



W.P.(MD)No.17967 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.17967 of 2019

M.Muthulakshmi

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. By its Principal Secretary,
Department of Social Welfare,
Secretariat, Chennai – 9.

2.The Commissioner of Social Welfare,
O/o. The Commissioner of Social Welfare,
Saidapet,
Chennai – 600 015.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, to call for the records pertaining to the impugned order in Na.Ka.No.17967/Nir3(1)/2019 dated 28.10.2021 on the file of the Respondent No.2 and quash the same as illegal and consequently for a direction, directing the respondent No.2 to include the petitioner's name in the panel for promotion to the post of Social Welfare Extension Officer in the light of the G.O.Ms.No.528, dated 18/05/1985 and the Judgment of this Court in



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WA(MD) No.253 of 2017 dated 14/07/2017 and Tamil Nadu Tourism Development Corporation Ltd., Rep by its Managing Director and others V.S.Purushothaman & 33 others reported in 2011 Writ L.R. 161 within the time period stipulated by this Court.

(Prayer is amended vide Order of this Court, dated 22.12.2022 in WMP(MD)No.22827 of 2022.)

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This Writ Petition is filed to quash the impugned order passed by the second respondent in Na.Ka.No.17967/Nir3(1)/2019, dated 28.10.2021 and consequential direction to the second respondent to include the petitioner's name in the panel for promotion to the post of Social Welfare Extension Officer in the light of G.O.Ms.No.528, dated 18/05/1985 and the Judgments of this Court in W.A(MD)No.253 of 2017 dated 14/07/2017 and ***Tamil Nadu Tourism Development Corporation Ltd., Rep by its Managing Director and others V.S.Purushothaman & 33 others*** reported in ***2011 Writ L.R. 161***, within the time period stipulated by this Court.



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2. Heard Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader appearing for the respondents. Perused the material documents available on record.

3. During the pendency of the Writ Petition, the respondents have passed the impugned order, dated 28.10.2021, rejecting the claim of the petitioner. Hence, the petitioner has filed amendment petition in C.M.P.(MD)No. 22827 of 2022 and the same is allowed.

4. The petitioner was appointed as Anganwadi worker and thereafter, on 14.07.2017, promoted to the post of Rural Welfare Development Officer based on the petitioner's qualification of pre-foundation course completed in the year 1996. The contention of the petitioner is that pre-foundation course in Madurai Kamaraj University is equivalent to 10th standard as per G.O.Ms.No.528 dated 18.05.1985 and so she is eligible for promotion to the post of Social Welfare Extension Officer. Moreover, the petitioner was already promoted to Rural Welfare Development Officer based on pre-foundation course. Hence for the



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subsequent promotion the respondents are refrained from declining promotion by citing this reason of pre-foundation course.

5. The issue of pre-foundation course and foundation course was considered by the Hon'ble Division Bench in ***Mohamed Hasan Refayee Vs. TNPSC and another*** in W.A.No.213 of 2018, dated 19.07.2019. It has been held that candidates completed pre-foundation course and foundation course prior to 18.08.2009 are eligible for promotion since the pre-foundation course and foundation course are recognized as per G.O.Ms.No.528 P&AR (Personnel) Department dated 18.05.1985. Candidates appointed prior to 18.08.2009 with pre-foundation course and foundation course, their services cannot be terminated. Since from the date of issuance of G.O.Ms.No.107, Personnel and Administrative Reforms Department, dated 18.08.2009, the pre-foundation course and foundation course was held to be not eligible. In other words, the pre-foundation course and foundation course were recognized prior to the cancellation of such recognition through G.O.Ms.No.107.



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6. However the subsequent Division Bench in W.A.No.497 to 500 of 2012 in the case of P.Thavam and Others Vs. The State of Tamil Nadu, vide order dated 05.07.2022 reported in 2022-III-LLJ-487(Mad) has fixed the cut off date as 20.11.2017. The Hon'ble Division Bench has held that the government constituted Equivalency Committee to analyze the issue and report the same. Then the Committee had submitted a report that the pre-foundation course and foundation is not equivalent to 10th and 12th. The government had accepted the report through G.O.Ms.No.107, P&AR Department, dated 18.08.2009. Subsequently through G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 has declared that pre-foundation course and foundation is not equivalent to 10th and 12th. Hence the Hon'ble Division Bench had held since through G.O.Ms.No.107 the government had only accepted the Equivalency Committee's report, but it is only through G.O.Ms.No.144 the Government has declared that pre-foundation course and foundation course is not equivalent to 10th and 12th. Hence the cut off date for not recognizing the pre-foundation and foundation course is only 20.11.2017. The relevant portion of the Division Bench judgment is extracted hereunder:



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“This Court is of the considered opinion that the government had recognized the pre-foundation course vide G.O.Ms.No.528, P and AR Department, dated 18.05.1985 and the said G.O. was in existence from 1985 onwards, subsequently there was a challenge to the open university degree and the High Court has held open university degree is not valid and pre-foundation course as not valid. When it was considered valid for the past twenty four years, then it was declared as invalid, the persons who are affected from this shift / change of qualification ought to be protected. As rightly pointed out by the appellants, the Government has taken eight long years after issuance of G.O.Ms.No.107, Personnel and Administrative Reforms Department, dated 18.08.2009, to issue G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017. It is only in G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 the government has declared that the pre foundation course is not recognized equivalent to the pre-foundation course. The G.O.Ms. No. 107, Personnel and Administrative Reforms Department, dated 18.08.2009, has only accepted the recommendations of the Equivalence Committee. As rightly pointed out by the learned Counsel appearing for the appellants, the government has passed G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 wherein it has been categorically held that the pre-foundation course as invalid. If it is so, then the date of issuance of the said G.O. Ms. No.



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144 ought to be held as the cutoff date. Moreover, the pre-foundation course was closed down in the year 2012. In short the pre-foundation course was recognized in the year 1985, then in the year 2009 it was held by High Court that pre-foundation course is not equivalent, then equivalence committee has reported it is not equivalent, the government accepted the report in 2009 and finally it was declared in the year 2017. Hence, the mischief of invalidity has been eradicated in phased manner. Therefore, this Court is of the considered opinion that the cutoff date, is the date of issuance of G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 i.e. 20.11.2017.”

7. Following the Hon’ble Division Bench judgment this Court had considered the same issue in W.P.(MD)No.20868 of 2015 vide order dated 03.11.2022 allowed the writ petition. In the present case, the petitioner had completed the pre-foundation course in the year 1996. Hence the petitioner is entitled for the relief.

8. The learned Additional Government Pleader vehemently opposed the claim of the petitioner and submitted that as per the Tamil Nadu Subordinate



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Service Rules, the qualification prescribed is 10th standard and the said service rules has not prescribed pre-foundation and foundation course as equivalent to 10th and 12th standard. In such circumstances, then the petitioner is not eligible for consideration. The learned Additional Government Pleader also relied on following judgments:

- (i). Order, dated 22.04.2019 in W.P.No.18934 of 2018.
- (ii). Order, dated 29.08.2019 in W.P(MD)No.17082 of 2019
- (iii). Order, dated 10.01.2020 in W.P.No.195 of 2020.
- (iv). Order, dated 15.04.2021 in W.A.(MD)No.1351 of 2019.
- (v). Order, dated 01.02.2022 in Rev.Aplc(MD)No.23 of 2022.

9. The Learned Additional Government Pleader further submitted that the same writ petitioner has filed challenging the same impugned order in W.P(MD)No.23008 of 2022 and the same is also pending and hence this case is hit by ***Res judicata***. However, the learned counsel appearing for the petitioner submitted that the said writ petition would be withdrawn, if this writ petition is allowed. This Court is of the considered opinion even otherwise the said writ petition would be infructuous. Also, this Court is of the considered opinion mere pendency of writ petition, the principles of ***Res Judicata*** is not attracted.



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10. Accordingly, this Writ Petition is allowed. The impugned order, dated 28.10.2021 passed by the second respondent in Na.Ka.No.17967/Nir3(1)/2019, is hereby quashed. The respondents are directed to consider the petitioner's name for promotion to the post of Social Welfare Extension Officer, if the petitioner is otherwise qualified. The said exercise shall be completed, within a period of eight weeks from the date of receipt of a copy of the order. No Costs.

Index : Yes / No
Internet : Yes
KSA

22.12.2022

To

- 1.The Principal Secretary,
The State of Tamil Nadu,
Department of Social Welfare,
Secretariat, Chennai – 9.
- 2.The Commissioner of Social Welfare,
O/o. The Commissioner of Social Welfare,
Saidapet,
Chennai – 600 015.



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S.SRIMATHY, J

KSA

**Order made in
W.P.(MD)No.17967 of 2019**

22.12.2022