

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.10.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

W.P. NO. 24943 OF 2018

AND

W.M.P. NO. 28989 OF 2018

The General Manager
Tamil Nadu State Transport
Corporation (Coimbatore) Ltd.
37, Mettupalayam Road
Coimbatore - 43.

.. Petitioner

- Vs -

1. K.Ilango
2. The Special Joint Commissioner of Labour
Chennai.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records relating to the order dated 4.3.2018 passed in A.P. No.104 of 2014 on the file of the 2nd respondent and quash the same as being illegal, arbitrary and unconstitutional.

For Petitioner : Mr. K.J.Shivakumar

For Respondents : Mr. I.Arockiasamy for R-1

ORDER

The present petition has been filed by the Management/petitioner, challenging the dismissal of the approval petition filed by it.

2. The brief facts leading to the filing of the writ petition are as under :-

The 1st respondent herein was appointed as reserve driver vide order of appointment dated 10.10.12. Accordingly, he joined the services of the petitioner on 12.11.12. Prior to the appointment, the petitioner Corporation issued vacancy notice

for filling up the vacancies in the post of reserve driver in Coimbatore Division. Accordingly, the employment office at Coimbatore sent the list of candidates vide proceedings dated 3.8.12 and 28.8.12. The employment office Coimbatore, gave its report to the effect that the 1st respondent, viz., employee, has allegedly given false address and has obtained the job in the petitioner Corporation. Based on the said report, disciplinary proceedings were initiated by issuing show cause notice followed by a charge memo stating that the 1st respondent is guilty of an offence under clause 14-D of the Standing Orders of the Corporation. The 1st respondent submitted his explanation and has placed relevant documents before the enquiry officer.

3. The case of the 1st respondent is that he was a permanent resident of Karur District, but shifted to Coimbatore for certain purposes and he could not effect change of address in the ration card on account of the nature of avocation that he was performing. According to the 1st respondent, he was moving around by driving lorries interstate and, therefore, he was not able to effect change of address in the ration card and, therefore, submitted that he is not guilty of giving false information. The 1st respondent further submitted that even at the time of interview, proforma has been submitted by him in which the 1st respondent has given two address, viz., in the permanent address column, the address at Karur has been mentioned and in the temporary address column, it is mentioned as Coimbatore. Therefore, it was submitted by the 1st respondent that he is not guilty of giving false address.

4. On a consideration of the entire materials, the enquiry officer held the charges proved against the 1st respondent, whereinafter, the 1st respondent was issued with a punishment of termination from service. Pending certain negotiations, approval petition was filed before the appropriate authority for approval of the said order, which was dismissed by the appropriate authority. Hence, the present petition has been filed at the instance of the petitioner.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the 1st respondent and perused the materials available on record as also the impugned order.

6. A perusal of the materials on record reveal that the name of the 1st respondent has been sponsored by the Employment Exchange, Coimbatore. In the above circumstances, the legal implication of issuing the vacancy notification on the basis of the residence is put under challenge.

7. Learned counsel appearing for the 1st respondent submits

that on the ground of residence alone public employment cannot be declined and the same is in violation of the provisions of Article 16 of the Constitution and, therefore, the charge itself is baseless. In support of the said contention, reliance is placed on the decision of the Division Bench in The Unemployed Secondary Grade Teachers Welfare Association & Ors. - Vs - The State of Tamil Nadu & Anr. (CDJ 2008 MHC 2080), wherein it has been held as under :-

"35. In view of the above discussion, in our considered opinion, confining the question of selection to the candidates sponsored by the Employment Exchange of a particular district without considering the willingness, availability and suitability of similar candidates who have been registered in the other district employment exchanges, is clearly violative of fundamental rights and, therefore, cannot be countenanced. The impugned G.O. Ms. No.447 dated 16.07.1996 is liable to be quashed. Accordingly, a direction is issued to consider the question of selection of eligible candidates, even though such candidates names have been registered in other District Employment Exchanges. For the aforesaid purpose, obviously intimation is required to be given to all the District Employment Exchanges and public advertisement throughout the State is required to be made so that any willing candidate even though registered in a different district can offer his candidature."

8. The contention of the learned counsel for the 1st respondent gains support from the above referred decision. In such a backdrop, the charge that the 1st respondent wilfully gave a wrong address for the purpose of getting employment at Coimbatore District itself will not lie in the light of the ratio laid down by the Division Bench in Unemployed Secondary Grade Teachers case (supra).

9. On facts as well, it is evident that this is not a case of wilful suppression of facts, as the materials on record reveal that even at the earliest instance, the 1st respondent has disclosed that he has two address, viz., permanent and temporary address and has given the address of Karur and Coimbatore respectively. In such a backdrop, the Approval Authority has analysed all the materials in proper perspective and has rightly rejected the approval petition, which requires no interference at the hands of this Court.

10. In the result, the writ petition fails and the same is

dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

GLN

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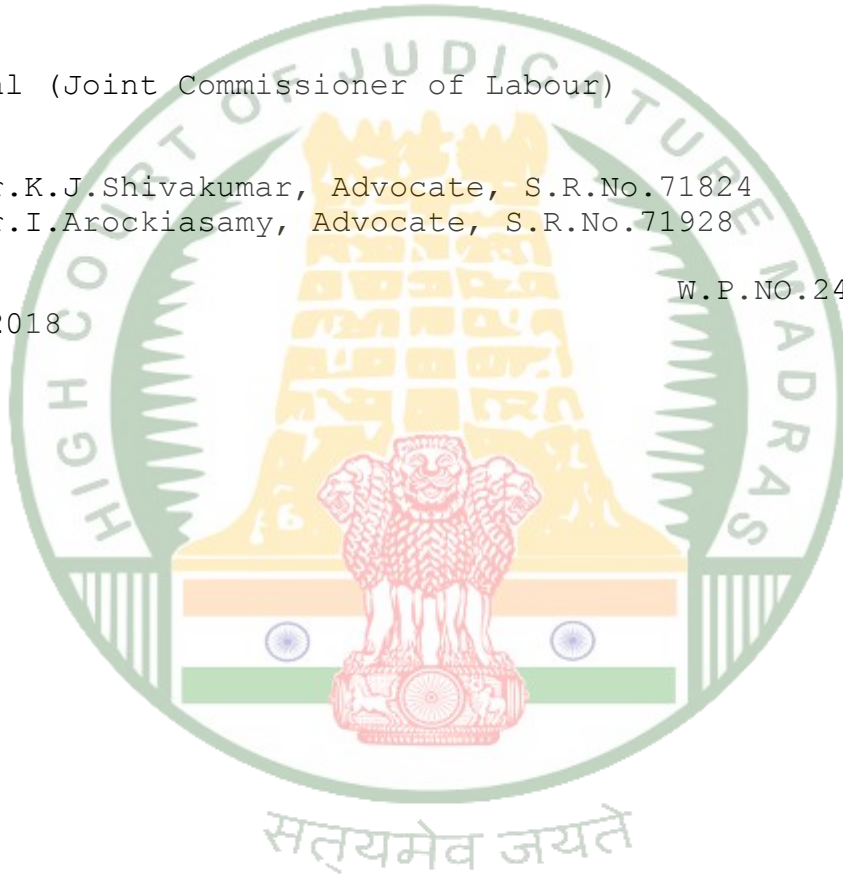
The Special (Joint Commissioner of Labour)
Chennai.

+1cc to Mr.K.J.Shivakumar, Advocate, S.R.No.71824

+1cc to Mr.I.Arockiasamy, Advocate, S.R.No.71928

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CS/03/12/2018



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