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W.A.Nos.1401 of 2021, etc. Batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

CORAM

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

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.Nos.1401, 1402, 1593 to 1595, 1597, 1600, 1604 & 1605 of 2021

and

C.M.P.Nos.8657 to 8660 of 2021, 12418, 12426 & 12422 of 2022

W.A.No.1401 of 2021:

Mr.P.S.Kumar

... Appellant

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Municipal Administration
and Water Supply (Town Panchayat),
Fort St. George, Chennai – 9.
- 2.The Director of Town Panchayats,
Directorate of Town Panchayats,
Kuralagam, Chennai – 108.
- 3.The Assistant Director of Town Panchayats,
Tirunelveli Zone, Tirunelveli District.
- 4.The Executive Officer,
Alangulam Selection Grade Town Panchayat,
Alangulam, Tirunelveli District.

... Respondents



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Prayer: Writ Appeal filed under Clause 15 of Letters Patent to allow the writ appeal setting aside the order passed by the learned Judge in W.P.No.42459 of 2016 dated 24.11.2020.

For Appellants	: Mr.P.I.Thirumoorthy (in WA.Nos.1401 & 1402/2021)
	: Mr.T.Arul For Mrs.V.S.Manimekalai (in WA.Nos.1593, 1594, 1595, 1597, 1600, 1694 & 1605/2021)
For Respondents	: Mr.R.Neelankandan Additional Advocate General Assisted by Mr.S.John J.Raja Singh Additional Government Pleader (in 9 WAs)

COMMON JUDGMENT

[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

The pesent Intra-Court Appeals on hand have been instituted challenging a common verdict dated 24.11.2020 in batch of writ petitions.

2. The issue raised for consideration is that, whether the Diploma in Civil Engineering certificate acquired by the appellants from St. Peters' University can be treated as valid for the purpose of grant of promotion to the



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post of Overseer in Town Panchayats across the State of Tamil Nadu.

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3. All the appellants were originally appointed as Electrician / Work Inspector in Panchayats and on upgradation of Panchayats as Town Panchayats, the appellants were promoted to the post of Overseer on ad hoc basis and on certain terms and conditions.

4. The order of promotion dated 03.03.2016 issued by the Director of Town Panchayats promoting the petitioners as Overseers on ad hoc basis reveals that the promotion is a temporary arrangement and made on account of certain exigencies. It is further stated that the ad hoc promotees cannot claim regular promotion or seniority. The services rendered on ad hoc basis in the post of Overseer cannot be reckoned for further promotion. In the event of identifying any disqualification, the ad hoc promotees will be reverted. The condition stipulated in the ad hoc promotion order dated 03.03.2016 has not been disputed by the appellants. Thus, it is clear that all the appellants were promoted to the post of Overseer on ad hoc basis on condition that in the event of any disqualification they will have to be reverted back.

5. Subsequently, the authorities found that the Diploma in Civil



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Engineering certificate possessed by the appellants are not valid as per the Service Rules. Therefore, they were reverted back to their original posts, which resulted in filing of the writ petitions. By virtue of an interim order, they are continuing in the same post.

6. Mr.Arul, learned counsel assisted by Mrs.Manimekalai for the appellants would submit that the Diploma in Civil Engineering obtained by the appellants from the St. Peters' University recognised by Indira Gandhi National Open University (IGNOU) is a valid degree. The Government of Tamil Nadu has held that the diploma certificate is valid for public employments. To substantiate the said contention Mr.Arul relied on the Government orders revealing that St. Peters' Institute of Higher Education and Research, Chennai has been recognised by All India Council for Technical Education (AICTE). Therefore, the diploma certificates issued by the University are to be construed as valid for public employment in the State Government.

7. Mr.Arul, would rely on certain proposals submitted by the Director of Town Panchayats to the Government, stating that Diploma in Civil Engineering degree possessed by the appellants must be recognised even for



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promotion by amending the Rules. However, such proposals have not been considered. However, the Rule issued in G.O.(D).No.75, Municipal Administration and Water Supply (T.P.1) Department dated 05.02.2016 has been notified in the Tamil Nadu Government Gazette on 2nd November, 2022. Accordingly, the Tamil Nadu Town Panchayats Engineering Service and Tamil Nadu Town Panchayats Engineering Subordinate Service Rules were notified.

8. With reference to the Rules, the appellants would submit that there is no nexus between the qualification prescribed under the Rules and the object sought to be achieved with reference to the job responsibilities involved to the post of Overseers. Thus, the Government order itself is liable to be quashed.

9. Mr.R.Neelagandan, learned Additional Advocate General appearing on behalf of the respondents would oppose by stating that the Rules are not disputed between the parties. The Rules were issued in G.O.(D).No.75 dated 05.02.2016. As per the Rules, the post of Oversees / Draughtsman can be filled by way of promotion. The qualification prescribed under the Rules



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stipulates 5 years of service as Work Inspector in the Tamil Nadu Town Panchayat Engineering Sub-ordinate Service with the Diploma in Civil or Mechanical or Electrical Engineering issued by the State Board of Technical Education and Training Department of Technical Education, Government of Tamil Nadu. Since the respondents have not possessed the Diploma in Civil Engineering certificate from the State Board of Technical Education and Training Department of Technical Education, Government of Tamil Nadu, their cases were not considered for regular promotion to the post of Overseer / Draughtsman. Thus, the decision of the authorities are in consonance with the Rules and the Writ Court also confirmed the said position.

10. Mr.P.I.Thirumoorthy, learned counsel appearing on behalf of the few appellants would also articulated his grounds akin to that of the grounds raised by Mr.Arul, learned counsel for other appellants.

11. We have considered the rival submissions made on behalf of the parties to the *lis* on hand.

12. The Service Rules applicable to the post of Overseer/Draughtsman is not in dispute between the parties. The Rules notified reads as under;



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Category

(1)

2. Overseer/
Draughtsman

Method of Appointment

(2)

(a) By direct recruitment

(b) By promotion

Qualification

(3)

Must possess a Diploma in Civil or Mechanical or Electrical Engineering issued by the State Board of Technical Education and Training, Department of Technical Education, Government of Tamil Nadu.

(a) Must possess a Diploma in Civil or Mechanical or Electrical Engineering issued by the State Board of Technical Education and Training, Department of Technical Education, Government of Tamil Nadu.

(a) Must have put in a service for a period of not less than five years as Work Inspector in the Tamil Nadu Town Panchayats Engineering Subordinate Service.

13. Prescription of educational qualification, age and other criteria are the prerogative of the employer. Court cannot sit as an appellate authority with reference to the educational qualification and other qualification and criterias, fixed for the particular post, unless such prescription is violative of



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Statutes or Rules or unconstitutional. The subjective satisfaction regarding prescription of qualifications need not be gone into by the High Court in exercise of the powers of judicial review. It is for the employer to form an opinion with reference to the job responsibility involved and the relevance of the educational qualification for performing such job responsibilities. Therefore, the scope of judicial review in the area of prescription of essential qualifications for appointment to a particular post limited.

14. In the present case, admittedly the qualification prescribed for promotion to the post of Overseer/Draughtsman states, candidate must possess a Diploma in Civil Engineering issued by the State Board of Technical Education and Training, Department of Technical Education, Government of Tamil Nadu.

15. Under the Constitution, the State is empowered to make reservations for the benefit of the residents of the State. The said reservations cannot be construed as discrimination or violative of the Constitutional mandates. The State is empowered to make certain special reservations in Service Rules considering the Job responsibilities and other factors. Therefore, the employees possessing Diploma in Civil Engineering alone



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would be insufficient, and the said Diploma in Civil Engineering certificate must be issued by the State Board of Technical Education and Training, Department of Technical Education, Government of Tamil Nadu.

16. The arguments of Mr.Arul and Mr.P.I.Thirumoorthy that the validity of the Diploma in Civil Engineering certificate issued by the St. Peters' University is not all an issue needs to be considered by this Court.

17. Diploma in Civil Engineering obtained from Peter's University may be a valid Diploma for the purpose of securing public employment, since the Government of Tamil Nadu issued various orders recognising the degrees granted by St. Peters' Univeristy.

18. We are in agreement with Mr.Arul that Diploma in Civil Engineering possessed by these respondents may be a valid certificate for the purpose of securing public employment to the suitable posts. However, when the Special Rule contemplates a specific qualification with a rider that the degree must be obtained in the manner contemplated under the Rules, then the said degree obtained in consonance with the Rules alone must be made eligible for grant of promotion.



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19. In the present case, admittedly, none of the appellants have possessed the Diploma in Civil Engineering issued by the State Board of Technical Education and Training, Department of Technical Education, Government of Tamil Nadu. We are not inclined to go into the dispute regarding the validity or invalidity of the Diploma in Civil Engineering certificate issued by St. Peters' University, since there are other controversies exist and the learned Additional Advocate General also raised some grounds, which deserves no further adjudication, since the Rules applicable are made clear.

20. When the Special Rules are framed for appointment / promotion to a particular post, the Special Rules alone will be applicable and the reference made on behalf of the appellants relying the General Rules deserves no merit consideration.

21. In view of the facts and circumstances that the appellants did not possess the prescribed qualification as per the Special Rules for Tamil Nadu Town Panchayats Engineering Service and Tamil Nadu Town Panchayats Engineering Subordinate Service Rules, they are not eligible for promotion to



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the post of Overseer/Draughtsman.

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22. Pertinently, an ad hoc promotion was granted on terms and conditions. Temporary ad hoc promotions would confer no right on the employees to claim seniority or regular promotions, which all are to be granted strictly in accordance with the Special Rules in force. The order of ad hoc promotion itself stipulates that in the event of identification of disqualification, they will be reverted back. Accepting the said conditions stipulated in the ad hoc promotion order, the appellants have joined in the promotional post of Overseer. Therefore, now they cannot turn around and plead that no show cause notice has been issued. Once the conditions stipulated in the ad hoc promotion order was accepted by the employees, issuance of further notice would not arise at all. More so, the appellants have raised all such grounds regarding the eligibility for promotion, which all are considered by this Court. Therefore, non-issuance of notice cannot be a ground to invalidate the order of reversion passed by invoking the Special Rules applicable for promotion to the post of Overseer/Draughtsman.

23. For all these reasons, we do not find any infirmity in respect of the



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findings made by the learned Single Judge in the writ order and consequently,
the writ order stands confirmed and the Writ Appeals are dismissed. No
costs. Connected Miscellaneous Petitions are closed.

[S.M.S., J.] [C.K., J.]
27.06.2024

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Index : Yes
Speaking order
Neutral Citation : Yes



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