

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.03.2022

DELIVERED ON : 14.06.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.16516 & 16519 of 2020

and

WMP No.20490, 20494 of 2020

C.Senthil Kumar ... Petitioner in W.P.No.16516/2020

A.Ganesh ... Petitioner in W.P.No.16519/2020

vs.

1. The Registrar of Cooperative Societies,
Department of Co-operation, Natarajan Maaligai,
170, Periyar EVR High Road, Kilpauk,
Chennai 600 010.
2. The Joint Registrar/Managing Director,
Tiruvannamalai District Central,
Co-operative Bank Ltd, Collectorate Master Complex,
Vengikkal, Tiruvannamalai 606 604.

... Respondents

Prayer in W.P.16516 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the second respondent to grant promotion to the petitioner as Assistant General Manager which had fallen vacant on 31.08.2020 in terms of the representation submitted by the petitioner on 07.07.2020.

Prayer in W.P.16519 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the second respondent to grant promotion to the petitioner as Assistant General Manager which had fallen vacant on 31.08.2020 in terms of the representation submitted by the petitioner on 06.07.2020.

In both W.Ps.
For Petitioner : Mrs.G.Thilakavathi, Senior Counsel
for R.Gophinath

For Respondents : Mrs.S.Anitha,
Special Government Pleader for R1
Mr.L.P.Shanmugasundaram for R2

COMMON ORDER

The issues involved in these writ petitions are one and the same and hence, they are disposed of by this common order. The writ petitions have been filed seeking to issue a Writ of Mandamus, directing the second respondent to grant promotion to the petitioners as Assistant General Manager which had fallen vacant on 31.08.2020 in terms of the representation submitted by them.

2. The facts of the case in brief is as follows:

2.1. The petitioners were appointed as sub-staffs in Vellore District Central Cooperative Bank during the year 1993 and thereafter, they were promoted as Assistant with Time Scale during the year 1998 and 2000. The first respondent, vide proceedings dated 15.10.1999, had considered the request from the District Central Cooperative Banks to promote the SSLC/ XII Standard passed with cooperative trained sub-staff to the category of Assistants as onetime measure. Pending adoption of necessary transitory provisions, wherever necessary, the case of SSLC/XII Standard passed with cooperative training, sub-staff were considered eligible by duly observing seniority etc., in the category of Assistants, within the approved cadre strength.

2.2. As per Bye-laws of the Bank, the mode of recruitment to the post of Assistant Manager alone was in the ratio of 3:1 both by direct recruitment and by promotion from the feeder category of Assistant. Thereafter, all the posts on the schedule of the bank are filled by promotion only. Therefore, by virtue of seniority in the category of Assistant, the petitioners were promoted up to the post of Manager vide proceedings dated 12.07.2010. At the time of their promotion as Assistant Manager, the Bye-laws of the Bank were required to be amended and till such time, the amendments were brought into implementation, which was imposed by the first respondent, vide circulars dated 07.10.1996 and 31.07.1997. Only in adherence to the directives of the first respondent, the petitioners were promoted upto the post of Manager on 12.07.2010.

2.3. Pendency to the challenge to the amendments of the Bye Laws, necessitated the first respondent to clarify the District Central Co-operative Banks as to in what manner the educational qualification of the in-service candidates should be considered, vide proceedings dated 17.06.2011. The first respondent had clarified that persons who had entered service with requisite qualifications at the entry level post, after undergoing the qualification by way of pursuing their studies in the regular stream, as per the circular dated 27.12.2009, are eligible for progression of their service as on date, the rule position continues, without any variation to the same. However, when three vacancies for the post of Assistant General Manager has arisen as on 31.08.2020, the second respondent has not granted promotion to the petitioners, though the petitioners are the next senior most eligible Managers, and had made their representation in this regard on 06.07.2020 and 07.07.2020 to consider them for promotion when the vacancies arises. Therefore, the second respondent may be directed to grant promotion to the petitioners as Assistant General Manager, which had fallen vacant on 31.08.2020, in terms of their representation dated 06.07.2020 and 07.07.2020. Hence the writ petitions.

3. The second respondent has filed a counter affidavit wherein it has been stated as follows:

3.1. The petitioners were appointed on compassionate ground as Sub-Staff during 1993 and were promoted as Assistant during 1998 and 2000. Thereafter, they were promoted as Assistant Manager and Manager. All these promotions were given prior to amendment of Special Bylaw 4.A II(b), which was amended on 24.03.2016, in pursuance of G.O.Ms.107 dated 18.08.2009. Further, these promotions were given as one time measure only. The petitioner in W.P.No.16516 of 2020 completed SSLC and D.Coop. The petitioner in W.P.No.16519 of 2020 completed SSLC and D.Coop. and passed M.Com, (Coop Management) through open University awarded by Annamalai University, not under 10+2+3 regular scheme. While the amendment came into force on 24.03.2016, the second respondent should act as per Special By-law provision. The Bank cannot now promote the petitioners, by virtue of the existing law and if any such promotion is given, the same will be in violation of both G.O.Ms.No.107 dated 18.08.2009 and also the bye-laws of the bank. The continued services rendered by the petitioners will not in any way give them a right to be considered for promotion to the post of Assistant General Manager, if they do not fulfill the qualification.

3.2. In the matters of appointment/promotion for any category of post to be filled by direct recruitment or by

promotion, the second respondent should consider any individual having a degree obtained through distance education method from open universities/regular universities, will not be eligible for a post, where degree is a necessary qualification, unless he/she has studied in a regular school and passed 10th and 12th Standard examination conducted by State Board/CBSE/such other Boards recognized by the Government to conduct such examination. In the instant case, the petitioners have passed only SSLC and does not possess the required qualification for promotion as per Special Bye-law No.4 II(b). Therefore, the writ petitions are not maintainable and the same are liable to be quashed.

4. Mrs.G.Thilagavathi, learned Senior Counsel appearing for the petitioners submitted that as per the seniority list available on the file of the second respondent dated 15.06.2016, the petitioners are the next eligible persons to be promoted to the post of Assistant General Manager and the number of posts available and approved on the schedule of the second respondent as per the communication of the second respondent dated 09.12.2019 made in Rc.No.255/2002/E1, five posts have been approved by the first respondent in the cadre strength and three posts are vacant as on 01.08.2020 and being the next eligible senior most manager under the second respondent, the petitioners are eligible to be promoted as Assistant General Manager as per the provisions of the Special Bye Laws relating to service conditions of the second respondent herein and therefore, prays for appropriate orders.

5. Mrs.S.Anitha, Special Government Pleader for the respondents 1 and 2 placed heavy reliance upon G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department dated 18.08.2009 and the Amended Bye Laws relating to service conditions of the Employees of Tiruvannamalai District Central Cooperative Bank and G.O.Ms.No.107 dated 18.08.2009 was communicated to the Registrar of Cooperative Societies and in turn the second respondent Bank was directed to amend the Bye-Laws, vide communication dated 29.10.2012 and accordingly, the Bank has also amended its Bye-Laws in the year 2016 and the requirement, as it stands today, is that the person must be graduated in 10+2+3 pattern and the Bye-Laws came into force with effect from 05.07.2017. The learned Additional Government Pleader further submits that the petitioners have obtained degree through Open University system, but not under 10+2+3 pattern and therefore, the request made by the petitioners cannot be complied with and if any such promotion is granted, it would amount to violating the Bye-laws and directions that were issued by the Registrar of Cooperative Societies. The learned Additional Government Pleader has relied upon the judgment of this Court in W.P.No.1618 of 2018 dated 12.12.2019 [S.Deenadayalan and Others v. The State of Tamil Nadu, Rep. By

its Principal Secretary, Personnel and Administrative Reforms Department, Chennai-600 001 and Others].

6. This Court has considered the submissions made and perused the materials available on record.

7. Admittedly, the petitioners were appointed on compassionate ground as Sub-Staff in the second respondent Cooperative Bank during 1993 and subsequently promoted as Assistant during 1999/2000, Assistant Manager during 2005/2006 and Manager during 2010 as a One Time Measure and all these promotions were given prior to amendment of Special Bye Law 4A II(b), which was amended on 24.03.2016 in pursuance of G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department dated 18.08.2009.

8. It is the contention of the learned Senior Counsel for the petitioners that challenge to the amendments to the Bye Laws necessitated the first respondent to clarify the second respondent as to in what manner the educational qualification of the in-service candidates should be considered, vide proceedings dated 17.06.2011, which stipulates that the qualifications prescribed in Registrar's Circular No.45/2009 dated 27.12.2009 will not be applicable to in-service candidates and for promotion to Assistant Manager to Manager cadres, the prescription of qualification of 10+2+3 pattern will not apply and it applies to entry-level posts.

9. However, it is the stand of the second respondent that once the amendment has been made to the Bye-Laws, which came into force on 2016, the second respondent should act as per the existing Bye-Laws and the second respondent Bank cannot now promote the petitioners by virtue of the existing laws and if any such promotion is given, the same will be in violation of both G.O.Ms.No.107 dated 18.08.2019 and also the Special Bye-Laws of the Bank and the continued services rendered by the petitioners will not in any way give them a right to be considered for promotion to the post of Assistant General Manager, if they do not fulfill the qualification.

10. It is useful to extract the amended Special Bye law No.4A II(b) of the second respondent Bank:

The Management of the Tiruvannamalai District Central Cooperative Bank in matters of appointment / promotion for any category of post to be filled by direct recruitment or by promotion, should consider the degree, diploma, master degree obtained through distance education and awarded by open universities / regular universities as eligible educational qualifications only if such persons have completed

successfully passed the school examination in 10th and plus 2 scheme. In other words, an individual having a degree obtained through distance education method from open universities / regular universities will not qualify for a post where degree is a necessary qualification unless he has studied in a regular school and passed 10th and 12th class examination conducted by State Board / CBSE / such other Boards recognized by the Government to conduct such examination."

Thus obtaining the educational qualification degree/diploma/masters degree in Open Universities / Regular Universities only after successfully passing the school examination under 10+2 is the essential criteria for getting promotion as per the amended Special Bye-Laws of the second respondent Cooperative Bank.

11. Similar identical issue came up for consideration before this Court in W.P.No.1618 of 2018 dated 12.12.2019 [S.Deenadayalan and Others v. The State of Tamil Nadu, Rep. By its Principal Secretary, Personnel and Administrative Reforms Department, Chennai-600 001 and Others], wherein a learned Single Judge of this Court has observed as under:

"8. There is no controversy with regard to the educational qualification of the petitioners. All the petitioners have completed the degree in the Open University Scheme, without completing 10+2. The only question is whether the petitioners can be considered for promotion with the qualification that is possessed by them.

9. It will be relevant to take note of G.O.Ms.No.107, dated 18.08.2009 in this regard. The relevant portion is extracted hereunder.

"The above recommendations were carefully examined by the Government and accordingly Government accepted the recommendations of Equivalence Committee and issue orders, that the Diplomas/Degrees/Post Graduation after possession of Xth Std., Higher Secondary (+2) obtained through Open Universities alone considered for appointment/ promotion in Public Services."

10. By virtue of the above Government Order, any graduation can be considered for appointment in public services, only if the candidate has completed the graduation in 10+2+3 pattern.

11. This Government Order became a subject matter of challenge before this Court. Ultimately, the case reached the Division Bench by way of an appeal in

W.A.No.805 of 2014. The relevant portions of the order passed in the appeal, dated 06.08.2014, are extracted hereunder.

5.4. In the case on hand, admittedly, at the time of completing the degree, the respondent did not complete the plus 2 course. That is exactly the reason why she thereafter completed the plus 2 course. This fact has also been observed by the learned single Judge. While it is absolutely open to the respondent to do the same, the question for consideration is, as to whether the said action would cure the defect. In our respectful submission, the said attempt cannot be substitute to the Government Order passed in G.O.(Ms). No.107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009. Any other interpretation would amount to re-writing the provisions of the said Government Order, which is impermissible in law, without there being a challenge.

5.5. Now, coming to the Regulations of the Unvieristy Grants Commission with reference to admission of a student to a Degree, the said issue is irrelevant insofar as the insistence on the part of the appellants to comply with the Government Order passed in G.O.(Ms).No.107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009. The appointment is to the post of Post Graduate Assistant Teacher in the Higher Secondary School. When the appellants thought it fit to make sure that only those who have completed plus 2 course and thereafter the degree course be eligible to be considered for a particular post of a teacher, then the wisdom and rationale behind the same cannot be questioned. As discussed above, the rationale has not been questioned before us and in any case, we do not find any arbitrariness in the Government Order, which has already been upheld.

5.6. The issue of recognition of a degree is different from a qualification fixed in service matters. An eligibility criteria fixed cannot be said to be an indirect way of derecognising a degree or diploma. To put it differently, such a degree cannot be termed as an eligible qualification for a particular post. Therefore, we are of the view that though scope and ambit of Regulation 2 of the University Grants Commission has not been considered by the learned single Judge, the same is not required to be considered in favour of the respondent in view of the express terms as provided in the G.O. Passed in G.O.(Ms).No.107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009. In this connection, a

useful reference can be made to the Full Bench Judgment of the Rajasthan High Court in Shanker Lal Verma and 13 others Vs. Rajasthan State Electricity (1993(3) LLJ 796), wherein the following passage is apposite:

''32. It is also to be noted that these are not the cases of derecognition of a degree, diploma or certificate issued by a particular institution because of some fault on the part of the institution awarding the same. The cases of derecognition of particular institutions and consequently derecognition of the degrees, diplomas and certificates issued by such institutions have to be distinguished from service matters in which certain qualifications are deleted from the rules. Removing or deleting a qualification from eligibility criteria cannot be said to be derecognition of that qualification or a degree, diploma or certificate. It only means that the degree, diploma or certificate has ceased to be the eligibility qualification for a particular post. It does not take away from the candidate, the degree, diploma or certificate conferred by the institutions. For example, if the eligibility qualification for a particular post was earlier 'Graduate' and by amendment, it is raised to 'Post graduate', it does not mean that degree possessed by the candidates are derecognised. What it simply means is that the eligibility qualifications are enhanced and a higher qualification is now required. It is also to be taken into account that purpose behind amendment to the rule was not to derecognise any degree, diploma or certificate, it was only to delete certain qualifications from the eligibility criteria. This may be because of the changed situation in which the employer may find that candidates who have passed the Secondary School Examination from the Statutory Boards and Universities are available in sufficient numbers and it was not necessary to consider the candidates having equivalent qualifications. The respondents cannot be forced to accept equivalence of certain qualifications and to accept such equivalence for all times to come.''

5.7. Coming to the other decisions relied on by the respondent as considered by the learned single Judge, we are of the view that they do not have any application to the case on hand. In Writ Appeal No.1064 of 2012 dated 6.11.2013, the Division Bench of this Court merely directed the authorities to reconsider the matter. On a perusal of the Order passed by the learned single judge, it is seen that the ratio

laid down in W.A.No.1064 of 2012 dated 6.11.2013 (Joseph Vs. Irudayaraj Vs. Joint Director of School Education) has been wrongly relied upon. The direction was specific to the effect that the entire issue will have to be considered in the light of paragraph No.4 of G.O.(Ms).No.107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009. We have already discussed the scope and ambit of paragraph No.4 of the G.O. Therefore, we are of the view that the said decision does not throw any light on the issue raised before us, that too, in favour of the respondent. Similarly, we are of the view that the decision dated 21.4.2014 relied upon by the respondent as rendered by the single Judge of this Court in W.P.No.13054 of 2010 etc., batch does not have any application to the case before us in view of the discussion made above, wherein, we have already held that fixing qualification is different from recognising a degree.

5.8. After the judgment was reserved, on mentioning, learned counsel appearing for the respondent produced the following judgments:

''1. SURESH PAL AND OTHERS VS. STATE OF HARYANA AND OTHERS ((1987) 2 SCC 445);

2. Full Bench Judgment of the Punjab and Haryana High Court in NEELAM KUMARI VS. STATE OF PUNJAB AND OTHERS, ((1993 (1) SLR 666) and

3. CHANDRAKALA TRIVEDI VS. STATE OF RAJASTHAN AND OTHERS, ((2012) 3 SCC 129).''

5.9. In SURESH PAL AND OTHERS VS. STATE OF HARYANA AND OTHERS ((1987) 2 SCC 445), the issue involves derecognition of a degree course with retrospective effect. Merely because the respondent has obtained the degree earlier, the same cannot act as an estoppel on the appellants from exercising their power in fixing the qualification. Therefore, the said decision does not have any application to the present case. The other decisions relied upon by the learned counsel for the respondent in Full Bench Judgment of the Punjab and Haryana High Court in NEELAM KUMARI VS. STATE OF PUNJAB AND OTHERS, ((1993 (1) SLR 666) and CHANDRAKALA TRIVEDI VS. STATE OF RAJASTHAN AND OTHERS, ((2012) 3 SCC 129) would not help the case of the respondent. In (2012) 3 SCC 129, the Supreme Court was dealing with the question of equivalence. We are afraid, the issue of equivalence is not before us. On the contrary, we are dealing with the issue of requisite qualification and the power of the appellants in fixing the same for the purpose of appointing teachers. Hence, the said judgment also is of no help to the respondent.

5.10. In the case on hand, the respondent has written the examination as a private candidate without undergoing Higher Secondary course of a duration of two years. It is the prime duty of the appellants to see to it that the quality of education is maintained for the purpose of imparting the same to the students. Certainly, there is a difference between a candidate, who had undergone a regular course as against the other who completes it by writing the examination privately. Therefore, even on that score, we do not find anything arbitrary in the decision of the appellants in rejecting the candidature of the respondent.

12. It is clear from the above Judgment that it is left open to an employer to fix the eligibility criteria for selection or promotion to a post. Therefore, it is not the question as to whether such a degree, which was obtained in the open university, is valid or not. The question is whether such a stipulation can be made by the Government, wherein candidates will be considered, only if they complete the graduation in 10+2+3 pattern. The Division Bench has upheld such a stipulation and has categorically found that the candidature can be rejected on this ground.

13. In the Division Bench Judgment that was relied upon by the learned counsel for the petitioners in *M. Rathinavel vs The Registrar General of High Court of Judicature, Chennai* referred supra, the Division Bench has not gone into this issue and it has not considered the effect of G.O.Ms.No.107, dated 18.08.2009. Therefore, the said Judgment will not help the petitioners in the present case.

14. After the Government Order was passed, the same has been directed to be implemented by the Bank, through the communication of Registrar of Co-operative Societies on 29.10.2012. Accordingly, the Bank has also amended the by-laws in the year 2016 and it has come into effect on 05.07.2017. The Bank cannot now promote the petitioners by virtue of the existing law and if any such promotion is given, the same will be in violation of both G.O.Ms.No.107, dated 18.08.2009 and also the by-laws of the Bank. This Court cannot give a direction to the respondent Bank to promote the petitioners to the post of Assistant Manager de hors the rules. The continued services rendered by the petitioners will not in any way give them a right to be considered for promotion to the post of Assistant Manager, if they do not fulfill the qualification.

15. In the result, this Court does not find any

ground to allow this writ petition and accordingly,
the same is dismissed. No costs. Consequently,
connected miscellaneous petition is closed."

The decision cited supra squarely applies to the facts of these cases also, as the petitioners herein have passed only SSLC and obtained Post Graduation through Open University stream and does not possess the required qualification for promotion as per Special Bye-Law No.4.A II(b) of the second respondent bank.

12. In the light of the reasons assigned above and the decision cited supra, this Court do not find any merit in the writ petitions. The Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

Jvm

To

1. The Registrar of Cooperative Societies,
Department of Co-operation, Natarajan Maaligai,
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2. The Joint Registrar/Managing Director,
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+2ccs to Mr.R.Gophinath, Advocate, S.R.No.34922, 34923

W.P.No.16516 & 16519 of 2020

PM(CO)
UMA(21/07/2022)