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W.P.(MD)No.19628 of 2016

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.19628 of 2016

and

WMP(MD)Nos.2313 of 2017, 14151 of 2016 and 15190 of 2016

S.Padmavathy

.. Petitioner

Vs.

1.The State of Tamil Nadu,
rep.by its Principal Secretary to Govt.,
Rural Development and Panchayat Raj Dept.,
Secretariat,
Chennai - 600 009.

2.The Director,
Rural Development and Panchayat Raj Dept.,
Panagal Building, Saidapet,
Chennai - 600 015.

3.The District Collector,
Virudhunagar District,
Virudhunagar.

4.The Tamil Nadu Public Service Commission,
rep.by its Secretary,
Govt. Estate,
Anna Salai,
Chennai - 600 003.

5.The Block Development Officer (Village Panchayat),
Kariapatti,
Virudhunagar District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records on the file of the 2nd respondent in connection with the impugned order of demotion passed by him in his proceedings in Se.Mu.No.24333/20/12/EE2 dated 23.09.2016 (served on 30.09.2016) and the consequential impugned appointment and relieving order passed by the respondents 3 and 5 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.



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For Petitioner : Mr.G.Thalaimutharasu
For R1 to R3 : Mr.K.Chellapandian
Additional Advocate General
assisted by Mr.Aayiram K.Selvakumar
Additional Government Pleader
For R4 : Mr.D.Sivaraman
For R5 : Mr.Aayiram K.Selvakumar
Additional Government Pleader

ORDER

Challenge in this Writ Petition is to the impugned demotion order passed by the second respondent Se.Mu.No.24333/20/12/EE2 dated 23.09.2016 and the consequential impugned appointment and relieving orders passed by the respondents 3 and 5 in proceedings in Na.Ka.No.27867/2016/Q1 and Na.Ka.A1/70/2016 dated 30.09.2016 respectively.

2.According to the petitioner, she joined in service as Overseer on 04.02.2008 with the diploma qualification. Thereafter, she completed B.E., in Civil Engineering in the year 2008 in Vinayaka Mission University, Salem under distance education and the aforesaid B.E., degree qualification has been duly entered in the service records of the petitioner. Thereafter, she was promoted as Assistant Engineer by the proceedings of the second respondent dated 23.09.2014, based on the recommendation of the Departmental Promotion Committee inconsonance with the Tamil Nadu Public Service Commission.

3.The post of Assistant Engineer in Rural Development Department is filled up by
(i)direct recruitment and
(ii)by transfer of service from the post of Overseer or Junior Draughting Officer.

4.The qualifications prescribed under Rule 5(b) of the Tamil Nadu Panchayat Development Engineering Subordinate Service Rule for recruitment by transfer are as follows:

*"Must possess a B.E degree in Civil Engineering or
Must have passed sections A and B of the Institution
of Engineers (India) in Civil Engineering Branch and he
should furnish evidence of having undergone practical
training in Surveying for a period of not less than one
year; and*

*Must have rendered service as Overseer or Junior
Drawing Officer, as the case may be, for a period of not
less than five years.*



5.As per the said Rule, the petitioner is eligible for the promotion to the post of Assistant Engineer and accordingly, she was promoted on 23.09.2014. Subsequently, the second respondent de-promoted the petitioner vide order dated 23.09.2016 on the ground that the petitioner has not acquired the eligible qualification for the promotion to the post of Assistant Engineer. Challenging the aforesaid demotion order and the consequential impugned appointment and relieving orders passed by the respondents 3 and 5, the petitioner is before this Court.

6.According to the learned counsel for the petitioner, the petitioner possessed the required qualification for the post of Assistant Engineer. While so, the first respondent issued G.O.Ms.No.295, Rural Development (E1) Department, dated 14.12.2001 and relied upon Rule 5-A of the Special Rules for Tamil Nadu Panchayat Development Engineering Subordinate Service Rules, which prescribes the qualification of candidates based on the date of passing B.E.degree in Civil Engineering. The aforesaid Rule does not prescribe whether the degree has to be obtained in the regular stream or under distance mode. Therefore, relying upon the Government Order, reverting the petitioner to the Overseer post is illegal and arbitrary and violates Articles 14 and 16 of the Constitution of India.

7.The learned counsel appearing for the petitioner brought to the notice of this Court to the order passed by this Court in W.P.No.26001 of 2001 on 03.01.2013, wherein, it is held that the degree obtained by the petitioners therein is equivalent to the regular B.E.degree and therefore, they were given appointment. Thus, the impugned order passed by the second respondent by reverting the petitioner to the original post is contrary to the abovesaid order and the same is unsustainable in law and hence the impugned order is liable to be quashed.

8.The learned Additional Advocate General appearing for the respondents 1 to 3 drew the attention of the Court to paragraph No.5 of the counter affidavit filed by the second respondent and submitted that the Tamil Nadu Public Service Commission has recommended Resolution No.12 through Equivalent Committee that based on the policy decision taken by AICTE, the B.E. degree awarded through distance education is not equivalent to regular streams in G.O.(Ms)No.117, Higher Education (K2) Department, dated 02.07.2013. Further, G.O.(Ms)No.1435 Public (Services-A) Department, dated 19.08.1964, prescribes the procedures for cancellation of erroneous promotion or appointment of Government servant in an officiating capacity, wherein, it is stated that there is no need to ask the Government servant concerned to show cause against the cancellation of the order proposed to be passed by the department. Therefore, the prayer sought by the petitioner is totally unsustainable in the eye of law and therefore, the writ



petition is liable to be dismissed.

9. The learned counsel for the petitioner, in support of his contention, relied upon a decision of the Hon'ble Supreme Court in **Civil Appeal Nos.17869 - 17870 of 2017 [Orissa Lift Irrigation Corp. Ltd V.Rabisankar Patro & Ors.]**, wherein, it is held as follows:

"53. Accordingly we direct:

IV. The AICTE shall devise the modalities to conduct an appropriate test/tests as indicated in Para 47 above. The option be given to the concerned students whose degrees stand suspended by 15.01.2018 to appear at the test/tests to be conducted in accordance with the directions in Para 47 above. Students be given not more than two chances to clear test/tests and if they do not successfully clear the test/tests within the stipulated time, their degrees shall stand cancelled and all the advantages shall stand withdrawn as stated in Paras 46 and 47 above. The entire expenditure for conducting the test/tests shall be recovered from the concerned Deemed to be Universities by 31.03.2018.

V. ****

VI. If the students clear the test/tests within the stipulated time, all the advantages/benefits shall be restored to them and their degrees will stand revived fully.

10. The learned counsel for the petitioner submitted that the petitioner had got validation certificate from AICTE and as per the said decision of the Hon'ble Supreme Court, she is entitled to get the relief sought in the present writ petition.

11. On the other hand, the learned Additional Advocate General relied upon the order passed by a Division Bench of this Court in W.P.Nos.26257 of 2009 etc., batch, decided on 16.04.2010 **[K.Sakthi Rani Vs. The Secretary, Bar Council of Tamil Nadu, Chennai and others]**. The relevant portion of paragraph - 92 is

extracted as follows:



"92. On consideration of the above said factual and legal issues, the following conclusions are arrived at:

(i) The Rules of Legal Education, 2008, are framed in accordance with the powers conferred under Sections 7 (1)(h)&(i), 24(1)(c)(iii) and (iii a), 49(1)(af), (ag) and (d) of the Advocates Act, 1961 and hence, they are constitutionally valid;

(ii) Explanation to Rule 5 of the Rules of Legal Education, 2008, is neither contrary to Section 24(1) of the Act nor beyond the rule making power conferred on the Bar Council of India under section 49 of the Advocates Act, 1961;

(iii) The Bar Council of India is well within its rights to insist that **a person having a decree from the Open University under the Indira Gandhi National Open University Act, 1985, cannot be allowed to join a law course in a Law University** recognised by it and the Bar Council of Tamil Nadu and Bar Council of India can also refuse to enroll such a person who joins the law course and completes the same. The judgment of the Honourable Apex Court in Annamalai University represented by Registrar v. Secretary to Government, Information and Tourism Department and others, is binding on the Bar Council of Tamil Nadu and Bar Council of India insofar as the applicability of the University Grants Commission Act and Regulations, but the said judgment cannot be applied to the petitioners who have already obtained the law degree. The Rules of Legal Education, 2008, cannot be made applicable to the case of the petitioners who had already completed their law course at the time of coming into force of the Rules;

(iv) The petitioners are not entitled to succeed based upon Article 14 of the Constitution of India;

12. In the case of **Annamalai University rep. by Registrar Vs. Secretary to Government, Information and Tourism Department and others**, reported in (2009) 4 Supreme Court Cases 590, the Hon'ble Supreme Court has held that Master's degree obtained in open university system without obtaining a first (Bachelor's) degree is not valid.

13. In the case of **Chairman, TRB and another Vs. Kanimozhi**, reported in (2014) 8 MLJ 344, the Division Bench of this Court has held 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. 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 is 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."

14. The learned Additional Advocate General has also relied upon G.O.Ms.No.756, Public (Services - A) Department, dated 22.04.1964, wherein the Government have prescribed the procedures to be followed for cancellation of promotion or appointment order, if it is found to be erroneous. Paragraph - 3 of the said Government Order reads as follows:

3. The procedure to be followed is indicated below:

(i) Erroneous promotion or appointment to a post in substantive capacity

(a) An order of confirmation which is clearly contrary to the relevant statutory rules may be cancelled by the competent authority straight away. Here the order of confirmation was on initio void as it was ultra vires of the relevant rules and cancellation of the order would be justified on the ground that there was no valid subsisting order at all and the act of cancellation is a mere formality. The effect of cancellation would be to put the employee concerned in a position of never having been confirmed.

(b) An order of confirmation which is contrary to executive orders or administrative instructions may be cancelled by the competent authority. If such erroneous order of confirmation has operated to the prejudice of some identifiable person who would otherwise have been confirmed if the orders would have been correctly applied. Here the order of cancellation would be just and equitable as the confirmation of the employee concerned operates unfairly to the detriment of another employee who would have otherwise been confirmed. Such cancellation will not have the effect of doing any injustice to the employee whose confirmation is cancelled, since he was, under the executive orders or administrative instructions in force, not entitled to confirmation.

(c) It would, however, be in consonance with the principles of natural justice that a notice to show cause why the orders of confirmation should not be cancelled be given to the affected party in both the types of cases specified in clauses (a) and (b) above.

(ii) Erroneous orders of promotion or appointment of a Government servant in an officiating capacity to a higher post. The procedure indicated in sub paragraph (1) above need not be followed.



(iii) Any consequential promotion or appointments of other Government servants made on the basis of the incorrect promotion or appointment of particular Government servant will also be regarded as erroneous and such orders also will be cancelled in the same manner as indicated in sub-paragraph (i) and (ii) above.

15. The learned Additional Advocate General has also relied upon the decision of this Court in **W.P.(MD)No.843 of 2012, dated 30.07.2014 [S.Antonymuthu Vs. The Chief Engineer (Appointment), Tamil Nadu Electricity Board, Anna Salai, Chennai and others]**. The relevant paragraph of the aforesaid order read as follows:

"6. The learned counsel for the petitioner would submit that without affording any opportunity, the impugned order has been passed. In this contention also, I do not find any force, for the simple reason that when the date of birth of his daughter is not in dispute, failure to afford any opportunity will not make any difference in the ultimate order to be passed. Allowing any further opportunity will be only an empty formality. Therefore, though it may be stated that sufficient opportunity was not afforded to the petitioner, on that ground the impugned order cannot be found fault with, because the date of birth of his daughter is not in dispute at all."

16. The Government issued G.O.No.117, Higher Education (K2) Dept., dated 02.07.2013, wherein it is stated that B.E.degree qualification obtained through distance education cannot be considered as equivalent to regular B.E. degree. Further, as per G.O.(Ms)No.149, Higher Education (J2) Dept., dated 22.07.2016, B.E.degree obtained through distance education is not equivalent to regular B.E.degree.

17. Coming to the facts of the case on hand, the petitioner was promoted as Assistant Engineer on 23.09.2014, whereas, the aforesaid G.O.No.117, Higher Education (K2) Dept., was issued by the Government on 02.07.2013 by stating that the B.E.degree obtained through distance education cannot be considered as equivalent to regular B.E. degree. Therefore, on the date of promotion of the petitioner, ie., on 23.09.2014, she has not prescribed the qualification of B.E.degree through regular course. Therefore, the petitioner cannot seek the aforesaid relief, having the B.E.degree obtained through distance education, which is not equivalent to regular B.E.degree.

18. Based on the recommendation made by the Equivalent Committee, the Government had taken a decision that B.E degree, obtained through distance education is considered as not



equivalent to the B.E.degree obtained through regular stream. Further, in **Kanimozhi's case**, the Division Bench of this Court has held that the State Government, being employer, has every right to prescribe the eligibility criteria for promotion as well as recruitment. Further, the petitioner has not at all completed the regular stream of education i.e., S.S.L.C., +2, Degree as per the decision of **Kanimozhi's case** and she has completed B.E.degree, through distance education mode, which cannot be considered equivalent to that of regular streams. Further, G.O.(Ms)No.149, Higher Education (J2) Dept., dated 22.07.2016 clearly says that B.E.degree obtained through distance education is not equivalent to regular B.E.degree.

19.In view of the foregoing discussions, this Court finds no merit in the contentions raised by the learned counsel for the petitioner. Thus, the writ petition is liable to be dismissed.

20.In fine, this writ petition stands dismissed. No costs. Consequently, WMP(MD)Nos.2313 of 2017, 14151 of 2016 and 15190 of 2016 are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

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To

1.The Principal Secretary to Govt.,
State of Tamil Nadu,
Rural Development and Panchayat Raj Dept.,
Secretariat,
Chennai - 600 009.

2.The Director,
Rural Development and Panchayat Raj Dept.,
Panagal Building, Saidapet,
Chennai - 600 015.

3.The District Collector,
Virudhunagar District,
Virudhunagar.



4.The Secretary,
Tamil Nadu Public Service Commission,
Govt. Estate,
Anna Salai,
Chennai - 600 003.

5.The Block Development Officer (Village Panchayat),
Kariapatti,
Virudhunagar District.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-84659[F] dated
30/08/2019)

+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-84700[F] dated
30/08/2019)

Order made in
W.P. (MD)No.19628 of 2016
30.08.2019

_KM/ (18.09.2019) 10P 8C