

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.26699 of 2010

&

M.P.No.2/2010 and M.P.No.1/2011 and WMP.No.32119/2016 and
W.P.No.22174/2010 and M.P.Nos.2 & 3/2010 and M.P.No.1/2011

K.SENTHIL ... Petitioner in both WPs.

Vs.

THE SECRETARY TO GOVERNMENT
HOME (TR.II-A) DEPARTMENT SECRETARIAT
CHENNAI-9.

THE SECRETARY
TAMIL NADU PUBLIC SERVICE COMMISSION
NO.1 GREAMS ROAD COMMERCIAL TAX ANNEXE BUILDING
CHENNAI-6. ... R1 & R2 in both WPs

P.SENBAGAVALLI

G.JASMIN MERCY KAMALA ... R3 & R4 in WP.26699 of 2010

Prayer in W.P.No.26699 of 2010:Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus, calling for the records of the Provisional Selection List dated.13.10.10 for appointment by direct recruitment to the post of Motor Vehicles Inspector Grade II in the Tamil Nadu Transport Subordinate Service 2006-2008 issued by the 2nd respondent and the consequential order passed by the 2nd respondent made in Memorandum No.4615/ED-A3/2010 dated 26.10.10 and quash the same and consequently direct the 2nd respondent to consider the petitioner for Selection/Appointment to the Post of Motor Vehicle Inspector Grade-II based on the Advertisement No.187 dated 24.02.2009 and supplementary Notification No.191 dated 28.2.2009 in Tamil Nadu Transport Subordinate Service.

Prayer in W.P.No.22174 of 2010:Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus, directing the respondents to permit the petitioner to attend the oral test to be held on 07.10.10 and 08.10.10

based on the Written Examination held on 24.05.09 for appointment to the post of Motor Vehicle Inspector Grade-II in the Tamil Nadu Transport Subordinate service for the year 2006-2008 and further direct the respondents to Provide the Key answers OMR answer sheet and marks obtained by the Petitioner in the Written examination vide Registration No.00105001 held on 24.05.2009.

For Petitioners : Mr.N. Umapathi
in both WPs

For R1 : Mr. Jaya Prakash Narayan
in both WPs Special Government Pleader

For R2 : Mr. R.Muthukumaraswamy,
in both WPs Advocate General for
Dr. M.Devendran
Standing Counsel for TNPSC

For R3 in
W.P.No.26699/10 : Mr. J.Ramakrishnan

For R5 in
W.P.No.26699/10 : Mr. S.Selvaraj

ORDER

The prayer in the W.P.No.26699 of 2010 is for a writ of certiorarified mandamus, calling for the records of the Provisional Selection List dated.13.10.10 for appointment by direct recruitment to the post of Motor Vehicles Inspector Grade II in the Tamil Nadu Transport Subordinate Service 2006-2008 issued by the 2nd respondent and the consequential order passed by the 2nd respondent made in Memorandum No.4615/ED-A3/2010 dated 26.10.10 and quash the same and consequently, direct the 2nd respondent to consider the petitioner for Selection/Appointment to the Post of Motor Vehicle Inspector Grade-II based on the Advertisement No.187 dated 24.02.2009 and supplementary Notification No.191 dated 28.2.2009 in Tamil Nadu Transport Subordinate Service.

2.1. The case of the petitioner is that the petitioner had completed the Diploma in Mechanical Engineering in the year 1995. Thereafter, he acquired the qualification of Post Diploma in Computer Application and under graduation degree in computer science. After that, the respondents Service Commission issued a notification in advertisement No.187, dated 24.2.2009 and supplementary notification No.191 dated 28.2.2009 for the post of Motor Vehicle Inspector Grade-II in Tamil Nadu Transport Subordinate Service. The total number of vacancies were 76.

2.2. The petitioner's further case is that the necessary educational and experience qualification for the said post is as has been prescribed by the Commission which is reflected in clause 4(B) of the notification which reads as follows:

"(B) Educational Qualification:

Candidates should possess the following or its equivalent qualifications on the date of this Notification, viz., 24.02.2009.

(i) Minimum General Educational Qualification (as defined in paragraph 7 of Commission's Instructions, etc, to Candidates')

AND

(ii) A Diploma in Automobile Engineering (3 years course) or a Diploma in Mechanical Engineering (3 years course) awarded by the State Board of Technical Education and Training, Tamil Nadu.

AND

(iii) 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

(iv) Must Hold a Driving License Authorising him to Drive Motor Cycle Heavy Goods Vehicles and Heavy Passenger Motor Vehicles

AND

(v) 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.

(Details regarding equivalence of qualifications are given in paragraph 9 of the Commission's Instructions, etc to candidates')

Explanation:- 'Automobile workshop' shall mean

(A) An Automobile workshop owned by the Government or the State Transport Corporation.

OR

(B) An Automobile workshop recognised or approved or certified by the Transport Commissioner or the Director, Motor Vehicles Maintenance Department for carrying out all kinds of repairs."

2.3. So a minimum general educational qualification and a diploma in Mechanical Engineering and also 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 is a required qualification. Since the petitioner has fulfilled the said qualification, he had applied for the said post.

2.4. Pursuant to the application submitted by the petitioner, his application was also considered along with other candidates and written examination had been called for which the petitioner wrote on 24.5.2009. Thereafter, the results should be published by the Commission and based on the marks obtained by the candidates in the written examination, candidates could be called for oral interview and after conducting oral interview, the marks obtained both in the written examination as well as oral interview would be taken together and ultimately, final selection would be made.

2.5. Though the petitioner has done well in the written examination and when he was expecting a call from the Commission for an oral interview, however, he was not called for interview. Therefore, he filed W.P.No.22174 of 2010 wherein the petitioner sought for a prayer for a writ of mandamus directing the respondents to permit the petitioner to attend the oral test to be held on 07.10.2010 and 08.10.2010 pursuant to the written examination held on 24.05.2009. The said writ petition was admitted by this Court on 05.10.2010 and the same was pending. Since the petitioner was not permitted to attend the interview, he had requested the Commission to permit him to attend the interview and the same was rejected by the impugned order of the Commission dated 26.10.2010, whereby the Commission adduced reasons for rejection of the application of the petitioner. On scrutiny, it was found that the petitioner did not possess workshop experience as prescribed in paragraph 4 (B) (iii) and explanation under paragraph 4 (B) of the Commission's notification dated 24.2.2009. In the meanwhile, by order dated 05.10.2010, in M.P.No. 1 of 2010 in W.P.No.22174 of 2010, an interim order was passed by this Court whereby, it was ordered that if any appointment or selection is made during the pendency of the writ petition, the same shall be subject to the result of the writ petition.

2.6. Since the request of the petitioner was rejected by the impugned order of the Commission dated 26.10.2010, challenging the same, the petitioner has come out with the present writ petition W.P.No.26699 of 2010 with the aforesaid prayer.

3. Heard both sides.

4. The learned counsel appearing for the petitioner would submit that the petitioner had working experience from an authorised automobile work shop by name Sri Jayalakshmi Motor Works and Service Station, Salem where he worked for 1 year and 7 months from 03.01.2007 to 31.07.2008. Authorizing the said experience, the petitioner gained in the said work shop by working experience certificate dated 01.08.2008 it had certified that the petitioner had the experience of 1 year and 7 months as required by the Commission under clause 4 (B) of the instructions for consideration of selection process for the said post of Motor Vehicle Inspector.

5. Since the petitioner had produced the said experience certificate obtained from the work shop where he had gained experience and the work shop also is an authorized work shop duly recognised by Director of Motor Vehicle Maintenance Department who in fact is the proper authority to give such recognition under clause 4(B) of the notification, the petitioner's application ought not to have been rejected and he should have been called for interview.

6. Per contra, Mr.R.Muthukumarasamy, the learned Advocate General assisted by Mr.M.Devendaran learned Standing Counsel for TNPSC, who is appearing for the respondent Commission would contend that insofar as the selection of Motor Vehicle Inspector is concerned, for the scrutiny of the certificates produced by number of candidates, a scrutiny committee of the Commission was constituted and the said scrutiny committee after having thoroughly verified each of such experience certificates produced by the candidates will decide whether to accept or not to accept the certificates produced by the respective candidates based on the instructions issued by the Commission under clause 4 of the notification. In this regard, as per the report received from the Director of Motor Vehicle Maintenance Department, the petitioner had obtained certificate from the said Shri Jayalakshmi Motor Works and Service Station, Salem and the said workshop was given approval for major repairs by the Motor Vehicle Maintenance Organisation from 17.6.2005 to 31.3.2007 and 1.4.2007 to 31.12.2007. Since the petitioner was employed from 3.1.2007 to 31.7.2008, he had a shortage of two days of experience for the prescribed one year period as stipulated in paragraph 4(B)(iii) of the Commission's notification and therefore, on the basis of such a lack of experience of one year as mandatorily required under the notification, the petitioner's candidature, was rejected.

7. The learned Advocate General, however, very fairly during the hearing has produced a communication dated 17.11.2016 received from the Motor Vehicle Maintenance Department, Chennai-42 addressed to the Deputy Secretary, Tamil Nadu Public Service Commission. Under the said communication, the Motor Vehicle Maintenance Department has given details about the recognition/authorisation of the workshop, namely, Sri Jayalakshmi Motor Works, Salem wherein the petitioner gained experience. In the said letter dated 17.11.2016, the following period has been given for authorisation/recognition of the said automobile works:

Name and Address of the Workshop (Major)			Sri Jayalakshmi Motor Works, 72/59 KAS Nagar VI Cross, Court Road, Salem-7	
Sl.No	Period	1 st Order issued	1 st extension	2 nd extension
1	01.04.2005 to 31.3.2007	17.06.2005 to 26.06.2005	upto 26.06.2006	upto 31.03.2007
2	01.04.2007 to 31.3.2009	01.04.2007 to 31.12.2007	upto 25.03.2009	

8. Though such a clarification now has been made by the Motor Vehicles Maintenance Department, in the earlier communication there might have been a different version from the said department to the Commission and only based on that, a decision was taken by which the petitioner was not permitted to attend the interview.

9. The learned Advocate General would further contend that all those documents pertaining to the selection since had been taken possession by vigilance department officials on an enquiry which was pending against these recruitment and other related issues, the Commission was not in a position to produce the actual documents based on which a decision was taken in respect of the petitioner's case.

10. This Court had considered the said rival submissions made by the learned counsel for the petitioner and the learned Advocate General appearing for the Commission and also the materials placed before this Court for its perusal.

11. The issue raised in the writ petition is in a very narrow compass. The issue actually is whether the petitioner has gained the experience of minimum one year period from a

recognized or approved or certified automobile workshop either by the Transport Commissioner or by the Director, Motor Vehicles Maintenance Department. In this regard, the learned counsel appearing for the petitioner also relied on a communication dated 8.4.2010 given by the Director, Motor Vehicles Maintenance Department, Chennai-42, pursuant to the RTI query according to which, the following table is given to show that the automobile workshop where the petitioner gained experience was having the approval of the authority for the period from 2005 to 2009 and the same is reproduced hereunder:

	Period	Category
i	From 1.4.2005 to 31.3.2007	Major Repairs
ii	From 1.4.2007 to 25.3.2009	Major Repairs
Iii	From 1.4.2009 to 25.3.2010 (The Company will be considered for extension up to 31.3.2011 subject to the production of relevant documents)	Major Repairs

12. This document dated 08.4.2010 discloses an undisputed fact by the very same authority, who is empowered to give approval or recognition to automobile workshop that the said workshop where the petitioner gained experience was having approval from 01.4.2005 to 25.3.2009 continuously without any break. More or less, the same factor has now been coincided or corroborated with the present document produced by the learned Advocate General as written by the same authority, namely, Director, Motor Vehicles Maintenance Department, Chennai-42 to the respondent Commission. Even though the said factor was brought to the notice of the Commission, atleast by filing this writ petition where this 08.4.2010 document was also filed by the petitioner in the typed set of papers and on receipt of the same, the Commission could have reviewed their decision. But, unfortunately, inspite of the documents, the Commission in their counter filed on 24.4.2011 at paragraph 6 states as follows:

"6. It is submitted that as regards the contention raised by the petitioner in ground No. E, it is submitted that the workshop wherein the petitioner was employed i.e., Sri Jayalakshmi Motor Works, Salem-7 was given approval for Major repairs by Motor Vehicle Maintenance Organisation from 17.06.2005 to 31.03.2007 and from 01.04.2007 to 31.12.2007. As the petitioner was employed from 03.01.2007 to 31.07.2008, he had a shortage of 2 days experience for the prescribed one year in an Automobile workshop as stipulated in para 4 (B)(iii) of the Commission's

Notification for the said post. Therefore, the contention raised in Ground E has no relevance to the case of the petitioner."

13. However, now the stand of the petitioner is vindicated and the automobile workshop where he gained experience stands approved by the authority concerned right from 01.4.2005 or atleast from 17.6.2005 as claimed by the Commission till 31.3.2009 within which period the petitioner gained experience from 03.1.2007 to 31.07.2008 i.e., 1 1/2 years. Therefore, absolutely there is no reason on the part of the Commission to conclude that the petitioner had a shortage of two days experience for the prescribed one year in automobile workshop as stipulated in paragraph 4 (B)(iii) of Commission's notification.

14. In view of the disclosure made by atleast two documents; one dated 08.4.2010 and another dated 17.11.2016 by the very same authority, namely, Director, Motor Vehicles Maintenance Department, Chennai-42, the only objection raised by the Commission for not calling the petitioner for interview has vanished or no legs to stand.

15. As discussed above, during the pendency of the writ petition, an interim order was passed that whatever selection be made in respect of this recruitment that shall be subject to the outcome of the writ petition and also further in M.P.No.2 of 2010 in W.P.No.26699 of 2010 by order dated 01.12.2010, an interim direction was given to the second respondent Commission to keep one post of Motor Vehicles Inspector Grade-II in TamilNadu Transport Subordinate Services 2006-2008 vacant for a period of two weeks and the said order was subsequently, also extended by order dated 02.02.2011 in the same M.P.No.2 of 2010. Whether the said post has been still kept vacant or not is not an issue, at any rate, the petitioner without any flaw on his part was denied the chance of attending the interview for the said selection, the fault is not on the part of the petitioner, but exactly on the respondent Commission, who either could have verified the certificate produced by the petitioner by calling clarification from the authority, namely, Director, Motor Vehicles Maintenance Department, or atleast after filing the writ petition, in view of the document dated 8.4.2010 issued by the very same authority further review could have been made by the Commission and ultimately, the petitioner could have been called for interview, at any rate, all those measures have not been taken except to file a counter by defending the action of the Commission as stated in paragraph 6 of the counter referred to above.

16. In the circumstances, this Court is of the considered view that the petitioner shall be entitled to get the relief claimed herein as he has fulfilled the qualification of education as well as experience and has also participated in the written examination and the result there on has not been published.

17. In the result, the writ petition is ordered in the following terms:

(i) The impugned order, insofar as it relates to the petitioner's candidature is concerned, is quashed.

(ii) The second respondent is directed to call the petitioner for oral interview for the said selection of Motor Vehicle Inspector, Grade-II for the year 2006-08 immediately, at any rate within a period of four weeks from the date of receipt of a copy of this order and conduct the oral interview by constituting a interview Board for this specific purpose;

(iii) On completion of the interview, the marks to be obtained by the petitioner in the oral interview and the marks already obtained by the petitioner in the written examination shall be put together within the meaning of clause 7 of the notification and ultimately, if the petitioner obtained the marks for consideration within the zone of selection either in the open category or in any other communal category which he belongs, he shall be considered for selection for the said post accordingly;

(iv) At any rate, all the needful indicating above shall be done by the second respondent within a total period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

18. In view of the order passed in W.P.No.26699 of 2010, no further orders are necessary in W.P.No. 22174/2010. Therefore, the same is closed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kua

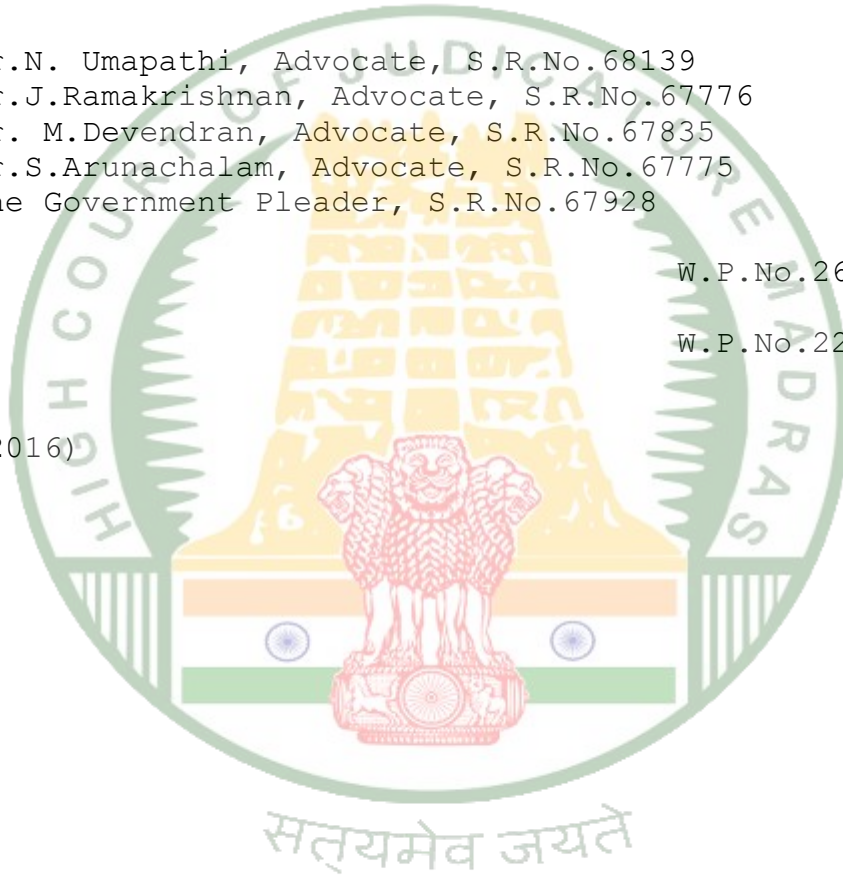
To

1. THE SECRETARY TO GOVERNMENT
HOME (TR.II-A) DEPARTMENT SECRETARIAT
CHENNAI-9.
2. THE SECRETARY
TAMIL NADU PUBLIC SERVICE COMMISSION
NO.1 GREAMS ROAD COMMERCIAL TAX ANNEXE BUILDING
CHENNAI-6.

+1cc to Mr.N. Umapathi, Advocate, S.R.No.68139
+1cc to Mr.J.Ramakrishnan, Advocate, S.R.No.67776
+1cc to Dr. M.Devendran, Advocate, S.R.No.67835
+1cc to Mr.S.Arunachalam, Advocate, S.R.No.67775
+1cc to the Government Pleader, S.R.No.67928

W.P.No.26699 of 2010
&
W.P.No.22174 of 2010

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