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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.08.2019
Delivered on : 30.08.2019

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR**

W.P.(MD)No.9593 of 2018
and
WMP(MD)Nos.8862 and 8863 of 2018

M.Balusamy .. Petitioner

Vs.

1.The Secretary to Govt.,
Department of Rural Development and Panchayat Raj,
Fort St. George,
Chennai - 600 009.

2.The Director,
Rural Development and Panchayat Raj Dept.,
Panagal Building,
Chennai - 600 009.

3.The District Collector,
Tirunelveli District,
Tirunelveli. .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records from the 3rd respondent herein in his proceedings in Na.Ka.No.13/18570/2016 dated 18.12.2017 and quash the same and consequently direct the respondents to promote the petitioner to the post of Overseer on par with his juniors with all attendant benefits.

For Petitioner : Mr.G.Thalaimutharasu
For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader

**ORDER**

This writ petition is directed against the impugned order passed by the third respondent in Na.Ka.No.13/18570/2016 dated 18.12.2017. A consequential direction to the respondents to promote the petitioner to the post of Overseer on par with his juniors with all attendant benefits, has also been sought for.

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2.According to the petitioner, he completed SSLC in the

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year 1987 and ITI (Civil Draughtsman) in the year 1989 and based on the said qualification, he was initially appointed as a Technical Assistant on NMR basis and thereafter, he was appointed as Road Inspector Grade – II and thereafter as Road Inspector Grade – I. At the time of working as Road Inspector Grade – II, he has undergone Diploma in Civil Engineering under Lateral Entry Scheme (2 years) at Karnataka State Open University. According to the petitioner, as per G.O.Ms.No.242, Higher Education (B1) Department, dated 18.12.2012, the Diploma (Lateral Entry) studied through distance education is equivalent to regular stream and therefore, the petitioner is eligible to get promotion to the post of Oversear. The third respondent without considering the aforesaid fact, has passed the impugned order, which is illegal and arbitrary and the same is liable to be quashed.

3.The learned Additional Government Pleader appearing for the respondents based on the counter affidavit filed by the third respondent submitted that as per G.O.(Ms)No.149, Higher Education (J2) Dept., Diploma/B.E.degree obtained through distance education is not equivalent to regular B.E.degree and based on the aforesaid Government Order, the Director of Rural Development and Panchayat Raj, Chennai/second respondent herein, had given instructions that the Road Inspectors, who have studies Diploma in Civil Engineering through distance education are not eligible for the promotional post of Oversear. Since the petitioner had obtained Diploma in Civil Engineering under Lateral Entry Scheme (2 years) at Karnataka State Open University, he is not eligible to get the promotional post of Oversear.

4.According to the learned counsel for the petitioner, the petitioner is entitled for promotion as per G.O.Ms.No.242, Higher Education (B1) Department, dated 18.12.2012, the Diploma (Lateral Entry).

5.The learned Additional Government Pleader would submit that the aforesaid Government Order is not applicable to the case of the petitioner, since the Head of the Department/second respondent herein, by letter dated 19.10.2016, has clearly given instructions to the authorities concerned that the Diploma in Civil Engineering obtained through distance education is not equivalent to the Diploma studied in regular stream. Thus, the said contention raised by the petitioner cannot be accepted. Further, the learned Additional Government Pleader relied upon the decision of the Division Bench of this Court in the case of **Chairman, TRB and another** Vs. **Kanimozhi**, reported in **(2014) 8 MLJ 344**, wherein, the Division Bench of this Court has held as follows:

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*"5.6. The issue of recognition of a degree is different from a qualification fixed in service matters.*

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*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. 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*

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*equivalent qualifications. The respondents cannot be forced to accept equivalence of certain qualifications and to accept such equivalence for all times to come."*

6.At this juncture, the learned counsel appearing for the petitioner submitted that the third respondent has passed the impugned order by stating that as per G.O.Ms.No.117, Higher Education (K2) Department, dated 02.07.2013, the Diploma obtained by the petitioner through distance education cannot be held as the Diploma obtained through regular stream. But, the aforesaid Government Order clearly reveals only B.E.Degree and not Diploma. Therefore, the impugned order passed by the third respondent is arbitrary and unsustainable in law.

7.A perusal of the said Government Order shows that only B.E.Degree awarded through distance education is considered as not equivalent. But, it is pertinent to point out that the petitioner has not at all completed the regular stream of education i.e., S.S.L.C., +2, Degree as per ***Kanimozhi's case***, and he has completed Diploma in Civil Engineering through distance education, which cannot be considered as equivalent to that of the Diploma in Civil Engineering, obtained in regular stream. Further, the subsequent Government Order in G.O.(Ms)No.149, Higher Education (J2) Dept., dated 22.07.2016 clearly says that Diploma/B.E.degree obtained through distance education is not equivalent to regular Diploma/B.E.degree qualification. Therefore, in the light of the aforesaid discussions, this Court is of the view that the impugned order passed by the third respondent is sustainable in law and the same does not require any interference at the hands of this Court.

8.In fine, this writ petition stands dismissed. No costs. Consequently, WMP(MD)Nos.8862 and 8863 of 2018 are closed.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

mj

To

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Department of Rural Development and Panchayat Raj,
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Chennai - 600 009.

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Tirunelveli District,
Tirunelveli.

+1 CC to M/s.G.THALAIMUTHARASU, Advocate ( SR-84701[F] dated 30/08/2019 )

Order made in
W.P.(MD)No.9593 of 2018
30.08.2019

_KM/(18.09.2019) 5P 5C

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