

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 02-12-2020

Judgment Delivered on :23-12-2020

Coram :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Writ Appeal No. 2667 of 2019
and
C.M.P. Nos. 17180 and 6140 of 2019

The Joint Director (Craftsmen Training Scheme)
Directorate of Employment and Training
Training Wing, Alandur Road
Guindy, Chennai - 600 032 .. Appellant/2nd Respondent

Versus

1. N. Gopal
2. P. Annamalai
3. V. Manokaran ..Respondents 1 to 3/Petitioner
4. The State of Tamil Nadu
rep. by its Secretary to Government
Labour and Employment Department
Fort St. George
Chennai - 600 009
5. The Chairman
Tamil Nadu Public Service Commission
Frazer Bridge Road
VOC Nagar, Park Town
Chennai - 600 003
6. The Director of Technical Education
No.53, Sardar Patel Road, Guindy
Chennai - 600 025 ..Respondents 4 to 6/Respondents 1,3 & 4

Writ Appeal filed under Clause 15 of Letters Patent against
the order dated 07.01.2019 passed by the learned Single Judge in
W.P. No. 32125 of 2018 on the file of this Court.

W.P.No.32125/2018: Directing the second respondent to consider the petitioners, who possess Diploma in Production Engineering as qualified for the post of Junior Training Officers in terms of G.O.Ms.No.465, dated 21.03.1991, which directed that Diploma in Production Engineering awarded by the State Board of Technical Education of Tamil Nadu, be recognized as an equivalent qualification for employment purpose wherever Diploma in Mechanical Engineering is prescribed and consequently to direct the second respondent to appoint the petitioners for the post of Junior Training Officers in Government Industrial Training Institutes in Tamil Nadu, pursuant to Notification dated 12.01.2016.

For Appellant : Mrs. Narmadha Sampath
Additional Advocate General
assisted by Mrs. A.Srijayanthi
Special Government Pleader

For Respondents : Mrs.Nalini Chidambaram, Senior Advocate
for Mrs.C.Uma for RR1 to 3

Mr. C. Munusamy
Special Government Pleader for RR4 & 6

No appearance for R5

JUDGMENT

R. SUBBIAH, J

The appellant is the second respondent in W.P.No.32125 of 2018 filed by the respondents 1 to 3 in this appeal. The appellant is aggrieved by the order dated 07.01.2019 passed by the learned Single Judge in allowing WP No. 32125 of 2018, filed by the respondents 1 to 3 herein.

2. The respondents 1 to 3 herein have filed WP No. 32125 of 2018 before the learned Single Judge for issuing a Writ of Mandamus to direct the second respondent therein/appellant herein to consider the writ petitioners, who possess Diploma in Production Engineering as qualified for the post of Junior Training Officers in terms of G.O.Ms.No.465, Public Works (B-2) Department, dated 21.03.1991, which directed that Diploma in Production Engineering awarded by the State Board of Technical Education of Tamil Nadu, be recognised as an equivalent qualification for employment purpose, wherever Diploma in Mechanical Engineering is prescribed, and to consequently direct the second respondent therein/appellant herein to appoint the respondents 1 to 3/writ petitioners for the post of Junior

Training Officer in the Government Industrial Training Institute in Tamil Nadu pursuant to the notification dated 12.01.2016.

3. The case of the writ petitioners/respondents 1 to 3 herein before the learned Single Judge is that they are Diploma holders in Production Engineering. The second respondent in the Writ Petition, issued a notification on 12.01.2016 to fill up 339 vacancies as Junior Training Officer. The writ petitioners/respondents 1 to 3 herein participated in the selection process for the post of junior training officer exam on 21.03.2016 and also participated in the main selection process held between 31.10.2018 and 17.11.2018 conducted by the appellant herein. When the provisional selection list was published in the official website, their names were not found. The reason for non-selection is that, the candidates did not possess the required Engineering qualification. In other words, the required qualification is Diploma in Mechanical Engineering and not Diploma in Production Engineering, which the respondents 1 to 3 possess. Therefore, the respondents 1 to 3 have filed the above writ petition contending that the Diploma in Production Engineering possessed by them is equal to Diploma in Mechanical Engineering.

4. Before the Writ Court, the writ petitioners relied on the said G.O.Ms.No.465, dated 21.03.1991, as per which the Diploma in Production Engineering is an alternative qualification for the purpose of employment and sought for allowing the writ petition.

5. The learned Single Judge, accepting the said submission made on behalf of the writ petitioners/respondents 1 to 3 herein, allowed the writ petition on 07.01.2019. Aggrieved by the same, the present Writ Appeal is filed by the second respondent in the Writ Petition.

6. The learned Additional Advocate General appearing for the appellant contended that the appellant herein issued a Notification, dated 12.01.2016 to fill up 329 posts of Junior Training Officers and on 21.02.2016, the examination was conducted. Thereafter, the writ petitioners/ respondents 1 to 3 herein also participated in practical skill cum teaching ability followed by personal interview held on 31.10.2018 to 17.11.2018. The results were published in the web-site on 27.11.2018. Since the writ petitioners possessed Diploma in Production Engineering and they did not possess the Diploma in Mechanical Engineering, for which they have applied, their results have been declared as 'not eligible'. However, the learned Single Judge, by relying on G.O.Ms.No.465, Public Works (B-2) Department, dated 21.03.1991 allowed the writ petition on the reasoning that a large portion of syllabus for Production

Engineering is common with Mechanical Engineering and therefore, the Government in consultation with TNPSC and Chief Engineer, PWD has accepted the suggestion made by the Principal, Thyagaraja Polytechnic, Salem, that Diploma in Production Engineering awarded by the State Board of Technical Education of Tamil Nadu, be recognised as an alternative qualification for employment purpose, wherever Diploma in Mechanical Engineering is prescribed.

7. The learned Additional Advocate General appearing for the appellant also submitted that in G.O.Ms.No.465, Public Works (B-2) Department, dated 21.03.1991, the Government, while considering amendment to the Special Rules to the post of Assistant Engineer (Mechanical), by direct recruitment, have issued necessary order to the effect that Diploma in Production Engineering awarded by the State Board of Technical Education of Tamil Nadu may be recognised as an alternative qualification for employment purposes, wherever Diploma in Mechanical Engineering is a qualification. The Chief Engineer, Public Works Department (General) was directed to send draft amendment to the Special Rules in Tamil Nadu Engineering Services for approval of the Government. This Government Order has not been communicated to other Departments. The Tamil Nadu Engineering Service falls under Category X of the Tamil Nadu Service Manual Volume II of State Services and Section 10 of the Tamil Nadu Service Manual for Subordinate Services, Volume III. Based on the said Government Order, the Service Rules have been suitably amended for category Branch VII Mechanical from Page No.106 to 109 under State Services category post of Tamil Nadu Engineering Services, whereas, the post of Junior Training Officer falls under Category 7-B of Tamil Nadu Employment and Training Subordinate Services as per the Tamil Nadu Services Manual Volume III, for Subordinate Service posts. As per the Tamil Nadu Employment and Training Subordinate Service Rules, there is no provision to treat the Diploma in Production Engineering as an alternative qualification for Diploma in Mechanical Engineering to the post of Junior Training Officer. Therefore, the reliance placed by the learned Single Judge on the said G.O.Ms.No.465, which is meant for Tamil Nadu Engineering Services is not correct. In the Notification issued by the appellant itself, it has been clearly stated that the required qualification is only Diploma in Mechanical Engineering, whereas, at the time of uploading the application in on-line mode, the respondents 1 to 3/writ petitioners have filled up the application in the form relating to qualification purportedly as Diploma in Mechanical Engineering, though they were only in possession of Diploma in Production Engineering. When later it was found that the respondents 1 to 3/writ petitioners were not possessing the prescribed qualification, their name was not included in the selection list. The learned Single Judge, on sympathetic ground

and on an erroneous appreciation of the merits of the case, allowed the writ petition, which according to the learned Additional Advocate General required to be interfered with by this Court.

8. Countering the above submissions of the learned Additional Advocate General appearing for the appellant, the learned Senior Counsel appearing for the respondents 1 to 3/writ petitioners invited the attention of this Court to the Notification issued by the Government of Punjab, Department of Technical Education and Industrial Training and submitted that in the said Notification, for the post of Drawing Inspector/Draughtsman (Mechanical), the required qualification mentioned is Mechanical Engineering/Production Engineering. Similarly, the learned Senior Counsel appearing for the writ petitioners/respondents 1 to 3 herein, has invited our attention to the Notification issued by the Andhra Pradesh Public Service Commission, wherein it was stated that required qualification for the post of Assistant Training Officer is a Degree in Mechanical/Production Engineering. The attention of this Court was also invited to the notification issued by the Ministry of Labour and Employment, New Delhi for the post of Training Officer, in which the qualification prescribed is Diploma in Mechanical/Production Engineering. Further, in the "Public Notice regarding relevant branch of Engineering/Technology for recruitment of faculty in Technical Institutions" dated 27.02.2020 issued by the All India Council for Technical Education, New Delhi, it was mentioned as follows:-

"All India Council for Technical Education vide Gazette Notification dated 28.04.2017 have notified major/core branches of Engineering and Technology and their relevant/appropriate courses leading to degree in Engineering/Technology for recruitment to teaching positions in the technical education. It was also specified that having a UG or PG Degree in any one of the Major/Core branches of Engineering, invariably from IITs/NITs/IISc/CUs/DUs, along with any combination of relevant/appropriate make a candidate eligible for consideration of teaching post. It was also mentioned in the above Gazette notification that the BoG of the concerned institution on the recommendation of duly constituted Selection Committee and with the approval of their respective State / UT / Central Government / University / DTE etc., as applicable may take appropriate decision on relevant qualifying degrees suitable for recruitment to teaching positions especially keeping in view interdisciplinary nature of emerging technologies."

9. By relying on the aforesaid Notificaiton, the learned Senior counsel for the respondent 1 to 3 herein/writ petitioners contended that a Diploma in Mechanical Engineering is equivalent to Diploma in Production Engineering as well.

10. The learned Senior Counsel appearing for the respondents 1 to 3/writ petitioners had also invited our attention to Seventh Schedule of the Constitution of India (Article 246) List - I, Entry 66 which provides "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions". According to the learned Senior Counsel appearing for the respondents, the technical institutions comes under the Union List as mentioned above. When the notification issued by All India Council for Technical Education clearly says 'Diploma in Mechanical Engineering' is equivalent to a 'Diploma in Production Engineering', the State Government also has to follow the same in relation to public employment. Considering the above, the learned Single Judge had rightly allowed the Writ Petition and therefore, the learned Senior Counsel appearing for the respondents 1 to 3/writ petitioners, prayed for dismissal of the Writ Appeal.

11. By way of reply, the learned Additional Advocate General appearing for the appellant brought to the notice of this Court the very same Seventh Schedule of The Constitution of India (Article 246) List - III, Concurrent List, wherein under Entry 25, it was stated as "Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour". Therefore, by placing reliance on Entry 25 in the concurrent list, it was contended by the learned Additional Advocate General that the State Government, on its own, can prescribe requisite qualification. Thus, it is contended that Entry 66 has to be read along with Entry 25 and not in isolation. In this regard, the learned Additional Advocate General relied on the decision of the Supreme Court in the case of State of Tamil Nadu and another Vs. S.V.Bratheep (Minor) and others reported 2004 (4) SCC 553, wherein it was held that State Government can prescribe standards higher or additional to those prescribed by AICTE. By placing reliance on the above decision, the learned Additional Advocate General prayed for allowing the Writ Appeal.

12. Keeping the submissions made by the counsel for both sides, we have gone through the materials placed on record. It is seen that the learned single Judge mainly relied on G.O.Ms.No.465, Public Works (B2) Department, dated 21.03.1991 and issued a direction for appointment of the respondents 1 to 3

herein/writ petitioners. The said Government Order was issued by the Public Works Department. Based on the said Government Order, the Service Rules have been suitably amended for category Branch VII Mechanical under State Services, Category Post of Tamil Nadu Engineering Services, whereas, the post of Junior Training Officer falls under category 7B of Tamil Nadu Employment and Training Subordinate Services as per Tamil Nadu Services Manual Volume III for Subordinate Service posts. Therefore, based on the aforesaid Government Order, Diploma holders in Production Engineering cannot be treated to be an alternative qualification for Diploma in Mechanical Engineering to the post of Junior Training Officer.

13. The learned Senior Counsel appearing for the respondents 1 to 3/writ petitioners made an attempt to substantiate her contention by relying upon the notifications issued by the other State. Reliance was also placed on Entry 66 to VII Schedule in the List I of the Constitution of India to contend that prescription of and determination of standards in institution of higher education or research and scientific and technical education, is within the domain of the Union Government such as All India Council for Technical Education. According to the learned Senior Counsel appearing appearing for the respondents 1 to 3, when the All India Council for Technical Education prescribes certain standards to be followed in higher education, it will bind the State Government and the State Government has to follow suit.

14. Repudiating the aforesaid submissions, the learned Additional Advocate General relied on Entry 25 in List III of the Seventh Schedule of The Constitution of India - Concurrent List, and contended that State Government is equally empowered to prescribe its own qualification in the matter of public appointment.

15. We find considerable force in such submission of the learned Additional Advocate General appearing for the appellant. As per Entry 25, mentioned supra, the State Government can prescribe its own standards and qualification required to be possessed by a candidate in the matter of public appointment. Therefore, Entry 66 of List-I of the VII Schedule, cannot be read in isolation and it has to be read along with Entry 25 of List III of the VII Schedule to the Constitution of India.

16. In this case, the Notification was issued by the appellant prescribing a particular qualification viz., Diploma in Mechanical Engineering. When that be so, the respondents 1 to 3 cannot rely upon the Government Order in G.O.Ms.No.465, Public Works (B2) Department, dated 21.03.1991, which was issued by the Public Works Department for appointment to the post of

Assistant Engineer (Mechanical). Furthermore, while applying for the post, the respondents 1 to 3 have mentioned their qualification as Diploma in Mechanical Engineering and attended the interview. The fact remains that the respondents 1 to 3 are in possession of a Diploma in Production Engineering. But they have uploaded their application by mentioning their qualification as Diploma in Mechanical Engineering, for which applications were invited, and hence, the appellant called them for interview. During the course of enquiry, it came to light that what was possessed by the respondents 1 to 3 is not the Diploma in Mechanical Engineering, but only a Diploma in Production Engineering. Thus, it is evident that the writ petitioners/respondents 1 to 3, with their eyes wide open, have applied for a post to which they did not possess requisite qualification. When this has come to light, the appellant is wholly justified in with-holding their results.

17. The argument of the learned Senior Counsel appearing for the respondents 1 to 3/writ petitioners, that a Diploma in Production Engineering is equivalent to a Diploma in Mechanical Engineering and therefore, the respondents 1 to 3/writ petitioners have to be appointed to the post of Junior Training Officer. We are not inclined to accept this submission. The Notification had been issued by the appellant clearly indicating that the candidate must possess a Diploma in Mechanical Engineering. The respondents 1 to 3, after attending the interview and when the appellant with-held their selection for want of qualification, cannot seek to alter or re-write the terms or requisite qualification prescribed in the notification issued by the appellant. In exercise of power under Article 226 of The Constitution of India, this Court cannot resort to such an exercise to alter or vary the terms of the notification issued by the appellant. It is well settled that after the parties have entered into the arena, altering the terms and conditions of the Notification, would result in adverse consequences and chaos will rein supreme in the selection process. In such circumstances, we are of the view that the appellant is entitled to succeed in this Writ Appeal and the order passed by the learned Single Judge has to be set aside.

18. In the result, we set aside the order dated 07.01.2019 passed by the learned Single Judge in W.P. No. 32125 of 2018. The Writ Appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Joint Director (Craftsmen Training Scheme)
Directorate of Employment and Training
Training Wing, Alandur Road
Guindy, Chennai - 600 032

2. The Secretary to Government
State of Tamil Nadu
Labour and Employment Department
Fort St. George
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3. The Chairman
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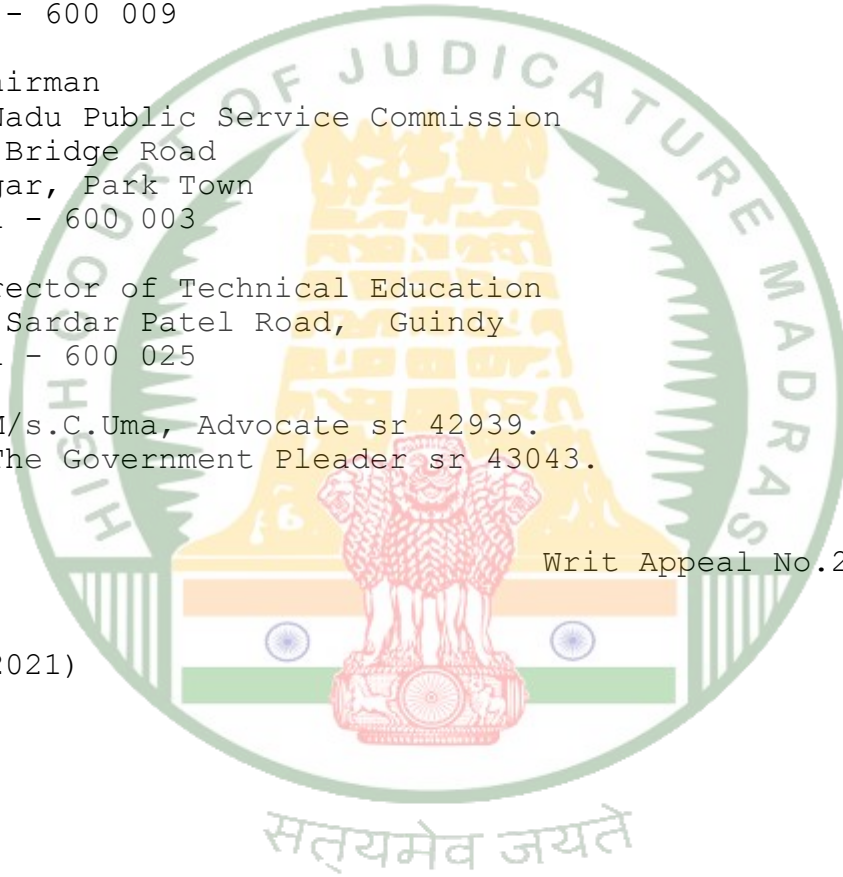
4. The Director of Technical Education
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+1 CC to M/s.C.Uma, Advocate sr 42939.

+1 CC to The Government Pleader sr 43043.

Writ Appeal No.2667 of 2019

SJ(CO)
SP(19/01/2021)



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