

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.26769 of 2011 &
M.P.Nos.1 & 2 of 2011 and
W.P.No.23956 of 2011

1.V.Manoharan ... Petitioner in W.P.No.26769 of 2011
2.P.Ponnuswamy ... Petitioner in W.P.No.23956 of 2011

-Vs-

1.The Secretary to Government,
Home (Transport II.A) Department,
Fort St.George,
Chennai 600 009.

R1 deleted as per order dated 17.04.2013 in
M.P.Nos.1 & 1 of 2012 in W.P.Nos.23956 & 26769 of 2011

2.The Secretary/Chairman,
Tamil Nadu Public Service Commission,
1, Greams Road,
Thousand Lights,
Chennai 600 006.

3.The Transport Commissioner,
Ezhilagam,
Chennai 600 005. ... Respondents in both W.Ps

Prayer in W.P.No.26769 of 2011: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order dated 13.10.2010 and the consequential order made in Memorandum No.424/OTD-B4/2008 dated 20.09.2011, passed by the 2nd respondent and quash the same so far it relates to withholding and non appointment of the petitioner's name (Registration Number : 00101097) and consequently direct the respondents to appoint the petitioner as Motor Vehicle Inspector Grade II.

Prayer in W.P.No.23956 of 2011: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order made in Memorandum No.424/OTD-B4/2008 dated 20.09.2011, passed by the 2nd respondent and quash the same and

consequently directing the respondents to appoint the petitioner (Registration Number : 00102205) as Motor Vehicle Inspector, Grade II in terms of the provisional Selection list dated 13.10.2010.

In both W.Ps

For Petitioners : Mr.G.Ethirajulu
For Respondents : Mr.V.Ayyadurai (SC) for
Mr.M.Devendran for R2
: Ms.Rose Kamalam,
Government Advocate for R3

C O M M O N O R D E R

Heard Mr.G.Ethirajulu, learned counsel for the petitioners and Mr.V.Ayyadurai, learned senior counsel appearing for the second respondent and Ms.Rose Kamalam, learned Government Advocate appearing for the third respondent.

2. These two writ petitions raised the same issues and grounds and therefore, taken up together for common disposal.

3. The petitioners have approached this Court, seeking the following reliefs:-

"1. To issue a Writ of Certiorarified Mandamus, to call for the records relating to the order dated 13.10.2010 and the consequential order made in Memorandum No.424/OTD-B4/2008 dated 20.09.2011, passed by the 2nd respondent and quash the same so far it relates to withholding and non appointment of the petitioner's name (Registration Number : 00101097) and consequently direct the respondents to appoint the petitioner as Motor Vehicle Inspector Grade II.

2. To issue a Writ of Certiorarified Mandamus, to call for the records relating to the order made in Memorandum No.424/OTD-B4/2008 dated 20.09.2011, passed by the 2nd respondent and quash the same and consequently directing the respondents to appoint the petitioner (Registration Number : 00102205) as Motor Vehicle Inspector, Grade II in terms of the provisional Selection list dated 13.10.2010."

4. The case of the petitioners is as follows:-

The petitioners had obtained valid driving licence to drive heavy transport vehicle on 27.09.1999 and 12.07.2006 and the licence had been renewed upto 26.12.2006 and 11.07.2009. On 24.02.2009, the second respondent invited applications through advertisement for the post of Motor Vehicle Inspector Grade - II for the year 2006-08. Initially, 65 vacancies were notified and subsequently, it was increased to 76 vacancies. The petitioners who did not renew their licence which was valid upto 26.12.2006 and 11.07.2009, therefore, renewed their licence on 04.03.2009 and 05.03.2009, in terms of Section 15(4) of the Motor Vehicles Act. Thereafter, they were in possession of the valid driving licence to drive the heavy transport vehicle, apart from other vehicles like light vehicles etc.

5. In terms of the notification dated 24.02.2009, the last date for submission of application was 31.03.2009. The petitioners submitted their application with valid driving licence for two-wheeler, light motor vehicle, heavy goods and transport vehicles. Thereafter, the petitioners attended the written examination which was scheduled on 24.05.2009. The petitioners were successful in the written examination. Thereafter, they were called for interview on 07.10.2010 and 08.10.2010. Thereafter, the petitioners were also directed to fill up the details of driving licence in a particular format. Subsequently, on 13.10.2010, the second respondent published a provisional list of selectees in which, the name of the petitioners also figured. However, it appears that the second respondent proceeded with the appointment of all the selectees, except the petitioners herein.

6. Since, the petitioners were shocked about their non-selection, they appeared to have submitted a representation on 26.08.2011, seeking for issuance of appointment letter as Motor Vehicle Inspector Grade - II in pursuance of their selection. In response to the petitioners' representation, by memorandum dated 20.09.2011, the second respondent cancelled the selection of the petitioners on the ground that they did not have valid heavy goods and transport licence on the date of Commission's notification for the post i.e., 24.02.2009. The said cancellation memo is put to challenge in the present writ petitions by both the petitioners herein.

7. The learned counsel for the petitioners would strenuously contend that on the day when the application was submitted by the petitioners, they had valid licence to drive heavy transport vehicle. Since on 04.03.2009 and 05.03.2009, it was renewed in terms of the provisions of the Motor Vehicles Act and the valid licence was also one of the documents enclosed along with the application submitted by the petitioners on 30.03.2009. The learned counsel would therefore submit that on the day when

their candidatures were considered, the petitioners had valid licence and fulfilled all the conditions of eventual appointment. Therefore, the cancellation of their selection by the second respondent cannot be countenanced either in law and on facts.

8. The learned counsel for the petitioners would also submit that the issues raised in the writ petitions are directly covered by the decision of learned Single Judge of this Court rendered in W.P.Nos.6214 and 6668 of 2015, dated 31.03.2015. The learned Judge of this Court in identical circumstances, has held that as per the notification calling for application for appointment to the post of Motor Vehicle Inspector Grade - II, the Commission had only mentioned that the person applying must have driving licence and not valid driving licence. Once it is permissible for renewal of licence even after the expiry of the original licence within a period of five years in terms of the provisions of the Motor Vehicles Act, it should be construed that the persons applying are deemed to have licence and therefore, on that ground, the candidature of the persons cannot be rejected.

9. The learned counsel for the petitioners would draw the attention of this Court to the clear findings given by the learned Judge commencing from paragraph Nos.11 to 16 of the order which are reproduced below:-

"The substantial issue:

11. The core question is whether TNPSC was correct in rejecting the applications of the petitioners on the ground that they were not in possession of a "valid driving licence" to drive Heavy Transport Vehicles as on 25 June 2012.

The Statute:

12. Chapter II of Motor Vehicles Act, 1988 provides for licensing of drivers of motor vehicles. Section 3 of the Motor Vehicles Act deals with possession of licence to drive vehicles. Section 9 deals with grant of driving licence. Section 15 provides for renewal of driving licence. Sub-section (1) of Section 15 permits the authority to renew driving licence on application. The proviso to Section 15(i) deals with cases of belated renewal. It provides that in case an application for renewal of the licence was made more than thirty days after the date of expiry, the driving licence shall be renewed from the date of its renewal. Sub Sections (3) and (4) of Section 15 clearly indicates that even after a period of thirty days, application could be made for

renewal of licence. The proviso to sub-clause (4) of Section 15 gives an indication that only in case the application is made more than five years after the expiry of driving licence, the applicant should undergo the test of competence to drive vehicle. Section 15 therefore gives an idea that under normal circumstances, renewal is automatic. In case the application is made within a period of thirty days it should be renewed from the period of expiry. If it is made beyond the period of thirty days, it should be renewed from the date of its renewal. Such a renewal could be made upto a period of five years. The question of producing medical certificate would arise only in case the renewal application is made after a period of five years.

13. The petitioner in W.P.No.6214 of 2015 was holding Light Vehicle Driving Licence from 1 August 2003 and Heavy Vehicle Driving Licence with effect from 26 May 2010. She failed to renew the Heavy Motor Vehicle licence and as such it expired on 19 March 2012. However she got it renewed on 12 July 2012 and submitted application for recruitment to the post of Motor Vehicles Inspector Grade II on 19 July 2012. Therefore it is clear that as on the date on which she made the application, she was having a valid licence.

14. Similarly the petitioner in W.P.No.6668 of 2015 was given a valid driving licence and it expired on 26 April 2012. The Heavy Vehicle Driving Licence was renewed on 11 July 2012. The petitioner after renewal of the licence submitted application on 12 July 2012 well before the last date prescribed for submission of application.

15. Since TNPSC rejected the applications on the ground that the petitioners were not having valid driving licences as on 25 June 2012, it is necessary to scan the contents of the notification regarding experience.

16. The notification mandates that the candidate should hold a driving licence authorising him to drive Motor Cycle, Heavy Goods Vehicles and Heavy Passenger Motor Vehicles. There is no requirement that the candidate must hold a "valid driving licence". The word "valid" is missing. It was only in the impugned order passed in W.P.No.6668 of 2015, TNPSC has stated that the application was rejected on the ground that the petitioner was not having a valid driving licence. It was not the case of TNPSC in its notification that the candidate must hold a valid driving licence."

10. The learned counsel for the petitioners would also draw the attention of this Court to paragraph No.20, wherein, the learned Judge has made clear observations regarding the provisions which are available in the Motor Vehicles Act for renewal of licence. The paragraph No.20 is reproduced below:-

"20. The notification would appear as if possession of driving licence would mean a valid licence. However it is not so on account of the provisions of Motor Vehicles Act. The applicant who was issued with a driving licence is a person having driving licence. Even if licence is not renewed up to five years, it would still be termed as a driving licence. By renewing it immediately, before expiry of thirty days from date of expiry or within a period of five years with medical certificate it would get validated. Therefore, possession of driving licence is different from possession of valid driving licence. When the mandatory condition is possession of driving licence, even a person whose licence expired just before five years would qualify for making application. In case, the condition is possession of valid driving licence, only a person in possession of a valid licence either by currency of initial driving licence or by renewal alone would qualify. The basic difference was omitted to be taken note of by the Commission while issuing the notification."

11. Finally, the learned Judge proceeded to hold that the petitioners therein had valid driving licence as on the date of their selection and allowed the writ petition. The order passed by the learned Single Judge was subjected to intra Court appeal in W.A.Nos.909 and 1051 of 2015. The learned Division Bench of this Court re-affirmed the observations and findings of the learned Judge and finally held in paragraph Nos.19 and 20 as follows:-

"19. It is a settled proposition of law that the selection process commences on the date when the applications are invited and any person eligible on the last date of submission of the application has a right to be considered against the said vacancy provided he fulfils the requisite qualification. Therefore, it is clear that the eligibility has to be considered only on the last of submission of the application. Accordingly, in the instant case, it has to be held that the respondents were eligible to be considered for the post on the last date of submission of application."

20. The learned single Judge, after considering the issue threadbare, held that TNPSC had created a confusion by not notifying clearly that the candidate must hold a valid driving licence as on the date of notification and therefore, the respondents are entitled to succeed and accordingly, allowed the writ petitions. We do not find any reason to interfere with the findings of the learned single Judge."

The learned Division Bench of this Court did not find anything wrong with the ratio decided by the learned Single Judge and dismissed the writ appeals filed by the Department. Therefore, the learned counsel for the petitioner would submit that in all fours, the prayer in the writ petition is covered by the orders passed by the learned Single Judge as confirmed by the learned Division Bench of this Court.

12. Upon notice, the learned senior counsel appearing for the second respondent, entered appearance and filed a detailed counter affidavit.

13. The learned senior counsel appearing for the second respondent vehemently opposed for grant of any relief to the petitioners on the ground that on the day when the notification was issued, it is presumed that the persons who applied for consideration in response to the notification ought to have valid driving licence and in this case, admittedly, these petitioners did not have valid licence on the day when the notification was issued by the second respondent Commission. Moreover, he would submit that the distinction has drawn by the learned Single Judge between the valid driving licence and driving licence in terms of the provisions of the Motor Vehicles Act, may not be correct, since the language employed in the Motor Vehicle Act is clear and unambiguous and such nuanced distinction was not correct.

14. The learned senior counsel appearing for the second respondent would further submit that the learned Division Bench of this Court was only concerned about the fact that there was no cut off date prescribed for minimum qualification prescribed in the notification and therefore, it cannot be taken that the learned Division Bench has confirmed the order passed by the learned single judge in all respects. He would therefore impress upon this Court to read language as it is and interpret the same as intended by the framers of law. Finally, the learned senior counsel would submit that there was a considerable delay on the part of the petitioners in approaching this Court in 2011 when the selection and appointment had been completed in October 2010 itself. For all these reasons, the learned senior counsel would contend that the petitioners are not entitled to the relief as prayed for in the writ petitions.

15. This Court has given its anxious consideration to the rival submissions of the learned counsel for the petitioners as well as the learned senior counsel appearing for the second respondent. As rightly contended by the learned counsel for the petitioners that the issues and the facts which form the basis of the present writ petitions are squarely and directly covered by the decision of the learned Single Judge and as confirmed by the learned Division Bench as aforesaid. In fact, the learned Single Judge has finally held that the Commission was to be blamed for not employing proper language while issuing notification. In fact, even in the present notification, what is stated is only the qualification of driving licence which was, what interpreted by the learned Single Judge in the aforesaid writ petition and held that those petitioners were held to be having driving licence at the time when the notification was issued. The said interpretation of the learned Single Judge has to be applied ipso facto to this case also, since this Court is also called upon to decide the issues in identical circumstances as that of the earlier case, wherein, the learned Single Judge has rendered any order in favour of the those petitioners therein.

16. The arguments of the learned senior counsel appearing for the second respondent is that the learned Judge's interpretation of the provisions of the Motor Vehicles Act may not be correct. Such argument advanced by the learned senior counsel cannot be accepted as valid piece of arguments, since the finding of the learned Judge has been confirmed in the writ appeal and therefore, is bound by the orders passed by both the learned Single Judge as well as the learned Division Bench and therefore, it cannot be embark upon into giving different interpretation of the statute in question.

17. Further, the learned senior counsel's argument is that in Column No.9 of the notification where the term valid licence is mentioned and it should be taken to be scheme of the notification and if that is taken into consideration, these petitioners cannot held to be having driving licence at the time of issuance of the notification on 24.02.2009.

18. At this, the learned counsel for the petitioners would draw the attention of this Court to Column No.9, where it is captioned as enclosures to be sent along with the application. When the application was submitted by these petitioners, they had admittedly enclosed valid driving licence and therefore, they had fulfilled all the required conditions. Therefore, their candidatures cannot be in any event rejected on that ground.

19. This Court is of the view that there is some force in the above contention put forth by the learned counsel for the

petitioners, therefore, the same is accepted. Even otherwise, this Court is of the considered view that once the provisions of the Motor Vehicles Act permitted for renewal of licence upto five year period and once the renewal of the licences had been done in terms of the provisions of the Act, it is not open to the Commission to reject the licences obtained by the petitioners on the ground that these licences were not available at the time of issuance of the notification on 24.02.2009. As rightly held by the learned Single Judge that on the date when the notification was issued, the petitioners were deemed to have licence and only the same were not renewed and such renewal was possible in terms of the provisions of the Act, within a period of five years.

20. In the said circumstances, this Court does not find any difference between the claim of the petitioners herein with the petitioners in W.P.Nos.6214 and 6668 of 2015 and therefore, the issues raised in the writ petition have to be answered in favour of the petitioners herein. As regards the objection of the learned senior counsel appearing for the second respondent that there was considerable delay in petitioners approaching this Court and the selection was over in 2010 itself, this Court is unable to appreciate such arguments, since the petitioners had approached the authorities in order to ascertain why they were not selected along with other persons whose names were found in the final selection list and only when they were informed about the cancellation of the selection, they approached this Court immediately challenging the impugned order dated 20.09.2011. Therefore, the petitioners cannot be faulted for any act of approaching the Court belatedly, mere pendency of the litigation before this Court cannot be a ground for denying the relief to the petitioners when they were otherwise entitled to, in law.

21. For the above said reasons, this Court does not have any hesitation in allowing the writ petitions and the impugned orders dated 13.10.2010 and No.424/OTD-B4/2008, passed by the second respondent, dated 20.09.2011, are set aside. The second respondent is directed to forward the selection of the petitioners to the third respondent and the third respondent is directed to take further action and appoint the petitioners as Motor Vehicle Inspector Grade - II in any of the available vacancies. In case, there are no vacancies, the third respondent is directed to create supernumerary post after obtaining necessary direction from the competent authority and accommodate the petitioners herein and issue appointment order to the petitioners. The second and third respondents are directed to implement the direction passed by this Court, within a period of eight weeks from the date of receipt of a copy of this order.

22. With the above direction, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary/Chairman,
Tamil Nadu Public Service Commission,
1, Greams Road,
Thousand Lights,
Chennai 600 006.

2.The Transport Commissioner,
Ezhilagam,
Chennai 600 005.

+1 cc to M/s.G.Ethirajulu Advocate sr 28780

+1 cc to Dr.M.Devendran Advocate sr 28781

+1 cc to the Govt Pleader se 29210

W.P.Nos.26769 and 23956 of 2011

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