

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:03.07.2018

Delivered on: 06.07.2018

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.11869 of 2011
and
M.P.No.6 of 2011
W.M.P.No.6374 of 2017

T.Mathivanam

.. Petitioner

Vs

1.The Secretary,
Tamil Nadu Public Service Commission,
Greams Road,
Chennai.

2.The Secretary to Government,
Home (TR-II) Department,
Secretariat,
Chennai-600 009

3.The Transport Commissioner,
Chepauk,
Chennai-600 005

4.The Deputy Secretary,
Tamilnadu Public Service Commission,
Greams Road,
Chennai-600 006

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus to call for the records in pursuant to the order dated 20.09.2011 in Memorandum No.424/OTD-B4/2008, passed by the 4th proposed respondent/4th respondent and quash the same and consequently direct the first respondent to send petitioner's selection list to the Government by accepting his driving experience certificates dated 29.07.1994 & 07.08.2000, further direct the 2nd and 3rd respondents to appoint the petitioner as Motor Vehicle Inspector Grade-II, under GT Category in respect of Notification dated 24.02.2009, issued by the first respondent published in Dinakaran daily news paper on 24.02.2009.

For Petitioner .. Mr.AR.L.Sundaresan,Sr.counsel
for Mr.M.Elango

For Respondents .. Dr.M.Devendran for R1 & R4
Mr.J.Pothiraj,Spl.G.P.
For R2 and R3

Mr.N.R.Prasad for
Mr.A.S.Balaji for the
petitioner in W.M.P.No.6374
of 2017

ORDER

The first respondent/Tamil Nadu Public Service Commission called for applications from the open market to fill up 65 vacancies for the post of Motor Vehicle Inspector Grade-II, on 24.02.2009. Subsequently, a supplementary Notification was issued calling for applications for 11 more vacancies for the same post, on 28.2.2009. In response to the advertisement, the petitioner had applied for the same and he was called for written examination, which was held on 24.05.2009 and he having secured sufficient marks, he was called for an interview, which was held on 07.10.2010. Thereafter, the petitioner was placed 3rd rank in G.T.category in the selection list.

2.According to the petitioner he had fulfilled all the eligibility criteria prescribed for appointment as Motor Vehicle Inspector Grade-II, in terms of the qualifications prescribed in paragraph 4(B) of the Notification, which would run thus:

"Candidates should possess the following or its equivalent qualifications on the date of this Notification, viz., 24.02.2009.

(i)Minimum General Educational Qualification (as defined in paragraph 7 of Commission's "Insctructions.etc., to Candidates").

AND

(ii)A Diploma in Automobile Engineering (3 years course) or a Diploma in Mechanical Engineering (3 years course) awarded by the State Board of Technical Education and Training, Tamil Nadu.

AND

(iii)Experience of having worked for a period of not less than one year both on vehicles fitted with Petrol Engines and Vehicles fitted with Diesel Engines on a full time basis in an

Automobile workshop which undertakes repairs of Light Motor Vehicles, Heavy Goods Vehicles and Heavy Passenger Motor Vehicles.

AND

(iv) Must hold a Driving Licence Authorizing him to drive Motor Cycle Heavy Goods Vehicles and Heavy Passenger Motor Vehicles.

AND

(v) Must have experience in Driving Heavy Transport Vehicles for a period of not less than six months.

Provided that other things being equal, preference shall be given to those who possess Post Diploma in Automobile Engineering awarded by the State Board of Technical Education and Training, Tamil Nadu.

(Details regarding equivalence of qualifications are given in paragraph No.9 of the Commission's Instructions etc. to candidates')

EXPLANATION: "Automobile workshop" shall mean

(A) An Automobile workshop owned by the Government or the State Transport Corporation.

OR

(B) An Automobile workshop recognized or approved or certified by the Transport Commissioner or the Director, Motor Vehicles Maintenance Department for carrying out all kinds of repairs."

3. In respect of Driving Licence is concerned, the petitioner had produced an Experience Certificate given by one Sri Prabhakar Bus & Lorry Service, Kancheepuram, dated 29.07.1994, which is evidenced by a document filed in support of the Writ Petition, certifying him for having worked as Driver in the Transport from 20.06.1993 to 25.07.1994. According to the petitioner, this Experience Certificate was considered to be valid Certificate and he was allowed to participate in the earlier selections which were held in the years 1999, 2001 and 2007 and in all these selections, the petitioner was allowed to appear for interview and results were also published. However, ultimately he was not selected in those selections. Even in the present selection, the Certificate was accepted and the petitioner was allowed to participate in the selection process.

4. In spite of the fact that the petitioner had secured 3rd rank in GT Category, his ultimate selection was pending verification of the Certificates produced by him. The petitioner had come to know about this fact when a Provisional

list was published on 13.10.2010. In the meanwhile, the candidates, who participated in the selection along with the petitioner, had been given appointment. In such circumstances, the petitioner made a representation on 7.2.2011 and since no response was forthcoming to the representation, the petitioner is before this Court seeking issue of Writ of Mandamus.

5.Upon notice, Mr.M.Devendran, learned counsel, entered appearance for the first and fourth respondent, Mr.J.Pothiraj, the learned Special Government Pleader entered appearance for R2 and R3.

6.As far as the Tamil Nadu Public Service Commission is concerned, viz., the first respondent herein, the Commissioner had taken a decision to reject the application of the candidature of the petitioner for the reason as stated in Paragraph Nos.6 to 8 of the counter affidavit, which read as under:

"6.It is submitted that the petitioner Thiru T.Mathivanan (Register No.00105121) was one among the candidates who had applied to the Commission for the said post of Motor Vehicle Inspector Grade-II, 2006-2008 and he had submitted a certificate from M/s.Sri Prabakar Bus and Lorry Service, along with his application, wherein it has been stated that the candidate had worked as a Driver of passenger Bus (TMR 5484) from 20.06.1993 to 25.07.1994, in their concern. In this regard the Transport Commissioner was addressed to verify the candidates driving experience. The petitioner had also submitted another driving experience certificate from M/s.Sri Bharathi Bus Service, dated 07.08.2000. However, the said certificate had been received in the Commission's office after the last date for receipt of applications and hence, the certificate was not considered.

7.The petitioner appeared for the Oral Test on 07.10.2010. However, his result was withheld pending receipt of the report from the Transport Commissioner regarding the verification of the driving experience claimed by him.

8.It is submitted that the Transport Commissioner had forwarded the report of the Regional Transport Officer,

Kancheepuram, wherein it has been stated that, the connected records, registers or receipt were not available at Ms.Sri Prabakar Bus & Lorry Service where the petitioner had claimed to have gained the said driving experience. Hence, it was concluded that the candidate did not work in the said concern. Consequently, the Commission had decided to reject the application and cancelled the candidature of the petitioner for selection for appointment by direct recruitment to the post of Motor Vehicles Inspector, Grade-II, as he does not possess the driving experience laid down in the Commission's Notification for the said post. The candidate had also been intimated accordingly vide Commission's memo dated 20.09.2011."

7. During the pendency of the writ petition, W.M.P.No.6374 of 2017 was filed by one Mr.S.Selvaraju for impleading him in the Writ Petition. The said Petition for impleadment is filed on the ground that his name was kept in the reserve list and in case of the Writ Petitioner failing in the Writ Petition, he can be considered for appointment from the reserve list. However, the W.M.P. has not been ordered and taken up for hearing along with the Writ Petition.

8. The learned Senior counsel Mr.ARL.Sundaresan, appearing for the Writ Petitioner, would, at the outset, submit that the decision of the Tamil Nadu Public Service Commission to reject the application of the petitioner was invalid and cannot be countenanced both in Law and on facts. According to the learned Senior counsel, it was not the fault of the petitioner that the Certificate granted by M/s.Sri Prabakar Bus and Lorry Service, Kanchipuram, was not supported by any records maintained by the said Lorry and Bus Service. According to the learned Senior Counsel, it was always possible that due to passage of time, the records were not available in support of the fact that the petitioner worked as Driver in the said Bus and Lorry Service.

9. The learned Senior counsel would further submit that in the earlier selections, as stated above, the same Certificate was held to be valid and the petitioner was allowed to participate in the interview and thereafter, results were published. Once the Certificate was held to be valid in respect of earlier selections, the same would hold good for the present selection also.

10. The learned Senior counsel would also rely on a decision of a Division Bench of this Court rendered in W.A.No.4 of 2008 (D.Vinoth Kumar vs. The Secretary, Tamil Nadu Public Service Commission, Government Estate, Anna Salai, Chennai-2), dated 11.01.2008. The Division Bench of this Court, under similar circumstances, has allowed the claim of the candidate therein. The judgment of the Division Bench, as found in paragraph Nos.2 to 8, are extracted hereunder for better appreciation of the arguments advanced by the learned Senior Counsel.

"2. In this case, the application of the appellant was rejected by the Tamil Nadu Public Service Commission on two grounds. One was that the application was received by the Commission beyond the time stipulated, i.e., only on 24.5.2007 and the other that the appellant had not enclosed the relevant certificates as required by the Commission, viz., the certificate in driving heavy transport vehicles which is prescribed for the post as per Paragraph 5-B(iv) of the Annexure in the Tamil Nadu Public Service Commission's Notification dated 18.4.2007.

3. Mr. M. Venkatachalapathy, learned senior counsel appearing for the appellant drew our attention to the letter issued by the Postal Department dated 14.12.2007, which shows that the application was received by the Tamil Nadu Public Service Commission on 23.5.2007. This position is also fairly conceded by the learned counsel appearing for the Tamil Nadu Public Service Commission. Thus, the first ground of objection does not survive.

4. The second ground relates to the compliance with the condition prescribed in Paragraph 5-B(v) of the Annexure to the Notification, which reads as follows :

"Must have experience in Driving Heavy Transport Vehicles for a period of not less than six months."

5. The appellant has produced a Certificate dated 13.8.2002 issued by V.S.T. Service Station, which is reproduced hereunder :

" TO WHOMSOEVER IT MAY CONCERN
This is to certify that D. VINOTH KUMAR, S/o.
Mr. R.Dorai Raj was worked efficiently both on

vehicles fitted with Petrol engines and vehicles fitted with Diesel engines on a full time basis in our Automobile Workshop which undertakes repairs of Light Motor vehicles, Heavy goods vehicles and Heavy passenger motor vehicles from 14.6.2001 to 16.6.2002. His nature of work includes driving and testing of Heavy Transport vehicles. His conduct and character have been good.

For V.S.T. SERVICE STATION P. LTD.,
K. RAJAGOPAL
Dy. General Manager "

6.The appellant has also produced a Certificate from SKLS. Lorry Service dated 28.2.2007, which reads thus :

" TO WHOMSOEVER IT MAY CONCERN

This is to certify that D. Vinoth kumar, S/o. Mr. R.Dorairaj has worked efficiently on vehicles fitted with diesel engines on a full time basis in our Automobile workshop, which undertakes repairs of light motor vehicles, heavy goods vehicles from 20.1.2006 to 28.2.2007. During the above period, he had the experience in driving the heavy transport vehicles also. His conduct and character were good.

For SKLS. LORRY SERVICE
(D. MUTHUKUMAR)
Proprietor

7. In our opinion, the above certificates are in accordance with the requirement of Paragraph 5-B(v) of the Annexure to the Notification and satisfy the condition contained therein.

8. In the circumstances, the order of the learned single Judge is set aside and the writ appeal is allowed and. The respondent-Tamil Nadu Public Service Commission is directed to declare the result of the appellant and consider his application in accordance with law. No costs. Consequently, M.P. No.1 of 2008 is closed."

11.The learned Senior Counsel would further submit that as far as the impleading petition is concerned, the same is not maintainable since the proposed party is neither a necessary

nor a proper party and as such, he need not be heard in the matter and he has no locus standi to oppose any relief to be granted to the writ petitioner.

12.The learned Senior Counsel would submit that although the second Certificate, which was produced by the petitioner from Sri Bharathi Bus Service, Wallaja Road, Vellore, dated 7.8.2000, was received by the officer of the Commission after the last date, the first Certificate issued in the year 1994 by Sri Prabhakar Bus & Lorry Service, Kancheepuram, is a valid Certificate and therefore, on the basis of the first Certificate alone, the petitioner is entitled to be considered for appointment, as he fulfilled the driving experience also, as provided under the Notification.

13.The Second Respondent/Secretary to Government has also filed a counter affidavit, however, they confined their averments in the counter affidavit stating that it was the sole decision of the first respondent/Tamilnadu Public Service Commission and they had nothing to do with the selection or the decision to reject the selection of the petitioner.

14.Mr.N.G.R.Prasad, the learned counsel appearing for the proposed party, would vehemently contend that in the event of the Writ Petitioner failing in the Writ Petition, the proposed party, who is kept in the reserve list, can be accommodated as Motor Vehicle Inspector Grade-II. In fact, his submission was resisted by the first respondent/Commission on the ground that the proposed party did not come within the zone of consideration and therefore, he has no locus standi to the litigation. However, in view of the order proposed to be passed hereunder, this Court is of the considered view that the proposed party is neither a necessary nor a proper party for adjudicating the issue and such proposed party cannot seek to obtain any relief in the Writ Petition filed by another candidate. In any event, this Court feels that the impleading petition lacks any merit and therefore, the same is rejected.

15.Having considered the legal submissions and also having perused the pleadings and materials placed on record, this Court is in agreement with the submissions made on behalf of the Senior Counsel appearing for the Writ Petitioner. No way in the Notification it is mentioned that the driving experience Certificate produced should be supported by material. Although it is always open to the Tamilnadu Public Service Commission to conduct verification of the Certificate, in case they had any genuine apprehension of its veracity, however, in all cases such verification need not be done, particularly, in the present case, when the same Certificate was found to be valid in the earlier selections participated by the same petitioner.

16.Further, it is to be seen as to whether for non-availability of the records with the employer, under whom the petitioner had worked some 15 years before, the selection can be held against the petitioner, in the absence of any material to doubt the veracity of the Certificate issued by the erstwhile employer of the petitioner.

17.As rightly relied on by the learned Senior counsel for the petitioner, the Division Bench of this Court, under similar circumstances, has held that production of such Certificate was valid. In the considered opinion of this Court, the conclusion reached by the first respondent/Tamil Nadu Public Service Commission that the Certificate produced by the Writ Petitioner was not genuine in the absence of supporting document, cannot be a valid and acceptable conclusion in the facts and circumstances of the case. The employer of the petitioner cannot be expected to maintain all the records in respect of each of the employees for all times to come. Therefore, the conclusion of the first respondent/Tamilnadu Public Service Commission, which is merely on the basis of absence of records, without any corroborative material, cannot be countenanced in Law.

18.For the above said reasons, the petitioner is entitled to succeed and the Writ Petition is allowed. There shall be a direction to the First Respondent/The Tamil Nadu Public Service Commission to forward the name of the petitioner to the second and third respondent for his appointment as Motor Vehicle Inspector Grade-II, under GT category, in pursuance of the Notification dated 24.02.2009. The Second and Third Respondent, on such recommendation, shall appoint the petitioner as Motor Vehicle Inspector Grade-II with effect from the date on which the other candidates, who participated along with the petitioner, were appointed in the subject selection. The petitioner is also entitled to all attendant benefits except the salary for the period in question. The respondents are directed to comply with this direction within a period of three months from the date of receipt of copy of this order.

In fine, the writ petition stands allowed as above. No costs. Consequently, connected M.P.No.6 of 2011 is closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

Msk

To

1.The Secretary,
Tamil Nadu Public Service Commission,
Greens Road,
Chennai.

2.The Secretary to Government,
Home (TR-II) Department,
Secretariat,
Chennai-600 009

3.The Transport Commissioner,
Chepauk,
Chennai-600 005

4.The Deputy Secretary,
Tamilnadu Public Service Commission,
Greens Road,
Chennai-600 006.

+ 1 cc to Mr. M. Elango, Advocate SR.44293
+ 1 cc to Mr.M. Devendran, Advocate Sr.44366
+ 1 cc to Mr. A.S.Balaji, Advocate Sr.44966
+ 1 cc to Mr. Government Pleader Sr.44963
+ 1 cc to Government Pleader Sr.44963

W.P.No.11869 of 2011

(CS-IX)
EU(26/07/2018)

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