IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2024

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. No.795 of 2023
and
C.M.P. No.5696 of 2023

The Managing Director,
State Industries Promotion Corporation of Tamil Nadu Limited,
(The Government of Tamil Nadu undertaking)
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai-600 008. .. Appellant

Vs.

1.T.Pothi Madhavan

2. The State of Tamilnadu
Represented by its Secretary,
Personnel and Administrative Reforms Department,
Secretariat, Chennai-600 009.

3.N.Jaiganesh ..Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, praying to set aside the order made in W.P.No.5220 of 2021 dated 28.10.2022.

For Appellant	: Mr.P.Wilson Senior Advocate for Mr.K.Palaniyappan
For Respondents	: Mrs.A.L.Gandhimathi Senior Advocate for Mr.L.Palanimuthu (for R1)

JUDGMENT

The present writ appeal is filed challenging the order of the learned Judge insofar as it quashes the impugned Notification No.01/2021 dated 22.01.2021 issued by the appellant herein while directing the appellant herein to proceed with the earlier Notification No.03/2020 dated 18.11.2020 and to consider the 1st Respondent herein for appointment to the post of Assistant General Manager (Finance), if he is otherwise eligible and pass necessary orders.

2. Brief facts:

The appellant herein invited applications for appointment to the post of Assistant General Manager (Finance) vide Notification No.3/2020 dated 18.11.2020 reserved for Scheduled Caste (hereinafter referred to "SC") category (preferably Arunthathiyar). As per the Notification, the candidate should have "passed Chartered Accountant (Associate/ Fellow member of ICAI)" and "the candidate shall have an experience of not less than 10 years in a Bank / Financial Institution / Reputed Industrial or Commercial concern in independent senior capacity". The Respondent applied online on 21.11.2020. The above notification was later withdrawn and fresh notifications dated 15.12.2020 and 22.01.2021 were issued by the appellant herein calling for applications from the candidates to the post of Assistant General Manager (Finance) and the reservation was shifted from SC (preferably Arunthathiyar) to Backward Class (other than Backward Class Muslim) – Priority. It is this Notification which was put to challenge by the 1st Respondent herein on the premise that it is not open to the appellant herein to de-reserve the post of Assistant General Manager (Finance) reserved for SC to BC (OBCM) as it would result in violation of Article 16 of the Constitution of India.

3. <u>Order of the learned Single Judge:</u>

i) The learned Judge found that 4 vacancies were to be filled in the Assistant General Manager (hereinafter referred to as "AGM") Category viz.,

a. AGM(Legal) – 1 post

b. AGM(Finance) – 1 post

c. AGM (Project) – 2 posts

ii) Following the 200 Roster point system, the post of AGM (Finance) was originally reserved for SC (Arunthathiyar on preferential basis) – vide Notification No.03/2020 dated 18.11.2020. The appellant herein cancelled the said Notification dated 18.11.2020 as only one applicant had applied for AGM (Finance). The Appellant issued another Notification dated 15.12.2020 for the post of AGM (Finance) changing the reservation from SC (preferably Arunthathiyar) to Backward Class (other than Backward Class Muslim) –

Priority. The appellant received three applications and selected the 3rd Respondent to the said post. Thereafter, a Notification dated 12.12.2020 was issued for the post of AGM (Projects), of which one was reserved for SC (Arunthathiyar on preferential basis) and other for MBC and De-Notified Community. Pursuant thereto, 119 applications were received and A.Balu, under the category of SC (preferably Arunthathiyar) and A.Arun Kumar under the category of Most Backward Class and de-notified community were selected to the post of AGM (Project) and had joined duty on 08.02.2021. The learned Judge also found that the 200 Roster Point System had thus been followed and the submission that the change from AGM(Finance) to AGM(Project) would constitute de-reservation, stood rejected. The learned Judge however proceeded to find that the cancellation of Notification No.3/2020 dated 18.11.2020 was bad on the premise that no reason for cancellation of the selection process was disclosed by the appellant herein. Accordingly, the learned Judge allowed the writ petition filed by the first respondent, by the order impugned herein.

4. Case of the appellant:

The learned Senior Advocate Mr.P.Wilson appearing on behalf of the appellant would submit that the 1st Respondent herein does not even satisfy the qualification criteria set out in the Notification No.3/2020 dated 18.11.2020 inasmuch the 1st respondent herein, though a Chartered Accountant, however does not possess experience of not less than 10 years of post-qualification experience in a Bank/ Financial Institution/ Reputed Industrial Concern in independent senior capacity. It was further submitted that the experience credential was neither stated nor produced by the 1st Respondent herein which was the primary reason for rejecting his application. The 1st Respondent herein who does not satisfy the eligibility criteria, does not have any locus to maintain the writ petition challenging the cancellation / discharge of the Notification dated 18.11.2020. It was also submitted that the four posts of AGM (Finance, Project, Legal) constitute a single category / post and not different categories viz., Legal, Finance and Project and the 200 point roster for the recruitment of the 4 posts of AGM is made by treating the same as constituting a single category and thus, the reservation amongst the four posts of AGM (Finance) is inter-changeable, while complying with the 200 Roster point system. The change of reservation for SC (Arunthathiyar) from the post of AGM(Finance) to AGM (Project) does not constitute de-reservation inasmuch as it does not in any manner distort the 200 point roster for recruitment to the post of AGM.

5. <u>Case of the 1st Respondent:</u>

The learned Senior Advocate Mrs.Gandhimathi appearing for the 1st Respondent would submit that what was reserved for the SC was AGM (Finance) and changing it to AGM (Projects) constitutes de-reservation. Further, the 1st Respondent is a Chartered Accountant and has more than 12 years of experience and had performed Audit of various companies, educational institutions including Banks and Financial Institutions, Industrial and Commercial concerns and would thus contend that the submission of the learned counsel for the appellant herein that the 1st Respondent does not satisfy the eligibility criteria in terms of experience, is incorrect and wholly unjustified. It is thus submitted that the impugned order of the learned Judge does not warrant any interference insofar as it quashes the impugned Notification No.01/2021 dated 22.01.2021 issued by the appellant herein, while directing the appellant herein to proceed with the earlier Notification No.03/2020 dated 18.11.2020 and to consider the 1st Respondent herein for appointment to the post of Assistant General Manager (Finance) if he is otherwise eligible.

6. Heard both sides. Perused the materials on record.

7. We shall take up the issue of maintainability raised by the learned Senior Advocate appearing for the appellant on the premise that the 1st

Respondent does not satisfy the eligibility criteria for applying to the post of AGM (Finance) in terms of Notification No.03/2020 dated 18.11.2020, and thus cannot maintain a challenge to the recruitment Notification as a preliminary issue.

8. Before we proceed further, it may be relevant to extract the educational qualification and the experience criteria provided under the said Notification No.3/2020 dated 18.11.2020 for appointment to the post of AGM (Finance), the relevant portions of which are extracted hereunder:

Name of the Post	*Assistant General Manager (Finance)*
Number of vacancies	1 (one)
Category	"Scheduled Caste (Arunthathiyars on preferential basis)
Scale of pay	Level 27 Rs.62200-197200
Educational qualification	Candidates should have passed Chartered Accountant (Associate / Fellow member of ICAI)
Experience	Not less than 10 years of post qualification experience in a Bank/ Finance Institution/ Reputed Industrial or Commercial concern in independent senior capacity
Age limit	Maximum 45 years

8.1. On a reading of the clauses relating to educational qualification and experience in the above Notification as a whole, the following position would emerge:

a. The candidate should have passed Chartered Accountant (Associate / Fellow member of ICAI).

b. The candidate should have experience of not less than ten (10) years of post qualification experience in a Bank/ Financial Institution/ Reputed Industrial or Commercial Concern. Chartered Accountants are Certified Accounting Professionals commonly referred to as CA. The Institute of Chartered Accountants of India (ICAI) licenses and regulates Chartered Accountants in India. A Chartered Accountant has broadly two courses namely to practice or opt for a job. A Chartered Accountant opting to practice may opt the following:

1. Internal Audit
2. Tax Audit
3. Statutory Audit
4. Finance Controller
5. Forensic Auditing
6. Management Counseling
7. Treasury.

8.2. A Chartered Accountant may also opt for job, in which case is normally designated as Chief Financial Manager, Tax manager, Finance Manager etc., A Chartered Accountant who chooses the job option would then be exclusively associated only with that particular Bank or Financial Institution or Commercial Concern.

c. The expression “Bank/ Financial Institution/ Reputed Industrial or Commercial Concern is used as an alternative as evident from the employment of the punctuation “/ ”. A slash in punctuation is generally used instead of the conjunction 'or'. It is also used to denote the availability of option and choices or in other words to indicate alternatives. It is thus evident that the candidate's experience of 10 years must be in either a Bank / Financial Institution / Reputed Industrial or Commercial Concern.

d. The expression “in a”, which qualifies Bank / Financial Institution / Reputed Industrial / Commercial concern, would denote one or singular and thus indicative of the fact that the candidate must be exclusively associated with a particular Bank / Financial Institution / Reputed or Commercial Concern, in other words, must have taken up employment in a Bank / Financial Institution / Reputed or Commercial Concern.

e. The use of the expression “independent senior capacity” after the expression “Bank/ Financial Institution / Reputed Industrial or Commercial concern” qualifies the nature of role / function discharged by C.A. which the the candidate must possess while reckoning his experience. This would also demonstrate that the 10 years experience set out in the notification is with reference to the employment of a CA in a Bank / Financial Institution / Reputed or Commercial Concern and should be exclusively associated with a particular Bank / Financial Institution / Reputed Industrial or Commercial concern.

8.3. In the light of the above discussion, it leaves no room for any doubt in our mind that the experience contemplated in Notification No 3/2020 dated 18.11.2020 is that of a C.A. who has job experience in a Bank / Financial Institution or an Industrial/ Commercial Concern for more than 10 years. Further, the notification insofar as it provides that the candidate must have experience in a senior capacity, reinforces the view that we have taken inasmuch as a practicing C.A. does not hold a independent senior capacity, instead conducts one of the audits enumerated above.

8.4. The learned counsel for the 1st Respondent circulated 4 volumes of typed set of papers stating the same as evidence of the experience of the 1st Respondent. A perusal of the typed set of papers would reveal that the 1st Respondent was involved in filing of Form 23AC pursuant to Section 220 of the Companies Act, for a number of companies, clearly indicating that he was a practicing CA. Some of the companies, which had engaged the services of the 1st respondent, are set out below:

S.No.	***Date***	***Descriptions***
1	2009-10	VSL Technologies Private Limited
2	2010-11	Reveira Marketing Services Private Limited
3	2011-12	Active Comnet Limited

S.No.	Date	Descriptions
4	2011-12	Sera Construction Private Limited
5	2011-12	Sera Construction Private Limited
6	2011-12	Simplan Software India Private Limited
7	2011-12	Modern Electronic and Technologies Private Limited
8	2011-12	ITS Doors Private Limited
9	2012-13	SPEG Engineering Services Private Limited
10	2012-13	Sri Sai Quarry and Granites Private Limited
11	2013-14	LGN Educational Charitable Trust
12	2013-14	HB Education and Consulting Services Private Limited
13	2013-14	V Genius Academy Private Limited
14	2013-14	Sakro Enterprises Private Limited
15	2013-14	Transcode Solutions Private Limited
16	2014-15	Organge Frame Infrastructure Solutions and Services Private Limited
17	2015-16	Reveira Marketing Services Private Limited
18	2015-16	SLA Engineering Private Limited
19	2016-17	Reveira Marketing Services Private Limited
20	2016-17	Chennai Diesel Private Limited
21	2016-17	ECO Maxet India Private Limited
22	2016-17	SLA Engineering Private Limited
23	2017-18	High Surfing Techno Corps Private Limited
24	2018-19	Reveira Marketing Services Private Limited
25	2018-19	SLA Engineering Private Limited
26	2019-20	SLA Engineering Private Limited
27	2019-20	Reveira Marketing Services Private Limited
28	2020-21	Reveira Marketing Services Private Limited
29	2020-21	SLA Engineering Private Limited
30	2021-22	Reveira Marketing Services Private Limited

8.5. The above would clearly show that the experience which the 1st respondent was claiming, was not in an independent senior capacity in a Bank / Financial Institution or an Industrial / Commercial Concern, but was in fact a practicing CA. We are thus of the view that the 1st Respondent does not even satisfy the eligibility criteria in terms of experience as stipulated in Notification dated 18.11.2020. It is trite law that a court could examine the legality or otherwise of a matter only at the instance of a person who is qualified and eligible and has *locus standi* and not the one, who has no eligibility as held in *Subhash Chander Bajaj v. Kamal Singh Singhmar [(2010) 15 SCC 795], A.P. Public Service Commission v. G. Sankar [(2010) 15 SCC 796 : 1999 SCC (L&S) 993] and Jit Singh v. State of Punjab [(1979) 3 SCC 37 : 1979 SCC (L&S) 220 : (1979) 1 SLR 604]*. In this regard, it may be relevant to refer to the following judgments:

i) Shripal Bhati v. State of U.P., [(2020) 12 SCC 87]:

> *"**23.** The question of maintainability of challenge to appointment and subsequent absorption at the behest of the appellants has also been raised by the learned counsel for Respondents 2 and 3. It is vehemently contended that the appellant lacks requisite necessary qualifications for being considered for promotion to the post of Project Engineer (Electrical) and being ineligible for promotion any challenge to the appointment on the said post at their behest is not maintainable. It is pointed out that the eligibility for promotion to the post of Project Engineer is degree in Engineering with minimum 8 years of experience as Assistant Project Engineer.*
>
> ***24.** The specific case set up by Noida in its counter-affidavit is that Appellant 1 was appointed as Junior Engineer in 1987 and was promoted to the post of Assistant Project Engineer on 27-8-2013. Thus, he lacks necessary qualification of 8 years' experience and shall be eligible for being considered for promotion in 2021. Insofar as Appellant 2 is concerned, he was appointed on the post of Assistant Project Engineer in February 2009. As prescribed by the Service Regulations, he became eligible for being considered for promotion on completing 8 years of service in February 2017. Thus, at the time of appointment of Respondent 4 in 2014, and his subsequent absorption in 2015, both the appellants were not eligible for promotion to the post of Project Engineer for want of requisite 8 years' experience as Assistant Project*

Engineer.

(ii) *Rameshwar Dass Mehla v. Om Prakash Saini, [(2010) 15 SCC 790],* wherein it was held that once it is found that the candidate before the Court does not possess necessary qualification in terms of education or experience the Court should refrain examining the issue on merits. The relevant portion of the Judgment is extracted as under:

> *3. In challenging this order made by the High Court on behalf of the appellant, it is submitted that-*
>
> *....*
>
> *(4) That once the High Court has come to the conclusion that the writ petitioners were not eligible for the post, the High Court could not have gone further to examine the matter and at the most, could have treated the matter as one for a writ of quo warranto, although it could not be issued in a matter of this nature;*
>
> *(5) The learned counsel for the appellant also raised certain pleas on the basis of certain equities arising in the case.*
>
> *....*
>
> *8. Similarly, in the case of the other respondent it has been stated that the respondent concerned is not having 10 years' experience as a Deputy Librarian in a university or 15 years' experience as a College Librarian and he is not having one year specialisation in the area of Information Technology/Archives and Manuscript-keeping and this fact found favour with the High Court. The High Court categorically stated that the petitioners in both the cases were not eligible for the post. That finding has been recorded on consideration of these aspects of the matter. If that is so, other questions need not have been examined in this case at all, though raised by either of the parties."*

9. Thus, we find that the 1st Respondent does not satisfy the experience as provided/contemplated in Notification No.3 of 2020 dated 18.11.2020 and

hence, the order of the learned Judge insofar as it quashes the Notification No.01/2021 dated 22.01.2021 issued by the appellant herein, while directing the appellant herein to proceed with the earlier Notification No.03/2020 dated 18.11.2020 and to consider the 1st Respondent herein for appointment to the post of Assistant General Manager (Finance), is liable to be set aside.

10. Accordingly, the order of the learned Judge passed in the writ petition is set aside and the Writ Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
13.03.2024

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
mka / spp

To:
The Secretary,
Personnel and Administrative Reforms Department,
Secretariat, Chennai-600 009.

<u>R. MAHADEVAN, J.</u>
<u>AND</u>
<u>MOHAMMED SHAFFIQ, J.</u>

mka / spp

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