



W.P.No.42752 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	5/1/2024
Delivered on	23/1/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.42752 of 2016

a n d

W.M.P.No.36674 of 2016

1. Thameem Ahamed
2. Syed Irfan Ahmed
3. M. Shathish Kumar
4. D. Venkatesan

...

Petitioners

Vs

1. The State of Tamil Nadu
rep. By the Secretary
P & AR Department
Fort St. George
Chennai 600 009.

2. The Secretary
Tamil Nadu Public Service Commission
Frazer Bridge Road
Chennai 600 003.

...

Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the records of the second respondent in Memorandum No.7443/PD-E1/2015 dated 15/6/2016 and quash the same and consequently, direct the second respondent to consider the case of the petitioners for promotion and grant consequential seniority in their respective places with consequential monetary benefits.

For petitioners

...

Mr.C.Vigneswaran

For respondents

...

Mr.M.S.Prem Kumar
Government Advocate
for R.1

Mrs.G.Hema
for R.2.

ORDER

This writ petition has been filed to quash the order dated 15/6/2016 passed by the second respondent in Memorandum No.7443/PD-E1/2015 and consequently, direct the second respondent to consider the case of the petitioners for promotion and grant consequential seniority in their respective places with consequential monetary benefits.



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2. The facts in brief are that all the petitioners were initially appointed in the second respondent/Tamil Nadu Public Service Commission in the post of Junior Assistant. At the time of their appointment, requisite qualification for appointment to the post of Junior Assistant was SSLC. On 4/1/1996, by way of an amendment to the Tamil Nadu Public Service Commission Regulations, 1954, first respondent has issued G.O.Ms.No.7, Personnel and Administrative Reforms Department, dated 4/1/1996 and modified the nomenclature of various posts in the Commission and modeled them on the same lines of the Tamil Nadu Secretariat Service including the pay.

3. As per G.O.Ms.No.7, without a degree, no promotions could be granted to them and that five years time was given in the said G.O., from 4th January 1996, to acquire degree qualification. Accordingly, the petitioners have approached the second respondent seeking permission to pursue Under Graduate degree course, under Open University System. Permission was accordingly given to the petitioners. Accordingly, petitioners underwent the entrance test conducted by the Open University and joined the graduation course in the Open University and ultimately passed the graduation within five years as stipulated in G.O.Ms.No.7,



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dated 4/1/1996.

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4. As per the judgment of the Hon'ble Supreme, reported in 2009 (4) SCC 590, the Government of Tamil Nadu has issued G.O.Ms.No.107 dated 18/8/2009, stating that after passing 10+2, Diploma/Degree/PG degree, candidate is valid for appointment/promotion in the Government service. G.O.Ms.No.116 was issued by the Government clarifying the position that Post Graduation degree obtained without undergoing a basic degree is invalid for appointment. Accordingly, the Tamil Nadu State and Subordinate Service Rules were amended, as per G.O.Ms.No.65 dated 2/7/2014 in which the amendment has come into force with effect from 18/8/2009, i.e., the date on which G.O.Ms.No.107 was issued.

5. As per the promotion channel, Junior Assistants will get the promotion as Assistant, Assistant will be promoted as Assistant Section Officer, Assistant Section Officer will get promotion as Section Officer and finally Section Officer will get promotion as Under Secretary. In spite of making several representations, names of the petitioners were not considered to the post of Under Secretary. On 24/10/2014, a final representation was submitted. As there was no action, petitioners moved



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W.P.No.30068 of 2015, seeking to consider their representations. The said writ petition was disposed of with a direction to pass orders on the representation of the petitioners within a period of six weeks from the date of receipt of the order. In spite of passing of orders, representations of the petitioners were not considered, thereby Contempt Petition was filed. In the meanwhile, the petitioners representation dated 15/6/2016 was rejected. Aggrieved by the same, present writ petition is filed.

6. The first respondent has filed counter adopting the counter of the second respondent.

7. The second respondent/Tamil Nadu Public Service Commission, has filed a detailed counter stating that as per G.O.Ms.No.116, Personnel and Administrative Reforms (M) Department, dated 18/8/2010, the Government has issued orders with regard to validity of Direct Post Graduate degree for public employment as under:-

"After careful examination, the Government
have decided to accept the recommendations of
the Equivalence Committee and accordingly,



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direct that those who possess a PG degree through Open University System without obtaining a basic degree cannot be considered as possessing a Post Grade degree for appointment to Public Services."

8. The Government has issued G.O.Ms.No.107 dated 18/8/2009, amending the Rule 19 of the Tamil Nadu State and Subordinate Service Rules with retrospective effect from 18/8/2009, vide G.O.Ms.No.65 dated 2/7/2014. It is also mentioned in the counter that the petitioners names were not included in the panel drawn for the post of Under Secretary to the Commission in Proceedings No.7777/PD-E1/2014 dated 26/8/2015 that their degree qualification is not in consonance with G.O.Ms.No.107 dated 18/8/2009 and the joint representation submitted by them dated 24/10/2014 was not accepted. It is also mentioned that though the petitioners have mentioned the order made in W.P.No.28172 of 2013 in support of their contention for considering, the respondent has rejected the same stating that the said judgment is not applicable.

9. Finally, it is mentioned in the counter that the Government has



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issued qualification vide letter dated 17/11/2015 to the respondent

Commission that the "formal system of education alone can be considered for promotion and non formal system of education cannot be adopted for entry in public service which insist on 10+2+3 pattern and it is further stated that Rule 19 of the Tamil Nadu State and Subordinate Services Rules has already been amended vide, G.O.Ms.No.65 P & AR (S) Department dated 2/7/2014 earlier to their representation to the effect that 10+2+3 pattern of study in Degree course in formal education method only is eligible for public employment.

10. Heard Mr.C.Vigneswaran, learned counsel for the petitioners, Mr.M.S.Premkumar, learned Government Advocate for the first respondent and Ms.G.Hema, learned counsel for the second respondent.

11. The petitioners were originally joined as Junior Assistant with the qualification of SSLC. Subsequently, G.O.Ms.No.7 dated 4/1/1996 was issued stating that for appointment and promotion, graduation is a must and the petitioners have studied and completed the graduation in the Open University method, after obtaining due permission and basing on the said qualification, the petitioners were promoted to the cadre of



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Section Officers. However, when the petitioners were due to be promoted as Under Secretaries, G.O.Ms.No.65 was issued on 2/7/2014 and consequently, Rule 19 of the Tamil Nadu State and Subordinate Service Rules are amended to the effect that passing of 10+2+3 pattern for degree courses in formal education method is only eligible for promotion, thereby, the petitioners who have obtained graduation by way of Open University System have denied the promotion as Under Secretaries.

12. The learned counsel appearing for the second respondent has filed a Position Note dated 24/7/2023 wherein it is stated that during the pendency of the writ petition

(i). Thameem Ahamed/first petitioner did not acquire degree in 10+2+3 pattern as per G.O.(Ms)No.107, P & AR (M) Department, dated 18/8/2009. Hence, he was not promoted as Under Secretary and retired from service on 30/4/2018 as Section Officer on attaining the age of Superannuation.

(ii). Syed Irfan Ahamed/second petitioner was promoted as Under



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Secretary with effect from 9/6/2017, who had passed his degree during January 2016 in the pattern of 10+2+3.

(iii). M.Shathish Kumar/third petitioner was promoted as Under Secretary with effect from 20/10/2022 who had passed his degree during June 2019 in the pattern of 10+2+3.

(iv). D.Venkatesan/fourth petitioner was promoted as Under Secretary with effect from 4/11/2020 who had passed his degree in June 2018 in the pattern of 10+2+3.

Therefore, except the first petitioner, all the other three petitioners have acquired the graduation in 10+2+3 pattern, as required under G.O.Ms.No.107 dated 18/8/2009, thereby they were already promoted as Under Secretaries and they are working as such.

13. However, though the petitioners were promoted as Under Secretaries, the petitioners are seeking their seniority with effect from passing of their graduation in Open University System. The representations of the petitioners for promoting them as Under



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Secretaries basing on their degree qualification acquired by way of Open University was submitted to the second respondent on 13/10/2015.

However, G.O.Ms.No.107 was passed, six years prior to that, i.e., on 18/8/2009 mandating the acquiring of graduation under 10+2+3 pattern and not under Open University System. That means, once the representation of the petitioners were given on 24/10/2014 and 13/10/2015 which was much later than issuance of G.O.Ms.No.107 dated 28/8/2009. Subsequent to the issuance of G.O.Ms.No.107 in the year 2009, Rule 19 of the Tamil Nadu State and Subordinate Service Rules were amended on 2/7/2014 by way of G.O.Ms.No.65. Representations of the petitioners dated 24/10/2014 and 13/10/2015 are also subsequent to amendment of Rule 19 of the Rules, acquiring the graduation in 10+2+3 pattern. As on the date, the petitioners were only having graduation under Open University System and thereby, the representations of the petitioners were declined.

14. The learned counsel appearing for the petitioners has submitted that out of four petitioners, first petitioner was retired and the other writ petitioners are concerned, they will get some benefit since they are already working as Under Secretaries. Request of the petitioners 2 to 4



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cannot be considered for the simple reason that they have not challenged G.O.Ms.No.107 dated 18/8/2009 or G.O.Ms.No.65 dated 2/7/2014 or amended Rule of 19 of the Tamil Nadu State and Service Rules which mandated passing of graduation of 10+2+3 pattern. Therefore, as long as amended Rule of Section 19 is in force, the relief sought for by the petitioners 2 to 4 cannot be granted.

15. In view of the above, this writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

23/1/2024

mvs.

Index: yes/No

Neutral Citation: Yes/No

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Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in
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