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W.A.No.1789 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2023

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.A.No.1789 of 2022
and
C.M.P.No.13121 of 2022**

1.The Government of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Tourism, Culture and Religious Endowments Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Tourism,
Department of Tourism,
Tamil Nadu Tourism Complex,
No.2 Wallajah Road,
Chennai - 60 002.

... Appellants

Vs.

R.J.Gajendra Kumar

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order
dated 16.08.2021 passed in W.P.No.10251 of 2020.

For Appellants

: Mr.R.Neelakandan
Additional Advocate General
Assisted by Mr.M.Rajendran
Additional Government Pleader

For Respondents

: Mr.G.Rajagopalan, Senior Counsel
for Mr.Lourdu Paul Maurya



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JUDGMENT

(Judgment of the Court was made by R. MAHADEVAN, J.)

The Additional Chief Secretary to Government and the Commissioner of Tourism Department are the appellants herein. This writ appeal is directed against the order dated 16.08.2021 passed by the learned Judge in W.P.No.10251 of 2020.

2. Originally, the respondent herein filed a writ petition in W.P.No.18392 of 2019, which by order dated 24.10.2019, was disposed of, by directing the first appellant herein to consider his representation dated 13.05.2019 seeking promotion to the post of Assistant Director of Tourism, and pass appropriate orders on merits and in accordance with law, within a period of twelve weeks. Pursuant to the said order, the first appellant passed an order on 22.07.2020 stating that the respondent was not qualified to hold the post of Tourist Officer / Publication Officer and therefore, his request to promote him to the post of Assistant Director of Tourism was not feasible as per the rules in force. It was further observed that there was no specific direction in the order dated 24.10.2019 to promote the respondent to the said post. Challenging the said order of the first appellant, the respondent preferred WP.No.10251 of 2020.



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3. Before the writ court, it was the case of the respondent that he completed SSLC (10th Standard) during the academic year 1981-82 and thereafter joined H.S.C. (+1) on 12.07.1982. Due to the sudden demise of the respondent's father, he was appointed as Junior Assistant on compassionate grounds and he joined the Tourism Department on 25.05.1983 and hence, he was unable to attend regular school. In view of the same, he joined Madurai Kamaraj Open University and completed foundation course. Subsequently, he obtained U.G. Degree in B.Com. during October 1987, P.G. Diploma in Tourism in May 1993 and M.Com. during April 2003 through Distance Education in Madurai Kamaraj University. He also completed P.G. Diploma in Personnel Management during June 1991 through Distance Education Programme in Annamalai University. According to the respondent, he was fully qualified to consider his candidature for promotion to the post of Assistant Director of Tourism from the cadre of Tourist Officer and hence, he made a representation to the authorities in this regard, but the same was not considered. Thereafter, as per the order of the learned Judge in W.P.No.18329 of 2019, the first appellant passed the order dated 22.07.2020, rejecting his claim, on the premise that the respondent had not passed the degree in the regular pattern of 10 + 2 + 3; the amended special Rules prescribe a degree qualification to hold the post of Tourist Officer; and hence, his claim for promotion to the post of Assistant Director of Tourism without being qualified for the feeder category post of Tourist officer, was not feasible for consideration. The



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said order of the first appellant was put to challenge in the instant writ petition.

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4. By order dated 16.08.2021, the learned Judge allowed the aforesaid writ petition viz., WP.No.10251 of 2020 by setting aside the order of the first appellant and directing the authorities to place the name of the respondent in the seniority and promote him also if his juniors were promoted, within a period of four weeks from the date of receipt of copy of that order.

5. Challenging the aforesaid order passed by the Writ Court, the present appeal has been filed by the Tourism Department.

6. Mr.R.Neelakandan, learned Additional Advocate General assisted by Mr.M.Rajendran, learned Additional Government Pleader submitted that in G.O.(Ms)No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009, orders have been passed prescribing degree qualification in the pattern of 10 + 2 + 3 for appointment / promotion in Public Services; and by Letter No.33448/M/2010-4 P&AR (M) Department, dated 03.12.2010, it has been clarified that a degree awarded by the Open Universities after passing Pre-Foundation course and two year foundation course through open university cannot be recognised as a degree as per the University Grants Commission norms for the purpose of employment / promotion in public services. Adding further, the



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learned Additional Advocate General submitted that it was mentioned in G.O.(Ms) No.144 P&AR (M) Department dated 20.11.2017 that foundation courses offered by various Universities are not equivalent to Higher Secondary Course (+2); Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, states that for appointment to public service, a degree should be in the pattern of 10 +2 +3; and according to Rule 5 of the Special Rules for the post of Tourist Officer, qualification of degree is prescribed for appointment to the post of Tourist Officer from the post of Assistant Tourist Officer Grade-II by recruitment by transfer. In the light of the said orders and rules and in view of the fact that the respondent had completed the second year higher secondary course through foundation course offered by the Madurai Kamaraj Open University, it was found that the respondent herein had not passed the degree in the regular pattern of 10 +2 +3 and hence, he was not qualified to hold the post of Tourist Officer / Publication Officer, as a result of which, his claim for promotion to the post of Assistant Director of Tourism cannot be considered by the appellant authorities. However, the learned Judge erred in allowing the writ petition by setting aside the order of the first appellant, by the order impugned herein, which is illegal and contrary to law.

7. Per contra, Mr.G.Rajagopalan, learned Senior Counsel appearing for the



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respondent, while reiterating the points put forth before the writ Court, submitted that the G.O passed by the Government prescribing the education of 10+2+3 pattern based on the UGC regulations, cannot be applicable to the case of the respondent, as he had enrolled in the foundation course offered by Madurai Kamaraj University in 1984 i.e., much prior to the coming into effect of the UGC Regulations. It is further submitted that the foundation course has been recognized as equivalent to Plus-Two as per G.O.Ms.No.528 P&AR Department dated 18.05.1985; and that, G.O.Ms.No.144 dated 20.11.2017 may say that it is not equivalent, but it is only prospective and cannot be retrospective in nature. Thus, based on the qualifications prescribed in the Special Rules, the name of the respondent was included in the panel for promotion to the post of Tourist Officer in the year 2009-10 and accordingly, he was promoted as Tourist Officer, and therefore, he is eligible to be considered for further promotion as Assistant Director of Tourism. Therefore, the learned senior counsel submitted that the learned Judge has considered the entire issue in detail and has passed the order impugned in this appeal, which does not require any interference in the hands of this Court.

8. By way of reply, the learned Additional Advocate General appearing for the appellants submitted that *vide* G.O.Ms.No.100, Tourism and Culture Department dated 20.07.2011, the panel for promotion to the post of Tourist



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Officer for the year 2009-2010 was issued, which was after the amendment to the Special Rules came into force *vide* G.O.Ms.No.174, Tourism and Culture (T2) Department dated 06.08.2010 prescribing a degree qualification for recruitment by transfer from the post of Assistant Tourist Officer Grade-II. Further, at the time of issuance of the said panel, it was not brought to the knowledge of the Government that the respondent had completed the second year higher secondary course through foundation course and that, based on the degree qualification, his name was included in the panel for promotion to the post of Tourist Officer for the year 2009-10 and accordingly, he was promoted as Tourist Officer and he joined duty as such at New Delhi on 05.08.2011. Hence, the contention of the respondent that he was promoted to the post of Tourist Officer considering the qualifications prescribed under Rule 5(b)(iii) of the Special Rules *vide* G.O.Ms.No.246, Information & Tourism (T2) Department, dated 03.09.1991, is devoid of merits. Thus, the learned Additional Advocate General prayed for allowing this appeal by setting aside the impugned order passed by the learned Judge.

9. Heard the learned counsel on either side and perused the materials available on record, carefully and meticulously.

10. Admittedly, the respondent was appointed as Junior Assistant on



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compassionate grounds on 25.05.1983 and he had completed the second year higher secondary course through foundation course offered by the Madurai Kamaraj Open University in the year 1984. He was promoted as Tourist Officer vide G.O.Ms.No.100 Tourism & Culture Department, dated 20.07.2011 and he joined the said post on 05.08.2011 and his service as Tourist Officer was regularised vide G.O.Ms.No.224, Tourism, Culture and Religious Endowments Department dated 16.10.2017. His further promotion is to the post of Assistant Director of Tourism, which was not considered by the appellant authorities, but the learned Judge considered the claim of the respondent in his favour, by the order impugned in this appeal.

11. There cannot be any dispute that the Government issued G.O.Ms.No.107 P&AR Department, dated 18.08.2009, prescribing the degree qualification in the pattern of 10 +2 +3 for appointment / promotion in public services; and that, vide letter No.33448/2010-4 P&AR Department, Dated 03.12.2010, it was clarified that those who obtained a degree under Open University System, after passing the pre-foundation course and two year foundation course without passing 10th standard and +2 examination, do not satisfy the conditions laid down in the said G.O.Ms.No.107 dated 18.08.2009. It is also not in dispute that as per G.O.Ms.No.144 dated 20.11.2017, the foundation courses offered by various Universities are not equivalent to Higher Secondary



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Course (+2).

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12. The appellants questioned the order of the learned Judge by stating that the respondent is not eligible for further promotion to the post of Assistant Director of Tourism, without being qualified for the feeder category post of Tourist Officer. Therefore, before going into the issue, as to whether the respondent is entitled to be considered for promotion to the post of Assistant Director of Tourism, this court is inclined to go into the question as to whether he is eligible to hold the feeder category post of Tourist Officer.

13. It could be seen that *vide* G.O.Ms.No.336, Information & Tourism (Tourism II) Department, dated 22.07.1988, the qualifications for the post of Tourist Officer for recruitment by transfer from the post of Receptionist Grade-II (now, Assistant Tourist Officer Grade-II) were prescribed and they are (i) a pass in Account Test for Executive Officers and District Office Manual Test; and (ii) service as Receptionist Grade II for a period of not less than five years. Subsequently, a qualification of degree was added *vide* G.O.Ms.No.174, Tourism & Culture (T2) Department, dated 06.08.2010. While so, the panel for promotion to the post of Tourist Officer for the year 2009-2010 was issued, *vide* G.O.Ms.No.100 dated 20.07.2011, in which, the name of the respondent was found at sl.no.11. Based on the same, the respondent was promoted as such and he joined the post of



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Tourist Officer at New Delhi on 05.08.2011 and his service was also regularised in the year 2017. However, his name was not considered for further promotion to the post of Assistant Director of Tourism for the reason that he had not obtained the degree in the regular pattern of 10 + 2 +3.

14. According to the learned Additional Advocate General appearing for the appellants, the respondent had completed the second year higher secondary course through foundation course offered by the Open University and hence, he had not completed the degree in the regular pattern of 10 + 2 +3 for considering him for promotion to the post in question. Whereas, it is the specific contention of the learned senior counsel for the respondent that the respondent had completed the foundation course before the UGC regulations came into force and that, the orders passed by the Government prescribing the degree qualification with prospective effect, were passed, subsequent to the promotion given to the respondent to the post of Tourist Officer and therefore, he is eligible to be promoted as Assistant Director of Tourism.

15. This court is of the view that in the light of the orders and rules as referred to above, the degree qualification in the pattern of 10 + 2 + 3 is very much required for appointment / promotion in Public Services. As pointed out earlier, the respondent had completed the second year higher secondary course



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through foundation course offered by the Open University, which is not equivalent to +2 course conducted by the Board. Therefore, he had not obtained the degree qualification in the pattern of 10 +2 +3. In view of the same, the stand taken by the respondent that at the time of issuance of panel for promotion to the post of Tourist Officer for the year 2009-2010, his name was considered for promotion based on the qualifications as prescribed under Rule 5(b)(iii) of the Special Rules, vide G.O.Ms.No.246, Information and Tourism (T2) Department, dated 03.09.1991, in which, degree qualification was not prescribed, cannot be accepted by this court. It is admitted on the side of the appellants that the fact that the respondent had completed his higher secondary course through foundation course, was not brought to the knowledge of the Government at the time of preparation of panel for promotion to the post of Tourist Officer for the year 2009-2010; that, out of 30 persons, only 11 alone possessed the degree qualification and the respondent was one among them; and hence, his name was included in the panel. In such circumstances, the observation of the learned Judge that when the respondent was appointed as a Tourist Officer and posted to the said post on 05.08.2011, G.O.Ms.No.107 dated 18.08.2009 was not in force, is not correct, as the date of the said G.O. is 18.08.2009, whereas the respondent was posted as Tourist officer on 05.08.2011.



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16. It is well settled principle that at the time of promotion, the existing Government Order has to be applied. Even though the respondent herein was not eligible to be appointed as Tourist Officer in the year 2011 and the panel was not informed about the fact that the respondent had not completed the degree course in 10 +2 +3 pattern, he was erroneously given promotion to the post of Tourist Officer. However, this court cannot precipitate this issue further, by applying the settled law that any G.O / Rules issued by the Government is only prospective in nature and the same will not affect the persons, those who are already in service. Thus, leaving the aspect of granting promotion to the respondent to the post of Tourist Officer, this court is of the opinion that he is not fit to be further promoted to the post of Assistant Director of Tourism, without being qualified for the feeder category post of Tourist Officer. Consequently, the contention raised on the side of the respondent that the UGC regulations are not applicable to the case of the respondent, since he had completed the foundation course in 1984, cannot be countenanced by this court, as the decision of the Government prescribing the pattern of 10 + 2 + 3 education, for the purpose of appointment / promotion in the public services, has been upheld by the Hon'ble Supreme Court in various decisions. Therefore, this court is inclined to interfere with the order of the learned Judge.

17. Accordingly, this writ appeal is allowed by setting aside the impugned



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order dated 16.08.2021 passed by the learned Judge in WP.No.10251 of 2020. No costs. Consequently connected miscellaneous petition is closed.

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[R.M.D,J.] [M.S.Q, J.]
06.06.2023

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Speaking Order / Non-speaking order

Internet : Yes.

Index : Yes /No

To

- 1.The Additional Chief Secretary to Government,
Tourism, Culture and Religious Endowments Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Tourism,
Department of Tourism,
Tamil Nadu Tourism Complex,
No.2 Wallajah Road,
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R. MAHADEVAN, J.
and



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MOHAMMED SHAFFIQ, J.

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**W.A.No.1789 of 2022 &
C.M.P.No.13121 of 2022**

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