

**(2010) 11 MAD CK 0030**

**In the Madras High Court**

**Case No :** Writ Petition No. 10840 of 2010 and MP. No. 1 of 2010

C. Govindasamy

APPELLANT

Vs

The Principal (incharge) Government Poly Technic College  
and The Commissioner, Directorate of Technical Education

RESPONDENT

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**Date of Decision :** 02-11-2010

**Acts Referred:**

**Citation :** (2010) 11 MAD CK 0030

**Hon'ble Judges :** K.B.K. Vasuki, J

**Bench :** Single Bench

**Advocate :** G. Elanchezhian, for the Appellant; E. Ranganayagi, G.A.(Edu), for the Respondent

**Final Decision :** Allowed

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## **Judgement**

K.B.K. Vasuki, J.—The writ petition is filed against the order of the 1R dated 15.3.2010 made in memo No. 1907/P/06 to quash the same

and to direct the Respondents to allow the Petitioner to continue in service with all benefits as per earlier order dated 20.10.2009.

2. The brief facts which are relevant herein are:

The Petitioner passed +2 and also M. Com degree and served for more than 20years in Indian Army and was discharged from Indian Army

during 1998 and registered his name in the district employment exchange at Krishnagiri. While so, the 1st Respondent by his letter dated

03.01.2008 invited list of eligible candidates from the employment exchange for the post of skilled assistant/lab assistant and the same was

complied with and the list containing the Petitioner name on priority category was furnished to the 1st Respondent. The same is followed by oral

interview on 04.11.2009 and the Petitioner was selected and appointed as lab

assistant on 20.11.2009 joined duty on 01.12.2009 and was continuously in service till 15.03.2010. After he joined duty the 1st Respondent has sent all his original certificate along with his appointment order to the 2nd Respondent for ratification, but the 2nd Respondent has returned the said letter on 05.03.2010 with instruction to cancel the Petitioner's appointment on the ground that he did not have ITI qualification for the post of Lab assistant and the same is followed by the consequential termination order, which is impugned herein, passed by the 2nd Respondent.

3. The learned Counsel for the Petitioner has seriously questioned the propriety and validity of the action of the Respondents 1 and 2 mainly on the ground that the notification for the vacancy and the communication inviting eligible candidates from the employment exchange was based on old rule issued in G.O. Ms. No. 2100, Education Department, dated 18.09.1981 and the Petitioner possesses the requisite educational qualification i.e., 8th pass with 2 year experience prescribed for the post as per the old rule and ITI qualification referred to in the order termination of his appointment is only prescribed under the old rule and the impugned order passed on the basis of new rule that too without giving any notice and opportunity of personal hearing to the Petitioner is unfair, arbitrary, in violation of the principles of natural justice and perse illegal and without jurisdiction.

4. Per contra, the learned Counsel for the Respondents would try to justify the impugned termination on the ground that though the old rule was in force on the date of communication issued through the District employment exchange new rule came to be in force on the date of selection and the appointing authority came to know that the Petitioner did not possess the prescribed educational qualification for the said post only subsequently, and the same is followed by the impugned order of termination and the same is well based on the new rule and is within the authority of the appointing authority.

5. I have heard the rival submissions made on both sides.

6. The appointment in question is for the post of lab assistant and the old rule prescribing the qualification and the selection process is dated

18.09.1981 in G.O. Ms. 2100, Education Department and the same was in force till G.O. Ms. 220 Higher Education Department came to be

passed on 06.07.2009. The list of dates and events as disclosed from the office records produced herein would reveal that the first list was called

for on 05.02.2008 in letter No. 1907/P/06, and the list of eligible candidates was furnished on 13.03.2008 by the District Employment Officer.

However, the selection process could not be held for more than 6 years as a result the principal has again in letter dated 04.02.2009 called for

fresh list of eligible candidates for few post one among which is skilled assistant/lab assistant with SSLC passed with ITI-NTC-NAC and with

computer operating programme assistant and the list containing the name of the Petitioner was also furnished on 08.09.2009 and personnel

interview was on 18.11.2009 and the Petitioner was selected and appointed as lab assistant by the appointment order dated 20.11.2009.

7. That being so, on the date of commencement of selection process by inviting the list of eligible candidate on 05.02.2008 and 04.02.2009 the old

rule under G.O. Ms. No. 2100 was admittedly in force and the new rule came to be passed only on 08.09.2009 which is much after the selection

process is commenced. As per the old G.O. the copy of which is enclosed at page 2 of the typed set of papers the qualification prescribed for

lab/skilled assistant is pass in 8th std in any recognised school and practical experience for period of not less than 2 years in a workshop or in a

laboratory relating to the post concerned, It is not in serious dispute that the Petitioner is +2 passed and M. Com decree holder and has also

successfully completed diploma course in computer application and has also two years experience as Electrical lab attender in Krishnagiri Industrial

Training center as per the certificate dated 05.01.2009 issued by the institution the copy of which is enclosed at page 12.A of the typed set of

papers. The ITI qualification is prescribed for the post of lab assistant only in the new G.O. in GO. Ms. 220 dated 06.07.2009.

8. As rightly pointed out by the learned Counsel for the Petitioner, the recruitment to a post can be made only according to the terms of the rules

operative in the field on the date of issuance of the notification or as specified in the rules and it cannot be based on the rules which have

subsequently amended. Such contention raised on the side of the Petitioner is fortified in the observation of the judgment of the Supreme Court

reported in (i) Madan Mohan Sharma and Another Vs. State of Rajasthan and Others, and (ii) Rajasthan Public Service Commission Vs. Kaila

Kumar Paliwal and Another, . In both the cases the Supreme Court has observed that the recruitment can be strictly in terms of rules and the essential qualification prescribed on the date of issuance of notification as specified in the rules must be possessed by the person. The Supreme Court has in the latest judgment gone to the extent of saying that if the recruitment is intended to be made on the basis of the amended rules the only course open is to recall the earlier advertisement and to issue a fresh advertisement according to the latest rules. Here in this case on the date of inviting eligible candidate the qualification prescribed is pass in 8th std and practical experience of 2 years and the selection shall be made only based on the same. As a matter of fact the selection is made only after satisfying with the Petitioner's educational qualification on the basis of the old rule.

9. The learned Additional Government Pleader would attempt to point out that the educational qualification mentioned in the Annexure attached to inviting list of eligible candidate is SSLC passed ITI-NTC-NAC the same is contrary to the 1981 G.O. which prescribes pass in 8th std plus practical experience of 2 years as such the same cannot be taken advantage of by the Respondents while defending the impugned order of termination.

10. In as much as the latest GO prescribing ITI qualification came into force much after the commencement of the selection process the selection cannot be based on the latest GO. When the selection cannot be made so the impugned order of selection already made based on the old rule on the ground that the Petitioner did not possess the educational qualification as prescribed in the latest G.O. is illegal and without jurisdiction and cannot be legally and factually allowed to be sustained and the impugned order is hence liable to be quashed and the earlier selection and the appointment of the Petitioner to the post concerned is held to be valid and the Petitioner is entitled to continue in service based on the order of appointment dated 20.11.2010.

11. In the result WP is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.