



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:22.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI
W.P. (MD)No.5548 of 2012

WEB COPY

1.S.Usha
2.A.K.Varadharajan
3.J.Chandrasekaran
4.M.Rajalakshmi
5.A.Balaji
6.P.Gandhimathi
All working as Assistants (SG),
Bharathidasan University,
Tiruchirapalli 24.

... Petitioners

Vs.

1.The Bharathidasan University,
Tiruchirapalli 24,
represented by its Registrar.

2.T.Rajaram
3.Mr.Prem Nawaz
4.T.Subramanian
5.M.Tamilvanan

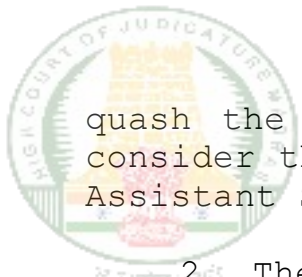
... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned resolution passed by the first respondent in its Agenda No.2009.154 in the Syndicate Meeting held on 01.10.2009 and quash the same as illegal and consequently to consider the petitioners herein for promotion to the post of Assistant Sections Officers.

For Petitioners	:	Mr.Jerin Mathew for Mr.M.E.Ilango
For R1	:	Mr.V.R.Shanmuganathan Standing counsel
For R2 to R5	:	Mr.F.X.Eugene

O R D E R

This writ petition has been filed challenging the impugned resolution passed by the first respondent in its Agenda No.2009.154, in the Syndicate Meeting held on 01.10.2009 and to



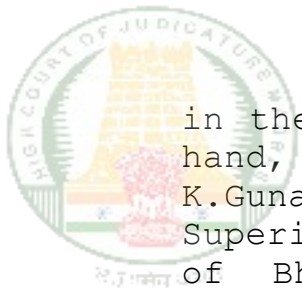
quash the same and consequently, direct the first respondent to consider the name of the petitioners, for promotion to the post of Assistant Section Officers.

2. The case of the petitioners is that initially they were appointed as Junior Assistants in the first respondent University on daily wage basis in the year 2000. Thereafter, their services were regularised in the post of Junior Assistants with effect from the date of their initial appointment and they were granted selection grade. Thereafter, in the year 2007, the post of Junior Assistant was upgraded as Assistant and the post of Assistant was upgraded as Assistant Section Officer. The petitioner further averred that the post of Assistant is the feeder category for being considered for promotion to the post of Assistant Section Officer. The qualifications prescribed under the University Statute for promotion to the post of Assistant Section Officer are (i) at least three years of service in the cadre of Assistant, (ii) degree with typewriting higher and (iii) a pass in Account Test Part - 1 conducted by the Tamil Nadu Public Service Commission. The person, who possessed all the above said three qualifications would be considered for promotion to the post of Assistant Section Officer. But the respondents 2 to 5 have not passed the Account Test Part - 1 as prescribed by the Statute. However, they prevailed upon the first respondent for relaxing the third condition ie., a pass in Account Test Part - I conducted by TNPSC and thereby the first respondent University has passed the resolution, in order to favour the private respondents. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioners would submit that Assistant is the feeder category for promotion to the post of Assistant Section Officer. The petitioners and the respondents 2 to 5 are in the feeder category and they are eligible for promotion to the post of Assistant Section Officer. The prescribed qualifications under the University Statute for promotion to the post of Assistant Section Officer are (i) three years service in the cadre of Assistant, (ii) degree with typewriting higher and a pass in Account Test Part - I conducted by TNPSC. However, the respondents 2 to 5 have not passed the Account Test Part - I as prescribed by the Statute. Thus, the first respondent University had passed the impugned resolution relaxing the third condition. He would further submit that in a similar circumstances, this Court, in ***W.P. (MD) .Nos.8032 of 2015 etc., batch***, dated ***14.06.2019***, has held as follows:

"22. As per sub-section (2) Section 28 of Chapter IV of the Bharathidasan University Act of 1981, "the University should carryout such instructions as may be issued by the Government based on the Audit Report". But

the University failed to adhere to the objections raised

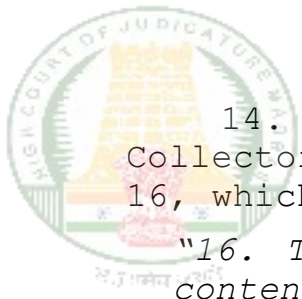


in the audit and carryout such instructions. On the other hand, based on One Man Commission's report, Thiru K.Gunalan was given promotion on 09.06.2001 as Deemed Superintendent. On 03.03.2003, the then Assistant Director of Bharathidasan University / fourth respondent has clarified that exemption given for not passing the Account Test for Subordinate officers Part I and the award of selection grade in the cadre of ASO to Mr.K.Gunalan is an action against the rules of the University and not valid. Towards avoiding future financial burden of the fourth respondent / University, the order of the Vice- Chancellor dated 09.02.2010 also came to be issued. Thus, the administration of the fourth respondent / University is solely responsible for the violation of the Rules, which resulted in exorbitant financial crunch to the University in the subsequent years.

23. A perusal of the materials available on record would disclose that Thiru K.Gunalan is senior to all the Junior Assistants, who have claimed anomaly in the post of Assistants and Assistant Section officers. The actual senior, Gunalan, was overlooked for promotion to the higher post due to non-possession of the qualification, i.e., a pass in Accounts Test for Subordinate Officers Part I. The discrepancy was removed when he was given exemption, promotion and further promotion. In view of the above, the award of exemption from passing the qualifying examination for promotion and then rectifying the so called anomaly arising out of such wrong promotion are not tenable."

4. Further, in ***W.P.Nos.13520 of 2018 etc., batch***, dated ***13.03.2019*** this Court has held as follows:

"9. The learned counsel, appearing on behalf of the writ petitioners, states that the writ petitioners are not at fault and they cannot be penalised for the administrative exigencies, which caused reasons for not sending them for clerical training to the post of Junior Assistants for a period of one year as per the Rules. Further, these typists/steno-typists were promoted to the post of Assistants, which is also the Ministerial Service. In the post of Assistants, they have already served about four years. Thus, their completion of one year training in Junior Assistant posts become an empty formality as far as the writ petitioners are concerned. This apart, on account of the administrative reasons admittedly, the writ petitioners were not provided an opportunity to undergo the training of one year in the post of Junior Assistants.



14. In the case of S.Sasisivanandam vs. District Collector [2012 (1) MLJ 634], this High Court held in paragraph 16, which reads as under:-

"16. The learned counsel for the petitioner has rightly contended that the judgment of this Court dated 4.9.2007 in W.P. Nos. 47872 and 47885 of 2006 and 7791 of 2007 is squarely applicable to this case. The relevant portion of the above said judgment reads as follows:

"8. Under these circumstances, the petitioners cannot be denied the benefit of inclusion in the panel, on the ground that they did not possess the service qualification. After all, the service qualification cannot be equated to the qualification of a pass in the departmental test. While the pass in a departmental test may be in the hands of the individual, the posting of the individual to a particular post, is not within the hands of the individual. Therefore, the respondents ought to have formulated and implemented a policy providing equal opportunity to all persons to <http://www.judis.nic.in> acquire the service qualifications. Since the respondents have failed to do so, the petitioners were not at fault and on that ground, they should not have been omitted to be included in the panel."

15. In the order passed in WP No.9354 of 2012 dated 17.4.2012, again this Court in paragraphs 6 and 7 observed as under:-

"6. The issue arises for consideration herein is as to whether the petitioner can be blamed for non-possessing of required service in the post of Assistant on the clerical side.

7. The power of posting in a particular department is vested with the authority concerned. The petitioner has no control over the said aspect. It is not the case of the respondents that the petitioner was offered the posting as Assistant and he declined to work in the same. In the absence of any such averments, the decision relied on by the learned counsel for the petitioner is squarely applicable to the facts of this case."

16. In identical circumstances in WP No.15180 of 2013 dated 14.6.2013, this Court held in paragraph-12 which reads as under:-

In view of these decisions, I am of the view that the writ petitioners are entitled to succeed in the writ



petition and the respondents cannot reject the petitioners for promotion to the post of Assistant on the ground that they did not have service qualification as Junior Assistant for one year."

5. The learned Standing counsel appearing for the first respondent University would submit that the first respondent University have a power to give exemption, if any anomaly arises for promotion in between the junior and the senior. Exercising such a power, the first respondent gave relaxation to the respondents 2 to 5 and this Court cannot interfere with the same, under Article 226 of the Constitution of India. He would further submit that the order passed in W.P.(MD).Nos.8032 of 2015 etc., batch was challenged before the Division Bench of this Court in W.A.(MD).N.684 of 2019 and the same is still pending. Accordingly, he prayed for dismissal of this writ petition.

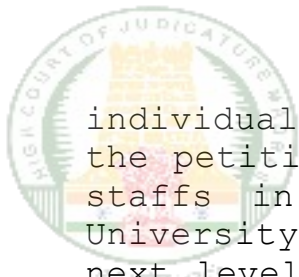
6. The learned counsel appearing for the private respondents adopted the arguments advanced by the learned standing counsel for the first respondent.

7. Heard the learned counsel for the petitioners, learned Standing counsel for the first respondent University, the learned counsel for the private respondents and perused the materials available on record.

8. The facts in the present case are not in dispute. The petitioners challenged the Resolution dated 01.10.2009, after lapse of 2 ½ years. Admittedly, the petitioners are the juniors to the private respondents and they are in the feeder category and they are also eligible for promotion to the post of Assistant Section Officer. In the present case, the petitioners claimed that they were passed the Account Test Part - I conducted by the TNPSC, prior to the impugned resolution. However, the private respondents have not passed the said qualification. Accordingly, they are not eligible for promotion and in order to make the private respondents as eligible to the next level promotion, the impugned resolution is passed, by exercising the power under Clause - 3 of Chapter - VI of the Service Conditions of the Establishment of the Bharathidasan University. For better appreciation, the Clause - 3 is reads as follows:

"The Syndicate may relax any of the provisions of these Statutes in exceptional cases in favour of an individual or a group of individuals as the Syndicate may deem fit."

9. A perusal of the above said provision makes it clear that the Syndicate may relax any of the provisions of these Statutes in exceptional cases in favour of an individual or a group of



individuals as the Syndicate may deem fit. In the present case, the petitioners and the respondents 2 to 5 are the non - teaching staffs in the educational institution viz., the Bharathidasan University and they were expected to qualify themselves for the next level promotion. Admittedly, the respondents 2 to 5 have not passed the Account Test Part - I conducted by the TNPSC and for granting relaxation, no reason was assigned and the simple reason assigned by the first respondent University is that the private respondents are seniors to the petitioners and that is not the criteria for granting exemption and that exemption is not coming under the category of exceptional cases. The above cited decision also makes it clear that in a similar circumstances, the same qualification was relaxed by the very same University and the said relaxation was objected by the audit report and based on the audit report, the issue was came up for consideration.

10. In view of the above discussion and the decision cited supra, this Court is inclined to set aside the impugned resolution, dated 01.10.2009. Accordingly, the impugned resolution, dated 01.10.2009 is set aside and pursuant to the resolution, if any promotion is granted in favour of the private respondents 2 to 5, the same is also not tenable and the first respondent is directed to re-fix the seniority between the petitioners as well as the private respondents 2 to 5.

11. In the result, this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

AKV
To
The Registrar,
Bharathidasan University,
Tiruchirapalli 24.

+1 CC to MR.F.X.EUGENE, Advocate (SR-6358[F] dated 22/02/2021)
+1 CC to MR.M.E.ILANGO, Advocate (SR-6638[F] dated 23/02/2021)

W.P. (MD)No.5548 of 2012

22.02.2021

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