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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.07.2021
PRONOUNCED ON : 22.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.6625 of 2020
&
WMP.Nos.7853, 7855, 7857 & 7859 of 2020

C.Aarthi

... Petitioner

Vs.

1.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, Park Town,
VOC Nagar, Chennai-600 003.

2.The Chairman,
Tamil Nadu Public Service Commission,
TNPSC Road, Park Town,
VOC Nagar, Chennai-600 003.

3.The Controller of Examination,
Tamil Nadu Public Service Commission,
TNPSC Road, Park Town,
VOC Nagar, Chennai-600 003.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records made in the impugned Email Communication dated 02.03.2020 by the first respondent and to quash the same. Consequently, direct the first respondent to issue Counselling Memo letter to the petitioner for Certificate Verification in respect of Group IV Typist Post mentioned in Notification No:19/2019, dated 14.06.2019 issued by the respondent.

For Petitioner :Mr.P.Srinivasan

For Respondents:Mr.K.V.Sajjev Kumar for R1
Mr.V.Balamuralikrishnan
Standing Counsel for TNPSC



O R D E R

By consent of both the parties, this Writ Petition is heard through Video Conferencing on 23.07.2021.

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2. The petitioner herein is aggrieved against her non-selection to the posts called for by the respondents under Notification No.19 of 2019 dated 14.06.2019.

3. Through the impugned email communication dated 02.03.2020, the petitioner was informed that her application was rejected for the reason that the date of publication of her Post Graduation degree was after the date of notification. The petitioner has passed her Post Graduation in the month of July 2019, whereas the notification for appointment to the posts of Typist/Junior Assistant was published earlier on 14.06.2019.

4. When the minimum educational qualification prescribed for the post of Typist/Junior Assistant is a pass in +2/Higher Secondary Course, there is no justification on the part of the respondents in referring to the petitioner's higher qualification and thereby disqualifying her of having passed it after the date of notification dated 14.06.2019. Such a reasoning adopted by the respondents had already come up for consideration before this Court in various Writ Petitions and in one such Writ Petition, in the case of P.Balu V. The Government of Tamil Nadu rep. by its Secretary, Personnel & Administrative Reforms Department, Chennai passed in W.P.No.6582 of 2016 dated 18.08.2021, some of these decisions were relied upon and ultimately, it was held that the authorities cannot rely upon the higher qualifications obtained by a Government employee for the purpose of promotion to a post, which does not prescribes such higher qualifications as the minimum educational qualification. Though the law laid down in this decision arises in a service matter, the ratio would be applicable to the facts of the present case also. This Court in P.Balu's case (supra) had dealt on this aspect in the following manner:

"10. When the Tamil Nadu Secretariat Rules prescribes the qualifications for promotion to the post of ASO, as a pass in SSLC examination, together with successful completion of the departmental test/foundational training and the examination at the end of the training, this Court, is unable to appreciate the claim of the respondent in expecting the petitioner to possess the qualifications, over and above the minimum required qualification for such promotions, in a regular academic stream. Incidentally, it is not the case of the respondent that the service rules/regulations governing the qualifications



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for promotion to the post of ASO requires or mandates higher qualification in 10+2+3 pattern. As a matter of fact, there is no such provision. Thus, the subsequent higher qualification of the petitioner by completing his higher secondary (Plus 2) in March 2014 and his degree B.A. (Sociology) in May 2017 will have no relevance, for considering the petitioner's candidature for promotion to the post of ASO. While that being so, the inevitable conclusion which this Court is constrained to take is that, the petitioner was possessed of the minimum general educational qualification for being considered for promotion to the posts of ASO as on 01.08.2008. Consequently, it requires to be held that the non inclusion of the petitioner's name in the promotional panel for the post of ASO for the year 2007-08 is not only unjustifiable, but also illegal.

11. When a similar situation arose before this Court in the case of S.Navaneethakrishnan Vs. The Principal Secretary to Government, Personnel & Administrative Reforms Department, Chennai and others in a Writ Petition in W.P.No.24589 of 2013, a learned Single Judge of this Court, in his order dated 10.02.2015, had placed reliance on a decision of the Hon'ble Division Bench of this Court passed in W.A.No.1372 of 2013 and held that when the incumbent seeking promotion possesses the required qualification under the statutory regulations, he would be entitled for the promotion on that minimum qualification alone. The relevant portion of the order reads as follows:-

"7. The petitioner was initially appointed as typist. The appointment was made in Tamil Nadu Secretariat service. The petitioner was promoted to the post of Assistant in the year 2005. There was no requirement that for promotion to the post of Assistant, candidate should have obtained degree. SSLC was the qualification for appointment to the post of Assistant, in case it is by promotion from the post of typist. The petitioner is therefore qualified for appointment to the post of assistant. Thereafter, he was promoted to the post of Assistant Section Officer. The recruitment rule for promotion to the post of Assistant Section Officer indicates



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that it was by way of promotion, from among the category of Assistants. There was no requirement that Assistant Section Officer should hold a degree.

8. The Tamil Nadu General Service rules was amended subsequently. The amendment was made in the year 2012 with effect from December 2011. As per the amended Rule, candidate must hold a Degree. However, that was not the case as on 1 June 2011, which was the crucial date for drawing the panel for the year 2011-12. The petitioner is therefore perfectly correct in his contention that even without a Degree, he was eligible for appointment to the post of Section Officer, as on 1 June 2011.

9. Similar question came up for consideration before a Division Bench of this Court in W.A.No.1372/2013. The Division Bench, having found that on the crucial date for promotion to the post of Under Secretary, respondent therein fulfilled all the necessary qualification, dismissed the writ appeal filed by State by -5- judgment dated 12 July 2013. The petitioner is similarly situated and as such, he must succeed.

10. In view of the then prevailing statutory position that for appointment to the post of Section Officer, requirement is only SSLC, the first respondent was not correct in rejecting the claim made by the petitioner, solely on the ground that he failed to undergo basic course before obtaining degree. While rejecting the request, the first respondent omitted to consider the material fact that it was only by amendment of the rule, condition regarding degree was inserted. The amended rule came into force six months after the crucial date. The case of the petitioner should therefore be considered in the light of the unamended service rule.

12. A similar view was taken in the case of V.K. Baskar and another Vs. The Government of Tamil Nadu rep. by its Principal Secretary, Personnel & Administrative Reforms Department in W.P.Nos.25701 & 25702 of 2011, dated 04.04.2014, in the following manner:-

"3. It is the contention of the petitioners that only on 15.06.2012, G.O.Ms.No.88, Personnel and Administrative Reforms (C) Department has been issued by the Government, fixing the



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required qualification for the post of Section Officers as a Bachelor's Degree of any University recognized by the University Grants Commission for the purpose of its grant. Before 15.06.2012, the petitioners' juniors were promoted on 31.12.2010 and on the said date, the petitioners are possessing the required qualification of Plus 2 and 6 years experience. Therefore, on the date of giving promotion to their juniors viz., on 31.12.2010, the petitioners have the required qualification and hence, promotion has to be given to them.

4. Learned Special Government Pleader appearing for the respondent submits that as per G.O.Ms.No.88, Personnel and Administrative Reforms (C) Department dated 15.06.2012, the petitioners cannot claim promotion as they are not having the required graduation degree through regular stream.

5. I have considered the submissions made on either side and perused the materials available on record.

6. From the records, it is seen that the said graduation qualification was fixed only after 15.06.2012 and the petitioners' juniors having been promoted before the said date, who are also qualified with Plus 2 and 6 years of experience (without graduation degree), the petitioners are also entitled to get promotion, if there is no other legal impediment."

13. The appeal filed by the Government against the aforesaid decision was dismissed through an order dated 25.07.2014 passed in W.A.Nos.860 & 861 of 2014 by observing as follows:

"6. We do not find any merit in these appeals. Admittedly, persons, junior to the respondents, were promoted. According to the appellants, the only ground on which the appellants were not considered for promotion along with their juniors, is that they were not possessing the requisite qualification and nothing also. Therefore, the learned Single Judge rightly held that the date on which the juniors of the respondents were considered, a pass in degree was not prescribed as the requisite qualification. When such is the case, the respondents ought to have been considered for promotion and their obtaining degree through Open



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University System instead of regular stream, cannot be put against them, especially, when a pass in degree itself was not prescribed as a requisite qualification for promotion as Section Officer."

14. A further appeal filed before the Hon'ble Supreme Court of India, against the aforesaid order, was rejected in SLP. (C) No.28282 of 2014, through an order dated 16.10.2014.

15. The citations extracted above are self explanatory. Thus, by applying the above ratio and in the background of the minimum general educational qualifications prescribed under the Tamil Nadu Secretariat Service Rules, it can be said that the respondent cannot expect the petitioner to possess higher qualifications, over and above the minimum educational qualifications, in the regular pattern of 10+2+3. Consequently, the defence taken by the respondent that the petitioner would be qualified to be promoted as an ASO for the year 2017-18, after completion of his higher qualification, in the 10+2+3 pattern, cannot be sustained."

5. The aforesaid extract is self explanatory. As such, when the notification for appointment to the post of Typist/Junior Assistant prescribes +2/Higher Secondary Course as a minimum educational qualification, the respondents cannot rely upon the higher educational qualification obtained by the petitioner and use it against her as a disqualification, as held in the aforesaid order of this Court.

6. Apart from the reasons assigned by the respondents in the impugned email communication dated 02.03.2020, admittedly, the petitioner herein is otherwise qualified to be appointed to the post of Group IV post referred to in the notification No.19 of 2019 dated 14.06.2019. This Court has also taken note of the fact that the petitioner herein has already been provisionally appointed as Typist in the Employment and Training Department with a rider that the appointment would be subject to the outcome of the present Writ Petition.

7. For all the foregoing reasons, the impugned email communication dated 02.03.2020 sent by the first respondent herein, is hereby quashed. Consequently, there shall be a direction to the respondents herein to ratify the provisional appointment given to the petitioner as Typist in the Employment



and Training Department, within a period of two weeks from the date of receipt of a copy of the order of this Court. The Writ Petition stands allowed accordingly. Consequently, the connected Miscellaneous Petitions are closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

DP

To

- 1.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, Park Town,
VOC Nagar, Chennai-600 003.
- 2.The Chairman,
Tamil Nadu Public Service Commission,
TNPSC Road, Park Town,
VOC Nagar, Chennai-600 003.
- 3.The Controller of Examination,
Tamil Nadu Public Service Commission,
TNPSC Road, Park Town,
VOC Nagar, Chennai-600 003.

+1cc to M/s.G.Hema, Advocate, S.R.No.48808

W.P.No.6625 of 2020
&
WMP.Nos.7853, 7855,7857 & 7859 of 2020

RLD(CO)
CB(24/09/2021)