



W.A.(MD)No.1178 of
2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.A.(MD) No.1178 of 2023
and
C.M.P.(MD) No.9028 of 2023

1.P.Murugaperumal
2.S.Ganeshamoorthy
3.T.Selvam
4.G.Gowtham
5.K.Hari Krishnan
6.N.Muthu Ram

... Appellants

vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai - 600 009.

2.The Tamil Nadu Public Service Commission,
Rep. by its Secretary,
TNPSC Road, Park Town,
Chennai - 600 003.

3.K.Ramalingam
4.K.Gunalan
5.R.Prakash



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- 6.S.Akila
7.C.Karthikeyan
8.R.Sridhar
9.M.Karunakaran
10.J.Antony Goldwin Raj
11.K.Kalipandian
12.E.Gowri Sankar
13.R.Praveen Kumar
14.P.Malathi
15.A.Ananthan
16.N.Rajkumar
17.B.Bala Murugan
18.R.Dhanasekar
19.M.Chithiralega
20.S.G.Balakrishnan
21.S.Sheik Ali
22.V.S.Janani
23.G.Suresh
24.M.Murali
25.S.Ram Prasanth
26.K.Dinesh Kumar
27.M.Kiran Kumar
28.K.Vinoth Kumar
29.M.Santhakumar
30.T.Sri Sudhan
31.T.Suresh
32.K.Kavin Kumar
33.G.Geetha
34.B.Mageswari
35.S.Sivakumar
36.S.Vijay
37.M.Ramki
38.P.Karthick
39.R.Rajaguru
40.M.Sivaprakasam
41.M.Bharathi



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42.K.Vasanthakumar
43.T.D.Karthikeyan
44.T.Saranya
45.S.Syedameena
46.V.Palanisamy
47.S.Muthuraj
48.K.Jeevanantham
49.T.Pandi Selvan
50.N.Sadhamhussein
51.V.Mathavan
52.K.Harikrishnan
53.M.Vivekanandan
54.N.Mohan Kumar
55.P.Prabhu
56.A.Mahendran
57.P.Sakthivel
58.M.Periyannan
59.G.Ayyanar

... Respondents

[R3 to R59 are impleaded vide order dated
13.08.2024, made in C.M.P.(MD)No.7673
of 2024 in W.A.(MD)No.1178 of 2023]

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order,
dated 01.06.2023, passed in W.P.(MD)No.4977 of 2023, on the file of this Court.

For Appellants : Mr.M.Ajmalkhan
Senior Counsel
for M/s.Ajmal Associates

For R1 Mr.Veera.Kathiravan
Additional Advocate General
Assisted by
Mr.S.R.A.Ramachandran
Additional Government Pleader



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For R2 : Mr.V.Panneer Selvam
Standing Counsel

For R3 to R59 : Mr.V.George Raja

JUDGMENT

[Judgment of the Court was made by **R.SUBRAMANIAN, J.**]

This Appeal is directed against the order of the learned Single Judge dated 01.06.2023, made in W.P.(MD)No.4977 of 2023.

2. The Writ Petition was filed by the candidates, who possessed Diploma in Civil Engineering and opted to apply for the post of Overseer in the Tamil Nadu Rural Development and Panchayat Raj Department. The appointments are governed by the Special Rules framed for the said purpose. The qualification prescribed for the post of Overseer by direct recruitment is that the candidate must possess a Diploma in Civil Engineering. The proviso appended to the said clause provides that preference shall be given to the persons possessing a Bachelor's Degree in Civil Engineering from any University or Institution recognized by the University Grants Commission [UGC].



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3. It was the contention of the appellants / writ petitioners that, since the Rule reads that the candidate must possess a Diploma in Civil Engineering, a person having Graduate Degree in Civil Engineering without having a Diploma cannot be allowed to apply for the said post. The Notification calling for applications issued by the Tamil Nadu Public Service Commission, dated 03.02.2023, was challenged on the above grounds.

4. The Writ Court dismissed the Writ Petition relying upon Section 25 of the Tamil Nadu Government Servants [Conditions of Service] Act, 2016 [hereinafter referred to as "the Act"], particularly, Explanation – II to the said provision, which reads as follows:-

"25.Special Qualifications:-

Explanation-II.—In cases where the special rules prescribe a diploma in a particular subject as qualification, then, a degree in that subject shall be deemed to be a higher qualification."

5. The Writ Court has also referred to and followed the judgment of the Division Bench of this Court in **W.A.No.237 of 2022** in the case of



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P.Krishnakumar vs. The State of Tamil Nadu, Rep. by its Secretary, Department of Human Resources Management, Chennai and others, dated **06.06.2022**, wherein a similar question was considered. Aggrieved by the dismissal of the Writ Petition on the above grounds, the appellants have come up with the Writ Appeal.

6. We have heard Mr.M.Ajmalkhan, learned Senior Counsel appearing for the appellants, Mr.Veera.Kathiravan, learned Additional Advocate General appearing for the first respondent, Mr.V.Panneer Selvam, learned Standing Counsel appearing for the second respondent and the learned counsel appearing for the newly impleaded respondents.

7. Mr.M.Ajmalkhan, learned Senior Counsel appearing for the appellants would vehemently contend that since the word "must" has been used in the Special Rules, the Special Rules alone would prevail in terms of Section 68 of the Act. The learned Senior Counsel would submit that once it is found that the first part of the Rule is mandatory, the proviso cannot be allowed to override it or expand its scope.



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8. Contending contra, Mr.Veera.Kathiravan, learned Additional Advocate General appearing for the first respondent would submit that Section 68 of the Act would apply only in case there is an inconsistency between the Special Rules and the Act. According to him, the provision namely, Explanation – II to Section 25 of the Act is not inconsistent with the Special Rules. It only explains as to what is meant by higher qualification. Therefore, in the absence of any inconsistency, Section 25 of the Act would very well apply and hence, the Writ Court was right in concluding that Bachelor of Engineering [Civil] being a higher qualification to Diploma in Civil Engineering, those candidates could also apply for the post of Overseer.

9. We have considered the rival submissions made by the learned counsel appearing for the parties.

10. In **P.Krishnakumar vs. The State of Tamil Nadu, Rep. by its Secretary, Department of Human Resources Management, Chennai and others** [cited supra], the Division Bench of this Court had considered the



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qualifications for Junior Draughting Officer in the Public Works Department.

The essential qualification for the post of Junior Draughting Officer is Diploma in Civil Engineering or its equivalent from any University or Institution awarded by the State Board of Technical Education and Training of the concerned State Government, provided that while making appointment by direct recruitment to the post of Junior Draughting Officer, preference shall be given if other things being equal, to those who have undergone one year of apprenticeship training under the Government of India Scheme or the State Government Apprenticeship Scheme. The educational qualification for the post of Junior Draughting Officer (Public Works Department) is as follows:-

"Diploma in Civil Engineering awarded by the State Board of Technical Education and Training Tamil Nadu or its equivalent qualification recognized by Director General of Employment and Training, Government of India or by the All India Council for Technical Education or Diploma in Architectural Assistantship awarded by the State Board of Technical Education and Training, Tamil Nadu or its equivalent qualification recognized by Director General of Employment and Training, Government of India or by the All India council for Technical Education."



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11. The appellant namely, P.Krishnakumar in W.A.No.237 of 2022, who had a Diploma in Civil Engineering, questioned the Notification, where Graduate Engineers were allowed to participate in the selection process. The Division Bench of this Court after considering the provisions of Sections 25 and 68 of the Act, concluded that since Bachelor's Degree in Civil Engineering is a higher qualification than Diploma in Civil Engineering, the appellant cannot prevent those with the higher qualification from participating.

12. The Act specifies what constitutes a higher qualification. Explanation – II to Section 25 of the Act makes it very clear that Bachelor's Degree in Civil Engineering is a higher qualification than a Diploma in Civil Engineering. To draw a corollary, a Graduate Teacher in History must have a degree in History. A person, who has completed a B.A. in History and an M.A. in History can also apply, as this constitutes a higher qualification. However, a person who has obtained a Postgraduate degree in History after completing an undergraduate degree in Commerce or Science cannot apply for the post of Graduate Teacher in History or Postgraduate Teacher in History. If this distinction is kept in mind, it will be very useful in resolving the issue at hand. If the basic qualification is a



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Diploma in Civil Engineering and the Rule states that a person with a higher qualification should be preferred, then a person with a Bachelor's degree in Civil Engineering would be the automatic choice.

13. The learned Single Judge applied the above yardstick only and has concluded that the appellants cannot prevent Graduate Engineers from applying for the post of Overseer in view of the rule position. Hence, we do not see any merit in the Writ Appeal. The Writ Appeal fails and it is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No
Index : Yes / No
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[R.S.M., J.] [L.V.G., J.]
13.08.2024

To

- 1.The Principal Secretary to Government of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai - 600 009.
- 2.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, Park Town,
Chennai - 600 003.



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