

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.29616 of 2014

E.Sankar

... Petitioner

-Vs-

1. The Chairman,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Chennai 600 003.
2. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Chennai 600 003.
3. The Deputy Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Chennai 600 003.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus, directing the Respondents herein to select and appoint the Petitioner in any one of the Non-Interview posts included in the combined Subordinate Services Examination - I, 2011-2013 pursuant to the Certificate verification held on 16.07.2014.

For Petitioner: Mr.A.R.Suresh
for M/s.K.J.Parthasarathy

For Respondents: Mr.M.Loganathan

O R D E R

Petitioner has come up with the above Writ Petition seeking a direction to the Respondents herein to select and appoint him in any one of the Non-Interview posts included in the combined Subordinate Services Examination-I, 2011-2013 pursuant to the Certificate verification held on 16.07.2014.

2. The case of the Petitioner is that he is an Ex-serviceman, having served the Indian Army for 17 years 09 days from 22.04.1995 to 30.04.2012 and that he may be considered

educationally qualified for reserved Group 'C' posts, where prescribed qualification is graduation. He relied on the Graduation Certificate dated 30.04.2012 issued to him, wherein, it is categorically stated that, as per Government of India, Ministry of Personnel Public Grievance and Pension (Department of Personnel and Training) No.15012/8/82 Estt. (D), dated 12.02.1986, Ex-servicemen who are matriculate (which term include Ex-servicemen who have obtained the Indian Army Special Certificate of Education or the Corresponding Certificate in the Navy or the Air Force), and has put in not less than 15 years of service in the Armed Forces of the Union, may be considered eligible for appointment to any reserved vacancy in Group 'C' Posts, for which the essential qualification is graduation and where experience of technical or professional nature is not essential.

3. It is further stated by the Petitioner that with the previous permission of the authorities concerned, he underwent B.A. Degree course in Public Administration in the Tamil Nadu Open University from January 2008 to December 2010 and has successfully completed the same in January 2011. Similarly, with the previous permission of the authorities concerned, the Petitioner also completed and passed his Higher Secondary Course in September 2011.

4. The Petitioner drew reference to G.O.Ms.No.106 Personnel and Administrative Reforms (R) Department, dated 11.06.1999, wherein, it has been specifically stated that the Military Trade Certificates issued by the Central Government for the Three Forces is considered equal to the Trade Certificates issued by the concerned State Governments, i.e. Military Trade as equal to Civil Trade. The Government of Tamil Nadu also issued another Government Order in G.O.Ms.No.180, Personnel and Administrative Reforms (R) Department, dated 11.09.2000 to the effect that, for the purpose of public employment, Diploma, Degrees and Post Graduate Degrees issued by the Open Universities in Tamil Nadu are equal to the corresponding Diplomas, Degrees and Post-Graduate Degrees issued in Regular stream.

5. The Petitioner referred to yet another Government Order in G.O.Ms.No.242, Higher Education (B1) Department, dated 18.12.2012 to the effect that, for the purpose of public employment, those who have undergone three years Degree Course, after undergoing three years Diploma or two years Industrial Training (I.T.I.) after completing S.S.L.C., or two years Degree Course, after undergoing three years Diploma (Lateral Entry) after completing their S.S.L.C., or three years Degree Course, after undergoing two years Diploma in Teachers Training after completing 11th Standard (old S.S.L.C.) are to be considered

equal to those who possess, 10th, H.S.C., (+2) and 3 years Degree.

6. It is further stated by the Petitioner that the 2nd Respondent herein vide Notification No.19(A) dated 13.06.2012, had invited applications from eligible candidates for direct recruitment to the posts included in the Combined Subordinate Services Examinations-I, 2011-2013 numbering 3631 posts for which, a Written examination was to be held on 12.08.2012 with minimum educational qualification as a Degree. Since the Petitioner possessed a valid Degree, he applied for the same in time and appeared in the said Examination and secured 366639th Rank. He was called for Certificate verification followed by counselling (IV Phase) scheduled to be held on 16.07.2014 and 17.07.2014. On verification of his Certificates, the Officers attached to the Respondents informed the Petitioner that he was not having a valid Degree, since he had not passed +2 before B.A. Degree and orally instructed him not to attend the counselling on the next day (17.07.2014). Since his detailed representation dated 24.07.2014 to the 3rd Respondent was not considered, having no other alternative, the Petitioner is before this Court.

7. Respondents have filed a detailed counter affidavit and an additional counter affidavit. It is stated therein that the Petitioner is one among the candidates, who had applied to the Commission for appointment by direct recruitment to the posts included in CSSE-I for the year 2011-2013. The Petitioner was summoned for the 4th phase of Certificate verification/counselling on 16.07.2014 for Non-Interview Posts (included in CSSE-I, 2011-2013) based on his claim that he is an Ex-Serviceman. On the day of Certificate verification, it was found that the Petitioner had acquired the UG Degree through Open University Scheme (OUS) without passing Higher Secondary Course.

8. According to the Respondents, it has been announced in the Notification under paragraph 3(B)(a) note:(1) that the candidates should possess the prescribed qualification for the post by passing the required qualification in the order of study 10 +2 +3. Since the educational qualification of the Petitioner was rejected for not possessing the prescribed educational qualification as ordered in G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009 and as per the amendment of Tamil Nadu State and Subordinate Service Rules vide G.O.Ms.No.65, Personnel and Administrative Reforms (S) Department, dated 02.07.2014, he preferred the above Writ Petition and this Court, by an interim order dated 14.11.2014 ordered that any appointment made, is subject to the result of the Writ Petition.

9. In respect of the contention of the Petitioner in paragraph 5 of his Affidavit regarding G.O.Ms.No.180, Personnel and Administrative Reforms (R) Department, dated 11.09.2000, the Petitioner submitted that the qualification referred to in the said Government Order should also be obtained in the required sequence of 10+2+3 and that the Petitioner's qualification is not covered in the said Government Order.

10. With regard to the Petitioner's contention regarding Army Graduation Degree, it is stated by the Respondents that the Government in their Letter No.55732/S/07-1, Personnel & Administrative Reforms (S) Department, dated 26.01.2008, has issued the following clarifications in regard to equivalence of degree obtained in Army/Navy/Air Force.

"No orders have been issued equating the degrees obtained in the Army, Navy and Air Force with that of the Degrees given by the Universities listed out in Schedule II to General Rules for Tamil Nadu State and Subordinate Services and hence the Graduation Certificate issued by the Army, Navy and Air Force cannot be considered for the purpose of employment in Public Services."

11. In reply, it has been pointed out by the Petitioner that the Government issued G.O.Ms.No.77, dated 23.01.2018 specifying the qualification required for an Ex-servicemen to any reserved vacancy in "Group-C" posts. Relevant portion of the said Government Order is reiterated hereunder:

"2. In the Government letter second read above, the proposal received from the Director of Ex-Servicemen's Welfare, Chennai, has been sent to the Secretary, Tamil Nadu Public Service Commission, for obtaining necessary recommendation of the Equivalence Committee, on the same. In this regard, the Secretary, Tamil Nadu Public Service Commission, Chennai, in the letter third read above, has communicated the resolution of the Thirty Sixth Equivalence Committee Meeting, held on 15.11.2012, which is reproduced hereunder:

"Resolution 4:

Considering the stand of Government of India, the State Government of Punjab, Karnataka, Maharashtra, Goa, Jammu &

Kashmir, Orissa, Tripura and Government of Pondicherry in the subject, this Committee recommends that the Government may consider, as this being a policy decision.

3. After careful examination, the Government have decided to accept the proposal of the Director of Ex-Servicemen's Welfare, Chennai and accordingly, direct that for appointment to any reserved vacancy in "Group-C" posts, a Matriculate Ex-Servicemen, (which term includes an Ex-Servicemen, who has obtained the Indian Army Special Certificate of Education or the corresponding certificate in the Navy or the Air Force), who has put in not less than 15 years of service in the Armed Forces of the Union shall be constituted eligible for appointment to the posts for which the essential qualification prescribed is Graduation. They are eligible for promotion to all Group 'A' and 'B' posts in routine course excepting for those posts for which graduation is prescribed as a prescribed qualification for promotion."

12. Heard the learned counsel on either side and perused the material documents available on record.

13. It is not in dispute that the Petitioner is an Ex-serviceman having rendered 17 years 09 days of service. He has also participated in the selection process for CSSE-I during the period 2011-2013. However, his candidature was rejected on the ground that he did not possess the requisite qualification as contemplated under various Government Orders, more particularly G.O.Ms.No.180, dated 11.09.2000, wherein, it is stated that the candidate must possess qualification in the required sequence of 10 +2 +3.

14. It is seen that the Government vide G.O.Ms.No.106, dated 11.06.1999 has decided to accept the recommendation of the Committee and accordingly direct the automatic acceptance of equivalence of various Military Trades with that of Civil Trades as published by the Government of India and recognize the course of trade for the purpose of employment in the Public Services in this State. While so, the said Government Order cannot be superseded by a Letter issued by the Government vide No.55732/S/07-1, Personnel & Administrative Reforms (S) Department, dated 26.01.2008, clarifying with regard to the equivalence of degree obtained in Army/Navy/Air Force.

15. It is no doubt true that the Government is empowered to prescribe certain qualifications for employment in Public service in the State, by means of a Government Order, which can be modified/superseded by another Government Order, and it is by no means bad in law. When the Government vide G.O.Ms.No.106, Personnel and Administrative Reforms (R) Department, dated 11.06.1999 has stated that the candidate must possess the Certificate issued by the Military which can be treated as equivalent qualification, it has stated vide G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009 that the candidate has to acquire educational qualification in the required sequence of 10 +2 +3.

16. It is no doubt true that G.O.Ms.No.77, dated 23.01.2018 may not be applicable to the facts of this case, as it is only prospective in nature. A reading of clause 3 of the said Government Order would make it very clear that the intention of the Government is to accommodate eligible candidates, which is the objective of the Government Order in G.O.Ms.No.106, dated 11.06.1999.

17. Once the Equivalence Committee is constituted by the State Government and the Government has accepted the qualification prescribed for Ex-servicemen, the contention of the Respondents that there is no vacancy available as on date and that the Petitioner cannot be accommodated, cannot be accepted. Once the Ex-servicemen Certificate is issued, the Petitioner's eligibility will have to be taken into account retrospectively. This Court, for the purpose of ensuring better administration of justice, can permit the employer to fill up vacancies without reserving one post, but, however, make an observation that any appointment made, is subject to the result of the Writ Petition.

18. Accordingly, this Court makes it clear that once appointment is made, any recruitment of candidates will be subject to the result of the Writ Petition. Either, they should have got themselves impleaded in the Writ petition or the Respondent should have made them as parties to the Writ petition and it is the duty cast upon the employer to inform the candidates about the pendency of the Writ petition. In any event, other candidates are not here and this Court could not wait to render any findings based on facts available before this Court.

19. As stated supra, more particularly in view of the Full Bench decision of this Court in the case of Nadar Thanga Shubha Laxman vs. State of Tamil Nadu, reported in 2014 (3) CTC 433, restricting the operation of the Equivalence Certificate prescribed, would affect the rights accrued on the candidates

and the Equivalence Certificate issued by the Government becomes operative from the date of issuance.

20. In this case, even though no Equivalence Certificate has been issued, the Government has made it very clear that the Equivalence Certificate would be treated as equivalent on par with the Civil Degree Certificate. That being the case, the case of the Petitioner needs to be considered in the light of the above observation.

21. In view of the foregoing, as the appointment is subject to the result of the Writ Petition, the case of the Petitioner need to be considered for appointment in any suitable post and accordingly, this Court directs the Respondents herein to accommodate the Petitioner herein in any suitable post on par with candidates, who got selected and appointed.

The Writ Petition is disposed of with the above direction and observation. No costs. Consequently, connected M.P.No.1 of 2014 is closed.

(aeb)

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chairman,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, Chennai 600 003.
2. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, Chennai 600 003.
3. The Deputy Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, Chennai 600 003.

+1cc to Mr.M.Loganathan, Advocate, SR.No.62874
+2cc to Mr.K.J.Parthasarathy, Advocate, SR.No.62615
+1cc to Mr.A.R.Suresh, Advocate, SR.No.62483

W.P.No.29616 of 2014

Kak(16/10/2019)