



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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Orders Reserved On 20.04.2022	Orders Pronounced On 27.04.2022
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W.P. (MD) No.11319 of 2019

and

W.M.P. (MD) Nos.8638 of 2019 & 11018 of 2020

R.Alaguraj .. Petitioner

-vs-

1.The State of Tamil Nadu,
Rep., by its Secretary,
Highways Department, Chennai.

2.The Director General,
Highways Department,
Guindy, Chennai.

3.The Divisional Engineer,
(Construction and Maintenance)
Highways Department,
Virudhunagar Division, Virudhunagar.

4.The Secretary to Government of Tamilnadu,
Personnel and Administrative Reforms,
Chennai.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus forbearing the respondents from de-promoting the Petitioner from the post of Road Inspector Grade I (Skilled Assistant Grade I) to the post of Road Inspector Grade II (Skilled Assistant Grade II) or as Gang Mazdoor on the ground that the pre-foundation course is not equivalent to SSLC.

For Petitioner : Mr.G.Prabhu Rajadurai
For Respondents : Mr.A.K.Manikkam
Special Government Pleader

ORDER

The Writ of Mandamus has been filed to forbear the respondents from de-promoting the petitioner from the post of Road Inspector Grade-I (Skilled Assistant Grade-I) to the post of Road Inspector

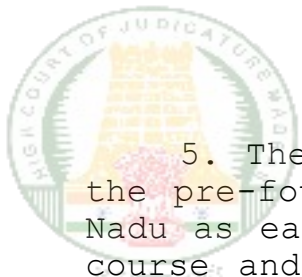


Grade-II (Skilled Assistant Grade-II) or as Gang Mazdoor on the ground that the pre-foundation course is not equivalent to SSLC.

2. The petitioner is presently working as Road Inspector Grade-I (Skilled Assistant Grade-I) in the Highways Department. He was initially appointed as Gang Mazdoor.

3. The learned counsel for the petitioner made a submission that the educational qualification fixed for appointment to the post of Gang Mazdoor was V-Standard pass. However, he possesses the qualification for the post of Gang Mazdoor, but not passed SSLC (X-Standard). The Service Rules for promotion to the post of Road Inspector Grade-II (presently known as Skilled Assistant Grade-II) prescribes the requisite educational qualification as SSLC. Besides the qualification, one must possess the experience as Gang Mazdoor for a period of five years. 25% of the post of Skilled Assistant Grade-II would be filled by way of promotion from the category of Gang Mazdoor and the remaining 75% will be filled up by direct recruitment. Admittedly, the petitioner is not possessing the requisite educational qualification of SSLC. However, it is contended that the petitioner has passed the pre-foundation course conducted by the Madurai Kamaraj University, which is an equivalent qualification to SSLC. As per the University Rules, candidates, who have not completed VIII-Standard were permitted to study pre-foundation course, which is an introductory course for a period of one year. The Government vide G.O.Ms.No.528, Personnel and Administrative Reforms Department, dated 18.05.1985 made clear that the pre-foundation course of Madurai Kamaraj University is to be recognised as equivalent to SSLC qualification for entry into public services in the State. Based on the above Government Order, the petitioner has joined the pre-foundation course and completed the same and thereafter, promoted to the post of Skilled Assistant Grade-II and further promoted to the post of Skilled Assistant Grade-I.

4. The learned counsel appearing for the petitioner made a submission that the petitioner was promoted as Road Inspector Grade-II in the year 2009 and was further promoted as Road Inspector Grade-I in the year 2014 and as of now, he is working as Skilled Assistant Grade-I. While so, the respondents are initiating steps to revert the petitioner on the ground that the pre-foundation course undergone by the petitioner is not equivalent to the SSLC qualification in the State of Tamil Nadu as per G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department dated 20.11.2017. It is contended that the said Government Order is not applicable to the petitioner, as he was already promoted as Skilled Assistant Grade-II in year 2009 and further as Skilled Assistant Grade-I in the year 2014. G.O.Ms.No.144 was issued in the year 2017 and therefore, the said order cannot be retrospectively implemented so as to revert the petitioner from the post of Skilled Assistant Grade-I to the post of Skilled Assistant Grade-II or Gang Mazdoor.



5. The learned counsel for the petitioner reiterated that when the pre-foundation course is recognised by the Government of Tamil Nadu as early as in the year 1985 and the petitioner underwent the course and got promotions in the year 2009 and 2014, there is no other reason to revert the petitioner to the post of Road Inspector Grade-II or Gang Mazdoor based on the Government Order issued in G.O.Ms.No.144, dated 20.11.2017.

6. The learned Special Government Pleader appearing for the respondents objected the contention by stating that G.O.Ms.No.144, dated 20.11.2017 admittedly was issued after the promotion of the petitioner from the post of Gang Mazdoor to the post of Skilled Assistant Grade-II. However, the petitioner even at the time of promotion was found not qualified and the promotion to the post of Skilled Assistant Grade-II was granted by mistake by the authorities and thus, actions were initiated.

7. To substantiate the said contentions, the learned Special Government Pleader relied on the judgment of the Hon'ble Division Bench of this Court dated 02.09.2021 passed in W.A.No.1863 of 2021. In the said case, the Hon'ble Division Bench dealt with the issue relating to "equivalence" and in paragraphs 17, 21 and 22, the Hon'ble Division Bench held as follows:-

"17. It is pertinent to note that in the decision rendered in R. Thirunavukkarasu v. The State of Tamil Nadu, 2012 (5) CTC 129, various instances where the persons with lesser qualification or degrees obtained by shortcut methods had attempted to get recruited as teachers and the same has been scuttled by the Teachers Recruitment Board and the Government have been stated and in this regard, it is apt to reproduce the following observations :

- "A student cannot be admitted to a 1 st degree course unless he has successfully completed 12 years of schooling.*
- No student will be eligible for 1 st degree unless he has successfully completed a three years course.*
- The students cannot seek admission to Masters course in any of the faculties unless he has successfully pursued the 1 st degree of three years duration.*
- Wherever a degree course of duration of less than three years was in existence at the time of 1985 regulations these institution can award degrees of a duration of two years only as a transitive measure. However, these persons will be eligible for admission to masters course only if they had*



undergone a one year bridge course."

18. ...

19. ...

20. ...

21. The very same issue was dealt with in detail by another Division Bench of this Court in W.P.No.28040 of 2018, dated 26.10.2018 [T.Karikalan V. The Secretary, Government of Tamil Nadu, Law Department, Fort St. George, Chennai-9] and it has been held as follows:

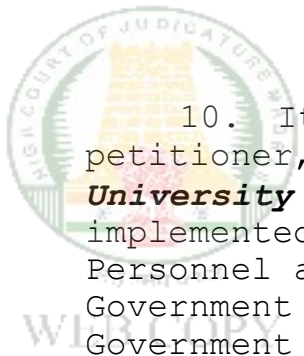
"38. That apart, section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, is virtually the reproduction of G.O.Ms No.107 Personnel and Administrative Reforms Department dated 18.08.2009, which has been upheld by a Hon'ble Division Bench of this court. Needless to state decisions of a Coordinate Bench are binding."

22. From the above, it is clear that G.O.Ms.No.107, dated 18.08.2009, has been brought into effect, as Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, and the said G.O. has been consistently upheld by the Division Benches of this Court. We have to take a similar view, unless and until some valid ground is made out to take a different view."

The writ appeal filed by the Government of Tamil Nadu was allowed.

8. The Hon'ble Supreme Court of India in **Annamalai University, Rep. by Registrar and another vs. Secretary to Government, Information and Tourism Department and Others** reported in (2009) 4 SCC 590, while dealing with the validity of the Open University degrees, settled the principle by stating that the degrees granted, by undergoing the regular pattern prescribed by the University Grants Commission, alone are to be considered as valid degrees. The Open University degrees are held as invalid. The pattern of education, i.e., 10+2+3+2 as prescribed under the University Grants Commission Regulations alone is to be treated as a valid degree for all purposes and any qualification acquired through Open University system is invalid.

9. The learned Special Government Pleader made a submission that the pre-foundation course is an Open University course permitting the candidates to study the same without possessing any qualification. Age criteria alone was fixed for admission to the pre-foundation course. After pre-foundation course, the candidates will be admitted in degree course. Therefore, such pre-foundation course cannot be considered as equivalent to SSLC qualification conducted by the Government of Tamil Nadu through Director of Government Examinations.



10. It is contended that even before the promotion of the petitioner, the Hon'ble Supreme Court of India in **Annamalai University** case delivered the judgment. The said judgment was implemented by the Government of Tamil Nadu in G.O.Ms.No.107, Personnel and Administrative Department, dated 18.08.2009. The said Government Order unambiguously stipulates that the earlier Government Orders recognising all those Open University degrees are cancelled and pursuant to the judgment of the Hon'ble Supreme Court, the Government of Tamil Nadu in the said G.O.Ms.No.107 reiterated that candidates, who have studied SSLC (X-Standard) and Higher Secondary Course (+2) and thereafter studied the degree course, alone should be considered as persons eligible for entering into Government service. When the Government Order is in force, which was issued in implementation of the judgment of the Hon'ble Supreme Court in **Annamalai University** (supra), the petitioner was promoted mistakenly to the post of Skilled Assistant Grade-II and thereafter as Skilled Assistant Grade-I in violation of the Government Order in force. Thus, actions were initiated by the competent authorities.

11. The learned Special Government Pleader reiterated that though actions were initiated, no final order has been passed reverting the petitioner to the post of Skilled Assistant Grade-II or Gang Mazdoor. The writ petition is filed based on certain apprehensions and such writ petition is not entertainable. When there is no order of reversion passed by the competent authority, the writ petition is liable to be rejected.

12. The fact remains that the petitioner do not possess the required qualification of SSLC. However, he has completed the pre-foundation course from Madurai Kamaraj University. The pre-foundation course is an Open University course conducted by Madurai Kamaraj University. It is not considered as a degree and it is an eligible qualification for admission to degree course in Madurai Kamaraj University. Therefore, it is not considered as regular course under the UGC Regulations. Though the Government recognised the pre-foundation course of the Madurai Kamaraj University in the year 1985, the Hon'ble Supreme Court of India in **Annamalai University** case categorically held that those Open University degrees granted in violation of the UGC Regulations cannot be considered as valid course or degree. Thereafter, such Open University degrees were not accepted for entering into public services. The judgment of the Hon'ble Supreme Court was implemented by the Government of Tamil Nadu in G.O.Ms.No.107, dated 18.08.2009. When the Government Order de-recognizing the pre-foundation course as equivalent to that of SSLC was in force during the relevant point of time, the petitioner was promoted to the post of Skilled Assistant Grade-II during the year 2009 and further as Skilled Assistant Grade-I in the year 2014. Therefore, the contention of the petitioner that actions are initiated by the respondents to revert him based on G.O.Ms.No.144, dated 20.11.2017 deserves no



merit consideration, as the said Government Order is not the basis for any action.

13. Subsequent to the judgment of the Hon'ble Supreme Court of India, this Court also passed several orders following the same and the Open University degrees were declared invalid and only the promotions granted prior to the Government Order issued in G.O.Ms.No.107, dated 18.08.2009 alone were protected.

14. More precisely, if the promotions are granted prior to the Government Order issued in G.O.Ms.No.107, dated 18.08.2009 based on the earlier Government Orders granting equivalence, such promotions alone are held to be valid. However, subsequent promotions granted after the judgment of the Hon'ble Supreme Court, which was implemented by the Government in G.O.Ms.No.107 cannot be considered as valid promotion, as such promotions are granted in violation of the orders of the Supreme Court. Thus, all such promotions are in violation of the judgment of the Hon'ble Supreme Court and in violation of the Government Order and therefore, they are granted either by mistake or otherwise. Such illegal or irregular promotions can never be approved by the Courts, as the promotion itself is in violation of the judgment of the Hon'ble Supreme Court of India in the case of **Annamalai University** (supra).

15. In the present case, as rightly pointed out by the learned Special Government Pleader, order of reversion has not been passed. The petitioner has filed the writ petition merely based on apprehensions. Such writ petition is not entertainable, as there is no cause for the purpose of filing writ petition and thus, the writ petition is premature.

16. For all the above reasons, this Court do not find any reason whatsoever to consider the relief as such sought for. Accordingly, the writ petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1.The Secretary to Government,
The State of Tamil Nadu,
Highways Department, Chennai.

2.The Director General,
Highways Department, Guindy, Chennai.

3.The Divisional Engineer,
(Construction and Maintenance)
Highways Department,
Virudhunagar Division, Virudhunagar.

4.The Secretary to Government,
The State of Tamil Nadu,
Personnel and Administrative Reforms Department,
Chennai.

+1 CC to M/s.SPL.GP (SR-20063[F] dated 21/04/2022)

Order made in
W.P. (MD) No.11319 of 2019
27.04.2022

NA (CO)

GC(25.05.2022) 7P 6C