

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

W.P.NOs. 22437 & 22441 of 2019

S. Ranganathan ... Petitioner in W.P.No.22437/2019
P. Kamalakannan ... Petitioner in W.P.No.22441/2019

-Vs-

1. The State of Tamil Nadu
Rep by its Principal Secretary to Government
School Education Department
Secretariat, Fort St. George
Chennai 600 009.
2. The Director of Public Libraries (In-charge),
No.737/1, Anna Salai
Chennai 600 002. ... Respondents in both the petitions

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ, order, or direction more particularly a writ in the nature of Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the second respondent in Na.Ka.No.1717/A1/2018 dated 26.09.2018 and to quash the same and consequently directing the respondents to promote the petitioners to the post of Grade-II Librarian based on 2016-17 panel with all consequential and other attendant benefits, within a time frame to be fixed by this Hon'ble Court.

For Petitioners: Mr. G.Sankaran in both the Writ petitions
For Respondents: Mrs. V. Annalakshmi
Government Advocate in both the Writ
Petitions.

COMMON ORDER

The present Writ Petition has been filed challenging the impugned proceedings of the second respondent dated 26.09.2018 and for a consequential direction to the respondent to promote the petitioners to the post of Grade-II Librarian based on 2016-17 panel with all consequential benefits.

2. The case of the petitioners is that the first petitioner was initially appointed as a Record Clerk in the District local library at Chennai in the year 1999 and the second petitioner was appointed in the District local Library at Cuddalore in the year 1996. The petitioners studied Two Years Foundation Course from Madurai Kamaraj University and Annamalai University respectively and completed the same.

3. The petitioners, thereafter, acquired necessary qualifications to be considered for promotion to the post of Librarian Grade-III. It is to be kept in mind that during the relevant point of time, this Two Years Foundation Course was considered to be equivalent to +2 by virtue of G.O.Ms.No.528, Personnel and Administrative Reforms Department, dated 18.05.1985 and G.O. Ms.No.219, Personnel and Administrative Reforms Department, dated 30.03.1988.

4. Since the petitioners had completed the Two Years Foundation Course, which was considered equivalent to +2, they were found to be eligible for promotion to the post of Librarian Grade-III and they were promoted to the said post in the year 2004. The next avenue of promotion for the petitioners is to the post of Librarian Grade-II. As per Rules, the seniority is the only pre-requisite for promotion to this post. According to the petitioner, they became eligible for promotion to the said post in the 2016-17 panel. The petitioners also made their claim for promotion. The claim made by the petitioners was rejected by the impugned proceedings of the second respondent dated 26.09.2018 only on the ground that as per G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017, the Two Years Foundation Course was not found to be equivalent to +2 and, therefore, the petitioners are not eligible for promotion to the next higher post. Aggrieved by the same, the present Writ Petition has been filed before this Court.

5. Mr.G.Sankaran, learned counsel appearing for the petitioners submitted that the qualification possessed by the petitioners, when they were considered for promotion to the post of Librarian Grade-III, was found to be valid by virtue of the earlier Government Orders. This qualification cannot be completely effaced by a subsequent Government Order that was passed vide G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017. The learned counsel submitted that this Government order cannot be given retrospective effect and what was considered to be valid at the relevant point of time cannot be undone by the present Government Order. The learned

counsel, in order to substantiate his submissions, relied upon the judgment of this Court in W.P.No.32799 of 2019 dated 05.12.2019. The relevant portion of the judgment is extracted hereunder.

4. Learned counsel for the petitioner, in order to fortify his argument, also placed reliance upon an order of this Court in W.P.No.28755 of 2017, dated 30.11.2017. In that case, the issue that was involved was, obtaining a B.Ed.Degree from Vinayaka Missions University, which was earlier considered to be equivalent and later found to be not equivalent by virtue of the very same G.O. viz., G.O.Ms.No.3, Higher Education (K2) Department, dated 05.01.2016, can be given effect retrospectively. The learned counsel has submitted that this Court, in the said case, has categorically held that G.O.Ms.No.3, dated 05.01.2016, will have only prospective effect from the academic year 2015-2016. The relevant portions of the said order are brought to the notice of this Court and the said portions are extracted hereunder :

"2. The petitioner joined Vinayaka Missions University's Annapoorna College of Education for B.Ed course, which is a one year course between 2006-2007 and she had successfully completed the course. However, the Government issued G.O.Ms.No.3, Higher Education (K2) Department, dated 05.01.2016, stating that B.Ed degree awarded by Vinayaka Missions University and three other Universities are not equivalent to B.Ed Degree of Tamil Nadu Teachers Education University. The petitioner who had obtained the degree before the date of issuance of G.O.Ms.No.3, Higher Education (K2) Department would contend that the said G.O., is not applicable to the candidates who had joined and passed the course before the date of issuance of the said Government Order. The G.O. could only be prospective and not retrospective. The necessity to approach this Court at this juncture is that the Teachers Recruitment Board had notified for receiving applications from eligible candidates for the post of PG Assistants in Government Higher Secondary Schools for the year 2016-17. However, in view of G.O.Ms.No.3, Higher Education (K2) Department, dated 05.01.2016, the petitioner apprehend that she will not be considered for appointment.

11. One more interesting point is that Tamil Nadu Teachers Education University itself has been established only in the year 2008, whereas Vinayaka Missions University got approval from NCTE in the year 2007 itself and they have been admitting students from the year 2007 onwards. Subsequent regulation or G.O., cannot disqualify validly obtained degrees granted by an NCTE approved institution. Moreover, as rightly pointed out by the learned Senior counsel, the Hon'ble Supreme Court in Suresh Pal and others Vs. State of Haryana and others reported in (1987) 2 Supreme Court Cases 445, has held that based on the subsequent order, the recognition of the institution would not affect the students, who have been admitted in the college, when the recognition was in force. Similarly, the petitioner had obtained valid degrees before G.O.Ms.No.3, Higher Education (K2) Department, dated 05.01.2016, and the new NCTE regulation came into force. In view of the above, this Court holds that G.O.Ms.No.3, Higher Education (K2) Department dated 05.01.2016, which declares that B.Ed degree awarded by Vinayaka Mission University as not equivalent to B.Ed conferred by Tamil Nadu Teachers Education University would be applicable only from the year 2015-2016 and not before that, especially in respect of the petitioner.

13. Since this Court holds that G.O.Ms.No.3, Higher Education (K2) Department dated 05.01.2016 is not applicable to the degrees obtained from Vinayaka Missions University and the petitioner is said to have obtained valid degrees, she is qualified to be appointed. In view of the above reasons, the petitioner is entitled to be appointed, whenever the other selected students are appointed, as the petitioner possess valid degrees and she has also qualified in the Teachers Eligibility Test and her name find place in the select list of candidates."

Learned counsel, therefore, submitted that the petitioner possesses all requisite qualifications to be considered for selection and appointment to the post of P.G.Assistant (Zoology).

8. In order to decide the above issue, it will be relevant to take note of the order passed by this Court in W.P.No.28755 of 2017, dated 30.11.2017. The relevant portions of the said order are already extracted supra. It is clear from the said order that this Court was dealing with a very similar issue and the only difference was, in that case, the B.Ed.Degree was obtained from Vinayaka Missions University and, in this case, the B.Ed.Degree has been obtained from Kerala University. While considering the said case, this Court came to a categorical conclusion that G.O.Ms.No.3, dated 05.01.2016, would be applicable only from the academic year 2015-2016 and not prior to that. This Court held therein that the B.Ed.Degree that was obtained by the petitioner was a valid degree and, accordingly, consequential directions were issued to the Department.

9. The facts of the present case are squarely covered by the above order. There is yet another reason why G.O.Ms.No.3, dated 05.01.2016, must be given only prospective operation. Earlier, G.O.Ms.No.483, Education Department, dated 28.03.1988, was passed by Education Department. By virtue of the said G.O., namely, G.O.Ms.No.483, B.Ed.Degree obtained from Kerala University was considered equivalent to that of Madras University. In this case, the petitioner had obtained the B.Ed. Degree in the year 2010 and, as on that date, G.O.Ms.No.483 was in force. Therefore, it cannot be said that the degree obtained by the petitioner became invalid in the year 2016 pursuant to passing of G.O.Ms.No.3, dated 05.01.2016. If the interpretation is to be given otherwise, it will have a serious impact on those persons, who had obtained a valid degree and which was considered equivalent by the previous G.O., and, subsequently, were informed that the degree obtained by them was not equivalent to the corresponding degree of the Madras University. Therefore, the stand taken by the learned Government Advocate in this regard is untenable and it is hereby rejected.

10. In the considered view of this Court, B.Ed.Degree obtained by the petitioner from Kerala University is valid for all purposes. Since it is seen that the petitioner also possesses all requisite qualifications to be considered for selection and promotion to the post of P.G.Assistant (Zoology), the third respondent is directed to entertain the application of the petitioner and consider the same

strictly in accordance with the Rules, subject to the petitioner fulfilling all the other criteria. "

6. The learned counsel, by relying upon the judgment, submitted that the Government orders cannot be given retrospective effect and the petitioners cannot be denied their right of promotion on the ground that they do not possess the qualification.

7. The second respondent has filed counter affidavit in this case. The relevant portion in the counter affidavit is extracted hereunder:

"7. With regard to the averments made in para 6 of the affidavit it is submitted that the petitioner passed Foundation Course second year and CLIS. As per adhoc rules for the post of Librarian Grade III frame in G.O.Ms.No.292, School Education Department, dated 12.12.2007, the qualification for the said post is pass in +2 and Certificate of Library and Information Science and as per G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017, Foundation Course Second year is not equivalent to +2 and as per G.O.107, Personnel and Administrative Reforms Department, dated 18.08.2009, the petitioner has not passed in the pattern of 10+2+3. At the time of consideration of promotion the petitioner has not acquired the prescribed qualification (+2, CLIS) for the post Librarian Grade-II. Therefore, the petitioner was not considered for promotion for the post of Librarian Grade II. The petitioner passed Foundation Course second year instead of +2. The Foundation course is not equivalent to +2 as per the said Government Order.

8. With regard to the averments made in para 7 and 8 of the affidavit it is submitted that as per G.O.Ms.528, Personnel and Administrative Reforms Department, dated 18.05.1985 and G.O.Ms.No.219, Personnel and Administrative Reforms Department, dated 30.03.1998, the foundation course conducted by Madurai Kamaraj University and Annamalai University has been considered as equivalent to Higher Secondary (+2) Course. But the Government issued order in G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017 that "As the recommendations of the Equivalence Committee confirms the clarification that the Pre-foundation Course and Foundation Course offered by various Universities in the state are not equivalent to SSLC and Higher

Secondary Course(+2) respectively".

12. With regard to the averments made in paragraph 13 and 14 of the affidavit it is submitted that as per G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017 ordered that the pre-foundation Course and Foundation Course conducted by various universities are not equivalent to SSLC and +2 respectively. The petitioner passed Foundation Course second year. Hence the petitioner is not eligible for promotion for the post of Librarian Grade II in accordance with the adhoc rules.

13. With regard to the averments made in paragraph 15 and 16 of the affidavit it is submitted that after issuing G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017, the G.O.Ms.No.219, Personnel and Administrative Reforms Department, dated 30.03.1988 was not in force and invalid. At the time of consideration for promotion the petitioner was not eligible for the higher post, since the acquired Foundation Course instead of +2 examination."

8. Mrs.V. Annalakshmi, learned Government Advocate appearing on behalf of the respondents, apart from reiterating the stand taken by the respondents in the counter affidavit, submitted that the petitioners are not eligible for being considered for promotion since they are not satisfying the basic eligibility that has been fixed under the Rules. The learned counsel specifically drew the attention of this Court to G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017. The learned counsel submitted that this Government Order was passed after taking into consideration the earlier Government Orders and it was categorically stated that the pre-foundation Course and the Foundation Course offered by various Universities in the State is not equivalent to SSLC and Higher Secondary Course (+2). The learned counsel submitted that after this Government Order came into force, the earlier Government Orders will cease to exist and the petitioners cannot rely upon the same to substantiate their rights. The learned counsel submitted that the petitioners only have the right to be considered for promotion and that must be based on the qualification fixed under the Rules and that if the qualification is not fulfilled by the petitioners, they will lose their right to be considered for promotion to the post of Librarian Grade-II.

9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. It is an admitted fact that there were two Government Orders that were holding the field, namely, G.O.Ms.No.528, Personnel and Administrative Reforms Department, dated 18.05.1985 and G.O.Ms.No.219, Personnel and Administrative Reforms Department, dated 30.03.1988. Both these Government orders make it clear that the Two Years Foundation Course completed in Madurai Kamaraj University and Annamalai University are considered to be equivalent to Higher Secondary (+2). This Government Order was acted upon on earlier occasion and the petitioners were, in fact, promoted as Librarian Grade-III in the year 2004. The next avenue of promotion for the petitioners is to the post of Librarian Grade-II. The said promotion post does not carry with it any pre-requisite educational qualification and the only consideration is the seniority. According to the petitioners, they have become eligible for promotion to the said post in the 2016-17 panel.

11. The main issue that arises for consideration is whether the qualification that was recognized from the year 1985/88 till the passing of G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017, can be completely erased and thereby whoever were benefited by virtue of the earlier Government Orders in the interregnum, can be deprived of their promotion or selection? This issue has been substantially answered by this Court in the judgment that was cited by the learned counsel for the petitioner. The relevant portions were also extracted supra.

12. This Court categorically held that the qualification that was acquired based on the previous Government Orders is valid for all purposes till the passing of the later Government Orders. The later Government Order cannot be given retrospective effect and thereby take away whatever benefits were enjoyed by the candidates by virtue of the earlier Government Orders. G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017 deals with the substantial right with regard to the qualification and, therefore, it can only be given prospective effect and to give it a retrospective effect, will virtually take away all the rights / benefits acquired by the candidates on the strength of the earlier Government Orders. In the considered view of this Court, the qualification that was possessed by the petitioners was, in fact, recognized when they were considered for promotion to the post of Librarian Grade-III. Such a benefit cannot be knocked off by virtue of G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017. This is more so due to the fact that the next

avenue of promotion to the post of Librarian Grade-II is only based on seniority.

13. In view of the above discussion, this Court has no hesitation to interfere with the impugned order passed by the second respondent dated 26.09.2018 and the same is accordingly quashed. There shall be a direction to the respondents to consider the promotion of the petitioners to the post of Grade-II Librarian based on 2016-17 panel and appropriate orders shall be passed within a period of four(4) weeks from the date of receipt of copy of this order.

14. This Writ Petition is accordingly allowed. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

bga
Copy to

1. The State of Tamil Nadu
Rep by its Principal Secretary to Government
School Education Department
Secretariat, Fort St. George
Chennai 600 009.
2. The Director of Public Libraries (In-charge),
No.737/1, Anna Salai
Chennai 600 002.

+2 CCS to Mr.G.Sankaran, Advocate sr 12824, 12822
+1 CC to Govt. Pleader sr 13032.

W.P.NOs.22437 & 22441 of 2019

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SVI (CO)
SP(20/02/2020)