

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No.27584 of 2015 (O&M)

Date of decision: 25.08.2017

Darshan Pal

....Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Karan Singh, Advocate, for the petitioner.

Mr.Harish Rathee, Sr.DAG, Haryana.

G.S. SANDHAWALIA, J. (Oral)

Petitioner seeks issuance of writ in the nature of mandamus, under Article 226 of the Constitution of India, for considering him for the post of Driver in the General Category, advertised vide advertisement dated 14.08.2015 (Annexure P-1).

It is pertinent to mention that the petitioner was provisionally allowed to take part in the selection process but the result was not to be declared without the leave of the Court, vide order dated 28.12.2015. Record was produced on 08.11.2016 in a connected matter (CWP-27467-2015) and it was noticed that the present petitioner comes within the range of selection having secured 40.25 marks with the cut off at 31. Additional affidavit was filed by Smt. Anita Yadav, IAS, Director, State Transport, Haryana, whereby the difference between the Heavy Transport Vehicle and Heavy Passenger Transport Vehicle with reference to Motor Vehicles Act, 1988 and also in context to the Heavy Passenger Transport Vehicle Driving Licence mentioned in the eligibility criteria of the concerned advertisement was sought to be explained. The necessary affidavit has been filed dated 20/24.04.2017 in CWP-27467-2015.

The petitioner claims to have the requisite qualification in the advertisement which was for the purpose of recruiting Heavy Passenger Transport Vehicle Drivers (HPTVD). The eligibility criteria prescribed was apart from the Matric School Examination with Hindi/ Sanskrit or a language of its equivalence, a valid Heavy Passenger Transport Vehicle Driving Licence, with 3 years of experience, reckoned from the date of issuance of the same. The eligibility was to be determined on the closing date fixed for submission of the application form, i.e., 17.09.2015.

It is the case of the respondents, in their written statement, since his case was considered for the purpose of interview, that the petitioner had the Light Transport Vehicle (LTV), Heavy Goods Vehicle (HGV), Heavy Passenger Motor Vehicle (HPMV), which do not fall in the category of Heavy Passenger Transport Vehicle (HPTV) Driving Licence and therefore, he did not have the requisite pre-condition/eligibility for the post of Driver. The respondents also relied upon letter dated 12.10.2015 (Annexure R-1) that TRV-Vestibule Bus; TVR-PSV-Double Decker Passenger; TRV-PSV-Bus; and TRV-Private Bus, were to be considered at par with the Heavy Passenger Transport Vehicle (HPTV) and therefore, the petitioner did not fall in any of these 4 categories mentioned above and he cannot be considered for the post of Driver as per the above-said memo and resultantly, it was mentioned that the petitioner's result could not be declared as it had been withheld by the order of this Court itself.

The defence of the State, as such, is not liable to be accepted in the present case. As noticed, the petitioner does fall within the merit-list and the denial is only on a technical ground, on the lack of the essential qualifications of not having the licence for the HPTV. A perusal of Annexure P-5, which is the renewal of the licence would show that the original licence was issued on 08.01.2002. The petitioner did his training with the Haryana Roadways Central Works, Haryana, from 01.06.2002 to 30.06.2002, as per Annexure P-8 and was given the certificate on the course of training in the driving of HGV/HPMV, by the respondents themselves. Thereafter, a new HGV/HPMV licence was issued by the licencing authority, Hisar on 17.11.2006, which was validated by the RTI, Kaithal till 05.11.2015 (Annexure P-4) and vide Annexure P-5, its validity was till 05.11.2018. The subsequent validity for the last 3 years is for LMV-Transport, TRV Rigid Chasis, TRV-PSV-Bus. The experience certificate of the petitioner, which was for the 3 years period was also given by him, which showed that he was working as a HTV Driver with the Cooperative Transport Society, Hisar from 11.05.2003.

Counsel for the petitioner has validly relied upon the clarification itself dated 12.10.2015, whereby the Directorate of State Transport, Haryana had given the clarification regarding Heavy Driving licences for the purpose of consideration, keeping in view the different types of driving licences submitted by the candidates of the present recruitment process. Reference was made to the Transport Commissioner, who vide his memo dated 08.10.2015 (part of Annexure

R-1), while placing reliance upon the letter dated 12.10.2015 (Annexure P-3) of the Director, State Transport, Haryana, separated 34 Class of Vehicles (COV) with Priority in Sarathi. It was further mentioned that 4 categories could be considered at par with Heavy Transport Vehicles.

The relevant part of the letter reads as under:

“Now Transport Commissioner, Haryana Chandigarh office vide memo No. 47441/AT-III/HR-2 dated 08.10.2015 has informed that the Government of India Ministry of Road Transport and Highway vide DO No. RT-11636/19-2000-MVL dated 29.12.2005 has circulated list of 34 Class of Vehicles (COV) with Priority in Sarathi which at Serial No. 18 i.e. Transport Vehicle (TRV-Vestible Bus), Serial No. 16A Transport Vehicle (HMTV Double Decker-Passenger) TRV-PSV DblDkr, Serial No. 14A Transport Vehicle (HMTV-Rigid Chassis-Public Service Vehicle-Bus), TRV-PSV-Bus, Serial No.14 B Transport Vehicle (HMTV Rigid-Chassis-Private Service Vehicle) TRV Private Bus are mentioned and these four categories can be considered at par with Heavy Passenger Transport Vehicle (HPTV) (Copy enclosed).

Further the Transport Commissioner, Haryana Chandigarh office vide Memo No. 1818/AT-3/AS-II dated 21.01.2013 addressed to this office has stated that the Section 2 of Motor Vehicle Act, 1988 provides a Sub section 17 which says that Heavy Passenger Motor Vehicle means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which or a motor car the unladen weight of which exceeds 12,000 kilograms (copy enclosed).

All GMs Haryana Roadways are requested to get examine the submitted applications of all the candidates w.r.t. Heavy Driving Licences as per the above and take necessary

decisions about the eligibility/ ineligibility accordingly and inform the candidates about the decision taken.”

A perusal of the above would go on to show that at Sr.No.14-A, Transport Vehicle (HMTV- Rigid Chassis-Public Service Vehicle Bus), TRV-PSV-Bus, is also one of the 4 categories which can be considered at par with Heavy Passenger Transport Vehicle (HPTV). The said communication dated 12.10.2015, as noticed also, referred to in the written statement is attached as Annexure R-1. Along with it, another communication dated 08.10.2015 is also attached in which the list of class of vehicles and sub-classification has been mentioned.

'Heavy Passenger Motor Vehicle' as per letter dated 21.01.2013 (Annexure R-1 Colly.), would mean any public service motor vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which or a motor car the unladen weight of which exceeds 12000 kilograms and thus, there is reference to the definition under Sub-Section 17 of Section 2 of the Motor Vehicles Act, 1988. Letter dated 29.12.2005 has also been attached of the Government of India, to the Ministry of Communication & Information Technology, National Informatics Centre, to incorporate the proposed classifications in the software. Sr.No.14-A talks of Transport Vehicle M/HMTV (Rigid Chassis) Public Service Vehicle-Bus, which also finds mention in the communication dated 12.10.2015, reproduced above, in which the four categories can be considered at par with HPTV. A conjoint reading of the above would go on to show that

once a person is possessing a HPMV license, it would fall within the definition of a Heavy Passenger Motor Vehicle, as per Section 2(17) of the 1988 Act and a Heavy Motor Vehicle with a rigid chassis being a Public Service Vehicle, is to be considered at par with HPTV, which was the requirement, as per the advertisement.

Thus, it is apparent and crystal clear that the petitioner did have the requisite qualifications and has wrongly been denied consideration inspite of having the training certificate issued by the Haryana Roadways and thus, in such circumstances, the denial is held to be unjustified and arbitrary.

Accordingly, the present writ petition is allowed, directing respondent No.3 to consider the case of the petitioner for appointment and take action on the application, within a period of 6 weeks from the receipt of a certified copy of this order.

25.08.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No