



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.No.25686 of 2012

&

M.P.Nos.1&2 of 2012

G.Senthil Kumar

... Petitioner

Vs.

1. The Inspector General of Registration
120, Santhome High road
Chennai-600 028

2. Secretary to Government
Commercial Taxes and Registration Department
Government of Tamil Nadu
Secretariat, Chennai-600 009

... 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 respondent in Letter No.15490/K/2011-2, dated 10.02.2012 and the consequential order of the 1st respondent issued in No.15111/A1/2011 dated 27.03.2012 and quash the same and consequently, direct the 1st respondent to include the name of the petitioner in the panel prepared for promotion as Sub Registrar Grade-I above the name of R.Venkatesan (serial No.8) his immediate junior.

For Petitioner : Mr.M.Ramamoorthi

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

O R D E R

The petitioner, after having passed X standard in the year 1996 and Higher Secondary in the year 1998, obtained a post graduate degree in Sociology in the year 2004. He was selected through Tamil Nadu Public Service Commission for recruitment in Government services, in a competitive exams conducted in the year 2007. He was appointed as Sub-Registrar Grade- II under the control of first respondent. He completed his probation and no



disciplinary proceedings were pending against him. Next promotion from the post of Sub-Registrar Grade II is the Sub-Registrar Grade-I. A panel was prepared for the year 2011-12, but his name was not included. His juniors were included in the panel and hence he made a representation on 30.11.2011. The first respondent after getting clarification from the second respondent, has informed him in Letter No.1590/K/2011-12 dated 10.02.2012 that his name cannot be considered in view of G.O. (Ms).No. 107 P & Ar Department dated 18.08.2010 as the petitioner had obtained M.A degree from Open University without getting a regular U.G. Degree. According to the petitioner, as long as his selection with this qualification is valid, he cannot be denied of promotion. As per Tamil Nadu Registration Sub-Ordinate Service Rules, no educational qualification is prescribed for promotion from Sub-Registrar Grade-II to Grade-I. Even the Assistants possessing SSLC qualification are being considered by recruitment by transfer. The only criteria for promotion is merit and ability and when it is equal seniority is being considered. Hence applying the Government order which is prospective, retrospectively is illegal as held by this Court in W.P.No.23234 of 2004 dated 27.01.2011 and hence, this writ petition.

2. Learned Special Government Pleader Mr.T.Pappiah, appearing for the respondents would contend that pursuant to the judgment of this Court, it is clarified that obtaining post graduate degree without obtaining basic degree is illegal and therefore the petitioner cannot be considered for promotion. Hence, the order passed by the respondent is very much justified legally and does not require any interference.

3. I considered the submissions made by the parties.

4. Facts narrated above are not disputed. It is an admitted fact that the petitioner was recruited through TNPSC into Government service and is holding the post of Sub-Registrar Grade-II in regular capacity. There is no dispute about validity of his appointment. Only issue is that the educational qualification, he possess. He has obtained a post graduate degree, without undergoing regular under graduate course. On the date of appointment, G.O.Ms.No.217 P&AR department dated 08.09.2007 was holding the field. By this G.O. Government had clarified that Diploma/Under Graduate/Post Graduate Degree courses offered by Tamil Nadu Open University shall be treated as equivalent to the corresponding awards of the other Universities in the State under regular stream for the purpose of employment in public services. Therefore, it is crystal clear that on the date of his appointment, the petitioner was fully qualified to get the appointment.



5. Later in G.O.Ms.No.107 P&AR Department dated 18.08.2009 degree obtained through Open University was recognised as equivalent for the purpose of appointment and promotion in public service was re-affirmed by Government of Tamil Nadu. Pursuant to the judgment of Hon'ble Supreme Court, in Civil Appeal Nos.4173,4189-4191 of 2008 dated 25.02.2009, Government issued a G.O.(Ms)No.118 P&AR department dated 18.08.2010, wherein it was decided that whoever possess a post graduate degree through Open University system without obtaining basic degree cannot be considered as possessing a post graduate degree for appointment to public service.

6. In similar circumstances, when an approval for appointment of teacher was rejected, this Court in W.P.No.23234 of 2004 by its order dated 27.01.2011 referring to para 65 of the Annamalai University case, wherein the Hon'ble Supreme Court has held that the Government orders are prospective in nature and they cannot deprive the appointees and cause hardship by its retrospective application. Therefore, the appointments already made as per the extent rules cannot be undone.

7. Now that the second respondent non considered the petitioner to promotion in view of G.O.Ms.No.116 P&AR department dated 18.08.2010. As mentioned above as per the judgment the Government order is prospective. It applies only to appointment to public service. A perusal of Tamil Nadu Registration Sub-ordinate Service Rules reveal that method of recruitment to Sub-Registrar Grade I is by promotion and direct recruitment. For direct recruitment, B.A or B.Sc degree is prescribed as educational qualification. For promotion no such educational qualification is specified. It also specifies that those who are holding the posts of Assistants are eligible to be considered for promotion to Sub-Registrar Grade II. The promotional avenue to the post of Sub-Registrar Grade I is through Sub-Registrar Grade II. There is no dispute that many Assistants with SSLC qualifications got promotion to the post of Sub-Registrar Grade-I. Thus it is clear that for promotion, educational qualification is not a criteria on the other hand passing of departmental tests is the eligibility criteria.

8. In so far as the present case is concerned, the appointment of the petitioner is valid and he cannot be deprived of the same by retrospective application of the later Government orders. Else it will create chaos in the entire Government machinery. It is also made clear that the Government order will operate prospectively in respect of recruitment but not for promotion.



9. In a recent judgment of High Court of Delhi in W.P(C). No.10522 of 2019 and batch of case has taken a decision that Universities are functioning under University of Grants Commission Act, which is a creature of Parliament in exercise of power under Schedule VII List Entry 66 of the Constitution of India and hence the degree granted by Open University is equivalent to degree granted by educational institutions through regular scheme.

10. Be that as it may, the judgment of the Hon'ble Supreme Court is only with respect to recruitment and, it cannot be applied to promotion de hors the rules governing the same. In that view of the matter, since there being no prohibition in the service rules, the petitioner is entitled to be considered for promotion to the post of Sub Registrar Grade-II. Applying the educational qualifications meant for direct recruitment to the method of recruitment by promotion is not sustainable.

11. For the discussions above, I am of the considered opinion that the impugned order passed by the first respondent in No.15111/A1/2011 dated 27.03.2012 refusing to include the petitioner in the panel fit for promotion to the post of Sub-Registrar Grade I for the year 2011-2012 is bad and illegal. Hence, the impugned order mentioned above is set aside. Writ petition stands allowed. The first respondent is directed to include the name of the petitioner in the panel for 2011-2012 and consider his promotion to higher posts with effect from the date on which his immediate junior was promoted on notional basis within a period of two months from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III-MDU)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector General of Registration
120, Santhome High road
Chennai-600 028.



2.The Secretary to Government,
Government of Tamil Nadu
Commercial Taxes and Registration Department
Secretariat, Chennai-600 009.

+1cc to M/s.M.Ramamoorthi, Advocate Sr.11112
+1cc to the Government pleader Sr.11830

W.P.No.25686 of 2012

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