



W.P.(MD)No.7395 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.7395 of 2023

K.Neelamegam

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Commissioner of Tourism,
Secretariat,
Fort St.George,
Chennai-600 009.

2.The Commissioner / Director,
Tourism Department,
Tamil Nadu Tourism Complex,
Wallajah Road,
Chennai-600 002.

3.The Tourist Officer,
Tourist Office,
Madurai-625 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent in his proceedings in Letter No.391/HRD-2/2018, dated 28.05.2019 and quash the same as illegal and consequently to direct the respondents to promote the petitioner in the post of Assistant from 2017 with consequential monetary and pensionary benefits in the



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light of the Division Bench Judgment of this Court in W.A.(MD).Nos.497 to 500 of 2022, dated 05.07.2022.

For Petitioner : Mr.M.Pounraj

For Respondents : Mr.S.Shamugavel,
Additional Government Pleader

ORDER

Heard Mr.M.Pounraj, learned counsel appearing for the petitioner and Mr.S.Shanmugavel, learned Additional Government Pleader appearing for the respondents.

2. This Writ Petition has been filed challenging the impugned order passed by the first respondent in his proceedings in Letter No.391/HRD-2/2018, dated 28.05.2019 and consequently, to direct the respondents to promote the petitioner to the post of Assistant from the year 2017 with consequential monetary and pensionary benefits in the light of the Division Bench Judgment of this Court in W.A.(MD).Nos.497 to 500 of 2022, dated 05.07.2022.

3. The petitioner has been temporarily appointed as a 'Watchman' on 01.08.1988 in the Tourism Department, Madurai. His service has been regularized on 21.08.1991. The petitioner had completed Pre-foundation Course



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at the Kamarajar University in the year 1993 and also has got technical higher grade in both English and Tamil Typewriting. He was promoted as 'Selection Grade Typist' with effect from 05.10.2001 and now, he has retired from service on 31.05.2019.

3.1. The petitioner has passed all the Departmental Examinations and he was entitled to get promotion to the post of Assistant in the year 2015 itself. Though there were three posts in the cadre of Assistants during the relevant point of time, the petitioner was not considered for promotion despite several representations were made to the respondents and thereafter, he retired from service. The petitioner's representation in this regard has been rejected through the impugned proceedings dated 28.05.2019 by citing the reason that as per the Government Order in G.O.(Ms).No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017, the petitioner was not eligible to the promotional post.

4. Mr.M.Pounraj, learned counsel appearing for the petitioner submitted that the petitioner had completed his Pre-Foundation course in accordance with the Government Order in G.O.(Ms).No.528, Personnel and Administrative Reforms (M) Department, dated 18.05.1995 and the said Government Order



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was in existence from 1985 onwards till 2017. Therefore, it is claimed that the petitioner's Pre-Foundation course has to be considered as equivalent to SSLC, but the petitioner was not covered under the Government Order in G.O. (Ms).No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017.

4.1. He further submitted that as per the Government Order in G.O. (Ms).No.528, Personnel and Administrative Reforms (M) Department, dated 18.05.1995, the Pre-Foundation course done in the Madurai Kamaraj University is considered as equivalent to SSLC in the Tamil Nadu Government, for the purpose of entering into the Public Services in Tamil Nadu. However, the Government has issued the Government Order in G.O.(Ms).No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009, by fixing a cut-off date that for only those persons who have passed the Pre-Foundation Course prior to 18.08.2009 would be recognized and the persons who have passed Pre-Foundation Course after the cut-off date would not be recognized by giving equivalence to SSLC.

5. In the instant case, the petitioner has acquired his Pre-Foundation qualification as early as in the year 1993, during which time, neither the



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Government Order in G.O.(Ms).No.107, Personnel and Administrative Reforms

(M) Department, dated 18.08.2009, which fixed the cut-off date prior to 18.08.2009 nor the Government Order in G.O.(Ms).No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 was in force. Similar issue has already been dealt by this Court in W.P.(MD).No.10514 of 2024, dated 29.04.2024, wherein, it has been observed as under:

“4. Mr.S.Jeyakarthik, learned counsel appearing for the petitioner submitted that as per G.O.Ms.No.528, Personnel and Administrative Reforms (Per.R) Department, dated 18.05.1985, the Pre-Foundation Course done under Madurai Kamaraj University is equivalent to SSLC of the Tamilnadu Government, for the purpose of entering into public service in Tamilnadu. However, the Government has issued a subsequent Government Order in G.O.Ms.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009 by fixing a cut-off date that only those persons who have passed Pre-Foundation Course prior to 18.08.2009 can be recognized and the persons who have passed Pre-Foundation Course after the cut-off date cannot be recognized for having acquired qualification equivalent to that of SSLC.

5. But, in the instant case, the petitioner secured employment on 19.04.2007, even before the issuance of the Government Order in G.O.Ms.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009.



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6. *In fact, another Government Order in G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 has also been issued by accepting the Equivalence Committee Report, which would state that the Pre-Foundation Course cannot be treated as equivalent to that of SSLC. In pursuance thereof, the employees who have been given with the employment were either de-promoted or debarred for any further promotion. In this regard, several litigations have been filed by the aggrieved persons and orders have been passed stating that all those persons who have passed Pre-Foundation Course before the issuance of G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 are eligible for promotion and G.O.Ms.No. 144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 can be given effect only retrospectively.*

7. *Mr.T.Amjadkhan, learned Government Advocate for the respondents submitted that contradictory views have been given by two Single Judges in respect of giving effect to G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017, either prospectively or retrospectively, and hence, the issue has been referred to a Larger Bench of this Court by an order dated 13.07.2023 made in Writ Appeal in W.A.(MD)No.462 of 2014, in the case of Murugesan Vs Tamil Nadu State Transport Corporation, Vannarapet, Tirunelveli through its Managing Director.*



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8. It is worthwhile to extract the portion of the order below for the purpose of better understanding:

7. The above letter has been issued on the heels of G.O.Ms.No.107 and, according to G.O.Ms.No.144, has been applied from the date of issue of G.O.(Ms) No.107 dated 18.08.2009. Thus, the position appears to be that, though a benefit was granted under G.O.Ms.No. 107 dated 18.08.2009, it was immediately withdrawn by issuance of letter dated 03.12.2010. It is unclear as to whether the aforesaid letter is unavailable in public domain.

8. The above paragraphs capture the background to the matter. The parties place before us two series of orders. In one series, that is 2011 SCC OnLine Mad 209 (Order dated 10.02.2011), CDJ 2019 MHC 2929 (Order dated 19.07.2019), CDJ 2021 MHC 3466 (Order dated 15.04.2021) and W.A. (MD)No.471 of 2021 (order dated 20.07.2021), Division Benches of this Court have taken a view that the benefit granted under G.O.(Ms).No.107 stands nullified by G.O.Ms.No.144 dated 20.11.2017 and a foundation course cannot be equated to High Secondary Course. Reference is made to letter dated 03.12.2010.

9. In a recent decision of a Division Bench reported in 2022 SCC OnLine Mad 6177, a Division Bench has taken a view that G.O.Ms.No.144 dated 20.11.2017, would operate



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prospectively. Thus, appointments made prior to 20.11.2017 have been held to be entitled to the benefit granted under G.O.Ms.No.107 dated 18.08.2009 and other similar Government Orders passed for earlier periods as well.

9. So far as this petition is concerned, the petitioner is neither affected by G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009 nor by G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 because, this petitioner has been appointed even prior to the issuance of the above two Government Orders. Since the petitioner is covered under G.O.Ms.No. 528, Personnel and Administrative Reforms (Per.R) Department, dated 18.05.1985, there need not be any confusion in granting promotion to her without having any confusion as to the application of subsequent Government Orders issued in the year 2009 and 2017 respectively. Since the petitioner's qualification was found to be fit at the time of her employment and all other Government Orders have been passed consequently, the petitioner's position is safely protected and she is entitled to be regularized without any conditions attached. To make it more clear, the above Government Orders issued in the years 2009 and 2017 have no application to the case of the petitioner.”

6. Mr.S.Shanmugavel, learned Additional Government Pleader appearing for the respondents submitted that the petitioner had filed this Writ Petition after a period of four years and hence, there is delay and laches on the part of the petitioner. Even before the retirement of the petitioner, he had given his



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representation and that was not considered favourably. The order of rejection itself came to be passed only in the year 2019. Though there is a delay in filing this Writ Petition, the inequity caused to the petitioner by denying the relief will be the inconvenience caused to the Department due to the delay.

7. Since the petitioner had acquired the Pre-Foundation course, when the Old Rules which recognized the Pre-Foundation course as SSLC were in force, the rejection of the petitioner's request for promotion is not correct.

8. In view of the above stated reasons, the Writ Petition is **allowed** and the impugned order passed by the first respondent in his proceedings in Letter No.391/HRD-2/2018, dated 28.05.2019 is set aside and the respondents are directed to promote the petitioner from which date, the vacancy has arisen and give notional effect from the date of promotion and revise the pension of the petitioner in accordance with the last drawn pay arrived after refixation and pass orders in this regard within a period of four weeks from the date of receipt of a copy of this order. No costs.

19.07.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
TSG



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To

1.The Additional Chief Secretary to Government,
Commissioner of Tourism,
Secretariat,
Fort St.George,
Chennai-600 009.

2.The Commissioner / Director,
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Tamil Nadu Tourism Complex,
Wallajah Road,
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R.N.MANJULA, J.

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