



W.A.No.2317 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

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S.Rajkumar ... Appellant

-Vs-

1.State of Tamil Nadu
represented by the Secretary to Government
Personnel and Administrative Reforms Department
Secretariat, Chennai 600 009.

2.The Director of School Education
DPI Complex, College Road
Chennai 600 006.

... Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in
W.P.No.20395 of 2012 dated 01.08.2012.

For Appellant : Mr.M.Radhakrishnan
For Respondents : Mr.Vadivelu Deenadayalan
Additional Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This writ appeal has been directed against the order passed by the writ Court
dated 01.08.2012 made in W.P.No.20395 of 2012. Before the writ Court, the



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appellant filed the said writ petition praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in G.O.Ms.No.107, Personnel and Administrative Reforms Department dated 18.08.2009 and to quash the same and to consequently direct the second respondent in the said writ petition to treat the petitioner eligible to be considered for the post of Graduate Assistant (English) as on 01.01.2012 in the counselling scheduled to be held on 30.07.2012.

2. The said writ petition came to be decided by the writ Court on 01.08.2012, where the learned Judge has stated the reason that, with regard to the said G.O., ie., G.O.Ms.No.107 Personnel and Administrative Reforms Department dated 18.08.2009, which was under challenge, it was the subject matter before the Division Bench in W.P.No.18729 of 2010 and the said Division Bench has upheld the said G.O., in toto by a judgment dated 10.02.2011. Therefore, the learned Judge was of the view that in view of the said Division Bench judgment, the prayer sought for in the said writ petition cannot be entertained. Accordingly, he was inclined to dismiss the writ petition, as against which the present writ appeal has been filed.

3. Assailing the said judgment of the writ court, Mr.M.Radhakrishnan learned counsel appearing for the appellant would contend that the reasons cited by the learned Judge as if that the validity of G.O.Ms.No.107 Personnel and Administrative Reforms Department dated 18.08.2009 having been considered, was upheld in



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W.P.No.18729 of 2010 is concerned, the Division Bench has stated about the validity and the interpretation of the qualification that has been prescribed by the High Court under its Service Rules framed under Article 229 of the Constitution of India. In the said judgment, the validity of G.O.Ms.No.107 though had been questioned in the prayer column, it has not been considered and decided and that the G.O.Ms.No.107 was not upheld. When that being so, based on the said judgment of the Division Bench dated 10.02.2011 in W.P.No.18729 of 2010, the learned Judge ought not to have come to such a conclusion that the validity of G.O.Ms.No.107 since has been upheld by the Division Bench nothing survives in the writ petition as it cannot be entertained and therefore on that ground dismissed the writ petition, is an erroneous approach, he contended.

4. Learned counsel for the appellant would further submit that, in fact a similar issue had come up for consideration before another Division Bench in W.P.(MD) No.11111 of 2016 in the matter of **M.Rathinavel -vs- Registrar General, High Court of Madras and another**, where the promotion that has been given to the writ petitioner therein was cancelled due to the reason that the degree obtained by the said writ petitioner viz., M.Rathinavel was obtained from an Open University without having following the 10+2+3 system. Therefore, on that ground since the promotion has been cancelled, when that was questioned before the Court in the said writ petition in W.P.(MD) No.11111 of 2016, another Division Bench of this Court on 10.08.2017 has passed an order stating that, when a



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qualification has been prescribed as if that it is a degree issued by the Madras University or any other equivalent degree issued by any other recognized university, the Division Bench has given an interpretation stating that the recognition of the University degree is not by the High Court and it is only by the University Grants Commission under Section 3 of the University Grants Commission Act.

5. When that being so, whatever be the university established in the country, which has got the recognition of the University Grants Commission, they are empowered or entitled to award degrees, so for as the university if granted / awarded a degree, that degree can be considered as an equivalent degree awarded by the Madras University. Accordingly, the certificate of Under Graduate (U.G) degree obtained by the said writ petitioner viz., M.Rathinavel from the Open University without having 10+2+3 system is also an equivalent degree or equivalent qualification, therefore based on which the promotion sought for by him could have been given. Hence, the rejection that has been made cancelling the promotion for the said writ petitioner is bad in law and to that extent the Division Bench has rendered the said judgment in M.Rathinavel's case on 10.08.2017. When that being so, assuming that in the Division Bench judgment dated 10.02.2011 made in W.P.No.18729 of 2010, the validity of G.O.Ms.No.107 has been upheld or it has been interpreted by the Division Bench, a diagonally opposite view has been taken in the case of M.Rathinavel dated 10.08.2017. Therefore, due to the conflicting views that have been taken by two Division Benches of this Court, the issue is not concluded



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and it requires the reconsideration by a larger Bench. Hence, the learned counsel appearing for the appellant prays for referring the matter to a Full Bench.

6. Learned counsel for the appellant also relies upon the grounds that have been urged before this Court in support of this writ appeal and made his submissions stating that, insofar as the validity of G.O.Ms.No.107 is concerned, first of all it has not been upheld by the Division Bench judgment dated 10.02.2011. Assuming that it has been upheld, whether such an executive order issued under Article 162 of the Constitution can amend the various service regulations or service rules which were framed under Article 309 of the Constitution in toto and that is impermissible. Therefore, the service rules that have been framed under Article 309 of the Constitution alone will prevail unless and until it is amended in the manner known to law. Therefore, mere issuing of executive order or government order cannot take away the rights of the employees, which has already been accrued by virtue of the service rules framed under Article 309. Therefore, for that reason the view taken by the learned Judge is erroneous and hence the learned counsel for the appellant seeks the indulgence of this Court in setting aside the impugned order.

7. Heard Mr.Vadivelu Deenadayalan, learned Additional Government Pleader appearing for the respondents. He would submit that the view taken by the learned Judge is to be sustained because, as early as on 10.02.2011 a Division Bench of this



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Court has taken the view with regard to the validity of G.O.Ms.No.107 as the very validity itself questioned in the said writ petition having been considered *vis-a-vis* the rules framed under Article 229 of the Constitution of India ie., High Court Service Rules, the Division Bench has made it clear that, whatever the qualification that has been prescribed under the Service Rules of the High Court is meant only the degree obtained through proper method ie., 10+2+3 system in consonance with G.O.Ms.No.107. Therefore, impliedly if not explicitly G.O.Ms.No.107 has been upheld by the Division Bench in the said writ appeal, the learned Additional Government Pleader contended.

8. We have considered the submissions made by the learned counsel on either side and have perused the materials placed on record.

9. The learned Judge in the impugned order, has only relied upon the Division Bench judgment in W.P.No.18729 of 2010 dated 10.02.2011, where the validity of G.O.Ms.No.107 since has been upheld. When the very same prayer was sought for in the writ petition in W.P.No.20395 of 2012 which is under appeal here, the learned Judge has taken the view that the issue of validity of G.O.Ms.No.107 since was considered and upheld by the Division Bench judgment, the writ petition cannot be entertained. That is the only reason given by the learned Judge for rejecting the writ petition through the impugned order.



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10. Therefore, now the question is whether the validity of G.O.Ms.No.107 has been upheld in the other Division Bench judgment dated 10.02.2011 in W.P.No.18729 of 2010 in the matter of **T.L.Muthukumar and four others -vs- The Registrar General, High Court of Madras and another.**

11. Insofar as **T.L.Muthukumar's** case judgment cited supra is concerned, the prayer sought for therein is for a writ of certiorarified mandamus calling for the records in G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department dated 18.08.2009 on the file of the second respondent therein and quash the same and direct the first respondent therein to consider the petitioners therein for promotion to the post of Assistant, A.S.O., etc., and also on the basis of the educational qualification obtained by the petitioners therein.

12. When this issue was dealt with, the Division Bench has exhaustively considered all these aspects and discussed about the validity of G.O.Ms.No.107. In fact, the G.O.Ms.No.107 verbatim has been recorded or extracted by the Division Bench in the said judgment in **T.L.Muthukumar's** case.

13. The Division Bench has also given reasons that, insofar as the qualification of U.G.degree prescribed under the High Court Service Rules, which has been framed under Article 229 of the Constitution is concerned, that U.G.degree



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is nothing but an U.G.degree properly secured or obtained. The U.G.degree which has been shown as qualification in the Service Rules is nothing but an U.G.degree completed in 10+2+3 system.

14. This is the sum and substance of the view that has been expressed by the Division Bench in **T.L.Muthukumar's** case, where the very validity of the very same Government Order ie., G.O.Ms.No.107 was put under challenge.

15. If at all G.O.Ms.No.107 is not valid and the Division Bench has considered that G.O.Ms.No.107 does not make any dent on the service rules that has been framed under Article 229 of the Constitution of India, the Division Bench judgment would have been in a different way.

16. The Division Bench has confined itself to the challenge that has been made in the said writ petition in **T.L.Muthukumar's** case ie., the validity of G.O.Ms.No.107 *vis-a-vis* the Service Rules of Madras High Court and accordingly has enunciated the principle that the qualification that has been prescribed under the Service Rules of the Madras High Court ie., U.G.degree is nothing but an U.G.degree regularly obtained. U.G.degree regularly obtained means through proper education system of 10+2+3, not otherwise.

17. Therefore, it has been made clear in the said judgment of



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T.L.Muthukumar's case that, there is no infirmity in the prescription that has been made by the Government through G.O.Ms.No.107. When that being so, the approach of the learned Judge in following the said judgment of the Division Bench in **T.L.Muthukumar's** case cannot be found fault with or it cannot be stated to be an erroneous approach.

18. Once the Division Bench already upheld the validity of G.O.Ms.No.107, of course in comparison with the relevant service rules, the subsequent Benches or single Judges necessarily have to follow the said judgment as there has been no further appeal against the said judgment in **T.L.Muthukumar's** case it seems. In other words, there has been no judgment by the Hon'ble Apex Court as against the view expressed by the Division Bench in **T.L.Muthukumar's** case.

19. However, after six years when a similar issue had come up for consideration before another Division Bench of this Court, it seems that in **M.Rathinavel's** case dated 10.08.2017, in a different way interpretation has been given by the Division Bench with regard to the degree qualification being prescribed under various service rules.

20. In that case also, the petitioner was an employee of the High Court, whose promotion since has been cancelled on the ground that the degree qualification of U.G.degree obtained by him is not a proper U.G.degree, as he



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admittedly obtained the degree from Open University, without following 10+2+3 system and therefore that degree cannot be recognized as a degree for the purpose of promotion if strictly implemented the prescription that has been made under G.O.Ms.No.107. The Division Bench has gone to the extent of saying that any degree awarded by various other universities recognized by the University Grants Commission (UGC) can also be considered as valid degree and therefore, if a person is having a valid degree awarded by any other University recognized by the UGC, that degree can also be considered as equivalent degree awarded by the Madras University. Therefore, the petitioner therein fulfills the qualification prescribed under the service rules and hence he is eligible to hold the promoted post and thereby, the order passed against him was found be bad. That was the view expressed by the another Division Bench in **M.Rathinavel's** case in **W.P.(MD) No.11111 of 2016 dated 10.08.2017.**

21. The Division Bench, in **M.Rathinavel's** case, though has referred the ratio laid down in the judgment of the Hon'ble Supreme Court in **2009 (4) SCC 590 (Annamalai University -vs- Secretary to Government)**, it has opined that the said judgment has not been correctly followed by the State Government and therefore the Division Bench was of the opinion that, notwithstanding the orders passed by the State Government not to recognize the Bachelor's degree awarded by the Open Universities as equivalent to a Bachelor's degree awarded by the Madras University and such holders of Bachelor's degree are not eligible for employment



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under it, it is clearly an impermissible exercise.

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22. In this regard, with respect, we would like to point out that the Division Bench in **T.L.Muthukumar's** case has dealt with the matter in detail and upheld the validity of G.O.Ms.No.107 by giving interpretation to the qualification of U.G.degree prescribed for certain posts for promotion in the High Court Service Rules as early as on 10.02.2011, but the said judgment dated 10.02.2011 in **T.L.Muthukumar's** case has not been referred in **M.Rathinavel's** case by the subsequent Division Bench after six years. Normally, judicial discipline requires that if a decision on the same subject has already been rendered by a Division Bench, that will be taken care of and if the Co-equal Division Bench agrees with the view already taken by the Coordinate Bench, they can agree with the same and in case they disagree with the decision taken, normally the matter would be referred to a larger Bench.

23. Here, no such exercise has been done and no such attempt has been made by the subsequent Division Bench in **M.Rathinavel's** case. More over, in the Division Bench judgment in **M.Rathinavel's** case, it has been held that the degree awarded by Madras University means any equivalent degree awarded by any other university can also be construed as an equivalent qualification, and held that the University from which the petitioner M.Rathinavel obtained the degree is also a recognized university and therefore the degree awarded by that University is also a



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recognized degree.

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24. We have absolutely no quarrel on this proposition with regard to the recognized degree. Recognized degree means valid degree. However, the degree obtained from Open University without following 10+2+3 system, whether to be accepted as qualification for the purpose of appointment and promotion in the public employment insofar as the State of Tamil Nadu is concerned, was the question which arose in the wake of G.O.Ms.No.107 which has been upheld by the Division Bench in **T.L.Muthukumar's** case.

25. No doubt, there was an U.G.degree obtained by the said M.Rathinavel (petitioner in W.P(MD) No.11111 of 2016) from Open University, without following the system of 10+2+3. That degree may be a valid degree, but that cannot be taken as qualification for the purpose of appointment and promotion in the public employment in Tamil Nadu including High Court Service. This has been already clarified and made clear by the earlier Division Bench judgment in **T.L.Muthukumar's** case on 10.02.2011 on the very same High Court Service Rules framed under Article 229 of the Constitution. When that being so, when a different view wanted to be taken by another Division Bench, they must have considered the earlier judgment and if at all the earlier judgment is not agreeable with the subsequent Division Bench, the subsequent Division Bench should have referred the matter to the Full Bench. Otherwise, the issue should have been declared as *per*

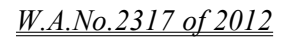


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26. Here in the present case, the judgment rendered in M.Rathinavel's case, in our considered opinion, is ***per incuriam*** because, the declaration that has been made by the Division Bench in M.Rathinavel's case about the validity or equivalence of the degree obtained by any person from any other University recognized by the UGC is concerned, we need not have any quarrel. However, whatever degree obtained from any university recognized by the UGC, whether is a degree obtained after following the system of 10+2+3 system is the question. If anyone secures any degree from any recognized University, no doubt it may be a degree for other purposes, but for the purpose of public employment in the State of Tamil Nadu, the degree must be a degree obtained after following the system of 10+2+3. If that system has not been followed, it is not a degree or qualification to be recognized for the purpose of either for appointment or promotion in public employment in the State of Tamil Nadu. When that being so, the crux of the issue has not been considered and decided by the Division Bench in M.Rathinavel's case by judgment dated 10.08.2017, which in fact has already been decided in T.L.Muthukumar's case by judgment dated 10.02.2011.

27. Therefore, we have no hesitation to hold that the judgment made in M.Rathinavel's case is only ***per incuriam*** especially in the context of the declaration already made by the Division Bench in **T.L.Muthukumar's** case by the judgment



28. Insofar as the argument that has been made by the learned counsel for the appellant that, by virtue of G.O.Ms.No.107 several service regulations framed under Article 309 since were sought to be amended, that kind of amendment is impermissible by mere issuing of an executive order under Article 162 of the Constitution, we are not impressed with the said argument, the reason being that, the import of G.O.Ms.No.107 is nothing but a declaration that the qualification prescribed under various service rules for appointment and promotion in public employment in the State of Tamil Nadu especially in the context of U.G.degree is concerned, that U.G.degree must be a valid degree obtained through the system of 10+2+3. Therefore, by virtue of G.O.Ms.No.107, Personnel and Administrative Reforms Department dated 18.08.2009, the State of Tamil Nadu did not make any amendment to the service rules. If the amendment is to be made to the service rules, that has to be made only through proper procedure. Here, the service rules has not been sought to be amended and the prescription of U.G.degree is always there. Therefore, we have no hesitation to hold that no amendment has been sought for in the High Court Service Rules and it has not been touched upon or tinkered with by issuance of G.O.Ms.No.107, and therefore this argument made by the learned counsel for the appellant is liable to be rejected. Accordingly, it is rejected.



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29. For all these reasons and the discussion made herein above, we are of the considered view that the judgment of the Division Bench made in **W.P.No.18729 of 2010 dated 10.02.2011** in the matter of "**T.L.Muthukumar and four others -vs- The Registrar General, High Court of Madras and another**" is holding the field and the judgment of the Division Bench made in **W.P.(MD) No.11111 of 2016 dated 10.08.2017** in the matter of "**M.Rathinavel -vs- The Registrar General, Madras High Court and another**" insofar as the present context and subject matter is concerned it is held *per incuriam*. Therefore, the view taken by the learned Judge in the impugned order dated 01.08.2012 in W.P.No.20395 of 2012 following the Division Bench Judgment in **T.L.Muthukumar's** case dated 10.02.2011 is a right approach. Therefore, that kind of approach cannot be found fault with. Hence, the order made by the writ court impugned in the present writ appeal is to be sustained. Accordingly, it is sustained. Resultantly, the appeal fails and hence it is dismissed. No costs.

30. After pronouncing the judgment, the learned counsel for the appellant, the question of law that may arise pursuant to this judgment since has to be tested before the Hon'ble Apex Court, seeks leave under Article 134A(b) of the Constitution. However, we are not inclined to give such certification / leave and the said plea is rejected.

(R.S.K.,J.) (G.A.M.,J.)
22.11.2023

Index : Yes



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Internet : Yes

Neutral Citation : Yes

KST

Note : Issue order copy by 23.11.2023

R.SURESH KUMAR, J.

and

G.ARUL MURUGAN, J.

KST

To

1. The Secretary to Government
Personnel and Administrative Reforms Department
Secretariat, Chennai 600 009.
- 2.The Director of School Education
DPI Complex, College Road
Chennai 600 006.

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