



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P. (MD) No.12326 of 2014

and

M.P. (MD) Nos.1 and 2 of 2014

M.Sakkaraichamy

... Petitioner

-Vs-

1.Tamil Nadu Public Service Commission,
Represented by its Secretary,
No.3, Frazer Bridge Road,
V.O.C.Nagar, Chennai-600 003.

2.The Principal Secretary to Government,
Personnel and Administrative
Reforms Department,
Secretariat, Chennai.

... Respondents

(R2 is *suo motu* impleaded vide Court Order dated 02.07.2019.)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned communication in Memorandum No.7776/RID2/OTD-B1/2013, dated 17.12.2013 on the file of the first respondent and quash the same as illegal to the extent of reply to the query No.5 and consequently, to direct the first respondent appoint the petitioner to the post of Assistant in Revenue Department within the time stipulated by this Court.

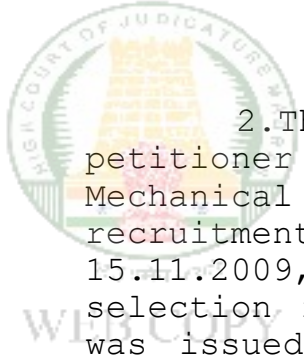
For Petitioner : Mr.S.Sarvagan Prabhu

For R1 : Mr.K.K.Senthil

For R2 : Mr.K.Mu.Muthu,
Additional Government Pleader.

ORDER

The reply given by the first respondent under the Right To Information Act in letter dated 17.12.2013, is under challenge in the present Petition.



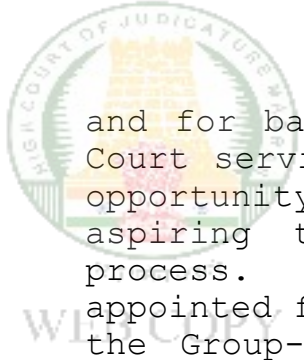
2. The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner has completed B.E., in Mechanical Engineering in the year 1999 and pursuant to the recruitment notification issued in Advertisement No.219, dated 15.11.2009, the writ petitioner participated in the process of selection for appointment to the post notified. The notification was issued for Combined Subordinate Services Examination-I. The selection was conducted in two successive stages. Firstly, written examination, secondly, oral test. The writ petitioner was successful in the written examination and further, attended the oral interview. The case of the writ petitioner was not considered, on account of the fact that the writ petitioner is a B.E., degree holder and he secured degree in the subject of Mechanical Engineering.

3. It is further contended that with reference to the notification, qualification prescribed for the post of Revenue Assistant in various districts is that a degree of B.A., or B.Sc., (other than in Professional Subject) or B.Com., of any University or Institution recognized by the University Grants Commission for the purpose its grants or B.O.L., of Annamalai University or B.B.A., of Madurai Kamaraj University or B.Lit., of Madras University or B.B.M., or B.Lit., of Bharathiar University. Under these circumstances, the writ petitioner was declared as not possessing the requisite educational qualifications with reference to the notification issued.

4. The learned counsel appearing on behalf of the writ petitioner states that the Government issued an order in G.O.Ms.No.739, P & AR (M) Department, dated 07.10.2009, stating that the professional degrees are equated with the Arts degrees for the purpose of selection in Government services. However, the Government Order did not speak anything in respect of the cadre post with reference to the services notified. The Government Order is absolutely absent, in respect of the qualification for the particular post, for which the recruitment notification was issued.

5. The Government Order referred above is of general in nature. Even in such cases, rules will prevail over the Government Orders and guidelines. Therefore, such Government Orders if at all applicable cannot be relied upon for the purpose of validating the selection. This apart, the Government Orders passed in a general terms for the purpose of providing instructions or guidance to the authorities cannot be construed as a rule for the purpose of validating the selection or otherwise, which is to be done strictly in accordance with the statutes and rules in force.

6. It is relevant to consider that on account of large scale unemployment problem in our great nation, it is unfortunate that the engineering degree holders, agricultural degree holders and other professional degree holders and the master degree holders are participating in the recruitment process even for Group-4 services



and for basic services in Government departments and even in High Court services. However, the State is duty bound to provide equal opportunity in public employment to all the citizens, who are all aspiring to secure public employment through open competitive process. In this context, if over qualified candidates were appointed for performing the duties and responsibilities attached to the Group-4 services and basic services, undoubtedly, efficiency level in the public administration would be brought down. After getting appointment, these over qualified persons are not performing their duties and responsibilities attached to the posts under Group-4 services as well as basic services.

7. Acute unemployment issues prompted this over qualified persons to apply for such posts under Group-4 services as well as for the basic services. However, the competent authorities may not be in a position to effectively extract work from these employees with reference to the job responsibility.

8. For instance, if a professional degree holder or a master degree holder is appointed as Office Assistant, Sweeper or Driver or any other basic services, the administrative officials cannot direct them to perform certain duties and responsibilities by virtue of their professional qualification. They may not perform their duties as rules required. Those employees would be reluctant in performing their duties and responsibilities and therefore, very purpose and object of prescribing educational qualifications for a particular job profile, is not only defeated, but the same would result lowering the efficiency level in public administration.

9. Equally, candidates, who are possessing under qualification cannot be allowed to perform higher responsibility. All these aspects are to be considered by the competent authorities of the State Government and its organizations or corporations, while undertaking the process of issuing recruitment notification to the particular post or cadre. Currently, minimum educational qualifications and other related criterias are prescribed by the employers. However, no maximum educational qualifications are prescribed, so as to restrict the opportunity to more suitable candidates. This being the reason, these over qualified persons and professional degree holders are participating in the recruitment process for the posts under Group-4 services as well as basic services.

10. Even, the Madras High Court administration is facing the similar problems. Sweepers recently appointed for High Court services are the degree holders, diploma holders or master degree holders. The High Court is unable to extract work effectively and efficiently for better administration. These employees are evading to perform duties and responsibilities and they are sometime refusing to perform duties attached to the posts. At the outset, these over qualified employees are not performing their duties with devotion and in the interest of the public at large. When the



spirit of service was not shown by these employees, it would be very difficult by the administrators to perform their duties and responsibilities in a peaceful manner, so as to run administration smoothly.

11. Similar issues are brought to the notice of this Court in the matter of appointing Grade-II Police Constables in the police department. Large number of degree holders, professional degree holders, master degree holders are being appointed as Grade-II Police Constables in the Tamil Nadu Police Service. After appointment into police services, they are further preparing only for the competitive examination even during the duty hours. They are mostly associated with the smart phones as well as study materials. Such an attitude can never be tolerated. No police person during the duty hours should evade the duty or commit dereliction of duty or negligence. Even the police officials are unable to control this, in view of the fact that it would be very difficult for them to control these kind of activities.

12. This Court is of the considered opinion that in respect of the uniformed forces, discipline is of paramount importance and therefore, there cannot be any compromise in the matter of performance of the duties and responsibilities. The issues are common and now, faced by the uniformed services also.

13. The efficient public administration is the constitutional mandate. Various Articles of the Constitution enumerates that the State and Union should maintain efficiency in public administration for the welfare of the people of this great nation and provide better public services. This being the constitutional philosophy and ethos, this Court is of the considered opinion that appointments of over qualified persons in the lower posts are to be stopped at once, in order to provide equal opportunity to the unemployed youths, who are all possessing suitable qualification for the particular posts notified.

14. Another point of view is also to be considered. In the event of appointing the over qualified persons in the lower posts, constitutional rights of the suitably qualified persons are infringed. If the professional degree holders and master degree holders are appointed as Sweeper, Office Assistant or to the basic services, constitutional rights of the suitable candidates, who are actually qualified for the posts under Group-4 services and last grade services, are infringed and those candidates cannot compete with the over qualified candidates in the matter of performing in the written examination. Thus, prescription of educational qualifications must be in consonance with the job profile and the nature of the posts. The concept of level playing field is to be adopted, while prescribing educational qualifications for the posts under Group-4 services and the basic services.



15. The Hon'ble Apex Court also dealt with the importance of the concept of level playing field in the matter of providing equal opportunity in public employment. In a competitive examination, more specifically, in written examination over qualified persons will undoubtedly succeed or secure more marks than the suitably qualified candidates. Thus, in the event of not prescribing the maximum educational qualifications, constitutional rights of the suitably qualified candidates are infringed and the equality clause enunciated in the Constitution is also violated. When the literacy level in the State of Tamil Nadu is considerably in increasing mode, prescription of maximum educational qualifications for these posts under Group-4 Service and basic service are of paramount importance.

16. In view of the facts and circumstances, it is necessary to *suo motu* implead the Principal Secretary to Government, Personnel and Administrative Reforms Department, Chennai as second respondent in the Writ Petition only to the limited extent to review the scheme of prescription of educational qualifications in commensuration with the nature of the posts and job profile and accordingly, take a decision and pass suitable Government Orders, prescribing the minimum educational qualifications as well as maximum educational qualifications in order to provide equal opportunity to all the citizens, who are all suitable and aspiring to secure public employment for a particular post. The over qualified persons are getting opportunity to participate in many number of posts. However, the under qualified persons cannot participate in the recruitment process for appointment to the higher post. Therefore, the educational qualifications must be in commensuration with the nature of the posts notified under the recruitment notification.

17. As far as the present Writ Petition is concerned, the writ petitioner is possessing B.E., degree. It is not a qualification for the post of appointment as per the recruitment notification issued by the first respondent. Thus, the writ petitioner is not eligible to participate in the process of selection. Even as per the Tamil Nadu Ministerial Service Rules "no person shall be eligible for appointment as Assistant by direct recruitment unless he possess a B.A., or B.Sc., degree (other than in a professional subject or B.Com., degree)". Thus, the writ petitioner is not qualified for appointment to the post notified by the Tamil Nadu Public Service Commission.

18. This being the factum, this Court is inclined to pass the following orders:-

"1. The relief as such sought for in the present Writ Petition stands rejected.

2. The second respondent is directed to review the rules in relation to the selection and appointment to various posts more specifically for the posts under Group-3 and 4 services as well as basic services and accordingly, prescribe the minimum educational qualifications as well as maximum educational



qualifications in consonance with the concept of level playing field, enabling the suitable candidates to secure public appointment by participating in the open competitive process.

3.The above exercise is directed to be done by the second respondent, within a period of twelve weeks from the date of receipt of a copy of this order."

19.With the above directions, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

/ True Copy /

Sub Assistant Registrar(CS-)

Myr

To

The Principal Secretary to Government,
Personnel and Administrative
Reforms Department,
Secretariat, Chennai.

+1 CC to M/s.K.K.SENTHIL, Advocate (SR-73143[F] dated 03/07/2019)
+1 CC to M/s.K.MU.MUTHU, Advocate(SR-73019[F] dated 03/07/2019)
+1 CC to M/s.S.SARVAGAN PRABHU,Advocate(SR-73254[F]dated 04/07/2019)

W.P(MD)No.12326 of 2014
02.07.2019

ES/18.07.2019/6P/5C