

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON 22.12.2020

ORDER DELIVERED ON 05.02.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.13396 OF 2020

AND

W.M.P.NOS.21784 & 16532 OF 2020

M.Gracy Darling

..Petitioner

Vs

1. Tamil Nadu Generation and Distribution Corporation Ltd.,
Rep. By its Chairman cum Managing Director,
No.144, Anna Salai,
Chennai - 600 002.

2. Deputy Secretary Personnel,
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002.

.. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus to call for the concerned records from the 2nd respondent, quash the order of the 2nd respondent bearing Office Order No.796 dated 4.8.2020 as illegal, arbitrary and contrary to law and consequently direct the respondents to include the name of the petitioner in the panel of Private Secretary fit for promotion as Additional Senior Private Secretary for the year 2019-20 and promote the petitioner to the post of Additional Senior Private Secretary in the available vacancy from when it is vacant.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.Karthik Rajan
Standing Counsel

O R D E R

The matter is taken up through web hearing.

This Writ Petition has been filed seeking to issue a Writ of Certiorari Mandamus to call for the concerned records from the 2nd respondent, quash the order of the 2nd respondent bearing Office Order No.796 dated 4.8.2020 as illegal, arbitrary and contrary to law and consequently direct the respondents to include the name of the petitioner in the panel of Private Secretary fit for promotion as Additional Senior Private Secretary for the year 2019-20 and promote the petitioner to the post of Additional Senior Private Secretary in the available vacancy from when it is vacant.

2. The case of the petitioner is that she joined the erstwhile Tamil Nadu Electricity Board as Steno-typist on 21.10.1995. Her qualification was Tamil and English Typewriting Senior Grade and Shorthand Junior Grade in English and Senior Grade in Tamil. According to the petitioner the Board had issued proceedings No.55 dated 09.10.1992 forming a separate cadre for Stenographers. In terms of the proceedings, the following categories of stenographers have been formed:

i) the personal staff attached to Chairman, Accounts Member, Member (Generation), Member (Distribution), Inspector General of Police/ Vigilance and Secretary to the Board to be in the rank of Section Officer cum Steno Typist known as Private Secretary.

ii) the personal staff attached to Deputy Secretary, Legal Advisor, Industrial Relations Advisor will be in the rank of Assistant cum Steno typist known as Personal Assistant.

iii) the personal staff attached to Under Secretaries and equivalent post to be in the rank of Steno typist known as Personal Clerk.

3. Subsequently, by another proceedings No. 51 dated 07.09.2002, the Board has prescribed the educational and technical qualification to the respective categories as mentioned above as follows:

Name of the Post	Method of Recruitment	Qualification
Personal Clerk	By obtaining option from the existing Steno Typist in B.O.S.B or By direct recruitment	Must possess the minimum General Educational Qualification Must have passed the Government Technical examination in Typewriting by the Senior Grade both in English and Tamil and have passed Examination in Shorthand Senior Grade both in English and Tamil. Provided that preference shall be given to those who have higher educational qualification than the minimum general educational qualification as well as having Technical qualification as prescribed above.
Personal Assistant	By promotion from Personal Clerk in Secretariat Branch	Must possess the Minimum General Educational Qualification Must have passed the Government Technical examination in Typewriting by the Senior Grade both in English and Tamil and have passed Examination in Shorthand Senior Grade both in English and Tamil. Provided that those who are having lesser Technical qualification as prescribed above should acquire the said qualifications within a period of 2 years from the date of promotion as Personal Assistant. If a person fails to acquire the said qualifications within the said period of two years, he shall be reverted to the post of Personal Clerk Must have passed Account Test for Subordinate Officers Part I Must have rendered not less than 5 years of service as Personal Clerk.

Private Secretary	By promotion from the Personal Assistant in Secretariat Branch	Must possess the Minimum General Educational Qualification Must have passed the Government Technical examination in Typewriting by the Senior Grade both in English and Tamil and have passed Examination in Shorthand Senior Grade both in English and Tamil. Must have passed Account Test for Subordinate Officers Part I Must have rendered not less than 10 years of service as Personal Clerk and Personal Assistant.
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4. The petitioner herein had opted for Stenographers category on 20.02.1999 and out of 4 steno typists available in the cadre, the petitioner was the senior-most. The petitioner was, thereafter, on 24.06.2004, regularly appointed as Personal Clerk under the relevant regulations of the Board. While being appointed as Personal Clerk, it was made clear that the petitioner was deemed to have been appointed as Personal Clerk from the date of her joining as Steno typist on 21.10.1995.

5. Thereafter, the Board by office order dated 30.06.2004, promoted the petitioner to the post of Personal Assistant and when the promotion was granted, it was stated that the petitioner should pass Shorthand Senior Grade in English Examination within a period of two years from the date of promotion. However, subsequently, the condition to pass the said examination was withdrawn and the petitioner was granted exemption. According to the petitioner, the exemption was granted on the basis of the qualification possessed by the petitioner and was found to be sufficient to discharge her functions in the promoted post.

6. The petitioner was thereafter promoted to the next higher post of Private Secretary by order dated 06.12.2008. However, she was reverted to the post of Personal Assistant on 02.03.2009 for want of vacancy. Subsequently, she was again regularly promoted to the post of Private Secretary on 27.08.2011.

7. During the period of reversion of the petitioner from Private Secretary to the post of Personal Assistant, a colleague of the petitioner was promoted as Private Secretary and there was a dispute with regard to the seniority of the petitioner with other person promoted and in that regard, the petitioner filed W.P.No.9410/2009. The said Writ Petition is still pending before this Court. In any event, in 2011, the petitioner was again promoted as Private Secretary and in that post, the petitioner has been working, as on date.

8. The grievance of the petitioner in this Writ Petition is that the Board has created two posts of Additional Senior Private Secretary and according to her, she being the senior most was eligible to be promoted to the newly created post. There was a vacancy available in the post of Additional Senior Private Secretary for the year 2019-2020 and the petitioner herein had claimed for promotion. However, by order dated 04.08.2020, the petitioner was informed about her non-selection to the existing vacancy of Additional Senior Private Secretary for the year 2019-20 as she had not acquired Shorthand Senior Grade in English in terms of the relevant regulation of the Board proceedings. Challenging the same, the petitioner is before this Court.

9. Mr.Balan Haridas, learned counsel for the petitioner would submit that as early as on July, 2007, an exemption was granted for acquiring higher qualification in stenography. The exemption was granted at the time when the petitioner was being promoted as Personal Assistant and that exemption granted would hold good for further promotion to the next higher categories as well. According to the learned counsel, once exemption is granted for promotion to the post of Personal Assistant, no further exemption is contemplated.

10. Learned counsel would further submit that when the petitioner was promoted as Private Secretary in 2011, the Board still felt that there was no requirement of the petitioner acquiring higher qualification. She was promoted as Private Secretary in 2011 and has been working as such as on date. It is quite strange that only when it came to the promotion to the Additional Senior Private Secretary, such qualification was insisted upon. According to the learned counsel, the nature of duties and functions are the same in respect of the post of Private Secretary as well as to the post of Additional Senior Private Secretary and therefore, it was arbitrary to insist for acquiring further qualification without considering the vast experience of the petitioner as being the senior-most

stenographer available in the service of the Board.

11. Notice was ordered in the Writ petition and Mr. Karthik Rajan, learned Standing Counsel appeared for the respondent Board and a detailed counter affidavit has been filed.

12. The claim of the petitioner is sought to be resisted on the ground that exemption which was granted in July 2007, when the petitioner was promoted as Personal Assistant, was not a full exemption, covering future promotion also. Merely because exemption was granted in the lower post, such exemption cannot be made applicable to further promotions, to the higher posts. According to the Standing counsel no such complete exemption was to be read in the exemption order issued in July 2007.

13. The Standing counsel for the respondents would strenuously oppose the challenge in the writ petition stating that the consideration by the Board in respect of promotion to the post of Personal Assistant was entirely different. The earlier exemption was granted only on taking into account, the nature of duties discharged by the Personal Assistant. The same yardstick cannot be expected to be applied, when the petitioner aspires to be promoted to the post of Additional Senior Private Secretary where the duties are completely different. According to the learned counsel, as the post of Additional Senior Private Secretary, carries much higher responsibilities and functions, for which, higher qualification is a must as part of functional requirement. In any event, when the rule provides for such qualification, merely because the petitioner had been given exemption from acquiring the higher qualification when she was promoted in the lower cadre, such exemption cannot ipso facto be applied in the higher promotion.

14. This Court, in order to resolve the controversy as to the nature and duties and functions attached to the subject post has sought the details of the duties assigned to the post of Additional Senior Private Secretary in order to find out any differential duties and functions for insisting upon the higher qualification by the respondents. In response to the same, on behalf of the TANGEDCO, a tabular statement has been filed delineating duties of Private Secretary as well as the Senior Private Secretary vide letter dated 08.12.2020. The tabular column is extracted hereunder:

Private Secretary	Normally posted under the control of Secretary & Legal Adviser of TANGEDCO/ TANTRANSCO in Secretariat Branch
Duties & Responsibilities	I. Taking notes from the officers and converting them into full correspondence or instructions as the case may be. II. Should maintain in and out register where all files going to the Officers are noted on their receipt and the entries rounded off and attested by the Private Secretary, when the file is returned after being seen by the officers. III. Assisting the officers in all official matters IV. Attending telephone calls, receiving visitors and fixing appointments for various meetings. V. Preparing tour programmes and T.A.Bills and attending other miscellaneous works.
Add.Sr.Private Secretary	Additional Senior Private Secretary is posted with Top Level Officers like IAS and IPS officers and Directors of TANGEDCO and TANTRANSCO.

Duties & Responsibilities	I. Taking notes from the officers and converting them into full correspondence or instructions as the case may be. II. Should maintain in and out register where all files going to the Officers are noted on their receipt and the entries rounded off and attested by the Additional Senior Private Secretary, when the file is returned after being seen by the officers. III. Additional Senior Private Secretary should take dictation in various meetings conducted by the top level officers and prepare minutes of meetings. IV. Self drafting of correspondence and letters is also a duty of Additional Senior Private Secretary based on the oral instruction of the top level Officers. V. Maintaining records including filing and indexing, maintaining various records and registers etc., VI. Attending telephone calls, receiving visitors and fixing appointments for various meetings. VII. Preparing tour programmes for Officers, booking Air/Train tickets, providing vehicles and accommodation for various inspection and preparing T.A.Bill and all the sort of assistance required by the top level officers.
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15. In the light of the above statement, the learned Standing counsel would submit that the petitioner has no right to claim exemption from acquiring higher qualification, as the office of the Senior Private Secretary is qualitatively different from posting in lower cadres and in any event grant of exemption is always within the discretionary power of the Management, which cannot be claimed as a matter of right by the Officers of the Board. Therefore, he would submit that the Writ Petition is devoid of merits and liable to be dismissed.

16. This Court, considered the submissions of Mr.Balan Haridas, learned counsel for the petitioner and Mr.Karthik Rajan, learned Standing Counsel for the respondents.

17. The only issue that calls for adjudication is whether the petitioner could be considered for subject promotion without her acquiring higher qualification, namely pass in Examination for Shorthand Senior Grade in English in terms of the relevant regulations of the Board or not.

18. The factual narrative as above would disclose that the petitioner was initially granted exemption in July 2007 when she was promoted as Personal Assistant where again, the same higher qualification was part of the requirement as per the regulations. In the exemption order, reasons have been clearly spelt out as to why exemption was to be given in favour of the petitioner and two others. The reasons as set out in the exemption order are reproduced hereunder.

" Certain employees of the Board who have opted for appointment as Personal Clerk/Personal Assistant/Private Secretary, believing that the qualification they possessed at the time of giving option was sufficient for further promotion; that passing of examination to acquire the higher qualification was impossible to some of them due to their age and family circumstances; and that they could not re-opt for the other wing which did not require such higher qualification. In view of that, they are deprived of promotional opportunities in both the wings. Hence, they have represented for exemption of the conditions prescribed qualification for promotion.

2. After careful consideration, the Board has decided to accept the following persons shall be given exemption from passing the higher qualifications prescribed as detailed below:-

Sl.No	Name and Designation	Date of effect
1)	Thiru A.Thiagarajan Private Secretary	The date on which his immediate junior was included in the panel/promoted.
2)	Tmtty.T.Lalitha Padmini, Personal Assistant	On the date of issue of the order
3)	Tmtty.M.Gracy Darling Personal Assistant	On completion of extension period of two years (i.e) 1 st July 2006.

19. From the above, it could be seen that the exemption contemplated above was not confined to promotion to the post

of Personal Assistant alone. This position is fortified by the subsequent developments, namely that when the petitioner was further promoted in the post of Private Secretary in 2011, there was no insistence of acquiring the said higher qualification. Therefore, the respondents had deemed to have accepted the experience gained by the petitioner as a stenographer in the capacity of Personal Clerk, Personal Assistant etc. presumably and rightly on such consideration, the higher qualification was not insisted upon in the earlier promotion even after 2007.

20. Be that as it may, the moot question in this case is, despite the above indicator, whether insisting on acquiring the higher qualification for the present promotion has any nexus to the object sought to be achieved by the respondents has to be examined. The duties as mentioned in the extracted Tabular column above do not demonstrate any material and qualitative difference as between the post of Private Secretary and Additional Senior Private Secretary. In fact, from the materials as disclosed in the Writ Petition, it could be seen that the post of Additional Senior Private Secretaries has been created by upgradation of the post of Private Secretary. No doubt that the Senior Private Secretary as part of functional requirement has to assist the higher officials of the Board and in that event correspondingly duties may be different. Yet at the same time, when the post itself is nomenclatured as Senior Private Secretary, the expression seniority has to have nexus to experience and not with the qualification in Shorthand Senior Grade. The petitioner herein has been working as Stenographer from 1995, for about 25 years and her vast experience as Personal Clerk, Personal Assistant and Private Secretary cannot be ignored in preference to the additional paper qualification. The experience gained by the petitioner over the years would be factually and materially superior than mere acquisition of a theoretical qualification in the same sphere of professional engagement of the petitioner.

21. This Court of course is conscious of the fact that it is not within the purview or domain of this Court to examine and appreciate the qualification and suitability of the candidate for promotion to a particular post, as such consideration falls exclusively within the purview of the administration. At the same time, this Court can always examine if there is patent arbitrariness or irrationality in insisting upon any higher qualification or whether such insistence has any material basis or nexus to the object sought to be achieved by the administrators or not. In this case, as observed above, this Court does not see any material functional difference as between the Private Secretary, and Addl. Senior Private Secretary, except one or two marginal additional duties. That alone in the opinion

of this Court would not make the petitioner ill-suited for the promotion. Moreover, as stated above, the post of Additional Senior Private Secretary is a upgraded post ostensibly interrelated to confer an opportunity of financial upgradation without functional variation.

22. In support of the above conclusion, this Court also draws its strength from the earlier events when the petitioner was promoted from Personal Assistant to Private Secretary which was again a higher post and the petitioner was not required to acquire the higher qualification nor was there any separate exemption regularising the promotion of the petitioner. Therefore, there appears to be some force in the submission of the learned counsel for the petitioner that exemption granted in July, 2007, will hold good for the remaining part of the career of the petitioner. In any event, the post being nomenclatured as Additional Senior Private Secretary and the post carrying almost the same duties as that of the Private Secretary, the so called higher qualification would pale into the insignificance in the face of the vast experience of the petitioner. As between Private Secretary and Senior Private Secretary insisting on the so called additional qualification appears to be preposterous in the circumstances of the case. Therefore, it should be concluded that the exemption originally granted to the petitioner would have to be taken into consideration for the present promotion as well. Moreover the reasons as set out in the exemption order would certainly a pointer to hold that the exemption was not confined to the promotion of Personal Assistant alone.

23. Finally, in the considered view of this Court, on behalf of the respondents, it was not conclusively and convincingly demonstrated that unless the said higher qualification is acquired, the petitioner could not effectively or properly discharge her duties as Additional Senior Private Secretary. In consideration of her seniority and her experience in the field of her functional engagement, this Court is inclined to accept the plea of the petitioner.

24. In the circumstances, the Writ Petition is allowed. The impugned order passed in Office Order No.796 dated 04.08.2020 is hereby set aside. There shall be a consequential direction to the respondents to consider and grant promotion to the petitioner to the post of Additional Senior Private Secretary without insisting on the additional qualification, if she is otherwise fit for promotion, with all attendant benefits.

25. The respondents are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002.
2. The Deputy Secretary Personnel,
Tamil Nadu Generation and Distribution
Corporation Ltd., No.144, Anna Salai,
Chennai - 600 002.

+1cc to Mr.BALAN HARIDAS, Advocate, S.R.No.6328
+1cc to Mr.KARTHIKRAJAN, Advocate, S.R.No.6507

W.P.No.13396 of 2020

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