

2026 LiveLaw (SC) 853

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

MANOJ MISRA; J., UJJAL BHUYAN; J.

SLP (CIVIL) NOS. 23378-79 OF 2025; August 22, 2026.

R.J. GAJENDRA KUMAR *versus* GOVERNMENT OF TAMIL NADU AND ANR.

Service Law – Promotion – Educational Qualification – Degree Obtained Through Open University / Distance Education Mode – Prospective Operation of Executive Orders Modifying Equivalence – Saving of Existing Rights - Tamil Nadu Government Servants (Conditions of Service) Act, 2016 – Sections 25 (Explanation 1(b)) & 54 – Pre-foundation and Foundation Courses offered by Open Universities – Equivalence to SSLC and Higher Secondary (+2) Courses – Validity of Degrees Obtained Under Prior Prevailing Norms – Noted that Degrees obtained through open university/distance education mode following the two-year foundation course under G.O. Ms No. 528 dated 18.05.1985 (which held the field for over 24 years) cannot be invalidated retrospectively for the purpose of promotion - The cutoff date for declaring pre-foundation and foundation courses as not equivalent to SSLC and +2 is 20.11.2017, being the date of notification of G.O. Ms No. 144 - Persons who acquired such qualifications prior to 20.11.2017 are fully protected, and the invalidity applies only prospectively. [Paras 46–50]

Saving Clause under Section 54 of 2016 Act - Challenging Feeder Cadre Eligibility at Subsequent Promotion Stage Not Permissible - Section 25 (Explanation 1(b)) of the 2016 Act which prescribes a degree obtained after SSLC and Higher Secondary (10 + 2 + 3 pattern) came into effect on 14.09.2016 and cannot adversely affect degrees obtained prior thereto in view of the savings contained in Section 54 - Explanation 1(b) nowhere mandates that the degree must be acquired through a regular physical course rather than distance education - Where an employee has been promoted to and regularized in a feeder cadre post (Tourist Officer) and has served uninterruptedly for nearly 15 years without any challenge to the said appointment, the employer cannot rake up the validity of his initial entry/feeder cadre eligibility at the time of considering his case for promotion to the next higher post (Assistant Director of Tourism) - Appeals allowed - The judgment and order of the Division Bench dated 06.06.2023 and the Review Bench order dated 18.11.2024 are set aside - The judgment of the Single Judge dated 16.08.2021 is restored, holding the appellant eligible for promotion to the post of Assistant Director of Tourism. [Relied on *P. Thavam v. State of Tamil Nadu*, 2022 SCC OnLine Mad 6177; *Chandrakala Trivedi v. State of Rajasthan*, (2012) 3 SCC 129; *Annamalai University v. Secretary to Government, Information and Tourism Department*, (2009) 4 SCC 590; Paras 23-55].

[Arising out of impugned final judgment and order dated 18-11-2024 in RA No. 308/2024 06-06-2023 in WA No. 1789/2022 passed by the High Court of Judicature at Madras]

For Petitioner(s): Mr. Nachiketa Joshi, Sr. Adv. Mr. Shyam Gopal, AOR Ms. Nikita Bhardwaj, Adv. Mr. L.P. Maurya, Adv. Mr. P. Krishnadevan, Adv.

For Respondent(s): Ms. Misha Rohatgi, AOR

J U D G M E N T

UJJAL BHUYAN, J.

Leave granted.

2. Subject matter of the two appeals being interrelated, those were heard together and are being disposed of by this common judgment and order.
3. The related special leave petitions have been filed against the judgment and order dated 06.06.2023 passed by a Division Bench of the High Court of Judicature at Madras (briefly 'the High Court' hereinafter) in W.A. No. 1789 of 2022; and against the order dated 18.11.2024 passed by the High Court in Review Application No. 308 of 2024. Both the writ appeal and the review application were filed by the appellant Shri R.J. Gajendra Kumar.
4. The matter relates to promotion of the appellant to the post of Assistant Director of Tourism in the Department of Tourism, Government of Tamil Nadu.
5. By order dated 22.07.2020, the Additional Chief Secretary to the Government of Tamil Nadu, Tourism, Culture and Religious Endowments Department ('the first respondent' hereinafter) held that appellant was not qualified to hold the post of Tourist Officer and, therefore, his request to promote him to the post of Assistant Director of Tourism was not feasible as per the rules. This came to be challenged by the appellant before the High Court by way of a writ petition being W.P. No. 10251 of 2020. By judgment and order dated 16.08.2021, learned Single Judge allowed the writ petition by setting aside the order of the first respondent dated 22.07.2020 and directing the authorities to place the name of the appellant in the panel as per seniority and, thereafter, to promote him to the post of Assistant Director of Tourism if his juniors have been promoted. Respondents assailed this judgment and order of the learned Single Judge before the Division Bench in Writ Appeal No. 1789 of 2022. By the judgment and order dated 06.06.2023, the writ appeal has been allowed and the judgment and order of the learned Single Judge dated 16.08.2021 has been set aside. Appellant preferred a review application before the Division Bench for review of the judgment and order dated 06.06.2023 which was registered as Review Application No. 308 of 2024. By order dated 18.11.2024, the review application has been dismissed.

Hence, the two appeals.

Facts

6. Appellant completed his SSLC (10th standard) in the year 1982 from the Sourashtra Higher Secondary School, Madurai. He thereafter completed his 11th standard from the said school during the academic year 1982-83. However, he could not pursue further studies in the said higher secondary school due to the untimely death of his father. His father served as Receptionist Grade I (now designated as Assistant Tourist Officer Grade I) in the Tourism Department, Government of Tamil Nadu. Following the death of his father, appellant was appointed as Junior Assistant in the Department of Tourism on 25.05.1983 on compassionate ground. Thereafter, appellant was appointed as Receptionist Grade II (now designated as Assistant Tourist Officer Grade II) and joined duty on 25.07.1990. Subsequently, appellant was temporarily promoted as Tourist Officer in the year 2011. In terms of GO Ms No. 110 of the Tourism and Culture Department dated 01.08.2011, appellant was posted as Tourist Officer in New Delhi in which post he joined on 05.08.2011.
7. It may be mentioned that at the time of his entry into service, appellant had the qualification of SSLC +1 which would be evidenced from the transfer certificate issued by the school. Appellant, thereafter, sought for and was granted permission by the authority (Director of Tourism) to join the second year of the foundation course from the Madurai Kamraj Open University. He completed his second year foundation course from the said University in April, 1984, certificate of which was issued on 27.07.1984. He went on to

complete his undergraduate course obtaining a B.Com. degree from the said University in October, 1987. He also obtained postgraduate diploma in Personal Management in June, 1983, postgraduate diploma in Tourism in May, 1993 and obtained M.Com. degree in April, 2003. It may be mentioned that all the above degrees and diplomas were obtained by the appellant through the distance education mode from the said Madurai Kamraj Open University (except the postgraduate diploma in Personal Management which he obtained through the distance education mode from the Annamalai University).

8. Appellant's service as Tourist Officer came to be regularized with effect from 05.08.2011 *vide* GO Ms No. 224 dated 16.10.2017.

9. It is stated that after serving for nearly six years in the post of Tourist Officer, appellant made a request to the authority to consider his case for promotion to the next higher post of Assistant Director of Tourism. In this regard, appellant had submitted a number of representations before the authority including one dated 13.05.2019. As there was no consideration of his representations, he approached the High Court by filing a writ petition being W.P. No. 18392 of 2019. A learned Single Judge of the High Court *vide* the order dated 24.10.2019 directed the first respondent to consider the representation dated 13.05.2019 and to pass appropriate order(s) thereon on merit within a period of twelve weeks.

10. In terms of the directions of the High Court, the first respondent considered the case of the appellant. The first respondent noted that appellant had passed the 10th standard (SSLC) in March, 1982 and joined the higher secondary (+1) first year during the academic year 1982-83 on 12.07.1982. In the meanwhile, appellant was appointed as Junior Assistant on compassionate ground in the Tourism Department in which post he joined on 25.05.1983. Later on, appellant got admitted in the second year foundation course directly in the Madurai Kamraj Open University during 1984 and then obtained a degree in commerce through the distance education mode during 1987.

10.1. The first respondent referred to GO Ms No. 107 dated 18.08.2009 whereby and whereunder degree qualification in the pattern of 10+2+3 was prescribed for appointment and promotion to public services in the State of Tamil Nadu. In the subsequent letter dated 03.12.2010 of the Personnel and Administrative Reforms Department, it has been clarified that a degree awarded by the open universities after passing the pre-foundation course and two years foundation course through open university would not be recognized as a degree as per norms of the University Grants Commission for the purpose of employment and promotion in public services since such pre-foundation course and two years foundation course are not contemplated in the regulations of the University Grants Commission.

10.2. Thereafter, the first respondent referred to GO Ms No. 144 dated 20.11.2017 on the basis of which orders were issued to the effect that the foundation courses offered by various universities are not equivalent to higher secondary course +2. As per Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, for appointment to public service, a degree should be in the pattern of 10+2+3. Adverting to Rule 5 of the Special Rules for the post of Tourist Officer, the first respondent was of the view that the educational qualification of degree is prescribed for appointment to the post of Tourist Officer.

10.3. The first respondent found that the appellant had not passed the degree course in the regular pattern of 10+2+3 i.e. after passing SSLC (10th) and higher secondary course (+2). Hence, *vide* the order dated 22.07.2020, he declared that the appellant is not

qualified to hold the post of Tourist Officer. Therefore, the request of the appellant to promote him to the post of Assistant Director of Tourism has been found to be not feasible as per rules in force and, thus, rejected.

11. The aforesaid order came to be challenged by the appellant before the Single Bench of the High Court by filing W.P. No. 10251 of 2021. Learned Single Judge framed the question for adjudication as to whether appellant was having a valid qualification for being appointed as a Tourist Officer and whether the appellant was eligible to be promoted as an Assistant Director.

11.1. Learned Single Judge noted that the appellant had completed the foundation course and thereafter graduated from the Madurai Kamraj Open University through the distance education mode prior to issuance of GO Ms No. 107 dated 18.08.2009 and GO Ms No.242 dated 18.12.2012. When the appellant was appointed as Tourist Officer on 01.08.2011, both the aforesaid GO Ms were not in force; those were given effect subsequently. Learned Single Judge also noted that at the relevant point of time, GO Ms No. 180 dated 11.09.2000 was in force. As per the said GO Ms, Government of Tamil Nadu had decided to accept and to treat the diploma, graduation and postgraduation courses offered through the system of distance education by the universities in Tamil Nadu and recognized by the University Grants Commission at par with the diploma, graduation and postgraduation courses offered through regular courses by those universities and recognized for the purpose of employment in public services.

11.2. Thus, as per the said GO Ms No. 180 dated 11.09.2000, diploma, graduation and postgraduation through open university system were treated at par with the regular stream for the purpose of employment in public services. This GO Ms was explained and reiterated by the subsequent GO Ms No. 217 dated 08.09.2007. Therefore, when the appellant was appointed as Tourist Officer, GO Ms No. 217 dated 08.09.2007 was in force. After the appellant had joined the post of Tourist Officer in 2011, GO Ms No. 242 dated 18.12.2012 came to be issued which clarified that those who have studied two years foundation course after completing the 10th standard (SSLC) and graduation through open university would be treated at par with those who have studied 10th standard, 12th standard and under graduation (10+2+3) for the purpose of appointment to and promotion in public services. Learned Single Judge came to the conclusion that the qualification obtained by the appellant through open university cannot be questioned by the first respondent either for the purpose of his appointment to the post of Tourist Officer in 2011 or for the purpose of being considered for promotion to the post of Assistant Director.

11.3. Consequently, *vide* the judgment and order dated 16.08.2021, the order dated 22.07.2020 passed by the first respondent was set aside with a direction to the respondents to place the name of the appellant in the panel list in order of seniority and to promote him to the post of Assistant Director of Tourism, if his juniors have been promoted in the meanwhile.

12. The judgment of the learned Single Judge dated 16.08.2021 came to be challenged by the respondents before the Division Bench of the High Court in W.A. No. 1789 of 2022. The Division Bench referred to GO Ms No. 107 dated 18.08.2009 which prescribed the degree qualification in the pattern of 10+2+3 for appointment and promotion in public services. The Division Bench also referred to the letter dated 03.12.2010 of the Personnel and Administrative Reforms Department clarifying that those who have obtained a degree under the open university system after passing the prefoundation course and two-year foundation course without passing the 10th standard and +2 examination do not satisfy the conditions laid down in the said GO Ms No. 107 dated 18.08.2009. Therefore, the Division

Bench observed that before considering the entitlement of the appellant for promotion to the post of Assistant Director of Tourism, it was inclined to go into the question as to whether the appellant was eligible to hold the feeder cadre post of Tourist Officer.

12.1. The Division Bench took the view that in terms of GO Ms No. 107 dated 18.08.2009 and other related government office memoranda, the degree qualification in the pattern of 10+2+3 is very much required for appointment and promotion in the public services in the State of Tamil Nadu. Since the appellant had completed the second year higher secondary course through foundation course offered by the open university, the same is not equivalent to +2 course. Thus, he had not obtained the degree qualification in the pattern of 10+2+3. Therefore, the Division Bench found fault with the view taken by the learned Single Judge.

12.2. The Division Bench went further ahead observing that appellant was not eligible to be appointed as Tourist Officer in the year 2011 and was erroneously given promotion to the said post. However, the Division Bench did not proceed further in this regard and did not disturb the promotion granted to the appellant to the post of Tourist Officer but held that he is not qualified to be further promoted to the post of Assistant Director of Tourism without being qualified for holding the feeder post of Tourist Officer.

12.3. *Vide* the judgment and order dated 06.06.2023, the Division Bench allowed the writ appeal and set aside the judgment and order of the learned Single Judge dated 16.08.2021.

13. Appellant thereafter preferred a review application before the Division Bench of the High Court which was registered as Review Application No. 308 of 2024. By the order dated 18.11.2024, the Review Bench held that appellant's qualification upto the higher secondary stage is not a problem as the foundation course completed by the appellant may be taken as qualification of +2. However, the Review Bench held that since the appellant did his graduation through the distance education mode, he cannot be considered as eligible for promotion to the post of Assistant Director of Tourism.

13.1. The Review Bench also rejected the contention of the appellant that since the authorities had permitted him to undergo and obtain the degree course through the distance mode, therefore, the said authority would be estopped from not giving the benefit of the said degree obtained by the appellant. According to the Review Bench, mere permission granted by the Government to undergo a course during employment would not mean that the Government is estopped from questioning the qualification of the employee as per rules. Consequently, *vide* the order dated 18.11.2024, the review application has been dismissed.

14. Learned senior counsel for the appellant submits that the Review Bench ought not to have entertained a completely new ground of the appellant not possessing the degree qualification, which was not agitated before the Division Bench. As a matter of fact, when the Review Bench holds that the appellant's qualification upto the higher secondary stage is not a problem as the foundation course completed by the appellant may be taken as equivalent to +2, the Review Bench has practically held that the view taken by the Division Bench in writ appeal is erroneous. This is because the Division Bench had held that the degree of the appellant cannot be taken into consideration because appellant did not complete the higher secondary in its entirety through the regular course. But when the Review Bench holds that the appellant's qualification upto the higher secondary stage is not a problem, then it amounts to endorsing the stand of the appellant.

14.1. He further submits that the Review Bench fell in gross error while taking the view that the degree obtained by the appellant through the distance education mode is not acceptable as it did not fulfill the qualification prescribed for promotion to the post of Assistant Director of Tourism. Nowhere it is provided that the degree should be obtained through the regular physical course and not through the distance education mode.

14.2. Assailing the impugned order of the Division Bench, learned senior counsel submits that the issue before the court was not the eligibility of the appellant to hold the post of Tourist Officer; rather the issue was about eligibility of the appellant to be considered for promotion to the next higher post of Assistant Director of Tourism. Instead of adjudicating on this issue, the Division Bench completely misdirected itself by confining the adjudication to the eligibility of the appellant to hold the feeder post of Tourist Officer. Appellant was promoted as Tourist Officer on 01.08.2011 and subsequently his services as Tourist Officer were regularized with effect from 05.08.2011 (on which date he had joined the post of Tourist Officer at New Delhi) *vide* GO Ms No. 224 dated 16.10.2017. Appellant has served as Tourist Officer for about 15 years now.

14.3. It is nobody's case that appellant is not eligible to hold the post of Tourist Officer. Unfortunately, the first respondent raked up this issue only with a view to deny the benefit of promotion to the appellant. The Division Bench fell in gross error in confining its adjudication to the eligibility of the appellant to hold the post of Tourist Officer.

14.4. Learned senior counsel submits that appellant has been holding the post of Tourist Officer for about 15 years now without any challenge. Therefore, it was improper on the part of the Division Bench to make a declaration that appellant was not eligible to be promoted as Tourist Officer and observing that appellant is not fit to be further promoted to the post of Assistant Director of Tourism without being qualified for the feeder category post of Tourist Officer.

14.5. According to learned senior counsel, appellant is entitled to be considered for promotion to the post of Assistant Director of Tourism. Division Bench fell in error in giving retrospective effect to GO Ms No. 144 dated 20.11.2017. He submits that a Coordinate Bench of the High Court in the case of *P. Thavam Vs. State of Tamil Nadu*¹ has clearly held that the cut off date for applicability of GO Ms No. 144 is the date of its notification i.e. 20.11.2017. A special leave petition filed before this Court against the decision in *P. Thavam* has been rejected. Therefore, the Division Bench ought to have followed the decision of the Coordinate Bench in *P. Thavam*. Failure to do so has rendered the impugned orders of the High Court wholly untenable in law.

15. *Per contra*, learned counsel for the respondents submits that the contention of the appellant that the eligibility prescription of 10+2+3 pattern of education came to be introduced in the year 2017 is fundamentally erroneous. Following the decision of this Court in *Annamalai University Vs. Secretary to the Government, Information and Tourism Department*², GO Ms No. 107 dated 18.08.2009 came to be issued. This GO Ms was already in existence at the time of appointment of the appellant as Tourist Officer. GO Ms No. 144 dated 20.11.2017 did not introduce any new norm but merely restated the requirements as stipulated in GO Ms No. 107 dated 18.08.2009; thus, making it clarificatory in nature and not prospective in its application. He further submits that letter dated 03.12.2010 clarified GO Ms No. 107 by stating that foundation courses from open universities are not equivalent to 10th or 12th standard.

¹ 2022 SCC Online Madras 6177

² (2009) 4 SCC 590

15.1. Learned counsel for the respondents further submits that reliance placed by the appellant on GO Ms No. 224 dated 16.10.2017 which regularized the temporary promotion of the appellant to the post of Tourist Officer is misconceived as regularization is merely an administrative act to confirm continuity of service and does not amount to relaxation of statutory eligibility.

15.2. He finally submits that the impugned judgment and order of the Division Bench as well as the impugned order of the Review Bench have been passed by taking into consideration all relevant factors. No case for interference is made out. Therefore, the appeal should be dismissed.

16. Submissions made by learned counsel for the parties have received the due consideration of the Court.

17. The following facts are not disputed. Appellant had completed his SSLC 10th standard in the year 1982 from the Sourashtra Higher Secondary School, Madurai. Thereafter, he completed his 11th standard in the said school during the academic year 1982-83. However, he could not continue his studies further due to the untimely demise of his father. His father served as Receptionist Grade I (now Assistant Tourist Officer Grade I) in the Tourism Department, Government of Tamil Nadu. On the sudden death of his father, appellant was appointed on compassionate ground as Senior Assistant in the Tourism Department on 25.05.1983.

18. While serving as Senior Assistant, appellant sought for and was granted permission by the authority i.e. the Director of Tourism to join the second year of the foundation course from the Madurai Kamaraj Open University which he successfully completed in April, 1984. Thereafter, he obtained his B.Com degree from the said university in October, 1987. Appellant also obtained the postgraduate diploma in Tourism from the Madurai Kamaraj Open University in May, 1993 and finally obtained the M.Com degree from the said university in April, 2003.

19. From Senior Assistant, appellant came to be appointed as Receptionist Grade II (now Assistant Tourist Officer Grade II) on 25.07.1990. He was temporarily promoted as Tourist Officer in the year 2011 in terms of GO Ms No. 110 dated 01.08.2011 and came to be posted as Tourist Officer in New Delhi in which post he joined on 05.08.2011. His service as Tourist Officer came to be regularized w.e.f. 05.08.2011 *vide* GO Ms No. 224 dated 16.10.2017.

20. After serving for nearly six years in the post of Tourist Officer, appellant sought for his promotion to the next higher post of Assistant Director of Tourism which came to be rejected by the first respondent *vide* the order dated 22.07.2020.

21. Appellant approached the High Court before the Single Bench complaining against the rejection of his request for promotion to the post of Assistant Director of Tourism. Learned Single Judge upheld the contention of the appellant and set aside the order of the first respondent. On appeal by the first respondent, the Division Bench reversed the decision of the learned Single Judge and upheld the order of the first respondent. Review filed by the appellant also came to be dismissed.

22. Till this stage, there is not dispute.

23. Question before the High Court, both before the Single Bench and before the Division Bench, was the eligibility of the appellant to be considered for promotion to the next higher post of Assistant Director of Tourism. Unfortunately, the High Court diverted its attention to the aspect of appellant's eligibility to hold the post of Tourist Officer, rather

than considering his eligibility for promotion to the next higher post of Assistant Director of Tourism. Nobody had challenged appellant's promotion to the post of Tourist Officer in which post he has rendered service for more than 15 years now. Though the learned Single Judge held that appellant had the eligibility to hold the post of Tourist Officer and, therefore, he is eligible to be considered for promotion to the next higher post of Assistant Director of Tourism, the Division Bench disagreed therefrom and held that in the first place, appellant was not eligible to even hold the post of Tourist Officer (though it did not disturb the service of the appellant as Tourist Officer); therefore, he is not eligible for promotion to the next higher post of Assistant Director.

24. Let us now deal with the legal framework.

25. Information and Tourism Department, Government of Tamil Nadu issued GO Ms No. 290 dated 18.06.1986 notifying the rules framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India making it clear that the General Rules applicable to the holders of permanent posts in the Tamil Nadu General Service shall apply to the holders of the temporary post of Assistant Director (Tourism), sanctioned from time to time, in the Directorate of Tourism. As per Rule 3, appointment to the post of Assistant Director of Tourism shall be made in the following manner:

- (i) by promotion from amongst the holders of the post of the Tourist Officer (on and from the 10th September, 1976 from amongst the holders of the post of Publication Officer); or
- (ii) by direct recruitment; or
- (iii) by transfer from any other class; or
- (iv) by recruitment by transfer from any other service.

25.1. Rule 4 provides that promotion to the post of Assistant Director of Tourism shall be on the basis of merit and ability, seniority being considered only where merit and ability are approximately equal. Rule 5(b) lays down the other qualifications for appointment to the post of Assistant Director of Tourism. In case of promotion, the qualification prescribed is 'a pass in the accounts test for executive officers'. For direct recruitment or transfer, the qualification prescribed is (i) a degree; (ii) practical experience in travel, hotel, journalism or public relations in a promotional or managerial capacity for a period not less than 5 years. As per the proviso, other things being equal, preference would be given to persons who possess a degree or diploma in Tourism from a recognised university. Ofcourse in this case, we are only concerned with the promotion method of appointment in which case the qualification prescribed was 'pass in the accounts test for executive officers'.

26. As per GO Ms No. 45 dated 27.02.1997, the following eligibility criteria for promotion to the post of Assistant Director of Tourism was prescribed:

- i. a pass in the accounts test for executive officers;
- ii. must have served one year as Tourist Officer in the Tourist Offices under the control of Directorate of Tourism, located outside the State of Tamil Nadu.

27. On 06.08.2010, GO Ms No. 174 was issued by the Tourism and Culture Department as per which the Special Rules for the Tamil Nadu General Service were amended in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. As per this amendment, for the post of Tourist Officer, the following eligibility was prescribed:

- i. a degree;

ii. a pass in the accounts test for executive officers and the Tamil Nadu Government Office Manual Test.

28. Thus, as of 06.08.2010, to be eligible for holding the post of Tourist Officer, the following were the eligibility criteria:

i. a degree;

ii. a pass in the accounts test for executive officers and the Tamil Nadu Government Office Manual Test.

29. Instead of confining the adjudication as to the eligibility of the appellant for promotion vis-à-vis the qualification prescribed, the High Court proceeded to examine as to whether the appellant had the eligibility to be promoted to the post of Tourist Officer. While the Division Bench found that the degree obtained by the appellant could not be accepted as the appellant had not obtained the degree after completing the higher secondary course in the pattern of 10+2, the Review Bench held that appellant's qualification upto the higher secondary stage is not a problem as the foundation course completed by the appellant may be taken as equivalent to +2. However, since the appellant obtained his graduation through the distance education mode (meaning thereby he should have obtained the degree through the regular physical course), he cannot be considered as eligible for the promotion post. Thus, the Review Bench has actually taken a contrary view to that of the Division Bench by holding that the appellant's qualification upto 10+2 is not a problem.

30. The Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (briefly 'The 2016 Act' hereinafter) has been enacted to regulate the service conditions of the Tamil Nadu Government Servants. It has been notified on 14.09.2016. As per Section 1(2), barring sub-section (1) of Section 40 which shall be deemed to have come into force on the 01st January, 1955, all the remaining provisions of the 2016 Act shall come into force at once. It means that barring Section 40(1), all the other provisions of the 2016 Act came into effect on and from 14.09.2016.

30.1. Section 25 of the 2016 Act lays down special qualifications. As per Explanation 1(b), in cases where the Special Rules prescribe a degree as a qualification for appointment, then the candidate must possess a degree obtained after completion of SSLC and higher secondary course (10+2+3 or more) from any university or institution recognized by the University Grants Commission which shall be accepted as the qualification.

30.2. Section 54 of the 2016 Act is the saving clause. Sub-section (1) clearly says that unless a contrary intention is expressly indicated therein, nothing contained in the 2016 Act shall adversely affect any person who was a member of any service on the date of coming into force of the 2016 Act. Subsection (3) further clarifies that where the provisions of the 2016 Act or the Special Rules would adversely affect in respect of any matter, a person who was a member of any service before the date of coming into force thereof, he shall, in respect of such matter, be governed by the rules and orders, if any, which were applicable to him immediately prior to such date.

30.3. Explanation 1(b) to Section 25 of the 2016 Act came into effect on and from 14.09.2016. It does not effect the degrees obtained prior thereto in view of the saving clause in Section 54 of the said 2016 Act.

30.4. That apart, no where does Explanation 1(b) to Section 25 say that the degree obtained should be through the regular physical course and not through the distance education mode. Therefore, the Review Bench fell in error in taking the view that because

the appellant had obtained the degree through the distance education mode, his degree would not be considered as valid for the purpose of promotion to the post of Assistant Director though appellant's education up to the graduation level is not a problem. This is the fundamental flaw committed by the Review Bench.

31. Though based on the aforesaid analysis, we are of the view that the appellant fulfils the criteria for promotion to the post of Assistant Director of Tourism in terms of the aforesaid norms, in order to reassure ourselves we would like to examine the correctness or otherwise of the view taken by the High Court.

32. For this, it would be appropriate to advert to and analyse the relevant Government Office Memoranda.

33. GO Ms No. 528 dated 18.05.1985 was issued by the Personnel and Administrative Reforms Department, Government of Tamil Nadu. A request was made by the Registrar of Madurai Kamaraj Open University to the Government to recognize the first year foundation course of the open university system as equivalent to the old 11 years SSLC/matriculation examination and the second year foundation course as equivalent to the pre-university course or 12-year higher secondary examination for the purpose of employment in public services in the State of Tamil Nadu. The Government after careful consideration of the request directed that the pre-foundation course of the Madurai Kamaraj Open University be recognized as equivalent to the 10 years SSLC of the Tamil Nadu Government for the purpose of entry into the public services in the State. The Government also directed that the two-years foundation course of the said open university should be recognized as equivalent to higher secondary (+2) course for the purpose of entry into public services in the State of Tamil Nadu.

34. GO Ms No. 336 dated 22.07.1988 pertains to the post of Tourist Officer in the Directorate of Tourism, Government of Tamil Nadu. As per this office memorandum, the General Rules applicable to the holders of permanent posts in the Tamil Nadu General Service shall apply to the holders of the temporary post of Tourist Officer, sanctioned from time to time, in the Directorate of Tourism. As per Rule 3, appointment to the post of Tourist Officer could be made through the following process:

- i. direct recruitment; or
- ii. by transfer from the category of Publication Officer; or
- iii. by promotion from amongst the holders of the post of Publication Assistant in the Directorate of Tourism; or
- iv. by recruitment by transfer from amongst the holders of the post of Information Assistant or Receptionist Grade I in the Directorate of Tourism; or
- v. by recruitment by transfer from amongst the holders of the post of Receptionist Grade II in the Directorate of Tourism.

34.1. As per Rule 4(b), in case of direct recruitment, the qualification prescribed was a degree from a recognized university and practical experience in travel etc. of not less than three years. In case of other modes of recruitment, what was required was that 'accounts test for executive officers and District Office Manual Test should be passed'.

34.2. In case of recruitment by transfer from amongst the holders of the post of Receptionist Grade II in the Directorate of Tourism, the following two criteria were prescribed:

- i. a pass in accounts test for executive officers and District Office Manual Test; and

ii. service as Receptionist Grade II for a period of not less than five years.

35. By way of GO Ms No.180 dated 11.09.2000 of the Personnel and Administrative Reforms Department, Government of Tamil Nadu, the Government after careful consideration directed that diploma, degree and postgraduate degree courses offered through the open university system by the universities in Tamil Nadu and recognized by the University Grants Commission be recognized as equivalent to the diploma, degree and postgraduate degree courses offered through the regular stream by the respective universities for the purpose of employment in public services.

36. That brings us to the next GO Ms No. 217 dated 08.09.2007 of the same department which clarified that diploma, undergraduate and postgraduate degree courses offered by the Tamil Nadu Open University should be treated as equivalent to the corresponding awards of the other universities in the State under the regular stream for the purpose of employment in public services.

37. The next GO Ms No. 107 dated 18.08.2009 of the same department declared that the diploma and degrees in undergraduate and postgraduate courses obtained through the open universities only after having passed the secondary school examination (10th standard) and higher secondary school examination (+2) alone would be accepted for employment/promotion in public services.

38. Secretary to the Government of Tamil Nadu in the Personnel and Administrative Reforms Department informed the Secretary, Tamil Nadu Public Service Commission *vide* letter dated 03.12.2010 regarding the clarification sought for as to whether the qualification possessed by an individual as per GO Ms No. 528 dated 18.05.1985 could be recognized as the qualification prescribed in GO Ms No. 107 dated 18.08.2009. The following clarification came to be issued:

6. In view of the above, the following clarifications are issued:

(1) A degree awarded by the open universities after passing pre-foundation course and two year foundation course through open university cannot be recognized as a degree as per the University Grants Commission norms for the purpose of employment/ promotion in public services, since such pre-foundation course and 2 year foundation course are not contemplated in the University Grants Commission Regulations.

(2) Therefore, those who obtained a degree under open university system after passing the prefoundation course and two year foundation course without passing 10th Standard and +2 examination do not satisfy the conditions laid in G.O (Ms) No. 107, P&AR (M) Department, dated 18.08.2009 which is in consonance with the order of Supreme Court of India.

39. By GO Ms No. 100 dated 20.07.2011, appellant alongwith ten others were promoted as Tourist Officers on temporary basis in terms of Rule 39(a)(1) of the General Rules for the Tamil Nadu State and Subordinate Services.

40. As per GO Ms No. 242 dated 18.12.2012 issued by the Department of Higher Education, it has been ordered as under:

(i) A three-year graduation course through the open university/distance education and colleges after studying a three-year diploma course after 10th standard (SSLC) (10+3+3);

(ii) An undergraduate course (open university) through distance education after the completion of eleventh standard (old SSLC) and then studying a two-year diploma in Teacher Education offered by the Directorate of Government Examinations (11+2+3);

- (iii) An undergraduate course through distance education after studying tenth standard (SSLC) and then a two-year Industrial Training (I.T.I) (10+2+3); and
- (iv) Tenth standard, three-year diploma course; after that, studied a two-year graduation course (lateral-entry) (10+3+2) are to be treated as an equivalence of qualification for employment and promotion with those who studied tenth standard, twelfth standard (+2) and then 3-year graduation course.

41. The temporary promotion of the appellant to the post of Tourist Officer was regularized w.e.f. 05.08.2011 *vide* GO Ms No. 224 dated 16.10.2017 of the Tourism, Culture and Religious Endowments Department, Government of Tamil Nadu. It may be mentioned that the Commissioner of Tourism had submitted a proposal for regularizing the services of Tourist Officers from the panel years 1988-89 to 2014-15. Appellant was placed in the 2009-10 panel. Government after careful examination accepted the aforesaid proposal and issued the aforesaid GO Ms No. 224.

42. Personnel and Administrative Reforms Department issued GO Ms No. 144 dated 20.11.2017 as per which the Government confirmed the recommendations of the Equivalence Committee and clarified that pre-foundation course and foundation course offered by various universities in the State are not equivalent to SSLC and higher secondary course (+2) respectively.

43. This Court in the case of *P. Mahendran Vs. State of Karnataka*³ was considering an issue relating to selection and appointment of Motor Vehicle Inspectors in the State of Karnataka. Karnataka General Service (Motor Vehicles Branch) (Recruitment) Rules, 1962 (briefly, 'the 1962 Rules', hereinafter) provides for direct recruitment to the post of Motor Vehicle Inspectors. It further lays down the minimum qualification requiring a candidate to be the holder of diploma in automobile engineering or mechanical engineering. Based on that, the Public Service Commission issued advertisement inviting applications for filling up a number of posts of Motor Vehicle Inspectors. Though interview letters were issued, the Public Service Commission for one reason or the other refused to interview some candidates which resulted in litigation and stay of the recruitment process. In the meanwhile, the State Government amended the 1962 Rules by omitting the qualification of diploma in mechanical engineering for the post of Motor Vehicle Inspectors. Consequent to the amendment of the 1962 Rules, the holders of diploma in automobile engineering became exclusively eligible for appointment to the post of Motor Vehicle Inspectors and holders of diploma in mechanical engineering ceased to be eligible for selection and appointment to the said post.

43.1. It was in that context, this Court observed that it is a settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the rules showing the intention to affect existing rights, the rule must be held to be prospective. Since the amending rules were not retrospective, it could not adversely affect the rights of those candidates who were qualified for selection and appointment on the date they applied for the post. The amended rules could not affect the existing rights of those who were being considered for selection as they possessed the requisite qualification prescribed by the 1962 Rules before its amendment. This Court emphasized that construction of amending rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject-matter.

³ (1990) 1 SCC 411

44. In *Annamalai University Vs. Secretary to Government, Information and Tourism Department*⁴, interpretation and application of the University Grants Commission (the Minimum Standards of Instruction for the Grant of the First Degree through Non-Formal/Distance Education in the Faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences) Regulations, 1985 vis-à-vis the provisions of the Indira Gandhi National Open University Act, 1985 was in question. The controversy pertained to appointment to the post of Principal in Film and Television Institute of Tamil Nadu. We need not delve into the intricate details of the litigation. Suffice it to say that this Court expressed the view that provisions of the University Grants Commission Act, 1956 are not in conflict with the provisions of the Open University Act but the University Grants Commission Act shall prevail over the Open University Act in case of any conflict, while endorsing the view that the University Grants Commission Act, 1956 was enacted for effectuating coordination and determination of standards in universities with its powers being very broad and binding on all universities whether conventional or open. In the matter of laying down qualifications of the teachers, running of the university etc., the University Grants Commission Act and the Regulations framed thereunder are applicable and binding on all concerned, including open universities.

44.1. There can be no two views on the proposition of law laid down in *Annamalai University*.

44.2. However, in the facts of that case, this Court endorsed the view taken by the High Court. High Court had approved the decision of the Government appointing the appellant as the Principal. The High Court was of the view that there was no arbitrariness in the appointment, more so, when the stand of the University Grants Commission was that on the date when the appellant obtained his MA degree, it was possible for a person who did not have the basic degree to obtain a MA degree. Therefore, the order appointing the appellant as the Principal could not be quashed.

45. A two-Judge Bench of this Court in *Chandrakala Trivedi Vs. State of Rajasthan*⁵ was concerned with a controversy arising out of the appellant's appointment to the post of Teacher for primary and upper primary schools. Appellant's selection was cancelled on the ground that she did not pass the higher secondary/senior secondary examination after passing the secondary examination. Appellant's contention was that at the time when she had passed the secondary examination, it was permissible for a candidate passing the secondary examination to get admission in the higher classes with a preparatory course. Appellant thereafter completed her graduation from Indira Gandhi National Open University, which was followed by B.Ed degree obtained on regular basis. She also got her MA degree on regular basis. Her writ petition came to be dismissed by both Benches of the High Court, Single Bench as well as Division Bench, on the ground that the appellant had not passed the senior secondary examination which is the basic qualification for the post in question. Therefore, the candidature of the appellant could not be considered.

45.1. This Court disapproved the reasonings of the High Court to the extent that it did not consider the higher qualification as equivalent to the qualification of passing senior secondary examination even in respect of a candidate who was selected and emphasized that the word 'equivalent' must be given a reasonable meaning. Drawing a distinction between equivalence and exactness, this Court held thus:

⁴ (2009) 4 SCC 590

⁵ (2012) 3 SCC 129

8. The word “equivalent” must be given a reasonable meaning. By using the expression “equivalent” one means that there are some degrees of flexibility or adjustment which do not lower the stated requirement. There has to be some difference between what is equivalent and what is exact. Apart from that, after a person is provisionally selected, a certain degree of reasonable expectation of the selection being continued also comes into existence.

46. In *P. Thavam*, a Division Bench of the High Court of Madras was considering the prayer of the petitioners to restrain the respondents from de-promoting them from the post of Road Inspector Grade II (Skill Assistant Grade II) to that of Gang Mazdoor on the ground that the pre-foundation course undertaken by them is not equivalent to SSLC. After analysing the import of GO Ms No. 528 dated 18.05.1985, GO Ms No. 107 dated 18.08.2009 and GO Ms No. 144 dated 20.11.2017, the High Court held thus:

24. This Court is of the considered opinion that the government had recognized the pre-foundation course vide G.O.Ms. No. 528, P and AR Department, dated 18.05.1985 and the said G.O. was in existence from 1985 onwards, subsequently there was a challenge to the open university degree and the High Court has held open university degree is not valid and pre-foundation course as not valid. When it was considered valid for the past twenty four years, then it was declared as invalid, the persons who are affected from this shift/change of qualification ought to be protected. As rightly pointed out by the appellants, the Government has taken eight long years after issuance of G.O.Ms. No. 107, Personnel and Administrative Reforms Department, dated 18.08.2009, to issue G.O.Ms. No. 144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017. It is only in G.O.Ms. No. 144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 the government has declared that the pre-foundation course is not recognized equivalent to the prefoundation course (sic). The G.O.Ms. No. 107, Personnel and Administrative Reforms Department, dated 18.08.2009, has only accepted the recommendations of the Equivalence Committee. As rightly pointed out by the learned Counsel appearing for the appellants, the government has passed G.O.Ms. No. 144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 wherein it has been categorically held that the prefoundation course as invalid. If it is so, then the date of issuance of the said G.O. Ms. No. 144 ought to be held as the cutoff date. Moreover, the prefoundation course was closed down in the year 2012. In short the pre-foundation course was recognized in the year 1985, then in the year 2009 it was held by High Court that pre-foundation course is not equivalent, then equivalence committee has reported it is not equivalent, the government accepted the report in 2009 and finally it was declared in the year 2017. Hence, the mischief of invalidity has been eradicated in phased manner. Therefore, this Court is of the considered opinion that the cutoff date, is the date of issuance of G.O.Ms. No. 144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 i.e. 20.11.2017.

46.1. The High Court was of the view that when the Government had recognized the pre-foundation course and when it was considered valid for the past 24 years, then when it was declared as invalid, the persons who are affected by this change of qualification ought to be protected. The High Court noted that the Government took eight long years after issuance of GO Ms No. 107 dated 18.08.2009 to issue GO Ms No. 144 dated 20.11.2017. It is only in GO Ms No. 144 dated 20.11.2017 that the Government has finally declared that the pre-foundation course is invalid. If that is so, then the date of issuance of the said GO Ms No. 144 i.e. 20.11.2017 ought to be held as the cutoff date. The High Court noted that the pre-foundation course was recognized in the year 1985; then in the year 2009, it was held that prefoundation course and foundation course are not equivalent to 10th

standard and +2 higher secondary course following which the Equivalence Committee reported that such courses are not equivalent to high secondary (10th standard) and higher secondary (+2); Government accepted the report; but the declaration was made in the year 2017 only. Hence, the mischief of invalidity has been eradicated in a phased manner. In these circumstances, the High Court opined that the cutoff date is the date of issuance of GO Ms No. 144 dated 20.11.2017 i.e. 20.11.2017.

46.2. Since all the appellants had completed the prefoundation course prior to 20.11.2017, the High Court opined that the appellants are entitled to promotion.

47. We have been informed that the special leave petition filed against the decision of the High Court in *P. Thavam*, being Special Leave Petition (Civil) Diary No. 32036/2022, was dismissed by this Court *vide* the order dated 20.01.2023.

48. Both the Division Bench and the Review Bench erred in not following the Coordinate Bench decision in *P. Thavam*.

49. Be that as it may, we are of the view that the reasonings given by the High Court in *P. Thavam* are sound and valid. We accordingly endorse and approve the decision of the High Court in *P. Thavam*.

50. As can be seen from the above, a plethora of Government orders have been issued in the present case by the State of Tamil Nadu. This has created confusion in the minds of those who had passed the pre-foundation and foundation courses through the open universities and thereafter obtained degrees. This came to be finally set at rest by the decision of the Madras High Court in *P. Thavam* which made it clear that the invalidity of the pre-foundation course and foundation course can only be prospective and that too with effect from 20.11.2017. A candidate who has obtained the requisite qualification based on the prevailing norms i.e. GO Ms No. 528 dated 18.05.1985 which continued to remain in force for more than 24 years and finally came to be reversed after 32 years cannot be made ineligible by resorting to the maze of Government orders. It needs no reiteration that interpretation of such Government orders which have the effect of modifying and amending previous Government orders has to be done in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter.

51. On due consideration, we are of the considered opinion that the learned Single Judge was fully justified in holding that at the time of appointment of the appellant by way of promotion to the feeder post of Tourist Officer, GO Ms No. 528 dated 18.05.1985 was holding the field. This made his appointment to the post of Tourist Officer valid. That apart, as already noted above, nobody has challenged the promotion of the appellant to the post of Tourist Officer. Now that the question of consideration for promotion to the next higher post of Assistant Director of Tourism has arisen, it is not open to the first respondent to rake up the issue of eligibility of the appellant to hold the post of Tourist Officer, which in any view of the matter is not correct.

52. Having said that, as noticed above, we find that following are the eligibility criteria for promotion to the post of Assistant Director of Tourism:

- (i) a degree from a recognized university;
- (ii) pass in accounts test for executive officers; and
- (iii) one year experience as Tourist Officer in other states outside Tamil Nadu.

52.1. It is thus evident that appellant has the eligibility as above to be considered for promotion to the next higher post of Assistant Director of Tourism.

53. In view of the discussions made above, we are of the considered opinion that the Division Bench as well as the Review Bench fell in grave error in interfering with the judgment and order dated 16.08.2021 passed by the learned Single Judge. Consequently, we set aside the judgment and order dated 06.06.2023 passed by the Division Bench of the High Court as well as the order dated 18.11.2024 passed by the Review Bench, thus restoring the judgment and order of the learned Single Judge dated 16.08.2021.

54. We accordingly hold that the appellant has the eligibility to be considered for promotion to the post of Assistant Director of Tourism. His case shall now be considered for promotion in accordance with law.

55. Civil Appeals are allowed. However, there shall be no order as to costs.

© All Rights Reserved @LiveLaw Media Pvt. Ltd.

*Disclaimer: Always check with the original copy of judgment from the Court website. Access it [here](#)