

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

W.A.No.519 of 2020

1.S.Deenadayalan
2.S.Jacob
3.R.Saravanan

.....Appellants

Vs

1.The State of Tamil Nadu,
rep.by its Principal Secretary,
Personnel and Administrative Reforms,
Department, St.George Fort,
Chennai 600 001.
2.The Chairman,
The Tamil Nadu State Apex
Co-operative Bank Ltd,
No.4, N.S.C.Bose Road,
Chennai 600 001.
3.The Managing Director,
The Tamil Nadu State Apex
Co-operative Bank Ltd.,
NO.4, N.S.C.Bose Road,
Chennai 600 001.

4.M.Ravi

5.T.Vasanthakumar

6.S.A.K.Narendrakumar

7.T.Paramasivam

8.J.Jayaseelan

9.C.Kumar

10.T.Pakkirisamy

..Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order passed in W.P.NO.1618/2018 dated 12.12.2019 passed by this Court.

Prayer in WP No.1618/2018 : Writ Petition filed under Article 226 of the constitution of India, praying to issue a writ of mandamus, directing the respondents to consider the candidature of the petitioners for promotion to the post of Assistant Manager without reference to GO Ms.No.107 dated 18.08.2009 and promote the petitioners as Assistant Manager in the Respondent Bank.

For Appellant : Mr.S.Umapathy

For RR1 : Mr.R.Vijayakumar,
Additional Government Pleader

For RR2 and R3 : Mr.L.P.Shanmugasundaram
Standing Counsel

JUDGMENT

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The respondent / writ petitioner filed W.P.No.1618 of 2018, praying for issuance of a Writ of Mandamus directing the official respondents to consider their candidature for promotion to the post of Assistant Manager in the services of the Tamil Nadu State Apex Co-Operative Bank Ltd., Chennai 600 001, without reference to G.O.Ms.No.107 dated 18.08.2009. The said Writ Petition, after contest, came to be dismissed, vide impugned order dated 12.12.2019 and aggrieved by the same, the present Writ Appeal is filed.

2. Facts leading to the present round of litigation have been narrated in detail and in extenso in the impugned order passed in the Writ Petition, which is the subject matter of challenge in this Writ Appeal and therefore, it is unnecessary to restate the facts once again for the sake of brevity.

3. The petitioners were appointed in the year 1996 as subordinate staffs and subsequently they were promoted as Assistants and the next level of promotion is to the post of Assistant Manager and at the relevant point of time, there were large vacancies and the respondents / writ petitioners had completed Under Graduation through open university without completing 10+2 and in view of the same, they took an entrance test and completed the Under Graduation.

4. In terms of G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009, the degrees in Diploma/Degree/Post-Graduate degree obtained through Open Universities only after having passed secondary school examination (10th standard) and higher secondary school examination (+2) alone are considered for appointment / promotion in public services.

5. The primordial ground raised by the Writ Petitioners is that since they were also granted scale of the Assistant Manager and they had also discharged their duties for promotional posts, the Government Order has no application and therefore, prays for consideration of their request for promotion to the post of Assistant Manager, without citing the above cited Government Order.

6. The respondents 2 and 3 in their counter affidavit took a stand that in the light of the communication dated 29.10.2012, sent by the Registrar of Co-operative Societies, the Bye-Law has been amended and as per S.No.7 under Clause (1) of Special By-law No.5, the educational qualification for Assistant Manager is a graduate (10+2+3 pattern) in any discipline of any University or Institution recognized by the University Grant Commission and even in respect of Assistant, the qualification is a Graduate having 10+2+3 pattern in terms of S.No.10 of Clause (1) of Special By-law No.5 and the said Bye-law came into force with effect from the date of registration namely 05.07.2017 and as such they are not entitled to be considered.

7. The learned Judge, after taking note of the materials and consideration of the rival materials, found that it is left to the discretion of the employer to fix the eligibility criteria for selection and promotion to the post and further taken note of the fact that the Bank has also amended the Bye-law in the year 2015, which came into effect on 05.07.2017 and by virtue of the said Bye-law, the case of the petitioners do not deserve consideration and accordingly, dismissed the Writ Petition.

8. The learned counsel appearing for the appellants / writ petitioners would submit that the learned Single Judge has not properly appreciated the judgment cited and further points out that even as per the counter affidavit, the petitioners are paid with the salary of the Assistant Manager and since it is a promotional post and that the petitioners have also gained experience for a considerable period of time, there cannot be any impediment to grant them promotion to the said post and no prejudice would be caused to the respondents 2 and 3 / employers.

9. It is also the submission of the learned counsel appearing for the appellants / writ petitioners that though the respondents 2 and 3 in paragraph no.8 of the counter affidavit, took a stand that the writ petitioners 1 to 7 were given the scale of pay admissible to Assistant Manager from the month of August 2013, on completion of 12 years of service in the Assistant cadre as per the 10th By-Partite settlement (supplement) arrived on 31.07.2013, the fact remains that they have not been paid so and prays for appropriate direction in that regard.

10. Per contra, Mr.L.P.Shanmugasundaram, learned Standing Counsel appearing for the respondents 2 and 3 would submit that assuming for the sake of arguments that the petitioners / appellants are eligible, they have to be considered in the light of the present Bye-law and in terms of Section 7 under Clause (1) of Special Bye-law No.5, the educational qualification for Assistant Manager is a graduate (10+2+3 pattern) in any discipline of any University or Institution recognized by the University Grant Commission and admittedly, the petitioners did not complete their educational qualification in 10+2+3 pattern and through open university, directly obtained degree and as such, they are not eligible to be considered for promotion to the post of Assistant Manager and further made a submission that the learned Judge has taken note of the factual aspects and legal position and on a thorough consideration and appreciation of the same, has rightly reached the conclusion to dismiss the Writ Petition and hence prays for dismissal of this Writ Petition.

11. This Court has carefully considered the rival submissions and also perused the materials placed before it.

12. Admittedly, the petitioners / appellants did not undergo SSLC and +2 and in view of the same, appears to have undergone graduation course and got the degree through Open University System.

13. The primordial submission made by the learned counsel appearing for the appellants / writ petitioners is that since vacancies were arose prior to the amendment, the Rule position prevalent on that day should be made applicable. In the considered opinion of this Court, the said submission lacks merit and substance for the reason that as and when the selection is made, the Rule position prevalent upon the date of notification for selection alone would have application. It is also a well settled position of law that prescription of the qualification for selection / promotion is prerogative of the employer and it falls with their exclusive domain and this Court in exercise of it's jurisdiction under Article 226 of the Constitution of India, cannot direct the employer to prescribe the particular qualification for selection / promotion. It is also a well settled position of law that the Court cannot issue a positive direction directing the employer to fill all the vacancies and this Court keeping in mind the well settled legal position, has accordingly scrutinized and analyzed the materials placed before this Court.

14. In the light of the amendment made to the Special By-law No.5, S.No.7 under Clause (1) of Special Bye-law No.5, which came to be registered on 05.07.2017, the prescription for qualification to the post of Assistant Manager is a Graduate having 10+2+3 pattern in any discipline of any University or Institution recognized by the University Grant Commission and admittedly, the petitioners after passing 8th

standard, joined the services of the respondents 2 and 3 as subordinate staff and after undergoing the graduation course, straightaway got the degree without studying SSLC and Higher Secondary course. The eligibility of the petitioners to be considered in terms of Bye-laws, is in terms of the amendment dated 05.07.2017. Admittedly, on the date of such amendment, the petitioners did not have the prescribed qualification for promotion to the post of Assistant Manager and in respect of promotion / selection to the post of Assistant Manager, there cannot be any different qualification also. In the considered opinion of this Court, the learned Judge, considering and appreciating the relevant materials, had rightly reached the conclusion to reject the claim of the petitioners with a consequential dismissal of the Writ Petition.

15. This Court, on an independent application of mind to the entire materials, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the learned judge in dismissing the Writ Appeal.

16. Therefore, the Writ Appeal is dismissed, confirming the order dated 12.12.2019 in W.P.No.1618/2018. No costs.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1.The Principal Secretary,
Personnel and Administrative Reforms,
Department, St.George Fort,
Chennai 600 001.

2.The Chairman,
The Tamil Nadu State Apex
Co-operative Bank Ltd,
No.4, N.S.C.Bose Road,
Chennai 600 001.

3.The Managing Director,
The Tamil Nadu State Apex
Co-operative Bank Ltd.,
NO.4, N.S.C.Bose Road,
Chennai 600 001.

+1cc to Special Government Pleader SR.No.23359

W.A.No.519 of 2020

RLD (CO)

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GM (23/06/2021)