



W.P.No.9093 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P. No.9093 of 2021

M.Ramashankar

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by Secretary to Government,
School Education Department,
Secretariat, Fort,
Chennai – 600 009.

2. The Director of Public Libraries,
No.737/1, Anna Salai,
Chennai – 600 002.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Mandamus, directing the respondents to include the name of the petitioner in the panel for promotion to the post of District Library Officer for the year 2019 – 2020 over and above his immediate junior and consequently promote the petitioner to the post of District Officer on par with his juniors in accordance with law in the light of the Judgement rendered by this Court in W.P.No.22437 and 22441 of 2019, dated 14.02.2020 with all service and monetary benefits.



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For Petitioner : Mr.S.Selvathirumurugan

For Respondents : Mr.P.Gurunathan,
Additional Government Pleader

ORDER

This Writ Petition is filed, seeking direction to the respondents to include the name of the petitioner in the panel for promotion to the post of District Library Officer for the year 2019 – 2020 over and above his immediate junior and consequently promote the petitioner to the post of District Officer on par with his juniors in accordance with law in the light of the Judgement rendered by this Court in W.P.No.22437 and 22441 of 2019, dated 14.02.2020 with all service and monetary benefits.

2. Mr.S.Selvathirumurugan, the learned counsel for the petitioner submitted that the petitioner had undergone two years foundation course conducted by Madurai Kamarajar University and thereafter obtained a certificate course in Library Science and then selected to the post of Grade III Librarian. Thereafter he was promoted to Grade II Librarian. Subsequently he passed B.A.Degree during April, 2007. He also passed Bachelor of Library and Information Science in the year 2015. During the year 2017, he was promoted to the post of Grade I Librarian and he was



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given with additional charge of District Library Officer. In the seniority list for the post of Grade I Librarian / the Inspector of Libraries in the State of Tamil Nadu, dated 01.01.2020, the petitioner's name finds place in Sl.No.13, below one Bala Sarawathi and above one Ananthi.

3. The grievance of the petitioner is that he was not included in the promotion panel for the post of District Library Officer by giving due weightage to his seniority. In this regard, the petitioner gave representation on 17.12.2020 to include his name in the panel of promotion for the post of District Library Officer, but so far no order has been passed. Hence this Writ Petition.

4. Mr.P.Gurunathan, learned Additional Government Pleader submitted that there is no dispute with regard to the fact that the petitioner had obtained a certificate course in Library Science and thereafter acquired Bachelor Degrees. But in the matter of public service, the diploma, degree, Post Graduation, etc., can be considered only for candidate who possess 10th Standard as well as higher secondary course (+2).

5. But the claim of the petitioner is that the two years foundation



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course done by him in the month of April, 1986 itself was considered to be equivalent to higher secondary course in accordance with G.O.Ms.No.528 Personnel and Administrative Reforms Department, dated 18.05.1985.

6. However, the learned Additional Government Pleader submitted that as per G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017, a degree obtained through Open Universities after passing Pre-foundation course and two year Foundation Course through Open University cannot be recognized as a degree as per the University Grants Commission norms for the purpose of employment / promotion for public purposes in Public Services, because qualification like pre-foundation course or two year foundation course are not contemplated in the University Grants Commission Regulations. It is submitted that the equivalence claimed by the petitioner is valid only prior to issuance of G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017 and after the said Government Order issued in the matters of public appointment, the degree obtained after completing +2 alone can be recognized.

7. The learned Additional Government Pleader relied on the



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judgment of the Division Bench of this Court in ***W.A.No.213 of 2018***

dated 19.07.2019 (Mohamed Hasan Refayee Vrs. the Tamil Nadu Public

Service Commission and anr.) in support of his above submission. In the

said case, it is held as under:

“In view of the above discussion and in view of the changed situation, the petitioner cannot now after 2009, claim to be eligible, to be considered for selection to the posts included in the Combined Subordinate Services Examination-I, because his graduation degree now cannot be considered to be valid, in view of the fact that he has not either passed the 11th standard public examination under the old pattern or the 12th standard public examination under the new pattern and because of the fact that the Government in the year 2009 have issued G.O.Ms.No.444, Personnel & Administrative Reforms Department, dated 20.11.2017 and in subsequent clarifications, taken a consistent stand that graduation degrees obtained on the basis of foundation courses conducted by Madurai Kamaraj University would not be considered as valid degree, to be eligible for appointment in public services.

8. On similar facts, yet another Division Bench of this Court has



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held in ***W.A.No.805 of 2014 dated 06.08.2014 (the Chairman, Teachers***

Recruitment Board, D.P.I.Complex, Chennai and anr. Vrs. V.Kanimozhi)

that Plus Two Certificate obtained through Open Universities would be considered only after finishing Xth Standard. In the said Judgment, it is held as under:

"5.2. Coming to the first issue, we would like to extract the relevant passage of the Government Order passed in G.O.(Ms).No.107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009, which reads as under:

"The above recommendations were carefully examined by the Government and accordingly Government accepted the recommendations of Equivalence Committee and issue orders, that the Diplomas/Degrees/ Post Graduation after possession of Xth Std., Higher Secondary (+2) obtained through Open Universities alone considered for appointment/ promotion in Public Services."

On a reading of the above said paragraph, it is clear that a diploma/ degree/post graduation can only be considered for appointment in public services after a candidate possesses Xth Standard as well as Higher Secondary (+ 2). This Government Order passed has been upheld by the Division Bench of this Court in W.P.No.18729 of 2010 dated 10.2.2011. "



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9. Per contra, the learned counsel for the petitioner relied on the judgment dated 05.07.2022 passed by the Division Bench of Madurai Bench of this Court in ***W.A.(MD) No.497 to 500 of 2022 (P.Thavam and ors Vrs. The State of Tamil Nadu represented by its Secretary, Highways Department, Chennai and ors.)*** in which it is held as under:

“24. This Court is of the considered opinion that the government had recognized the pre-foundation course vide G.O.Ms.No.528, P and AR Department, dated 18.05.1985 and the said G.O. was in existence from 1985 onwards, subsequently there was a challenge to the open university degree and the High Court has held open university degree is not valid and pre-foundation course as not valid. When it was considered valid for the past twenty four years, then it was declared as invalid, the persons who are affected from this shift / change of qualification ought to be protected. As rightly pointed out by the appellants, the Government has taken eight long years after issuance of G.O.Ms.No.107, Personnel and Administrative Reforms Department, dated 18.08.2009, to issue G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017. It is only in G.O.Ms.No. 144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 the government has declared that the pre foundation course is not recognized



equivalent to the pre-foundation course. The G.O.Ms. No. 107, Personnel and Administrative Reforms Department, dated 18.08.2009, has only accepted the recommendations of the Equivalence Committee. As rightly pointed out by the learned Counsel appearing for the appellants, the government has passed G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 wherein it has been categorically held that the pre-foundation course as invalid. If it is so, then the date of issuance of the said G.O. Ms. No. 144 ought to be held as the cutoff date. Moreover, the pre-foundation course was closed down in the year 2012. In short the pre-foundation course was recognized in the year 1985, then in the year 2009 it was held by High Court that pre-foundation course is not equivalent, then equivalence committee has reported it is not equivalent, the government accepted the report in 2009 and finally it was declared in the year 2017. Hence, the mischief of invalidity has been eradicated in phased manner. Therefore, this Court is of the considered opinion that the cutoff date, is the date of issuance of G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 i.e. 20.11.2017.”

10. But in the above case what was under challenge was the promotion that has already been granted in the year 2013 by recognizing the equivalence of foundation course done by the respective candidates.



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But in the instant case the petitioner is yet to be promoted to the post of District Library Officer. However, the qualification prescribed for the post of District Library Officer in accordance with the adhoc rules issued in G.O.Ms.No.2544, Education, dated 20.11.1976 as amended in G.O.Ms.No.1234, School Education Department, dated 27.06.1981 and further amended in G.O.Ms.No.104, School Education Department, dated 23.05.2018 is extracted under:

- 1. Any Bachelor's Degree of a University recognized by the University Grants Commission in the patten of 10,+2 or its equivalent +3; and*
- 2. A Bachelor's Degree in Library Science or Library and Information Science of a University recognized by the University Grants Commission; and*
- 3. Must have served as Librarian Grade I/ Inspector of Libraries or both for a period of not less than five years. (vide Rule 4(b)(ii) of the Special Rules for Tamil Nadu Educational Service).*

11. It is to be noted that the petitioner is already in service and he has got the benefit of recognizing his foundation course as equivalent to that of +2 at the time of his appointment itself. Though the pattern of



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10+2+3 is applicable to the fresh applicants who would apply and compete to the post of District Library Officer through direct recruitment, it is learnt that the direct recruitment to the post of District Library Officer is done through promotion as well. If the petitioner is an open quota candidate, it is right on the part of the respondent department that his foundation course cannot be considered as equivalent to that of +2. Even the rules with regard to the qualification of District Library Officer has also been issued from time to time by making appropriate amendment and 2018 amendment ought to have been made consequent to G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 i.e. 20.11.2017, which mandates the qualification of +2, to recognize the Bachelor Degree.

12. Even though the Division Bench of this Court in *W.A.(MD) No.497 to 500 of 2022 dated 05.07.2022* deals with the persons' case who have already been promoted on principles, the logic for allowing the appeals of the individuals, is very much applicable to the facts involved in this case as well, wherein it has been elaborated about the recognition of



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the pre-foundation course by issuance of G.O.Ms.No.528, Personnel and Administrative Reforms Department, dated 18.05.1985 and later issuance of another G.O.Ms.No.107, Personnel and Administrative Reforms Department, dated 18.08.2009 by accepting the equivalence committee report which states that the foundation course is not equivalent to 10th standard. In view of the above said G.O. which was issued on 18.08.2009, the person who had Pre-foundation course are found to be not eligible for consideration for promotion. However, the Division Bench of this Court has held that there is a legitimate expectation in all those persons who had joined pre foundation course. But Government had recognised it by the Government Order in the year 1985.

13. So far as this petitioner is concerned, during that point of time, the said foundation course was not declared as invalid. In fact, this petitioner seems to have got promoted in view of G.O.Ms.No.528 Personnel and Administrative Reforms Department, dated 18.05.1985 had joined the pre foundation course in the following year. Even though in G.O.Ms.No.107, Personnel and Administrative Reforms Department, dated



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18.08.2009, the Government has accepted the equivalence committee's recommendations, only the subsequent G.O. Which is passed in G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 alone declares that the pre foundation course is not equivalent. So the said Government Order can be taken into file only from the date of its issuance i.e., 20.11.2017 and no prospective implementation can be given to the same. These petitioners got the qualification of pre foundation two decades earlier to the issuance of the G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017. If any retrospective effect is given to the above Government Order then all appointments or promotions given to the individuals prior to 20.11.2017, by giving validity to their pre foundation course, would become invalid and that would result in an anomalous situation of many Government servants losing their jobs.

14. Hence, in all possibilities and probabilities the impact of G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017 can be given effect prospectively and not retrospectively. In



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fact, the petitioner was included in the promotion panel for the year 2021 by taking into account of the fact that he had done his pre foundation course much before the issuance of G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017. Having included the petitioner in the promotion panel, he could have been promoted along with his juniors. But later as an after thought the petitioners' promotion was stopped by stating the reason that the pre foundation course qualification possessed by the petitioner is not equivalent to +2. In this regard, it is worthwhile to extract the relevant part of the Division Bench Judgement in ***W.A.(MD) No.497 to 500 of 2022 dated 05.07.2022:***

“22. The contention of the appellants is that the Government after considering all the issues have subsequently issued the G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017, where it has been categorically held that pre-foundation course awarded by various universities cannot be recognized as equivalent to SSLC or HSC. The plea of the appellants is that the cutoff date ought to be fixed from the date of issuance of G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 and the cutoff date should be 20.11.2017 and not the cutoff date of G.O.Ms.No.107,



Personnel and Administrative Reforms Department, dated 18.08.2009, i.e., 18.08.2009. Since in the earlier G.O., the Government has simply accepted the recommendations of the Equivalence Committee and whereas, in G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017, alone the Government has categorically clarified the pre-foundation course cannot be recognized as equivalent to SSLC or HSC.

23. This contention of the appellants was refuted by the respondents and the respondents relied on the judgment rendered in the case of Mohamed Hasan Refayee Vs. TNPSC and another in W.A.No.213 of 2018, dated 19.07.2019, wherein, the cutoff date has been prescribed as the date of issuance of G.O.Ms.No.107, Personnel and Administrative Reforms Department, dated 18.08.2009. Therefore, the respondents submitted that the cutoff date has already been considered by the Division Bench and that ought to be taken as the cutoff date and not the date of G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017, i.e., 20.11.2017. This would seriously affect not only the Highways Department but all the Departments would be affected. This also would affect the policy decision taken by the Government and therefore, the respondents contended that the claim of the appellants cannot be



considered.

24. This Court is of the considered opinion that the government had recognized the pre-foundation course vide G.O.Ms.No.528, P and AR Department, dated 18.05.1985 and the said G.O. was in existence from 1985 onwards, subsequently there was a challenge to the open university degree and the High Court has held open university degree is not valid and pre-foundation course as not valid. When it was considered valid for the past twenty four years, then it was declared as invalid, the persons who are affected from this shift / change of qualification ought to be protected. As rightly pointed out by the appellants, the Government has taken eight long years after issuance of G.O.Ms.No.107, Personnel and Administrative Reforms Department, dated 18.08.2009, to issue G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017. It is only in G.O.Ms.No. 144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 the government has declared that the pre foundation course is not recognized equivalent to the pre-foundation course. The G.O.Ms. No. 107, Personnel and Administrative Reforms Department, dated 18.08.2009, has only accepted the recommendations of the Equivalence Committee. As rightly pointed out by the learned Counsel appearing for the appellants, the



government has passed G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 wherein it has been categorically held that the pre-foundation course as invalid. If it is so, then the date of issuance of the said G.O. Ms. No. 144 ought to be held as the cutoff date. Moreover, the pre foundation course was closed down in the year 2012. In short the pre-foundation course was recognized in the year 1985, then in the year 2009 it was held by High Court that pre-foundation course is not equivalent, then equivalence committee has reported it is not equivalent, the government accepted the report in 2009 and finally it was declared in the year 2017. Hence, the mischief of invalidity has been eradicated in phased manner. Therefore, this Court is of the considered opinion that the cutoff date, is the date of issuance of G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 i.e. 20.11.2017.

25. The appellants relied on the Honourable Supreme Court judgments wherein it has been held that the employee is entitled to atleast one promotion in the entire career and hence the appellants are entitled to get an opportunity of one promotion in their entire career. The appellants submitted that the respondents conferred the promotion on the appellants based on their pre-foundation course qualification and hence, based on the equity, the appellants are entitled to



the said promotion. It is also submitted that all the appellants are above the age of 50 and at this stage, if they are de-promoted that would be a humiliation and they will be forced to work under their juniors which would affect their status in the family and in the Society. This Court is of the considered opinion that the appellants were conferred promotion in the year 2013 and 2014 and the appellants have worked for more than five years in the promoted post. At this stage, the appellants cannot be de-promoted and based on the equity, the appellants ought to be allowed to continue in the promoted post. Therefore this Court is of the considered opinion that based on equity the appellants are entitled to relief.”

15. On similar lines, in an another Judgment held in W.P.No.22437 and 22441 of 2019, dated 14.02.2020, this Court has observed as under:

“10. It is an admitted fact that there were two Government Orders that were holding the field, namely, G.O.Ms.No.528, Personnel and Administrative Reforms Department, dated 18.05.1985 and G.O.Ms.No.219, Personnel and Administrative Reforms Department, dated 30.03.1988. Both these Government orders make it clear that the Two Years Foundation Course completed in Madurai



Kamaraj University and Annamalai University are considered to be equivalent to Higher Secondary (+2). This Government Order was acted upon on earlier occasion and the petitioners were, in fact, promoted as Librarian Grade-III in the year 2004. The next avenue of promotion for the petitioners is to the post of Librarian Grade-II. The said promotion post does not carry with it any pre-requisite educational qualification and the only consideration is the seniority. According to the petitioners, they have become eligible for promotion to the said post in the 2016-17 panel.

11. The main issue that arises for consideration is whether the qualification that was recognized from the year 1985/88 till the passing of G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017, can be completely erased and thereby whoever were benefited by virtue of the earlier Government Orders in the interregnum, can be deprived of their promotion or selection? This issue has been substantially answered by this Court in the judgment that was cited by the learned counsel for the petitioner. The relevant portions were also extracted supra.

12. This Court categorically held that the qualification that was acquired based on the previous Government Orders is valid for all purposes till the passing of the later Government Orders. The later Government Order cannot be



given retrospective effect and thereby take away whatever benefits were enjoyed by the candidates by virtue of the earlier Government Orders. G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017 deals with the substantial right with regard to the qualification and, therefore, it can only be given prospective effect and to give it a retrospective effect, will virtually take away all the rights / benefits acquired by the candidates on the strength of the earlier Government Orders. In the considered view of this Court, the qualification that was possessed by the petitioners was, in fact, recognized when they were considered for promotion to the post of Librarian Grade-III. Such a benefit cannot be knocked off by virtue of G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 20.11.2017. This is more so due to the fact that the next avenue of promotion to the post of Librarian Grade II is only based on seniority.”

16. The above Judgment has settled the position that the next avenue of promotion shall not be affected by all these persons who have joined earlier on the strength of earlier Judgments. Hence, the above position of law settled is applicable to the case of the petitioner as well. Hence, the



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petitioner is entitled to the relief as prayed for.

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17. In the result, the Writ Petition is allowed. The respondents are directed to include the name of the petitioner in the panel for promotion to the post of District Library Officer for the year 2019 – 2020 over and above his immediate junior and consequently promote the petitioner to the post of District Officer on par with his juniors in accordance with law in the light of the Judgement rendered by this Court in W.P.No.22437 and 22441 of 2019, dated 14.02.2020 along with all attendant service and monetary benefits. No costs.

15.03.2024

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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To:

- 1.The Secretary to Government,
School Education Department,
Secretariat, Fort,
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2. The Director of Public Libraries,



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