



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.A. (MD) Nos.91 and 92 of 2013
and
M.P (MD) Nos.1 and 1 of 2013

W.A(MD)No.91 of 2013:

M.Rajamanickam

... Appellant/Petitioner

Vs.

State Transport Corporation (Madurai) Ltd.,
represented by its
General Manager,
Dindigul Region,
Dindigul - 624 004.

... Respondent/Respondent

PRAYER: Appeal filed under Clause 15 of the Letters Patent, against the order passed in W.P(MD)No.1293 of 2008, dated 05.10.2012.

Prayer in WP(MD) . 1293/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the entire reocrds relating to the impugned order of the respondent in Ref: Admn: 2631 dated 24/12/2007 and quash the same and consequently direct the respondent to appoint the petitioner as conductor in the respondent corporation.

For Appellant : Mr.M.S.Suresh Kumar
For Respondents : Mr.A.P.Muthupandian

W.A(MD)No.92 of 2013:

S.Alagupandi

... Appellant/Petitioner

Vs.

State Transport Corporation (Madurai) Ltd.,
represented by its
General Manager,
Dindigul Region,
Dindigul.

... Respondent/Respondent



PRAYER: Appeal filed under Clause 15 of the Letters Patent, against the order passed in W.P(MD)No.1294 of 2008, dated 05.10.2012.

Prayer in WP(MD). 1294/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the entire reocrds relating to the impugned order of the respondent in Ref: Admn: 2632 dated 24/12/2007 and quash the same and consequently direct the respondent to appoint the petitioner as conductor in the respondent corporation.

For Appellant : Mr.M.S.Suresh Kumar
For Respondents : Mr.A.P.Muthupandian

COMMON JUDGMENT

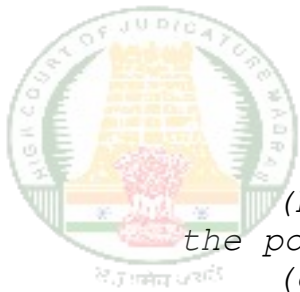
(Judgment of the Court was delivered by M.SATHYANARAYANAN,J.)

By consent, the writ appeals are taken up for final disposal.

2. The appellants claim that they belonged to Scheduled Caste community and after completing their Conductors' Course and obtaining the Certificate, got themselves registered with the jurisdictional Employment Exchange. The respondent Corporation through the Employment Exchange, called for the candidates for the post of Conductors and accordingly, they participated in the interview conducted on 08.05.2007 and since both of them came successful, they were given the Conductors' training from 05.00 p.m., to 06.00 p.m. in a particular route.

3. The grievance expressed by the appellants is that though they were seniors in Employment seniority, overlooking their merit and seniority, some unqualified persons were selected and appointed as Conductors and they were called for the Medical Fitness and in this regard, they filed W.P(MD)Nos.9358 and 9464 of 2007 respectively and pendency of the said writ petitions, they have been issued with the impugned orders stating that they have not been selected on account of poor performance in Efficiency Test.

4. The appellants challenging the legality of the said impugned orders dated 24.12.2007 passed by the respondent Corporation, had filed W.P(MD)Nos.1293 and 1294 of 2008, praying for quashment of the same with a further direction to the respondent Corporation to select and appoint them as Conductors. The respondent Corporation had filed the counter affidavits contending among other things that the persons were selected based on their skill regarding their performance in Conductors' duty during the course of interview and as per G.O.Ms.No.57, Transport (C1) Department, dated 21.07.2005, the Conductors/Drivers have to be selected after satisfying the following conditions:



"(a) Driving test for the test of drivers;
(b) Efficiency Test (issuing tickets in line) for the post of conductor;
(c) Physical fitness including Eye test, Hearing Test and Tolerance Test;
(d) They should be non-alcoholic and without any bad habits."

5. According to the respondents, the selection process was conducted in accordance with the above Government Order and the performances of the appellants were found to be not satisfactory and therefore, the impugned orders came to be passed rejecting their claim.

6. The learned Judge after taking note of the rival submissions, found that the selection process was done strictly in accordance with G.O.Ms.No.57, Transport (C1) Department, dated 21.07.2005, and in the absence of any *mala fide* and substantiate the same by relevant materials, the case projected by the appellants did not merit consideration. The learned Judge has also placed reliance upon the common order passed in W.P(MD)No.10372 of 2007, etc., batch of writ petitions, dated 30.11.2011, which, in turn, placed reliance upon the judgment of the Honourable Supreme Court in **State of M.P. v. Sanjay Kumar Pathak** reported in (2008) 1 SCC 456, wherein it has been held that a candidate does not have any legal right to be appointed and in terms of Article 16 of the Constitution of India, has only a right to be considered. The learned Judge, in the light of the factual aspects and legal position, has thought fit to dismiss both the writ petitions. Aggrieved by the same, the present appeals are filed.

7. The learned Counsel for the appellants would vehemently contend that both the appellants belong to Scheduled Caste community and their performance was admirable during the Efficiency Test and for extraneous and other reasons, the persons who were juniors in Employment seniority and who have not performed well, were selected and appointed as Conductors and prays for interference.

8. Per contra, Mr.A.P.Muthupandian, learned Counsel for the respondent Corporation accepts notice for the respondent Corporation and would contend that the selection was done strictly in accordance with the parameters prescribed in G.O.Ms.No.57, Transport (C1) Department, dated 21.07.2005 and in the light of the factual and legal aspects, the learned Judge has rightly reached the conclusion to dismiss the writ petitions and prays for confirmation of the said orders.

9. This Court paid it's best attention to the rival submissions and perused the materials available on record.

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10. It is the specific stand of the petitioners that though the



appellants had performed admirably well, for reasons/oblique reasons, they have not been selected. A perusal of the affidavit would show that no specific allegation regarding the *mala fide* has been made and it is well settled position of law that the specific allegations of *mala fide* have to be made and strictly proved and unfortunately, failed to substantiate the same in the absence of definite/worthwhile materials. The persons, who according to the appellants, rank juniors in their Employment seniority, have not performed well and admittedly, they have not been arrayed as parties in the writ petition. The learned Judge, on going through the materials, recorded a factual finding strictly in accordance with G.O.Ms.No.57, Transport (C1) Department, dated 21.07.2005, and also by applying the ratio laid down in the judgment of the Honourable Supreme Court in ***State of M.P. v. Sanjay Kumar Pathak*** reported in **(2008) 1 SCC 456**, that the appellants/writ petitioners did not have any legal right to be appointed, but have a right to be considered. Admittedly, the claims of the appellants/writ petitioners have been considered and their performance was poor.

11. This Court, on an independent application of mind to the entire materials available on record, is of the view that there is no error, illegality or infirmity in the reasons assigned by the learned Judge for dismissing the writ petitions and finds no merit in these writ appeals.

12. Therefore, both the writ appeals are dismissed, confirming the common order passed in W.P(MD)Nos.1293 and 1294 of 2008, dated 05.10.2012. However, in the facts and circumstances of the case, there is no order as to costs.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The General Manager,
State Transport Corporation (Madurai) Ltd.,
Dindigul Region,
Dindigul.

+ 1 CC TO Mr.M.S.SURESH KUMAR, ADVOCATE IN SR No. 53722

RSB
TE/GSV-PM : 27/09/2016 : 4P/3C

W.A. (MD) Nos.91 and 92 of 2013
and
M.P (MD) Nos.1 and 1 of 2013
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