



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.19146 of 2021

and

W.M.P Nos.20446, 20447 & 20449 of 2021

P.Krishnakumar

...Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary,
Department of Human Resources Management,
Secretariat, Chennai - 600 009.
2. The Tamil Nadu Public Service Commission (TNPSC),
Represented by its Secretary,
TNPSC Road, VOC Nagar,
Park Town, Chennai - 600 003.
3. Principal Secretary to Government,
Department of Highways and Minor Ports,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.
4. Secretary to Government,
Department of Public Works,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.
5. Secretary to Government,
Department of Animal Husbandry, Dairying,
Fisheries & Fishermen Welfare,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue writ of certiorarified mandamus calling for the records of the impugned recruitment notification issued by the 2nd respondent under Advertisement No. 581 and Notification No. 06/2021 dated 05.03.2021 for posts included in the Combined Engineering Sub-Ordinate Services Examination and quash the same in so far as prescribing qualification of Degree in Engineering viz Bachelor of Engineering (Civil Engineering) (Direct Entry) (10+2+4) to apply for the posts of Junior



Draughting officer (Highways Department and PWD Department) and Junior Engineer (Fisheries) and quash the same and consequently direct the Respondents herein not to further consider the applications from the degree holders for the said posts.

WEB COPY

For Petitioner : Mr.P.Dinesh Kumar

For Respondent

Nos.1,3 & 4,R5 : Mr. L.S.M.Hasan Fizal

For Respondent

No.2 : Mr. Karthikrajan

O R D E R

The grievance of the petitioner in this Writ Petition is that the second respondent Commission had invited applications from the eligible candidates for the posts of Combined Engineering Sub-Ordinate Services Cadre through advertisement dated 05.03.2021. The posts covered under the notifications were Junior Draughting Officer (Highways Department & PWD) and Junior Engineer (Fisheries Department). The educational qualification prescribed for the posts are Diploma in the subject concerned. While prescribing the educational qualification, the notification also included Bachelors Degree course in terms of Section 25(b) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

2. According to the petitioner, he had obtained Diploma in Civil Engineering but aggrieved by the inclusion of Engineering Graduates as eligible candidates. According to him, when the Special Service Rules prescribe only Diploma in the subject concerned, the inclusion of Graduate Engineers would be illegal and such qualification cannot be considered as eligible at all. If the graduate Engineers are included, the chances for Diploma holders getting selected would become remote and there will not be any level playing field as between the Diploma holders and Graduate Engineers.

3. The learned counsel appearing for the petitioner strongly pleaded that the unequals cannot be treated as equals in the matter of selection to the post of Junior Draughting Officer (Highways Department & PWD) and Junior Engineer (Fisheries Department). When the Special Rules prescribe Diploma as a qualification, the question of including the graduate qualification in terms of Section 25(b) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is highly irregular and legally unacceptable. The learned counsel would place strong reliance on the principles of the Special rules prevailing over the general rules. Therefore, he would submit



that the notification which include graduate Engineers also to be eligible for consideration is liable to be interfered with.

4. Per contra, Mr. Karthikrajan, the learned counsel appearing for the second respondent would submit that the issue has been squarely covered against the petitioner herein. According to the learned counsel, the same arguments were put forth before the Division Bench of this Court and the Division Bench, by order dated 29.07.2019, in W.A.No.1306 of 2019, had discountenanced the said objections. The learned counsel would draw the attention of this Court to paragraph No.9 wherein similar contention has been raised as follows:

9. The Special Rules framed for the Tamil Nadu Transport Subordinate Services indicates that Diploma is the qualification for appointment. The appellant has taken up a contention that in case there is a conflict between the special rules and the General rules, the Special Rules alone would prevail.

5. The Division Bench after dealing with the said contention has finally passed an order as follows:

10(a) Rule 25 of the Tamil Nadu Government Service (Conditions of Service) Act, 2016, defines Special qualifications. Explanation II is extracted below :-

In cases where the special rules prescribe a Diploma in a particular subject as qualification, then, a degree in that subject shall be deemed to be a higher qualification.

(b) The Explanation II is very clear that in case the special rules prescribe Diploma as the essential qualification then a degree in that subject would be a higher qualification.

11(a) Similar issue came up for consideration before the Hon'ble Supreme Court in Jyothi K.K. And others vs. Kerala Public Service Commission and others., 2010(15) SCC 596.

(b) In Jyothi K.K., the required qualification for appointment to the post of Sub Engineer (Electrical) in the Kerala State Electricity Board was a Diploma in Electrical Engineering of a recognized institution after three years of study. The Kerala Public Service Commission was not prepared to receive applications from the holders of B.Tech Degree in Electrical Engineering or Bachelor Degree in Electrical Engineer. The Writ Petition filed



WEB COPY

before the High Court was dismissed. The matter was taken up before the Hon'ble Supreme Court.

(c) The Supreme Court found that Rule 10 (a)(ii) of the Rules made the degree in the relevant subject a higher qualification enabling the degree holders also to compete with the Diploma Holders.

Rule 10(a)(ii) reads as follows:

"10. (a)(ii) Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications recognised by executive orders or standing orders of Government as equivalent to a qualification specified for a post in the Special Rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post." (emphasis supplied)

(d) The Supreme Court on a reading of the Rule in the light of the selection notification and the condition regarding eligibility criteria, held that if a person had required the higher qualification in the same faculty, such qualifications can be stated to presuppose the acquisition of the lower qualification. The Hon'ble Supreme Court therefore allowed the appeal filed by the Degree holders by holding that they are also eligible to apply for the post for which qualification is only a Diploma.

12. The Supreme Court decided Zahoor Ahmad on the peculiar facts of the said case. There was no special rules in Zahoor Ahmad, like the one in Kerala State and Subordinate Services Rules, considered by the Hon'ble Supreme Court in Jyoti K.K. cited supra. However, in the State of Tamil Nadu there is a specific Rule making Degree a higher qualification, in case Diploma is the essential qualification.

13. The judgment relied on by the learned Senior Counsel for the appellant has no relevance to the issue raised herein. In Zahoor Ahmad, the Supreme Court found that unlike in Jyoti K.K., there was no service rules in the State of Jammu and Kashmir, which prescribe



WEB COPY

that a degree would be treated as higher qualification in case Diploma is the essential qualification for a particular post. The Supreme Court in paragraph 22 of the said Judgment, explained the ratio of the decision in Jyoti K.K., which was rendered on the basis of rule 10(a)(ii) of the Kerala State Subordinate Services Rules, 1956.

14. The following observation contained in Zahoor Ahmad, would make the position clear:-

22. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti KK in the subsequent decision in Anita (supra). The decision in Jyoti KK turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily pre-supposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The state as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the state, as the recruiting authority, to determine. The decision in Jyoti KK turned on a specific statutory rule under which the holding of a higher qualification could pre-suppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome.

23. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the



WEB COPY

efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The state is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision making. The state as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in Jyoti KK must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti KK turned.

15. The decision of the Supreme Court in Jyoti K.K. is applicable to the case on hand. Here also, there is a rule which provides that in case Diploma is the essential qualification, degree in the relevant subject would be a higher qualification.

16. There is no challenge to the General Rules which gives statutory recognition to the higher qualification. The TNPSC has also made it clear that the questions would be of Diploma standard and as such, it would be possible for the Diploma holders to undergo the written test. We are therefore of the view that there is no merit in the contentions taken by the appellant.

17. In the upshot, we dismiss the intra court appeal. No costs. Consequently, C.M.P.No.8894 of 2019 is closed.

6. According to the learned counsel, the above ruling of the Division Bench would be applicable to the present case as well and this Court is bound by the ruling.

7. This Court is in agreement with the submissions made by



learned counsel appearing for the second respondent Commission. The same arguments were advanced in the above matter also, but it was not accepted by the Division Bench. This Court, as rightly contended by the learned counsel for the second respondent, is bound by the ruling of the Division Bench and therefore, the challenge in the Writ Petition cannot be countenanced both in law and on facts.

8. Accordingly, the Writ Petition lacks merit and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sli/vsi

To

1. The State of Tamil Nadu,
Represented by its Secretary,
Department of Human Resources Management,
Secretariat, Chennai - 600 009.
2. The Tamil Nadu Public Service Commission (TNPSC),
Represented by its Secretary,
TNPSC Road, VOC Nagar, Park Town, Chennai - 600 003.
3. Principal Secretary to Government,
Department of Highways and Minor Ports,
Government of Tamil Nadu, Secretariat, Chennai - 600 009.
4. Secretary to Government,
Department of Public Works,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.
5. Secretary to Government,
Department of Animal Husbandry, Dairying,
Fisheries & Fishermen Welfare,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.

+lcc to M/s.P.Dineshkumar, Advocate, S.R.No.65186

+lcc to the Government Pleader, S.R.No.65806

W.P.No.19146 of 2021
and W.M.P Nos.20446, 20447 & 20449 of 2021

SRA(CO)

RGA(29/12/2021)