

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2021

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.No.821 of 2021
and C.M.P.No.4621 of 2021

1. The Inspector General of Registration,
100, Santhome High Road,
Chennai-600 028.
2. The Secretary to Government,
Commercial Taxes & Registration
Department, Government of Tamil Nadu,
Secretariat,
Chennai-600 009. .. Appellants/Respondents

Vs.

G.Senthil Kumar,
Sub Registrar Grade II,
Sholingar, Arakkonam,
Vellore District. .. Respondent/Petitioner

Prayer : Writ Appeal filed under Clause 15 of Letters Patent
against the order dated 11.02.2020 in W.P.No.25686 of 2012.

PRAYER IN WP.NO.25686 OF 2012: To issue a Writ of
Certioraified Mandamus or any other Writ or order or
direction, calling 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 and to pass any other appropriate order
or directions as this Honourable Court.

For Appellants : Mr.R.Neelakandan,
State Government Counsel

For Respondent : Mr.M.Ramamoorthi

J U D G E M E N T

PUSHPA SATHYANARAYANA, J.

The Government is the appellant preferring this appeal aggrieved by the order passed in W.P.No.25686 of 2012 dated 11.02.2020. The issue relates to the educational qualification for the purpose of promotion as Sub Registrar Grade I from Sub Registrar Grade-II.

2. The writ petitioner had passed his S.S.L.C., in the year 1996 and H.S.C., in 1998. He obtained M.A., Degree in Sociology from Annamalai University through Open University stream during 2002-2004. After passing out the examination conducted by the Tamil Nadu Public Service Commission (TNPSC), he was appointed as Sub Registrar Grade-II on 20.02.2009. He was under probation for two years and completed the same on 20.03.2011. He had also cleared the departmental examination and qualified himself to be included in the panel for promotion to the post of Sub Registrar Grade-I for the year 2011-2012. Though the panel was drawn, the name of the writ petitioner was not found in the same, but persons junior to him were named in the panel. Therefore, he made a representation to the first respondent, which was considered by the second respondent in Letter NO.15490/K/2011-2, dated 10.02.2012, stating that the promotion as Sub Registrar Grade-I should be considered in terms of G.O.Ms.No.107, Personnel and Administrative Department, dated 18.08.2009 and G.O.Ms.No.116 of the same Department dated 18.08.2009. The first respondent had rejected the request of the writ petitioner on 27.03.2012, based on the said letter. Aggrieved by the above said orders of rejection, the writ petition was filed. The writ Court allowed the writ petition challenging which the instant appeal is filed by the Government.

3. Heard the learned counsels on either side and perused the materials available on record.

4. The above said factual details are not controverted by the State Government Counsel. The question whether a person obtaining P.G. Degree in an Open University System, without obtaining basic degree is qualified for promotion ? is no longer res integra, as the above said two Government Orders are put to test in various cases.

5. Before delving into the same, it would be appropriate to advert to the Tamil Nadu Registration Subordinate Service Rules. The appointment to the post of Sub Registrar Grade-II can be done in two methods : (i) recruitment by transfer ; and (ii) direct recruitment. Admittedly, the writ petitioner was appointed as Sub Registrar Grade-II by direct recruitment. For the direct recruitment to the post of Sub Registrar Grade-II, a candidate must possess B.A., or B.Sc., degree, provided that in the case of

candidates belonging to Schedule Caste/ Schedule Tribe, a pass in the Pre-University Course or a pass in the Higher Secondary Examination. It is not in dispute that the petitioner has been appointed as Grade II Sub Registrar and undergone his probation and qualified to be included in the panel for promotion for Sub Registrar Grade-I. The Tamil Nadu Registration Subordinate Service Rules, also prescribes the condition for promotion to the post of Sub Registrar Grade-I. Rule 2(b) states that promotion to the post of Sub Registrar Grade-I shall be made on the grounds of merit and ability, seniority being considered only where merit and ability are approximately equal. Therefore, this condition is subject to the subjective satisfaction of the authorities.

6. The learned Single Judge has given the following finding regarding G.O.Ms.No.116, dated 18.08.2010 in the impugned order :

"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."

7. As the petitioner had only challenged non-inclusion of his name in the promotion panel, the learned Single Judge had distinguished the qualification for appointment and

promotion. As the conditions prescribed are only for the purpose of appointment, the writ Court had held that the same are not applicable to the promotion and allowed the writ petition.

8. The decision in Annamalai University V. Secretary to Government, Information and Tourism Development Department, (2009) 4 SCC 590, has considered the question as to whether obtaining a Post Graduate degree through Open University System without obtaining the basic degree is valid or not.

9. In Review Application No.169 of 2019 against Writ Appeal No.861 of 2016 dated 27.09.2019 (State of Tamil Nadu V. V.Manavalan), a Division Bench of this Court held as follows :

"10. A Division Bench of this Court, in the common order dated 04.02.2008 made in W.A.Nos.1221 of 2005, 82 of 2006 and W.P.No.36307 of 2004 [N.Ramesh v. Sibi Madan Gabriel and Others] has considered a similar issue as to the obtaining of Post Graduate Qualification without undergoing Under Graduate course and held that the person who made the claim for the post of Principal, was not eligible to be considered for the reason that the M.A. Degree obtained by him through Open University System without there being a first degree was not a valid degree. The said judgment was put to challenge by Annamalai University as well as by individuals concerned in C.A.No.4173 of 2008 and C.A.Nos.4189 - 4191 of 2018 and the Hon'ble Supreme Court, in the common judgment dated 25.02.2009, which is also reported in 2009 (4) SCC 590, has affirmed the decision of the Division Bench of this Court in the above cited common judgment and therefore, the Post Graduate degree obtained by any individual without undergoing Under Graduation cannot be considered for promotion.

11. Admittedly, the respondent/writ petitioner, after completion of Higher Secondary Course, has directly joined M.A. through Open University System method of Annamalai University and successfully completed M.A. degree and thereafter, submitted his representation dated 03.02.2014 requesting for promotion. It is to be noted at this juncture that G.O.Ms.No.116, Personnel and Administrative Reforms (M) Department dated 18.08.2010, has been passed after taking into consideration the recommendations of the Equivalence Committee and directed that those who possess Post Graduate degree obtained through Open University System, without undergoing Under Graduate degree, cannot be considered for promotion in public service."

10. Based on the above findings, the Division Bench has held in paragraph 14 as follows :

"14. G.O.Ms.No.107, P&AR(M) Department dated 18.08.2009 would not come to the aid of the respondent/writ petitioner for the reason that in the light of two subsequent Government Orders of the very same department viz., G.O.Ms.No.116 dated 18.08.2010 and G.O.Ms.No.65 dated 02.07.2014 respectively, the respondent/writ petitioner, in terms of the statutory rules, lacks necessary educational qualification and since the said Rule position have not been taken note of by the learned Single Judge as well as by the Division Bench, this Court is of the considered opinion that it is an error apparent on the face of the record and as such, those orders have to be reviewed."

11. In view of the above, when the Supreme Court has already held that the Post Graduate Degree obtained in the Open University System without a basic Under Graduate Degree cannot be considered either for appointment or promotion, rightly the name of the writ petitioner was not included in the promotion panel.

12. As mentioned supra, the merit and ability has to be considered for the purpose of promotion. While considering the eligible candidates, it is open to the appellants to assess their performance and decide their ability. At this juncture, it is apt to refer to the judgment of the Hon'ble Supreme Court in Rupa Rani Rakshit V. Jharkhand Gramin Bank, (2010) 1 SCC 345, wherein, while distinguishing between seniority-cum-merit and merit-cum-seniority, it has been observed as follows:

"7. The principle of seniority-cum-merit is well settled. In Rajendra Kumar Srivastava v. Samyut Kshetriya Gramin Bank [(2010) 1 SCC 335], this Court observed as follows:

"11. It is also well settled that the principle of seniority-cum-merit, for promotion, is different from the principle of 'seniority' and the principle of 'merit-cum-seniority'. Where promotion is on the basis of seniority alone, merit will not play any part at all. But where promotion is on the principle of seniority-cum-merit, promotion is not automatic with reference to seniority alone. Merit will also play a significant role. The standard method of seniority-cum-merit is to subject all the eligible candidates in the feeder grade (possessing the prescribed educational qualification and period of service) to a process of assessment of a specified minimum necessary merit and then

promote the candidates who are found to possess the minimum necessary merit strictly in the order of seniority. The minimum merit necessary for the post may be assessed either by subjecting the candidates to a written examination or an interview or by assessment of their work performance during the previous years, or by a combination of either two or all the three of the aforesaid methods. There is no hard-and-fast rule as to how the minimum merit is to be ascertained. So long as the ultimate promotions are based on seniority, any process for ascertaining the minimum necessary merit, as a basic requirement, will not militate against the principle of seniority-cum-merit.

13. Thus it is clear that a process whereby eligible candidates possessing the minimum necessary merit in the feeder posts is first ascertained and thereafter, promotions are made strictly in accordance with seniority, from among those who possess the minimum necessary merit is recognised and accepted as complying with the principle of 'seniority-cum-merit'. What would offend the rule of seniority-cum-merit is a process where after assessing the minimum necessary merit, promotions are made on the basis of merit (instead of seniority) from among the candidates possessing the minimum necessary merit. If the criteria adopted for assessment of minimum necessary merit is bona fide and not unreasonable, it is not open to challenge, as being opposed to the principle of seniority-cum-merit. We accordingly hold that prescribing minimum qualifying marks to ascertain the minimum merit necessary for discharging the functions of the higher post, is not violative of the concept of promotion by seniority-cum-merit."

(emphasis supplied)

8. In this case, the Bank did not subject the eligible candidates to any process of assessment to ascertain any specified minimum merit, for the purpose of promoting the candidates who possessed the minimum merit, on the basis of seniority. On the other hand, the Bank proceeded to assess their inter se merit with reference to four criteria (period of service, educational qualification, performance during three years and interview) by allocating respectively maximum marks of 40, 6, 24 and 30

(out of a total 100 marks) and then proceeded to promote those who had secured the highest marks in the order of merit. Thus there were two violations of the relevant Rules: (i) promoting candidates on merit-cum-seniority and not on seniority-cum-merit; and (ii) assessing inter se merit, inter alia, with reference to marks allocated to different educational qualifications.

9. It cannot, therefore, be said that the promotions made on 20-11-1990 were on the basis of seniority-cum-merit. Though the period of service was also considered as one of the factors for assessment of comparative merit, the procedure adopted for promotion was merit-cum-seniority. The High Court was, therefore, justified in interfering with the promotions. The directions given by the High Court for fresh process of promotion were in consonance with the Rules and principles of seniority-cum-merit. The appeals, therefore, have no merit."

Thus, when the Tamil Nadu Registration Subordinate Service Rules prescribes merit and ability, the seniority alone will not confer any right to the petitioner, when otherwise educationally also he is not qualified.

13. In this case, applying G.O.Ms.No.107 and 116, which state that any Diploma/Degree and Post Graduate Degree in Open University System other than the regular / main system is not valid and therefore, the petitioner, who has got an M.A., degree without obtaining the Under Graduate from an Open University is not valid and as per the judgment of the Hon'ble Supreme Court in Annamalai University case (cited supra), the authorities have rightly rejected the prayer, which has been allowed by the learned Single Judge on the wrong interpretation of the eligibility by distinguishing appointment and promotion.

14. For the foregoing reasons, this writ appeal is allowed and the order of the learned Single Judge is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector General of Registration,
100, Santhome High Road,
Chennai-600 028.
2. The Secretary to Government,
Commercial Taxes & Registration
Department, Government of Tamil Nadu,
Secretariat, Chennai-600 009.

+1cc to the Government Pleader, S.R.No. 36548

W.A.No.821 of 2021

AK(CO)
GN(13/08/2021)