

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 08.11.2016

CORAM:

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.A(MD)No.99 of 2013
and
M.P. (MD)Nos.1 and 2 of 2013

T.Krishnaprasad ... Appellant/Petitioner

Vs.

- 1.The Government of Tamil Nadu,
represented by its Secretary to Government,
Transport Department, Fort St.George,
Chennai-600 009.
- 2.The Chairman cum General Manager,
Conductor, Driver Selection Committee,
Tamil Nadu State Transport Corporation Ltd.,
Madurai Division III, Nagercoil,
Ranithottam, Kanyakumari District. .. Respondents/Respondents

PRAYER: The Writ Appeal is filed under Clause 15 of Letter Patent Act praying to set aside the order dated 05.11.2012 made in W.P. (MD)No.7279 of 2007, on the file of this Court.

Prayer in WP(MD). 7279/ 2007 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the 2nd respnodent herein to select and issue appointment orders to the petitioner on the basis of the reservation rules under the Ex- servicement quota for the post of conductor or dirver in State Transport corporation (madurai) ltd, nagercoil division, Ranithottam, Kanyakumari district.

For Appellant :Mr.N.S.Ramakrishnadass

For Respondents : Mr.K.Sathyasingh
Standing Counsel for TNSTC

**JUDGMENT**

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

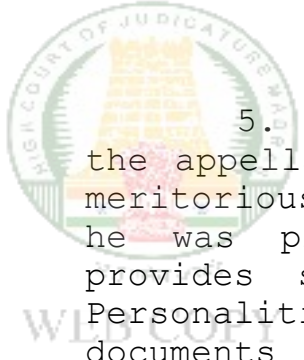
By consent, this Writ Appeal is taken up for final hearing.

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2. The appellant is the writ petitioner and he claims to be an Ex-Serviceman and further that he belongs to a poor agriculture family and after completed his Higher Secondary Course, he joined the service of Indian Army in the year 1982 and retired on 31.07.1998. The appellant/writ petitioner would state that during the period of his service, he had also served in National Security Guards (NSG), which provides security and protection to the Very Very Important Personalities. It is also the claim of the petitioner that he is having valid conductor licence, heavy driver licence with badge and first aid certificate and registered himself with the Employment Exchange, Nagercoil, Kanyakumari District and his registration number is Ex-75/98. The appellant/writ petitioner, in response to the advertisement issued by the second respondent Corporation for selection to the post of drivers and conductors, submitted an application and he was called for interview and his name was also sponsored by the Ex-Servicemen Welfare Board, however, he was not selected and expressing the grievance that while selection and appointment for the post of conductors and drivers, the reservation rules have not been followed, he has approached this Court by filing a writ petition in W.P.(MD)No.7279 of 2007 praying for issuance of Writ of Mandamus, directing the second respondent to select and issue appointment order to him either to the post of conductor or driver under the Ex-Servicemen quota.

3. The writ petition was entertained and notices were ordered to the respondents and the second respondent had filed his counter affidavit taking a stand that nine Ex-Servicemen and 20 dependents have already been selected and appointed to the post of driver and conductor, though there was no reservation quota for Ex-servicemen and as per rules in force and would submit that the performance of the petitioner was thoroughly valued and in the driving skill and in the aptitude test, his performances are found to be lacking and not satisfactory and therefore, he was was not selected and hence, prayed for dismissal of the writ petition.

4. The learned Single Judge, after taking note of the submissions made in the affidavit filed in the writ petition as well as counter affidavit, has accepted the stand of the second respondent and dismissed the writ petition, granting liberty to the appellant/writ petitioner to challenge his non-selection by impleading the selected candidates. The appellant/writ petitioner, by the dismissal of the writ petition, had filed this writ appeal.



5. Mr.N.S.Rama Krishnadass, learned Counsel appearing for the appellant/writ petitioner would submit that the appellant has meritorious service and on account of his exceptional performance, he was provided into National Security Guards (NSG), which provides security and protection to the Very Very Important Personalities and despite the fact that he is holding necessary documents for his selection to the post of either conductor or driver, his meritorious performances have been unjustly overlooked by extraneous consideration and therefore, prays for interference.

6. Per contra, Mr.K.Sathyasingh, learned Standing Counsel appearing for the respondents Corporation has drawn the attention of this Court to the counter affidavit filed by the second respondent in the writ petition and would submit that despite no reservation quota for Ex-servicemen and as per rules in force, nine Ex-Servicemen and 20 dependents have already been selected and the performance of the petitioner was also thoroughly valued and since it was not found to be satisfactory, he was not selected and therefore, prays for dismissal of the writ appeal.

7. This Court paid it's best attention to the rival submissions and also perused the materials placed before this Court.

8. The scope of interference with regard to the selection in exercise of jurisdiction under Section 226 of Constitution of India is very limited. The learned Judge has considered the said aspect and concluded that on account of non-satisfactory performance, the appellant/writ petitioner was not selected either to the post of conductor or driver and dismissed the writ petition and challenging the legality of the same, the present writ appeal has been filed.

9. Though a faint attempt has been made by the learned Counsel for the appellant/writ petition alleging that *malafide* and nepotism, no specific averments have been made to that effect and it is also well settled position of law that if *malafide* is alleged, it should be averred and strictly proved and the appellant/writ petitioner has failed to do so. This Court, in exercise of its jurisdiction under Clause 15 of Letter Patent, cannot interfere with the selection process, unless it is brought to the knowledge about favouritism, malafideness, arbitrariness and nepotism exhibited by the second respondent and unfortunately, the said averment made on behalf of the appellant/writ petitioner has not been substantiated in the form of relevant materials. Though this Court sympathises the appellant/writ petitioner on account of his past record service, is not in a position to grant him any relief on account of the above said infirmity. The learned Single Judge, while dismissing the writ petition, has also given liberty to the appellant/writ petitioner to challenge his non-selection by impleading the selected candidates.



10. This Court, on an independent application of mind and thorough consideration of the entire materials, is of the view that there is no infirmity or error apparent on the impugned order and therefore, the Writ Appeal deserves to be dismissed. Accordingly, the Writ Appeal is dismissed confirming the order passed in W.P(MD)No.7279 of 2007, dated 05.11.2012. However considering the facts and circumstances of the case, there shall be no order as to costs. Interim order already granted shall stand vacated. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1.The Government of Tamil Nadu,
represented by its Secretary to Government,
Transport Department, Fort St.George,
Chennai-600 009.

2.The Chairman cum General Manager,
Conductor, Driver Selection Committee,
Tamil Nadu State Transport Corporation Ltd.,
Madurai Division III, Nagercoil,
Ranithottam, Kanyakumari District.

+1 cc to MR.K.SATHIYA SINGH, Advocate SR.No.67752

+1 cc to MR.N.S.RAMAKRISHNADASS, Advocate SR.No.67092

W.A(MD)No.99 of 2013

and

M.P.(MD)Nos.1 and 2 of 2013

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SMA/SS-2/25.11.2016:2P/5C