

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.10477 of 2010

ORDER:

This writ petition under Article 226 of the Constitution of India is filed seeking the following relief:

‘..to issue a writ or order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents in not selecting/ appointing the petitioner as driver on the alleged ground that the petitioner is exceeded 40 years of age as on 1-7-2009 is illegal, arbitrary, violative of Articles 14, 16 and 21 of the Constitution of India and consequently direct the respondents to treat the petitioner with the age and consider the petitioner for appointment of driver in respondents corporation and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.’

I have heard the submissions of Sri S. Lakshminarayana Reddy, learned counsel for the writ petitioner, and Sri A. Rama Rao, learned Standing Counsel for APSRTC appearing for the respondents 1 to 3. I have perused the material record.

The respondents have issued the subject notification for appointment of drivers on contract basis. The petitioner, who was born on 01.07.1969 and who belongs to BC category applied for the said post. However, he was not selected and appointed as a driver on contract basis on the ground that he exceeded 40 years of age as on 01.07.2009.

In the said circumstances, the writ petition is filed, *inter alia*, contending that the petitioner is admittedly born on 01.07.1969 and that he can be said to have completed 40 years of age on the intervening midnight of 01/02.07.2009 and therefore he did not exceed 40 years of age as on cut off date, 01.07.2009, and hence, he is entitled to be considered for selection and appointment as a driver on contract basis. In support of the said contention, the petitioner relies upon the decision of this Court in M. Khamar Pasha v. Commissioner and Director of School Educatin, Andhra Pradesh, Hyderabad¹ wherein, in identical circumstances, this Court held that the petitioner therein can be said to have exceeded the age limit only after the midnight of 01.07.1996 as in that case the date of birth of the petitioner therein is 01.07.1960.

In-fact, following the ratio in the said decision, this Court while admitting the writ petition passed an interim order on 30.04.2010. The operative portion of the said order reads as under:

'In that view of the matter, pending further orders, there shall be a direction to the respondents to consider the case of the petitioner for appointment as a driver on contract basis, with reference to the age and subject to compliance of all other conditions.'

In view of the undisputed facts and the legal position obtaining, learned counsel for the petitioner would submit that the writ petition may be disposed of making the interim order as the final order.

¹ 1998 (4) ALD 512

Learned Standing Counsel fairly concedes the factual and legal position.

Having regard to the facts and submissions and the legal position obtaining, the Writ Petition is allowed directing the respondents to consider the case of the petitioner for appointment as a driver on contract basis in pursuance of the subject notification, subject however, to the compliance of all other conditions.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

18th November, 2016
Vjl

M. SEETHARAMA MURTI, J

