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W.P.(MD)NO.4977 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.4977 of 2023 AND
W.M.P.(MD)Nos.4642, 4644 and 4646 of 2023

1. P.Murugaperumal
2. S.Ganeshamoorthy
3. T.Selvam
4. G.Gowtham
5. K.Hari Krishnan
6. N.Muthu Ram

... Petitioners

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai – 600 009.

2. The Tamil Nadu Public Service Commission,
Rep. by its Secretary,
TNPSC Road, Park Town,
Chennai – 600 003.

... Respondents



Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned communication issued by the 2nd respondent in his proceedings No.Nil dated 03.02.2023 and quash the same as illegal and consequentially to forbear the respondents from allowing the degree holders viz., B.E., (Civil Engineering) who do not possess the essential qualification of Diploma in Civil Engineering for recruitment to the post of Overseer/ Junior Draughting Officer in Rural Development and Panchayat Raj Department in terms of Rule 4(b) Category - I (1) of the Special Rules for the Tamil Nadu Panchayat Development Engineering Subordinate Service in pursuance of notification issued by the 2nd respondent in Advertisement No.651, Notification No.05/2023 dated 03.02.2023.

For Petitioners : Mr.M.Ajmalkhan,
for M/s.Ajmal Associates.

For R-1 : Mr.T.Villavankothai,
Additional Government Pleader.

For R-2 : Mr.V. Panneer Selvam,
Standing Counsel.

* * *

**ORDER**

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Heard the learned Senior counsel appearing for the writ petitioners and the learned Additional Government Pleader appearing for the first respondent and the learned Standing counsel appearing for the second respondent.

2. The writ petitioners are holders of Diploma in Civil Engineering. The second respondent Commission had issued the impugned notification calling for applications from eligible candidates for the post of Overseer / Junior Draughting Officer in the Rural Development and Panchayat Raj Department. Clause 5(B) of the Notification reads as follows:-

“(B) EDUCATIONAL QUALIFICATION (as on 03.02.2023)”

Applicants should possess the following or its equivalent qualification awarded by any University or Institution on the date of this notification as mentioned below:



Sl. No.	Name of the Post	Educational Qualification
1.	Overseer / Junior Draughting Officer in Rural Development and Panchayat Raj Department	Must possess a Diploma in Civil Engineering: Provided that preference shall be given to the persons possessing a Bachelor's degree in Civil Engineering from any University or Institution recognized by the University Grants Commission.
2.	Junior Draughting Officer in Highways Department	A Diploma in Civil Engineering or its equivalent from any University or Institution awarded by the State Board of Technical Education and Training of the concerned State Government; Provided that while making appointment by direct recruitment to the post of Junior Draughting Officer, preference shall be given if other things being equal, to those who have undergone one year of apprenticeship training under the Government of India Scheme or the State Government Apprenticeship Scheme."
3.	Junior Draughting Officer in Public Works Department	Diploma in Civil Engineering awarded by the State Board of Technical Education and Training, Tamil Nadu or its equivalent qualification recognized by the Director General of Employment and Training, Government of India or by the All India Council for Technical Education; (OR) Diploma in Architectural Assistantship awarded by the State Board of Technical Education and Training, Tamil Nadu or its equivalent qualification recognized by the Director General of Employment and Training, Government of India or by the All India Council for Technical Education



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4.	Draughtsman, Grade - III in Town and Country Planning Department	(i) Must possess Post Diploma in Town and Country Planning awarded by the Government of Tamil Nadu. Experience: Nil. (OR) [(ii) Must possess Diploma in Civil Engineering awarded by the State Board of Technical Education and Training or (iii) Must possess Diploma in Architectural Assistantship awarded by the State Board of Technical Education and Training Or (iv) Any other Qualification Equivalent to the qualifications mentioned in (ii) or (iii) above] Experience: Experience in the field of Civil Engineering for not less than 3 Years
5.	Foreman, Grade-II in Tamil Nadu Small Industries Corporation	A Diploma in Mechanical Engineering / B.E., Mechanical Engineering preferred.

Note: (i) The educational qualifications prescribed for this post should have been obtained by passing the required qualification in the following order of studies viz. 10th + Diploma Course (10+3) or 10th + HSC + Diploma Course (10+2+2) or 10th + HSC + Bachelor's Degree Course (10+2+4) as required under Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The results of examination should have been declared on or before the date of Notification. [Section 20(4)(iv) of the Tamil Nadu Government Servants (Conditions of Service) Act 2016]

(ii) Experience should have been gained after passing be prescribed



educational qualification in Annexure-II.

(iii) The qualifications considered equivalent are indicated in Annexure-I to this notification.

(iv) Applicants claiming equivalence of qualification to the prescribed qualification should upload and submit evidence for equivalence of qualification, in the form of Government Order issued on or before the date of this notification and submit it along with online application, failing which, their application will be summarily rejected after due process. The Government Orders regarding equivalence of qualification issued after the date of this notification will not be accepted. (For further details regarding equivalence of qualification refer note under para. 9 of the “Instructions to Applicants”). ”

3. The grievance of the writ petitioners is that when the special rules specifically prescribe holding of Diploma in Civil Engineering as an essential qualification, the second respondent Commission has erred in permitting even those candidates having Degree in Civil Engineering to participate. The learned Senior counsel appearing for the petitioners reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to restrain the respondents from



allowing the degree holders from participating in the recruitment process if they do not have the essential qualification of Diploma in Civil Engineering.

4. The second respondent has filed counter affidavit and the learned Standing counsel took me through its contents and prays for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. The recruitment is for the post of Overseer / Junior Draughting Officer in the Rural Development and Panchayat Raj Department. The recruitment to the said post is governed by the Special Rules for Tamil Nadu Panchayat Development Engineering Subordinate Service. Amendments were made to the Special Rules vide G.O.(Ms)No.202 Rural Development and Panchayat Raj (E3) Department dated 01.12.2020. The said Rule reads as follows:-



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1.	Overseer	(a) Direct	Must possess a Diploma in Civil Engineering:
2.	Junior Draughting Officer	Recruitment	Provided that preference shall be given to the persons possessing a Bachelor's degree in Civil Engineering from any University or Institution recognized by the University Grants Commission. ”

7. The only question that calls for consideration is whether a degree holder is barred from participating the recruitment process if he does not possess the Diploma in Civil Engineering. The answer is in the negative. Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act is as follows:-

“ **Special Qualifications** - No person shall be eligible for appointment to any service, class, category or grade or any post borne on the cadre thereof unless he,—

(a) possesses such special qualifications and has passed such special tests as may be prescribed in that behalf in the special rules; or

(b) possesses such other qualifications as have been declared to be higher than or equivalent to the said special qualifications or special tests—



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(i) by the Government in consultation with the Committee constituted under the Chairmanship of the Chairman, Tamil Nadu Public Service Commission for the purpose, in cases where the appointment has to be made in consultation with the Commission; and
(ii) by the Government or by the appointing authority with the approval of the Government in other cases. -
G.O.Ms.No.226 P&AR dated 18.08.1994 w.e.f. 18.08.1994. ”

8. The Hon'ble Division Bench in the decision rendered in ***W.A.No.1306 of 2019 dated 29.07.2019 (R.Vijayamurugan V. The Secretary, Tamil Nadu Public Service Commission, Chennai)*** had held that where there is a rule which provides that in case Diploma is the essential qualification, degree in the relevant subject would be a higher qualification. Section 25 of the Act permits those having higher qualification also to compete. The learned Senior counsel appearing for the petitioners would argue that in view of Section 68 of the Act, the Special Rules will prevail over Section 25 of the Act. Section 68 of the Act reads as follows:-



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“ Overriding Effect of special rules - If any provision of this Act is inconsistent with any provision of the special rules applicable to any particular service, the special rules shall, in respect of that service, prevail over the provisions of this Act.”

9. Overriding clause will come into play only if there is inconsistency. The Hon'ble Division Bench of Madras High Court in ***W.A.No.237 of 2022 (P.Krishnakumar V. The Secretary, Department of Human Resources Management, Secretariat, Chennai)*** dated **06.06.2022**, had already dealt with the issue. While it is true that in ***R.Vijayamurugan*** case, no reference was made to Section 68 of the Act, in ***P.Krishnakumar*** case, Section 68 of the Act has been specifically considered. Paragraph No.11 of the order dated **06.06.2022** made in ***W.A.No.237 of 2022*** reads as follows:-

“11. An attempt was made by the appellant to submit that the fiction under section 25(b) of the Act provides for a range from Diploma holder to holders of Bachelors degrees for the rule making authority to fix



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and choose while prescribing the qualification. The rule making authority having prescribed Diploma as the requisite qualification, it may not be open to understand that Degree holders as also being eligible. The above argument only needs to be noticed to be rejected. The rule making authority should be understood to be conscious of Section 25(b) of the Act and the fiction contained therein. Thus, if the rule making authority intended to exclude Engineers while prescribing the educational qualification as Diploma holders then it ought to have been set out expressly. Failure to do so would only indicate that the rule making authority never intended to narrow or whittle down the fiction contained in Section 25(b) of the Act.”

10. When there is no inconsistency between the Special Rules and the provisions of the Act, Section 25 of the Act will have to be applied with full force and the question of Special Rules prevailing over will not arise at all. I do not find any ground to interfere. This writ petition stands



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dismissed. No costs. Consequently, connected miscellaneous petitions are

closed.

01.06.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

1. The Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai – 600 009.
2. The Tamil Nadu Public Service Commission,
Rep. by its Secretary,
TNPSC Road, Park Town,
Chennai – 600 003.



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G.R.SWAMINATHAN,J.

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