



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

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W.P. (MD) No.686 of 2011

E.Brighton

... Petitioner

Vs.

- 1.The Chief Mechanical Engineer,
Tuticorin Port Trust,
Tuticorin - 628 004.
- 2.The Chairman,
Tuticorin Port Trust,
Tuticorin - 628 004.
- 3.T.Smeeth Bert Prabhu

... Respondents

PRAYER : This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 29.03.2010 passed by the 1st respondent in his order No.E(M)/3/2/2010-P/1566 and quash the same and to direct the respondents to conduct the trade test again for the post of Operator Grade - II and select the petitioner.

For Petitioner

:Mr.A.S.Mujibur Rahman

For Respondents 1 & 2

:Mr.S.Yashwanth

For 3rd Respondent

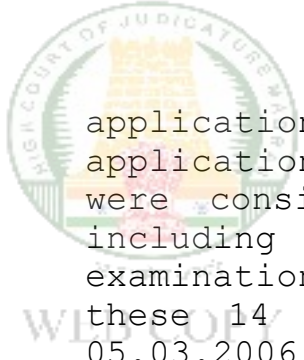
:Mr.Shaji Chellan

O R D E R

The prayer in the writ petition is for a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 29.03.2010, passed by the 1st respondent in No.E(M)/3/2/2010-P/1566 and quash the same and to direct the respondents to conduct the trade test again for the post of Operator Grade - II and select the petitioner.

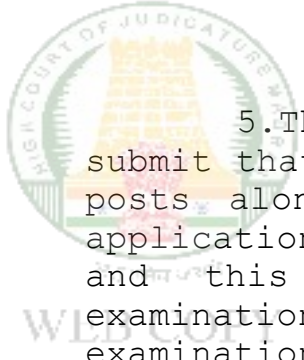
2.The respondent port-trust had invited applications from eligible candidates for the post of Operator Grade - II, which is otherwise called as Crane Operator. The petitioner had applied for the said post. The petitioner claims that he had more than the requisite qualification for the said post. As per the procedure to be adopted for the recruitment is concerned, it is by way of

<https://www.servicecomplaints.gov.in/bctservice/> followed by Trade test and if candidates become successful based on their performance, interview would be conducted, based on which, selection would be made. Out of 130



applications made, pursuant to the notification calling application from the eligible candidates, 14 applications alone were considered to be accepted and accordingly 14 candidates including the petitioner were permitted to write the written examination. Totally five posts were to be filled up from among these 14 candidates. The written examination was conducted on 05.03.2006. After having successfully completed the written examination, 13 candidates alone had been called for Trade Test excluding the petitioner and the reason being that the driving licence of the petitioner had expired and the same was not renewed. On that ground he was not called for Trade Test. As against non-calling, the petitioner had approached this Court by filing W.P.(MD) No.4484 of 2006, wherein by interim order dated 20.06.2006, this Court had directed the respondent Port Trust to keep one post of Operator Grade - II vacant. Subsequently, the said Writ Petition was finally disposed of with a direction to the respondent Port Trust to permit the petitioner to undergo the trade test and interview after comparing once again the original heavy vehicle driving license of the petitioner and pass appropriate orders in accordance with law.

3.As against the said order passed by a learned Single Judge of this Court, intra Court appeal was preferred by the respondent Port Trust in W.A.No.257 of 2006, wherein final order was passed by this Court on 22.12.2006. In the said order, the Division Bench of this Court, after having considered the relevant merits of the issue raised therein, was pleased to dismiss the appeal and as against which Special Leave Petition was also filed before the Hon'ble Supreme Court, by the respondent Port Trust. However, during the pendency of the Special Leave Petition before the Hon'ble Supreme Court, in view of the compromise between the parties to settle the issue amicably, the said Special Leave Petition has been withdrawn, and accordingly, an order to that effect has also been passed by the Hon'ble Supreme Court on 18.09.2009, whereby the said Special Leave Petition was dismissed as withdrawn. Only thereafter, the petitioner had been called for participating the Trade Test. After having participated in the Trade Test, though the petitioner had the hope that he would be considered for the post, the present impugned order dated 29.03.2010 was issued by the respondent Port Trust, whereby the candidature of the petitioner had been rejected by saying that in comparison of the performance of other candidates, who had participated along with the petitioner for Trade Test, the petitioner's performance was poor and in fact he failed. Therefore, his candidature was rejected. Challenging the said impugned order dated 29.03.2010, the present Writ Petition has been filed with the aforesaid prayer.

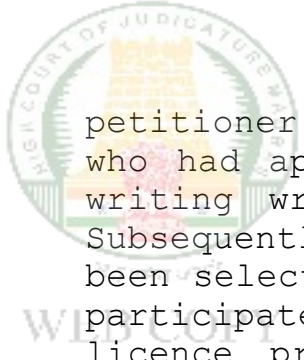


5. The learned counsel appearing for the petitioner would submit that despite five posts were earmarked to fill up and for 5 posts alone applications were called for, though a number of applications were filed, only 14 persons considered to be eligible and this petitioner was permitted to write the written examination. Even though the petitioner succeeded in the written examination, he was not called for Trade Test, alleging that the driving licence of the petitioner was not renewed and original was not produced. In order to overcome this, petitioner had to approach this Court. Against the order of this Court, permitting the petitioner to participate in the Trade Test, the Respondent Port Trust has filed an intra Court appeal and suffered with an order. Their appeal was dismissed. Even then, the respondent did not leave the matter and they have approached the Hon'ble Supreme Court by filing Special Leave Petition. During the pendency of the Special Leave Petition, they came forward to allow the petitioner to participate in the Trade Test. Accordingly, the Special Leave Petition filed by them was withdrawn.

6. At any rate, since the petitioner was permitted to participate in the Trade Test, the petitioner had participated in the Trade Test and performed well. In spite of the best performance, the present impugned order has been passed, wherein it is stated that the performance of the other five candidates were better than the petitioner and ultimately the petitioner has not been selected. In this regard the petitioner's counsel would submit that the very vacancy available, according to the respondents, were only 5, for which already 5 people were selected and therefore, the selection of the petitioner would not arise. Having selected 5 persons already, the respondents for eye-wash permitted the petitioner to participate and they simply rejected the candidature of the petitioner by merely saying that the performance of the petitioner was not well while comparing with others. In this regard, the learned counsel appearing for the petitioner would state that in respect of other candidates only 5 T cranes were pressed into service, whereas the petitioner was asked to handle 20 T cranes. This itself show that the job allotted by the respondents 1 and 2 in respect of other candidates and the petitioner were entirely different. This differential treatment is because of the litigation he has already filed before this Court against the respondent Port Trust. Therefore, the learned counsel appearing for the petitioner would submit that in the impugned order it is stated as if the petitioner has not performed well, which is totally unjustifiable and if the petitioner is given a chance to perform his trade test in the presence of independent technicians other than the technicians belonging to the respondent Port Trust, certainly the petitioner would be able to substantiate his allegations.

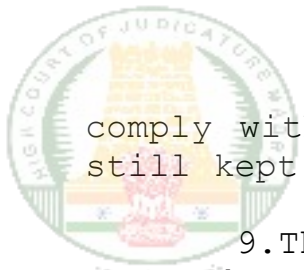
<https://hcservices.ecourts.gov.in/hcservices/>

7. Per contra, the learned Standing Counsel appearing for respondents 1 and 2 would submit that as has been averred by the



petitioner in his affidavit that only 14 out of 130 candidates, who had applied for the said post, had been given the chance of writing written examination. The petitioner is one among them. Subsequently, fourteen candidates including the petitioner had been selected for Trade Test. The petitioner was not permitted to participate in the trade test since it was found that the driving licence produced by the petitioner was not valid one and its validity was not in currency and the said licence was not renewed. A person without valid driving licence cannot be considered for Crane operator that too in Port Trust. Only in that context, explanation was called for from the petitioner. Immediately, the petitioner approached this Court and ultimately by the order of this Court the respondent Port Trust was directed to consider the petitioner's candidature also to perform the Trade Test. Though initially the respondent Port Trust wanted to test the matter in respect of the question of law raised in Special Leave Petition, subsequently it was decided that the chance of performing trade test can be given to the petitioner pursuant to the direction of this Court and the legal issue can be raised at a later point of any appropriate time. Only in that context, the Special Leave Petition was withdrawn by the respondent Port Trust and that is why in the said order itself the Hon'ble Supreme Court has stated that, the Special Leave Petition be dismissed as withdrawn leaving question of law open. Therefore, with good intention to permit the petitioner to participate in the Trade Test the Special Leave Petition was withdrawn by the respondent Port Trust. Thereafter, the petitioner in fact was permitted to perform in the Trade Test. When the Trade Test was conducted, it was not, as alleged by the petitioner, a different capacity crane was utilised for the petitioner alone, but all the candidates, who had been asked to perform trade test, had been given 5 T, 6 T, 10T and 20 T cranes. So, in what way the other candidates were asked to perform the Trade Test in the same way the petitioner was given chance to perform. Therefore, the allegations in this regard, according to the learned Standing Counsel for the respondents 1 and 2 that the petitioner alone had been given 20 T crane to perform the Trade Test, is totally baseless, and every candidate including the petitioner had been given 20 T crane to perform Trade Test.

8.The learned Standing Counsel appearing for the respondents 1 and 2 would also submit that on 20.06.2006 itself, pursuant to the completion of the Trade Test, a merit list was prepared and out of five vacancies four were unreserved and one was reserved for OBC candidates. Since on the same date, this Court passed interim order in the said Writ Petition in W.P.(MD) No.4484 of 2006, the unreserved vacancy of four alone were filled up and the remaining one is kept vacant. Subsequently, as per sanction of the Central Government to the respondent Port Trust, <https://www.mca.gov.in/press-releases> of Operator Grade - II i.e., Crane Operator was sanctioned and only in that post, which was newly sanctioned, the third respondent has been selected and appointed. In order to



comply with the orders of this Court, the original 5th vacancy is still kept vacant and the same has not been still filled up.

9.The learned Standing Counsel appearing for the respondents 1 and 2 would also submit that as per Trade Test held on 30.11.2009 to the petitioner, the petitioner had satisfactorily performed in handling 20 T Cranes. Therefore, there is no quarrel in that aspect. Insofar as the performance of the petitioner in the field of operation of Fork Lift Trucks, he had not performed well and his performance was poor and when certain fundamental questions were asked for from the petitioner to be answered, the petitioner was not able to give answer in this regard. The respondent Port Trust had produced the relevant documents, which discloses the following factor:

"REF. E (M) -3/2/2009-P/D5286 DT.27.11.2009

TRADE TEST HELD ON 30.11.2009

Sl. No	Name	Job allotted	Performance	Result	Remarks
	Shri E.Brighton	Operation of Fork Lift Trucks	Poor	Fail	Hit the barrels placed.
		Operation of 20T Cranes	Satisfactory		Unable to answer for the question "Which wheels of the heavy vehicle gets drive from the engine"
					"Answer for what is level luffing crane? Not answered.

Since his performance was not well and it was recorded as poor, question of selecting him even in the one post which has been kept vacant, pursuant to the direction of this Court, does not arise. Therefore, based on his performance only the impugned order dated 29.03.2010 was issued. Therefore, there is no un-sustainability attached with the said impugned order and hence, it is liable to be sustained.

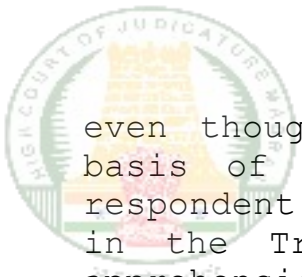
10.It is also brought to the notice of this Court, by the learned counsel appearing for the petitioner that, the petitioner has received some useful information from the respondent Port Trust under the Right to Information Act by the proceedings of the respondent Port Trust dated 18.07.2011, wherein number of questions were answered out of which in respect of one pertinent question pertaining to the type of Crane which was used by the



candidates, who had been subject to Trade Test, the answer from the respondent Port Trust is, that all the candidates attended the Trade Test used 6T Cranes. Therefore, in this regard, the learned counsel appearing for the petitioner would submit that when other candidates were permitted to use only 6 T Cranes, the petitioner alone was given 20 T Crane and even in respect of such higher capacity, the petitioner had performed well, and therefore, the petitioner would be better than any other candidates selected.

11.This Court has considered the rival submissions and perused the materials placed before this Court.

12.The initial disqualification or otherwise in respect of the petitioner pursuant to the driving licence is concerned, the issue has been settled by way of two successive Court orders and pursuant to which the petitioner was called for Trade Test. Therefore, if at all the petitioner had performed in the Trade Test then certainly, there would be no further impediment to consider the candidature of the petitioner for the selection to the said post. However, the records produced by the respondents would disclose that the petitioner had satisfactorily performed in handling 20 T cranes itself, whereas in respect of operation of Fork Lift Trucks alone, it is the stand of the respondent Port Trust that, the performance of the petitioner was poor. Also in the remarks column, it is specifically stated that, two questions were asked from the petitioner for which he was not able to give answer. According to the learned Standing Counsel for the respondents 1 and 2, when the Trade Test was conducted, which is very important and basic to decide the caliber of the candidate, who is going to perform the work as crane operator, he has not performed well as the net result shows that he failed and that he was not able answer basic questions, certainly he would not be a fit candidate for the post. However, the learned counsel appearing for the petitioner would contend that all other candidates who had been called for Trade Test have not been given operation of 20 T cranes and in order to substantiate his contention he has produced the answer to query raised under RTI Act from the respondent Port Trust. If every candidate had been asked to perform by handling 6 T cranes, it is injustice on the part of the respondent Port Trust to press the petitioner alone to handle cranes with 20 T, in which the petitioner in fact has performed satisfactorily and the same has been recorded in the proceedings itself. If the person compared was able to perform satisfactorily by handling three times higher capacity cranes than others, certainly his credence/capacity cannot be doubted by any other authority. Therefore, insofar as the petitioner is concerned, because of the litigation went on between the petitioner and the respondent Port Trust, the learned counsel appearing for the petitioner submits that some animosity would have been attached with the respondent Port Trust. But, notwithstanding the result, the successful completion of the Trade Test, by the petitioner, has been shown as if that he has failed. For the said allegations made on behalf of the petitioner,



even though there is no direct proof to show that only on the basis of such animosity developed against the petitioner, the respondent Port Trust has concluded that the petitioner has failed in the Trade Test, this Court, cannot brush aside the said apprehension, raised by the petitioner.

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13. Even from the very records produced by the respondent Port Trust it has been stated that the petitioner has satisfactorily performed or capable of operating 20 T Cranes and it is the fact that other operators had been given lesser capacity cranes. Even though there is no justification on the part of the respondents as to how the petitioner alone had been given 20 T capacity cranes, since the petitioner has performed well in the higher capacity cranes, that question need not be gone into at this stage. So far as the remarks made by the official respondents for conducting trade test in respect of the petitioner that the petitioner was not able to answer two questions which are fundamental and rudimentary in nature, this court is not expressing any opinion. Since the petitioner is having the necessary qualifications and also satisfactorily performed the crane with higher capacity and it is also a fact that there were litigation between the petitioner and the respondent Port Trust, this Court in order to meet the ends of justice, is of the considered view that if a chance is given to the petitioner to perform once again the Trade Test especially in respect of the Job, namely, Operation of Fork Lift Trucks and if the petitioner is able to perform satisfactorily, he can be considered for the recruitment. In this regard, since some apprehension has been expressed on behalf of the petitioner, in the interest of justice, this Court feels that performance of Trade Test by the petitioner can be done in the presence of one technical person from any other Port, other than the respondent Port.

14. In the result, the following orders are passed in this Writ Petition:

(i) The impugned order dated 29.03.2010 passed by the first respondent is quashed.

(ii) The matter is remanded to the respondents to do the following compliance.

(a) The petitioner shall be subjected to a fresh Trade Test, where the job, namely, Operation of Fork Lift Trucks and any other relevant job as has been given to other candidates who have already been selected, for the post, shall be given to the petitioner to perform. Since the petitioner had already performed satisfactorily in 20 T crane, the same performance need not be repeated. In other words, the petitioner shall not be subjected to perform cranes with 20 T again.

(b) For the said purpose of conducting a fresh trade test apart from the technical people of the respondent Port Trust, one ~~independent~~ technical staff either from Chennai Port Trust or from Ennore Kamaraj Port Trust can be called and in whose presence the aforesaid trade test can be performed.



(c) The date and time of the Trade test, so directed above, to be conducted by the respondent Port Trust, be intimated to the petitioner at least a week in advance so that he can make him convenient to appear before the Trade Test and on that day after completion of the Trade Test, if the petitioner become successful, it is needless to state that the interview also can be conducted for him and ultimately, the net result based on the performances of the petitioner in both Trade Test as well as the interview can be calculated and finally selection for the one post kept vacant can be completed.

(d) The above directions shall be complied within a period of 8 weeks from the date of receipt of a copy of this order.

15. This Writ Petition is allowed to the extent as indicated above. No costs.

Sd /-
ASSISTANT REGISTRAR (RTI)

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SUB ASSISTANT REGISTRAR

To

1. The Chief Mechanical Engineer,
Tuticorin Port Trust,
Tuticorin - 628 004.

2. The Chairman,
Tuticorin Port Trust,
Tuticorin - 628 004.

+1 CC TO MR. S. YASWANTH, ADVOCATE, SR NO. 7952

+1 CC TO MR. A. S. MUJIBUR RAHMAN, ADVOCATE, SR NO. 7446

sj
MAS/JC/SAR1:09.06.2017:8P-5C

W.P. (MD) No. 686 of 2011
09.02.2017