

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON: 05.7.2016 & PRONOUNCED ON: 18.7.2016

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal Nos.909 & 1051 of 2015

Tamil Nadu Public Service Commission
rep. by its Secretary
Frazer Bridge Road
Chennai 600 003.

Appellant in WA
No.909/15 & 1st
Appellant in WA
No.1051/15

The Deputy Secretary
Tamil Nadu Public Service Commission
Frazer Bridge Road
Chennai 600 003.

2nd Appellant in
.. WA No.1051/15

Vs.

N.Santhi

.. Respondent in
WA No.909/15

M.S.K.Manibharathi

.. Respondent in
WA No.1051/15

Appeals under Clause 15 of the Letters Patent filed against the common order dated 31.3.2015 made in W.P.Nos.6214 & 6668 of 2015 on the file of this Court.

Prayer in WP 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-C4/2015 dt 20.2.2015 and select her and appoint her as Motor Vehicle Inspector Grade II in the Tamil Nadu Transport Sub Ordinate Service within a reasonable time.

Prayer in WP No.6668 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorarified Mandamus Calling for the records in respect of the Memorandum / Order No.6066/OTD-B3/2011-1 dated 05.03.2015 issued by the 2nd respondent rejecting the

application of the Petitioner for recruitment to the post of Motor Vehicles Inspector Grade II quash the same and direct the 1st Respondent to select the Petitioner for appointment to the post of Motor Vehicles Inspector Grade II.

For Appellants : Mr.P.H.Arvind Pandian, Addl.A.G.
Assisted by M.Devendran

For Respondent in: Mr.Vijay Narayan, S.C.
WA No.1051/15 For Mr.M.Ramadoss

For Respondent in
WA No.909/15 : Mr.M.Muthappan

J U D G M E N T

These appeals have been filed by the Tamil Nadu Public Service Commission (for brevity "TNPSC") against the common order of the learned single Judge dated 31.3.2015 made W.P.Nos.6214 and 6668 of 2015.

2. The respondents herein are the writ petitioners. They are Diploma Holders in Mechanical Engineering and Automobile Engineering respectively. They were holding licence to drive both transport and non transport vehicles. The said licences expired on 19th March 2012 and 26th April 2012 respectively. It was renewed on 12th July 2012 and 11th July 2012 respectively. Pursuant to the notification issued by the TNPSC on 25th June 2012, the respondents applied for the post of Motor Vehicle Inspector Grade II. They appeared for the examination and based on the marks obtained by them, they were directed to appear for certificate verification on 4th March 2015 and for oral test on 5th March 2015. The respondents appeared for certificate verification on 4th March 2015. However, they were not permitted to appear for oral test on the ground that they did not possess valid driving licence as on 25th June 2012, namely the date of notification. Hence, the respondents filed writ petitions.

3. Based on the interim order granted by the learned Single Judge in the writ petition, the respondent in W.A.No.909 of 2015 appeared before the Interview Board. However, the result was not published due to the pendency of the writ petition.

4. On 31.3.2015, the learned single Judge, after analysing the provisions of the Motor Vehicles Act, allowed the writ petitions, holding that the respondents were in possession of driving licences as on the date of notification and directing the TNPSC to publish the result of the respondent in W.A.No.909 of 2015 within a period of one week and to treat the application of the respondent in W.A.No.1051 of 2015 as valid and to consider him for recruitment to the post of Motor Vehicle Inspector Grade II within a period of four weeks. Aggrieved by the said order, TNPSC have come up with the above appeals.

5. Mr.P.H.Arvind Pandian, learned Additional Advocate General appearing for the appellants assailing the order of the learned single Judge contended that the respondents did not possess driving licence as on the date of notification, namely 25.6.2012, since their licences expired on the date of notification and were renewed later. He further contended that the driving licence is one of the pre-requisite qualification for applying for the said post and since the respondents did not possess the same, they are not entitled to be considered for appointment. Therefore, he seeks the intervention of this Court to set aside the order of the learned single Judge. In support of his contentions, the learned Additional Advocate General relied upon the decisions of the Supreme Court in National Insurance Company Limited v. Vidhyadhar Mahariwala & Others [(2008) 12 SCC 701] and Alka Ojha v. Rajasthan Public Service Commission [(2011) 9 SCC 438].

6. On the contrary, Mr.Vijay Narayan, learned senior counsel appearing for the respondent in W.A.No.1051 of 2015 contended that though the driving licence of the respondent was not renewed on the date of notification, it was renewed before the submission of the application and therefore, the act of renewal would relate back to the date of expiry and accordingly, it has to be construed that the respondent was in possession of driving licence on the date of notification. It is further contended by the learned senior counsel that possession of driving licence is only a pre-requisite qualification and not an educational qualification or experience which is considered as eligibility for recruitment to the said post and therefore, rejection of the application of the respondent, after allowing him to appear for written examination and oral test, is erroneous.

7. Mr.M.Muthappan, learned counsel appearing for the respondent in W.A.No.909 of 2015, contended that as per the notification dated 25.6.2012, the cut off date pertains only to

the educational qualification and not to the possession of driving licence and therefore, the application of the respondent cannot be rejected on the ground that her driving licence was not in force on the date of notification. In support of his contention, the learned counsel relied upon the decisions in Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd. [(1999) 6 SCC 620] and National Insurance Co. Ltd. v. Swaran Singh [(2004) 3 SCC 297].

8. We have carefully considered the submissions of learned Additional Advocate General for the appellants, Mr. Vijay Narayan, learned senior counsel and Mr. M. Muthappan, learned counsel for the respondents.

9. Admittedly, the respondents were having driving licences and the same expired on the date of notification. However, before submitting their application, the respondents have renewed their driving licences. It is the plea of the TNPSC that since the driving licences of the respondents expired on the date of notification, they are not eligible to be considered for recruitment as per the notification dated 25.6.2012.

10. For better understanding of the said issue, it would be appropriate to refer to the educational qualifications prescribed in the notification issued by the TNPSC on 25.6.2012, which reads as follows:

Educational Qualification (as on 25.06.2012)
Candidates should possess the following or its
equivalent qualification on the date of this
notification (i.e. 25.06.2012)

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Qualification		Experience	
(i)	Minimum General Educational Qualification (as defined in para 7 of the 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.
(ii)	And Any one of the following Qualifications (3 years course) awarded by the State Board of Technical Education and Training, Tamil Nadu A Diploma in Automobile Engineering Or A Diploma in Mechanical Engineering	(ii)	And Must hold a Driving Licence Authorising him to Drive Motor Cycle, Heavy Goods Vehicles and Heavy Passenger Vehicles And 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.			

11. A perusal of the above condition makes it clear that the applicant should possess the requisite educational qualification as on the date of notification. It is nowhere stated that on the date of notification, he should possess the requisite experience and a valid driving licence. When the notification did not prescribe any specific date for the possession of driving licence, TNPSC cannot now contend that the driving licence of the applicant was not renewed as on the date of notification and therefore, the respondents cannot be considered for recruitment, particularly when the respondents were in possession of driving licence and renewed it prior to the last date of submission of the application. Therefore, rejection of the application of the respondents on the ground that the driving licence was not in force on the date of notification is illegal.

12. In the decision relied upon by the learned Additional Advocate General in National Insurance Company Limited v. Vidhyadhar Mahariwala [(2008) 12 SCC 701], the issue involved was whether the Insurance Company is liable to pay compensation to the victim of the motor accident, when the licence of the driver of the offending vehicle was not in force at the time of accident and it was renewed later. After referring to three judgments, the Supreme Court held that the Insurance company will not be liable to pay compensation and only the owner of the vehicle should pay, as the obligation is cast upon the owner to ensure that the driver possess appropriate licence. Hence, this decision will not be of any help to the appellants.

13. In another decision relied upon by the learned Additional Advocate General in the case of Alka Ojha v. Rajasthan Public Service Commission [(2011) 9 SCC 438], the Supreme Court held that those who do not possess the requisite qualifications necessary for being considered for appointment on the last date specified and notified for receiving the applications are not eligible for recruitment. In other words, if a candidate does not possess the necessary qualifications on the cut-off date, he is disqualified and cannot be permitted to participate in the selection process or be considered therein.

14. In the case on hand, it is beyond any cavil that the respondents got their licences renewed before the date of submission of their application. The proposition laid down by the Supreme Court, in the decision cited supra, to that extent comes to the aid of the respondents. However, in the case on hand, the advertisement issued by the TNPSC does not specify any date with regard to possessing of driving licence as in the case of Alka Ojha, referred supra. On this score, the decision in Alka Ojha is distinguishable on facts.

15. The issue before the Apex Court in Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd. [(1999) 6 SCC 620] which was relied upon by Mr.M.Muthappan, learned counsel appearing for one of the respondent, was whether the driver who was having driving licence for a light motor vehicle can use the said licence for driving goods carriage/transport vehicle. The Supreme Court after considering the relevant provisions of the Act, held that there is no definition in the Act with respect to light motor vehicle and therefore, it cannot be said that the driver was not having effective valid licence to drive goods carriage/transport vehicle. In the instant case, the issue is entirely different from the one in Ashok Gangadhar Maratha. Therefore, the said decision is not applicable to the facts of this case.

16. In National Insurance Co. Ltd. v. Swaran Singh [(2004) 3 SCC 297], relied upon by Mr.M.Muthappan, learned counsel for one of the respondents, the Supreme Court has held as under:

"45. Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the Rules framed thereunder, despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefor. Proviso appended to Section 14 in unequivocal terms states that the licence remains valid for a period of thirty days from the day of its expiry.

46. Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity or tenure of the driving licence has lapsed, as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter, he cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry."

17. From a bare reading of the above decision, it is clear that the application for renewal of driving licence cannot be rejected on the ground that there is a break in validity or the tenure of the driving licence has lapsed and that a right is conferred upon a person to get his driving licence renewed. Therefore, it cannot be said that the respondents did not have valid licence on the ground that the tenure of the driving licence has lapsed.

18. It is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the application, unless of course the notification calling for application itself prescribes such date. In the case on hand, no such date was prescribed, but for the educational qualification. Therefore, the last date for submission of application has to be construed as the prescribed date for possession of requisite qualification.

19. It is a settled proposition of law that the selection process commences on the date when the applications are invited and any person eligible on the last date of submission of the application has a right to be considered against the said vacancy provided he fulfils the requisite qualification. Therefore, it is clear that the eligibility has to be considered only on the last of submission of the application. Accordingly, in the instant case, it has to be held that the respondents were eligible to be considered for the post on the last date of submission of application.

20. The learned single Judge, after considering the issue threadbare, held that TNPSC had created a confusion by not notifying clearly that the candidate must hold a valid driving licence as on the date of notification and therefore, the respondents are entitled to succeed and accordingly, allowed the writ petitions. We do not find any reason to interfere with the findings of the learned single Judge.

21. In the result, the appeals are dismissed, confirming the order of the learned single Judge. There shall be no order as to costs. Consequently, M.P.No.1 of 2015 in W.A.No.909 of 2015 is also dismissed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The Secretary
Tamil Nadu Public Service Commission
Frazer Bridge Road
Chennai 600 003.

2. The Deputy Secretary
Tamil Nadu Public Service Commission
Frazer Bridge Road
Chennai 600 003.

2 ccs to M/s.M.Ramadoss, Advocate, sr.40084

W.A.Nos.909 & 1051 of 2015

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