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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.03.2022

PRONOUNCED ON : 06.06.2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. NO.237 OF 2022
AND C.M.P. NO.1711 OF 2022

P. Krishnakumar

...Appellant

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of Human Resources Management,
Secretariat, Chennai-9.
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 Tamilnadu, 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 Husbandary Diarying,
Fisheries and Fishermen Welfare,
Government of Tamil Nadu
Secretariat, Chennai - 600 009.

... Respondents



Prayer:

Writ appeal is filed under Clause 15 of the Letter Patents Act praying to set aside the order dated 08.12.2021 in W.P.No.19146 of 2021 and consequently direct the 2nd respondent herein not to consider candidates with qualification of Bachelors of Engineering (civil Engineering) (direct Entry) (10+2+4) for the post of Junior Draughting Officer (Highways Department & PWD Department) & Junior Engineer (Fisheries) notified under the Recruitment notification in Notification No.06/2020 issued by the 2nd respondent under Advertisement No.581 dated 05.03.2021.

Prayer in WP.No.19146 of 2021:

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 o far as prescribing qualification of Degree in Engineering viz Bachelor of Engineering (Civil Engineering) (Direct Entry) (10 plus 2 plus 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.

For Appellant : M/s.V.Prakash
Senior Counsel
for Mr.P.Dinesh Kumar

For Respondent 2: Mr.Karthick Rajan

For Respondents : Mr.P.Anand Kumar
1, 3 to 5

JUDGMENT

S.VAIDYANATHAN, J.
and
MOHAMMED SHAFFIQ, J.

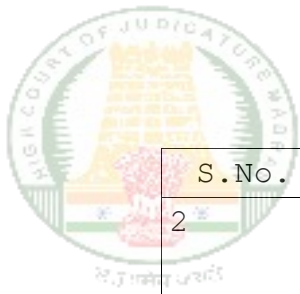
This intra-court appeal is filed against the order of the learned Single Judge in W.P.No.19146 of 2021 dated 12.08.2021 insofar as the learned Single Judge held that Graduate Engineers are also eligible to apply for the posts of Junior Draughting Officer (Highways Department and PWD) and Junior Engineer (Fisheries Department) covered under notification/ advertisement dated 05.03.2021.



2. Brief facts:

2.1. The Tamil Nadu Public Service Commission (hereinafter referred to as "TNPSC") invited applications from eligible candidates for the posts of Combined Engineering Services Cadre through advertisement dated 05.03.2021. The Junior Draughting Officer (Highways Department and PWD) and Junior Engineer (Fisheries Department) were amongst the posts with regard to which notification was issued inviting application for the said posts. Importantly, the notification prescribed Diploma in the subject concerned as being eligible qualification. A note was appended to the said clause which also includes Bachelor's Degree Course as being eligible. The relevant portions of the said Advertisement No.581 in Notification No.06/2021 dated 05.03.2021 prescribing the educational qualification reads as under:

S.No.	Name of the Post	Educational Qualification
1	Junior Draughting Officer	A Diploma in Civil Engineering or its equivalent from any University or Institution awarded by the State Board of Technical Education and Training of the concerned State Government; Provided that while making appointment by direct recruitment to the post of Junior Draughting Officer, preference shall be given if other things being equal, to those who have undergone one year of apprenticeship training under the Government of India Scheme or the State Government Apprenticeship Scheme."



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S.No.	Name of the Post	Educational Qualification
2	Junior Draughting Officer (Public Works Department)	Diploma in Civil Engineering awarded by the State Board of Technical Education and Training TamilNadu or its equivalent qualification recognized by Director General of Employment and Training. Government of India or by the All India Council for Technical Education or Diploma in Architectural Assitanship awarded by the State Board of Technical Education and Training, Tamil Nadu or its equivalent qualification recognized by Director General of Employment and Training, Government of India or by the All India council for Technical Education.
3	Junior Engineer (Fisheries Department)	Must possess Diploma in Civil Engineering

Note:

(i) The educational qualification prescribed for these posts should have been obtained by passing the required qualification in the following order of studies viz., 10th + Diploma Course (10+3) or 10th + HSC + Diploma Course (10+2+2) or 10th + HSC + Bachelors Degree Course (10+2+4).

2.2. The appellant had obtained Diploma in Civil Engineering and thus eligible to apply in terms of the above notification for the posts of Junior Draughting Officer (Highways Department and PWD) and Junior Engineer (Fisheries Department). However, the appellant found that Engineering Graduates were applying and being considered for appointment.

3. Aggrieved by the consideration of the Engineering Graduates for appointment to the post of Junior Draughting Officer under the said notification, the appellant filed the writ petition praying for a 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 insofar as prescribing qualification of Degree in



Engineering viz., Bachelor of Engineering (Civil Engineering) (Direct Entry) (10+2+4) as eligible 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 consider the applications from the degree holders for the said posts.

4. The learned Single Judge was of the view that the issue stands covered by the order of the Division Bench of this Court in W.A.1306 of 2019 dated 29.07.2019 and is thus bound by the Ruling of the Division Bench thereby rejected the challenge in the writ petition.

5. It is submitted by the appellant that the Special Service Rules, prescribed only Diploma in the subject concerned as eligible qualification, thus, consideration/ inclusion of Graduate Engineers as being eligible would be illegal and the order of the learned single Judge was challenged inter alia on the following grounds:

a. The notification insofar it includes Bachelor's Degree course while prescribing the educational qualification for the above posts is bad in law inasmuch as the Special Rules while prescribing the educational qualification had only provided for Diploma in the concerned subject.

b. If the Graduate Engineers are included, Diploma holders would be at a disadvantage and chances of Diploma holders getting selected would be remote and there will be no level playing field between the Diploma holders and Graduate Engineers.

c. When the Special Rules prescribed Diploma as eligible qualification, the question of inclusion of Graduate Engineers in the impugned notification cannot be sustained by drawing support from Section 25(b) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (hereinafter referred to as "the Act") inasmuch as it would run contrary to the settled position that Special Rules would prevail over General Rules, more so, in view of Section 68 of the Act which expressly provides that Special Rules would prevail over the Act in case of conflict. Consequently, the notification insofar as it includes Graduate Engineer as being eligible for consideration is liable to be set aside.

d. That though, earlier Graduate Engineers were also eligible, however, the amendment made vide G.O.Ms.No.152 Highways and Minor Ports (HMI) dated 01.12.2019 substituting the said clause had consciously omitted Engineering Graduates from being eligible to apply for the said post of Junior Draughting Officer as would be clear from the following table:



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Prior to amendment		Post amendment
3 and 4. Head Draughting Officers in the office of the Chief Engineer, (Highways). Civil Draughtsmen in the office of the Chief Engineer (General), Highways and elsewhere, Senior Draughting Officers, Draughting Officers and Junior Draughting Officers	(i) Degree in Engineering (Highways, Civil or Mechanical); or (ii) The Licentiate in Civil Engineering Diploma of the State Board of Technical Examination and Training (formerly known as Technological Diploma Examination Board), Chennai or the Diploma in Civil and Rural Engineering awarded by the National Council for Rural Higher Education. (iii) A pass in Sections A and B (Civil or Mechanical) of A.M.I.E (India) Examinations; or	5. In Schedule II (referred to in rule 8), in the tabular columns, in Serial Numbers 3 and 4:- i) for the entire in column (2), against the entries "3 and 4. Head Draughting Officers in the office of the Chief Engineer (General), Highways and elsewhere, Senior Draughting Officers, Draughting Officers and Junior Draughting Officers" in Column (1) thereof, the following entries shall be substituted, namely:- i) A Diploma in Civil Engineering or its equivalent from any University or Institution awarded by the State Board of Technical Education and Training of the concerned State Government; or ii) A pass in Sections A and B (Civil) of the Associate Member of Institution of Engineers (India) Examinations; or iii) A pass in the Trade Test for Draughtsmen (Civil) conducted by the Director General of Resettlement and Employment and by the National Council for Vocational Training, Government of India.

e. That the learned Single Judge erred in relying upon the decision of the Division Bench of this Court in W.A.No.1306 of 2016 insofar as it followed the judgment of the Hon'ble Supreme Court in the case of Jyoti K.K. vs. Kerala Public Service Commission reported in (2010) 15 SCC 596. The learned Single



Judge ought to have seen that the Hon'ble Supreme Court was examining the provisions under the Kerala Public Service Commission Rules which did not contain provisions in the nature of Section 68 of the Tamil Nadu Government Servant (Conditions of Service) Act, 2016, which provides that Special Rules would override the provisions of the Tamil Nadu Government Servant (Conditions of Service) Act, 2016, in the event of conflict between the two. Thus, the decision of the Hon'ble Supreme Court in view of the difference in the language between the Kerala Public Service Commission and the Tamil Nadu Government Servant (Conditions of Service) Act, 2016, cannot be understood as a binding precedent.

f. That the learned Single Judge ought to have seen that in Engineering Services in Government Department wherein the prescribed qualification is Degree holders, Diploma holders are excluded from consideration for the aforesaid post. Thus, inclusion of Degree holders for consideration in Engineering Sub-ordinate Services even to post where the qualification is Diploma by treating the Degree holders as satisfying the qualification prescribed would diminish/ scale down the chances of the Diploma holders being selected.

g. Importantly, the Special Rules governing the respective posts though originally included Degree as a necessary qualification, however, there was an amendment by which the Degree qualification was consciously omitted. Thus, to permit Degree holders to also apply would defeat the very purpose of the said omission/ amendment.

h. The Special Rules only provides for Diploma, thus Graduate Engineers being treated as eligible by virtue of the fiction contained in Section 25(b) of the Act read with Explanation II would result in conflict between the Special Rules and Section 25(b) of the Act. In the event of a conflict, Section 68 of the Act provides that the Special Rules would prevail.

6. Against the above background, the following questions would arise for consideration:

a. Whether there is any conflict between the Special Rules and Section 25(b) of the Act, if so, whether the Special Rules would override Section 25(b) of the Act and

b. Whether, while fixing the qualification for the posts which included Engineering Graduates, its omission subsequently would indicate that the intention was to exclude Engineers and thereby exclude/ nullify the operation of the fiction contained in Section 25(b) of the Act.



7. Before we proceed further, it may be necessary to extract the relevant provisions:

" Section 25. Special Qualifications:

No person shall be eligible for appointment to any service, class, category or grade or any post borne on the cadre thereof unless he,

a. possesses such special qualifications and has passed such special tests as may be prescribed in that behalf in the special rules; or

b. possesses such other qualifications as have been declared to be higher than or equivalent to the said special qualifications or special tests

.....

Explanation II : In case where the special rules prescribe a diploma in a particular subject as qualification, then, a degree in that subject should be deemed to be a higher qualification."

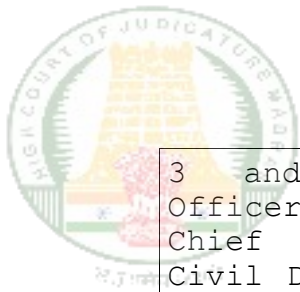
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Section 68. Overriding Effect of special rules:

"If any provision of this Act is inconsistent with any provision of the special rules applicable to any particular service, the special rules shall, in respect of that service, prevail over the provisions of this Act."

A reading of Section 25(b) of the Act, would show that with regard to an eligibility criteria for any appointment to any class or service or post if one possesses qualifications declared to be a higher qualification to the special qualification prescribed would also be eligible. Importantly, Explanation II further provides that if Special Rules prescribed Diploma in a particular subject as qualification, then a Degree in that subject should be deemed to be a higher qualification. Thus, it appears that if eligibility for appointment is that of Diploma holders, Degree holders in that subject being deemed to be having higher qualification would be eligible to take part in the appointment process.

8. It may be relevant to refer to the qualifications prior and after 01.12.2019 to the post of Junior Draughting Officer:
SCHEDULE 2:



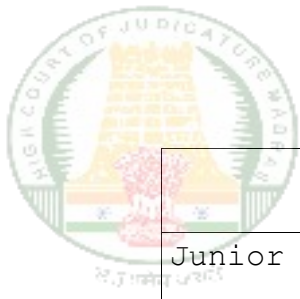
3 and 4. Head Draughting Officers in the office of the Chief Engineer, (Highways). Civil Draughtsmen in the office of the Chief Engineer (General), Highways and elsewhere, Senior Draughting Officers, Draughting Officers and Junior Draughting Officers	(i) Degree in Engineering (Highways, Civil or Mechanical); or (ii) The Licentiate in Civil Engineering Diploma of the State Board of Technical Examination and Training (formerly known as Technological Diploma Examination Board), Chennai or the Diploma in Civil and Rural Engineering awarded by the National Council for Rural Higher Education. (iii) A pass in Sections A and B (Civil or Mechanical of A.M.I.E (India) Examinations; or
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The above Schedule was amended on 01.12.2019 in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India vide G.O.Ms.No.152, Highways and Minor Ports Department, the relevant amendment reads as under:

i) The Tamil Nadu Highways Engineering Subordinate Service Rules:

POSTS	EDUCATIONAL QUALIFICATIONS FOR DIRECT RECRUITMENT
Junior Draughting Officer	A Diploma in Civil Engineering or its Equivalent from any University or Institution awarded by the State Board of Technical Education and training of the concerned State Government Ref- Entry 3 & 4 of Schedule II under Rule 8 as amended by G.O.Ms.152 dated 01.12.2019 and G.O.Ms.122 dated 03.10.2020.

ii) The Tamil Nadu Engineering Subordinate Service Rules, Part II Branch I Engineering Branch:



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POSTS	EDUCATIONAL QUALIFICATION FOR DIRECT RECRUITMENT
Junior Draughting Officer	Diploma in Civil Engineering or Diploma in Architectural Assistantship vide G.O.(Ms) No.69, dated 28.02.2020

iii) The Tamil Nadu Fisheries Subordinate Service Rules:

POSTS	EDUCATIONAL QUALIFICATIONS FOR DIRECT RECRUITMENT
Junior Engineer	Must possess a Diploma in Civil Engineering G.O.Ms.No.170 dated 25.08.2014.

It is thus clear that Education qualification prescribed for the above mentioned posts viz., Junior Draughting Officer (Highways Department), Junior Draughting Officer (Public Works Department) and Junior Engineer (Fisheries Department) originally under the Special Rules included Degree in Engineering the same was substituted and replaced with educational qualification of Diploma in relevant streams as per amendment to Special Rules vide G.O.Ms.No.152, dated 01.12.2019, G.O.Ms.No.122 dated 03.10.2020, G.O.Ms.No.69 dated 28.02.2020 and G.O.Ms.No.170 dated 25.08.2014.

9. The case of the appellant that there is a conflict between the Special Rules which prescribes Diploma as a qualification and Section 25(b) of the Act which provides for a fiction whereby a Degree in the prescribed subject shall be deemed to be a higher qualification, and thus eligible to apply results in repugnancy between the Special Rules and Section 25 (b) of the Act, may have to be rejected for the following reasons:

a. Fiction under Section 25(b) of the Act not done away with by the amendment to the Rule:

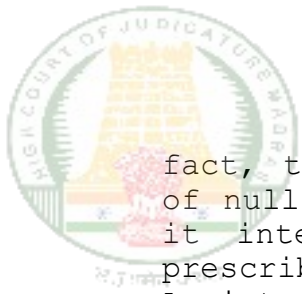
Section 25(b) which creates a fiction whereby in case where the Special Rules prescribed a Diploma in a particular subject as eligible qualification, a Degree in that subject is deemed to be a higher qualification, thereby rendering the candidate eligible is not in any manner nullified/stultified by the amendment to the Special Rules for the Tamil Nadu Highways Engineering Subordinate Service vide G.O.Ms.No.152, Highways and Minor Ports (HM1) dated 01.12.2019.



The above fiction has not been in any manner nullified by the above Rule. It is settled law that whenever a case of conflict between a Subordinate and a primary legislation is set-up, one would not readily infer inconsistency, instead effort ought to be made to reconcile and it is only when attempt to reconcile fails, question of repugnancy would arise. In other words, effort must be made to harmoniously construe the Rule and the provision so that both can be given effect to. Whenever it comes to the question of repugnancy it must be demonstrated that it is inconsistent or irreconcilable or there is actual collision and not mere existence of two instruments in the same field, though in some cases by their very existence in a particular field, the legislative instrument may be understood to result in conflict.

However, in the present case, it does not appear that the rule making authority while framing the Special Rules intended to nullify/ do away with the fiction contained in Section 25(b) of the Act, this would be all the more evident if one bears in mind the representation of the appellant dated 15.03.2021 wherein recruitment for the posts of Assistant Agricultural Officer and Assistant Horticultural Officer was notified under Notification No.2/2021 dated 05.02.2021. Under the said Notification, two years Diploma Course in Agriculture and two years Diploma Course in Horticulture has been prescribed as educational qualification for the aforementioned posts respectively. Further, it has been expressly mentioned in the aforementioned Notification that people with higher educational qualification i.e., Degree holders are ineligible for appointment. The non-prescription of such disqualification for the posts of Junior Draughting Officer (Highways & PWD) would in our view indicate that the rule making authority did not intend to undo or nullify/ stultify the fiction created under Section 25(b) of the Act.

Degree holder's eligibility is by virtue of the fiction under Section 25(b) of the Act and not because of the provision relating to prescription of qualification mentioned in the Special Rules as seen above. Section 25(b) by virtue of fiction provides that Degree holders would be deemed to have a higher qualification and thus eligible to post, wherein Diploma is the prescribed qualification. Thus, without anything more a Degree holder becomes automatically eligible by virtue of Section 25(b) of the Act irrespective of whether the Special Rules while prescribing the qualification expressly includes Bachelors degree or does not in cases where the prescribed qualification is Diploma. The amendment in the year 2019 by omitting Degree holders cannot be understood to render Degree holders ineligible or disqualify them, unless, the Special Rules nullifies the fiction contained in Section 25(b) of the Act. As a matter of



fact, the Special Rules has also carried out the said exercise of nullifying the fiction in Section 25(b) of the Act, wherever it intended, which would be evident from the qualification prescribed for the post of Assistant Agricultural Officer and Assistant Horticulture Officer notified vide Notification No.2 of 2021, wherein it was expressly stated applicants with higher qualification are ineligible.

b. Harmonious Construction - Inconsistency and Repugnancy to be avoided:

A statute must be read as a whole and one provision of the Act or the rules made thereunder should be construed with reference to other provisions in the same Act/Rules so as to make a consistent enactment of the whole statute read with relevant rules. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a Section or between a Section and other parts of the statute or between sections and the Rules. The provisions of one Section of a statute cannot be used to defeat those of another Rule or Section. The principle of harmonious construction ought to be applied to resolve a conflict between a provision and a Rule made under the said Act, in this regard, it may be relevant to note the decision of the Hon'ble Supreme Court in the case of Collector of Central Excise, Jaipur vs. Raghuvar India Ltd., reported in (2000) 5 SCC 299.

c. Parliament aware of existing law and thus in the absence of nullification of fiction expressly - fiction ought not to be nullified through process of interpretation:

It is settled that Parliament is deemed to have knowledge of the entire existing law. Thus Parliament while framing the rule ought to be understood as being conscious of the fiction contained in Section 25(b) of the Act. If it was thus the intent of the rule making authority to nullify the fiction, it would have done so expressly by excluding candidates with higher qualification. However, Parliament while framing the Special Rules has not chosen to do so. Therefore, by a process of interpretation, the fiction cannot be done away with, for it may then amount to legislation which is impermissible. It may be relevant to refer to the following judgments wherein Courts have taken a consistent view that Parliament must be aware of the existing / prevailing law.

(i) MSP Infrastructure Ltd. v. M.P. Road Development Corpn. Ltd., reported in (2015) 13 SCC 713 :

"14.....Parliament has the undoubted power to enact a special rule of law to deal with arbitrations



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and in fact, has done so. Parliament, in its wisdom, must be deemed to have had knowledge of the entire existing law on the subject and if it chose to enact a provision contrary to the general law on the subject, its wisdom cannot be doubted. In the circumstances, we reject the submission on behalf of the respondent."

(ii) Peddinti Venkata Murali Ranganatha Desika Iyengar v. Govt. of A.P., reported in (1996) 3 SCC 75 :

"13..... Presumption is against repeal by implication and the reason is based on the theory that the legislation, while enacting a law, has complete knowledge of the pre-existing law on the same subject-matter."

(iii) Union of India v. Ranjit Kumar Saha, reported in (2019) 7 SCC 505 :

"16. There is a presumption against repeal by implication and the reason for this rule is based on the theory that the legislature while enacting a law has complete knowledge of the existing laws on the same subject-matter, and therefore, when it does not provide a repealing provision, the intention is clear not to repeal the existing legislation. [State of M.P.v.Kedia Leather & Liquor Ltd., (2003) 7 SCC 389, para 13 : 2003 SCC (Cri) 1642; See:Municipal Council, Palav.T.J. Joseph, (1964) 2 SCR 87 : AIR 1963 SC 1561;Northern India Caterers (P) Ltd.v.State of Punjab, (1967) 3 SCR 399 : AIR 1967 SC 1581;MCDvShiv Shanker, (1971) 1 SCC 442 : 1971 SCC (Cri) 195;R.S. Raghunathv.State of Karnataka, (1992) 1 SCC 335 : 1992 SCC (L&S) 286;Ratan Lal Adukiav.Union of India, (1989) 3 SCC 537]"

10. Issue covered by Division Bench in W.A.No.1306/2019 dated 29.07.2019:

In any view, we see no reason to interfere with the order of the learned Single Judge wherein it has been found that the issue stands resolved by the judgment of the Division Bench of this Court by order dated 29.07.2019, in W.A.No.1306 of 2019, the relevant portion of which reads as under:

"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



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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 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.?"

(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 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



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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 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."

11. An attempt was made by the appellant to submit that the fiction under section 25(b) of the Act provides for a range from Diploma holder to holders of Bachelors degrees for the rule making authority to fix and choose while prescribing the qualification. The rule making authority having prescribed Diploma as the requisite qualification, it may not be open to



understand that Degree holders as also being eligible. The above argument only needs to be noticed to be rejected. The rule making authority should be understood to be conscious of Section 25(b) of the Act and the fiction contained therein. Thus, if the rule making authority intended to exclude Engineers while prescribing the educational qualification as Diploma holders then it ought to have been set out expressly. Failure to do so would only indicate that the rule making authority never intended to narrow or whittle down the fiction contained in Section 25(b) of the Act.

12. For all the reasons stated above, we see no merit in the Writ Appeal and the same stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To:

1. The Secretary,
Department of Human Resources Management,
Secretariat,
Chennai-9.
2. The Secretary,
Tamil Nadu Public Service Commission (TNPSC)
TNPSC Road,
VOC Nagar,
Park Town,
Chennai - 600 003.
3. Principal Secretary to Government,
Department of Highways and Minor Ports,
Government of Tamilnadu,
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4. Secretary to Government,
Department of Public Works,
Government of Tamil Nadu,
Secretariat,
Chennai - 600 009.



5. Secretary to Government,
Department of Animal Husbandary Diarying,
Fisheries and Fishermen Welfare,
Government of Tamil Nadu
Secretariat, Chennai - 600 009.

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+1cc to Mr.P.Dinesh Kumar, Advocate, S.R.No.32350
+1cc to the Special Government Pleader, S.R.No.33087

W.A. No.237 of 2022
and
C.M.P.No.1711 of 2022

SKM(CO)
PM/30/06/2022