

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.11.2019

*Judgment Reserved
on:24.10.2019*

*Judgment delivered on:
04 .11.2019*

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.(MD) No.1085 of 2019

and C.M.P.(MD) No.9785 of 2019

S.Padmavathy

... Appellant/Writ Petitioner

-vs-

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai - 600 009.
- 2.The Director,
Rural Development and Panchayat Raj Department,
Panagal Building,
Saidapet, Chennai - 600 015.
- 3.The District Collector,
Virudhunagar District,
Virudhunagar.
- 4.The Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Government Estate,
Anna Salai,
Chennai - 600 003.
- 5.The Block Development Officer (Village Panchayat),
Kariapatti,
Virudhunagar District.

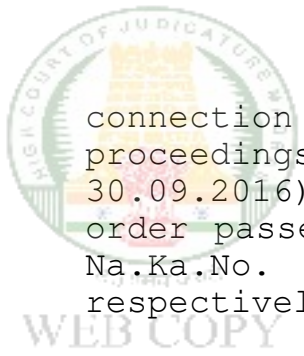
... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 30.08.2019, made in W.P.(MD) No.19628 of 2016, on the file of this Court.

Prayer in WP(MD) . 19628/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari call for the records on the file of the 2nd respondent in

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connection with the impugned order of demotion passed by him in his proceedings in Se.Mu.No. 24333/20/EE2 dated 23.09.2016 (served on 30.09.2016) and the consequential impugned appointment and relieving order passed by the 3rd and 5th respondent in their proceedings in Na.Ka.No. 27867/2016/Q1 and Na.Ka.A1/70/2016 dated 30.09.2016 respectively and quash all as illegal and ultravires.

For Appellant : Mr.G.Thalaimutharasu
For Respondents 1 to 3 : Mr.A.Muthukaruppan
Additional Government Pleader

J U D G M E N T

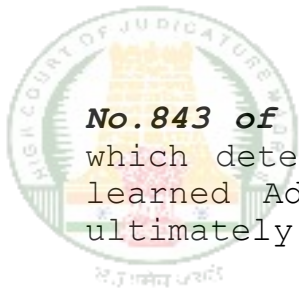
[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

This Writ Appeal by the State is directed against the order passed in W.P.(MD) No.19628 of 2016, dated 30.08.2019.

2.The appellant filed the Writ Petition for issuance of a Writ of Certiorari, to quash the order passed by the second respondent and the consequential appointment and relieving order passed by the respondents 3 to 5 as being illegal.

3.The appellant joined the services of the respondent department as an Overseer on 04.02.2008. On the date of joining service, the appellant had a diploma qualification. In the year 2008, the appellant had acquired B.E. Degree qualification under distance education mode from the Vinayaka Mission University, Salem. Based on such degree, she was promoted as Assistant Engineer by the second respondent vide order dated 23.09.2014. Subsequently, on verification of the qualification possessed by the appellant, it was found that she had acquired the B.E. Degree qualification by distance education mode, which is not equivalent to the regular course of study and accordingly, the promotion granted to the appellant was cancelled and she was reverted to the earlier post. These orders were put to challenge in the Writ Petition.

4.The Writ Court after taking note of the decision of the Hon'ble Supreme Court in the case of ***Orissa Lift Irrigation Corporation Ltd., v. Rabisankar Patro & Others in Civil Appeal Nos.17869 to 17870 of 2017***, relied on by the learned counsel appearing for the appellant and the decision of the Hon'ble Supreme Court in ***Annamalai University rep. by Registrar v. Secretary to Government, Information and Tourism Department and others [(2009) 4 SCC590]*** and the decisions of the Division Bench of this Court in ***Chairman, TRB and another v. Kanimozhi [(2014) 8 MLJ 344]***; ***K.Sakthi Rani v. The Secretary, Bar Council of Tamil Nadu, Chennai and others in W.P.Nos.26257 of 2009 etc., batch, dated 16.04.2010*** and in the case of ***S.Antonymuthu v. The Chief Engineer (Appointment), Tamil Nadu Electricity Board, Anna Salai, Chennai and others in W.P.(MD)***



No.843 of 2012, dated 30.04.2014 and the various Government Orders, which determine the equivalence of qualification, relied on by the learned Additional Advocate General appearing for the State, and ultimately dismissed the Writ Petition.

5.Mr.G.Thalaimutharasu, learned counsel appearing for the appellant after reiterating the factual position submitted that the learned Writ Court though referred to the decision relied on by the appellant in the case of **Orissa Lift Irrigation Corporation** (Supra), did not take into consideration the effect of the judgment on the appellant's case and the fact that the appellant had appeared for the special theory and practical examinations conducted by AICTE and UGC as per the directions issued by the Hon'ble Supreme Court in **Orissa Lift Irrigation Corporation** (Supra) and the Certificate of Validation of B.E. Degree has been issued by the AICTE/UGC and without taking these facts into consideration the Writ Petition was dismissed.

6.We have heard Mr.A.Muthukaruppan, learned Additional Government Pleader appearing for the respondents 1 to 3 on the above submissions.

7.The sheet anchor of the arguments advanced by Mr.G.Thalaimutharasu rests upon the decision of the Hon'ble Supreme Court in **Orissa Lift Irrigation Corporation** (Supra). The learned counsel has drawn our attention to paragraph 53 of the judgment, wherein the Hon'ble Supreme Court has issued directions. Referring to sub para IV, V and VI of para 53, it is submitted that the Hon'ble Supreme Court had directed a special theory and practical examination to be held for validation of the degree obtained by the candidates who have enrolled under distance education mode during the academic year 2001-2005 and upon being successful, the degrees obtained by those candidates would be valid and the appellant being a candidate, who enrolled herself for the B.E. Distance Education Programme in the academic session commencing from 2005 applied for validation of the degree pursuant to the public notice issued by AICTE on 02.12.2017 and she was issued Hall Ticket by AICTE and she appeared for the examination, both theory and practical, conducted during June 3rd to 6th of 2018 and she was successful in the examinations and UGC has issued a Certificate for Validation of Degree. Therefore, it is submitted that the appellant is entitled to be promoted based on the qualification obtained by her.

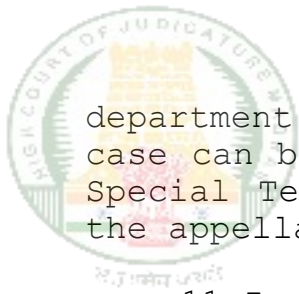
8.In **Orissa Lift Irrigation Corporation** (Supra) suspended the degrees (Bachelor of Engineering) obtained through distance education mode as was obtained by the appellant. However, the Hon'ble Supreme Court considering the misconduct of some of the functionaries, who failed to uphold the law and granted the degrees contrary to the policy and the Rules gave a reprieve to the candidates who had enrolled themselves under the distance education



programme during the academic year 2001-2005 in four deemed Universities, which includes Vinayaga Mission from which institution the appellant obtained her B.E. degree. As per the directions of the Hon'ble Supreme Court the Test was conducted by AICTE - UGC.

9. It is true that the appellant participated in the Test and she was successful and AICTE - UGC had issued a certificate of validation of the degree obtained by the appellant. What is important to note is the validation of a degree and effect of such validated degree on public employment, they are two different issues. These two issues cannot be confused or mixed up. As an employer, the State Government is entitled to fix the qualification required to be possessed by a candidate, who seeks appointment or promotion. If the candidate states that the qualification obtained by him/her is though not identical to that of the qualification prescribed under the Rules/Recruitment Notifications but it is equivalent to the qualification obtained by him/her, then the candidate has to approach the Committee constituted by the Government of Tamil Nadu called Equivalence Committee, which consists of Experts and Academicians, who will evaluate the course content, syllabus etc., of both the courses and render a decision as to whether both the qualifications are equivalent or not. If the Expert Committee takes a decision that both the qualifications are not equivalent, the Writ Court cannot set aside such expert opinion, unless and until it is shown that the decision is ex-facie arbitrary. Admittedly, in the instant case, the qualification obtained by the appellant has been held to be not equivalent to the qualifications prescribed for promotion to the post of Assistant Engineer. This aspect has been dealt with by the learned Single Judge in paragraph 16 of the impugned order. Admittedly, the appellant has not challenged the Government Orders, which have held that the B.E. Degree obtained through Distance Education is not equivalent to B.E. Degree obtained through regular stream. Furthermore, the employer, the Government is entitled to fix qualification, which is required for a post. Unless and until the appellant possesses the requisite qualification, she has no vested right to claim that she should be promoted.

10. At this juncture, it is noteworthy to mention that the qualification obtained by the appellant is an under graduate degree in engineering. The regular course of study is 4 ½ years. The syllabus prescribed for the course contains rigorous practical training and examinations. Further, there are projects to be done by the candidates in the final year of the course. If such is the course content, it is rather surprising as to how such a course can be completed through distance education mode and what would be the competence of the candidate, who secured an engineering degree by distance education mode. A mere imagination of the consequence creates severe apprehensions in the minds of the Court. A person who has secured such a degree is required to perform the duty of a Civil Engineer. It is not possible to ignore the situation that will arise in the respondent



department. Therefore, at no stretch of imagination the appellant's case can be accepted and the validation of the degree by conducting Special Test by AICTE/UGC can have no impact on the employment of the appellant or her promotion or for any other career advancement.

11. In the result, the Writ Appeal fails and the same is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
State of Tamil Nadu,
Secretariat, Chennai - 600 009.
2. The Director,
Rural Development and Panchayat Raj Department,
Panagal Building,
Saidapet, Chennai - 600 015.
3. The District Collector,
Virudhunagar District,
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4. The Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Government Estate,
Anna Salai,
Chennai - 600 003.
5. The Block Development Officer (Village Panchayat),
Kariapatti,
Virudhunagar District.

+1 CC to Mr.G.THALAIMUTHARASU, Advocate (SR-95710[F] dated 04/11/2019)

judgment in
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sj

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