

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH  
and  
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.A.No.944 of 2013  
and  
M.P.No.1 of 2013

N.Lenin .. Appellant / Petitioner

Vs

- 1.The Government of Tamil Nadu  
rep. by its Secretary to Government,  
Transport Department,  
Secretariat, Chennai - 9.
- 2.Tamil Nadu State Transport  
Corporation (Coimbatore) Ltd.,  
rep. by its Managing Director,  
No.37, Mettupalayam Road,  
Coimbatore - 641 043. ... Respondents / Respondents

Appeal preferred under Clause XV of Letters Patent against the order dated 02.01.2013 made in W.P.No.12321 of 2012 Petition filed under article 226 of the Constitution of India praying for a Writ of mandamus directing the 2nd respondent to appoint the petitioner in the post of Asst. Engineer (Trainee) in the 2nd respondent Corporation under SC (A) Category within a reasonable time to be fixed by this court.

For Appellant .. Mr.P.Rajavel  
For Respondents .. Ms.Thangavadhana Balakrishnan,  
Addl. Govt. Pleader for R1  
Mr.S.Sairaman for R2

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This writ appeal is directed against the order dated 02.01.2013 made in W.P.No.12321 of 2012, whereby the learned single Judge dismissed the writ petition.

2.This is the third round of litigation. The appellant has sought for an appointment to the post of Assistant Engineer (Trainee) with the second respondent. Pursuant to the direction by this Court in W.P.No.1161 of 2010, the request of the appellant was considered and rejected. Thereafter, the appellant has once again come before this Court seeking a direction to appoint him in the post of Assistant Engineer (Trainee) under the Scheduled Caste (Arunthathiyar) category. Three objections have been raised in the counter affidavit filed by the second respondent. One is with respect to the apprenticeship training. According to the respondents, there is no apprenticeship training given by the Board of Apprenticeship Training under the control of the respondents. Therefore, any other certificate will not be taken into consideration. The second is with respect to the gradation. According to the respondents, the qualification is First Class whereas the appellant has got the qualification as High Second Class. The third ground is touching upon the age criteria. At the time of sponsoring by the employment exchange, the appellant was found to be over aged.

3.Learned counsel appearing for the appellant would submit that the question of overage would not arise. The appellant was not over aged at the time of the first Notification. This Notification has been replaced by the second one. Admittedly, the appellant has got the apprenticeship training certificate. It was countersigned by the Director (Apprenticeship Training). Similarly, the other qualification of First Class cannot be put against the appellant, taking into consideration the fact that he is the only candidate available.

4.What is relevant is the date of Notification or the date on which the appellant's name was sponsored by the employment exchange as the case may be. On both counts, the appellant did not satisfy the age qualification. Mere fact that there was earlier Notification cannot be a ground to hold that the age mentioned therein will have to be taken into consideration. After all, the Notification is only an offer. The fact that the subsequent Notification came into being itself would show that the earlier Notification has been impliedly cancelled. Therefore, even assuming that the date of Notification will have to be taken into consideration, the appellant was over aged. There is no material to hold to the contrary that the date on which the employment exchange sponsored the name could not have been reckoned for the purpose of fixing the age qualification. It is the specific case of the respondents that it is the rule governing. To put it differently, if the age bar has already

come into being, the employment exchange has got no role to play in sponsoring the names. Admittedly, at the time of sponsoring the name of the appellant, he was found to be over aged. It was done so in the purported compliance of the direction issued by this Court.

5.This Court cannot go into the wisdom of an employer in fixing the qualification. The qualification being the First Class, when the appellant has obtained High Second Class, he obviously lacks qualification. Thus, even on this ground also, he will not have a case on merit.

6.Coming to the third issue with respect to the apprenticeship certification, it is required to be given by the Board of Apprenticeship Training. As rightly considered by the learned single Judge, under Section 4 of the Apprenticeship Act, 1961, such certification will have to be emanated from the employer, which unfortunately is not available in the case on hand. Thus, looking from any perspective, we do not find any merit in the appeal. Accordingly, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

mmi  
To

1.The Secretary to Government,  
Transport Department,  
Secretariat, Chennai - 9.

2.The Managing Director,  
Tamil Nadu State Transport  
Corporation (Coimbatore) Ltd.,  
No.37, Mettupalayam Road,  
Coimbatore - 641 043.

+one CC to M/s.P.Rajavel, Advocate SR No.79728  
+one CC to M/s.S.Sairaman, Advocate SR No.79714  
+one CC to the Government pleader SR No.79941

W.A.No.944 of 2013

VG-II(co)  
ssm (18/12/2018)