



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.08.2021
PRONOUNCED ON : 16.08.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.10251 of 2020
and M.P.Nos. 12464 & 12466 of 2020
(Through Video Conferencing)

R.J.Gajendra Kumar

.. Petitioner

vs

1.The Government of Tamil Nadu,
Rep.by its Additional Chief Secretary to Government,
Tourism, Culture and Religious Endowments Department,
Secretariat, Chennai 600 009.

2.The Commissioner of Tourism,
Department of Tourism,
Tamil Nadu Tourism Complex,
No.2, Wallajah Road,
Chennai 600 002.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the impugned proceedings of the 1st respondent in Letter No.4937/T2-1/2019-5 dated 22.07.2020, quash the same and consequently direct the 1st respondent to include the petitioner's name in the appropriate place in the regular panel for the year 2017-18 and consider the petitioner for promotion to the post of Assistant Director of Tourism with effect from 01.09.2017.

For Petitioner : Mr.G.Rajagopal, Sr.Counsel
for Mr.L.P.Maurya

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate.

O R D E R

This is the second round of litigation. The petitioner has challenged the impugned order dated 22.07.2019 bearing reference No.4937/T2-1/2019-5 of the 1st respondent passed pursuant to an order dated 24.10.2019 of this Court in W.P.No.18392 of 2019. Relevant portion of the impugned order reads as follows:-

"3. Based on the orders of the Hon'ble High Court dated 24.10.2019, your representation dated 13.05.2019 and further representations



WEB COPY

mentioned in the reference 1st cited were examined.

4. It is pertinent to note that you have passed 10th Std (SSLC) on March 1982 and joined H.Sc(+1) first year during the academic year 1982-83 on 12.07.1982. In the meantime, you were appointed as Junior Assistant on compassionate grounds and joined in Tourism department on 25.05.1983. Later you have got admitted in the second year Foundation Course directly in Madurai Kamaraj University- Open University during 1984 and then passed a Degree in Commerce through Distance Education during 1987.

5. In this regard, it is informed that in G.O.(Ms.)No.107, Personnel & Administrative Reforms (M) Department, dated 18.08.2009, orders have been issued prescribing the degree qualification in the pattern of 10, +2, +3 for appointment/promotion to Public Services. In Letter No.33448/M/2010-4, Personnel and Administrative Reforms (M) Department, dated 03.12.2010, it has been clarified that a degree awarded by the Open Universities after passing Pre-Foundation Course and two years Foundation Course through Open University cannot be recognized a degree as per University Grants Commission norms for the purpose of employment / promotion in Public Services since such Pre-Foundation Course and 2 year Foundation Course are not contemplated in the University Grants Commission Regulations.

6.Further, in G.O.(Ms) NO.144, P & AR (M) Department, dated 20.11.2017, orders were issued that the Foundation Courses offered by various Universities are not equivalent to Higher Secondary Course (+2). As per Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, for appointment to public service, a degree should be in the pattern of 10, +2, +3. As per Rule 5 of the Special Rules for the post of Tourist Officer, educational qualification of degree is prescribed for appointment to the post of Tourist Officer from Assistant Tourist Officer Grade II by Recruitment by transfer.

7.Considering the above orders and rules, it is found that you have not passed the degree in the regular pattern of 10 + 2 + 3 (i.e.

After passing SSLC (10th) & Higher Secondary



WEB COPY

Course (+2). Hence you are not qualified to hold the post of Tourist Officer/Publication Officer.

8.I am also to inform you that there is no specific direction in the order dated 24.10.2019 in W.P.No.18392 of 2019 to promote you as Assistant Director. Therefore, your request to promote to the post of Assistant Director is not feasible as per the rules in force."

2. By the impugned proceedings in Letter No.4937/T2-1/2019-5 dated 22.07.2020 the petitioner has been informed that the petitioner was neither qualified to be appointed to the post of Tourist Officer on promotion from the post of Assistant Tourist Officer Grade II and therefore the request of the Petitioner to promote to the post of Assistant Director was not feasible as per the rules in force.

3. It has been further observed that there was no specific direction in the order dated 24.10.2019 in W.P.No.18392 of 2019 to promote the petitioner as an Assistant Director of the second respondent- Department of Tourism in terms of letter No.33448/M/2010-4, Personnel and Administrative Reforms (M) Department, dated 03.12.2010 and G.O.Ms.No.144, P & AR (M) Department, dated 20.11.2017.

4. The learned Senior counsel submits that the petitioner was appointed as a Tourist Officer with the 2nd respondent in the panel 2009-2010 and that his service was later regularised in the year 2017 vide G.O.Ms.No.224 Tourism Culture and Religious Endowments Department dated 16.10.2017.

5. The case of the petitioner is that the petitioner completed SSLC (10th standard) during the academic year 1981-82 and thereafter joined H.Sc (+1) first year on 12.07.1982.

6. The learned Senior further submits due to the demise of his father, the petitioner could not pursue his education in the school. The petitioner was appointed on compassionate ground by the 2nd respondent Tourism Department on 25.05.1983 as a Junior Assistant.

7. As the petitioner was unable to attend regular school as he was employed with the 2nd respondent, the petitioner joined the Madurai Kamaraj Open University during April 1984 and completed U.G in B.Com., during October 1987, P.G.Diploma in Tourism in May 1993 and M.Com., during April 2003 through Distance Education in Madurai Kamaraj University. The petitioner also completed P.G.Diploma in Personnel Management during June 1991 through the Distance Education programme in Annamalai University.



8. Learned Senior Counsel submits that the petitioner was fully qualified and therefore the petitioner represented before the first respondent to consider his name for promotion to the post of Assistant Director.

9. Since the representation was not considered, the petitioner approached this Court in W.P.No.18329 of 2019. By an order dated 24.10.2019, this Court directed the 1st respondent to consider the representation of the petitioner dated 13.05.2019 and pass appropriate orders on merits.

10. Learned Senior Counsel submits that the views of the 1st respondent in the impugned order dated 22.07.2020 are not correct. It is submitted that the impugned order refers to G.O.(Ms.)No.107, Personnel & Administrative Reforms (M) Department, dated 18.08.2009.

11. He submits that G.O.(Ms.)No.107, Personnel & Administrative Reforms (M) Department, dated 18.08.2009 was not in force when the petitioner obtained U.G in B.Com during October 1987 from the Madurai Kamaraj Open University under the distance education programme.

12. It is further submitted that the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 was made only in the year 2016 and therefore the restriction if any under the new Act would not operate retrospectively against the petitioner and disqualify him.

13. The learned Senior Counsel for the petitioner further submits that Section 25 of the said Act cannot be to the prejudice of the petitioner in the light of Section 54 of the aforesaid Act.

14. The learned Senior counsel for the petitioner therefore submits that if the petitioner's qualification stands recognized in terms of Section 54 of the Tamilnadu Government Servants (Conditions of Service) Act, 2016 then there is no basis on which either the petitioner's appointment to the post of a Tourist officer can be questioned or the petitioner denied promotion to the post of an Assistant Director of the respondents.

15. The learned Senior counsel for the petitioner has referred to the additional typed set of documents filed by the Petitioner. He has referred to G.O.Ms.No.528 Personnel and Administrative (Per A) dated 18.05.1985 which conferred recognition for qualification to persons who have completed Pre-Foundation and Foundational Course of Madurai Kamaraj University before the getting their UG degree. He has referred to relevant portion from G.O.Ms.No.528 Personnel and Administrative (Per A) dated 18.05.1985 which reads as under:-

" 3. The Government after careful consideration direct that the Pre-Foundation Course of the Madurai Kamaraj University - Open University be recognized as equivalent



to the 10 years S.S.L.C of the Tamil Nadu Government for the purpose of entry into Public Services in this State. The Government also direct that the two years Foundation Course of the Madurai Kamaraj University - Open University be recognised as equivalent to Higher Secondary (+2) course of the Tamil Nadu Government for purpose of entry into Public Services in this State".

16. He therefore submits that in para no.6 of the impugned order, in which it is stated that the Foundation Courses offered by various Universities are not equivalent to Higher Secondary Course is not correct. He submits that under Section 54 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 unless a contrary intention is expressly indicated therein, nothing contained in the Act shall adversely affect any person who was a member of any service on the date of coming into force of the provisions of this Act.

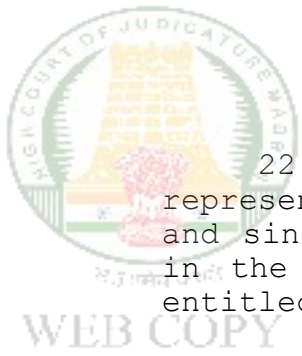
17. Defending the impugned order, the learned Government Advocate states that in G.O.Ms.No.107, Personnel & Administrative Reforms (M) Department, dated 18.08.2009 has prescribed qualification. For appointment/promotion in Public Services, the petitioner was required to have graduated in the regular pattern of 10 +2 +3.

18. It is submitted that the petitioner should have attended and completed Plus Two (+2) by attending regular schools and cleared the exam therefore the petitioner was neither qualified to be appointed to the post of Tourist Officer nor entitled to be promoted in the next higher post as an Assistant Director.

19. It is further submitted that in Letter No.33448/M/2010-4, Personnel and Administrative Reforms(M) Department dated 03.12.2010 it has been clarified that a degree awarded by the Open Universities after passing Pre-Foundation Course and two years Foundation Course through Open University cannot be recognized a degree as per University Grants Commission norms for the purpose of employment/promotion in Public Services.

20. The learned Government Advocate for the respondents further submits that in G.O.Ms.No.144, Personnel and Administrative Reforms(M) Department dated 20.11.2017, it has been clarified that the Foundation Courses offered by various Universities are not equivalent to Higher Secondary Course (+2).

21. It is therefore submitted that after examination of the petitioner's representation dated 13.05.2019, it has been correctly concluded that the petitioner was not qualified to hold the post of Tourist Officer/Publication Officer and therefore his request to promote him to the post of Assistant Director was not possible.



22. He further submits that the petitioner has given a representation for promotion to the post of Assistant Director and since the petitioner did not have requisite qualification in the feeder category post of Tourist Officer he was not entitled for any promotion.

23. He further submits that the Panel for the post of Tourist Officer for the year 2009-2010 was issued vide G.O.Ms.No.100, Tourism and Culture Department, dated 20.07.2011 after the amendment to the Special Rules for the post of Tourist Officer came into force on 06.08.2010 vide G.O.Ms.No.174, Tourism and Culture (T2) Department, which prescribed the qualification of "A degree" for recruitment by transfer from the post of Assistant Tourist Officer Grade-II.

24. It is submitted that the petitioner has not completed H.Sc. and therefore Foundation Course of Madurai Kamaraj University disqualified the petitioner and therefore this petition was considered for promotion based on the degree in Commerce obtained through the Distance Education of Madurai Kamaraj University.

25. He submits that the petitioner was promoted to the post of Tourist Officer for the panel year 2009-2010 considering the qualifications prescribed under Rule 5 (b) (iii) of the Specific Rules for the post of Tourist Officer (Degree qualification not prescribed) vide G.O.Ms.No.246, Information & Tourism (T2) Department dated 03.09.1991.

26. I have considered the arguments advanced by the learned Senior counsel for the petitioner and the learned Government Advocate for the first and second respondents. I have perused the affidavit filed in support of the present Writ Petition and the counter affidavit filed by the respondents and also reply affidavit filed by the respondents. I have also examined the impugned order passed by the first respondent.

27. The Hon'ble Supreme Court in Chandrakala Trivedi Vs. State of Rajasthan, (2012) 3 SCC 129 has held that the word "equivalent" must be given a reasonable meaning since the expression "equivalent" means that there are some degrees of flexibility or adjustment which do not lower the stated requirement.

28. A Full Bench of this Court in Nadar Thanga Shubha Laxman Vs. State of Tamil Nadu, (2014) 3 CTC 433 was called upon to answer as to whether the Equivalence Certificate issued by the Committee constituted by the Government, declaring that the degree obtained from one University was equivalent to the degree obtained from yet another University is only prospective in operation and answered the issue ultimately as follows:-

"23. Also, in the present case, neither the Equivalence Committee nor the Government Orders in G.O.Ms.Nos.72, dated 30.04.2013 and



WEB COPY

117, dated 02.07.2013, confined the validity of the degree obtained by the candidates to operate prospectively, therefore, as per the above judgments, when the vested rights are created from the date of their acquisition of equivalent degrees, the respondents cannot take a stand that the degrees obtained by the petitioners will only have prospective effect from the date of issuance of Equivalence Certificate. When both the Equivalence Committee and the Government Order have consistently not mentioned the effect of the validity of the degree, it is not proper to hold prospective by any one, more so, by the Court. That apart, a degree or a certificate issued by any University or competent educational authorities always have the effect on par with a decree issued by a competent civil court. Besides, it is well settled legal position that even an executing court cannot go behind its decree and this principle will mutatis mutandis undoubtedly apply to the case on hand as well. "

29. The Hon'ble Supreme Court in Prakash Chand Meena Vs. State of Rajasthan, (2015) 8 SCC 484, under a similar circular has observed that in the matter of eligibility qualification, the equivalent qualification must be recognised as such in the recruitment rules or Government Order existing on or before the initiation of recruitment process.

30. Thus, the question to be answered is whether the petitioner was having a valid qualification for being appointed either as a Tourist Officer and/or therefore whether the petitioner was eligible to be promoted as an Assistant Director?

31. The petitioner completed SSLC (10th Standard) in the year 1982. He was unable to continue his study in higher secondary school due to untimely death of his father on 12.07.1982. Meantime, the petitioner was appointed as a Junior Assistant on 25.05.1983 by the respondents on the compassionate grounds.

32. Thereafter, the petitioner completed Foundation Course second year in Madurai Kamaraj Open University during April, 1984. Later, the petitioner joined in Madurai Kamaraj Open University during April 1984 and completed U.G in B.Com., during October 1987, P.G.Diploma in Tourism in May 1993 and M.Com., during April 2003 through Distance Education in Madurai Kamaraj University.

33. Prior to issue of G.O.Ms.No.242, Higher Education (B1) Department dated 18.12.2012 and G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009, the petitioner had completed 3 year Diploma in lieu of Higher Secondary Certificate and thereafter graduated from the



Annamalai University through its Distance Education programme.

34. When the petitioner was appointed as a Tourist Officer on 01.08.2011 and posted in New Delhi both G.O.Ms.242 Higher Education (B1) Department dated 18.12.2012 and G.O.Ms.No.107 Personnel and Administrative Reforms (M) Department, dated 18.08.2000 were not in force.

35. As per G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department dated 18.08.2009 only those who completed SSLC, +2 and thereafter had pursued Under Graduation (U.G.) through open university were entitled to be considered for appointment in the Government Services.

36. Prior to issue of G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009, G.O.Ms. No.180, Personnel and Administrative Reforms (M) Department, dated 11.09.2000 was in force. The relevant portion of the said G.O.Ms.No.180, Personal and Administrative Reforms (R) Department, dated 11.09.2000 is reproduced below:-

4குழுவின் பரிந்துரைகளை அரசு தீவிர பரிசீலனைக்குப் பின் ஏற்றுக் கொள்ள முடிவெடுத்துள்ளது. அவ்வாறே, தமிழ் நாட்டிலுள்ள பல்கலைக்கழக மான்யக் குழுவால் அங்கீகரிக்கப்பட்ட பல்கலைக்கழகங்களால் திறந்த வெளி பல்கலைக்கழக முறை மூலம் வழங்கப்படும் பட்டயப்படிப்பு, பட்டப்படிப்பு மற்றும் முதுநிலைப் பட்டப்படிப்புகளை அப்பல்கலைக்கழகங்களால் முறையாக வழங்கப்படும் பட்டயப்படிப்பு, பட்டப்படிப்பு மற்றும் முதுநிலைப் பட்டப்படிப்பு ஆகியவற்றுக்குச் சமமாகக் கருதி பொதுப்பணிகளில் வேலை வாய்ப்பிற்கு அங்கீகாரம் அளித்து அரசு ஆணையிடுகிறது.”

37. As per G.O.Ms.No.180, Personal and Administrative Reforms (R) Department, dated 11.09.2000, Diploma, Graduation and Post Graduation through Open University System were treated on par with Regular Stream for the purpose of employment in Public Service.

38. Scope of G.O.Ms.No.180, Personal and Administrative Reforms (R) Department, dated 11.09.2000 was later explained in G.O. Ms. G.O.Ms.No.217, Personnel and Administrative Reforms. G.O.Ms.No.217, Personnel and Administrative Reforms (K) Department, dated 08.09.2007 is reproduced below:-

ABSTRACT

Public Services - Qualifications - Recognition of Course awarded under Open University System by Tamil Nadu Open University as equivalent to the corresponding awards of other Universities in the State under regular stream for the purpose of employment in public services - clarification - issued.



PERSONNEL AND ADMINISTRATIVE REFORMS (K) DEPARTMENT

G.O.Ms.No.

217

Dated : 08.09.2007

WEB COPY

1. G.O.Ms.180, Personnel and Administrative Reforms (R), Department, dt. 11.09.2000.
2. From the Registrar, Tamil Nadu Open University Letter F.No.16(2)/Misc/2003, dt. 27.2.07.

ORDER:

In the Government order first read above, it has been ordered that the Diploma / Under Graduate / Post Graduate Degree Courses offered by the Universities recognised by the University Grands Commission through open university system shall be considered as equivalent to Diploma / Under Graduate / Post Graduate Degree courses offered by those Universities under regular stream for the purpose of employment in public services.

2. In the letter second and read above, the Registrar, Tamil Nadu Open University has requested to issue an order to the effect that the Certificates / Diploma / Degree and Post Graduate Degree conferred by Tamil Nadu Open University shall be treated as equivalent to the corresponding awards of other Universities in the State under regular stream, for the purpose of employment in public services.

3. The Government have examined the matter in detail and decided to issue a clarification based on the orders issued in the Government order first read above. Accordingly, the Government direct that the Diploma / Under Graduate / Post Graduate Degree Courses offered by the Tamil Nadu Open University shall be treated as equivalent to the corresponding awards of the other Universities in the State under regular stream for the purpose of employment in public services.

//BY ORDER OF THE GOVERNER//

T.S.SRIDHAR

SPECIAL COMMISSIONER AND

SECRETARY TO GOVERNMENT



39. When the petitioner was appointed as a Tourist Officer, G.O.Ms.No.217 Dated 08.09.2007 in force wherein the Government directed that the Diploma / Under Graduate / Post Graduate Degree Courses offered by the Tamil Nadu Open University shall be treated as equivalent to the corresponding awards of the other Universities in the State under regular stream for the purpose of employment in public services. Same recognition is to be given to degree obtained from Madurai Kamraj University.

40. Post facto, in G.O.Ms.242, Higher Education (B1) Department, dated 18.12.2012 it has been clarified that those who have studied two years Foundation Course after completing their 10th Standard (SSLC), graduation through Open University and Colleges (10 + 2 + 3) will be treated on par with those who have studied 10th Standard, 12th Standard and Under Graduation (10 + 2 + 3) for appointment and promotion. It was issued before the petitioner was appointed as a Tourist Officer.

41. Thus, the qualification obtained by the petitioner through open university cannot be questioned by the respondents either for the purpose of his appointment to the post of Tourist officer in 2011 or for the purpose of being considered to be promoted to the post of the Assistant Director.

42. Therefore, there is no merits in the impugned order. It is therefore liable to be quashed. Accordingly, it is quashed with consequential relief to the petitioner. The respondents are therefore directed to place the name of the petitioner in the seniority and promote the petitioner also if the petitioner's juniors were promoted in view of the stand of the respondents. This exercise shall be carried out by the respondents within a period of four weeks from the date of receipt of this order.

43. This writ petition stands allowed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

kkd

To

1.The Additional Chief Secretary to Government,
Tourism, Culture and Religious Endowments Department,
Secretariat, Chennai 600 009.



2. The Commissioner of Tourism,
Department of Tourism,
Tamil Nadu Tourism Complex,
No.2, Wallajah Road,
Chennai 600 002.

WEB COPY

+1cc to Mr.L.P.Maurya, Advocate, S.R.No.40812
+1cc to the Government Pleader, S.R.No.41071

W.P.No.10251 of 2020

PL(CO)
GN(14/09/2021)