



W.A.No.690 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.04.2022

Pronounced on : 30.06.2022

CORAM

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

W.A. No.690 of 2015

K.Ravichandran

...Appellant

Vs.

1.The Tamil Nadu Public Service Commission,
Represented by its Member Secretary,
No.1, Greams Road, Commercial Tax Office,
Annexe Building, Chennai-6.

2.Union of India
Represented by its Secretary to Union of India,
Department of Personnel and Training,
North Block,
New Delhi – 110 011.

3.The State of Tamil Nadu Represented by its,
Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Fort St.George,
Chennai – 600 009.

... Respondents

Prayer: Writ appeal is filed under Clause 15 of the Letter Patents Act
praying to set aside the order dated 02.08.2013 made in W.P.No.18166 of



W.A.No.690 of 2015

2012 and consequently allow the writ petition and declare that the appellant is deemed to have been selected and appointed as Assistant in the Registration Department based on his written marks on par with an Ex-Serviceman who has secured lower merit than the appellant.

For Appellant : Mr.K.Raj Kumar

For Respondent 1 : M/s.Hema

For Respondent 2 : Mr.A.Murugan

For Respondent 3 : M/s.Mythreye Chandru
Special Government Pleader

JUDGMENT

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

The present Writ appeal is filed challenging the Order of the learned Single Judge dismissing the Writ petition as having become infructuous on the premise that selected candidates have been recruited and appointed in the respective posts.

2. The petitioner had completed his 10th standard in the year 1980 and had completed his higher secondary/ +2 in the year 1982 as would be evident from the certificates dated 30.05.1980 and 10.06.1982 respectively. The petitioner had been in service for 22 years with the Indian Army and



W.A.No.690 of 2015

was issued with a Graduation Certificate on retirement in the year 2009 .

The said Graduation certificate was issued in terms of notification of Union of India in 15012/8/82/Est (D) in terms of Rule 6(4) of the Ex-serviceman (Re-employment Central Civil Service & Post Rules, 1979). The said rules provided that the Graduate certificate would be issued to Ex-serviceman who had successfully completed their matriculation or higher secondary class and had put in more than 15 years of service in Army or Air Force or Navy.

The said sub-rule (4) to Rule 6 of the Ex-service men (Re-employment Central Civil Service & Post Rules), 1979, reads as under:

“(4) For appointment to any reserved vacancy in Group C posts, a matriculate Ex-Servicemen (Which term includes an ex-service men, who has obtained the Indian Army Special Certificate of Education of the Corresponding Certificate in the Navy or the Air-Force), who has put in not less than 15 years of service in the Armed Forces of the Union may be Considered eligible for appointment to the posts for which the essential educational qualification prescribed is graduation and where,

(a) Work Experience of technical or professional nature is not essential; or

(b) Though non-technical professional work experience



WEB COPY



W.A.No.690 of 2015

is prescribed as essential yet the appointing authority is satisfied that the ex-serviceman is expected to perform the duties of the post by undergoing on the job training for a short duration.

(5) For appointment to any reserved vacancy in Group C and Group D posts, where the prescribed minimum educational qualification is matriculation, the appointing authority may, at his discretion, relax the minimum educational qualifications in favour of an ex-service man who has passed the Indian army Class – D examination or equivalent examination in the Navy of the Air-Force, and who has put in at least 15 years of service in the Armed Forces of the Union and is otherwise considered fit to hold the post in view of his experience and other qualifications.”

3. The petitioner applied for Group – II Tamil Nadu Combined Subordinate Services Examination-I, the examination was held on 30.07.2011 and results were published on 08.06.2012. The petitioner was short-listed for oral test. The petitioner was directed to appear for certificate verification on 12.07.2012, prior to oral test to be held on 13.07.2012. The petitioner appeared for certificate verification and produced the following



W.A.No.690 of 2015

original certificates before the 1st respondent:

WEB COPY

- (a) School leaving certificate.
- (b) Graduation certificate issued by the Army.
- (c) Post graduate certificate in the Open University system.

However, the petitioner was informed that the Graduation certificate issued in terms of Rule 6(4) of the Ex-serviceman (Re-employment Central Civil Service & Post Rules, 1979) cannot be accepted. The educational qualification for the posts included in Combined Sub-ordinate Services Examination-I, 2009-2011 applied by the petitioner was set out in notification No.258 dated 30.12.2010 which is extracted in the counter which reads as under :-

“It is pertinent to mention that the Commission in its Notification No.258, dated 30.12.2010 had invited applications for direct recruitment to the posts included in CSSE – I, 2009 – 2011. The educational qualification required for various posts were also announced in para 4(B) of the notification which reads as follows:-

(i) The qualification prescribed for these posts should have been obtained by passing the required qualification in the order of studies 10th, HSC, UG Degree, PG Degree.



W.A.No.690 of 2015

WEB COPY

(ii) Persons claiming equivalence of qualification should enclose evidence for such claim failing which their application will be summarily rejected. Additional instructions have also been issued in the para – 9 of the Instructions etc., to candidates.”

Aggrieved by the refusal to accept the Certificate issued in terms of Rule 6(4) of the Ex-serviceman (Re-employment Central Civil Service & Post Rules, 1979), the appellant filed a writ petition. It is the order passed on the said writ petition which is under challenge in this writ appeal.

4. Order of the learned Single Judge:

The order of the learned Single Judge to the extent has proceeded to hold that the writ petition is infructuous merely because the selection process is over and thus dismissed the writ petition without examining the merits, cannot be countenanced.

It seems that the appellant or for that matter any candidate cannot be deprived of his right to appointment/ promotion only on the basis that the said exercise has been completed unless the challenge to the said proceeding



W.A.No.690 of 2015

is hit by laches which is not the case here.

WEB COPY

5. Issue:

The question that arises for consideration is whether the Graduation certificate which has been issued in terms of Rule 6(4) of the Ex-serviceman (Re-employment Central Civil Service & Post Rules), 1979 , would be valid and binding on the State Government and on Tamil Nadu Public Service Commission, which is the nodal authority for appointments.

Secondly, whether equivalence certificate would have prospective or retrospective effect from the date of acquisition of the qualifying degree/ certificate.

It may be relevant to note that, the Graduation certificate received by the Ex-service men, in terms of the above Rules, have been recognised by various States including the State of Gujarat, Odisha.

It may also be relevant to note that the Ministry of Defence vide its letter dated 23.01.2013 had addressed to the Joint Secretary of TNPSC, wherein after setting out the reasons in detail, requested that the benefit of the Order dated 12.02.1986 may be extended to Ex-serviceman belonging to



W.A.No.690 of 2015

Tamil Nadu. The relevant portion of the said communication is extracted

here under:-

“1. Reference petition received from an Ex-servicemen Shri R Balasubramanian addressed to Hon'ble Defence Minister forwarded vide Min of Defence ID no 1194/RM/PG/2013 dated 08 Jan 2013 (Appx I).

2. The ex-servicemen has appeared for the Combined Subordinate Services examination 2011 conducted by TNPSC against the notification of Tamil Nadu Public Service Commission (Notification No.CSSE-1 ADV 258/11-02-2011). He has qualified the written test vide the publication dated 18 July 2012 TNPSC (Govt of Tamil Nadu). However the ex-servicemen has not been considered for appointment for want of qualifications. The ex-servicemen states that the TNPSC is not considering the graduate certificate issued to the ex-servicemen.

3. As per Govt of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and training) OM no.15012/8/82/Estt(D) dated 12 Feb 1986 (Appx II) Ex-servicemen who are matriculate (which term includes ex-servicemen who have obtained the Indian Army Special Certificate of Education or the corresponding certificate in the Navy or the Air Force), and have put in not



WEB COPY



W.A.No.690 of 2015

less than 15 years of service in the Armed Forces of the Union may be considered for any reserved vacancy in group C posts for which the essential qualifications is graduation and where the experience of technical or professional nature is not essential.

4. Re-habilitaion of ex-servicemen is not only the responsibility of the Central Govt but also of the State Government as these ex-servicemen defend the country as a whole. Further, these certificates are issued to them on the basis of their practical experience and training undergone in the Armed Forces. Therefore, Govt of India., Ministry of Personnel Public Grievances and Pension (Dept. of Personnel & Training) issued the OM dated 12 Feb 1986 after considerable deliberations and extended this benefit to the ex-servicemen who rendered selfless service during the prime of their youth.

5. As the ex-servicemen has qualified the written test and it being a non-interview post, the ex-servicemen should be considered for the post subject to other conditions of recruitment being fulfilled.

6. In view of the above, it is requested that the benefit of this Govt of India order dated 12 Feb 1986 be extended to the ex-servicemen belonging to Tamil Nadu.



W.A.No.690 of 2015

7. *This has the approval of DG(R). ”*

WEB COPY

It is also relevant to note that the State of Tamil Nadu has also recognised the Graduate certificate issued by the Ministry of Defence as satisfying the educational qualification for appointment to the post wherein graduation is prescribed as a qualification vide G.O.(Ms).No.77 dated 23.01.2018, the relevant portion of which reads as under:

“3. After careful examination, the Government have decided to accept the proposal of the Director of Ex-Servicemen's Welfare, Chennai and accordingly, direct that for appointment to any reserved vacancy in “Group-C” posts, a Matriculate Ex-Servicemen, (which term includes an Ex-Servicemen, who has obtained the Indian Army Special Certificate of Education or the corresponding certificate in the Navy or the Air Force), who has put in not less than 15 years of service in the Armed Forces of the Union shall be considered eligible for appointment to the posts for which the essential qualification prescribed is Graduation. They are eligible for promotion to all Group 'A' and 'B' posts in routine course excepting for those posts for which graduation is a prescribed qualification for promotion.”



W.A.No.690 of 2015

(emphasis supplied)

WEB COPY

6. The question that arises for consideration is whether the certificate issued under Rule 6(4) of the Ex-serviceman (Re-employment Central Civil Service & Post Rules), 1979, which has been accepted by the State of Tamil Nadu vide G.O.Ms.No.77 dated 23.01.2018 would have effect prospectively from the date of the G.O.Ms.No.77 dated 23.01.2018 or from the date of issuance of certificate by the Union in terms of Rule 6(4) of the Ex-serviceman (Re-employment Central Civil Service & Post Rules), 1979.

7. To answer the above question, it may be relevant to refer to the Judgment of the Full Bench of this Court in the case of *Nadar Thanga Shubha Laxman vs. State of Tamil Nadu* reported in (2014) 3 CTC 433, wherein while dealing with the question as to whether an equivalence certificate issued by the Committee would have prospective or retrospective effect i.e., from the date of issuance of the certificate itself, it was held that the validity of the Degree would commence from the date of acquisition of the said degree and would add to the benefit of the candidate therefrom. The



W.A.No.690 of 2015

question of the same being only prospective, may not arise unless the notification or the Government Order declaring/ providing equivalence says so expressly. In this regard, it may be relevant to refer to the relevant portion of the said judgment:

“22. The above observation of the Apex Court clearly answers the doubt raised in this Reference that a right whether inchoate or accrued or acquired right can be held to be protected, provided the right survives. In the light of the said principle, if the case on hand is considered, admittedly, the Equivalence Committee has considered and approved the equivalent nature of the Degree and Certificate obtained by the candidates. Similarly, the Government Order issued by the Government also agrees with the validity of the Degree. therefore, from the date the Degree was obtained by the candidate, the right is accrued, hence the same should be protected. While so, giving a different meaning that the validity of the Degree will have prospective effect or retrospective effect is uncalled for. To make it even further clear, we wish to mention at the risk of repetition that when both the Equivalence Committee and the Government Order issued by the State Government have not chosen to restrict the validity of the Degree obtained in any one of their Orders, it



W.A.No.690 of 2015

goes without saying that the validity of the Degree from the date of acquisition will stand to benefit the candidates, therefore, the question of introducing the prospective or retrospective ruling will tantamount to violent interpretation against the settled legal position. In this context, it is useful to refer to the Judgment of the Apex Court in the case of B.S. Vadera v. Union of India, AIR 1969 SC 118, wherein, the law is well declared that an accrued and acquired right of a person cannot be taken away with retrospective effect.”

(emphasis supplied)

It may also be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *Praveen Kumar vs. Kerala Public Service Commission* reported in 2021 SCC Online SC 612, wherein it was held as under:

"28. Once we hold so, we do not think relief can be denied to these two appellants on the ground that other similarly situated persons may not have had applied for the same posts and were being put to disadvantage. In the case of Aarya K. Babu (supra), that course was adopted by a coordinate Bench as it was a new subject which was added to a subsisting range of subjects in the qualification criteria. The principle of



WEB COPY



W.A.No.690 of 2015

service jurisprudence that a candidate must possess the requisite qualification for a post on the date of issue of employment notification cannot be applied in the appellants' cases, as in our view, they possessed equivalent qualifications when they applied for the posts. The GOs only confirmed the equivalency of their B.Ed. degrees. In our opinion, they shall be deemed to have had the equivalent qualification on the relevant date. As we have held that the respective GOs only clarified or confirmed an existing status of certain educational qualifications, in absence of specific instance of similarly situated but unspecified number of persons having not applied for the posts would be unfair to the ones who apply for the same and undergo three levels of litigations to establish that they had equivalent degrees"

(emphasis supplied)

8. In view of the above, the learned counsel for the appellant may be right in his submission that the appellant is eligible for being considered for appointment to the post of Assistant in Combined Sub-ordinate Services Examination-I, 2009-11. However, as the appointments for the period is likely to have been completed, the appellant shall be considered as and when



W.A.No.690 of 2015

future vacancy arises to the post for which he had applied, namely, Group-II

Tamil Nadu Combined Sub-ordinate Services Examination-I by giving preference and relaxing the age factor, if any.

9. For all the reasons stated above, the writ appeal is disposed of on the above terms. No costs.

(S.V.N., J.) (M.S.Q., J.)
30.06.2022

Speaking order/Non-speaking order
Index: Yes/No
mpl/mka

To:

- 1.The Member Secretary,
Tamil Nadu Public Service Commission,
No.1, Greaves Road, Commercial Tax Office,
Annexe Building, Chennai-6.
- 2.The Secretary,
Department of Personnel and Training,
North Block,
New Delhi – 110 011.
- 3.The Secretary to Government,
Personnel and Administrative Reforms Department,

15/17



WEB COPY

Secretariat, Fort St.George,
Chennai – 600 009.



W.A.No.690 of 2015

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

mpl/mka

W.A. No.690 of 2015



WEB COPY



W.A.No.690 of 2015

30.06.2022