

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.26924 and 22382 of 2012

K.J.Sudakar .. Petitioner in W.P.No.26924 of 2012
G.Kumaraguru .. Petitioner in W.P.No.22382 of 2012

-VS-

1. The State of Tamil Nadu
rep.by its Secretary
Personnel and Administrative
Reforms Department
Secretariat, Fort St.George
Chennai 600 009
2. The Secretary
Tamil Nadu Public Service Commission
Greams Road
Chennai .. Respondents in W.P.No.26924 of 2012
1. The Tamil Nadu Public
Service Commission
rep.by its Secretary
Greens Road
Chennai 600 006
2. The State of Tamil Nadu
rep.by the Secretary to Government
P & A R Department
Secretariat
Chennai 600 009
3. The Government of India
Ministry of Personnel, Public Grievances
and Pension
(Department of Personnel and Training)
New Delhi .. Respondents in W.P.No.22382 of 2012

W.P.No.26924 of 2012 is filed under Article 226 of the
Constitution of India, praying to issue a Writ of Certiorarified

Mandamus, calling for the records pertaining to the proceedings Nil dated 30.7.2012 on the file of the first respondent and quash the same as illegal, incompetent and ultra vires and consequently direct the second respondent to appoint the petitioner in the post of Assistant (other than Law & Fin.) Secretariat under Ex-Servicemen category.

W.P.No.22382 of 2012 is filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondent to select the petitioner for appointment to the post which he is eligible in Combined Subordinate Service.

For Petitioners :: Mr.R.Jayaprakash

For Respondents :: Mr.K.Magesh
Special Government Pleader
for R1 in W.P.No.26924 of 2012
& for R2 in W.P.No.22382 of 2012

Mr.M.Devendran
Standing Counsel for R2
in W.P.No.26924 of 2012
Mr.M.Loganathan
Standing Counsel for R1
in W.P.No.22382 of 2012
No appearance for R3 in
W.P.No.22382 of 2012

ORDER

Since the issue raised in both the writ petitions is common, they are taken up together and disposed of by this common order.

2. Mr.K.J.Sudakar, the petitioner in W.P.No.26924 of 2012, having joined the Indian Air Force as Medical Assistant on 6.2.88 and got promotion to the post of Health Assistant-II (C1) and elevated finally to the rank of Surgeon and retiring from service, on reaching the age of superannuation on 29.2.2008, was issued with a Graduation Certificate on 29.2.2008 by the Indian Air Force certifying that the petitioner, having served for 20 long years in the Indian Air Force, may be considered eligible for appointment to any reserved vacancy in Group 'C' posts for which the essential qualification is graduation and where experience or technical or professional nature is not essential. Similarly, Mr.G.Kumaraguru, the petitioner in W.P.No.22382 of 2012, having joined the Indian Army as Sepoy on 1.8.84 and served for 15 long years in the Indian Army, was also issued with a Graduation Certificate on 31.1.2000 certifying that he may be considered eligible for appointment to any reserved

vacancy in Group 'C' posts for which the essential qualification is graduation and where experience or technical or professional nature is not essential.

3. On the basis of the Graduation Certificates dated 29.2.2008 and 31.1.2000 issued by the Indian Air Force and Indian Army respectively, the petitioners, on seeing the Advertisement No.176 dated 10.11.2008 & Advertisement No.258 dated 30.12.2010 respectively, calling for applications from the eligible candidates, applied to the post in the Combined Subordinate Service in the State of Tamil Nadu and thereupon, they attended the written examination conducted by the Tamil Nadu Public Service Commission on 22.3.2009 & 30.7.2011 respectively.

4. Mr.R.Jayaprakash, learned counsel appearing for the petitioners in both the writ petitions further stated that the petitioners successfully passed the written examination and the respondent-TNPSC sent the notices asking them to attend the interview/certificate verification with the requisite documents. Accordingly, the petitioners attended the certificate verification, but the results were withheld by the respondent-TNPSC for the reason known to them. Therefore, the petitioners sent letters asking the respondent-TNPSC to name the reason, for which a reply was sent stating that a clarification had been sought from the Government as to whether the degree obtained by them through the graduation certificate from the Indian Air Force / Indian Army is acceptable or not. When the respondent-TNPSC had issued the details of the selected candidates for oral and non-oral test posts, they cannot deny the issuance of appointment orders to the petitioners. Taking support from the certificates issued the Indian Air Force & Indian Army dated 29.2.2008 & 31.1.2000 to the respective petitioners, he further argued that as per the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training Notification No.15012/8/82-Estt (D) dated 12.2.86, the matriculate ex-servicemen who have put in not less than 15 years service in the Armed Forces of the Union may be considered eligible for appointment to any reserved vacancy in Group C posts, for which the educational qualification prescribed is Graduation and this also has been subsequently accepted by the Government of Tamil Nadu in G.O.(Ms.)No.77, Public (Ex-Servicemen) Department dated 23.1.2018, making it clear that the Government have decided to accept the proposal of the Director of Ex-Servicemen's Welfare, Chennai and directed that for appointment to any reserved vacancy in Group 'C' posts, all matriculate ex-servicemen, which term includes all ex-servicemen who obtained the Indian Army Special Certificate of Education or the corresponding certificate in the Navy or the Air Force, who have put in not less than 15 years service in

the Armed Forces of the Union, shall be considered eligible for appointment to the posts for which the essential qualification prescribed is Graduation, hence, the petitioners have to be considered by the Tamil Nadu Public Service Commission as eligible for appointment and also for promotion to Group A & B posts in routine course, excepting for those posts for which graduation is prescribed, as a prescribed qualification for promotion. Therefore, the stand taken by the Tamil Nadu Public Service Commission in the counter affidavits that the Graduation Certificate issued by the Indian Air Force / Indian Army cannot be considered as degree for the purpose of employment in Public Services, is untenable in law. Therefore, a direction be issued to consider the case of the petitioners for appointment, since they already took part in the written examination and after passing the same, they were also called for interview/certificate verification. Concluding his arguments, he also further submitted that the petitioners have applied for the post of Assistant or suitable post in the Combined Subordinate Service, in response to the Advertisement No.176 dated 10.11.2008 & Advertisement No.258 dated 30.12.2010 respectively, issued by the Tamil Nadu Public Service Commission for the non-oral test post i.e., non-interview post. Since the petitioners have been selected, the respondents should consider that the petitioners stood qualified for appointment from the date of making their applications.

5. Detailed counter affidavits have been filed by the respondent-TNPSC. The respective learned standing counsel for the respondent-TNPSC submitted that the Tamil Nadu Public Service Commission in their Advertisement No.176 dated 10.11.2008 & Advertisement No.258 dated 30.12.2010 respectively, called for applications from the eligible candidates for the posts in the Combined Subordinate Service, specifically mentioning that the candidates should have possessed B.A./B.Sc.,/B.Com degree of any University or institution recognised by the University Grants Commission or B.O.L of Annamalai University or B.B.A., of Madurai Kamaraj University or B.Litt of Madras University or B.B.M or B.Litt of Bharathiar University. When the Graduation Certificate issued by the Indian Air Force / Indian Army for having put in not less than 15 years of unblemished service in the Armed Forces, has not been shown as equivalent to the graduation degree awarded by the university or institution recognised by the University Grants Commission, the petitioners ought not to have applied, because the Graduation Certificate issued by the Indian Air Force / Indian Army has not been considered as an eligible qualification. Secondly, when the petitioners, having come to this Court in the year 2012 challenging the notification or seeking a mandamus, have not obtained any interim order directing the Tamil Nadu Public Service Commission to keep one post each vacant, the

issue raised by the petitioners has become only academic in nature, resultantly, all the vacancies for which the notifications have been issued have been filled up and all the selected candidates also have been appointed and there is no vacancy as on today. Thirdly, the Government of Tamil Nadu had also issued G.O.(Ms.)No.77, Public (Ex-Servicemen) Department dated 23.1.2018 stating that the ex-servicemen like that of the petitioners are also eligible for appointment to the Group 'C' posts for which the essential qualification prescribed is Graduation. Therefore, the said Government Order would enure to the petitioners only from 23.1.2018, the date on which the Tamil Nadu Government have recognised the Graduation Certificate obtained by the petitioners from the Indian Air Force / Indian Army as one of the eligible degrees for consideration to the posts in question.

6. I also find merits on the submissions made by the respective learned standing counsel for the respondent-TNPSC. The reason being that when the Advertisement No.176 dated 10.11.2008 & Advertisement No.258 dated 30.12.2010 respectively were issued, the Government of Tamil Nadu have not recognised the Graduation Certificate obtained by the petitioners from the Indian Air Force / Indian Army as an equivalent qualification to that of B.A./B.Sc./B.Com of any University or institution recognised by the University Grants Commission. In any event, in the year 2018, accepting the recommendation made by the Director of Ex-Servicemen's Welfare, Chennai, the Government of Tamil Nadu have issued G.O.(Ms.)No.77 dated 23.1.2018, directing that for appointment to any reserved vacancy in Group 'C' posts, a matriculate ex-servicemen, which term includes ex-servicemen, who has put in not less than 15 years of service in the Armed Forces of the Union, shall be considered eligible for appointment to the posts for which the essential qualification prescribed is Graduation. Therefore, by virtue of the above said Government Order, which will have prospective effect on and from 23.1.2018, an ex-serviceman having the Graduation Certificate issued by the Indian Army Special Certificate of Education or the corresponding certificate in the Navy or the Air Force, cannot have any legal right to claim that he had the prescribed qualification of Graduation even prior to the said date. Moreover, as the petitioners have also not obtained any order directing the respondents to keep one post each vacant and as a result, all the vacancies called for under the aforementioned notifications have also been filled up, this Court is unable to give any direction as sought for by the petitioners. However, it is made clear that the petitioners, if they are otherwise eligible, can always apply for the Group 'C' posts for which graduation is prescribed as the essential qualification, as and when notification is being issued by the Tamil Nadu Public Service Commission. Accordingly, both the writ petitions fail

and they are dismissed. Consequently, M.P.No.1 of 2012 is also dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Personnel and Administrative
Reforms Department
Fort St.George
Chennai 600 009
2. The Secretary
Tamil Nadu Public Service Commission
TNPSC Road
Chennai
3. The Secretary to Government of India
Ministry of Personnel, Public Grievances
and Pension
Department of Personnel and Training
New Delhi

W.P.Nos.26924 & 22382 of 2012

+1cc to Mr.M.Loganathan, Advocate, S.R.No.22125/20
+2cc to M/s.R.Jayaprakash, Advocate, S.R.No.21957/20
+1cc to Mr.M.Devanathan, Advocate S.R.No.21287/20
+1cc to the Government Pleader, High Court S.R.No.22166/20

GP(CO)
nvi/27.05.2020