

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.A.No.2321 of 2019

S.Dhanapal ... Appellant/Petitioner

vs

1.The Secretary to Government,
Home (TR.II-A) Department,
Secretariat, Chennai - 9

2.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC road, Park Town,
VOC Nagar, Chennai 3

.... Respondents/Respondent

Appeal filed against the order passed by this Court dated 27.02.2019 in WP No.26517 of 2018.

Prayer in WP No.26517 of 2018 : This Writ Petition filed under Article 226 of Constitution of India issue a writ of mandamus for forbearing the 2nd respondent from recruiting the Candidates who are possessing Bachelor's Degree in Engineering Subject without undergoing/Possessing the basic Qualification as prescribed under Rule 5 of the Tamil Nadu Transport Sub-ordinate Service Rules namely Diploma in Automobile or Mechanical Engineering (3 years course) for Selection/Appointment to the Post of Motor Vehicle Inspector Grade - II (113 Post) based on the Advertisement No.489 dated 14.02.2018 in Tamil Nadu Transport Subordinate Service (Code No.068) and Consequently direct the respondents to Strictly implement and follow the Statutory rule prescribed for selection to the Post of Motor Vehicle Inspector Grade-II in accordance with law

For appellant : Mr.N.Umapathi

For Respondents : Mrs.A.Srijeyanthi, Spl.G.P.

J U D G M E N T

The Writ Petition filed by the appellant before the writ court for issuance of a Writ of Mandamus to restrain the Tamil Nadu Service Commission from recruiting candidates possessing degree in Engineering without undergoing the diploma course in Engineering, was dismissed by the learned Single Judge. Feeling aggrieved, the appellant has come up with this intra court appeal.

2. The appellant is a diploma holder in Mechanical Engineering. The Tamil Nadu Public Service Commission (hereinafter referred to as "TNPSC") issued a notification dated 14 February 2018 for appointment to the post of Motor Vehicle Inspector Grade II, in the Tamil Nadu Transport Subordinate Service. The prescribed qualification is Diploma in Automobile Engineering/ Mechanical Engineering of three years duration. The appellant approached the writ court with a grievance that TNPSC is entertaining applications from Degree holders, notwithstanding their failure to possess the qualification as per the recruitment rule. The Writ Petition was dismissed on the ground that a Writ Petition of this nature is not maintainable.

3. The issue raised in this appeal is covered by the judgment of this Court in R.Vijayakurugan vs. Secretary, TNPSC, (Judgment dated 29 July 2019 in W.A.No.1306 of 2019). The challenge in W.A.No.1306 of 2019 was also to the very same notification and the prayer was also the same. The Writ Petition filed by the appellant therein for a direction to the Tamil Nadu Public Service Commission not to entertain applications from the degree holders was dismissed by the learned Single Judge.

4. The substantial question raised by the appellant in W.A.No.1306 of 2019 was answered in favour of the TNPSC. The relevant portion of the judgment is extracted below.

6. The notification dated 14 February 2018 issued by the TNPSC for appointment to the post of Motor Vehicle Inspector Grade II contain the details of the qualification and experience as on 14 February 2018. The prescribed qualification is SSLC, which is the basic qualification and a Diploma in Automobile/ Mechanical Engineering. The candidates must have undergone three years engineering course. There is also an indication that the candidates must possess the qualification referred to above or its equivalent qualification.

7. The appellant is stated to be a Diploma Holder. The grievance of the

appellant appears to be the action taken by the TNPSC to receive the applications from the Degree Holders in spite of their ineligibility.

8. The TNPSC in its counter affidavit made it very clear that the questions in the examination would be based on the Diploma standard or in other words, it would be possible for the Diploma holders to answer the questions.

9. The Special Rules framed for the Tamil Nadu Transport Subordinate Services indicates that Diploma is the qualification for appointment. The appellant has taken up a contention that in case there is a conflict between the special rules and the General rules, the Special Rules alone would prevail.

10(a) Rule 25 of the Tamil Nadu Government Service (Conditions of Service) Act, 2016, defines Special qualifications. Explanation II is extracted below :-

In cases where the special rules prescribe a Diploma in a particular subject as qualification, then, a degree in that subject shall be deemed to be a higher qualification.

(b) The Explanation II is very clear that in case the special rules prescribe Diploma as the essential qualification then a degree in that subject would be a higher qualification.

11(a) Similar issue came up for consideration before the Hon'ble Supreme Court in Jyothi K.K. And others vs. Kerala Public Service Commission and others., 2010 (15) SCC 596. सत्यमेव जयते

(b) In Jyothi K.K., the required qualification for appointment to the post of Sub Engineer (Electrical) in the Kerala State Electricity Board was a Diploma in Electrical Engineering of a recognized institution after three years of study. The Kerala Public Service Commission was not prepared to receive applications from the holders of B.Tech Degree in Electrical Engineering or Bachelor Degree in Electrical Engineer. The Writ Petition filed before the High Court was dismissed. The matter was taken up before the Hon'ble Supreme Court.

(c) The Supreme Court found that Rule 10(a)(ii) of the Rules made the degree in the relevant subject a higher qualification enabling the degree holders also to compete with the Diploma Holders.

Rule 10(a)(ii) reads as follows:

"10. (a)(ii) Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications recognised by executive orders or standing orders of Government as equivalent to a qualification specified for a post in the Special Rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post."

(emphasis supplied)

(d) The Supreme Court on a reading of the Rule in the light of the selection notification and the condition regarding eligibility criteria, held that if a person had required the higher qualification in the same faculty, such qualifications can be stated to presuppose the acquisition of the lower qualification. The Hon'ble Supreme Court therefore allowed the appeal filed by the Degree holders by holding that they are also eligible to apply for the post for which qualification is only a Diploma.

12. The Supreme Court decided Zahoor Ahmad on the peculiar facts of the said case. There was no special rules in Zahoor Ahmad, like the one in Kerala State and Subordinate Services Rules, considered by the Hon'ble Supreme Court in Jyoti K.K. cited supra. However, in the State of Tamil Nadu there is a specific Rule making Degree a higher qualification, in case Diploma is the essential qualification.

13. The judgment relied on by the learned Senior Counsel for the appellant has no relevance to the issue raised herein. In Zahoor Ahmad, the Supreme Court found that unlike in Jyoti K.K., there was no service rules in the State of Jammu and Kashmir, which prescribe that a degree would be treated as higher qualification in case Diploma is the essential qualification for a particular post. The Supreme Court in

paragraph 22 of the said Judgment, explained the ratio of the decision in Jyoti K.K., which was rendered on the basis of rule 10 (a)(ii) of the Kerala State Subordinate Services Rules, 1956.

14. The following observation contained in Zahoor Ahmad, would make the position clear:-

22. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti KK in the subsequent decision in Anita (supra). The decision in Jyoti KK turned on the provisions of Rule 10 (a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The state as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the state, as the recruiting authority, to determine. The decision in Jyoti KK turned on a specific statutory rule under which the holding of a higher qualification could pre-suppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome.

23. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The state is entrusted with the authority to assess the needs of its public services.

Exigencies of administration, it is trite law, fall within the domain of administrative decision making. The state as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in Jyoti KK must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti KK turned.

15. The decision of the Supreme Court in Jyoti K.K. is applicable to the case on hand. Here also, there is a rule which provides that in case Diploma is the essential qualification, degree in the relevant subject would be a higher qualification.

16. There is no challenge to the General Rules which gives statutory recognition to the higher qualification. The TNPSC has also made it clear that the questions would be of Diploma standard and as such, it would be possible for the Diploma holders to undergo the written test. We are therefore of the view that there is no merit in the contentions taken by the appellant.

5. In view of the judgment in W.A.No.1306 of 2019, there is no need for a further adjudication of the issue at the instance of the appellant.

6. We therefore dismiss the intra court appeal without any liability to pay costs.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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To

1.The Secretary to Government,
Home (TR.II-A) Department,
Secretariat, Chennai - 9

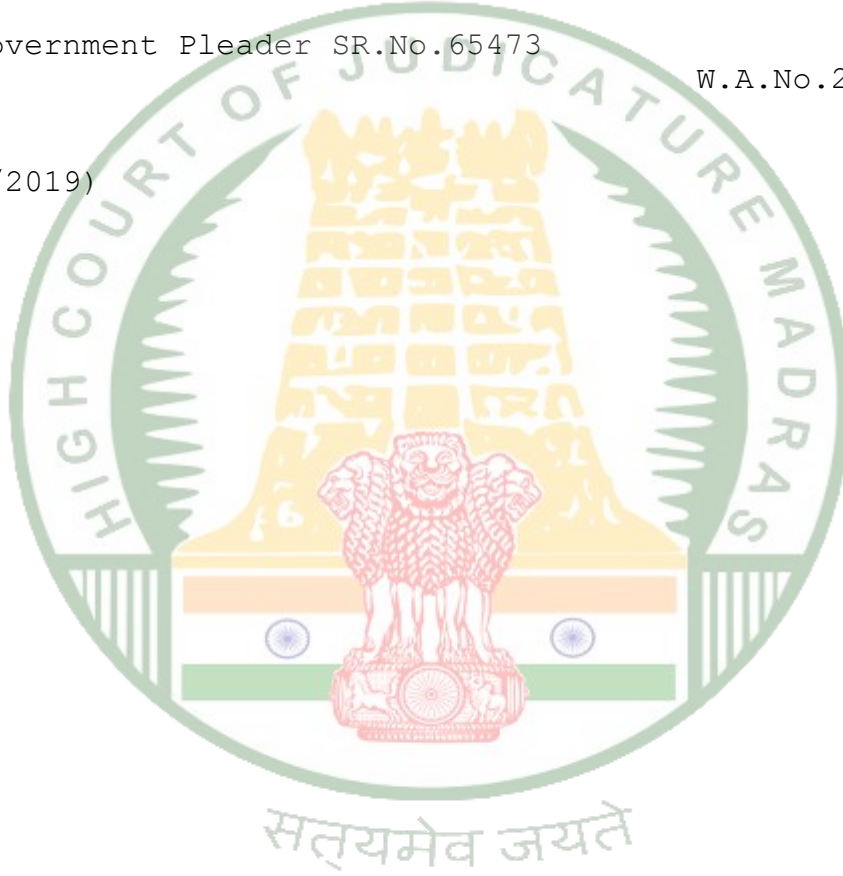
2.The Secretary,
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TNPSC Road, Park Town,
VOC Nagar, Chennai 3

+1cc to Mr.N.Umapathi, Advocate SR.No.65188

+1cc to Government Pleader SR.No.65473

W.A.No.2321 of 2019

RSI (CO)
GMY (19/09/2019)



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