

(2011) 08 MAD CK 0083

In the Madras High Court

Case No : Writ Petition No. 9539 of 2009

Tamil Nadu Engineering Diploma Holders Association

APPELLANT

Vs

The Secretary to Government, Home (Transport II A)
Department and The Secretary Tamil Nadu Public Service
Commission, Government Estate

RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 19(2)

Citation : (2011) 08 MAD CK 0083

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K. Rajkumar, for the Appellant; V. Subbiah, Spl. G.P. for R1 and K. Surendranath, for R2, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner Association is an Association of Engineering Diploma Holders, represented by its General Secretary. The

Association has come forward to file the present writ petition, seeking to challenge Rule 19 (b) (ii) of the Tamil nadu State and Subordinate

Service Rules as inoperative, unconstitutional, arbitrary and ultravires of the constitution of India and contrary to the Motor vehicles Act 1988 read

with (ii) Central Motor Vehicles Rules and the Tamil nadu Transport Subordinate Service Rules in so far as it relates to the post of Motor Vehicle

Inspector Gr. II is concerned and consequently forbear the Respondents from in any manner considering or recruiting the candidates possess

ing higher qualification other than the one prescribed in the Special rules for Tamil nadu State Transport Subordinate Service for the post of Motor

Vehicle Inspector Gr. II in the ensuing and future selections.

2. The writ petition was admitted on 20.05.2009. Pending the writ petition, the application for inter iminjunction in M.P. No. 1 of 2009 was

dismissed, buth owever, it was made clear that any appointment made was subject to the result of the writ petition.

3. The Petitioner also filed M.P. No. 1 of 2010 seeking for a direction to the Respondents to maintain Status Quo as on the date of the filing of the

MP, namely on 18.08.2010 in so far as the recruitment to the post of Motor Vehicle Inspector Grade II (for short MVI Grade II) is concerned.

That application was dismissed on the ground that the Petitioner was an Association and the relief claimed in the application was beyond the scope of the main writ petition.

4. On notice from this Court, on behalf of the first Respondent, a counter affidavit dated 01.10.2009 was filed. The second Respondent had also filed a counter affidavit dated Nil (2009).

5. It is claimed by the Petitioner that their Association was a registered Association under the Tamil Nadu Societies Registration Act and its

Registration No. was 280/2008. It was also claimed by them that the post of MVI Grade II is governed by Tamil Nadu Transport Sub-ordinate

Service Rules. The mode of appointment is by way of direct recruitment. The educational qualifications set out in the Rule is as follows:-

Educational Qualifications:

(i) Minimum General Educational Qualification prescribed in the schedule to General Rules.

(ii) Diploma in Automobile or Mechanical Engineering (3 years course).

(iii) Experience of having worked for a period of not less than one year both on vehicles fitted with petrol Engine and vehicle fitted with Diesel

Engine on a full time basis in an Automobile workshop. (iv) Must hold a Driving licence to drive motor cycle Heavy goods vehicle, Heavy passenger

motor vehicles and must have experience in driving Heavy Transport vehicle for a period of not less than six months provided preference shall be

given to those who possess post graduate Diploma in Automobile Engineering.

6. Therefore, it was stated by the Petitioner Association that the Rules do not prescribe any qualification such as Graduation in Engineering for the

post of MVI Grade II. Even the preferential qualification is only a Post Graduate Diploma in Automobile Engineering. Notwithstanding the same,

the second Respondent TNPSC had issued a notification vide its Advertisement No. 187 dated 24.02.2009 inviting applications for the post of

MVI Grade II. As per the said notification, the candidates are required to have the Educational qualification as per the Rules set out above or any equivalent qualification.

7. The Petitioner contended that under the Motor Vehicles Act, 1988, Rules have been framed by the Central Government known as Central

Motor Vehicle Rules. The Rules also prescribed the qualifications for the Motor Vehicle Inspector as what was set out above. Since the Motor

Vehicles Inspector appointed by the State Government has to discharge functions under the Motor Vehicles Act, even the State Government while

framing the Rules under Article 309 of the Constitution cannot deviate from the Central Rules and any Rule authorising a higher qualification for the

said post would be against the spirit of the Central Rules. But the Respondents were acting contrary to the Special Rules by invoking Rule 19 of the

General Rules framed for the Tamil Nadu State and Subordinate Service Rules.

8. It is necessary to refer to Rule 19 of the Tamil Nadu State and Subordinate Service Rules, which reads as follows:-

19. Special Qualifications:

No person shall be eligible for appointment to any service, class, category or grade or any post borne on the cadre thereof unless he a) possesses

such special qualifications and has passed such special tests as maybe prescribed in that behalf in the Special Rules; or

b) possesses such other qualifications as have been declared to be higher than or equivalent to the said special qualifications or special tests-

(i) by the State Government in consultation with the Committee constituted under the Chairmanship of the Chairman, Tamil Nadu Public Service

Commission for the purpose, in cases where the appointment has to be made in consultation with the Commission; and

(ii) by the State Government or by the appointing authority with the approval of the State Government in other cases. Substituted in G.O.Ms. No.

226, P & AR dated 18.08.1994 w.e.f. 18.08.1994 Explanation -(i) In cases where the Special Rules prescribed a degree or diploma as a

qualification, then a degree or diploma granted by any of the Universities or Institutions recognised by the University Grants Commission for the purpose of its grant mentioned in Schedule II to this part shall be recognised as the qualification.

(ii) In cases where the Special Rules prescribe a diploma in a particular subject as qualification then a degree in that subject should be deemed to be a higher qualification.

(iii) In cases where the Special Rules prescribe a period of practical or other experience in addition to educational/technical qualifications, for an appointment such a period of practical or other experience as the case may be, should have been acquired after obtaining the educational/technical qualifications prescribed for such appointment unless otherwise specified in the Special Rules.}

9. It is stated that the State Government by invoking General Rule 19 in respect of Educational Qualification prescribed for the post of MVI Grade

II and allowing Graduate Engineers to compete for the said post was clearly illegal. It is also stated that the members of the Petitioner Association

have applied for the post of MVI Grade II pursuant to the notification issued by the second Respondent and the written examination was to be

held on 24.05.2009. The Petitioner Association reliably understood that number of B.E. Graduates have also applied for the said post. The names

of some of the candidates entertained by the second Respondent were also set out in Paragraph 12 of the affidavit filed in support of the writ

petition. It was stated that when Special Rules provides for a qualification in respect of the recruitment, any violation of the recruitment Rules will

be invalid. The second Respondent cannot entertain applications from B.E. Graduates for the post of MVI Grade II. It is fundamental principle of

law that Special Rules will prevail over the General Rules and even if the State has power to frame Rules under Article 309 of the Constitution, it

should be circumscribed by the provisions of the Motor Vehicles Act, 1988 and unless the Central Government had framed Rules under the Act

and prescribes qualification, the State Government cannot have different qualification and such an action will be violative of Articles 14 and 16 of

the Constitution. It is also stated that the B.E. Graduates have got other avenues of appointments whereas for the Diploma Holders, the post of

MVI Grade II is the only executive post to which they can aspire. It is under these circumstances, the writ petition came to be filed.

10. The learned Counsel for the Petitioner relied upon the judgment of this Court in *V. Mohankumar v. Chairman, Tamil Nadu Public Service*

Commission, Chennai and Ors. reported in (2008) 6 MLJ 1229 for contending that when the Respondent advertised for filling up the posts of

MVI Grade II on contract basis, this Court held that such a recruitment will be encouraging back doentry in public employment and when a

regular selection by TNPSC was in progress, it was impermissible for the Government to recruit people through contract. Hence, TNPSC was

directed to make regular appointment. Therefore, he submitted that what was not possible for the Graduate Engineers to come through contract

basis, they are trying to achieve it by indirect method.

11. He also referred to a Full Bench judgment of the Allahabad High Court in *Umesh Chand Vinod Kumar and Others Vs. Krishi Utpadan Mandi*

Samiti and Another, for contending that instead of all the aggrieved persons filing a writ petition, a single writ petition can be filed.

12. He further referred to a judgment of a Division Bench of the Orissa High Court in *Krishna Garden Welfare Association Vs. Central Electricity*

Supply Co. of Orissa Ltd. (CESCO) and Others, for contending that a registered Society can maintain a writ petition and they have locus standi.

13. Since this Court is inclined to decide the issue on the merits of the case, it is unnecessary to decide the locus standi of the Petitioner. But with

reference to a judgment of this Court in *V. Mohan Kumar* case (cited supra), it must be noted that the case does not help the case of the

Petitioner. In that case, the Diploma Holders were prevented from applying for the said post by a recruitment through contract process.

14. In response to the allegations made by petitioner Association, the first Respondent State Government, in the counter affidavit, stated that when

a Minimum General Educational Qualification (MGEQ) is prescribed, it only means no person can be allowed to have qualification below what

was prescribed. But it does not bar a qualification above the MGEQ. It is admitted that the Central Government issued notification under Statutory

Order 443(E) dated 12.06.1989 regarding the minimum qualification for the post of MVI Grade II and that has been incorporated in Rule 5 of the

Tamil Nadu Transport Sub-ordinate Service Rules. But there is no maximum qualification prescribed under the said Rules. But the examination that is to be conducted by the TNPSC, the standard prescribed was only Diploma Standard. Therefore, the Diploma Holders are not in any way prejudiced if persons with higher qualifications also compete by writing the said examination. In the absence of any special restriction, there is no bar for the Engineering Graduate holders from writing the examination. Since the selection has to be done only on the basis of merits, the question of any prejudice to the Diploma Holders does not arise.

15. In the counter affidavit filed by the second respondent, it was stated that pursuant to the Commission's Notification dated 24.02.2009, as many as 1675 candidates were admitted to write the main examination. It included not only the Diploma Holders but also Decree and Post Graduate Degree Holders. But the vast majority viz., 1052 candidates were Diploma Holders, 504 Degree Holders, 115 P.G Holders were admitted. The candidates who possess B.E. Degree qualification in the subjects like Automobile and Mechanical Engineering were considered to be eligible for appointment by Direct Recruitment. General Rule No. 19 prescribes persons with higher qualification also to come under the qualifications prescribed under the Rules. Neither under the Central Act and the Rules framed there under nor under the Statutory Rules applicable to the post, there is any bar for Graduate Holders from applying for the said post.

16. It is also brought to the notice of this Court that a similar writ petition filed by the petitioner with regard to the same recruitment in W.P. No.

13216 of 2009, this Court dismissed the writ petition by an order dated 02.09.2009 holding that an Association cannot maintain such a writ petition.

17. Even otherwise, the contentions raised by the petitioner cannot be countenanced by this Court. It is open to the authority framing Rules under

Article 309 of the Constitution to prescribe necessary educational qualifications for the post which were created by the State Government. The

only rider is that if it is in conflict with any other law including Central Law, then that law which is a Special Law will prevail over the said Rules.

Merely because the chances of the members of the Petitioner Association will be reduced by Graduate Engineers participating in such recruitment

process cannot be a ground to challenge the Service Rules.

18. First of all, the members of the Petitioner Association are rank outsiders and they are yet to enter into Government Service and therefore, by

no stretch of imagination, they could challenge the Service Rules. The second contention that the post of MVI Grade II is governed by Special

Rules and therefore, the General Rules will have no application also cannot be accepted as there is no conflict between the Special Rules and the

General Rules.

19. As rightly contended by the Respondents, what is prescribed under the Rules is only a MGEQ and therefore, unless and until, the Rules are

specific with reference to higher qualification, the question of the petitioner contending that the Graduate Engineers is debarred from appearing for

the recruitment drive will not arise. The Respondents have also stated that the examination is only conducted at the Diploma Standard and

therefore, there cannot be any further apprehension in the minds of the Petitioner Association.

20. Hence, the challenge made in this writ petition is thoroughly misconceived. Accordingly, the writ petition will stand dismissed.