



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
07.04.2021	15.04.2021

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CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD) No.1351 of 2019
and
C.M.P. (MD) No.11351 of 2019
Against WP(MD).22591 of 2018

S.Palanikumar ... Appellant/Petitioner

-vs-

1.The Additional Chief Secretary to Government
Home (Police-II) Department
Fort St.George, Chennai-9

2.The Director General of Police
Dr.Radhakrishnan Salai
Mylapore, Chennai-4

3.The Superintendent of Police
Virudhunagar District,
Virudhunagar

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 29.08.2019, passed in W.P.(MD) No.22591 of 2018, on the file of this Court.

Prayer in WP(MD). 22591 of 2018 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the 2nd Respondent to include the name of the petitioner in the panel of Inspector of Police fit for appointment by recruitment by transfer as Deputy Superintendent of Police (Category-II) for the year 2017-2018.



For Appellant : Mr.Ajmal Khan, Senior Counsel
assisted by Mr.C.Venkatesh Kumar

For Respondents : Mr.K.P.Krishnadass
Special Government Pleader

J U D G M E N T

T.S.SIVAGNANAM, J.

This writ appeal by the writ petitioner is directed against the order dated 29.08.2019 passed in W.P.(MD) No.22591 of 2018.

2. The appellant filed the writ petition praying for a direction upon the second respondent to include his name in the panel of Inspector of Police fit for appointment by recruitment by transfer as Deputy Superintendent of Police (Category-II) for the year 2017 - 2018.

3. The facts as noted by the learned Writ Court are as hereunder:

3.1. The appellant completed his 10th standard during 1982 under the new education system. Thereafter, he joined as Grade II Police Constable at Armed Reserve in the year 1986. He was promoted as Inspector of Police in the year 2009 and the next avenue of promotion is to the post of Deputy Superintendent of Police. The appellant, after completion of 10th standard, had undergone two years foundation course through Madurai Kamaraj University and thereafter, completed B.A.Degree under distance education mode from the very same University. The appellant placed reliance on G.O.Ms.No.528, Personnel and Administrative Reforms Department, dated 18.05.1985, to support his contention that the foundation course undergone by him is equivalent to +2 and that as per the then existing Tamil Nadu Police Service Manual, he is entitled for promotion. Since the appellant's name was not included in the list of candidates fit for appointment by recruitment by transfer as Deputy Superintendent of Police (Category-II) for the year 2017 - 2018, he had filed the writ petition.

3.2. The respondent Department, in their counter affidavit, contended that the post of Deputy Superintendent of Police (Category-II) is governed by the Special Rules for the Tamil Nadu Police Service and the method of appointment for the said post is by recruitment from the post of Inspector of Police (Armed



Reserve) of the Tamil Nadu Police Subordinate Service. The respondents referred Rule 4(D) of the Special Rules, which stipulates the qualification for recruitment by transfer to the post of Deputy Superintendent of Police (Category-II). It is submitted that in terms of the said Rule, the Inspectors of Police (Armed Reserve), to be eligible for being considered for recruitment by transfer, should possess a pass in Secondary School Leaving Certificate (old pattern) i.e., 11 years of schooling or pass in Higher Secondary Course (new pattern) i.e., 10 + 2 years of schooling, which are eligible for college course of study. The appellant does not possess such qualification as prescribed under Rule 4(D) of the said Special Rules and therefore, his name was not included in the list of candidates fit for being considered for appointment by recruitment by transfer.

3.3. The appellant sought to get over the effect of G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017, by which, the Government ordered that the pre-foundation course and the foundation course offered by various Universities in the State are not equivalent to 10th standard and +2 respectively by contending that the appellant became eligible to be included in the list of approved candidates in the year 2014 itself, however, G.O.Ms.No.144 was passed only on 20.11.2017 and therefore, the said Government Order cannot be made applicable to the appellant.

3.4. In reply, the respondent Department contended that though the appellant completed five years of service as Inspector of Police (Armed Reserve) during the year 2014, as per the availability of vacancy in the post of Deputy Superintendent of Police (Category-II), his name fell within the zone of consideration for the first time only when the panel for the year 2017 - 2018 was drawn, for which the crucial date is 01.06.2017.

3.5. The appellant would contend that even going by the said date, namely, 01.06.2017 as the crucial date, as on the said date the foundation course undergone by the appellant was considered as equivalent to +2 and the Government took a decision to withdraw the equivalence only on 20.11.2017 by passing G.O.Ms.No.144 and therefore, as on 01.06.2017, the earlier Government Order in G.O.Ms.No.528, dated 18.05.1985, holds the field and therefore, the foundation course undergone by the appellant should be regarded as equivalent to +2. This

<https://hcservices.courts.madras.gov.in> did not find favour with the learned Writ



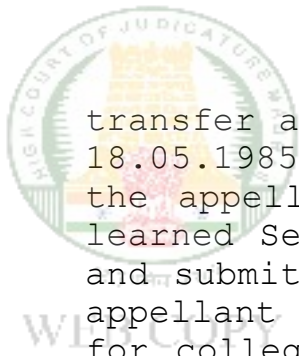
Court, which held that the Government had taken a decision by issuing G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009, ordering that the degree obtained after passing Secondary School Leaving Certificate (10th Standard) and Higher Secondary Course Certificate (+2) alone will be recognized for the purpose of employment / promotion in public service. The appellant relied on a decision of the Principal Seat of this Court in W.P.No.2303 of 2014, dated 05.02.2014 [**C.Pichandi vs. The Secretary to Government, Home (Police-II) Department, Fort St.George, Chennai-9 and others**], to sustain his case.

3.6. On the other hand, the learned Additional Government Pleader relied on the decision of the Honourable Supreme Court in the case of **Basawaraj and others vs. The Special Land Acquisition Officer** in Civil Appeal Nos.6974 and 6975 of 2013, for the proposition that even assuming that similarly placed persons have been granted some relief / benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well.

3.7. Further, the learned Additional Government Pleader appearing for the respondent Department relied on the Judgment of the Division Bench of this Court in the case of **Chairman, TRB and another vs. Kanimozhi**, wherein it was held that unless the candidate had obtained a Bachelor's Degree by going through regular education under 10+2+3 system, he / she will not be qualified for appointment as Secondary Grade Teacher.

3.8. The learned Writ Court, after noting the contentions advanced on either side, took note of Rule 4 (D) of the Special Rules for the Tamil Nadu Police Service and held that the appellant is not entitled for being considered for promotion and the foundation course undergone by him cannot be recognized as one of the regular stream for including his name in the panel of Inspector of Police fit for appointment by recruitment by transfer as Deputy Superintendent of Police (Category-II) for the year 2017 - 2018. With this reasoning, the writ petition was dismissed.

4. Mr.Ajmal Khan, learned Senior Counsel, assisted by Mr.C.Venkatesh Kumar, learned counsel appearing for the appellant, after reiterating the above submissions, stressed upon the crucial date for being considered for appointment by recruitment by



transfer as 01.06.2017, on the said date, the G.O.Ms.No.528, dated 18.05.1985, was in vogue and the foundation course undergone by the appellant was considered as equivalent to +2. Further, the learned Senior Counsel referred to Rule 4(D) of the Special Rules and submitted that in terms of 4(D)(ii) of the Special Rules, the appellant holds a Secondary School Leaving Certificate eligible for college course of study and therefore, he ought to have been included in the list of eligible candidates.

5. The learned Senior Counsel referred to the decision of the Principal Bench of this Court in W.P.No.12309 of 2014, dated 17.07.2018 [***G.Arjunan and others vs. The State of Tamil Nadu and another***] and submitted that identical issue was considered by the Court, after referring to a decision of the Division Bench in W.A.No.1372 of 2013, dated 12.07.2013.

6. Mr.K.P.Krishnadass, learned Special Government Pleader, appearing for the respondent Department, reiterated the submissions, which were made before the learned Writ Court and sought to sustain the order passed in the writ petition.

7. We have elaborately heard the learned counsel for the parties and carefully perused the materials placed on record.

8. The Special Rules for the Tamil Nadu Police Service, which prescribe qualification for recruitment by transfer to the post of Deputy Superintendent of Police (Category-II) reads as follows:

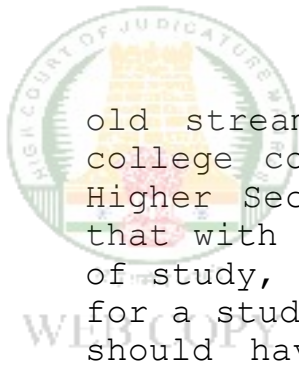
"(D) No reserve Inspector shall be eligible for appointment as Deputy Superintendent of Police, category 2 by recruitment by transfer unless:-

- (i) He has completed five years of service as Reserve Inspector; and*
- (ii) He is the holder of a Secondary School Leaving Certificate eligible for College course of study."*

9. During 2019, the Government issued G.O.Ms.No.440, Home (Pol.2) Department, dated 20.08.2019 and amended the Special Rules by substituting Clause (ii) to Sub Rule (D) of Rule 4 with retrospective effect from 01.04.1980 as follows:

"(ii) he is the holder of a Secondary School Leaving Certificate eligible for college course of study under the old stream or Higher Secondary Course Certificate eligible for college course of study."

10. In terms of the amended Rules, which were given retrospective effect, the qualification prescribed for eligible candidates is to possess a Secondary School Leaving Certificate



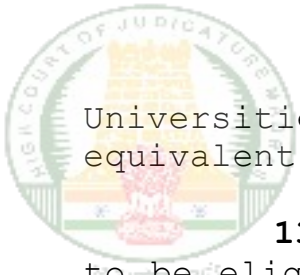
old stream i.e. 11 years of schooling, which is eligible for college course of study, which was prior to the introduction of Higher Secondary Course Examination (+2). It is not in dispute that with effect from March, 1980 onwards, Higher Secondary Course of study, which requires 12 years of schooling, was introduced and for a student to be eligible for college course of study, he / she should have completed 10+2 years of schooling. Therefore, a candidate to be eligible in terms of the amended rules, should have a Secondary School Leaving Certificate eligible for college course of study under the old stream or higher secondary course certificate eligible for college course of study under the new stream. Though an argument was advanced before the Writ Court that as early as in the year 2014 itself, the appellant had completed five years of service as Inspector of Police and was eligible to be considered for the post of Deputy Superintendent of Police (Category-II), the same was rightly rejected taking note of the fact situation i.e. the appellant reached the zone of consideration for the first time in the order of seniority while drawal of panel for the post of Deputy Superintendent of Police (Category-II) for the year 2017 - 2018 only. The crucial date for the said panel is 01.06.2017. Therefore, the argument of the learned Senior Counsel for the appellant is that as on 01.06.2017, the foundation course undergone by the appellant was treated as equivalent to +2 and G.O.Ms.No.144 was issued only on 20.11.2017 and therefore, the foundation course ought to be treated as equivalent to +2.

11. The second limb of argument is that though the rule was amended retrospectively, it was issued only in the year 2019, whereas the appellant was fully qualified for inclusion in the panel on the crucial date i.e. 01.06.2017. Admittedly, the sub rules have been amended with retrospective effect. The appellant has not challenged the amendment with retrospective effect and therefore, the amendment should be dated back with effect from 01.04.1980 and if it is so, the appellant is not qualified. Secondly, though the foundation course was treated as equivalent to +2 by G.O.Ms.No.528, dated 18.05.1985, the said equivalence was withdrawn by G.O.Ms.No.144, dated 20.11.2017. Much earlier G.O.Ms.No.107, dated 18.08.2009, was issued directing that a degree obtained after passing 10+2 alone will be recognized for the purpose of employment / promotion in public service. Thus, going by the scheme of things and the rule, which was amended with retrospective effect from 01.04.1980, the appellant's case was rightly not considered as he did not possess the requisite qualification. This is more so, because, the degree obtained by the appellant based upon the foundation course is of no avail as such degree cannot be recognized for the purpose of employment / promotion in public service. The appellant has not challenged the correctness of G.O.Ms.No.107, dated 18.08.2009, which the



appellant cannot as the said Government Order was issued pursuant to the decision of the Honourable Division Bench of this Court. Likewise, the appellant has not challenged G.O.Ms.No.144, dated 20.11.2017, which held that the foundation course offered by various Universities in the State is not equivalent to +2. The net result is the qualification possessed by the appellant on the crucial date i.e. 01.06.2017 is only 10 years of schooling. The foundation course cannot be recognized as equivalent to +2, consequently, the degree obtained by the appellant from the Open University based upon the foundation course will not be of any aid or assistance to the appellant for being considered for promotion to the said post.

12. As could be seen from the counter affidavit filed on behalf of the respondents, the Government taking note of the observations of the Honourable Supreme Court in Civil Appeal Nos.4173, 4189 - 4191 of 2008, dated 25.02.2009 and the Judgment of this Court in W.A.Nos.1221 of 2005 and 82 of 2006 and W.P.No.36307 of 2004, dated 04.02.2008, issued further clarification vide Government Letter dated 03.12.2010. The clarification is to the effect that a degree awarded by the Open Universities, after passing pre-foundation course and two years foundation course through Open University cannot be recognized as a degree as per the norms of University Grants Commission (in short, U.G.C.) for the purpose of employment / promotion in public service, since such pre-foundation course and two years foundation course are not contemplated in the U.G.C.Regulations. Therefore, it was clarified that those, who obtained degree under Open University System, after passing the pre-foundation course and two years foundation course, without passing 10th standard and +2 examination, do not satisfy the conditions laid down in G.O.Ms.No.107, dated 18.08.2009, which is in accordance with the orders passed by the Honourable Supreme Court. The said clarification makes the legal position lucid and the appellant is precluded from contending that as on the crucial date i.e.01.06.2007, the two years foundation course was regarded as equivalent to +2. To put it slightly different, the clarification issued by the Government in the year 2010 was based upon the decision of the Honourable Supreme Court and the Judgment of the Division Bench of this Court, which made it clear that U.G.C.Regulations nowhere provide for a pre-foundation course or two years foundation course and the same cannot be regarded as equivalent to 10th standard pass or +2 pass respectively. Therefore, it goes without saying that G.O.Ms.No.528, dated 18.05.1985 issued by the Government was without jurisdiction and beyond the scope of U.G.C.Regulations and should be regarded as a nullity. Realising the correct legal position, the Government issued G.O.Ms.No.144, dated 20.11.2017, stating that the pre-foundation course and the foundation course offered by the

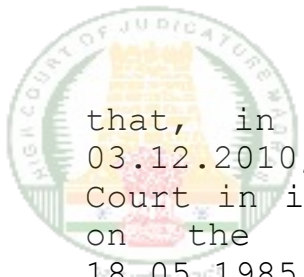


Universities under the Open University Scheme cannot be treated as equivalent to 10th standard and +2 respectively.

13. The appellant seeks for progression in his career and to be eligible for such progression, the appellant should satisfy the requirements under the Special Rules. The Special Rules were rightly amended with retrospective effect from 01.04.1980, since from March, 1980 +2 pattern of education was introduced in the State. Therefore, the plea raised by the appellant can never be countenanced.

14. As rightly pointed out in the counter affidavit, the duties and responsibilities of a Deputy Superintendent of Police (Category-II) in the Tamil Nadu Police Service is onerous. The Officer appointed to the said post is a Supervisory Officer in the Armed Reserve or Traffic Sub-Divisions and the candidates, who are appointed as Deputy Superintendent of Police (Category-II) are required to exercise the powers of Disciplinary Authority for imposing minor penalties in respect of Police Personnel from the rank of Police Constable to the rank of Sub Inspector of Police (Armed Reserve). The educational qualification for appointment as Police Constable by direct recruitment is a pass in Secondary School Leaving Certificate and for appointment to the post of Sub Inspector of Police (Armed Reserve) by direct recruitment is a degree from any University or Institution recognized by the U.G.C. Therefore, the appellant cannot claim that despite not possessing +2 qualification and placing reliance on the degree obtained from Open University based on the foundation course was rightly not considered for appointment by recruitment by transfer to the post of Deputy Superintendent of Police (Category-II). Further, from the counter affidavit we find that 19 candidates, including the appellant, did not possess the requisite educational qualification prescribed in the sub rules and their names were not included in the panel.

15. The learned Senior Counsel appearing for the appellant placed reliance on the order passed in W.P.No.12309 of 2014, dated 17.07.2018. The said decision cannot be pressed into service for more than one reason. Firstly, the decision was rendered by the learned Single Bench on 17.07.2018, which was much prior to the amendment made to the special rules in 2019 with retrospective effect from 01.04.1980. Secondly, as pointed out earlier, G.O.Ms.No.528, dated 18.05.1985, provides for a situation which was not authorized under the U.G.C.Regulations. A foundation course cannot be regarded as equivalent to +2, which involves two years of schooling culminating in a public examination. Realizing the mistake, the Government issued G.O.Ms.No.144, dated 20.11.2017, holding that the foundation course cannot be regarded as equivalent to +2. Even much prior to



that, in 2010, the Government issued a clarification, dated 03.12.2010, taking note of the decision of the Honourable Supreme Court in its Judgment dated 25.02.2009. Therefore, to state that on the crucial date i.e.01.06.2017, G.O.Ms.No.528, dated 18.05.1985, holds the field and therefore, the appellant should be considered for promotion is an argument which has to be rejected. Furthermore, the crucial date is 01.06.2007 and as early as in the year 2009, there were several decisions of this Court as well as the Honourable Supreme Court holding that a degree obtained without undergoing 10+2 course of study under the new pattern cannot be recognized for the purpose of employment / promotion in public service.

16. Thus, for the above reasons, we hold that the appellant has not made out a case for interfering with the orders passed in the writ petition. Accordingly, the writ appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

- 1.The Additional Chief Secretary to Government,
Home (Police-II) Department,
Fort St.George, Chennai-9.
- 2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.
- 3.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.



W.A.(MD) No.1351 of 2019

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-15948[F] dated 16/04/2021)

+1 CC to M/s.SPL GP (SR-16029[F] dated 16/04/2021)

JUDGMENT

IN W.A. (MD) No.1351 of 2019
and C.M.P. (MD) No.11351 of 2019
15.04.2021

SSS (CO)

TR(17.05.2021) 10P 6C