

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.12202/2009**

% **Judgment Reserved On: 08.07.2010
Judgment Delivered On: 12.07.2010**

GOVERNMENT OF NCT OF DELHI & ORS. Petitioners

Through Ms.Avnish Ahlawat, Advocate

Versus

MAHAVIR SINGH & ANR. Respondents

Through Ms.Priyanka M.Bhardwaj, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

MOOL CHAND GARG, J.

*

1. The short point involved in this matter is as to whether the order dated 21.05.2009 passed in OA No. 2026/2006 by the Central Administrative Tribunal, Delhi (hereinafter referred to as the "Tribunal") needs to be interfered with by this Court while exercising powers under Article 226 of the Constitution of India.

2. By the impugned order the Tribunal has directed the petitioners to consider the case of the respondents for regular appointment as per law subject to availability of regular vacancies and without insisting upon their clearing the skill test again.

3. As per Recruitment Rules for the post of Drivers in Delhi Administration as notified in 1986 and further amended in 1991, the posts of Light Motor Vehicle Drivers are Group 'C' posts. These posts are to be filled by the promotion, failing which by direct recruitment. The qualification prescribed is :-

"From amongst Group 'D' employees having driving licence of Light Motor Vehicle in the office in which the vacancy arises subject to passing a skill test to be conducted by a Transport Department (Motor Vehicle Institute)".

4. It is not in dispute that on the basis of efficiency trade test and practical test conducted by the petitioners through Motor Vehicle Institute the respondents, who were working as Group 'D' employees, were declared fit and on that basis they were appointed as adhoc Staff Car Drivers. While the first respondent continued as such, the service of the second respondent were dis-continued though he was re-engaged for the periods the vacancy became available.

5. According to the petitioners, the respondents had been engaged on adhoc basis with a clear stipulation that it did not confer any right for regular appointment. Further, one Sh.B.S.Rawat, who obtained highest marks as per the 1997 test, was appointed on regular basis in 2001. Insofar as the respondents are concerned, there was no clear cut vacancy for the post of Driver. Later when some vacancies for regular posts became available, the process for filling up those vacancies was initiated. At that time, neither of the respondents participated in the test despite being asked for the same and even being offered an opportunity for the second time for the trade test on 07.12.2006. It was their stand that once they had cleared the skill test in 1997, they should not be compelled to appear in the test once again. This contention was not found acceptable by the petitioners and therefore they approached the Tribunal.

6. According to the Tribunal, once the respondents were selected for Group 'C' post out of being a Group 'D' employee, their selection

for Group 'C' post was as per the statutory rules. It was held that the insistence of the petitioners that the respondents should go for a fresh test and that the earlier panel was not valid was not acceptable.

7. It is not in dispute that one of the respondents, namely, Mahavir Singh has been continuously working as Driver since the date of his adhoc appointment in Group 'C' post but insofar as the second respondent is concerned, he had been working occasionally inasmuch as his services were dispensed with vide order dated 07.06.1999 w.e.f. 21.05.1999 after revocation of suspension of Suresh Chand, who was facing disciplinary proceedings. He was again appointed on adhoc basis on 13.09.2005 and since then he is continuing in service. It is a matter of record that the respondents were called for trade test in 1997 for the purpose of regularization and were also given a chance but they have not appeared for the test even though one more opportunity was given to them.

8. The responsibility of a driver also affects the interest of those whose vehicles he drives. It is, therefore, necessary that the incumbents must be fit to drive the vehicle at the time when their regularization is considered. Their insistence that since they appeared in a test in 1997, which was only for adhoc appointment, would not meet the requirement of Recruitment Rules which requires a test to be undertaken before regularization.

9. Insofar as the first respondent is concerned, the very fact that he is working as a Driver right from the date when he was selected as a driver after the initial test was taken for his adhoc appointment, calling upon him to go for a second test would only be a mere formality. The mere fact that he has been permitted to continue to work as a driver throughout automatically waives the requirement of a trade test again. The argument that the trade test conducted in 1997 has outlived his life as the validity of panel is one year and six months is of no consequence because the respondents are to be regularized once there is vacancy in view of the judgment of the

Supreme Court in the case of *Secretary, State of Karnataka and Ors. Vs. Umadevi (3) and Ors.*, (2005) 4 SCC 1, in accordance with the Recruitment Rules applicable to the post of a Driver. Since the first respondent not only undertook a test but is also working as a Driver continuously for the last so many years, he should be considered for regularization without insisting for a second skill test.

10. However, the case of second respondent is different because there had been a break in service of his working as a driver. Therefore, if he wishes to be regularized, he has to meet the qualification as per Rules which also require undergoing a skill test as an essential qualification. It is not in dispute that he was disengaged as an adhoc driver w.e.f. 07.06.1999 and was called upon to work as a Driver again on 13.09.2005. **It is admitted that he was appointed as a Driver on adhoc basis on other occasions. However, he has not worked continuously on the post of Driver so as to justify his selection as driver without undergoing a test on account of a gap in his working as a driver. Thus, for the purpose of regularisation taking into consideration the Recruitment Rules his undergoing a skill test becomes essential.** Moreover, the possibility of person getting disability such as colour blindness etc. by the lapse of time cannot be ruled out. Thus, regularization of the second respondent as a Driver would be subject to his undergoing again for a skill test again which is an essential requirement under the Recruitment Rules for the purpose of considering his regularization in Group 'C' post, a promotional post.

11. A person who has undergone a skill test, one of the requirements for regularization and who is continuously working as driver since he cleared the test, may be on adhoc basis, becomes eligible for regularization once vacancy arises. Whereas a person who though qualified a skill test but was not working continuously as driver would stand on a different footing and could not claim the

benefit of undergoing a skill test at the time of his selection for adhoc appointment.

12. Thus, the writ petition is disposed of with a direction that the petitioners will consider the case of regularization of both the respondents without insisting for skill test so far as the first respondent is concerned. However, as far as the second respondent is concerned he would be regularized subject to his undergoing a skill test. To that extent, the impugned order dated 21.05.2009 is modified. The needful be done by the petitioners within a period of two months from today.

C.M.No.12425/2009 (Stay)

Interim orders, if any, stands vacated.

Application stands disposed of.

MOOL CHAND GARG, J.

JULY 12, 2010
'dc'

PRADEEP NANDRAJOG, J.