

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.6214 and 6668 of 2015
& connected MPs.

N. Santhi ...Petitioner in W.P.No.6214/2015
M.S.K.Manibharathi ...Petitioner in W.P.No.6668/2015

-vs.-

The Secretary
Tamil Nadu Public Service Commission
Frazer Brindge Road
Chennai-600 003. ...Respondent No.1 in both W.Ps.

The Deputy Secretary
Tamil Nadu Public Service Commission
Frazer Brindge Road
Chennai-600 003.2nd Respondent in W.P.No.6668/2015

Prayer in W.P.No.6214 of 2015 :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the respondent to permit the petitioner to participate in the oral test to be held on 5.3.2015 in pursuance of the memorandum No.6066/OTD-C-4/2015-1 dated 20.2.2015 and select her and appoint her as Motor Vehicle Inspector, Grade II in the Tamil Nadu Transport Subordinate Service within a reasonable time.

Prayer in W.P.No.6668 of 2015 :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari Mandamus calling for the records in respect of the memorandum/order No.6066/OTD-B3/2011-1 dated 5 March 2015 issued by the second respondent, rejecting the application of the petitioner for recruitment to the post of Motor Vehicles Inspector Grade II, quash the same and direct the first respondent to select the petitioner for appointment to the post of Motor Vehicles Inspector Grade II.

For Petitioners : Mr.K. Venkatramani
Senior Counsel
for Mr. M. Muthappan
in W.P.No.6214/2015

Mr.R. Ramachandran
for petitioner in W.P.No.6668/2015

For Respondent : Mr.M. Devendran
in both W.Ps.

ORDER

The petitioners though in possession of driving licences to drive heavy transport vehicles, failed to renew the licences and as such they were not in possession of valid driving licences as on 25 June 2012, the prescribed date for possession of essential educational qualification and experience for appointment to the post of Motor Vehicle Inspector Grade II. However they got it renewed and submitted application well before the last date prescribed for submission of applications. The Tamil Nadu Public Service Commission (hereinafter referred to as "TNPSC") rejected their applications on the ground that they were not in possession of a valid driving licence for driving transport vehicle as on the cut off date. The petitioners are therefore before this Court.

The facts:

W.P.No.6214 of 2015:

2. The petitioner is a Diploma Holder in Mechanical Engineering. She is holding a licence to drive transport as well as non transport vehicles. Her driving licence to drive transport vehicle expired on 19 March 2012. The petitioner submitted application for renewal and got it renewed on 12 July 2012. The petitioner submitted an application for appointment to the post of Motor Vehicle Inspector Grade II pursuant to the notification issued by TNPSC on 25 June 2012. The name of the petitioner was included in the provisional list and thereafter she was permitted to write the examination. Based on the marks obtained, the petitioner was directed to appear for certificate verification on 4 March 2015 and for the oral test on 5 March 2015. The petitioner appeared for certificate verification on 4 March 2015. However she was not permitted to appear for the oral test on the ground that she was not in possession of a valid

driving licence as on 25 June 2012. The petitioner immediately thereafter filed this writ petition and pursuant to the interim order, she appeared before the Interview Board. She was interviewed by the Board. However, results were not published on account of the pendency of the writ petition.

W.P.No.6668 of 2015:

3. The petitioner is a Diploma Holder in Auto mobile Engineering. The petitioner is having a valid driving licence to drive transport as well as non transport vehicles. The licence issued to the petitioner to drive transport vehicles expired on 26 April 2012. The driving licence was renewed on 11 July 2012 pursuant to his application. The petitioner submitted application for appointment to the post of Motor Vehicles Inspector Grade II pursuant to the notification issued by TNPSC. The application was made on 12 July 2012 well before the cut off date. The petitioner was permitted to write the examination. Thereafter he was directed to appear for certificate verification on 4 March 2015 and oral test on 5 March 2015. While verifying documents it was found that he was not having a valid professional driving licence as on 25 June 2012 and as such his application was rejected. The order dated 5 March 2015 is challenged in this writ petition.

The Response:

4. The Secretary, TNPSC filed separate counter affidavits justifying the stand taken by the Commission. According to TNPSC the candidates should satisfy the educational qualification and experience as on 25 June 2012. The petitioners were not holding valid driving licences as on 25 June 2012 and as such their applications were rightly rejected.

Submissions:

5. The learned Senior Counsel for the petitioner in W.P.No.6214 of 2014 contended that the petitioner renewed the driving licence well before the last date prescribed for submission of application. According to the learned Senior Counsel, the cut off date pertains to educational qualification only. It was not in relation to experience or possession of driving licence. Therefore TNPSC was not correct in rejecting the application submitted by the petitioner. The learned Senior Counsel contended that the act of renewal would relate back to the date of expiry and as such the petitioner should be construed to be a person in possession of a valid driving licence

as on the cut off date.

6. The learned counsel for the petitioner in W.P.No.6668 of 2015 submitted that for all practical purposes, the last date for submission of application should be taken as the cut off date. The petitioner was in possession of a valid driving licence as on the said date. Therefore he made the application. The petitioner was permitted to write the examination and he was provisionally selected. It was only during the final stage, his candidature was rejected on the ground of non-possession of valid driving licence. According to the learned counsel, the requirement regarding driving licence is not a qualification and therefore the cut off date is not applicable with regard to possession and experience.

7. The learned Standing Counsel for TNPSC contended that the educational qualification would include experience. The TNPSC made it very clear that the candidate should possess the required educational qualification as on 25 June 2012, the date on which the notification was issued. According to the learned counsel, the fact that the last date for submission of application was one month after the notification would not give a right to the petitioners to make an application not withstanding the fact that they were not in possession of valid driving licences as on the cut off date.

Analysis:

8. The TNPSC issued a notification dated 25 June 2012 calling for applications for appointment to the post of Motor Vehicles Inspector Grade II. Clause 4 sub clause (B) of the notification deals with educational qualification. It reads thus:

"(B) Educational Qualification: (as on 25.6.2012)

Candidates should possess the following or its equivalent qualifications:

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QUALIFICATION	EXPERIENCE
(1) Minimum General Educational qualification (as defined in para 7 of Commission's Instructions to Candidate).	(I) Experience of having worked for a period of not less than one year both on vehicles fitted with Petrol Engines and Vehicles fitted with Diesel Engines on a full time basis in an Automobile workshop which undertakes repairs of Light Motor Vehicles, Heavy Goods Vehicles and Heavy Passenger Motor Vehicles.
And	And
(II) Any one of the following qualifications (3 years course) awarded by the State Board of Technical Education and Training, Tamil Nadu.	(II) Must hold a Driving Licence Authorising him to drive Motor Cycle. Heavy Goods Vehicles and Heavy Passenger Motor Vehicles.
A. Diploma in Automobile Engineering.	And
A. Diploma in Mechanical Engineering.	(III) Must have experience in Driving Heavy Transport Vehicles for a period of not less than six months.
Provided that other things being equal, preference shall be given to those who possess Post Diploma in Automobile Engineering awarded by the State Board of Technical Education and Training, Tamil Nadu.	

9. The notification very clearly provides that the candidates should possess educational qualification as on 25 June 2012, the date on which the notification was issued.

10. The learned Senior Counsel for the petitioner in W.P.No.6214 of 2015 has taken up a contention that the cut off date was only in respect of educational qualification and it has no reference to experience or possession of driving licence. I am not inclined to accept the said submission in view of the provisions of the Tamil Nadu State and Subordinate Service Rules. Rule 12 (vi)(iv) provides

that not withstanding anything contained in the Special Rules, the applicants should possess the qualifications including experience prescribed for a post, on the date of notification of vacancy. Therefore it is very clear that educational qualification would include experience also, in case, there is a requirement that the candidate should have experience in a particular field. I therefore reject the contention taken by the learned Senior Counsel for the petitioner with regard to cut off date in respect of experience and possession of licences.

The substantial issue:

11. The core question is whether TNPSC was correct in rejecting the applications of the petitioners on the ground that they were not in possession of a "valid driving licence" to drive Heavy Transport Vehicles as on 25 June 2012.

The Statute:

12. Chapter II of Motor Vehicles Act, 1988 provides for licensing of drivers of motor vehicles. Section 3 of the Motor Vehicles Act deals with possession of licence to drive vehicles. Section 9 deals with grant of driving licence. Section 15 provides for renewal of driving licence. Sub-section (1) of Section 15 permits the authority to renew driving licence on application. The proviso to Section 15(i) deals with cases of belated renewal. It provides that in case an application for renewal of the licence was made more than thirty days after the date of expiry, the driving licence shall be renewed from the date of its renewal. Sub Sections (3) and (4) of Section 15 clearly indicates that even after a period of thirty days, application could be made for renewal of licence. The proviso to sub-clause (4) of Section 15 gives an indication that only in case the application is made more than five years after the expiry of driving licence, the applicant should undergo the test of competence to drive vehicle. Section 15 therefore gives an idea that under normal circumstances, renewal is automatic. In case the application is made within a period of thirty days it should be renewed from the period of expiry. If it is made beyond the period of thirty days, it should be renewed from the date of its renewal. Such a renewal could be made upto a period of five years. The question of producing medical certificate would arise only in case the renewal application is made after a period of five years.

13. The petitioner in W.P.No.6214 of 2015 was holding Light Vehicle Driving Licence from 1 August 2003 and Heavy Vehicle Driving Licence with effect from 26 May 2010. She failed to renew the Heavy

Motor Vehicle licence and as such it expired on 19 March 2012. However she got it renewed on 12 July 2012 and submitted application for recruitment to the post of Motor Vehicles Inspector Grade II on 19 July 2012. Therefore it is clear that as on the date on which she made the application, she was having a valid licence.

14. Similarly the petitioner in W.P.No.6668 of 2015 was given a valid driving licence and it expired on 26 April 2012. The Heavy Vehicle Driving Licence was renewed on 11 July 2012. The petitioner after renewal of the licence submitted application on 12 July 2012 well before the last date prescribed for submission of application.

15. Since TNPSC rejected the applications on the ground that the petitioners were not having valid driving licences as on 25 June 2012, it is necessary to scan the contents of the notification regarding experience.

16. The notification mandates that the candidate should hold a driving licence authorising him to drive Motor Cycle, Heavy Goods Vehicles and Heavy Passenger Motor Vehicles. There is no requirement that the candidate must hold a "valid driving licence". The word "valid" is missing. It was only in the impugned order passed in W.P.No.6668 of 2015, TNPSC has stated that the application was rejected on the ground that the petitioner was not having a valid driving licence. It was not the case of TNPSC in its notification that the candidate must hold a valid driving licence.

17. The learned Senior Counsel for the petitioner in W.P.No.6214 of 2015 placed reliance on the decision of the Kerala High Court in Biju v. Kerala Public Service Commission 2012(4) KLT 980. In the said judgment the Kerala High Court extracted the notification issued by the Kerala Public Service Commission for appointment to the post of "Reserve Drivers". The Commission initially wanted the candidates to possess a valid driving licence as on the last date of submission of application. Subsequently, it was amended and the candidates were required to possess a valid driving licence as on the date of application, date of interview and date of appointment. Though the judgment in Biju case as such is not applicable to the facts of this case, it gives an idea as to how similar clause regarding possession of driving licence is worded. The requirement must be possession of valid driving licence and not possession of driving licence alone. Therefore while indicating the requirement with regard to driving licence, it must be clearly stated that the person must hold a valid driving licence and not a loose term like holding driving licence.

18. There is no dispute that the petitioners were in possession of driving licences to drive light as well as heavy vehicles including transport vehicles. They were in possession of professional driving licences as on 25 June 2012. However they were not having valid driving licences to drive transport vehicles as on 25 June 2012. Since there was no requirement that the candidate must hold a valid driving licence as on 25 June 2012, the petitioners were justified in renewing the licence well before the cut off date prescribed for making applications. Both the writ petitioners have renewed their licences well before the last date prescribed for making application. In short, while making applications before the cut off date, they were in possession of valid driving licences to drive Heavy Goods Vehicle, including Heavy Passenger Motor Vehicles.

19. Even though TNPSC nowhere stated in the notification that the candidate must hold a driving licence, they have now introduced a term regarding possession of "valid driving licence" and rejected the applications. The applications were not rejected on the ground that the petitioners were not having driving licences. It was rejected only on the ground of non possession of valid driving licences, notwithstanding the fact that such a requirement was not contained in the original notification with regard to educational qualification and experience.

20. The notification would appear as if possession of driving licence would mean a valid licence. However it is not so on account of the provisions of Motor Vehicles Act. The applicant who was issued with a driving licence is a person having driving licence. Even if licence is not renewed up to five years, it would still be termed as a driving licence. By renewing it immediately, before expiry of thirty days from date of expiry or within a period of five years with medical certificate it would get validated. Therefore, possession of driving licence is different from possession of valid driving licence. When the mandatory condition is possession of driving licence, even a person whose licence expired just before five years would qualify for making application. In case, the condition is possession of valid driving licence, only a person in possession of a valid licence either by currency of initial driving licence or by renewal alone would qualify. The basic difference was omitted to be taken note of by the Commission while issuing the notification.

21. There is no dispute that the candidates should possess the qualification as on the cut off date. Here the petitioners satisfied the criteria regarding educational qualification. They were in possession of required qualification as on 25 June 2012. They were

also having driving licence to drive Heavy Duty Vehicle as on 25 June 2012. So, the cases regarding non possession of valid driving licences should not be compared with those cases involving non possession of educational qualification as on the cut off date.

22. The TNPSC entrusted with the task of selection to a public service, must issue a clear cut notification indicating the essential qualification and experience. The notification should not be vague like the present one. The dispute herein is actually created only by TNPSC. The TNPSC should have notified that the candidate must hold a valid driving licence in which case, it was not possible for the petitioners to apply with driving licences renewed after the cut off date. Since the confusion was created only by TNPSC, necessarily the benefit of such confusion should be given to the petitioners. I am therefore of the view that the petitioners are entitled to succeed.

23. In view of the above discussion, I hold that the petitioners were in possession of driving licences as on 25 June 2012, in accordance with the notification issued by TNPSC and were armed with valid driving licence well before the last date prescribed for submission of applications.

Disposition:
W.P.No.6214 of 2015

24. This Court passed an interim order in W.P.No.6214 of 2015 directing TNPSC to interview the petitioner. The petitioner was interviewed by TNPSC and her result is yet to be published on account of the condition incorporated in the said order. Now that I have arrived at a conclusion that the petitioner is entitled to succeed, necessarily her results should be published. The TNPSC is directed to publish the result of the petitioner. Such exercise shall be completed within a period of one week from the date of receipt of a copy of this order.

W.P.No.6668 of 2015

25. The order dated 5 March 2015 challenged in W.P.No.6668 of 2015 is set aside. The case of the petitioner in this writ petition should be considered in the light of my finding that it was not correct on the part of TNPSC to reject his application. The TNPSC is directed to take follow up action pursuant to certificate verification. In short, the application submitted by the petitioner should be treated as a valid application and he should be considered

for recruitment to the post of Motor Vehicles Inspector Grade II. Such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

26. In the upshot, I allow the writ petitions. Consequently, the connected MPs are closed. No costs.

Concluding remarks :

27. I wish to state that poor drafting of recruitment notification by the TNPSC alone contributed for the birth of this unwanted litigation. The commission is an expert body. It should use apt words while drafting notifications. In case proper words are used, and little care is taken, it would be possible to avoid litigations like this. The High Court would also be relieved from litigations involving the commission, in case notifications are drafted in a perfect manner and without ambiguity.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Tr/

To

1. The Secretary
Tamil Nadu Public Service Commission
Frazer Brindge Road, Chennai-600 003.

2. The Deputy Secretary
Tamil Nadu Public Service Commission
Frazer Brindge Road, Chennai-600 003.

2 CCs to Mr.M. Muthappan, Advocate SR.No. 17959
1 CC to Mr.M. Devendran, Advocate SR.No. 18097
1 CC to Mr.R. Ramachandran, Advocate SR.No. 17881

W.P.Nos.6214 and 6668 of 2015

VSN (CO)
PSI (01.04.2015)