



W.P(MD)No.6962 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.04.2023

Pronounced on : 01.06.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.6962 of 2023

and

WMP(MD)Nos.6566, 6567, 6568, 6570 of 2023

1.M.Amuthavanan

2.R.Elangovan

... Petitioners

Vs.

1.The State of Tamil nadu,
Rep.by its Principal Secretary to Government,
Rural Development and Panchayatraj 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 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned Notification issued by the 2nd respondent in his proceedings in Notification No.02/2023 dated 13.01.2023 insofar as educational qualification prescribed in Note (i) of Clause 5 (B) of the



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Notification and the consequential impugned communication issued by the 2nd respondent in his proceedings No.Nil dated 23.01.2023 and quash the same as illegal and consequentially to forbear the respondents from allowing the Diploma and Degree holders does not possess the essential qualification of ITI Certificate in Civil Draughtsmanship for recruitment to the post of Road Inspector in Rural Development and Panchayat Raj Department in terms of Rule 4(b) Category – II (1) of the Special Rules for the Tamil Nadu Panchayat Development Engineering Subordinate Service.

For Petitioner : Mr.M.Ajmalkhan, Senior Counsel
for Mr.C.Venkatesh Kumar

For Respondents : Mr.T.Villavan Kothai,
Additional Government Pleader for R1

Mr.V.Panneer Selvam, Standing Counsel
for R2

ORDER

The only question that calls for consideration is whether the candidates who do not have an ITI certificate in Civil Draughtsmanship can participate in the recruitment process conducted by TNPSC for the post of Road Inspector on the ground that they possess a diploma or degree in Civil Engineering.

2.The categorical and unambiguous stand of TNPSC is in the affirmative.

Clause 5(B) dealing with Educational Qualification is as follows :



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(B) EDUCATIONAL QUALIFICATION (as on 13.01.2023)

Applicants should possess the following or its equivalent qualification awarded by any University or Institution mentioned below:

Educational Qualification
Must possess an L.T.I. Certificate in Civil Draftsmanship from a Government recognized institute; Provided that preference shall be given to the persons possessing a Diploma in Civil Engineering.

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 + ITI (10+2) or 10th + Diploma (10+3) or 10th + Diploma + Bachelor's Degree Course (10+3+3) or 10th + HSC + Diploma (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) The qualifications considered equivalent are indicated in Annexure-I to this notification.
- (iii) 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").

The E-mail communication dated 23.01.2023 issued by TNPSC in response to a querist is as follows :

“As per Note-(i) under para.5(B) of Notification No.02/2023 dated 13.01.2023, candidates who possess Diploma in Civil Engineering / B.E (Civil) degree are also eligible to apply for the post of Road Inspector in the Rural Development and Panchayat Raj Department. For further details, kindly refer to the notification.”



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In the counter affidavit filed in this writ petition, reliance is placed on Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and the decision rendered by the Hon'ble Division Bench in ***WA No.1306 of 2019 dated 29.07.2019 (R.Vijayamurugan v. TNPSC)***. The learned Additional Government Pleader as well as the standing counsel for TNPSC after reiterating all the contentions set out in the counter affidavit submit that the impugned notification is very much in consonance with the recruitment Rules read in the light of Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. According to the respondents, even candidates possessing higher qualification are very much eligible to take part in the recruitment process and therefore, exclusion would run counter to the express terms of the recruitment notification.

3.The learned Senior Counsel appearing for the petitioners would on the other hand contend that the Hon'ble Division Bench in the decision mentioned above failed to take note of Section 68 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. He also laid emphasis on the expression “must possess” found in the recruitment Rules.



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4.I carefully considered the rival contentions and went through the materials on record. Recruitment is to be held for the post of Road Inspector in Rural Development and Panchayat Raj Department. It is governed by the Special Rules for the Tamil Nadu Panchayat Development Engineering Subordinate Services. Amendments were made to the said Special Rules vide G.O Ms.No.202 Rural Development and Panchayatraj (E3) dated 01.12.2020. It reads as follows :

Category II

1.Road Inspector	Direct Recruitment	Must possess an ITI Certificate in Civil Draughtsmanship from a Government recognized Institute : Provided that preference shall be given to the persons possessing a Diploma in Civil Engineering.
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Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 reads as follows :

“25.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



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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—

(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.

Explanation-I.—In cases where the special rules prescribe a diploma or a degree or a post-graduate degree as a qualification for appointment, then,—

(a) a diploma obtained, after completion of S.S.L.C. or Higher Secondary Course [10+3 (3 Years Diploma)] or [10+2+2 (Lateral Entry)]; or

(b) a degree obtained, after completion of S.S.L.C. and Higher Secondary Course (10+2+3 or more); or

(c) a post-graduate degree obtained, after completion of S.S.L.C., Higher Secondary Course and a degree (10+2+3+2 or 3) from any University or Institution, recognized by the University Grants Commission shall be recognized as the qualification.

Explanation-II.—In cases where the special rules prescribe a diploma in a particular subject as qualification, then, a degree in that subject shall be deemed to be a higher qualification.



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Explanation-III.—In cases where the special rules prescribe a period of practical or other experience in addition to educational or technical qualification, for an appointment, such a period of practical or other experience, as the case may be, should have been acquired after obtaining the educational or technical qualification prescribed for such appointment unless otherwise specified in the special rules.”

Section 68 of the Act reads as follows :

“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.”

5.It can be taken as an axiomatic proposition that the recruitment notification issued by the Public Service Commission must be in consonance with the relevant recruitment Rules. The recruitment Rules stipulate that the candidates aspiring to be directly recruited as Road Inspectors “must possess an ITI certificate in Civil Draughtsmanship from a recognized University”. The expression employed is “must”. The expression “must” may not always have the effect of being mandatory. But when the word “must” finds expression in a recruitment Rule and that too with reference to a qualification, it obviously has a mandatory connotation. Possession of ITI certificate in Civil



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Draughtsmanship therefore becomes an essential qualification. In view of the proviso, preference shall be given to the persons possessing a Diploma in Civil Engineering. In *A.N. Sehgal v. Raje Ram Sheoran*, 1992 Supp (1) SCC 304, the Hon'ble Supreme Court held as follows :

“14.It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms.

15. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect.”



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6. Applying the aforesaid ratio, the use of the word “preference” in the present context means that it has to be given only when the claims of all candidates who are eligible are taken for consideration and when any one or more of them are found in equal position, possession of Diploma can be a tilting factor. In other words, a Diploma holder can claim preferential treatment only if he is possessing ITI Certificate. In view of Section 25 of the 2016 Act, a person having B.E Civil Engineering would also be entitled to preference. But then, such a person should first possess ITI Certificate.

7. Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 only states that degree in the subject shall be considered as a higher qualification when diploma has been considered as a essential qualification. This provision does not deal with ITI Certificate. Therefore, reliance on Section 25 of the Act by the respondents is misplaced. If there is inconsistency between the provisions of the 2016 Act and the provisions of the relevant Special Rules, then, the provisions of the Act will have to give way. In my view, there is a clear inconsistency in this case. The Special Rules insist on possession of ITI Certificate. Preference will be given for Diploma holders. The Special Rules cannot be understood to mean that even if the candidate is not having ITI Certificate in Civil Draughtsmanship, he can still take part in the



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recruitment process only on the ground that he is possessing Diploma/degree in Civil Engineering. The petitioners are justified in invoking the overriding provision set out in Section 68 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. I, therefore, hold that the petitioners have made out a case for issuance of Writ. The respondents shall treat only those candidates having ITI Certificate in Civil Draughtsmanship as eligible to take part in the petition-mentioned recruitment process.

8.This writ petition is allowed on these terms. No costs. Connected miscellaneous petitions are closed.

01.06.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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To

- 1.The Principal Secretary to Government,
Rural Development and Panchayatraj 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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