IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.30626 & 12359 of 2017
(Through Video Conferencing)

M.Vivekanandan, ... Petitioner in both W.Ps

vs.

1. The State of Tamil Nadu,
   Represented by its Secretary,
   Commercial Taxes & Registration Department,
   Secretariat, Fort St.George,
   Chennai – 9.

2. The Principal Secretary/Commissioner of Commercial Taxes,
   Order of the Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai – 5.

3. The Joint Commissioner (CT)
   Trichy Division,
   Combined Court Building Campus,
   Cantonment, Trichy.

... Respondents in both W.Ps

Prayer in W.P.No.30626 of 2017: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 2nd respondent to consider the petitioner representation dated 17.06.2017 taking into consideration of the RTI reply viz., tho.Thu.Ka.e.s.1/684/2016-17 dated 05.06.2017 issued by the Public Information Officer, Distance Education Program, Annamalai University for the purpose of considering the petitioner to the post of DCTO on par with Mrs.Karthiyayini, whose name is found in the proceedings of 2nd respondent dated 18.01.2017 at S.No.245.

Prayer in W.P.No.12359 of 2017: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 3rd respondent to recommend petitioner's name as qualified to the 2nd respondent as on the crucial date of 01.03.2016 for the purpose of 2nd respondent including petitioner's name in the panel of DCTO for the year 2016 and further direct the 2nd respondent to issue the order of appointment to the post of DCTO with all consequential benefits including the monetary benefits on par with Mrs.Karthiyayini.

For Petitioner (In Both W.Ps)	:	Mr.V.Prakash Senior Counsel for Mr.K.Krishnamoorthy
For Respondents (In Both W.Ps)	:	Mr.LSM.Hasan Fizal Government Advocate

COMMON ORDER

By this common order both the petitions are being disposed. In these writ petitions, the petitioner has questioned the reasons given for not recruiting the petitioner by transfer as a Deputy Commercial Tax Officer.

2. The petitioner had completed Bachelor of Commerce (Co-Op) under the Distance Education Program of the Annamalai University in the year 1996-1999. The petitioner participated in a competitive exams conducted by the Tamil Nadu Public Service Commission in the year 2011 for the post of "Assistant" under the Commercial Tax Office.

3. The petitioner was issued with an appointment order on 6.12.2012 and asked to report to duty in Coimbatore. Petitioner's probation was later declared with effect from 10.12.2014 on 9.6.2016 while the petitioner was serving in the Trichy Division of the Commercial Tax Department. Before the petitioner's probation was declared, the petitioner requested for a transfer to the Trichy Division of the Commercial Tax Department.

4. The request of the petitioner was acceded by the 2nd respondent and transferred the petitioner to the Trichy Division of the Commercial Tax Department by an order dated 10.11.2014. While transferring the petitioner, it was made clear that the petitioner cannot claim any seniority in the list of the probationer in the cadre of "Assistants" on his transfer in the Trichy Division of the Commercial Tax Department and that the petitioner should not make any objection or give any representation for fixation of seniority and would have to forgo transfer allowances.

5. It is the case of the petitioner that since the petitioner was appointed as an “Assistant”with the Commercial Tax Department under the Tamil Nadu State and Subordinate

Services Rules, the petitioner was eligible to be recruited on transfer as a Deputy Commercial Tax Officer in terms of the Special Rules for Tamil Nadu, Commercial Taxes Subordinates Services Rules along with his batchmates. The grievance of the Petitioner was that the petitioner's name was not included in the list of persons eligible for recruitment by transfer as a Deputy Commercial Tax Officer in 2016.

6. On further enquiry, the petitioner came to know that the petitioner's name was not included in the selection list for the post ofthe Deputy Commercial Tax Officer as the petitioner had not completed two years as an "Assistant" in Trichy on the crucial date.

7. Under the circumstances, the petitioner sent a representation dated 27.2.2017 wherein the petitioner stated that one Karthikyayini, a similarly placed person, who had also opted for being transferred during her probation, was appointed as a Deputy Commercial Tax Officer by the respondent.

8. The petitioner later received a response from the office of the Commissioner of Commercial Taxes and was informed that the petitioner had passed B.Com (Co-op) and therefore the petitioner did not possess requisite qualification as per rule 6 (d) of the Tamil Nadu Commercial Taxes Subordinate Service.

9. It is the case of the petitioner that in a RTI response, the Annamalai University has clarified that the B.Com (Co-op) obtained by the petitioner from Annamalai University under its Distance Education Program was equivalent to B Com (General) in terms of clarifications of the Government of Tamil Nadu and that of the Government of India with a clarification reference No. 94873/H1-91-1 dated 17.12.91 and another clarification bearing reference No F 1-188 T.1 dated 25.11.1988.It is therefore submitted that the petitioner was not required to undergo foundational programme and pass the test of the Department.

10. The learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court and that of this High Court :-

i) Renu Mullick vs. Union of India, 1994(1) SCC 373,

ii) Scientific Advisor to Raksha Mantri vs. V.M.Joseph, (1998) 5 SCC 305,

iii)R.Ushadevi vs. The Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai 600 005 and another,W.P(MD)No.2657 of 2013 dated 22.11.2018

11. Defending the stand of the respondent, the learned counsel for the respondent submitted that the petitioner had not completed two years of service in the cadre of the Assistant inTrichy and had not passed the requisite Test in Lower Accountancy as on 1.3.2016 and hence the name of the petitioner was not included in the list of qualified persons to be appointed as "Deputy Commercial Tax Officer".

12. The learned Government Advocate for the respondents therefore submits that these writ petitions may be dismissed by directing the petitioner to pass the Test in Lower Accountancy conducted by the respondent and thereafter the name of the petitioner will be appointed to the post of the "Deputy Commercial Tax Officer" during the next recruitment by transfer.

13. I have considered the arguments advanced by the learned counsel for the petitioner and the respondent. The 2nd respondent vide letter dated 28.03.2017 bearing reference No.P2/2133/2016 dated 28.03.2017 informed the petitioner as follows:-

> "Your petition in the reference cited has been examined with connected records. As per the seniority list received from the JC (CT) Trichy, it is found that you have passed B.Com.,(Co-op.) degree and hence the JC (CT)Trichy has not recommended your name in the seniority list of qualified Assistant for drawal of DCTO Panel for the year 2016 (statement II). As per the rule 6 (d) of Tamil Nadu Commercial Taxes State Subordinate Services you have not possessed the prescribed qualification and hence you could not be considered for promotion as DCTO for the year 2016."

14.In para -5 of the counter affidavit in W.P.No.30626/2017, the respondent has stated as follows: -

> It is submitted that when the proposals for the drawal of the list of the individuals who are qualified for promotion as on 01.03.2016 were received from the Deputy Commissioner (Commercial Taxes) Kumbakonam, the same were verified by the 3rd respondent. It is found from that the entries available in the service register of the petitioner, that he passed B.Com (Co-operation 1 & II) in May 2004 and not general B.Com., and hence the petitioner was not found eligible as he had not passed the requisite Test in Lower Accountancy as on

01.03.2016. Further, he had not completed 2 years of service in the cadre of the Assistant in Trichy Division, as on 01.03.2016. Hence, he was found not eligible for the post of Deputy Commercial Tax Officer as on 01.03.2016 and hence his name was not recommended for the inclusion in the list of qualified persons for the post of Deputy Commercial Tax Officer.

15. In RenuMullick vs. Union of India,1994(1) SCC 373 it was held that past service in the previous collectorate cannot be ignored for the purposes of determining here eligibility for promotion. The eligibility for promotion has to be determined with reference to the Rule which prescribes the criteria for eligibility.The Hon'ble Supreme Court in Scientific Advisor to Raksha Mantri vs. V.M.Joseph (1998) 5 SCC 305, in para 6 which reads as follows : -

> " 6. …….. Even if an employee is transferred at his own request, from one place to another on the same post, the period of service rendered by him at the earlier place where he held a permanent post and had acquired permanent status, cannot be excluded from consideration for determining his eligibility for promotion, though he may have been placed at the bottom of the seniority list at the transferred place. Eligibility for promotion cannot be confused with seniority as they are two different and distinct factors."

16. If the above ratio is applied to the facts of the case, it is clear that the period of service undergone in Coimbatore by the petitioner cannot be ignored. It has to be reckoned though the name of the petitioner would be at the bottom of the seniority list in Coimbatore. Therefore, the petitioner was otherwise eligible for being promoted to the post of Deputy Commercial Tax Officer.

17. Whether the B Com (Co-op) degree obtained by the petitioner was equivalent to B Com (General) is altogether a different issue. The Annamalai University in its response to the RTI request of the petitioner vide its dated 05.06.2017 Letter bearing Reference No.bjh.J}.f.,.v!; 1/684/ 2016-17 dated 05.06.2017 has clarified that B.Com., (Co-op) decree obtained by the petitioner was equivalent to B.Com., (General).

18. The said clarification also encloses response of the Education Department, Government of Tamilnadu in Letter

No.94873/H1-91-1 Education (H1) Department, Fort St.George, Madras of the Joint Secretary to Government dated 17.12.1991 addressed to the Director, Directorate of Distance Education, Annamalai University, Annamalainagar and another Letter No.F.1-188 T.13 Government of India, Ministry of Human Resource Development (Department of Education) New Delhi, the 25th November 1988 addressed to the Registrar, Annamalai University, Annamalainagar 608 002. It clarified as under:-

வ,எண்	கேட்கப்படும் தகவல்	வழங்கப்படும் தகவல்
1	நான் தங்கள் (அண்ணாமலைப் பல்கலைக்கழகத்தில் 1996/1999ம் ஆண்டு பிகாம் பட்டம் பெற்றுள்ளேன் (இத்துடன் எனது கல்விச் சான்று நகல்கள் இணைத்துள்ளேன்) நான் பெற்ற பட்டம் B.com., (General) அல்லது B.com., (Co-op.) ஆக என்பதை எனக்கு தயவு செய்து தெரியப்படுத்தவும்	B.Com., (General)
2	தங்கள் பல்கலைக்கழகத்தில் தொலைதூரக் கல்வி இயக்ககத்தில் பி,காம் பட்டம் பெற்றால் அது ரெகுலர் பி,காம் அதாவது கல்லூரிக்கு சென்று மூன்று வருடம் பட்டம் பெறுவதற்கு ஈடானது என அரசு அறிவித்த அரசாணை எண் மற்றும் அதன் நகலினை எனக்கு அளித்து உதவிடுமாறு பணிவுடன் கேட்டுக்கொள்கிறேன்	நகல் இணைக்கப்பட்டுள்ளது,

19. The above clarification states that a degree obtained by the petitioner through the Distance Education Programme of the Annamalai University was a valid degree. Therefore, the petitioner was a graduate for the purpose of being appointed as Assistant with the Commercial Tax Department.

20. Once the appointment of the petitioner as an Assistant with the Commercial Tax Department was valid, the petitioner had a right to be considered for being appointed to the post of the Deputy Commercial Tax Officer subject to other qualifications prescribed in Rule 6 (d) of the Tamil Nadu Commercial Taxes Subordinate Services as amended.

21. Rule 6(d) of the Tamil Nadu Commercial Tax Subordinate Service Rules prescribes the qualification for appointment to the post of the Deputy Commercial Tax Officer (formerly Assistant Commercial Tax Officer) both by direct recruitment and by recruitment by transfer.

22. The post of Assistant Commercial Tax Officer was renamed as Deputy Commercial Tax Officer in the Tamil Nadu Commercial Taxes Subordinate Services vide G.O.(Ms) No.22 Commercial Taxes and Registration (A1) 15thFebruary, 2012.

23. As per the aforesaid Rule, 33-1/3 % of the substantive vacancies in the category of Deputy Commercial Tax Officer (formerly Assistant Commercial Tax Officer) was to be filled up by Direct Recruitment and 63-1/3 % of such substantive vacancies were to be filled by confirmation of persons recruited by transfer.

24. Amended Rule 6(d) of the Tamil Nadu Commercial Tax Subordinate Services Rules reads as under :-

> d) No person shall be eligible for appointment to the category specified in column (1) of the Annexure by the method specified in the corresponding entry in column (2) thereof unless he possess the qualifications specified in the corresponding entry in column (3) of the said Annexure.
>
> *Provided that where a pass in the special test in District Office Manual has been prescribed as a qualification for appointment to any of the categories every person who has passed the Department Test in Commercial Taxes Acts, Part-II at the examination held in November 1968, or earlier, or who has passed the Revenue Test Part 1 at the examination held in November 1969 or earlier shall not be required to pass the Special Test in District Office Manual".

25. Sl.No.4 to the Annexure the Rule 6(d) of the Amended Rules reads as under:-

4.Deputy Commercial Tax Officer	Recruitment by transfer from among the Assistant in Tamil Nadu Ministerial Service and Assistant Section Officer in the Secretariat (G.O.Ms.No.91 dated 3.11.2015)	(1)(a) Service of not less than two years as Assistant in the Commercial Taxes Department including the office of the Commercial Taxes or in the office of Tamil Nadu Sales Tax Appellate Tribunal or Service of not less than two years as Assistant Section Officer in the Commercial Taxes and Registration Department of Secretariat. Such service shall not include the period spent on unearned leave and extraordinary leave and (b) Must possess the minimum General educational qualification or to be deemed to possess such qualification with reference to rule 3(a) of the General Rules and must have passed the following examinations and tests. A pass or diploma in the Accountancy Examination conducted by the institute of chartered Accountants, or a pass in Accountancy Examination by the Lower Grade conducted by the Board of Examination. Tamil Nadu or any equivalent Examination that may be prescribed in that behalf by the State Government.
		Provided that a person who has passed the Commercial Book – Keeping of the local Fund Audit Department Test conducted by the Tamil Nadu Public Service Commission in the Examinations held upto and inclusive of May 1983 or the Government Technical Examination in Book – Keeping by the Lower Grade shall be

		deemed to have possessed the above qualification. (G.O.Ms. No. 402, CT & RE Department, dated 6.4.83.) (ii) The Accountant Test for Subordinate Officers Part-I (iii) Departmental Test in Commercial Taxes Acts. Part I and III. (iv) District Office Manual.

26. Thus, the petitioner was eligible for recruitment by transfer from among the Assistant in the Tamil Nadu Ministerial Service for being appointed as the Deputy Commercial Tax Officer if the petitioner had requisite qualification as in Rule 6(d) of the Tamil Nadu Commercial Tax Subordinate Service Rules.

27. From a reading of the above Rule, it is clear that the petitioner was eligible for being considered to be promoted to the post of Deputy Commercial Tax Officer. The petitioner should additionally have obtained one of the qualifications as per Sl.No.4 (1)(b) of the Tamil Nadu Commercial Tax Subordinate Services Rules which is reads as under:-

4.Deputy Commercial Tax Officer	Recruitment by transfer from among the Assistant in Tamil Nadu Ministerial Service and Assistant Section Officer in the Secretariat (G.O.Ms.No.91 dated 3.11.2015)	b)Must possess the minimum General educational qualification or to be deemed to possess such qualification with reference to rule 3(a) of the General Rules and must have passed the following examinations and tests.

		A pass or diploma in the Accountancy Examination conducted by the institute of chartered Accountants, or a pass in Accountancy Examination by the Lower Grade conducted by the Board of Examination. Tamil Nadu or any equivalent Examination that may be prescribed in that behalf by the State Government Provided that a person who has passed the Commercial Book - Keeping of the local Fund Audit Department Test conducted by the Tamil Nadu Public Service Commission in the Examinations held upto and inclusive of May 1983 or the Government Technical Examination in Book - Keeping by the Lower Grade shall be deemed to have possessed the above qualification. (G.O.Ms. No. 402, CT & RE Department, dated 6.4.83.) (ii) The Accountant Test for Subordinate Officers Part-I (iii) Departmental Test in Commercial Taxes Acts. Part I and III. (iv) District Office Manual.

28. In para 2 of the affidavit in this writ petition, it is stated as follows:-

> I respectfully submitted that I was recruited directly to the post of Assistant" in the open

competition written examination held in the year 2011 through the Tamil Nadu Public Service Commission for the vacancies of 2010-2011. I was transferred to Coimbatore Division of the 2nd respondent and the Joint Commissioner (CT) Coimbatore issued the order of appointment. Accordingly, I joined Coimbatore Division on 12.12.2012. My probation was declared satisfactory with effect from 10.12.2014. I passed all the departmental exams including Accounts test Junior Grade exam well before 01.03.2016. As I am B.Com Graduate. I am exempted from appearing in Accountancy Junior Grade Exam. Thus, I have completed 3 years 2 months and 19 days before the crucial date 01.03.2016.

29. In response, in para Nos.7 & 8 of the counter affidavit, the respondent has stated as follows:-

> 7. With regard to averments made in paragraph 2 of the affidavit, it is respectfully submitted that the petitioner passed all the prescribed tests for the qualification of the post of Deputy Commercial Tax Officer as on 01.03.2016, except passing the Lower Accountancy Examination.
>
> 8. With regard to averments made in paragraph 3 of the affidavit, it is respectfully submitted that the petitioner had passed B.Com degree with co-operation I & II and not general B.Com and hence he was not exempted from writing of examination in lower Accountancy. As he had not passed the test, he was found not eligible to be included in the list of persons qualified for the post of Deputy Commercial Tax Officers as on 01.03.2016. Further, the petitioner has not completed 2 years of Assistant Service as on 01.03.2016. Further, the petitioner has not completed 2 years of Assistant service in Trichy Division as on 01.03.2016, consequent of his division transfer from Coimbatore (Commercial Taxes) Division. Hence, he was not eligible for the inclusion in the list.

30. Since the petitioner has obtained B.Com., (Co-op.) which has been clarified to be equivalent to B.Com., (General) indicates that the petitioner was not required to pass Lower Accountancy Exam specified in Sl.No.4 (b) to Annexure separately for being promoted to the post of Deputy Commercial Tax Officer. The petitioner has made out a case for the relief sought for in these writ petitions.

31. Therefore, the respondents are directed to make necessary corrections in the Service Register of the petitioner by promoting the petitioner retrospectively from the date when he qualified for promotion along with his contemporary/batchmate.

32. These writ petitions are allowed with the above observations. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

arb/kkd

To

1.The Secretary,
Commercial Taxes & Registration Department,
Secretariat, Fort St.George,
Chennai – 9.

2.The Principal Secretary/Commissioner of Commercial Taxes,
Order of the Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 5.

3.The Joint Commissioner (CT)
Trichy Division,
Combined Court Building Campus,
Cantonment, Trichy.

+1cc to the Government Pleader SR No.38798

+1cc to the Special Government Pleader (Taxes) Sr No.38585

W.P.Nos.30626 & 12359 of 2017

SS (CO)
PR (27/08/2021)