



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.18539 of 2014

N.Kothandaram

... Petitioner

Vs.

1.Madurai Kamaraj University,
Represented by its Registrar,
Palkalai Nagar,
Madurai.

2.The Vice-Chancellor,
Madurai Kamaraj University,
Palkalai Nagar,
Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Ref: Estt-1/Admn.1/Pay Fix/2014, dated 12.09.2014 on the file of the first respondent and quash the same as illegal and consequently to direct the respondents to re-fix the pay and allowances in the rank of the Assistant Registrar from 23.07.2008 to 06.01.2009 and Deputy Registrar from 07.01.2009 to 30.06.2009 and accordingly re-fix the pension and other superannuation benefits to the petitioner.

For Petitioner : Mr.T.Aswin Rajasimman,
For Mr.T.Lajapathi Roy.

For Respondents : Mr.R.Vasanthakumar,
For Mr.R.M.Makesh Kumaravel.

ORDER

The writ petitioner has challenged the impugned order dated 12.09.2014 and consequently direct the respondents to re-fix the pay and allowances in the rank of Assistant Registrar from 23.07.2008 to 06.01.2009 and Deputy Registrar from 07.01.2009 to 30.06.2009 and re-fix the pension and other superannuation benefits to the petitioner.

2. The petitioner joined the respondents University in the year 1975 as a Clerk. He was subsequently promoted as Assistant then Superintendent and Senior Superintendent. After the post of Senior

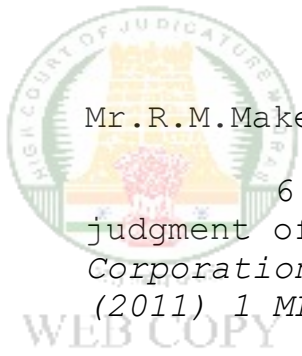


Superintendent, if any person is opting for any promotion, the candidates should possess degree qualification. Therefore, the petitioner with an aspiration to get further promotion has completed a degree course in open University system in the year 1994. Accordingly, the petitioner was promoted as Assistant Registrar on 23.07.2008 then as Deputy Registrar on 07.01.2009. Thereafter, he retired from service on 30.06.2009.

3. The contention of the petitioner is that he was granted the promotion with a condition that he should acquire degree within a period of five years. Based on such condition, the petitioner left with no other option has completed the degree course in Open University. Since the petitioner has not undergone the pattern of 10+12+3 before doing the degree course the respondents have denied to retain in the promoted post. The respondents had reduced the salary and pensionary benefits through the impugned order. Aggrieved over the petitioner preferred a Writ Petition in the year 2011 in W.P.(MD).No.9993 of 2011 and this Court has directed the respondents to consider and pass orders vide order dated 24.03.2014. Based on such order, the present impugned order came to be passed. The petitioner has challenged the said impugned order in this present Writ Petition.

4. The contention of the respondents is that the petitioner was granted promotion with a condition that the petitioner would be conferred with promotion, but the same will be subject to the result of the issue pending before the Supreme Court. The issue of M.A., qualification in Open University without passing the pattern of 10+12+3 was pending before the Supreme Court. Since the issue has ended against the petitioner, the petitioner was not granted the pay that is applicable to the Assistant Registrar and Deputy Registrar. The petitioner retired in the year 2009. After the lapse of two years, the petitioner has submitted a representation and based on the Court order dated 24.03.2014 in W.P. (MD) No. 9993 of 2011, the impugned order came to be passed. The claim of the petitioner is hit by delay and latches. Since the petitioner has not initiated any proceedings during his service period, after retirement, that too after the lapse of four years, the present issue is being agitated. The University has passed the resolution taking into consideration of the situation that prevailed, the degree was dispensed with until the promotion post of Senior Superintendent. However, for further promotion, degree is necessary. Since the degree is obtained under Open University system without qualifying UG Degree, the petitioner's M.A. Degree cannot be accepted. Hence, the petitioner was not conferred with the salary that is applicable to the Assistant Registrar / Deputy Registrar post. Therefore, the consequential effects were reflected in the pensionary benefits.

5. Heard Mr. T.Aswin Rajasimman, learned counsel for Mr.T. S. Jayaraman, for the petitioner and Mr.R.Vasanthakumar, for



Mr.R.M.Makeish Kumaravel, for the respondents.

6. The learned counsel for the petitioner referred to the judgment of this Court in the case of Tamil Nadu Tourism Development Corporation Limited Vs. S.Purushothaman and others reported in (2011) 1 MLJ 895, the relevant portion is as under:

"(iii). Judgment of this Court in W.A.No.327 of 1990 dated 25.04.1990 R.Thiruvankadam V. Government of Tamil Nadu and Ors.

" 2.In our opinion, this would not be the correct way of looking at things. Undoubtedly, the post of Principal is a selection post. Once the disability of not possessing 50 percent of marks for appointment as Assistant Professor was removed by the Order dated 9.9.1976, it would imply that the exemption granted by that order was to ensure during the service career of the members of the teaching staff to whom exemption was granted. The qualification of not possessing 50 per cent of marks in M.A. would be deemed to have been removed by the grant of exemption on 9.9.1976, and that removal would continue for the benefit of the concerned employee during his service career, and cannot be held against him at any subsequent stage of promotion as a professor or principal. He would, therefore, come within the zone of consideration for eligibility for appointment as principal. In taking this view, we are fortified by the judgment of a Division Bench of this Court in W.A.No.106 of 1979 The Government of Tamil Nadu V. M.N.Rghunathan- decided on 5-1-1982) and the opinion expressed by the Supreme Court in Jagdish Pandey V. Chancellor, Bihar University (A.I.R. 1968 Supreme Court 353). The answer to the question proved in the earlier part of the judgment has to be that the exemption would ensure during the service career of the concerned employee."

Special Leave Petition was preferred from the judgment passed in W.A.No.327 of 1990 and the Honourable Supreme Court dismissed the S.L.P. at the admission stage in S.L.P.(Civil)No. 9479 of 1990 on 25.4.1990.

10. In view of the above said consistent view taken by this Court, it has to be necessarily held that when the exemption was granted on an earlier occasion, the same would continue for the benefit of the concerned employee throughout his service career and cannot be held against him at any subsequent stage of promotion. Once it is exempted, at one point of time in service, the said exemption is available to the employee in



future for all the promotion posts, which require such qualification.

11. We are fortified in our view with the above said Division Bench decisions of this Court in the matter of relaxation of educational qualification for promotion to the higher cadre. Once the prescribed qualification is exempted in a particular stage of service career of an employee, the same exemption would be continuing to the subsequent future promotion of that employee and there could be no refusal on the part of the employer to deny the promotion under the guise of requiring such qualification".

In the judgment, it has been stated that if any exemption is granted on an earlier occasion, the same would continue for the benefit of the concerned employee throughout his career. Admittedly, in the present case, the petitioner was granted exemption based on the respondents resolution by the syndicate which is extracted hereunder:

"10. மட்டதாரி அல்லாத அலுவலர்களுக்கு கால அடிப்படையிலான பதவி உயர்வு மற்றும் பதவிஉயர்வு வழங்குவதற்கு மட்டப்படிப்புக் கல்வியைத் தளர்த்துவது தொடர்பாக பரிசீலனை செய்யப்பட்டது.

மட்டதாரி அல்லாத அலுவலர்களுக்கு முதநிலைக் கண்காணிப்பாளர் (அமர்வு) பதவி வரை பதவிஉயர்வு வழங்கத் தீர்மானிக்கப்பட்டது"

7. The learned counsel for the respondents relied on the order dated 25.02.2009 of the Hon'ble Supreme Court in *Annamalai University case reported in (2009) 4 SCC 590*, wherein it has been held that any Master degree awarded in violation of Regulation 2 of the University Grant Commission Regulations, 1985 by a University under Open University system without acquiring three years degree is held to be void. Since the degree obtained under the Open University system by the petitioner is void, the petitioner's degree cannot be considered for further promotion at all.

8. The facts of this case are that petitioner was granted promotion as Assistant Registrar from 23.07.2008 to 06.01.2009 and Deputy Registrar from 07.01.2009 to 30.06.2009. The Annamalai case judgment was rendered on 25.02.2009. According to the petitioner there cannot be any retrospective effect to the judgment, but it is seen that from 25.02.2009 the judgment will come into effect, then the petitioner's promotion to Deputy Registrar would be affected. Therefore, this plea is not saving the petitioner. However the plea once any exemption is granted on an earlier occasion, the same would continue for the benefit of the concerned employee throughout his career would give protection to the petitioner's claim. Moreover, it is seen from the records that the petitioner has completed PUC, which was prevailing until 1978 and the petitioner was appointed as Assistant Registrar in 1975. The Education policy was



changed from 1978, the pattern of 10+12+3 was introduced. Under such circumstances the respondents ought to have introduced clear policy decision by covering the changing scenario.

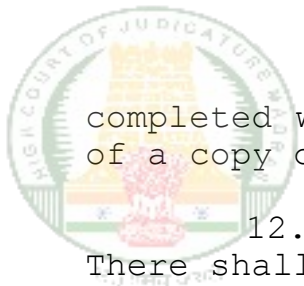
9. Even after the 10+12+3 pattern, the government initially recognized pre-foundation course and foundation as equivalent to 10th standard and 12th standard. But that was changed due to various litigation. For considering the issue of pre-foundation course and foundation course as equivalent, this Court has issued a cut off date as 18.08.2009. Pre-foundation course and Foundation course can be considered as qualification prior to 17.08.2009, but after the said cut off date the pre-foundation course and foundation cannot be considered a valid pass in 10th standard and 12th standard. The issue of equivalency of "Pre-Foundation Course to SSLC" and "Foundation Course to Higher Secondary Course" was considered by this Hon'ble Court in a Division Bench in the case of Mohamed Hasan Refayee VS the Tamil Nadu Public Service Commission filed in W.A. No. 213 / 2018, vide order dated 19.07.2019 it has been held that,

"33. In view of the above said discussion and in view of the changed situation, the petitioner cannot now after 2009, claim to be eligible, to be considered for selection to the posts included in the Combined Subordinate Services Examination-I, because his graduation degree now cannot be considered to be a valid, in view of the fact that he has not either passed the 11th standard public examination under the old pattern or the 12th standard public examination under the new pattern and because of the fact that the Government in the year 2009 have issued (G.O. Ms. No.107) and G.O. Ms. No. 144, Personnel & Administrative Reforms Department, dated 20.11.2017 and in subsequent clarifications, taken a consistent stand that graduation degrees obtained on the basis of foundation courses conducted by Madurai Kamaraj University would not be considered as valid degree, to be eligible for appointment in public services."

In the present case, the petitioner has already retired on 30.06.2009. Therefore, the petitioner is entitled to equity relief.

10. The Government is keeping on changing the policy in the education matters, which is leading to such problems. Moreover, there is no comprehensive and coordinated regulations with the University Regulations and the Government Orders. This cannot take the toll on the eligible candidates.

11. Therefore, this Court is inclined to grant the relief as prayed in the Writ Petition. The respondents are directed to refix the pensionary benefits by conferring the promotion as Assistant Registrar from 23.07.2008 to 06.01.2009 and Deputy Registrar from 07.01.2009 to 30.06.2009. The said exercise shall be



completed within a period of six (6) weeks from the date of receipt of a copy of this order.

12. With the above direction, this Writ Petition is allowed. There shall be no order as to costs.

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13. Before parting with the judgment this Court is of the considered view acquiring knowledge cannot be curtailed and such knowledge ought to be rewarded.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Registrar,
Madurai Kamaraj University,
Palkalai Nagar,
Madurai.

2.The Vice-Chancellor,
Madurai Kamaraj University,
Palkalai Nagar, Madurai.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-13038[F] dated 18/03/2022)

**W.P. (MD) .No.18539 of 2014
17.03.2022**

RD(08.04.2022) 6P 4C