IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

W.P. 16893 of 2013

A.Frank Alexander Tennison .. Petitioner

Versus

1. State of Tamil Nadu,
   rep. by its Secretary to Government,
   Finance (Treasuries & Accounts) Department,
   Secretariat,
   Chennai-600 009.

2. The Commissioner of Treasuries and Accounts,
   Panagal Building,
   Saidapet,
   Chennai-600 015.

3. The Treasury Officer,
   District Treasury Officer,
   Collectorate Campus,
   Salem-636 001, Salem Dt. ...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 pertaining to the order passed by the 1st respondent in G.O. (2D) No.105, Finance (Treasuries and Accounts) Department, dated 23.08.2013 and quash the same, and direct the respondents to include the name of the petitioner in the panel for promotion to the post of Accounts Officer (Class III) for the year 2012-2013 and give promotion to the petitioner as Accounts Officer (Class III) from the date on which, juniors were promoted and confer all the consequential benefits.
(prayer amended as per order dated 04.07.2018 in M.P.3 of 2013 in WP No.16893 of 2013)

For Petitioner : Mr.P.Ganesan for M/s. C.S.Associates

For Respondents : Mr.S.Thangavel, Special Govt. Pleader

ORDER

This Writ Petition has been filed challenging the Government Order in G.O. Ms. No.105, Finance (Treasuries and Accounts) Department, dated 23.08.2013 and consequently include the petitioner's name in the panel for promotion to the post of Accounts Officer (Class III) for the year 2012-2013, and give promotion to the petitioner from the date on which, juniors were promoted and to confer all consequential benefits.

2. The brief facts leading to the file of this Writ Petition is that, the petitioner was appointed as Junior Assistant in the Treasuries and Accounts Department on 10.12.1985. Subsequently, he was promoted as Assistant in September 1993, and further promoted as Superintendent in the year 2008 and as Assistant Treasury Officer in the year 2011. The next avenue of promotion is to the post of Accounts Officer (Class III). The crucial date for preparing panel was on 15.06.2012. His name was also recommended by the District Treasury Officer. Thereafter, the Government has issued a Government Order, in G.O. Ms. No.169, Finance (Treasuries and Accounts I) Department, dated 24.05.2013, wherein, names of 64 persons were included leaving the petitioner's name, on the ground that, the petitioner was not possessing necessary qualification and not passed the Accountancy test in Higher Grade examination. According to the petitioner, one of the qualification for the promotion to the post of Assistant Accounts Officer (Class III) is that, a pass in the accountancy test, in Higher Grade examination, however, any person, who is possessing B.Com. Degree, not required to pass Accountancy test in Higher Grade examination. Subsequently, in the year 1998, the Government has issued a G.O. Ms. 289, Personnel and Administrative Reforms Department, dated 09.12.1998, wherein the Government has held that a person, who has got M.Com. Degree through Open University System of Madurai Kamaraj University without passing B.Com. Degree, with Accountancy as an optional subject, can be considered for giving exemption from passing Accountancy Lower/Higher Grade examination for the purpose of departmental promotion or sanction of increment.

3. According to the petitioner, as per the above said G.O., petitioner posses M.Com. Degree with accountancy as optional subject. Hence, qualification of passing Accountancy test in Higher Grade Examination is not required. In the above circumstances, earlier, the petitioner has challenged the promotion panel issued in G.O. Ms. No.169, dated 24.05.2013. Pending Writ Petition, by way of interim order dated 24.06.2013, the petitioner was directed to make a representation to the 1st respondent to include his name pursuant to a G.O. Ms. 289, Personnel and Administrative Reforms Department, dated 09.12.1998. Pursuant to the direction, the 1st respondent had passed another order in G.O. Ms. 105, Finance (Treasuries and

Accounts) Department, dated 23.08.2013 rejecting the petitioner's request, on the ground that, the petitioner has obtained M.Com. Degree through open university system, without passing B.Com. Degree, and the degree is not recognised for promotion as per G.O.Ms. 116, Personnel and Administrative Reforms Department, dated 18.08.2010. Now, the petitioner has filed a petition to amend the prayer to challenge the above said order.

4. The 2nd respondent has filed a counter affidavit relying upon the Government Order in G.O. Ms. 116, Personnel and Administrative Reforms Department, dated 18.08.2010, stating that, the Science degree obtained in under Graduate Course, is not eligible for admission to a Commerce Degree in Post Graduate course. Hence, the M.Com. Degree obtained through Open University system without passing B.Com. Degree is not recognised. Hence, the M.Com. Degree obtained by the petitioner cannot be considered for promotion.

5. Mr.P.Ganesan, learned counsel appearing for petitioner would vehemently contented that, this court, earlier, has specifically directed the 1st respondent to consider the representation based on the G.O. Ms. 289, dated 09.12.1998 and to pass orders. Without considering the above said G.O., the 1st respondent now relying upon another Government Order issued in G.O. Ms. 116, dated 18.08.2010, rejected the petitioner's claim without application of mind. However, the Government has issued G.O. Ms.289, Personnel and Administrative Reforms Department, dated 09.12.1998 in respect of M.Com. Degree obtained through Open University System of Madurai Kamaraj University, wherein it has been specifically held that M.Com. Degree without passing B.Com. Degree with Accountancy as optional subject can be considered for giving exemption from passing Accountancy test in higher grade examination. The above G.O. is still in force. However, according to the learned counsel, the G.O. Ms. 116, P. & A.R. Department, dated 18.08.2010 has been issued based on the judgment of Hon'ble Supreme Court of India in Annamalai University Vs. Secretary to Government, Information and Tourism Department, and others, dated 25.02.2009, wherein it was held that, the Post Graduate Degree without basic degree is not valid.

6. The learned counsel further submitted that, a careful reading of G.O. Ms. 116, P. & A.R. Department, dated 18.08.2010, the Government has only directed that, persons, who possess Post Graduate Degree through Open University System without obtaining basic under graduate degree cannot be considered as possessing a Post Graduate Degree for appointment to public services. As per the above said G.O., any person, obtained Post Graduate degree without basic degree, is prohibited from seeking appointment based on the Post Graduate degree. So far as the petitioner is concerned, he is possessing the basic Bachelor's degree obtained through regular course. The learned counsel further submitted

that, the Tamil Nadu Public Service Commission also recognised the above degree for the purpose of granting exemption. However, the respondents without even considering the above said G.O. has mechanically rejected the petitioner's request relying upon the G.O. Ms. 116, dated 18.08.2010.

7. Mr.S.Thangavel, learned Special Government Pleader appearing for respondents would contend that, the basic qualification for promotion to the post of Accounts Officer (Class III) is that, person must possess a pass in Accountancy in higher grade examination, however, any person, who possess B.Com. Degree, that requirement is exempted. But, in the case of petitioner, admittedly, he is having Bachelor's degree in Science subject, subsequently obtained Post Graduate degree in M.Com. through open university system. Now, this Court as well as Hon'ble Supreme Court of India in Annamalai University Vs. Secretary to Government, Information and Tourism Department, and others, dated 25.02.2009, has held that, without basic degree in the same subject, the Post Graduate degree obtained by a candidate cannot be recognised. Based on the above, the Government issued G.O. Ms. 116, P. & A.R. Department, dated 18.08.2010 holding that, a person, who has obtained Post Graduate degree without basic degree cannot be considered as possessing a Post Graduate degree for appointment to public services. The respondents have also relied upon the above said Government Order while rejecting the petitioner's request.

8. I have considered the rival submissions made by learned counsel appearing for petitioners as well as learned Special Government Pleader appearing for respondents, and perused the records carefully.

9. The premortial contention of the learned counsel appearing for petitioner is that, the G.O. Ms. 289, P. & A.R. Department, dated 09.12.1998 has been specifically issued for granting exemption from passing Accountancy in higher grade examination to the employees possessing M.Com. Degree, without B.Com. Degree, admittedly, the above G.O. is still in force. The petitioner is possessing M.Com. Degree, and also passed the accountancy as one of the subject in M.Com. And as per the above said G.O., the petitioner is exempted from passing accountancy test. Considering the above circumstances, this Court, by way of an interim order, directed the 1^{st} respondent to consider the representation as per G.O. Ms. 289, P. & A.R. Department, dated 09.12.1998, but without considering the same, the impugned order has been passed.

10. A perusal of interim order dated 24.06.2013 passed by this court, it is seen that, earlier, the petitioner has made a representation to the 1^{st} respondent to consider his name for promotion granting exemption from passing Accountancy test as per the G.O. Ms.289, dated 09.12.1998, that was not considered

by the 1st respondent. Hence, this Court by way of an interim order directed the 1st respondent to consider the same, and pass suitable orders. However, the 1st respondent without considering the above said G.O. has rejected the petitioner's request relying upon G.O. Ms. 116, P. & A.R Department, dated 18.08.2010. Even though there is a dispute whether the G.O.Ms. 116 is applicable to the case of promotion, at this stage, this Court is not inclined to go into the above controversy. Considering the fact that, this Court has specifically directed the 1st respondent to consider the petitioner's representation based on the G.O. Ms. 289, dated 09.12.1998, the 1st respondent without considering the same, has passed the impugned order only relying upon the G.O. Ms. 116, dated 18.08.2010. In the said circumstances, I am inclined to set aside the order passed by the 1st respondent in G.O. (2D) No.105, Finance (Treasuries and Accounts) Department, dated 23.08.2013, and remand the matter back to the 1st respondent. The 1st respondent is directed to consider the petitioner's claim as per G.O. Ms. 289, P. & A.R. Department, dated 09.12.1998, and to pass suitable orders on merits in accordance with law. The above exercise is directed to be completed within a period of eight weeks from the date of receipt of copy of this order. Accordingly, this Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

rpp

To

1. Secretary to Government,
State of Tamil Nadu,
Finance (Treasuries & Accounts)
Department,
Secretariat,
Chennai-600 009.

2. The Commissioner of Treasuries
and Accounts,
Panagal Building,
Saidapet,
Chennai-600 015.

3. The Treasury Officer,
District Treasury Officer,
Collectorate Campus,
Salem-636 001, Salem Dt.

+1cc to M/s.C.S.Associates, Advocate SR.No.23846

+1cc to Government Pleader SR.No.24123

W.P. 16893 of 2013

SS(CO)
GMY(01/07/2020)