

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2017

CORAM:

THE HON 'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Writ Petition No.42866 of 2016

A.Selvakumar

... Petitioner

Versus

1. The Director General of Employment and Training, Ministry of Labour, Sharam Shakthi Bhavan, Rafi Marg, New Delhi - 110 001
 2. The Director of Employment & Training, Guindy, Chennai - 32
 3. The Regional Joint Director (Training), Tirunelveli Region, Tirunelveli.
 4. The Principal, St.Mary's Industrial Training Institute, Kuthukkalvalasai, Tenkasi, Tirunelveli District.
- ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of mandamus, to direct the respondents 1 & 2 to issue National Trade Certificate to the petitioner in the Mechanic (Motor Vehicle) Trade bearing Roll No.1601727 for the year 1994-1996.

For Petitioners : Mr. S.Kamadevan

For Respondents : Mr.P.Sanjaigandhi, Addl.Govt.Pleader (Edn)

for R-2 & R-3

Mr. K.Raju, ACGSC for R1

O R D E R

The Writ Petition has been filed seeking to issue a writ of mandamus, to direct the respondents 1 & 2 to issue National Trade Certificate to the petitioner in the Mechanic (Motor Vehicle) Trade bearing Roll No.1601727 for the year 1994-1996.

2. The petitioner would state that he had joined at St.Mary's Industrial Training Institute, which is a private institution, in the Mechanic (Motor Vehicle) Trade (which is a two years course), during the academic year 1994-1996. The said institute was affiliated with the first respondent and offering National Vocational Training Course to the students (trainees). At present, the said institute has been closed. The petitioner would further state that he came to know that the said Institute sought permission with the second respondent to start Mechanic (Motor Vehicle) Trade from August 1993 and on the basis of the application made by the said Institute, the Standing Committee conducted inspection and recommended for affiliation from August 1993 onwards. But the first respondent granted affiliation only from August 1995 onwards.

3. According to the petitioner, as per the permission granted under the orders of the second respondent, the concerned institute can admit trainees and students and it has also approved the trainees to write the All India Trade Examinations and some students failed and they wrote the supplementary examination, in the subsequent years, and further, that as a matter of practice, when the base units (trades) are approved, there is a requirement for the institute to seek affiliation for the additional units, enabling the second batch of trainees to be validly admitted in the subsequent years, which will enable movement of trainees to the second year course of study without any disruption. It is also claimed by the petitioner that the second respondent had approved the admission of trainees, permitted the examination, declared their results in 'C' Form and also granted the provisional National Trade Certificates and they also appeared in the All India Trade Examinations, held during July 1996.

4. The grievance expressed by the petitioner is that, after the publication of the results, the issuance of the Provisional Certificate by the second respondent was deemed to be only temporary arrangement and thus, the candidate / petitioner is entitled to get the National Trade Certificates and despite that, the issuance of National Trade Certificates have been delayed and therefore, the petitioner came forward to file this writ petition.

5. Mr. S.Kamadevan, learned counsel appearing for the petitioner, has drawn the attention of this Court to the order, dated 09.02.2015 made in W.P.No.23339 of 2015 (G.Elumalaiyandi v. The Director General of Employment & Training, Ministry of Labour, New Delhi and two others) and would submit that the matter in issue is squarely covered by the above cited order,

which in turn, refers to the order, dated 22.04.2010, made in W.P.No.7645 and 7663/2010 and therefore, there cannot be any impediment to allow this writ petition as prayed for and prays for appropriate orders.

6. This Court heard the submissions of Mr.K.Raju, learned Additional Central Government Standing Counsel appearing for the first respondent and Mr.P.Sanjaigandhi, learned Additional Government Pleader, appearing for the respondents 2 and 3.

7. It is relevant to extract paragraphs 3 and 4 of the above cited order, which reads thus:-

"3. Similar prayers as sought for in this writ petition were considered by this Court in WP.No.7645 and 7663/2010, wherein the prayer was to direct the respondents therein to issue the National Trade Certificates to the students of the said Institutions, which were private Industrial Training Institutions. This Court, after hearing the parties, passed an order on 22.04.2010, following the order passed by the Division Bench of this Court in WA.No.801/2006 dated 07.08.2009 and the writ petitions were allowed as prayed for and a direction was issued to issue the National Trade Certificates to the students. The operative portion of the said order reads as follows:-

"6. In the judgment made in W.P.No.21113 of 2006 dated 3.1.2007, in paragraph 8(c) onwards, it is held as follows:-

"(c) As a matter of fact, the practice adopted by the first respondent in the matter of grant of affiliation, conduct of examination and the issue of Certificates, appear to be very peculiar. As per the Training Manual for ITIs and ITCs, the first respondent acts as the affiliating body and he conducts examinations and issues Certificates only through the second respondent, who is described as "The State Director". The question papers are dispatched to the second respondent who conducts the examination. Ultimately, blank National Trade Certificates are also dispatched by the first respondent to the second respondent, who is empowered to issued those Certificates after filling up the blanks. Clause (vii) of the said Training Manual reads as follows:-

"The State Director may seek permanent affiliation by forwarding the inspection report (Annexure III) to the Secretary, NCVT, New Delhi.

The State Director need not wait for any instruction in this matter from Secretary, NCVT. He may grant permission to the management of the Institute to admit trainees in the trades/units which have been recommended for permanent affiliation by the Standing Committee. It should however be made clear that in case permanent affiliation is not granted, final trade test and certification would be the responsibility of respective SCVT."

The above clause makes it clear that even without waiting for orders of affiliation, the State Director can permit the courses to be commenced.

(d) The first respondent has also admitted in para-17 of his counter that students can be admitted to the trades/units, for which a recommendation is made by the second respondent, subject to the grant of permanent affiliation by the first respondent. According to the first respondent, if permanent affiliation is eventually granted, the first respondent will issue National Trade Certificates (NCVT) and if permanent affiliation is refused, the second respondent will issue State Trade Certificates (SCVT). In this case, the second respondent has agreed to grant State Trade Certificates (SCVT), thereby indicating that the State Director permitted the admission of students for the two additional units for the batch 1995-1997. Ultimately, the first respondent has also granted permanent affiliation, in June 1997, though with effect from August, 1996.

9. Therefore, the following conclusions become inevitable, from the sequence of events narrated above, which are not in dispute:-

(a) that the petitioner admitted students with the permission of the State Director, who is empowered to grant such permission;

(b) that the students admitted against the additional units are entitled to Trade Certificates issued by SCVT; and

(c) that affiliation is always granted by NCVT (first respondent), only post facto and hence neither the petitioner nor the students can be found fault with.

10. In view of the foregoing conclusions, the only objection taken by the first respondent for refusing to issue National Trade Certificates to the 1995-1997 batch of students, is illegal and the writ petition is liable to be allowed."

11. Accordingly the writ petition is allowed and the respondents are directed to issue National Trade Certificates for the 1995 batch of Trainees, in the trades of Electrician and Fitter, who took the examinations in July 1997 and the supplementary examinations thereafter, within a period of three months from the date of receipt or production of a copy of this order, subject to the students being found otherwise eligible for the grant of the Certificates. "

7. In the light of the above decision of this Court in an identical matter, the students are entitled to get Trade Certificates from the first respondent. Hence, a direction is given to the respondents to issue National Trade Certificates for the batch of trainees who appeared for the examination for which permanent affiliation is granted in the subsequent year. The respondents are directed to issue the N.C.V.T., certificates within a period of three months from the date of receipt of a copy of this order subject to verification of other details of the respective students."

6. The learned counsel appearing for the petitioners submitted that the issue involved in these cases are already decided in the above writ petitions and therefore, the same order may be passed. The learned counsel further submitted that one similar case which was filed earlier was dismissed namely, W.P.No.38340 of 2005 dated 06.04.2006 by a learned single Judge and the said order was challenged in W.A.No.801 of 2006 and the Division Bench of this Court dated 07.08.2009, paragraph 9 to 14 held as follows:

"12.....9. Therefore, the following conclusions become inevitable, from the sequence of events narrated above, which are not in dispute;-

(a) that the petitioner admitted students with the permission of the State Director, who is

empowered to grant such permission;

(b)that the students admitted against the additional units are entitled to Trade Certificates issued by SCVT; and

(c)that affiliation is always granted by NCVT (first respondent), only post facto and hence neither the petitioner nor the students can be found fault with.

10.In view of the foregoing conclusions, the only objection taken by the first respondent for refusing to issue National Trade Certificates to the 1995-1997 batch of students, is illegal and the writ petition is liable to be allowed.

11.Accordingly the writ petition is allowed and the respondents are directed to issue National Trade Certificates for the 1995 batch of Trainees, in the trades of Electrician and Fitter, who took the examinations in July 1997 and the supplementary examinations thereafter, within a period of three months from the date of receipt or production of a copy of this order, subject to the students being found otherwise eligible for the grant of the Certificates.

Following the above referred judgment, Mr.Justice N.Paul Vasanthakumar allowed batch of writ petitions in W.P.Nos.44489, 43551 and 43552 of 2006 and W.P.No.7894 of 2007, dated 21.11.2008. We are in full agreement with the said judgment.

13.But unfortunately, the aforesaid decision has not been brought to the notice of the learned single Judge which has resulted in the dismissal of the writ petition. In the light of the above decision of this Court, in an identical matter, the students are entitled to get Trade Certificates from the first respondent.

14.For the aforesaid reasons, we are of the considered view that the order of the learned single Judge dated 06.04.2006 made in W.P.No.38340 of 2006 is liable to be set-aside and accordingly the same is set-aside. The writ appeal is allowed. However, there will be no order as to costs. Hence, a direction is issued

to the respondents to issue National Trade Certificates for the batch of trainees who appeared for the examination for which permanent affiliation is granted in the subsequent year. The respondents are directed to issue the N.C.V.T., certificates within a period of three months from the date of receipt of a copy of this judgment subject to verification of other details of the respective students."

7.The learned counsel also submitted that as against the order passed by the Division Bench in W.A.No.801 of 2006 dated 07.08.2009, the first respondent filed the Special Leave Petition in S.L.P.No.3596 of 2010 and the Special Leave Petition was also dismissed by the Hon'ble Supreme Court on 15.03.2010 and therefore, the Division Bench order arriving at the judgment of mine dated 21.11.2008 has become final and the same order may be passed.

8.The learned counsel appearing for the respondents are unable to dispute the said submission.

9.In the light of the order passed by me, the Division Bench of this Court and the order passed in the Special Leave Petition, these writ petitions are allowed as prayed for. The first respondent is directed to issue the National Trade Certificates to the students of the petitioners, within a period of four weeks, from the date of receipt of a copy of this order.

10.The writ petitions are allowed with the above direction. No costs."

4.The respondents preferred a writ appeal as against the said order in WA.No.2150/2011 and the Division Bench of this Court by the Judgment dated 23.11.2011 dismissed the writ appeal. The operative portion of the said Judgment reads thus:-

"Heard the learned counsel appearing for the parties, and perused the impugned order passed by the learned Single Judge in WP.No.7645 of 2010. The learned Single Judge, following the earlier judgments rendered by this Court, allowed the writ petition. In the light of the decisions referred to in the said order and also following the recent judgments of this Court in WA.Nos.1163 & 1122/2008

dated 20.07.2010 [Director of Employment & Training Vs. ICWS Industrial Training Institute & Another] and WA.No.1954/2011 dated 15.11.2011 [Director of Employment & Training & another V. Kalathur V.Subramania Iyer], we do not find any merit in this appeal. The appeal is, therefore, dismissed. No costs. Consequently, miscellaneous petition is closed."

8. In view of the above, this Court is the considered view that the matter in issue is covered by the above cited order. Therefore, this writ petition is allowed as prayed for and the first respondent is directed to issue National Trade Certificates to the petitioner, in the Mechanic Trade, within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



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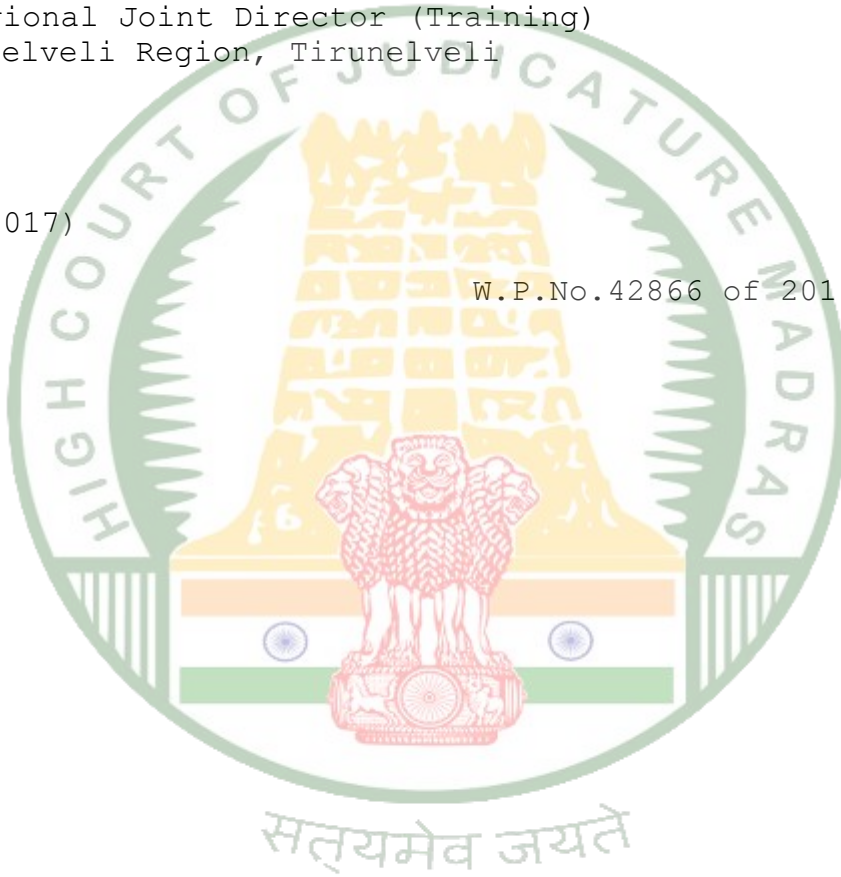
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To

1. The Director General of Employment
and Training, Ministry of Labour,
Sharam Shakthi Bhavan,
Rafi Marg, New Delhi - 110 001
2. The Director of Employment & Training,
Guindy, Chennai - 32
3. The Regional Joint Director (Training)
Tirunelveli Region, Tirunelveli

sj (CO)
md(12/04/2017)

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