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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 26.04.2022

ORDER PRONOUNCED ON : 06.06.2022

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
AND

THE HON'BLE MRS.JUSTICE N.MALA

W.A.NO.613 OF 2021

AND

CMP.NO.2712 OF 2021

The Tamil Nadu Public Service Commission,
Represented by its Secretary,
Frazer Bridge road (now TNPSC Road),
VOC Nagar, Park Town,
Chennai- 600 003.

...Appellant

Vs.

1. D.Devi

2. The Director of Industries and Commerce,
Chepauk, Chennai- 600 005.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 27.11.2020 passed by this Court in W.P.No.12528 of 2006.

Prayer in W.P.No.12528 of 2006:-

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the 1st respondent Memo No.3476/THPiNaThu/A4/2003 dated 06.04.2006 and quash the same.

For Appellant : Mrs.Hema

Respondent for R1 : Mr.J.Saravanavel

for R2 : Mr.Abhishek Murthy
(Government Advocate)



JUDGMENT

[Order of the Court was made by S.VAIDYANATHAN,J. and N.MALA,J.]

The Writ Appeal is filed against the order dated 27.11.2020 passed in W.P.No. 12528 of 2006, allowing the writ petition filed for a Writ of Certiorari to call for the records of the 1st respondent in Memo No. 3476/THEPiNaThu A4/ 2003 dated 06.04.2006 and quash the same.

The facts in nut shell:

2.The respondent applied for the post of Combined Subordinate Service Group-II (1996-1998) notified vide notification dated 30.07.1998. The respondent is a destitute widow with three girl children and according to her, with the help of her friends and well wishers she pursued B.A. Degree in History through Open University in the Institute of Correspondence in the University of Madras in the academic year 1995- 1998. The respondent completed the Course in May 1998, but her results were declared only on 20.08.1998. The Combined Subordinate Service Group-II (1996-1998) exams were conducted in 1999. On 07.06.2002, she received a letter, asking her to produce her community certificate which she produced on 27.08.2002. The respondent was informed that she was provisionally selected as Store-Keeper in the Department of Industries and Commerce in the Tamil Nadu Ministerial Services. The respondent was given provisional appointment on 09.09.2002 to the post of Store-Keeper (Assistant) and she joined the Government Technical Centre at Guindy on 16.09.2002. On 03.12.2002 the appellants called for the mark sheet of the respondent and also the conduct certificate. The respondent vide letter dated 20.12.2002 replied that she did her B.A. degree in History through Open University and that she was enclosing the conduct certificate along with clarification certificate of University of Madras.

3.Thereafter, on 11.02.2005 the appellants issued show cause notice to the respondent calling for an explanation, as to why her provisional appointment should not be cancelled on the ground that, on the date of the notification she did not possess the requisite educational qualification. The respondent submitted her explanation on 24.03.2005, but the same was rejected by the appellants vide impugned order dated 06.04.2006 and hence the respondent filed the writ petition challenging the said order.

4.The appellants filed detailed counter justifying the cancellation of the respondent's selection on the grounds, inter alia, that the appointment was provisional in nature and subject to verification of certificates and confirmation of TNPSC, that



at the time of verification of her certificates it was found that she did not possess the basic educational qualification for the post and further that the B.A. degree (Open-University) which she relied on was issued after the date of notification. Therefore the appellants prayed for the dismissal of the writ petition.

5. On the basis of the pleadings and the arguments of the counsels and on perusal of the records, the learned Judge allowed the writ petition directing the appellants to reinstate the respondent without back wages and continuity in service. The learned Judge under the facts and circumstances of the case added a rider that the order will not be taken as a precedent.

Submissions of the counsel:

6. The counsel for the appellants vehemently submitted that the respondent did not possess the requisite educational qualification on the date of the notification (i.e.) 30.07.1998 and that the B.A. Degree (Open University) which the respondent relied on was obtained after the notification. The counsel submitted that the learned Judge even though found that the petitioner was not eligible for the post on the date of notification (i.e.) 30.07.1998, erred in allowing the writ petition. The counsel further submitted that the higher qualification possessed by the respondent over and above the prescribed qualification is only an additional qualification and in the absence of the basic qualification of Pre-University or Higher Secondary examination, the B.A. Degree obtained through Open- University cannot be considered as a requisite qualification for the post. The appellants counsel finally submitted that as the appointment was provisional and subject to verification of the certificates and confirmation by TNPSC her selection was cancelled when on verification of the certificates it was found that she did not possess the educational qualification required for the post.

7. The counsel for the respondent on the other hand contended that, though the results of B.A. degree (Open-University) were announced after the notification dated 30.07.1998 the same would not be a bar because it is well settled that the acquisition of qualification will date back to the date of completion of final exams and not to the date of publication of results. The counsel further submitted that the appellants erred in thinking that she did not possess the requisite qualification over looking that she possessed the higher qualification of B.A. degree (Open-University). The counsel finally prayed that a sympathetic view may be taken considering that the respondent has put in 3 ½ years service. The counsel therefore submitted that there is no



infirmity in the order passed by the learned Judge and the same deserves to be confirmed in appeal.

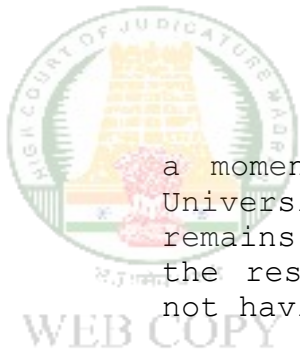
8. We have heard the respective counsels and perused the records. The short question that falls for consideration in this writ appeal is whether the impugned order cancelling the respondent selection is sustainable or not.

9. The fact that the respondent obtained the B.A. degree (Open-University) only after the date of notification (i.e) 30.07.1998 is not disputed. The explanation given by the respondent is that, she completed her final semester in the month of May, but the results were declared on 20.08.1998, which will relate back to the date of examination and as such it cannot be said that she did not possess the educational qualification on the date of the notification. Further explanation of the respondent in support of her case is that, though she did not possess the Pre-University and HSC qualification she possessed the higher qualification of B.A. degree (Open-University) and therefore it cannot be said that she did not possess the requisite educational qualification for the post.

10. It is relevant to refer to the notification dated 30.07.1998 and the clause relating to educational qualification for the post of Store-Keeper (Assistant).

"Store-Keeper in the department of Industries and Commerce below 30 years must have passed the Pre-University or Higher Secondary Examination"

11. The notification clearly prescribes that the candidates must have passed the Pre-University or Higher Secondary examination. The respondent counsel submits that the higher qualification cannot be a disqualification for holding the post. We are not inclined to accept the contentions of the respondent counsel. When a particular qualification is prescribed for a particular post, unless and until the notification itself prescribes or a rule or regulation prescribes that higher qualification is not a bar, only then the Court can intervene. In the absence of such Rule, Regulation or Clause in the notification, it is not within the scope of the power of judicial review to expand the ambit of the prescribed qualification. The prescription of prescribed qualification is in the domain of the State, which is the employer. We are fortified in the view we have taken by the law laid down by the Hon'ble Supreme Court in Chief Manager, Punjab National Bank Vs. Anit Kumar Das reported in 2020 SCC online SC 897. Assuming for



a moment that the higher qualification of B.A. degree (Open-University) can also be considered for the post, the fact remains that, on the date of the notification (i.e) 30.07.1998 the results were not declared and therefore the respondent was not having the B.A. degree (Open-University) also.

12.The learned counsel for the appellants relied on the Division Bench Judgment in W.A. No. 1150 of 2018 of this Hon'ble Court dated 31.08.2018 in support of the contention that the qualification obtained subsequent to the notification cannot be considered. The relevant portion of the Judgment is extracted here under.

"It is not the case of the respondent that he was having the requisite qualification as on the date of Notification. Admittedly, the respondent was not having the requisite qualification as on the date of Notification in question, i.e., the result of the qualifying examination was not announced. When the fact remained that the respondent was not qualified to apply for the post as on the date of Notification, we have to ultimately come to the conclusion that the writ appeal has to be allowed, even though the qualification was acquired before the last date of making the application."

The above judgment squarely applies to the facts of the present case.

13.One other aspect as rightly pointed out by the learned appellant's counsel is that the appointment was only provisional and the respondent accepted it without any demur. The relevant clause of provisional appointment order dated 09.09.2002 is as under.

"She is also informed that the selection is purely provisional subject to verification of original certificates and subject to confirmation by TNPSC."

14.We are therefore of the view that the respondent was very much aware that the appointment was only provisional and subject to verification of original certificates and confirmation by TNPSC, the respondent has also accepted it and hence cannot now take a different stand.

15.The counsel for the respondent pleaded that a sympathetic view may be taken and in support of the same he relied on the Judgment of the Hon'ble Supreme Court reported in (2019)3 SCC 511. We have gone through the said Judgment and we are of the



view that more than supporting the respondent the judgment is against the respondent.

16. The Hon'ble Supreme Court in Para 13 of the Judgment stated as follows:

"We are not for a moment doubting the correctness of the reasoning of the Division Bench in this case, that eligibility of the candidates must be decided with reference to the qualification possessed as on the cut-off date and the qualification acquired later in point of time cannot make a candidate eligible."

17. We are not able to comprehend as to how the Hon'ble Apex Court judgment will support the respondent. The issue raised by the respondent in this case is answered against the respondent and in so far as sympathy is concerned we are of the view that the length of service in the Hon'ble Apex Court case was over 2 decades and hence the relief was granted to the appellants therein. In the present case, the respondent has served for only 3 ½ years and that too after knowing fully well that her appointment was only provisional.

18. In this context the Hon'ble Supreme Court Judgment referred to by the counsel for the appellants in The State of Rajasthan and others Vs. Anju Rini Saini in Civil Appeal No. 872 of 2022 is more appropriate.

"We are unable to accept the contentions of the respondent that being a Constitutional Court and since rights have declared in Article 15 and being a widow warranting a sympathetic view to be taken, should culminate in our refusing to exercise our jurisdiction under Article 136. It is undoubtedly true that Article 136 is a special and extraordinary jurisdiction but that is a far cry from holding when a clear case of respondent not holding the required qualification is made out, the Court can still direct appointment. It will be palpably illegal and unconstitutional. Even with all the sympathy that this Court has undoubtedly for the respondent, however, it cannot result in public employment being made except in terms of the law governing the appointment. It is a clear case where the respondent was not eligible to be considered for appointment. The foundation for directing her to be considered appears to us to be very fragile and insupportable. It is, in fact, the duty of the constitutional Court in such cases to



uphold the action of the authorities which are in strict conformity with the rules of the game in question."

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19. We are therefore of the considered view that the above extract of the Hon'ble Apex Court judgment nails the issue. In the light of the above judgment we are of the view that on mere sympathy and sentiment no relief can be granted to the respondent. In view of the facts and the law involved in the case we set aside the order of the learned Single Judge dated 27.11.2020 in W.P. No. 12528 of 2006.

20. Accordingly, Writ Appeal is allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

dsn

To

1. The Director of Industries and Commerce,
Chepauk, Chennai- 6000 05.
2. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge road (now TNPSC Road),
VOC Nagar, Park Town,
Chennai- 6000 03.

+1cc to M/s.J.Saravana Vel, Advocate, S.R.No.32152

W.A.No.613 of 2021
and
CMP No.2712 of 2021

MT (CO)
RLP (27/06/2022)