



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.08.2019
Delivered on : 29.08.2019

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CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. (MD) No. 17082 of 2019
and
WMP (MD) Nos. 13622 and 13623 of 2019

T. Sukumar .. Petitioner
Vs.

1. The Director of College Education,
9th floor, EVK Sampath Buildings,
College Road,
Chennai - 600 006.

2. The Joint Director of College Education,
Madurai Division,
Madurai.

3. Rajapalayam Raju's College,
rep. by Secretary,
Rajapalayam - 626 117,
Virudhunagar District.

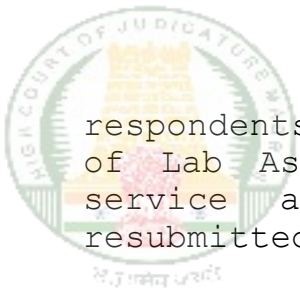
.. Respondents

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 on the file of the 2nd respondent pertaining to its proceedings in Aa.thi.mu.No.10501/22/18 dt.24.12.2018 and to quash the same and consequently direct the respondents to approve the promotion of the petitioner to the post of Lab Assistant with effect from 01.10.2018 and to grant all service and monitory benefits by considering the proposal resubmitted by the 3rd respondent.

For Petitioner	: Mr.S.C.Herold Singh
For Respondents	: Mr.Aayiram K.Selvakumar Additional Government Pleader

ORDER

This Writ Petition is filed challenging the impugned proceedings of the second respondent in Aa.thi.mu.No.10501/22/18 dated 24.12.2018 and for a consequential direction to the



respondents to approve the promotion of the petitioner to the post of Lab Assistant with effect from 01.10.2018 and to grant all service and monitory benefits, by considering the proposal resubmitted by the 3rd respondent.

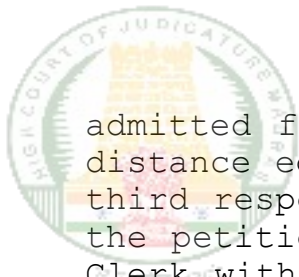
2. By consent of both the parties, the writ petition itself is taken up for final disposal at the stage of admission. In view of the order going to be passed hereunder, no notice is required to the third respondent.

3. According to the petitioner, he joined 10th standard at Rajapalayam Government High School during the academic year 1981-1982 and he did not complete the aforesaid course. Thereafter, the petitioner herein studied his 10th standard in the year 1986, through private studies and joined service as Office Assistant in the 3rd respondent college. According to the petitioner, he completed pre-foundation course during April 1995 and the said course is equivalent to 10th standard as per G.O.Ms.No.528, Personnel & Administrative Reforms (Per.R) Department, dated 13.05.1985. Under such circumstances, the petitioner is eligible to get promotion as Record Clerk. But the proposal for promotion to the petitioner was rejected by the second respondent by stating the reasons that the petitioner had undergone pre-foundation course, which is not equivalent to 10th standard. Challenging the same, the writ petitioner is before this Court with the aforesaid relief.

4. According to the learned counsel for the petitioner, G.O.Ms.No.1110 (Education Department) dated 17.09.1985, recognised the pre-foundation course obtained from Madurai Kamaraj University as equivalent to SSLC. The second respondent without considering the aforesaid Government Order, denied the promotion of the petitioner. Therefore, the impugned order passed by the second respondent is per se illegal and the same is liable to be quashed.

5. The learned Additional Government Pleader for the respondents 1 and 2 contended before this Court that the pre-foundation course undergone by the petitioner is not equivalent to the regular stream of education. Further, as per the Government Order in G.O.(Ms)No.107 Personnel and Administrative Reforms (M) Department, dated 18.08.2009, the persons, who have completed the regular stream of education, i.e., 10, +2, +3, are alone eligible for recruitment as well as promotion in the respondent department. In the case on hand, the petitioner has not completed 10th standard through the regular stream of education. Therefore, the rejection order passed by the second respondent is perfectly correct and the same does not warrant any interference at the hands of this Court under Article 226 of the Constitution of India.

6. By considering the rival submissions made by the parties concerned and on a perusal of the materials on record, it is an



admitted fact that the petitioner has studied 10th standard through distance education mode and he joined as an Office Assistant in the third respondent college and by considering the course completed by the petitioner, the third respondent college promoted him as Record Clerk with effect from 15.10.2015 and a proposal was forwarded to the Joint Director of Collegiate Education, Madurai District/second respondent herein, seeking approval for promotion of the petitioner and the same was rejected stating that the pre-foundation course as well as foundation course cannot be considered as equivalent to SSLC for next promotional post.

7.I have considered the rival submissions made on either side and perused the materials available on record.

8.The legal issue involved in the present writ petition is whether the pre-foundation course undergone by the petitioner is equivalent to S.S.L.C. or not?

9.In earlier occasions, a Division Bench of this Court in the case of Chairman, TRB and another Vs. Kanimozhi, reported in (2014) 8 MLJ 344, has held that unless the candidate had obtained a Bachelor's Degree by going through regular education under the 10 +2 +3 system he/she will not be qualified for appointment as secondary grade teacher. The relevant paragraph reads as follows:

"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 de-recognizing a degree or diploma. To put in 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 terms as provided in the G.O. passed in G.O.(Ms.) No. 107 Personnel and Administrative Reforms (M) Department, dated 18.08.2009. 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 case 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 'Postgraduate', it does not mean that degree possessed by the candidates are derecognised. What it simply means is that the eligibility qualification 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."

10. The very same issue involved in the present writ petition was dealt with in detail by the another Division Bench of this Court in W.P.No.28040 of 2018, dated 26.10.2018 [T.Karikalan v. The Secretary, Government of Tamil Nadu, Law Department, Fort St. George, Chennai-9]. The relevant paragraphs in the aforesaid decision read as follows:

30. In T.L.Muthukumar and Others vs. Registrar General, High Court, Madras and Another, reported in (2011) 2 MLJ 785, petitioners therein, were staff of this court. They did not undergo two year +2 course, but obtained degree, through open Universities. Government issued G.O.Ms No.107 dated 18.08.2009, which stated that those degrees issued by the Open University would be recognised and accepted for appointment and promotion, provided the said degree has been obtained after completing (10+2) Higher Secondary Examination. All the petitioners therein, obtained BA/BBA degree, through correspondence course, but not completed +2 course (Higher Secondary). T.L.Muthukumar and others challenged G.O.(Ms)



No.107 Personnel and Administrative Reforms Department dated 18.08.2009 and consequently, prayed for a direction to the Registrar General, High Court, Madras to consider their case for promotion.

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Thus it could be seen that, even in the case of recruitment of teachers in Government service, as well as promotion, a degree obtained under 10+2+3 pattern alone, has been permitted.

38. That apart, section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, is virtually the reproduction of G.O.Ms No.107 Personnel and Administrative Reforms Department dated 18.08.2009, which has been upheld by a Hon'ble Division Bench of this court. Needless to state decisions of a Coordinate Bench are binding.

39. In the light of the above discussion and decisions, we are of the view that the prayer sought for cannot be granted. Writ petition is dismissed."

11. Coming to the facts of the present case on hand, according to the learned counsel for the petitioner, as per G.O.Ms.No.528, Personnel & Administrative Reforms (Per.R) Department, dated 13.05.1985, the Government has considered the pre-foundation course obtained from the Madurai Kamaraj University as equivalent to 10th standard. Therefore, the impugned order passed by the second respondent requires interference by this Court.

12. The Government issued G.O(Ms)No.144, (Personnel and Administrative Reforms (M) Department, dated 20.11.2017, wherein, it is held as follows:

"4. ***

Therefore, those who obtained a degree under Open university system after passing the pre-foundation course and two year foundation without passing 10th standard and +2 examination do not satisfy the conditions laid in 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.

5. In the meantime, the Equivalence Committee in its recommendations in the letter eighth 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 course awarded by various Universities cannot be recognised as equivalent to SSLC and Higher Secondary Course (+2).

6.As the recommendation 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 emphasis to follow the clarification issued in the Government letter seventh read above scrupulously."

13.In the light of the aforesaid Government Orders as well as the decisions rendered by the Division Bench of this Court, this Court is of the view that the second respondent has rightly rejected the request for approval of the petitioner's promotion, stating that as per the present Government Orders, the pre-foundation course undergone by the petitioner is not equivalent to SSLC. In the absence of placing any materials before this Court by establishing the case of the petitioner that the aforesaid pre-foundation course undergone by the petitioner is equivalent to SSLC, the contention of the petitioner by stating that the said course is equivalent to regular stream, cannot be accepted and the same is liable to be rejected and the relief sought by the petitioner cannot be granted.

14.In fine, this writ petition stands dismissed. No costs. Consequently, WMP(MD)Nos.13622 and 13623 of 2019 are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

To

1.The Director of College Education,
9th floor, EVK Sampath Buildings,
College Road, Chennai - 600 006.

2.The Joint Director of College Education,
Madurai Division, Madurai.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-84352[F]dated 29/08/2019

Order made in

W.P. (MD)No.17082 of 2019

29.08.2019

MJ

MS/17.09.2019/6P.4C

<https://hcservices.ecourts.gov.in/hcservices/>