

(1976) 01 MAD CK 0032
In the Madras High Court

B. Gopalaswamy		APPELLANT
	Vs	
The Union Territory of Pondicherry and Another		RESPONDENT

Date of Decision : 12-01-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (1976) 2 MLJ 368

Hon'ble Judges : V. Ramaswami, J

Bench : Single Bench

Judgement

V. Ramaswami, J.—This is a petition under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to quash the order of the second respondent dated 1st November, 1974 by which the services of the petitioner as Section officer (redesignated as Junior Engineer) were terminated with effect from 28th November, 1974.

2. The post of a Section officer in the Public Works Department of the Union Territory of Pondicherry is a class III post and is filled either by promotion from among the categories of Draftsman Grades I and II who had practical experience of not less than three years in Public Works Department or by direct recruitment.

3. By an advertisement in the English dailies, dated 15th May, 1958, application were called for, for the appointment of a Section officer. The petitioner, who had appeared for the examination in the diploma course in L.C.E. and who was awaiting the results of the examination, applied for the post and he was called for an interview on the 1st of August, 1958 and was selected for post of a Section officer and posted to Karaikal subdivision in the leave vacancy of one Sri Andre on a pay of Rs. 100 per month in the scale of pay at Rs. 100 5-150-10-250 plus dearness allowance of Rs. 36 and house-rent allowance of Rs. 3. It was mentioned in his appointment order that the appointment was purely temporary and was subject to termination on two month's notice. When the posts of Section officer were made permanent, by a confirmation order, dated 17th May, 1965, the appointment of the petitioner was confirmed as Section

officer with effect from 1st April, 1964. This confirmation was subject to the petitioner passing the prescribed tests. There is no dispute that the petitioner had passed the prescribed departmental tests. It appears that at the time of selection, in the publication issued in the papers themselves the minimum qualification required for selection as a Section officer was the diploma in L.C.E., or equivalent qualification. Finding that the petitioner did not possess the minimum qualification the Government issued a memo, dated 23th May, 1967, by which they informed the petitioner that in view of the fact that he did not possess the minimum educational qualifications but had put in more than eight years of service, the Government had decided to give the petitioner an opportunity to qualify himself for the post by passing the L.C.E. Examination in full within one year from the date of the issue of the said memo, failing which his services would be terminated. It may be mentioned here that the petitioner had passed all the subjects except one in the L.C.E. Course. The petitioner tried to appear for the one subject in which he had failed; but by that time, the syllabi for the L.C.E. Course had been changed and therefore, he was asked by the Education Department to attend an institution for at least two years and then he would be permitted to write the examination in order that he may be given the diploma in L.C.E. Since the petitioner found it not possible to complete the course, he was going on requesting the Government to exempt him from the minimum educational qualifications. Ultimately, since the petitioner was not in a position to complete the L.C.E. course, the Government issued a further memo, dated 28th November, 1973, stating that that was the final notice requiring the petitioner to acquire the minimum educational qualification within a period of one year failing which his services would be terminated. Since the petitioner had not qualified himself for a diploma in L.C.E. within the period of one year, by the impugned memo, dated 1st November, 1974, his services were terminated with effect from 28th November, 1974. It is to quash this order, the present writ petition has been filed.

4. The learned Counsel for the petitioner contended that even if, at the time of appointment, the minimum educational qualification required was a diploma in L.C.E. he was appointed as a Section Officer by the order of the Government, dated 5th August, 1958 without any condition as to his acquiring a pass in the L.C.E. Diploma course. But, on the other hand, when the temporary posts of Section Officer were made permanent, the petitioner was confirmed as a Section Officer with effect from 1st of April, 1964. Even in that confirmation order, there was no condition that he should appear "for an examination or pass the Diploma course in L.C.E. On the other hand, even the seniorities were fixed on the basis that he was fully qualified for appointment as a Section Officer. Therefore, the subsequent direction of the Government requiring him to pass the examination in L.C.E., is illegal and beyond the jurisdiction of the respondents. He further contended that the petitioner's service could not be terminated on the ground that he is not possessed of the minimum educational qualification prescribed for the post of a Section Officer. The learned Counsel is well founded in his

contentions.

5. It is true, as contended by the learned Counsel for the respondents that even in the Press notification calling for applications for the post of Section Officers, it was stated "that persons holding at least L.C.E., or equivalent diploma or those who have appeared for the B.E. Examination need only apply." But when the petitioner applied without a full pass in the L.C.E. Course, though the Government could have rejected his application did not choose to reject it. But, on the other hand, they appointed him as a Section Officer. It was pointed out in the counter-affidavit that it appears that the Director of Public Works at the time of forwarding the list of selected candidates in calling for interview from out of the total applications, by mistake shown against the name of one V. Gopalaswamy the qualification as having passed the L.C.E. Madras and that because of this mistake, later on, without noting that the petitioner had actually not passed the L.C.E. Examination and the initial of Gopalaswamy given in the report of the Director of Public Works differed from the initial of the petitioner, appointed the petitioner as if the petitioner was qualified for the post. It might be that in the report of the Director of Public Works, a mistake could have been committed in both giving the initial of the petitioner and also in stating that he had passed the L.C.E. Examination, Madras. But it was never the case of the department that either in the application for the post of or at any stage the petitioner gave any mis-statement about his qualification. In fact the petitioner was not proceeded against for giving any false declaration either in the application or at any stage subsequent thereto on the basis of which he was selected to the post of Section Officer. If the petitioner had disclosed his correct qualifications and did not mis-state either his qualifications or his initials, he could not be blamed because the selecting authority had selected him on a mistaken impression that he was a qualified candidate. I must also point out that there is no evidence also to show that the selecting authority has misunderstood the qualifications of the petitioner at the time when he was recruited. It might be that there might not have been suitable candidates available and therefore the petitioner was selected even though he was not fully qualified. It is also seen from the letter of the Government dated 10th February, 1966, that some of the Section Officers in the Public Works Department had passed their final examination of the degree or diploma course after the date of appointment showing thereby that even those who were not fully qualified were appointed as Section Office is. But in the case of the petitioner, the original order of appointment and the confirming order did not require him to qualify himself as a diploma holder in L.C.E. course. It is therefore not possible for the Government, after he was confirmed in the service, to require him to qualify himself for the diploma in the L.C.E. course.

6. The learned Government Pleader contended that terminating the services of the petitioner on the ground that he had not fully qualified himself for the post will not amount to termination within the meaning of Article 311 of the Constitution of India. This is not a case where the appointment was made subject

to his qualifying himself as a diploma-holder in L.C.E. Course. As already stated, even the confirmation order did not require him to qualify himself in the diploma of L.C.E. The Government, therefore, was not entitled to require any further qualifications to be acquired subsequent to the appointment and confirmation and on the failure of which to terminate the services. Termination, on the failure to comply with such a superimposed condition, will certainly amount to punishment attracting the provisions of Article 311 of the Constitution of India. I am therefore of the opinion that the impugned order of the Government is liable to be set aside and it is accordingly set aside. The writ petition is allowed and the petitioner will be entitled to his costs. Counsel fee Rs. 250.