

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Writ Petition No.16729 OF 2011

K.Arumugam

... Petitioner

Vs.

1. Union of India
rep. by the Chief Postmaster General,
Tamil Nadu Circle,
Chennai 600 002.
2. The Senior Manager,
Mail Motor Service,
Chennai 600 006.
3. The Registrar,
Central Administrative Tribunal,
Chennai Bench,
High Court Campus,
Chennai 600 104.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari after calling for the concerned records relating to the order dated 14.03.2011 given in O.A.No.1053 of 2010 passed by the 3rd respondent and quash the same.

For Petitioner : Mr.S.Ramaswamy Rajarajan

For Respondents 1 and 2 : Mr.A.Kumaraguru,
Senior Central Govt. Standing
Counsel

O R D E R

(Order of the Court made by S.VAIDYANATHAN,J.)

Seeking to quash the order dated 14.03.2011 passed by the 3rd respondent/Tribunal in O.A.No.1053 of 2010, the petitioner has come up with this Writ Petition.

2. Brief facts of the case, in a nutshell would run thus:

2.1. The 2nd respondent/Senior Manager, Mail Motor Service published Notification in a Tamil Daily on 21.12.2009 calling for applications for the post of Drivers on or before 28.01.2010 for the vacancies which arose in the years 2008 and 2009. The petitioner, born on 31.05.1977, who belongs to Scheduled Caste Community, having all pre requisite qualifications, made his first application on 02.01.2010. The 2nd respondent, by a letter dated 22.07.2010, informed the petitioner that the Notification published in Dinamani on 21.12.2009 for the selection of Time Scale Driver (11 posts) in Mail Motor Service, Chennai has been cancelled by the competent authority.

2.2. The 1st respondent/Chief Postmaster General, Tamil Nadu Circle, Chennai, published the second notification in Dinathanthi on 11.07.2010 and called for applications for Driver [(13 posts) SC : 2, OBC : 3 and UR : 8] before 11.08.2010. Again, the petitioner forwarded his application on 06.08.2010 furnishing a copy of all his Certificates. The 1st respondent declared that the examination will be held on 08.09.2010 and had issued Hall Tickets to the candidates who had applied. But, the petitioner did not receive any Hall Ticket.

2.3. Aggrieved by the same, the petitioner filed O.A.No.1053 of 2010 before the Central Administrative Tribunal, praying to direct the respondents to consider his case for selection to the post of Heavy Vehicle Driver in Mail Motor Service, Chennai, if he comes out successfully in the examination to be conducted by the respondents on 08.09.2010. Further, as an interim relief, the petitioner sought permission to allow him to participate in the Written Examination. On considering his grievance, the Tribunal directed the respondents to allow the petitioner to participate in the selection process conducted on 08.09.2010 and by virtue of that order, the petitioner participated in the written examination and came out successfully. Since the Tribunal dismissed the Original Application filed by him, being aggrieved, the petitioner is before this Court.

3. It is the contention of the learned counsel for the petitioner that the Tribunal erred in dismissing the Original Application, without taking into consideration the Notification dated 18.12.2009 which was published in 'Dinamani' on 21.12.2009 calling for application for filling up of vacancies in the cadre of Mail Motor Driver which arose in the year 2009 and therefore, the petitioner is eligible for the post of Driver in the SC quota allotted, as on 01.07.2009. Learned counsel would mainly contend that the vacancies for Driver post in the Mail Motor Service arose in the years 2008 and 2009 and therefore the

petitioner should be given age relaxation as on 01.07.2008 or 01.07.2009.

4. In reply, learned counsel appearing for the respondents would submit that there was a notification on 21.12.2009 inviting applications for the post of Driver and during the process of recruitment, complaints were received about the procedural irregularities, which were found to be true and thereafter they cancelled the said process of recruitment as also the examination. Thereafter, another notification was issued on 09.07.2010 for the post of Time Scale Driver prescribing the age limit of the candidate between 21 and 28 years as on 01.07.2010 with relaxation for the Reserved Post by five years for SC/ST and three years for OBC. The cut-off date was 01.07.2010 as per the notification. Learned counsel would contend that as the petitioner did not fulfil the eligibility criteria, he was not issued with the Hall Ticket for the examination which was scheduled on 08.09.2010. It is his further submission that pursuant to the interim order of the Tribunal, the petitioner appeared for the examination and as he did not fulfil the conditions of age criteria, taking note of the crucial date as 01.07.2010, the request of the petitioner was rejected.

5. Heard the learned counsel on either side and gave careful consideration to their submissions.

6. The facts mentioned supra are not in dispute. Hence, we are not inclined to repeat the same, except the fact that the petitioner crossed the age of 33 years, i.e. 28 years plus 5 years age relaxation for SC/ST category as on 01.07.2010, due to which his application was rejected by the respondent/Postal Department. The contention of the petitioner is that the vacancies arose during the years 2008 and 2009 and the cut-off date should have been fixed as 01.07.2008 and 01.07.2009 and not as 01.07.2010, and if they had fixed the cut-off date as mentioned above, the petitioner would be eligible and has to be appointed.

7. Admittedly, the petitioner is not an employee of the respondent/Postal Department and he is an outsider and the cut-off date for fixing the age limit is the year of recruitment as per Gazette Notification dated 01.11.1983. It has been stated that the petitioner was working with a private contractor rendering services as Driver. Therefore, by no stretch of imagination, the petitioner can be called an 'insider'.

8. A perusal of the records would go to show that the petitioner has not challenged the notification dated 09.07.2010 that fixed the cut-off date as 01.07.2010. Apart from that, as

there were irregularities with regard to the selection of Drivers, the first notification to that extent was withdrawn and a fresh notification was issued. In such view of the matter, the Tribunal was right in rejecting the request of the petitioner by placing reliance on the decision of the Apex Court in the case of Shankar Mandal v. State of Bihar (2003 (9) SCC 519), relevant portion of which is extracted below:

"1. Where a cut off date with reference to which eligibility has to be determined in the date appointed by the relevant service rules.

2. Where no such cut off date is provided in the rules, then it will be the date appointed in the advertisement calling for applications.

3. If there is no such date appointed, then eligibility criteria shall be applied by reference to the last appointed by which the applications were to be received."

9. The contention of the petitioner that every year vacancies should be identified, notification should be issued, applications should be called for and persons should be appointed and that the notification dated 09.07.2010 fixing the cut-off date as 01.07.2010 has deprived chances of appointment of persons like that of the petitioner, who were eligible on the date of original notification, which was illegally withdrawn, cannot be accepted.

10. On the date of notification, the petitioner was ineligible for appointment to the post of Driver and, in our considered opinion, the Tribunal was justified in dismissing the claim of the petitioner.

11. In view of the above, we find no error apparent in the order dated 14.03.2011 passed by the Tribunal warranting interference of this Court. The Writ Petition stands dismissed, as it is devoid of merits. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

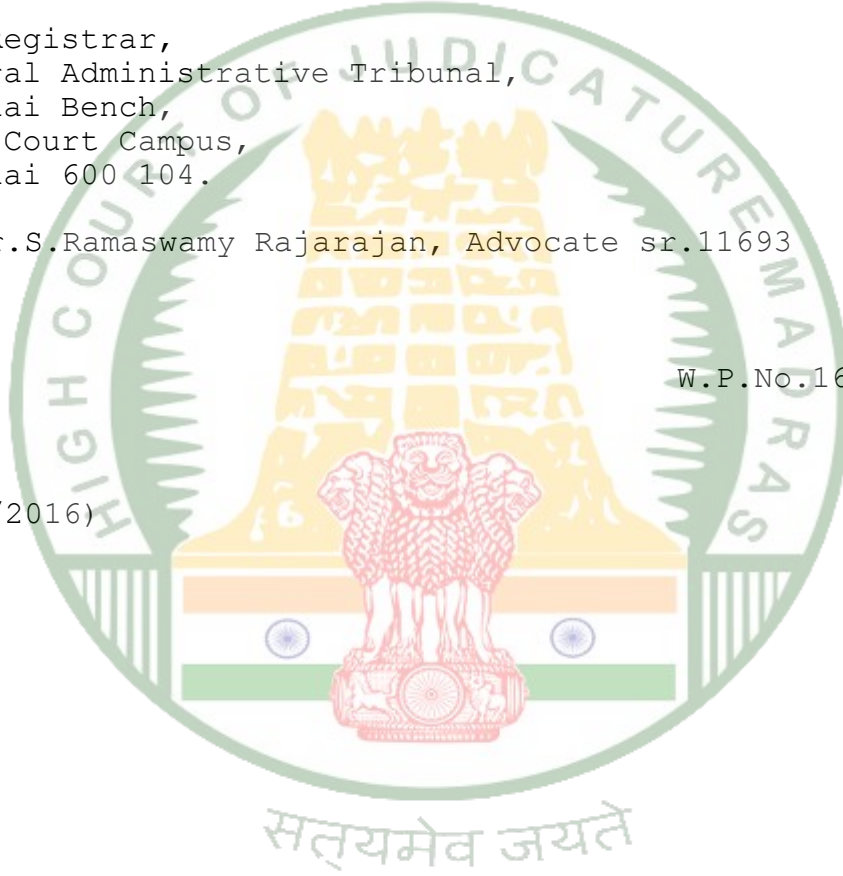
To :

1. The Chief Postmaster General,
Union of India,
Tamil Nadu Circle,
Chennai 600 002.
2. The Senior Manager,
Mail Motor Service,
Chennai 600 006.
3. The Registrar,
Central Administrative Tribunal,
Chennai Bench,
High Court Campus,
Chennai 600 104.

+1cc to Mr.S.Ramaswamy Rajarajan, Advocate sr.11693

W.P.No.16729 of 2011

lrs (CO)
srg (17/03/2016)



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