



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2016

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THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.66 of 2011
and
M.P (MD) No.1 of 2011

D.Baskaran

... Petitioner

vs.

The General Manager,
Tamil Nadu State Transport Corporation,
Dindigul.

... Respondent

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the respondent in his proceedings ~~251 of 11~~ 781 dated 14.09.2010 and quash the same as illegal and consequentially to direct the respondent to consider the petitioner for appointment to the post of Driver in the respondent corporation.

For Petitioner : Mr.M.Ajmal Khan
For Respondents : Mr.S.Baskaran

ORDER

The respondent has passed an order dated 14.09.2010, intimating that the petitioner is not selected for the post of Driver, as he has obtained less than 50 marks and the persons who secured more than 50 marks alone have been selected by the Corporation. This order is under challenge in this writ petition.

2.The petitioner's name has been enrolled in the District Employment Office, Theni, and his Employment No.2004M05084 and it has been renewed periodically from the year 1992 onwards. The respondent herein requested the District Employment Exchange, Theni, to sponsor the names of eligible candidates for being considered for appointment to the post of Driver.

3.The petitioner's name was sponsored by the District Employment Exchange, Theni, and the petitioner was called upon to appear for the Interview scheduled to be held on 05.02.2009. The



petitioner's name was in the selected list of eligible persons and in Serial No.21, his name was found, wherein, he has secured 19 marks and the breakup details being Personality-6, G.K-4 and Job Knowledge-9, totally 19 marks, but the petitioner was not issued with any appointment order. Therefore, he preferred a representation to the respondent on 01.07.2009. As his representation was not considered, the petitioner filed W.P(MD) No.5309 of 2009 and the same was disposed of by an order dated 29.06.2010, directing the respondent to consider the petitioner's representation dated 01.07.2009 and pass orders within a period of six weeks. Thereafter, by order dated 14.09.2010, the respondent has rejected the claim of the petitioner, on the ground that he has not even secured the minimum mark of 50 in the Interview.

4.The learned counsel for the petitioner would submit that no Rule has been framed by the respondent making the eligibility criteria that minimum mark of 50 should be secured during the Interview. The contention is that in the absence of any Rule, Guidelines or Regulations providing for obtaining certain minimum mark in the Interview, the order passed by the respondent saying that the petitioner has not secured minimum mark of 50 in the Interview, is liable to be set aside.

5.In support of the claim, decision of this Court in **M.Ravi vs. Tamil Nadu State Transport Corporation, Represented by its Managing Director, Salem Division, Salem, (W.P.No.17743 of 2008, dated 16.09.2008)** is relied upon, whereunder, in paragraph 14, it has been specifically mentioned that when there are no Rules under which minimum mark has been prescribed for selection, the rejection order passed cannot be upheld. In the said decision, decision of the Supreme Court in **K.Manjusree vs. State of A.P.**, reported in **AIR 2008 SC 1470**, was relied on, whereunder, it was held that the minimum mark for the interview was prescribed without prescription of the same in the rule of selection, hence, it is not valid. Relying upon this decision, learned counsel for the petitioner contended that the rejection of the candidature of the petitioner, on the ground that the petitioner has not secured minimum of 50 marks cannot be upheld.

6.The learned counsel for the respondent would submit that as of now, there is no vacancy available to accommodate the petitioner. Therefore, the petitioner's claim cannot be considered.

7.It is relevant to point out the observation made in paragraph 17 of the order passed by this Court in W.P.No.17743 of 2008, dated 16.09.2008, which would be relevant and suitable for this case:-

'17. The learned counsel for the respondents submitted that as on today there is no vacancy available. Petitioner also has not chosen to challenge the selection of any candidate by impleading them as party respondents. In the absence of any vacancy even though petitioner has



established his right to selection, I am unable to issue any direction to select the petitioner, since the selected candidates are not made as party before this Court. Even though their selection is found to be not justified, I am of the view that their selection could not be set aside at this stage. It is also the fact that by selecting ten times more than the notified vacancies, the petitioner's right to participate in future selections are denied several times and hence the petitioner is entitled to get a remedy. Therefore, I am of the view that the interest of justice would be met by directing the respondents to select and appoint the petitioner in the next available vacancy in the post of conductor before calling for fresh list from the Employment Exchange.''

8. In the light of the above order passed by this Court, the impugned order is set aside and the respondent is directed to consider the case of the petitioner in the future arising vacancies.

With the above direction, this writ petition is allowed. No costs. M.P(MD)No.1 of 2011 is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

nbi

To

The General Manager,

Tamil Nadu State Transport Corporation,
Dindigul.

+1CC to M/S.Ajmal Associates, Advocate Sr.No.51312

+1CC to Mr.S.Baskaran, Advocate Sr.No.51155

GJM/GSV/PM/10.11.16-3p-4C

W.P (MD) No.66 of 2011
08.09.2016