



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON:23.01.2017

ORDER PRONOUNCED ON: .02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A. (MD) No.280 of 2013
and
M.P. (MD) .No.1 of 2013

- 1.The District Collector & Inspector of Panchayats,
Sivagangai District,
Sivagangai.
- 2.The Block Development Officer,
Sivagangai Panchayat Union,
Sivagangai.
- 3.The Commissioner,
Sivagangai Panchayat Union,
Sivagangai. ... Appellants/Respondents

Vs

A.Rajendran ... Respondent/Writ Petitioner

Writ Appeal is filed under Clause 15 of Letter Patent against the order dated 20.12.2012 made in W.P. (MD) .No.8297 of 2011.

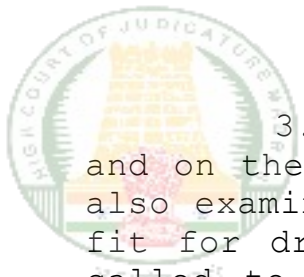
Prayer in WP(MD). 8297/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the Commissioner, Panchayat Union, Sivaganga District, the third respondent herein to appoint the petitioner to the post of driver in the third respondent Union as per the selection conducted on 18.02.2011 and 23.05.2011.

For Appellants :Mr.N.S.Karthikeyan
Additional Government Pleader

For Respondent :Mr.M.Ajmalkhan,
Senior Counsel

For M.S.Ajmal Associates



3.3. In the skill test, the petitioner was ranked at No.1 and on the same day, medical test was conducted and the Committee also examined him and gave a Certificate to the effect that he is fit for driving. Subsequently, on 23.05.2011, the petitioner was called to attend the interview with all necessary Certificates. The petitioner successfully cleared the interview and has been waiting for appointment order from the third respondent. As no appointment order was issued by the third respondent, he sent representations dated 26.07.2011 and 08.07.2011, but, there was no response for the said representations.

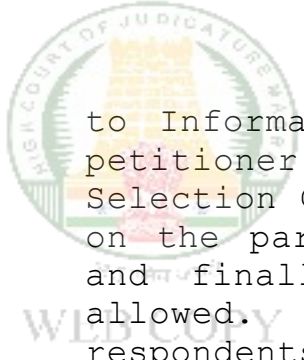
3.4. Under such circumstances, the petitioner sought information under the Right to Information Act, wherein, he received a reply from the third respondent stating that five persons were called for from the employment exchange on 14.02.2011 under the O.C.(non-priority) category and they were subjected to medical examination and four persons participated in the selection held on 23.05.2011 and the petitioner was selected for appointment as jeep driver. It was also stated that within three days, the appointment order has to be communicated. After getting such information under the Right to Information Act, the petitioner was constrained to file the afore-said Writ Petition.

4. *Per contra*, the respondents filed counter affidavit, wherein, it is stated that the petitioner secured 67 marks, out of 100 marks and the petitioner stood first among the participants. The respondents actually fixed a minimum of 75 marks, out of 100 marks for a candidate to be selected, but none of the candidates secured more than 75 marks and as the petitioner's secured only 67 marks and the eligible mark is 75, the petitioner was not selected.

4.1. In the counter affidavit, it was further stated that as there was an accident by the driver of the third respondent Panchayat Union due to rash and negligent driving, the respondents thought it fit to select the right driver and therefore, has gone for re-selection. It was also contended in the counter affidavit that the third respondent is only a recommending authority and the Selection Committee will select the candidates.

4.2. It is further averred that in reply to the petitioner query under the Right to Information Act, it has been specifically stated that the petitioner was selected and the Committee decided to appoint him as jeep driver in its meeting held on 23.05.2011.

5. After hearing both sides, the learned Judge found that there could be no rationalism to fix the minimum marks of 75% arbitrarily for selecting the jeep driver, that too, after the test being conducted followed by an interview and under the Right



to Information Act, the third respondent gave a reply that the petitioner was selected and cleared to be appointed by the Selection Committee. He also found that there was no justification on the part of the respondents in not appointing the petitioner and finally, the Writ Petition filed by the petitioner was allowed. Hence, the present Writ Appeal has been filed by the respondents.

6. In the Writ Appeal, it was contended by the respondents that the learned Judge has not considered the proceedings of the District Collector while rejecting the proposal forwarded by the appointment committee. Further, the recruitment allotted for general and non-priority category was wrongly followed and as such, candidates belonging to Schedule Caste ought to have been selected. The respondents would also raise an issue in the appeal whether a direction to appoint the petitioner to the post of driver can be ordered by the Writ Court, for which, he placed reliance upon the following judgments:-

(i) 2014 (3) SCC 767,

Ganapath Singh Gangaram Singh Rajput

Vs. Gulbarga University

(ii) 2010 (13) SCC 467,

State of Bihar and Others

and Mithilesh Kumar

(iii) 1991 (3) SCC 47,

Shankarsan Dash Vs Union of India

(iv) 2016 (6) SCC 532,

Kulwinder Pal Singh Vs. State of Punjab

6.1. It was also the contention of the respondents that the communal rotation was not followed in the selection process and the District Collector has also pointed out the same and the third respondent has also not followed the selection process and therefore, there is no illegality in the impugned order passed by the respondents and the petitioner did not have any vested or enforceable right on the mistake committed by the authorities.

7. In reply to the submission of the respondents, learned Counsel for the petitioner would submit that the only ground which was raised before the Writ Court was that the petitioner secured only 67 marks out of 100 marks which was less than the cut off marks of 75 for a candidate to be selected. No other ground was raised in the Writ Petition and only based on the counter



affidavit as well as the reply provided under the Right to Information Act, the Writ Court passed a well-considered order. He also placed reliance upon his arguments by stating that the non-following of communal rotation was not taken as a ground in the Writ Petition and in the absence of such contention, the respondents are not entitled to raise the point directly before the Hon'ble Division Bench which is impermissible in law. He also argued that the respondents are trying to improve their case stage by stage. In support of his contention, he relied on the Apex Court judgment reported in for which he placed reliance **(1978) 1 SCC 405, Mohinder Singh Gill Vs Chief Election Commissioner**. The said judgement is further reiterated in the case reported in **(2005) 7 SCC 627, Hindustan Petroleum Corpn.Ltd Vs. Darius Shapur Chennai**.

8. He also submitted that pleadings in a counter is vital and any pleadings has to be raised in the Writ Court itself and the failure on the part of the respondents would disentitle them to get any relief from the Division Bench for which also, he relied on the judgment reported in **(2011) 4 MLJ 692 (SC), State of Orissa and another Vs Mamata Mohanty**.

9. He further submitted that the communal rotation is not permissible for a single post and here the post is a single post and for that proposition, he relied on the judgment reported in **(1998) 4 SCC 1, Post Graduate Institute of Medical Education and Research Vs. Faculty Association**.

10. Heard the submissions of the learned Counsel for the petitioner as well as learned Counsel for the respondents and perused the materials available on record.

11. At the outset, a perusal of the judgments relied on by the respondents would throw light upon this Court that in all the judgments relied upon by them, it has been categorically held that the official respondents cannot act in an arbitrary manner in order to invalidate the selection process and therefore, we are of the firm view that the judgment relied on by the respondents are not applicable to the case on hand. Further, in the present case, the petitioner attended the test and was duly selected by the Selection Committee and what was left over was issuance of appointment order to the petitioner.

12. Admittedly, the recruitment in issue pertains to only one post and as rightly pointed out by the learned Counsel for the petitioner, no reservation is required to be followed as per the judgment reported in the case of **Post Graduate Institute's** cited supra. In the said judgment, it is held that in a single post



cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such a single post in the cadre will be kept reserved exclusively for the members of the backward classes to the total exclusion of the general members of the public. Such total exclusion of general members of the public and cent per cent reservation for the backward classes is not permissible within the constitutional framework. The decisions of this Court to this effect over the decades have been consistent and therefore, until there is plurality of posts in a cadre, the question of reservation will not raise as the post was only a single post and the Supreme Court has held that there cannot be any reservation for a single post.

13. Furthermore, in the case on hand, except to state that the cut off mark was fixed as 75% and since the petitioner obtained only 67%, no other reasons have been stated by the respondents for not selecting the petitioner. However, in the Writ Appeal a new ground has been raised without raising such ground before the Writ Court. It is pertinent to mention that any pleadings which is not raised in the Writ Court, cannot be directly canvassed in the appellate court, for which, the judgment relied on and reported in **(2011) 4 MLJ 692 (Supreme Court), State of Orissa and another Vs Mamata Mohanty**, is applicable to the case on hand. In the said judgment, it is held as follows:-

"35. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleading should not be granted". Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain in the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (vide: Sri Mahant Govind Rao Vs. Sita Ram Kesho, (1893) 25 Ind.App.195 ; Trojan & Co. Vs. RM.N.N.Nagappa Chettiar, AIR 1953 SC 235; Ishwar Dutt Vs. Land Acquisition Collector and 190 ; and State of Maharashtra Vs. Hindustan Construction Company Ltd., (2010) 4 SCC 518 : (2010) 7 MLJ 124)."

14. In the case reported in **(2005) 7 SCC 627, Hindustan Petroleum Corporation Limited Vs. Darius Shapur Chenai and Others** it has been held that when an order is passed by a statutory authority, the same must be supported either on the reasons stated therein or on the grounds available thereof in the record. A statutory authority cannot be permitted to support its order relying on or on the basis of the statements made in the affidavit *dehors* the order or for that matter *dehors* the records.



15. From the above discussion coupled with the counter affidavit, it is clear that the reasons for non-appointment was that the petitioner did not secure minimum of 75% marks fixed by the respondents and as the petitioner got only 67 marks and though he stood first, his name was recommended by the Selection Committee which is contra to the reply given under the Right to Information Act, in the meeting held on 23.05.2011 and therefore, there cannot be any justification in refusing the appointment order to the petitioner, which is well-founded by the learned Judge and therefore, we are of the considered view that the impugned judgment passed by the learned Judge suffers from no infirmity or illegality and therefore, this Writ Appeal stands dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. The respondents are directed to comply with the order of the Writ Petition made in W.P (MD).No.8297 of 2011 within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

ssm

To:

- 1.The District Collector & Inspector of Panchayats,
Sivagangai District, Sivagangai.
- 2.The Block Development Officer, Sivagangai Panchayat Union,
Sivagangai.
- 3.The Commissioner, Sivagangai Panchayat Union,
Sivagangai.

+1CC to M/S.Ajmal Associates, Advocate Sr.No.10332

GJM/SKN/RSK/7.3.17-7p-5C

Pre-delivery judgment made in
W.A(MD).No.280 of 2013
24.02.2017