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W.A.No.2096 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM :

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN**

**W.A.No.2096 of 2021
and
CMP.No.13267 of 2021**

1. The Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Chennai - 600 009.

The Secretary to Government,
now Human Resources Management Department,
Secretariat, Chennai - 600 009.

2. The Secretary to Government,
Environment and Forests Department,
Secretariat, Chennai - 600 009.

The Secretary to Government,
now Environment, Climate Change
and Forests Department,
Secretariat, Chennai - 600 009.

... Appellants

Vs.

J.Lalitha,
Section Officer,
Environment and Forests Department,
Secretariat, Chennai - 600 009.
now Environment, Climate Change



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and Forests Department,
Secretariat, Chennai - 600 009.

... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 01.12.2020 passed in W.P.No.25071 of 2014.

For Appellants : Mr.R.Neelakandan
Additional Advocate General
assisted by
Mr.D.Gopal
Government Advocate

For Respondent : No appearance

J U D G M E N T

(Judgment of the Court was made by **S.M.SUBRAMANIAM, J.**)

The State preferred the present intra-court appeal challenging the writ order dated 01.12.2020 in W.P.No.25071 of 2014.

2. The ground raised by the State for assailing the writ order would be that the respondent did not possess the requisite educational qualification of degree for promotion to the post of Under Secretary to the Government. The feeder category for promotion to the post of Under Secretary is Section Officer. Admittedly, the respondent is holding the post of Section Officer, Environment and Forests Department, Secretariat. The approved regular



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Panel for promotion to the post of Under Secretary was published by the Government in letter dated 22.06.2012. Since the respondent has not possessed the educational qualification prescribed in the Rules, her name had been deferred in the Panel of the year 2011-12.

3. The governing principles for grant of promotion are that:
 - i. Promotion *per se* cannot be claimed as an absolute right.
 - ii. Consideration for promotion is a fundamental right of an employee.
 - iii. The Authorities competent are empowered to take decision to fill up the vacant posts.
 - iv. On taking a decision to fill up the post, a Panel of eligible employees, who all are waiting for promotion are to be considered.
 - v. The eligibility criteria as prescribed under the Rules are to be scrupulously followed with reference to the crucial date for preparation of the Panel.



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4. Employer is empowered to prepare nil Panel, which cannot be questioned by the employees. In other words, availability of vacancy would not provide a right to an employee to seek the relief to fill up the posts or to grant promotion.

5. Only if the promotion Rules are violated, then alone the employee would get a right to approach the court of law for redressal.

6. In the present case, admittedly, the respondent possess the educational qualification of SSLC and acquired technical skills in typewriting both in English and Tamil and had passed secondary school leaving certificate course under the old system (11 years) in the year 1975-76. She was appointed as Typist through Tamil Nadu Public Service Commission. It is admitted that the respondent do not possess the educational qualification of Degree. She was promoted as Section Officer and during the relevant point of time, the degree qualification was not prescribed under the Rules by the Government. As of now, for promotion to the post of Section Officer, degree is the qualification. For promotion to the post of Under Secretary to Government, the Government amended the Rules in G.O.Ms.No.163,



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Personnel and Administrative Reforms Department, dated 16.12.2011.

Accordingly, the Government decided to prescribe a Bachelor's Degree as requisite educational qualification under category 3 in annexure referred to Rule 3 of the Special Rules for the Tamil Nadu General Service (Class XII) for appointment to the post of Section Officer in any department other than Law and Finance by recruitment by transfer from the category of Assistant Section Officer in the departments of Secretariat other than Law and Finance in the Tamil Nadu Secretariat service. Necessary amendments to the Special Rules were also issued. Thus, for appointment to the post of Section Officer, Bachelor's Degree is prescribed as a requisite educational qualification. While so, the employees, who do not possess the Degree cannot be further promoted to the post of Under Secretary to Government. The Rule was amended in the year 2011. The Panel of Section Officers, fit for the promotion to the post of Under Secretary to Government was prepared for the year 2011 - 2012 and the approved Panel was published by the Government in letter dated 22.06.2012. As on the said date, the Rule was amended and the Bachelor's Degree has been prescribed as a requisite



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educational qualification. Since the respondent do not possess the requisite qualification of Bachelor's Degree, her name was deferred in the approved Panel published on 22.06.2012.

7. The learned Single Judge has proceeded on the basis that the respondent had already been promoted to the post of Section Officer. Therefore, her further promotion to the post of Under Secretary to Government cannot be deferred. Such a view remains contrary to the amended Rules published by the Government in the year 2012. When the Bachelor's Degree is prescribed as a requisite educational qualification for appointment/promotion to the post of Section Officer, for further promotion to the post of Under Secretary to Government, the employee must possess the qualification of Bachelor's Degree.

8. That being the analogy to be adopted, the writ court has interpreted the application of Rules, which is not in consonance with the established principles. Consequently, the writ order dated 01.12.2020 in W.P.No.25071 of 2014 is set aside and the Writ Appeal stands **allowed**. No costs. Consequently, connected miscellaneous petition is closed.



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[S.M.S., J.] [C.K., J.]

03.07.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

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