



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.09.2016
Delivered on : 16.09.2016

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THE HON'BLE Mr. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE Ms. JUSTICE V.M.VELUMANI

W.A.(MD)Nos.861 & 1102 of 2015

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M.P.(MD)Nos.1 & 1 of 2015

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C.M.P.(MD)No.1645 of 2016 in W.A.(MD)No.1102 of 2015

W.A. (MD)No.861 of 2015:-

Jeevadhasan, S/o.Perumal .. Appellant/Petitioner

Vs.

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Executive Engineer,
Agriculture Engineering Department,
Thondi Road,
Sivagangai,
Sivagangai District.

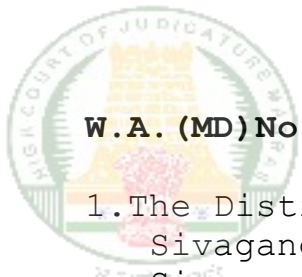
3.The District Employment Officer,
The Employment Exchange Office,
Sivagangai,
Sivagangai District.

.. Respondents/Respondents

Appeal filed under under Clause 15 of the Letters Patent,
against the order dated 10.03.2015, made in W.P.(MD)No.13121 of
2014.

Prayer in WP(MD). 13121/ 2014 :

To issue a Writ of Mandamus to direct the first
respondent herein to appoint the petitioner to the post of Jeep
Driver in the office of the 2nd Respondent in the light of G.O.Ms.
No. 475 dated 2.5.1985 and based on the petitioner's
representation dated 28.07.2014.

**W.A. (MD) No.1102 of 2015:-**

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Executive Engineer,
Agriculture Engineering Department,
Thondi Road,
Sivagangai,
Sivagangai District.

3.The District Employment Officer,
The Employment Exchange Office,
Sivagangai,
Sivagangai District.

.. Appellants/Respondents

Vs.

M.Maharajan

.. Respondent/Petitioner

Appeal filed under under Clause 15 of the Letters Patent,
against the order dated 21.07.2015, made in W.P.(MD)No.654 of
2015.

Prayer in WP(MD). 654/ 2015 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a writ of
Mandamus directing the 1st respondent herein to appoint the
petitioner to the post of Jeep Driver in the Office of the 2nd
respondent pursuant to the interview held on 21.7.2014 in the
light of G.O.Ms.No.475 Agriculture (EA3) Department dated
02.05.1985.

For Appellants in W.A.(MD)
No.1102/2015 &
For Respondents in W.A.
(MD)No.861/2015

: Mr.A.K.Baskarapandian
Special Government Pleader

For Appellant in W.A.(MD)
No.861/2015 &
For Respondent in W.A.
(MD)No.1102/2015

: Mr.T.Pon Ramkumar

**COMMON JUDGMENT**

V.M.VELUMANI, J.

These Writ Appeals have been filed challenging the orders of the learned Single Judge, dated 10.03.2015 and 21.07.2015, made in W.P.(MD)No.13124 of 2014 and W.P.(MD)No.654 of 2015 respectively.

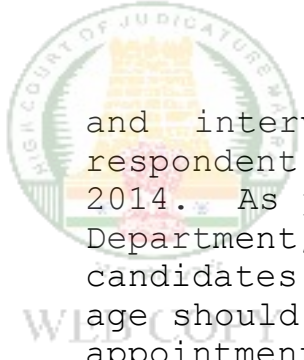
2. Since common issues are involved in the writ appeals, they are heard together and disposed of by this common Judgment.

3. The parties are referred to as per their rank in the writ petitions.

4. The case of the petitioners is that the petitioner in W.P.(MD)No.13121 of 2014 filed the said writ petition seeking a direction to the first respondent to appoint him to the post of Jeep Driver in the Office of the second respondent in the light of G.O.(Ms)No.475, dated 02.05.1985 and based on his representation, dated 28.07.2014. The petitioner in W.P.(MD)No.654 of 2015 filed the said writ petition seeking a direction to the first respondent to appoint him to the post of Jeep Driver in the Office of the second respondent, pursuant to the interview held on 21.07.2014 in the light of G.O.(Ms)No.47, Agriculture (EA3) Department, dated 02.05.1985.

5. According to the petitioners, they belong to Scheduled Caste Community and they are in possession of driving licence and the upper age limit for appointment to the post of Jeep Drivers is 35 years. The Government by G.O.(Ms)No.24, Agriculture (ED3) Department, dated 31.01.2012, sanctioned 12 posts of Jeep Drivers for Sivagangai District. Out of 12 posts, the second respondent filled up only 3 posts in the year 2012. Subsequently, on 28.02.2014, the second respondent requested the third respondent to sponsor the eligible candidates for appointment of Jeep Drivers. The petitioners' names were sponsored and they attended the interview and also appeared for driving test. According to the petitioners, in the interview and driving test, they were informed orally that they were selected and will get the appointment order. While so, the second respondent informed the petitioners that their names were rejected on the ground that they were crossed the upper age limit of 35 years as on the interview date.

6. The learned counsel for the petitioners submitted that the upper age has to be reckoned as on 01.01.2014 and the petitioners had not crossed 35 years as on that date. After advertisement, <https://heservices.heservices.gov.in/heservices/> selection was notified and therefore, no selection was made till the completion of parliamentary election in May 2014

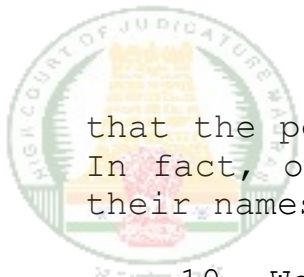


and interview was conducted only on 21.07.2014. The second respondent is not correct in reckoning the upper age as on July 2014. As per G.O.(Ms)No.475, Personnel and Administrative Reforms Department, dated 02.05.1985, if the date of sponsoring of the candidates falls within the age stipulated, then in such cases the age should not be taken into consideration for the issuance of the appointment order as on the date of its issue. The learned Single Judge allowed W.P.(MD)No.654 of 2015, vide order dated 21.07.2015, at the time of admission itself after hearing the learned Additional Government Pleader, on the ground that the petitioner therein was not over-aged on the cut-off date mentioned in the notification. The learned Single dismissed W.P.(MD)No.13121 of 2014, vide order dated 10.03.2015, on the ground that the petitioner therein was over-aged relying on the counter affidavit filed by the respondents.

7. Against the said orders, dated 10.03.2015 and 21.07.2015, the present writ appeals have been filed.

8. Mr.T.Pon Ramkumar, learned counsel for the appellant in W.A.(MD)No.861 of 2015 / respondent in W.A.(MD)No.1102 of 2015 contended that the petitioners are not over-aged as on 01.01.2014 and therefore, the second respondent is not correct in rejecting the candidature of the appellant in W.A.(MD)No.861 of 2015 and the respondent in W.A.(MD)No.1102 of 2015. The rejection of their candidature by the Authority is on the ground that they crossed the upper age as on the interview date, is not correct. The Authorities ought to have reckoned the age of candidates as on 01.01.2014 and not as on 21.07.2014, i.e., the date of interview. Further, both the candidates were informed that they were selected and appointment order will be issued. The selected candidate, John Kennady was removed from service as an accident had taken place and one official had died. Now, there are vacancies and the petitioners could be considered for appointment in the existing vacancies.

9. Mr.A.K.Baskarapandian, learned Special Government Pleader for the appellants in W.A.(MD)No.1102 of 2015 / respondents in W.A.(MD)No.861 of 2015 contended that it is not correct to state that the petitioners were informed orally that they were selected and appointment order will be issued. The case of the petitioners were rejected after verifying their records and driving test, as the petitioners secured lower marks in the interview and driving test. One John Kennady was selected and appointed, as he secured higher marks. The learned Special Government Pleader relying on the Typed Set of Papers and submitted that the case of the petitioners were rightly rejected, as they were secured only lower marks. The case of the petitioners cannot be considered for the <https://www.mca21.gov.in/hassearces> vacancies. The appointment can be made only after advertisement and selection process. By mistake in the counter affidavit filed by the second respondent, it has been mentioned



that the petitioner's case was rejected on the ground of over-age. In fact, only due to the fact that they have secured lower marks, their names were rejected.

10. We have carefully perused all the materials available on record and considered the arguments advanced by the learned counsel appearing for the parties.

11. The point for consideration in these writ appeals is, Whether Mandamus can be issued directing the authorities to appoint the petitioners as Jeep Drivers, when their cases were rejected after interview and driving test?

12. It is seen from the records, one John Kennady was appointed as Jeep Driver, as he secured highest marks in the interview and driving test. The case of the petitioners were rejected on the ground that they have obtained lower marks than John Kennady. The petitioners have not challenged the appointment of John Kennady. Further, the respondents have stated that the petitioners were informed orally that they were selected and appointment order will be issued. On the other hand, the specific case of the respondents is that the petitioners were rejected on the ground that they secured lower marks than John Kennady.

13. The contention of the learned counsel for the petitioners that still there are vacancies and sanctioned posts are not filled up and they can be appointed in the existing vacancies, is untenable. On the other hand, the contention of the learned Special Government Pleader is that the existing vacancies can be filled up only by calling for fresh advertisement, as some candidates would have become eligible as on today. The said contention has considerable force and the Hon'ble Apex Court in the following judgments, has held as follows:

(i) **2012 (1) SCC 432 [Union of India and another vs. Pradip Kumar Kedia and others]**

"29. As has been held by this Court in SCTI for Medical Science & Technology Vs. M.Pushkaran [2008 (1) SCC 448] each case must be considered on its own merits and where the Court does not find any reason for the authorities not to offer any appointment to the candidate placed in the selection panel the court can direct appointment."

(ii) **2016 (6) SCC 532 [Kulwinder Pal Singh and another Vs. State of Punjab and others].**

"13. As noticed earlier, as against twenty-seven posts of general category advertised for the year 2007-2008, thirty-one general category candidates have joined and are working. In Rakhi Ray And Ors. vs. High Court of Delhi And Ors. (2010) 2 SCC 637, observing that the vacancies cannot be filled up over and above the number of vacancies



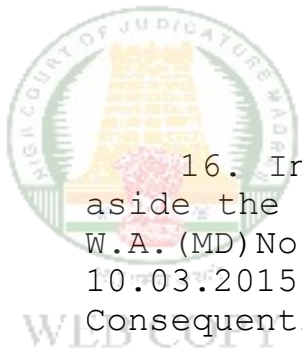
advertised, recruitment of the candidates in excess of the notified vacancies would amount to denial of equal opportunity to eligible candidates, this Court held as under (SCC pp.642-43, paras 12-13)

"12. In view of above, the law can be summarised to the effect that any appointment made beyond the number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of India, thus, a nullity, inexecutable and unenforceable in law. In case the vacancies notified stand filled up, the process of selection comes to an end. Waiting list, etc. cannot be used as a reservoir, to fill up the vacancy which comes into existence after the issuance of notification/advertisement. The unexhausted select list/ waiting list becomes meaningless and cannot be pressed in service any more.

13. In the instant case, as 13 vacancies of the general category had been advertised and filled up, the selection process so far as the general category candidates is concerned, stood exhausted and the unexhausted select list is meant only to be consigned to record room.""

14. From the above two judgments, it is clear that even selected candidates have no vested right to be appointed in the post. It is open to the authorities not to fill up the posts for valid reason. If the action of the authorities in not filling up the post, advertised after selection is not arbitrary, the Courts will not issue Mandamus to the authorities to appoint selected candidates. Only if the action of the authorities in not filling up the vacancies after selection, is without any reason or arbitrary, the Courts can issue Mandamus directing the authorities to fill up the vacancies from the select list. In the present case, after selection, one John Kennady was appointed as he obtained highest marks in the interview and driving test. The petitioners were not selected, as they obtained less marks. Therefore, they are not entitled for a direction being issued by this Court to the authorities. Further, the contention of the petitioners that their case had been rejected on the ground that they were over-aged is not correct. From the materials on record, it is seen that the petitioners were not appointed as their performance in the driving test, is not upto mark and they secured less mark.

15. We would like to point out that the second respondent, who filed counter affidavit in W.P.(MD)No.13121 of 2014, has without properly verifying the records and in a causal manner, has stated that the petitioner's case was rejected because of his over-age. These averments in the counter affidavit is factually incorrect, as seen from the materials produced by the respondents.



16. In the result, W.A.(MD)No.1102 of 2015 is allowed setting aside the order dated 21.07.2015, made in W.P.(MD)No.654 of 2015. W.A.(MD)No.861 of 2015 is dismissed confirming the order, dated 10.03.2015, made in W.P.(MD)No.13121 of 2014. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

- 1.The District Collector,
Sivagangai District,
Sivagangai.
- 2.The Executive Engineer,
Agriculture Engineering Department,
Thondi Road,
Sivagangai,
Sivagangai District.
- 3.The District Employment Officer,
The Employment Exchange Office,
Sivagangai,
Sivagangai District.

+2cc to Mr.T.Pon Ramkumar, Advocate SR.No.53267
+1cc to special Government Pleader SR.No.53193

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