

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.08.2019	Delivered on: 30.08.2019
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CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.12333, 28300 of 2012 and 12077 of 2014
and M.P.No.1 of 2015
and M.P.Nos.1 & 2 of 2012 and 2 of 2015
and M.P.No. 1 of 2014

W.P.No.12333 of 2012:

S.Selvaraju .. Petitioner

Vs.

1. The Secretary,
Tamil Nadu Public Service Commission,
Greams Road,
Chennai - 600 006.
2. The Transport Commissioner,
Chepauk, Chennai.
3. The Deputy Transport Commissioner,
Office of the Deputy Transport Commissioner,
Salem.

4.R.Saravanan

5.P.Easwaran

.. Respondents

W.P.No.28300 of 2012:

R.Sharavanan

.. Petitioner

Vs.

- 1.The Transport Commissioner,
The Transport Department,
Chepauk, Chennai - 600 005.

2.The Licensing Authority,
Office of the Licensing Authority,
Chennai East, Chennai - 600 012.

.. Respondents

W.P.No.12077 of 2014:

K.Sridhar

.. Petitioner

Vs.

1.The Transport Commissioner,
Transport Department,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 600 003.

3.The Joint Transport Commissioner (Admn),
Transport Department,
Ezhilagam, Chepauk,
Chennai - 600 005.

4.R.Sharavanan

5.P.Eswaran

.. Respondents

Prayer in W.P.No.12333 of 2012: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records to the appointments of the 4th respondent Proc.No.28871/T1/2012 (E.O.288/2012) dated 03.08.2012 and the appointment of the 5th respondent Se.Mu.Aa.No.75083/T1/2010 dated 25.01.2011, and quash the same and consequently direct the respondents to appoint me to the post of Motor Vehicle Inspector Grade II.

(Prayer amended as per order of this Court dated 13.08.2014 made in M.P.No.1 of 2014 in W.P.No.12333 of 2012)

Prayer in W.P.No.28300 of 2012: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in his Proceeding R.No.47167/A1/2012 dated 08.10.2012 and quash the same and consequently direct the 2nd respondent to renew the license of the petitioner bearing No.TN28Z/1994/0000540 from 20.10.2012 to 19.10.2015 for heavy transport vehicle.

Prayer in W.P.No.12077 of 2014: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the impugned appointment order of the 4th respondent dated 03.08.2012 bearing proceedings No.28871/T1/2012 (EO No.288/2012) issued by the 3rd respondent and the impugned appointment order of the 5th respondent dated 03.02.2012 bearing proceedings Su.Mu.No.54374/T1/2012 issued by the 3rd respondent to the post of Motor Vehicle Inspector, Gr.II and quash the same and consequently direct the respondents 1 & 2 to consider the petitioner for appointment to the post of Motor Vehicle Inspector, Gr.II.

In W.P.No.12333 of 2012:

For Petitioner : Mr.A.S.Balaji
For R1 : Mr.M.Devendran
For RR2 & 3 : Mr.R.S.Selvam
Government Advocate
For R4 : Mr.N.G.R.Prasad
for Mr.K.Raja
For R5 : Mr.K.Rajkumar

In W.P.No.28300 of 2012 :

For Petitioner : Mr.N.G.R.Prasad
for Mr.K.Raja
For RR 1 & 2 : Mr.R.S.Selvam
Government Advocate

In W.P.No.12077 of 2014 :

For Petitioner : Mr.K.Kumaraguru
for M/s.Sai Bharath and Ilan
For RR 1 & 3 : Mr.R.S.Selvam
Government Advocate
For R2 : Mr.M.Devendran
For R4 : Mr.N.G.R.Prasad
for Mr.K.Raja
For R5 : Mr.K.Rajkumar

COMMON ORDER

W.P.No.12333 of 2012 is filed challenging the order of the 4th respondent bearing Proc.No.28871/T1/2012 (E.O.288/2012) dated 03.08.2012 and the appointment of the 5th respondent Se.Mu.Aa.No.75083/T1/2010 dated 25.01.2011, and to consequently direct the respondents to appoint the petitioner to the post of Motor Vehicle Inspector Grade II.

2(a).W.P.No.28300 of 2012 is filed challenging the award of the 2nd respondent in his Proceeding R.No.47167/A1/2012 dated 08.10.2012 and to consequently direct the 2nd respondent to renew the license of the petitioner bearing No.TN28Z/1994/0000540 from 20.10.2012 to 19.10.2015 for heavy transport vehicle.

2(b).W.P.No.12077 of 2014 is filed challenging the impugned appointment order of the 4th respondent dated 03.08.2012 bearing proceedings No.28871/T1/2012 (EO No.288/2012) issued by the 3rd respondent and the impugned appointment order of the 5th respondent dated 03.02.2012 bearing proceedings Su.Mu.No.54374/T1/2012 issued by the 3rd respondent to the post of Motor Vehicle Inspector, Gr.II and to consequently direct the respondents 1 & 2 to consider the petitioner for appointment to the post of Motor Vehicle Inspector, Gr.II.

3.The issue in all the Writ Petitions are interlinked and therefore disposed of by this Common Order. The parties are referred to as per their rank in W.P.No.12333 of 2012.

4.The first respondent issued notification dated 24.02.2009 in Advt.No.187, notifying 65 vacancies for the post of Motor Vehicle Inspector Grade-II for the year 2006-2008 by way of direct recruitment. The Supplementary notification was also issued by the first respondent on 28.02.2009 in Advt.No.191, notifying 11 more vacancies. The total vacancies notified was 76. The first respondent prescribed the educational qualification as follows:

"(i) Minimum General Educational qualification ;

(ii) Diploma in Automobile Engineering (3 years course) or Mechanical Engineering (3 years course) awarded by the Board of Technical Education and Training Tamil nadu ;

(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 or Light Motor Vehicles, Heavy Goods Vehicles and Heavy Passenger Motor Vehicles.

(iv) Must hold a driving License, authorizing him to drive motorcycle Heavy goods vehicles and Heavy passenger Motor

vehicles.

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

5.The petitioners in all Writ Petitions and respondents 4 and 5 belong to BC category and 4th respondent is physically handicapped person and he applied under BC (OBCM)-Ortho category. All of them were called for written examination for the post of Motor Vehicle Inspector Grade-II on 24.05.2009 and after being successful, were called for interview on 07.10.2010 and 08.10.2010. The petitioners and respondents 4 and 5 obtained following marks:

Sl. No.	Name of the Candidate	Marks obtained in Written Test	Marks obtained in Oral Test	Total
1.	S.Selvaraju	214.50	30.00	244.50
2.	K.Sridhar	213.00	30.00	243.00
3.	R.Sharavanan	193.50	30.00	223.50
4.	P.Easwaran	219.00	30.00	249.00

The first respondent published the provisional result on 13.10.2010. As per the final selection list, 49 candidates have been declared selected for the post. The selection of 25 candidates have been withheld for various reasons. Out of 76 notified vacancies, only 74 candidates have been brought under the final list as stated above. The final list also carries the registered number of 24 candidates stating that they have been kept in reserve list in their respective community wise reservation and the candidates in the reservation list will be considered for allotment from the respective categories against the vacancies caused due to

(i) Non-joining of duty by selected candidates;

(ii) Selected candidates who joined duty but left thereafter;

(iii) Cancellation of provisional selection of the selected candidates for any reason. Thus, for any one of the above reasons, if selection of a candidate goes the candidate in the reserve list will get a right to the said post in the order of their reservation point.

6.The respondents 4 and 5 were recommended by the 1st respondent to be appointed to the post of Motor Vehicle Inspector, Grade-II. According to the petitioners, 4th respondent applied in the physically challenged quota and mentioned the disability up to 42% for the disablement of right upper limb.

Therefore, he was provisionally selected and was directed to appear before the Medical Board for his fitness. He was informed that for the working capacity of the Motor Vehicle Inspector, Grade-II he has to be assessed personally by the Transport Authorities. To assist his capacity, the Committee consisting of (i) Deputy Transport Commissioner, Salem, (ii) Regional Transport Officer, Salem (East) and (iii) Automobile Engineer Motor Vehicles Maintenance Department, Salem, have been formed. The Committee after conducting detailed examination and considering the X-ray, found that his right arm has been fitted with a metal plate from the right hand shoulder, which amounts to 42% inability and there is no provision in the Motor Vehicle Act or Rules to hold driving license to drive Transport Vehicle by differently abled person. According to Rule 5 of the Tamil Nadu Transport Subordinate Rules, no person shall be eligible for appointment to the post of Motor Vehicle Inspector, Grade-II, unless he possess the driving license, authorizing him to drive motor cycle, heavy goods vehicles, heavy passenger motor vehicle and must have experience in driving heavy transport vehicle for a period not less than six months.

7. The Committee has examined the point regarding his working capacity and submitted a detailed report on 09.07.2011 and recommended that he is not fit to perform the duties of the Motor Vehicle Inspector, Grade -II in the Tamil Nadu Subordinate Services. The 1st respondent inspite of the said opinion, appointed the 4th respondent. Hence, the appointment of the 4th respondent is invalid and illegal.

8. As far as the 5th respondent is concerned, he was recruited to the post of Junior Draughtsman in the Department of Economics and Statistics in the year 1993. He did not obtain badge as required. Even though he obtained license to drive heavy motor vehicle, he acquired driving experience certificate only from 05.11.1996 to 07.06.1997, as if he was employed in M/s.S.M.A. Lorry Service at Palani on part time basis. In the information obtained under Right To Information Act, it was stated that from 07.04.1995 to 08.06.1997, the 5th respondent was working as Draughtsman at Economics and Statistics Department in the Office of the Assistant Director, Economics and Statistics Department, Dindigul, Anna District. The Department did not issue any permission to the 5th respondent to work in the private concern in part time or full time. The distance between Dindigul and Palani is about 65 kms. It would take more than two hours to reach Palani from Dindigul. Therefore, the certificate produced by the 5th respondent is only bogus certificate and not an experience certificate. The 5th respondent has not fulfilled the conditions imposed in the notification issued for appointment of Motor Vehicle Inspector, Grade-II. In view of the same, the appointment of the 5th respondent is not in accordance with law.

The petitioners are in Serial Nos.1 and 2 in the wait list. Once the appointment of the respondents 4 and 5 are set aside, the petitioners are entitled to be appointed in their place.

9.The first respondents filed counter affidavit. The 1st respondent in the counter affidavit has stated that the petitioner in W.P.No.12077 of 2014 obtained 243 marks (written test-213, oral test-30) and the petitioner herein obtained 244.50 marks (written test 214.50 and oral test-30). They did not reach their turn for selection to the said post as the marks obtained by the last BC (OBCM) candidate selected to the said post [under BC (OBCM)-W category as substitute due to paucity of women candidates was 249.00]. The 4th respondent applied under Physically Handicapped Ortho category, mentioning the disability up to 42%. The notification issued pertaining to the selection by direct recruitment to the post of Motor Vehicle Inspector, Grade-II reads as follows:

"3 (E)...

Physically Handicapped persons should produce before appointment a certificate of Physical Fitness from the medical board to the effect that his/her handicap will not render him/her incapable of efficiently discharging the duties attached to the post to which he/she has been selected. Physically Handicapped persons (i.e. Ortho, Blind and Deaf) are eligible for the 3% reservation of vacancies intended for PH persons..."

Based on the marks obtained by the 4th respondent in the written examination as well as the oral test taken together, 223.50 [written test-193.50 + oral test-30] and taking into consideration the Rule of Reservation of appointment, the 4th respondent has reached his turn for selection to the post of Motor Vehicle Inspector, Grade-II in Tamil Nadu Transport Subordinate Services 2006-2008 under BC [OBCM] Ortho category. According to the proviso to Rule 12 (bb) of the General Rules of Tamil Nadu State and Subordinate Service, the Head of the Department concerned has to satisfy himself as to the capacity of the candidate to perform the duties of the post of Motor Vehicle Inspector Grade-II, through the Medical Board.

10.The learned Government Advocate appearing for the respondents 1 and 2 separately contended that the selection process was conducted as per the procedures, Rules and Regulations. The petitioner in W.P.No.12077 of 2014 obtained 243 marks and the petitioner obtained 244.50 marks. The cut-off mark

for BC candidates is 249. Both of them have not come within the zone of consideration. 25 candidates were withheld for lack of certain particulars and documents. After the 20 candidates complied with the requirements and they were included in the final selection list. The 4th respondent was not issued with appointment order. He filed W.P.No.9812 of 2012 before this Court for issue of Writ of Mandamus, directing the 2nd respondent (sole respondent in W.P.No.9812 of 2012) to appoint the 4th respondent as Motor Vehicle Inspector, Grade-II, in the vacancies meant and reserved for physically disabled persons. This Court by the order dated 05.07.2012, disposed of the said Writ Petition, directing the 2nd respondent herein to issue appointment order to the 4th respondent after getting clarification from the Secretary, Transport Department, Government of Tamil Nadu, if necessary. As per the order of this Court, appointment order was issued to the 4th respondent. The 1st respondent maintains only the reserve list and does not maintain a wait list. The reserve list will be in force till next notification is issued. The petitioner herein and the petitioner in W.P.No.12077 of 2014 were not included in the reserve list. Even if any BC candidate did not join or left after joining, they will not be appointed in the said vacancy. The certificates produced by the 5th respondent was verified and appointment order was issued to him as he possessed all required qualification. The appointment of the respondents 4 and 5 are valid and legal and there is no illegality in their appointment and prayed for dismissal of Writ Petition Nos.12333 of 2012 and 12077 of 2014.

11.The 4th respondent filed counter affidavit. The learned counsel appearing for the 4th respondent contended that the 4th respondent had applied for appointment under BC (OBCM)-Ortho quota. With his disability, the 4th respondent has obtained all the required qualification as prescribed by the 1st respondent. Only after the 4th respondent proved that he can drive two-wheeler, light motor vehicle and heavy motor vehicle, driving license was issued to him, including to drive heavy motor vehicle. When the respondents 1 to 3 did not issue appointment order, the 4th respondent filed W.P.No.9812 of 2012. This Court considered the issue thoroughly and allowed the Writ Petition by giving elaborate reasons to direct the respondents 1 to 3 to issue appointment order to the 4th respondent. The respondents 1 to 3 did not challenge the order and issued appointment order to the 4th respondent. The petitioner herein and petitioner in W.P.No.12077 of 2014 cannot challenge the appointment of 4th respondent when appointment order was issued to 4th respondent as per the orders of this Court and prayed for dismissal of the W.P.Nos.12333 of 2012 and 12077 of 2014.

12.The 5th respondent filed counter affidavit. The 5th respondent applied for selection to the post for the year 2006 - 2008. The 5th respondent was selected provisionally pending acceptance of his work experience certificate with reference to the date of publication of the result of the Diploma in Mechanical Engineering course as well as the acceptance of his driving experience as part time. He had obtained total marks of 249 [written examination-219 and oral test-30]. The 5th respondent reached his turn for selection to the said post under BC [OBCM] category. However, the results of the 5th respondent was withheld. Subsequently, the date of publication of the result of the DME course was verified with regard to candidate's driving experience. The 5th respondent had training as part time driver in M/s. SMA Lorry Service, Palani from 05.11.1996 to 07.06.1997 and in KP Transport, Chennai from 05.01.2011 to 11.05.2011 and had also been working as Draughtsman at Economics and Statistics Department in the Office of the Assistant Director, Economics and Statistics Department, Dindigul. The 5th respondent also enclosed the copies of the proceedings relating to the departmental proceedings initiated and the punishment of censure imposed on him for the following reasons:

(i) That he had not obtained prior permission of the Department to train as a part-time driver in M/s.S.M.A. Lorry Service, Palani from 05.11.1996 to 07.06.1997.

(ii) That he had not informed the Department that he had completed training as a part-time driver for the period from 05.11.1996 to 07.06.1997, while obtaining permission to undergo such training, vide proceedings dated 26.02.1998.

The Special Commissioner and Director, Economics and Statistics Department, vide proceedings dated 11.04.2003 has accorded post facto approval for the driving experience gained by the candidate during the said period. The driving experience possessed by both the candidates viz., respondents 4 and 5 have been accepted as per the guidelines issued by the Larger Bench of this Court in M.P.Nos.2 and 3 of 2008 in W.A.Nos.4 and 215 of 2008 and the workshop experience possessed by both of them were accepted by the Committee constituted by the 1st respondent Commission.

13.The learned counsel appearing for the 5th respondent contended that the 5th respondent possessed all required educational qualification as well as the training as prescribed by the 1st respondent. The 5th respondent underwent training part time and learned to drive and repair all category of vehicles. At the time the 5th respondent under went training, he was working as a Draughtsman at Economics and Statistics Department in the Office of the Assistant Director, Economics and Statistics Department, Dindigul, Anna District. The 5th

respondent's employer initiated departmental proceedings for undergoing training without obtaining permission. The punishment of censure was imposed. On appeal, the training underwent by the 5th respondent was ratified. The petitioner did not plead in the affidavit that the 5th respondent did not obtain badge for driving heavy motor vehicles and now the petitioner cannot raise the said issue.

14.Both the learned counsel appearing for the respondents 4 and 5 contended that the respondents 4 and 5 are working for the past seven years without any blemish. The petitioner herein and petitioner in W.P.No.12077 of 2014 have no locus standi to challenge the appointment of respondents 4 and 5 as they were not within the zone of consideration. The contention of the learned counsel appearing for the petitioner herein and petitioner in W.P.No.12077 of 2014 that they are in Serial Nos.1 and 2 in wait list is concerned, there is no wait list maintained by the 1st respondent. In the reserve list published by the 1st respondent, names of the petitioner herein and petitioner in W.P.No.12077 of 2014 were not included.

W.P.No.28300 of 2012

15.In addition to the above two Writ Petitions, W.P.No.28300 of 2012 filed by the 4th respondent is also posted. In the said Writ Petition, the 4th respondent is seeking to quash the order of the Licensing Authority. The 2nd respondent in W.P.No.28300 of 2012 informed the 4th respondent that his driving license will be renewed only for motor cycle with gear and light motor vehicle and his license will not be renewed for heavy motor vehicle. According to the 4th respondent, he obtained license in the year 1994 to drive motor cycle with gear and in the year 1995, he obtained driving license to drive light motor vehicle and heavy motor vehicle. He was working as 2nd Instructor in a driving school and based on the same, the license was issued to the said driving school to run the business of teaching the persons to drive the motor vehicles. From 1995 onwards, the 4th respondent was instructing the students to drive all motor vehicles including heavy motor vehicle. The action of the Licensing Authority not to renew the driving license of 4th respondent to drive heavy vehicle is arbitrary, invalid and illegal. The Licensing Authority is trying to avoid giving appointment to the 4th respondent inspite of the orders of this Court and prayed for allowing the Writ Petition.

16.The respondents filed counter affidavit. The learned Government Advocate appearing for the respondents contended that the petitioner was appointed for the post of Motor Vehicle Inspector Grade-II under the quota for physically disabled persons by first respondent. The expert Committee constituted by

the second respondent headed by Deputy Transport Commissioner, Salem to assess the driving capacity of the fourth respondent has given a report dated 09.07.2011 that the driving performance of the fourth respondent was satisfactory in Motorcycle and Light Motor Vehicle. In the circumstances, the petitioner was issued impugned notice. In the application, the petitioner has suppressed his disability in Form-I. As per Section 16 of the Motor Vehicles Act, any Licensing Authority may at any time revoke a driving license or may require as a condition of holding such driving license if holder has any disease or disability. The Committee gave a report that the fourth respondent has 42% disability and he is physically fit to drive Motorcycle and Light Motor Vehicle. The petitioner is not at all eligible to hold Heavy Motorcycle license and hence notice was issued. The Government has also initiated departmental action against the concerned Medical Officer. The petitioner while submitting his driving license, renewal application before the Authority has not furnished any details about his disability in Form-I. The Medical Certificate issued in Form 1A by Senior Civil Surgeon, Government Upgraded Block Primary Health Centre, Thammampatti, does not mention about the physical disability. The Government has initiated departmental action against the concerned Medical Officer. The petitioner wantedly suppressed the fact and tried to renew the driving license by furnishing false action to the Licensing Authority together with false Medical Certificate. The learned Government Advocate appearing for the respondents 2 and 3 contended that as per Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Central Act of 1 of 1996) 4th respondent is not entitled to get license. Therefore, the Licensing Authority has declined to issue license to the 4th respondent. The same is valid and legal and prayed for dismissal of the W.P.No.28300 of 2012.

17. Heard the learned counsel appearing for the petitioners and learned Government Advocate appearing for the respondents in W.P.No.28300 of 2012, respondents 2 and 3 in W.P.No.12333 of 2012 and respondents 3 and 4 in W.P.No.12077 of 2014 and the learned counsels appearing for the respondents and perused the materials available on record.

18. The Writ Petition Nos.12333 of 2012 and 12077 of 2014 are filed by the petitioners therein to set aside the appointment of respondents 4 and 5. The petitioner herein and petitioner in W.P.No.12077 of 2014 are challenging the appointment of respondents 4 and 5 on different grounds. Hence, their objections are dealt separately.

The appointment of the 4th respondent:

19. The appointment of the 4th respondent is challenged on the ground that he is a physically challenged person having 42% disability on the right fore arm and a plate has been fixed from shoulder. The 4th respondent in view of the said disability will not be in a position to discharge the duties of the Motor Vehicle Inspector, Grade-II. These contentions are without merits. In the notification itself, the 1st respondent/Tamil Nadu Public Service Commission has reserved 3% vacancy for physically challenged persons. The 1st respondent has mentioned three categories of physically challenged persons viz., Ortho, Blind and Deaf. The 4th respondent has applied for the appointment under the quota, Backward Community as well as physically challenged quota. On being successful in written examination, interview and obtaining marks within the zone of consideration, the 1st respondent called upon the 4th respondent to produce the medical certificate to show that his physical disability will not be an impediment for him to discharge the duties of Motor Vehicle Inspector, Grade-II. The 4th respondent produced the said certificate and the 1st respondent published the provisional list including the name of the 4th respondent. Again the 1st respondent referred the 4th respondent to the Medical Board of Mohan Kumaramangalam Medical College and Hospital, Salem. The Medical Board after examining the 4th respondent, certified him to be fit to be appointed as Motor Vehicle Inspector, Grade-II. The Medical Board in the report has stated that a Committee may be formed to find out whether 4th respondent is fit to discharge the duties of the Motor Vehicle Inspector, Grade-II. On such report, the Committee was formed, consisting of three members viz., (i) Deputy Transport Commissioner, Salem, (ii) Regional Transport Officer, Salem (East) and (iii) Automobile Engineer Motor Vehicles Maintenance Department, Salem. The Committee members met the Chairman of the Medical Board at Mohan Kumaramangalam Medical College and Hospital, discussed the matter and verified the X-ray and came to the conclusion that the 4th respondent will not be in a condition to discharge the duties of the Motor Vehicle Inspector, Grade-II, as he is not entitled to possess a driving license. The said report was sent to the 1st respondent. The 4th respondent was not informed about the report of the Committee and he was not issued appointment order inspite of his two representations.

20. In such circumstances, the 4th respondent filed W.P.No.9812 of 2012 for issue of Writ of Mandamus, directing the 2nd respondent (sole respondent in W.P.No.9812 of 2012) to appoint the 4th respondent Motor Vehicle Inspector, Grade-II, in the vacancies meant and reserved for physically disabled persons. The 4th respondent has made same averments as mentioned in the counter affidavit in the two Writ Petition Nos.12333 of

2012 and 12077 of 2014 and affidavit filed in W.P.No.28300 of 2012. The 2nd respondent filed counter affidavit in W.P.No.9812 of 2012 and contended that 4th respondent is not entitled to issue of license and therefore, he cannot discharge the duties of Motor Vehicle Inspector, Grade-II and therefore, he is not entitled to be appointed as Motor Vehicle Inspector, Grade-II. This Court considered Sections 32 and 33 of the Act 1 of 1996. This Court took note of the fact that the State Government has appointed a Committee to identify the post to which physically challenged persons can be appointed as per the Act. The Committee identified 117 posts to which Ortho, Blind and Deaf persons can be appointed. The post of Motor Vehicle Inspector, Grade-II was included in 117 post identified by the Committee. This Court has held that a blind person is not entitled to obtain driving license, but if he is successful in the selection process, he can be appointed as Motor Vehicle Inspector, Grade-II and posted as an Assistant Licensing Officer. This Court also held that physically challenged persons like 4th respondent can be appointed as Motor Vehicle Inspector, Grade-II and posted as Assistant Licensing Officer or in the Office and they need not be posted to do the field work. This Court also took note of Rule 48 of the Tamil Nadu State and Subordinate Service Rules and held that the State Government can relax the prohibition in Rules 4 and 5 of the Motor Vehicle Rules and license can be issued to physically challenged persons.

21.This Court in the said order elaborately considered Sections 32 and 33 of the Act 1 of 1996, Rules 4 and 5 of the Motor Vehicle Rules, Rule 48 of the Tamil Nadu State and Subordinate Service Rules and various judgments in this issue and allowed the Writ Petition No.9812 of 2012, directing the 1st respondent to appoint the 4th respondent as Motor Vehicle Inspector, Grade-II. This Court imposed a cost of Rs.10,000/- on the 2nd respondent/ the sole respondent therein, on the ground that the 2nd respondent took a stand in a mechanical manner to deny the appointment of the 4th respondent. This Court posted the matter for reporting compliance on 06.08.2012. On that day, the learned Special Government Pleader informed this Court that appointment order was issued to the 4th respondent in compliance of the order of this Court. In view of the compliance of the order of this Court, the cost of Rs.10,000/- imposed was set aside.

22.From the above material, it is clear that the physically challenged persons in the category of Ortho, Blind and Deaf can be appointed as Motor Vehicle Inspector, Grade-II and they can be posted as Assistant Licensing Officer or in the Office and physically challenged persons can be issued with the license by obtaining relaxation from the State Government of Rules 4 and 5 of the Motor Vehicle Rules. In the present case, the respondents

2 and 3 have not denied that the 4th respondent was possessing license from the year 1994 to drive motor cycle with gear and in the year 1995, he obtained driving license to drive light motor vehicle and heavy motor vehicle and that he was working as second Instructor to teach the students to learn driving all sorts of vehicle, including Heavy Vehicle and 4th respondent has produced two medical certificates from the Medical Board that he is fit to be appointed as Motor Vehicle Inspector, Grade-II.

23. For the above reason, the contention of the petitioner herein and petitioner in W.P.No.12077 of 2014 that the 4th respondent is not fit to be appointed as Motor Vehicle Inspector, Grade-II is without merits. The 4th respondent was appointed as Motor Vehicle Inspector, Grade-II as per the order of this Court and he is working for the past 7 years as Motor Vehicle Inspector, Grade-II without any blemish. The 2nd respondent has informed the 4th respondent that he can be issued driving license restricted to drive only Motor cycle with gear and Light Motor Vehicles. The reason for issuing impugned order is as per Section 16 of Motor Vehicles Act, 1988. The impugned order is only in accordance with Section 16 of Motor Vehicles Act, 1988. When a physically challenged person is not entitled to obtain driving license as per the rules, the 2nd respondent is willing to issue a driving license for 4th respondent to drive Motor cycle with gear and Light Motor Vehicle. The 2nd respondent has not considered Rule 48 of the Tamil Nadu State and Subordinate Rules by which the State Government can relax the prohibition contained in Rules 4 and 5 of the Motor Vehicle Rules. The 2nd respondent is directed to issue driving license to 4th respondent to drive heavy vehicle by obtaining relaxation by State Government.

The appointment of the 5th respondent:

24. The appointment of the 5th respondent is challenged on the ground that he has produced bogus certificate as though he underwent training to learn driving of Heavy Motor Vehicle and repairing all category of vehicle both petrol and diesel. According to the petitioner herein and petitioner in W.P.No.12077 of 2014, the 5th respondent was working as Draughtsman at Economics and Statistics Department in the Office of the Assistant Director, Economics and Statistics Department, Dindigul, a State Government Organization and he was posted and working at Dindigul. The M/s.S.M.A. Lorry Service, institute from which the 5th respondent alleged to have undergone the training is situated at Palani and due to the distance between Dindigul and Palani, the 5th respondent could not have undergone the training. The petitioners also alleged that the 5th respondent did not obtain badge to drive Heavy Motor Vehicle. These contentions are contrary to the materials on record. The

5th respondent has produced a copy of the driving license. In the license, badge number is given as 10958/1996/TN57Z. The then employee of the 5th respondent initiated disciplinary proceedings against the 5th respondent for undergoing a training without obtaining prior permission from the employer. The 5th respondent was imposed with punishment of censure. On appeal, the training underwent by the 5th respondent was ratified. It is not the contention of the learned counsel appearing for the petitioner herein and petitioner in W.P.No.12077 of 2014 that the institute which issued the certificate to the 5th respondent for having undergone training is a bogus one. The institute which issued the certificate is a recognized institute and the petitioner herein and petitioner in W.P.No.12077 of 2014 have not placed any materials to show that the 5th respondent did not undergo training, except alleging that the 5th respondent is a Government Servant and due to the distance between Dindugal and Palani, could not have undergone the training as alleged by him. The learned counsel appearing for the 5th respondent has contended that the disciplinary proceedings was initiated against the 5th respondent for undergoing training without permission, which shows that the 5th respondent in fact had undergone training and certificate produced by him is genuine. For the above reason, the contention of the learned counsel for the petitioner herein and petitioner in W.P.No.12077 of 2014 are rejected as devoid of merits.

25. Further, the contention of the learned counsel for the respondents that the petitioner herein and petitioner in W.P.No.12077 of 2014 have no locus standi to challenge the appointment of respondents 4 and 5 has considerable force. According to petitioner herein and petitioner in W.P.No.12077 of 2014 they are at Serial Nos.1 and 2 in wait list published by the 1st respondent and in the event of appointments of the respondents 4 and 5 are set aside, they will be entitled to be appointed in their place. The 1st respondent in the counter affidavit has stated that they do not maintain any wait list and the petitioner herein and petitioner in W.P.No.12077 of 2014 are not in the wait list as Serial Nos.1 and 2. On the other hand, it is the contention of the learned counsel appearing for the 1st respondent that the 1st respondent maintains only reserve list and the petitioner herein and petitioner in W.P.No.12077 of 2014 have not obtained necessary marks and therefore, they are not included in the reserve list also.

26.For the above reasons, W.P.Nos.12333 of 2012 and 12077 of 2014 are dismissed and W.P.No.28300 of 2012 is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

krk/gsa
To

- 1.The Secretary,
Tamil Nadu Public Service Commission,
Greams Road,
Chennai - 600 006.
- 2.The Transport Commissioner,
Chepauk, Chennai.
- 3.The Deputy Transport Commissioner,
Office of the Deputy Transport Commissioner,
Salem.
- 4.The Licensing Authority,
Office of the Licensing Authority,
Chennai East, Chennai - 600 012.
- 5.The Joint Transport Commissioner (Admn),
Transport Department,
Ezhilagam, Chepauk,
Chennai - 600 005.

+2 CCS to Mr.M.Devendran, Advocate sr 75089 & 75090.
+2 Ccs to Mr.K. Rajkumar, Advocate sr 74988 & 74987.
+1 CC to Mr.S. Balaji, Advocate sr 75413.
+1 CC to Mr.K.Raja, Advocate sr 75336.
+1 CC to M/s. Sai Advocate sr 75491.
+1 CC to Govt. Pleader sr 76149, 76150, 76148.

W.P.Nos.12333, 28300 of 2012 and 12077 of 2014

NMI (CO)
SP(20/09/2019)