



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) Nos.20273 and 20274 of 2017

and

W.M.P. (MD)Nos.16518 and 16519 of 2017

WEB COPY

N.Dominic Fonseka ... Petitioner in W.P.(MD)No.20273 of 2017
S.Ganesh Kumar ... Petitioner in W.P.(MD)No.20274 of 2017

-Vs-

1.The Secretary to the Government of Tamil Nadu,
Animal Husbandary & Fisheries Department,
Fort St. George, Chennai-600 009.

2.The Director of Fisheries,
DMS Complex, Teynampet,
Chennai-600 018.

... Respondents
in both Writ Petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents 1 and 2 herein to promote the petitioners as Sub-Inspector of Fisheries from 05.10.2017 to the post of Sub-Inspector of Fisheries, by way of promotion from the existing post of Fisheries Overseas Grade-I.

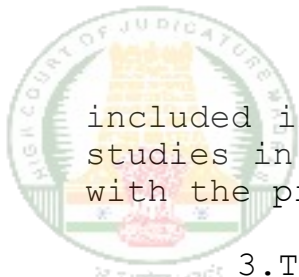
For Petitioner : Mr.S.Kadarkarai
(in both Writ Petitions)

For Respondents : Mr.S.Dhayalan,
Government Advocate.
(in both Writ Petitions)

COMMON ORDER

These Writ Petitions are filed to direct the respondents to promote the petitioners as Sub-Inspector of Fisheries from 05.10.2017, by way of promotion from the existing post of Fisheries Overseas Grade-I.

2.According to the petitioners, they are working as Fisheries Overseas Grade-I. The next level of promotion is Sub-Inspector of Fisheries. The petitioners possessed requisite qualification to be promoted as Sub-Inspector of Fisheries. The petitioners, apprehending that their names will not be included in the panel for promotion, gave representations to the respondents. However, no order was passed on the representations. Subsequently, the respondents have published the panel for the promotion to the post of Sub-Inspector of Fisheries on 04.08.2017. The petitioners' names were not found in the said panel. The petitioners' juniors were



included in the panel on the ground that they have completed their studies in the regular course. Hence, the petitioners have come out with the present Writ Petitions.

3.The respondents filed counter affidavit. The learned Government Advocate appearing for the respondents contended that the petitioners are not possessing requisite minimum general educational qualifications to be promoted as Sub-Inspector of Fisheries. The petitioners are possessing only pre-foundation course, which is not equivalent to the minimum general educational qualifications required by the respondents. Hence, the petitioners are not entitled to be promoted as Sub-Inspector of Fisheries and prayed for dismissal of the Writ Petitions.

4.Heard the learned counsel appearing for the petitioners, the learned Government Advocate appearing for the respondents and perused the materials available on record carefully.

5.The contention of the learned counsel appearing for the petitioners is that the petitioners are possessing pre-foundation course, which is equivalent to 10th standard. The contention of the learned Government Advocate appearing for the respondents is that the petitioners are not possessing requisite minimum general educational qualifications to be promoted as Sub-Inspector of Fisheries and pre-foundation course possessed by the petitioners, is not equivalent to the minimum general educational qualifications.

6.From the averments made in the counter affidavit, it is seen that by G.O.Ms.No.528, P&AR Department, dated 18.05.1985 and G.O.Ms.No.1110, Education (HS-2) Department, dated 17.09.1985, the Government has issued orders that the pre-foundation course and the two years foundation course of the Madurai Kamaraj University (Open University) be recognized as equivalent to 10 years of SSLC and Higher Secondary Course of the Tamil Nadu Government respectively, for the purpose of entry into public services. In view of the said Government Orders, the petitioners are possessing educational qualification of SSLC. The minimum general educational qualification prescribed for the post of Sub-Inspector of Fisheries is, SSLC or Higher Secondary. The Government has issued clarification in the letter No.33448/M2/2010-4, P&AR (M) Department, dated 03.12.2010 and stated that pre-foundation course is not equivalent to Higher Secondary and SSLC course. The said contention is not a valid ground for not including the petitioners in the panel for promotion as per the said Government Orders. The petitioners' qualifications are equivalent to SSLC and based on the said Government Orders, the petitioners were permitted to participate in the departmental test and they were promoted as Fisheries Overseas Grade-I from Grade-II and the petitioners have a right by the Government Orders. The said vested right given by the Government Orders cannot be taken away by issuing clarification. However, the



effect to only prospectively. In view of the same, non-inclusion of the petitioners in the panel for promotion to the post of Sub-Inspector of Fisheries, is not valid.

7. For the above reasons, these Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P AND A)

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Sub Assistant Registrar(CS)

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To

1. The Secretary to the Government of Tamil Nadu,
Animal Husbandary & Fisheries Department,
Fort St. George, Chennai-600 009.

2. The Director of Fisheries,
DMS Complex, Teynampet,
Chennai-600 018.

+1 CC to M/s.S. KADARKARAI, Advocate (SR-91104[F] dated
03/10/2019)

+1 CC to M/s.GP (SR-91339[F] dated 04/10/2019)

W.P. (MD)No.20273 and 20274 of 2017
03.10.2019

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