

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.No.27855 of 2011

&

M.P.No.1 of 2011, W.M.P.Nos.12980 and 12682 of 2018

M.Selvakumaran

... Petitioner

Vs.

1.Government of Tamil Nadu
represented by its Principal Secretary
Department of Commercial Taxes and Registration
Secretariat, Chennai

2.Inspector General of Registration
No.100,Santhome High Road,
Chennai-600 028

3.District Registrar, Registration Department
Chengalpattu

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certioraified Mandamus to call for the records relating to the impugned order of the 2nd respondents impugned order in proceedings vide letter No.30627/A-1/2011 dated 26-9-2011 and quash the same as illegal and consequently direct the 2nd respondent to include the name of the Petitioner above his junior whose name finds place at Sl No.43 of the seniority list published by the 2nd respondent vide their proceedings in No.15111/A1/2011-1 dated 23-6-2011 and further direct to the 2nd respondent to extend all the promotional avenues and attended benefits at par with his junior at sl No.43 of the 2nd respondents proceedings in No.15111/A1/2011-1 dated 23-6-2011.

For Petitioner : Mr.S.R.Arumugam

For Respondents: Mr.T.M.Pappiah, Spl.Govt.Pleader

O R D E R

Aggrieved over the non inclusion in the panel for the year 2011-12 for the post of Sub Registrar Grade I, the petitioner is before this Court.

2. Petitioner is working as Sub-Registrar Grade II. He passed his SSLC examination during March 1982 and Higher Secondary 07.06.1984. He joined Indian Air Force on 18.02.1986 as Combatant member through competitive selection as Air Craft Technician in Mechanical stream. He had put in 20 years of service and was discharged with effect from 01.03.2006. He has completed the training as weapon fitter and was issued a certificate on 27.02.2006. As per O.M.No.15012/8/82-Estt (D) Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personal and Training) New Delhi dated 12.02.1986 Sub Rule(4) was inserted to Rule 6 of Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules 1979, by which a matriculate who has put in 15 years of service was considered to be eligible for appointment to the posts for which the ascertain educational qualification prescribed is graduation. Sub-Rule 4 reads as under:

"4. For appointment to any reserved vacancy in Group C posts, a matriculate Ex-servicemen (Which term includes an ex-servicemen, who has obtained the Indian Army/Special certificate of Education or the corresponding certificates in the Navy or the Air Force), who was put in not less than 15 years of service in the Armed Forces of the Union may be considered eligible for appointment to the posts for which the ascertain educational qualification prescribed is graduation."

As per the above rule a matriculate Ex-Servicemen who has put in 15 years of service shall be considered for appointment to the Group C post for which essential qualification is graduation. As stated above on 27.02.2006 a certificate was issued by Indian Air Force to that effect. The discharge book issued to the petitioner also shows at Column 29 educational qualification shall be considered as graduation as per the above O.M.

3. The petitioner has applied for selection in an examination conducted by Tamil Nadu Public Service Commission viz., Combined Sub-ordinate Services Examination 2017 and was selected. He was then posted as Sub-Registrar Grade II and discharged his service as such. His probation was declared and was confirmed in the said post. The next promotional post of Sub-Registrar Grade II is Sub-Registrar Grade I. The eligibility for being considered to post of Sub-Registrar Grade I is merit and ability and passing the Departmental tests. The eligibility criteria is as follows:

- " a. Probation of Sub Registrar Grade-I to be completed at the stipulated period
- b. Passing of the following department

- tests/examination conducted by the Tamil Nadu Public Service Commission
- i. The Registration Act, 1908 (Group-I, Part-I)
 - ii. The Tamil Nadu Registration Manual (Group-I, Part II)
 - iii. The Stamp Act, 1899 (Group-II)
 - iv. Miscellaneous Acts (Group-II)
 - v. The Tamil Nadu District Office Manual
 - vi. Third Language Test
 - vii. The Account Test for Sub-ordinate Officers Part-I
 - viii. The Account Test for Executive Officers (For the promotion to the post of District Registrar)

4. The petitioner has passed all the examinations and is fully eligible to be considered for promotion. However, the respondent published a panel of persons fit for promotion to the post of Sub-Registrar Grade I on 23.06.2011. The petitioner's name was not included in the panel. Therefore, he made a representation on 28.06.2011 followed by another dated 01.08.2011. However, the 2nd respondent by his reply dated 26.09.2011 has stated that those who have obtained Post Graduate degree through Open University without passing the basic degree cannot be considered as possessing a Post Graduate degree for appointment to public service as per G.O.Ms.No.116 P& AR Department dated 18.08.2010. Since the petitioner has acquired Post Graduate degree through Open University his name was not included in the panel.

5. I have considered the submissions made by both sides.

6. It is pertinent to note that the petitioner was selected through Tamil Nadu Public Service Commission after undergoing the examination conducted by it and other regular processes. After verification of all his certificates and eligibility he was appointed as Sub-Registrar Grade II. He has discharged his duty and his probation was also declared. Thereafter, he was confirmed in the said post. Admittedly, the petitioner has passed all the departmental tests and has become eligible to be considered for promotion. As mentioned above, the eligibility criteria for being considered for promotion to the post of Sub-Registrar Grade I is that the Government servant should have completed the probation and pass the departmental tests mentioned above. In view of the same, the petitioner is fully eligible to be considered for promotion.

7. It is also pertinent to note that as per Sec.27 in Volume III of Tamil Nadu Services Manual, it is made clear that the appointment to the post of Sub-Registrar Grade I shall be by

promotion from Sub-Registrar Grade II and by recruitment by transfer from among the holders of posts of Assistant in the Registration Department. The Manual does not prescribe any educational qualification for promotion to the post of Sub-Registrar Grade I. In fact for the purpose of appointment to the post of Sub-Registrar Grade II by direct recruitment qualification of possessing B.A or B.Sc degree is required. Admittedly, the petitioner was considered and appointed to the post of Sub-Registrar Grade II by examination conducted by Tamil Nadu Public Service Commission. His appointment as such is not disputed and eligibility condition is also not disputed. In such circumstances, imposing a new condition which is not specified in the rules is not sustainable. Acquiring a Post Graduate degree from an Open University will not prohibit the candidate from being considered for promotion. Even without acquiring the Post Graduate degree, the petitioner is eligible to be considered for promotion. As such his acquiring Post Graduate degree is totally irrelevant for the purpose of inclusion in the panel for the year 2011-12 to the post of Sub-Registrar Grade I.

8. Secondly, as per O.M.No.15012/8/82-Estt (D) Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personal and Training) New Delhi dated 12.02.1986, it is specifically mentioned that a matriculate Ex-service men who has put in 15 years of service shall be considered as a Graduate. As per Office Memorandum No.F.18-52/75/T2/T7, Government of India issued by Ministry of Educational and Social Welfare (Department of Education Government of India) dated 22.07.1977, Trade certificate issued by Indian Air Force is equivalent to Diploma in Engineering. In so far as the post of "Weapon fitter" is concerned, it is equivalent to Diploma in Mechanical Engineering. The equation of this post has been recognised in G.O.,Ms.No.418, P&AR (Per.R) Department dated 26.06.1990 and Government accordingly recognised the trade certificate issued by Indian Air Force as equivalent to Diploma in Mechanical Engineering awarded by the Department of Technical Education and Training for appointment to the posts in the State Government.

9. In G.O.Ms.No. 121 P&AR (Per.R) Department dated 21.04.1993, it was further clarified that in respect of individual for appointment in Neyveli Lignite Corporation Limited, in G.O.Ms.No.106 P&Ar (Per.R) Department dated 11.06.1999, the Government has taken a decision to accept the recommendation of a committee appointed for this purpose and decided to accept and directed for automatic acceptance of equivalence of various Military trades with that of the Civil Trades as published by the Government of India and recognised the course trade for the purpose of employment in Public

services in the State Further, it is relevant to note that these diplomas were also recognised by All India Council for Technical Education. Therefore, the trade certificate issued by the Indian Air Force in the present case has been recognised by the Government of Tamil Nadu for the purpose of appointment in the State services.

10. While the matter stood thus, vide G.O.Ms.No.77 Public (Ex-Servicemen) Department dated 23.01.2018, Government has decided to accept the proposal of Director of Ex-servicemen welfare, Chennai and accordingly directed that for appointment in any reserved vacancy in Group C-post , the matriculate Ex-servicemen who has put in not less than 15 years of service in Armed Forces of the Union shall be considered eligible for appointment for the post for which the essential qualification prescribed is graduation. They are all eligible for promotion to all Group A and Group D posts in routine course excepting for those posts for which graduation is prescribed as prescribed qualification for promotion. From the above Government Order, it is very clear that a matriculate Ex-service men who has put in 15 years of service is eligible to be appointed to the post where graduation is fixed as educational qualification.

11. Apart from this the certificate issued by the Indian Air Force in favour of the petitioner to the effect that Diploma in Mechanical Engineering acquired by the petitioner is equivalent to Degree in Engineering awarded by Government of India, Ministry of Education and Social Welfare Department of Education O.M.No.F18-19/75/T2 dated 22.06.1977. From consideration of all these Government Orders mentioned above as well as the Official Memorandum of Central Government, it is very clear that the petitioner shall be construed as a graduate. Once he is a graduate, he is entitled to acquire Post Graduate qualification through Open University. What is stated in S.O.Ms.No.116 P&AR Department dated 18.08.2010 was that those who possess Post Graduate degree without possessing the basic degree are not eligible to be considered for appointment in public services. In the instant case, as discussed above, the petitioner for all purpose shall be considered as a graduate possessing Degree in Engineering. Therefore, securing Post Graduate degree from Open University is not a bar for consideration. Further, it should be noted that G.O.Ms.No.116, P&AR (Per.R) Department only specifies certain limitations for the purpose of appointment to Public services and it does not prohibit promotion. Even assuming there is prohibition for considering for promotion, in the instant case Post Graduate degree is not an essential qualification for being considered to the post of Sub-Registrar Grade I.

12. Further, the said Government Order will operate only

prospectively and it will not have retrospective operation. Therefore, viewing from any angle, the non inclusion of the name of the petitioner in the panel for promotion to the post Sub-Registrar Grade I is totally unsustainable, illegal, arbitrary and bad for non application of mind.

13. The petitioner being fully qualified, instead of including his name in the panel for promotion for the year 2011-12, he was deprived of the benefits by wrongly applying a Government Order which is irrelevant to the promotion to the post of Sub-Registrar Grade I. Therefore, the order impugned in the present writ petition passed by the 2nd respondent in his proceedings vide letter No.30627/A-1/2011 dated 26.09.2011 is liable to be set aside and accordingly set aside. It is submitted by the petitioner that pursuant to the preparation of panel for the year 2011-12 his juniors have been promoted.

14. In the opinion of this Court, the petitioner was not only deprived of his status, monetary benefits and his experience in the higher posts but must have undergone mental torture too.

15. Considering the totality of the circumstances, it is fit to issue a direction to consider the petitioner for promotion by including him in the panel for the year 2011-12 on par with his immediate junior and accord him all further promotions with monetary and all other attendant benefits within a period of 12 weeks from the date of receipt of a copy of this order.

Accordingly, the writ petition stands allowed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal Secretary
Government of Tamil Nadu
Department of Commercial Taxes and Registration
Secretariat, Chennai

2.The Inspector General of Registration
No.100,Santhome High Road,
Chennai-600 028

3.The District Registrar, Registration Department
Chengalpattu

+lcc to Mr.R.Arumugam, Advocate, S.R.No.11072
+lcc to the Government Pleader, S.R.No.11806

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NMI (CO)
GN(08/10/2020)



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