

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.03.2018

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

Writ Petition No.4741 of 2018

B.Sukumar

.. Petitioner

vs

- 1.The Director General of Employment and Training,
Ministry of Labour, Sharam Shakthi Bhavan,
Rafi Marg, New Delhi - 110 001.

Now changed as:

- The Director General of Training, Ministry of MSDE,
Employment Exchange Building,
1st Floor, IARI Complex, Library Avenue Road,
Pusa Complex, New Delhi
2. The Director of Employment & Training,
Guindy, Chennai - 32.
3. Rajarajan Industrial Training Institute,
Nanjikottai Road, Thanjavur 613 006

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the first respondent to issue National Trade Certificate to the petitioner, who was issued with Provisional Certificate by the second respondent.

For Petitioner : Mr. S.R.R.Raaghavan

For R1 : Mr.J.Madanagopal Rao, Sr.C.G.S.C

For R2 to R3 : Mr.A.Rajaperumal, AGP

सत्यमेव जयते
O R D E R

This writ petition has been filed for the issuance of a Writ of Mandamus directing the first respondent to issue National Trade Certificate to the petitioner, who was issued with Provisional Certificate by the second respondent.

2. According to the petitioner, on 17.11.1997, Provisional Certificate was issued by the second respondent for completion of the course by the petitioner in Mechanic Refrigeration and Air-Conditioning.

3. The learned counsel for the petitioner submitted that in similar circumstances, this Court, by order dated 09.02.2015,

allowed the writ petition in WP.No.23339/2014 (G.Elumalaiyandi v. the Director General of Employment and Training, Ministry of Labour, New Delhi and two others), directing the respondents therein to issue the National Trade Certificate to the petitioner therein for the relevant trade within a stipulated time. Therefore, the learned counsel prayed for similar order in this writ petition as well.

4. The learned Standing Counsel appearing for the first respondent has No Objection to dispose of this writ petition in the light of the earlier order passed by this Court, as referred to above.

5. This Court perused the order dated 09.02.2015 made in WP.No.23339 of 2014, wherein, the respondents therein were directed to issue National Trade Certificates to the students of the petitioner therein. For better appreciation, the relevant paragraphs of the said order are extracted hereunder:

"3. Similar prayers as sought for in this writ petition were considered by this Court in WP.Nos.7645 and 7663/2010, wherein the prayer was to direct the respondents therein to issue the National Trade Certificates to the students of the said Institutions, which were private Industrial Training Institutions. This Court, after hearing the parties, passed an order on 22.04.2010, following the order passed by the Division Bench of this Court in WA.No.801/2006 dated 07.08.2009 and the writ petitions were allowed as prayed for and a direction was issued to issue the National Trade Certificates to the students. The operative portion of the said order reads as follows:-

"5. According to the petitioners, the dispute is regarding the issuance of National Trade Certificates in respect of 15 students and 70 students respectively in these writ petitions and based on the inspection the respective courses were granted affiliation by the first respondent. The issue as to whether the students admitted prior to the grant of affiliation pending inspection and process can be given National Trade Certificates was considered by me in W.P.Nos.44489, 43551 and 43552 of 2006 and W.P.No.7894 of 2007 dated 21.11.2008, wherein in paragraphs 5 to 7, it is ordered as follows:

"5. The contention of the first respondent is that the students admitted for the respective trades were not granted affiliation by the National Council for

Vocational Training (N.C.V.T.). Hence, they are entitled to get the certificate issued by the State Council for Vocational Training only and are not entitled to get certificate from the first respondent. The learned counsel for the respondents also submitted that the issue in these writ petitions are covered by the above referred judgment.

6. In the judgment made in W.P.No.21113 of 2006 dated 3.1.2007, in paragraph 8(c) onwards, it is held as follows:-

"(c) As a matter of fact, the practice adopted by the first respondent in the matter of grant of affiliation, conduct of examination and the issue of Certificates, appear to be very peculiar. As per the Training Manual for ITIs and ITCs, the first respondent acts as the affiliating body and he conducts examinations and issues Certificates only through the second respondent, who is described as "The State Director". The question papers are dispatched to the second respondent who conducts the examination. Ultimately, blank National Trade Certificates are also dispatched by the first respondent to the second respondent, who is empowered to issued those Certificates after filling up the blanks. Clause (vii) of the said Training Manual reads as follows:-

"The State Director may seek permanent affiliation by forwarding the inspection report (Annexure III) to the Secretary, NCVT, New Delhi. The State Director need not wait for any instruction in this matter from Secretary, NCVT. He may grant permission to the management of the Institute to admit trainees in the trades/units which have been recommended for permanent affiliation by the Standing Committee. It should however be made clear that in case permanent affiliation is not granted, final trade test and certification would be the responsibility of respective SCVT."

The above clause makes it clear that even without waiting for orders of affiliation, the State Director can permit the courses to be commenced.

(d) The first respondent has also admitted in para-17 of his counter that students can be admitted to the trades/units, for which a recommendation is made by the second respondent, subject to the grant of permanent affiliation by the first respondent. According to the first respondent, if permanent affiliation is eventually granted, the first respondent will issue National Trade Certificates (NCVT) and if permanent affiliation is refused, the second respondent will issue State Trade Certificates (SCVT). In this case, the second respondent has agreed to grant State Trade Certificates (SCVT), thereby indicating that the State Director permitted the admission of students for the two additional units for the batch 1995-1997. Ultimately, the first respondent has also granted permanent affiliation, in June 1997, though with effect from August, 1996.

9. Therefore, the following conclusions become inevitable, from the sequence of events narrated above, which are not in dispute:-

(a) that the petitioner admitted students with the permission of the State Director, who is empowered to grant such permission;

(b) that the students admitted against the additional units are entitled to Trade Certificates issued by SCVT; and

(c) that affiliation is always granted by NCVT (first respondent), only post facto and hence neither the petitioner nor the students can be found fault with.

10. In view of the foregoing conclusions, the only objection taken by the first respondent for refusing to issue National Trade Certificates to the 1995-1997 batch of students, is illegal and the writ petition is liable to be allowed.

11. Accordingly the writ petition is allowed and the respondents are directed to issue National Trade Certificates for the 1995 batch of Trainees, in the trades of Electrician and Fitter, who took the examinations in July 1997 and the supplementary examinations thereafter, within a period of three months from the date of receipt or production of a copy of this order, subject to the students being found otherwise eligible for the grant of the Certificates. "

7. In the light of the above decision of this Court in an identical matter, the students are entitled to get Trade Certificates from the first respondent. Hence, a direction is given to the respondents to issue National Trade Certificates for the batch of trainees who appeared for the examination for which permanent affiliation is granted in the subsequent year. The respondents are directed to issue the N.C.V.T., certificates within a period of three months from the date of receipt of a copy of this order subject to verification of other details of the respective students."

6. The learned counsel appearing for the petitioners submitted that the issue involved in these cases are already decided in the above writ petitions and therefore, the same order may be passed. The learned counsel further submitted that one similar case which was filed earlier was dismissed namely, W.P.No.38340 of 2005 dated 06.04.2006 by a learned single Judge and the said order was challenged in W.A.No.801 of 2006 and the Division Bench of this Court dated 07.08.2009, in paragraphs 12 to 14 held as follows:

"12. The learned senior counsel for the appellant submitted that the matter in issue is covered by an order in W.P.No.21113 of 2006

dated 03.01.2007. The learned counsel for the respondents also not disputed the said decision, but the contention of the first respondent is that the students admitted for the respective trades were not granted affiliation by the National Council for Vocational Training (N.C.V.T.). Hence, they are entitled to get the certificate issued by the State Council for Vocational Training only and are not entitled to get the certificate from the first respondent. In the judgment made in W.P.No.21113 of 2006 dated 3.1.2007, in paragraph 8(c) onwards, it is held as follows:-

.....
Following the above referred judgment, Mr. Justice N. Paul Vasanthakumar allowed batch of writ petitions in W.P.Nos.44489, 43551 and 43552 of 2006 and WP.7894 of 2007, dated 21.11.2008. We are in full agreement with the said judgment.

13. But unfortunately, the aforesaid decision has not been brought to the notice of the learned single Judge which has resulted in the dismissal of the writ petition. In the light of the above decision of this Court, in an identical matter, the students are entitled to get Trade Certificates from the first respondent.

14. For the aforesaid reasons, we are of the considered view that the order of the learned single Judge dated 06.04.2006 made in W.P.No.38340 of 2006 is liable to be set-aside and accordingly the same is set-aside. The writ appeal is allowed. However, there will be no order as to costs. Hence, a direction is issued to the respondents to issue National Trade Certificates for the batch of trainees who appeared for the examination for which permanent affiliation is granted in the subsequent year. The respondents are directed to issue the N.C.V.T., certificates within a period of three months from the date of receipt of a copy of this judgment subject to verification of other details of the respective students."

7. The learned counsel also submitted that as against the order passed by the Division Bench in

W.A.No.801 of 2006 dated 07.08.2009, the first respondent filed the Special Leave Petition in S.L.P.No.3596 of 2010 and the Special Leave Petition was also dismissed by the Hon'ble Supreme Court on 15.03.2010 and therefore, the Division Bench order arriving at the judgment of mine dated 21.11.2008 has become final and the same order may be passed.

8.The learned counsel appearing for the respondents are unable to dispute the said submission.

9.In the light of the order passed by me, the Division Bench of this Court and the order passed in the Special Leave Petition, these writ petitions are allowed as prayed for. The first respondent is directed to issue the National Trade Certificates to the students of the petitioners, within a period of four weeks, from the date of receipt of a copy of this order.

10.The writ petitions are allowed with the above direction. No costs."

4.The respondents preferred a writ appeal as against the said order in WA.No.2150/2011 and the Division Bench of this Court by the Judgment dated 23.11.2011 dismissed the writ appeal. The operative portion of the said Judgment reads thus:-

"Heard the learned counsel appearing for the parties, and perused the impugned order passed by the learned Single Judge in WP.No.7645 of 2010. The learned Single Judge, following the earlier judgments rendered by this Court, allowed the writ petition. In the light of the decisions referred to in the said order and also following the recent judgments of this Court in WA.Nos.1163 & 1122/2008 dated 20.07.2010 [Director of Employment & Training Vs. ICWS Industrial Training Institute & Another] and WA.No.1954/2011 dated 15.11.2011 [Director of Employment & Training & another V. Kalathur V.Subramania Iyer], we do not find any merit in this appeal. The appeal is, therefore, dismissed. No costs. Consequently, miscellaneous petition is closed."

5.Subsequently, another batch of cases were

disposed of by this Court in WP.No.28731/2013 etc., batch dated 14.02.2014 following the earlier orders. Since the prayer sought for by the petitioner is also identical, this writ petition is also allowed as prayed for by following the earlier orders and there will be a direction to the respondents to issue the National Trade Certificate to the petitioner for the relevant trade within a period of four weeks from the date of receipt of a copy of this order. No costs."

6. In the light of the above extract, this Court is of the opinion that the issue involved herein is squarely covered by the aforesaid order dated 09.02.2015 passed in WP.No.23339 of 2014. Following the same, this writ petition is disposed of, by directing the respondents to to issue National Trade Certificate to the petitioner (who was issued with Provisional Certificate by the second respondent), within a period of four weeks from the date of receipt of a copy of this order. No costs.

srk

Sd/-
Assistant Registrar
/TRUE COPY/
Sub-Assistant Registrar

To

1. The Director General of Training, Ministry of MSDE, Employment Exchange Building, 1st Floor, IARI Complex, Library Avenue Road, Pusa Complex, New Delhi.
2. The Director of Employment & Training, Guindy, Chennai - 32.
3. Rajarajan Industrial Training Institute, Nanjikottai Road, Thanjavur-613 006.

+1 CC to Government Pleader Advocate SR.NO. 20440

+1CC to Mr.J.Madanagopal Rao, Advocate in SR.NO. 20260

W.P.No.4741 of 2018

SVI [CO]
MLT-28/03/2018