had issued a G.O.Ms.No.328 Personnel & Administrative Reforms (Per.A) Department dated 09.04.1983, wherein at Paragraph Nos.2 and 3 it is mentioned as follows:

'2. A question has arisen whether a Government servants who joins a Correspondence Course conducted by various Universities with a view to acquiring additional qualification, should obtain prior permission of the head of the department. The above question was examined in detail. It is considered that in a Correspondent Course, though the candidate need not attend classes, it requires considerable time to prepare answer to the question papers sent by the Universities and to prepare for the final examination. At times, the students will have to attend the seminars conducted by the Universities. The intention in granting permission to join an evening course or undertake a part-time job is that such evening course or part-time job should not be detrimental to discharging normal official duties. Therefore, prior permission of the head of department is necessary for joining correspondence course also.

3. The Government, therefore, direct that a Government servant, who join the Correspondence Course conducted by various Universities should obtain prior permission of the head of the department concerned.'

20. Moreover, this Court had issued an Official Memorandum in R.O.C.No.9095/84/C2 dated 25.10.1984 wherein it is stated as under:

'After careful consideration, High Court, Madras delegates the power to the Heads of Offices in the Judicial Department to grant permission to Government Servants under their control to join correspondence courses conducted by various universities and they are also required to ensure that the grant of such permission will be without detriment to the normal functioning of the offices concerned.'

21. Continuing further, the Government of Tamil Nadu in G.O.Ms.No.200 dated 19.04.1996 at Paragraph Nos.2 and 3, it is observed as under:

'2. It has been suggested to the Government further to relax the process of obtaining prior permission from the Heads of Department / Head of the

Offices for undergoing correspondence course / attending evening colleges. The Government therefore, direct that the application received from the Government servants seeking prior permission for joining correspondence course / evening college / private study shall be disposed of by the Head of Office / Heads of the Department within fifteen days from the date of the receipt of the application. If any clarification or particulars are sought for from the Government servant, the said period of 15 days shall be reckoned from the date of receipt of such clarification or particulars. Where no order (according such permission) has been issued within the said period of 15 days, it shall be deemed that the Head of the Department / Head of the office has granted permission for joining correspondence course / evening college. Head of Departments will be held responsible if any ineligible person happens to avail of deemed permission by default.

3. All the Departments of Secretariat and Heads of Department are directed to bring the above instruction to the notice of the subordinates under their administrative control.'

22. In fact, this Court in R.O.C.No.5583/96/U2 had issued an Official Memorandum dated 02.08.1996 wherein it is mentioned as follows:

'The undermentioned officers are hereby informed that when the probationers report to duty, they must be informed that until the probation period is over, they will not be permitted to apply for admission for higher studies.

It is further informed that inspite of the aforesaid instruction, if they apply, the permission will not be granted, even though they are able to secure the admission and such requests should not be forwarded to the High Court to avoid unnecessary burden to the administration.'

23. Indeed, this Court on 15.07.1999 in R.O.C.No.7818/98-Estt.V had issued a circular, wherein it is stated as follows:

'It is hereby informed that when the approved Staff Members of High Court Establishment desire to study any Degree Course either through Correspondence Course or Evening Courses etc., to acquire additional qualification, they must get prior permission from the Registry. If they join the Course without obtaining prior permission of the Registry and apply for ratification, their action will not be ratified, under any circumstances, and besides rejecting the same, Disciplinary Proceedings will also be initiated against such individual.'

Concept of Misconduct

24. Be it noted, the term 'Misconduct' is a relative term and it means that wrong conduct or an improper conduct. The 'Misconduct' may arise from an ill motive, acts of negligence or any unlawful behaviour in relation to discharge of duty by an employee and an error of Judgment. As a matter of fact, the Tamil Nadu General Clauses Act, 1891 does not define what 'Misconduct' is. Apart from that, Rule 8 of the Tamil Nadu Civil Services [Discipline and Appeal] Rules envisages the penalties that may be inflicted upon the Government Servant for good and sufficient reasons. In short, the blame worthy conduct of a Government Servant, in the teeth of Conduct Rules can safely be termed as 'Misconduct'.

25. In respect of lack of 'Integrity' or 'Devotion' to duty of a Government Servant, in any capacity, for acts and omissions committed by him, Disciplinary action can be initiated against him. The Disciplinary Authority is to assess and determine as to what action will amount to a 'Conduct' unbecoming of a Government Servant, which may amount to 'Misconduct' based on an objective consideration of materials placed before it.

26. The term 'Unbecoming' is a relative concept and the same is to be resolved on an assessment by adopting a reasonable standard, as per decision Girraj Singh V. Commissioner of Police, New Delhi reported in 1989 4 SLJ (CAT) 921. Undoubtedly, the exigency of a circumstance will determine the conduct of becoming or unbecoming of a Government Servant to do or not to do. In reality, the word 'Integrity' means the state of being whole and unimpaired. Also, the term 'Integrity' refers to Honesty and Uprightness. If a Government / Public servant is required to maintain 'Integrity' and to be devoted to duty, then, he is required to keep within the limits of an administrative decency in a civilised administration. There is no compromise in regard to the conduct of an 'Homo-Sapien's integrity amidst the Government Employees. Every Government employee must not only be Honest, but also ought to appear to be Honest.

Mandamus

27. It is to be remembered that the purpose of 'Mandamus' is to compel performance of a legal duty on the part of some person or body, who is interested by Law with that duty. The relief of 'Mandamus' is the discretionary remedy and not to be pressed into service, as a matter of right. A 'Mandamus', cannot be issued to 'violate the Law' or to act against the Law. For the issuance of 'Mandamus', the Petitioners concerned are to subjectively satisfy the conscience of this Court that they do have legal right to the performance of Legal duty by the party against whom the 'Mandamus' is sought

for and further that, such a right exists on the date of petition. The 'Writ of Mandamus' is not issued in anticipation of an injury except in respect of threat to a 'Fundamental Right'.

An Analysis

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 Course 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 negated 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:

'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 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:

'9. 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 / Universities' etc.,

35. In the present case, though the Petitioners have sought for passing of an order by this Court to grant promotion to them to the post of Senior Bailiff in the available vacancies at Subordinate Courts in Thiruppur District, on par with their Juniors to whom promotions were given, without reference to the G.O.Ms.No.144, Personnel and Administrative Reforms Department dated 24.11.2017, this Court is of the considered view that the Petitioners possess the qualification of Pre-Foundation Course, which is not a regular stream of S.S.L.C, as per G.O.Ms.No.144, Personnel and Administrative Reforms Department dated 24.11.2017 and hence their plea for considering them for promotion is not acceded to. Viewed in that angle, the Writ Petition fails.

Conclusion:

In fine, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Asst. Registrar

//True Copy//

Sub Asst. Registrar

To

1. The Registrar General
Madras High Court,
Chennai - 600 104
2. The Principal District Judge,
Tiruppur District, Tiruppur
3. Subordinate Judge,
Sub-Court,
Udumalaipet, Tiruppur District
4. Subordinate Judge,
Sub-Court,
Dharapuram, Tiruppur District
5. District Munsif,
District Munsif Court, Kangeyam,
Tiruppur District
6. The Government of Tamilnadu
Rep. By its Secretary,
Public (Courts) Department,
Secretariat, Chennai - 9

+1 CC to Mr.R.NEELAKANDAN Advocate SR.NO.39362
+1 CC to Mr.S.KAITHAMALAIKUMARAN Advocate SR.NO.38085
+1 CC to the Government Pleader SR.NO.38857

Pre-delivery Order in
W.P.No.18984 of 2018 and
W.M.P.Nos.22384 of 2018 and 4718 of 2019

CO(SP)
VC (08/06/2019)

सत्यमेव जयते

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