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W.A.(MD).No.957 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **24.09.2019**

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.A. (MD) .No.957 of 2019

and

C.M.P. (MD) .No.8658 of 2019

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

... Appellant/ 2nd Respondent

Vs.

1.M.Sakkaraichamy

... Respondent/Petitioner

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

... Respondent/1st Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.(MD).No.12326 of 2014 dated 02.07.2017.

Prayer in WP(MD). 12326/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue 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 Respondent and quash the same as illegal to the extent of reply to the query no.5 and consequently to direct the Respondent appoint the petitioner to the post of Assistant in Revenue Department within the time stipulated by this Honourable Court .

For Appellant

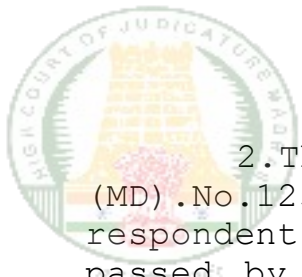
: Mr.A.K.Baskara Pandian
Special Government Pleader

JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the appellant.

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



2.This appeal is directed against the order passed in W.P. (MD).No.12326 of 2014 dated 02.07.2019 filed by the first respondent herein. Challenge in the writ petition was to an order passed by the appellant, dated 17.12.2013, which is in fact, a reply furnished under the Right to Information Act. The first respondent/writ petitioner also sought for a consequential direction to appoint him to the post of Assistant in the Revenue Department within a stipulated time.

3.The Writ Court, after considering the case of the first respondent/writ petitioner, dismissed the writ petition. In paragraph No.17 of the impugned order, it has been observed that the first respondent/writ petitioner possesses B.E., Degree qualification and it is not the prescribed qualification for the subject course as per the recruitment notification issued by the appellant. Therefore, the Writ Court held that the first respondent/writ petitioner is not eligible to participate in the selection process. Further, the Writ Court referred to the Tamil Nadu Ministerial Service Rules, which states that no person shall be eligible for appointment as Assistant by direct recruitment, unless he possess B.A., or B.Sc., Degree (other than in a professional subject or B.Com., degree). Therefore, the Writ Court concluded that the first respondent/writ petitioner is not qualified for appointment to the post notified by the Tamil Nadu Public Service Commission. It is not known as to whether the first respondent/writ petitioner has filed any appeal as against the said finding and the ultimate disposal of the writ petition.

4.However, in the event, the first respondent/writ petitioner challenges the order passed in the writ petition on the merits of the case then the Court will consider the same separately. The appellant is before us challenging the direction issued in paragraph No.18(2)(3) of the impugned order for easy reference, the relevant portion of the impugned order is extracted hereunder:

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."

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5.The question would be as to whether this Court can issue a direction to the appellant to review the Rules in relation to the selection and appointment to various posts more particularly, the post under Group III and Group-IV services as well as basic service and the prescribed minimum educational qualification as well as the maximum educational qualification. The Court came to the conclusion that many times over qualified persons have applied for basic servant post and after they have been recruited, they are not interested to perform their duties assigned to the said post. The issue would be as to whether this can be a reason for issuing a direction to the appellant to revise the qualification or in other words, direct them to enact the Rule in a particular manner. This issue has been well settled in various decisions of the Hon'ble Supreme Court to the effect that the Court can declare a law to be unconstitutional, interpret a law, strike down a provision in a statute, but the Court cannot step into the shoes of Legislative Wisdom and direct enactment of a law in a particular manner. This being the position, this Court cannot issue any direction, but however, it is always open to the appellant to examine as to whether the qualification prescribed for a particular post is appropriate qualification or not and the Writ Court would be incompetent to issue such a direction.

6.For the above reasons, this Writ Appeal stands allowed and the direction contained in paragraph No.18(2) and (3) are set aside. We make it clear that in the event the first respondent/writ petitioner approaches this Court by way of a Writ Appeal on the merits of the matter that would be heard separately and the result of this appeal will have no impact on the appeal that may be filed by the first respondent/writ petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

Sub Assistant Registrar (CS)



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

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+1 CC to M/s.GP (SR-89409[F] dated 25/09/2019)

ORDER MADE IN
W.A. (MD) No.957 of 2019
and
W.M.P. (MD) .No.8658 of 2019
24.09.2019

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