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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2021

CORAM :

The HON'BLE MR.JUSTICE M.DURAI SWAMY

AND

The HON'BLE MS.JUSTICE P.T.ASHA

Review Application No.220 of 2019

in Writ Appeal No.2321 of 2019

and

C.M.P.Nos.10307 of 2021 & 25790 of 2019

S.Dhanapal,
S/o. Shanmugam
No.5/102, A.Ellipalayam,
Akkampatti (Post), Sendamangalam Taluk,
Namakkal District. ...Petitioner/Appellant

v.

1. The Secretary to Government,
Home TR.II-A Department,
Secretariat, Chennai - 600 009.
2. The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road,
V.O.C. Nagar, Park Town,
Chennai - 600 003. ... Respondents /Respondents

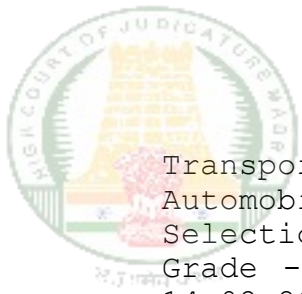
Review Application filed under Order 47 Rule 1 of Civil Procedure Code read with Section 114 of CPC against the order dated 30.07.2019 made in W.A.No.2321 of 2019.

Prayer in W.A No.2321 of 2019:

Writ Appeal filed against the order passed by this Court dated 27/02/2019 in W.P.No.26517 of 2018.

Prayer in W.P.No.26517 of 2018:

To issue a Writ of mandamus forbearing the 2nd respondent from recruiting the candidates who are possessing Bachelor's Degree in Engineering Subject without undergoing/Possessing the basic Qualification as prescribed under Rule 5 of the Tamil Nadu



Transport Sub-ordinate Service Rules namely Diploma in Automobile or Mechanical Engineering (3 years course) for Selection/Appointment to the Post of Motor Vehicle Inspector Grade - II (113 Post) based on the Advertisement No.489 dated 14.02.2018 in Tamil Nadu Transport Subordinate Service (Code No.068) and Consequently direct the respondents to Strictly implement and follow the Statutory rule prescribed for selection to the Post of Motor Vehicle Inspector Grade-II in accordance with Law.

For Applicant : Mr. N. Umapathy

O R D E R

[Order of the Court was made by M.DURAISWAMY, J]

Th above Review Application has been filed by the appellant in W.A.No.2321 of 2019, which was filed challenging the order passed in W.P.No.26517 of 2018.

2. The Review Applicant filed the Writ Petition in W.P.No.26517 of 2018 seeking for issuance of a Writ of Mandamus forbearing the 2nd respondent from recruiting the Candidates who are possessing Bachelor's Degree in Engineering Subject without undergoing/ Possessing the basic Qualification as prescribed under Rule 5 of the Tamil Nadu Transport Sub-ordinate Service Rules namely Diploma in Automobile or Mechanical Engineering (3 years course) for Selection/Appointment to the Post of Motor Vehicle Inspector Grade - II (113 Post) based on the Advertisement No.489 dated 14.02.2018 in Tamil Nadu Transport Subordinate Service (Code No.068) and Consequently direct the respondents to Strictly implement and follow the Statutory rule prescribed for selection to the Post of Motor Vehicle Inspector Grade-II in accordance with law.

3. The learned Single Judge by order dated 27.02.2019 dismissed the Writ Petition, however, observed that the authorities competent are bound to follow the terms and conditions issued in the Recruitment Notification as well as the Rules governing the post and further opined that the Writ Petitioner has not established even a semblance of legal right so as to entertain the Writ Petition.

4. Challenging the order of the learned Single Judge, the Writ Petitioner filed a Writ Appeal in W.A.No.2321 of 2019 and the Division Bench of this Court, by its Judgment dated 30.07.2019, dismissed the Writ Appeal following the ratio laid down in W.A.No.1306 of 2019. The subject matter of W.A.No.1306 of 2019 was also in respect of the very same notification and



the prayer was also the same. In paragraph 4 of the Judgment, the Division Bench extracted the Judgment made in W.A.No.1306 of 2019 and following the same, dismissed the Writ Appeal.

5. Mr. N.Umapathy, learned counsel appearing for the applicant submitted that he has relied upon a Judgment reported in 2013(7) SCC 289 [P.Dharni and others v. Government of Tamil Nadu and others], however, the Division Bench while dismissing the Writ Appeal, failed to consider the said Judgment, therefore, the same is an error apparent on the face of the record. Contrary to the said submission, in the affidavit filed in support of C.M.P.No.10307 of 2021 filed in the above Review Application, in para 8, the petitioner has stated as follows:-

".... 8. It is submitted that the petitioner inspite of exercising due diligence could not brought to the knowledge of this Hon'ble Court important piece of evidence namely the Judgment of Hon'ble Apex Court rendered in 2013(7) SCC 289 which specifically speaks about the same Tamil Nadu Transport Subordinate Service Rules (Recruitment Rules) and rendered a finding to the effect that special rules alone prevail over the General Rules. The petitioner could not be produced in spite of exercising due diligence at the time of hearing the Writ Appeal."

6. From the above it is clear that the Judgment reported in 2013 (7) SCC 289 was not cited or relied upon by the learned counsel appearing for the applicant before the Division Bench while arguing W.A.No.2321 of 2019. The applicant has also raised the said contention as ground B in the Review Application. When the Judgment was not cited or relied upon by the counsel for the appellant before the Division Bench while arguing the Writ Appeal, the contention now raised by the learned counsel appearing for the applicant is contrary to the averments stated in paragraph 8 of the affidavit filed in the above C.M.P.No.10307 of 2021. Apparently the counsel has made incorrect statement before this Court, which cannot be appreciated.

7. The other contention raised by the learned counsel appearing for the applicant is with regard to Rule 68 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 not having been considered by the Division Bench. But, on a reading of the Judgment made in the Writ Appeal, it could be seen that in W.A.No.1356 of 2019, this Court has considered Rule 68 in its form. Para 9 of the Judgment made in W.A.No.1356 of 2019 reads as follows:-



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"..... The Special Rules framed for the Tamil Nadu Transport Subordinate Service indicates that Diploma is the qualification for appointment. The appellant has taken up a contention that in case there is a conflict between the special rules and the General rules, the Special Rules alone would prevail....."

Therefore, the said contention raised by the learned counsel appearing for the applicant is also liable to be rejected.

8. It is pertinent to note that the Review Application can be entertained only if there is an error apparent on the face of the record. It is also settled position that in the guise of Review Application, the applicant cannot re-argue the matter.

9. It is also pertinent to note that, though the notification for the selection of Motor Vehicle Inspector was issued as early as in the year 2016, it is unfortunate that even after a lapse of 5 years, the selection process has not yet been completed.

10. The Review Applicant is not in a position to point out any error apparent on the face of the record to entertain the Review Application. Hence, we are not inclined to entertain the Review Application. Accordingly, the Review Application is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Rj

To

1. The Secretary to Government,
Home TR.II-A Department,
Secretariat,
Chennai - 600 009.



2. The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road,
V.O.C. Nagar, Park Town,
Chennai - 600 003.

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+1cc to M/s.N.Umapathi, Advocate Sr.33152

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ajs[col]
srg 23/08/2021