

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR  
AND  
THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.A.No.3240 of 2019

S.Selvaraju

... Appellant/3<sup>rd</sup> Party

Vs.

1. Madhivanan ....1<sup>st</sup> Respondent/ Petitioner

2. The Secretary  
Tamil Nadu Public Service Commission,  
Greams Road, Chennai.

3. The Secretary to Government,  
Home (TR-II) Department,  
Secretariat, Chennai - 600 009.

4. The Transport Commissioner,  
Chepauk, Chennai - 600 005.

5. The Deputy Secretary,  
Tamil Nadu Public Service Commission,  
Greams Road, Chennai - 600 006.

..Respondents 2 to 5/ Respondents 1 to 4

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 29.01.2019 made in WMP SR.8513 of 2018 in WP No.11869 of 2011

WP No.11869 of 2011:- Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to call for records in pursuant to the order dated 20.09.2011 in memorandum No.424/OTD-B4/2008 passed by the 4<sup>th</sup> proposed Respondent/4<sup>th</sup> Respondent and quash the same and consequently direct the first respondent to send petitioner's selection list to the Government by accepting his driving experience certificates dated 29.07.1994 & 07.08.2000 further direct the 2nd and 3rd respondents to appoint the petitioner as Motor vehicle Inspector Grade-II under GT. Category in respect of notification dated 24.02.2009 issued by the 1st respondent published in Dinakaran daily news paper on 24.02.2009.

For Appellant : Mr.R.K.Gandhi  
for Mr.M.Muthappan

For Respondents: Mr.P.S.Sivashanmugasundaram  
Spl. G.P. (for R3 & R4)

J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

Instant writ appeal has been filed against the order made in WMP SR.8513 of 2018 in WP No.11869 of 2011 dated 29.01.2019, whereby the writ Court rejected the application seeking leave to file a review petition against the order dated 06.07.2018 made in WP No.11869 of 2011.

2. Short facts leading to the filing of the writ appeal are as follows:

(i) T.Mathivanan, 1st respondent herein filed WP No.11869 of 2011, against the respondents 2 to 5, for the following relief.

"to issue a writ of mandamus to call for the records in pursuant to the order dated 20.09.2011 in Memorandum No.424/OTD-B4/2008, passed by the 4<sup>th</sup> proposed respondent/4<sup>th</sup> respondent and quash the same and consequently direct the first respondent to send petitioner's selection list to the Government by accepting his driving experience certificates dated 29.07.1994 & 07.08.2000, further direct the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to appoint the petitioner as Motor Vehicle Inspector Grade-II, under GT Category in respect of Notification dated 24.02.2009, issued by the first respondent published in Dinakaran daily news paper on 24.02.2009."

(ii) During the pendency of the writ petition, appellant herein filed W.M.P.No.6374 of 2017, for impleading himself in the Writ Petition on the ground that his name was kept in the reserve list and in case the Writ Petitioner failing in the Writ Petition, he can be considered for appointment from the reserve list. Said W.M.P. was taken up for hearing along with the main writ petition.

(iii) On the submission made by the TNPSC before the writ Court that the appellant/proposed party did not come within the zone of consideration and therefore, he has no locus standi to the litigation, this Court held that the proposed party is neither a necessary nor a proper party for adjudicating the issue and that the proposed party cannot seek to obtain any relief in the Writ Petition filed by another candidate. Taking

note of the above submission, writ Court rejected the impleading petition. Relevant portion of the order is as under.

"14.Mr.N.G.R.Prasad, the learned counsel appearing for the proposed party, would vehemently contend that in the event of the Writ Petitioner failing in the Writ Petition, the proposed party, who is kept in the reserve list, can be accommodated as Motor Vehicle Inspector Grade-II. In fact, his submission was resisted by the first respondent/Commission on the ground that the proposed party did not come within the zone of consideration and therefore, he has no locus standi to the litigation. However, in view of the order proposed to be passed hereunder, this Court is of the considered view that the proposed party is neither a necessary nor a proper party for adjudicating the issue and such proposed party cannot seek to obtain any relief in the Writ Petition filed by another candidate. In any event, this Court feels that the impleading petition lacks any merit and therefore, the same is rejected."

(iv) Further, writ Court, vide order dated 06.07.2018, allowed the writ petition and ordered as hereunder.

"15.Having considered the legal submissions and also having perused the pleadings and materials placed on record, this Court is in agreement with the submissions made on behalf of the Senior Counsel appearing for the Writ Petitioner. No way in the Notification it is mentioned that the driving experience Certificate produced should be supported by material. Although it is always open to the Tamilnadu Public Service Commission to conduct verification of the Certificate, in case they had any genuine apprehension of its veracity, however, in all cases such verification need not be done, particularly, in the present case, when the same Certificate was found to be valid in the earlier selections participated by the same petitioner.

16.Further, it is to be seen as to whether for non-availability of the records with the employer, under whom the petitioner had worked some 15 years before, the selection can be held against the petitioner, in the absence of any material to doubt the veracity of the Certificate issued by the erstwhile employer of the petitioner.

17.As rightly relied on by the learned Senior counsel for the petitioner, the Division Bench of this

Court, under similar circumstances, has held that production of such Certificate was valid. In the considered opinion of this Court, the conclusion reached by the first respondent/Tamil Nadu Public Service Commission that the Certificate produced by the Writ Petitioner was not genuine in the absence of supporting document, cannot be a valid and acceptable conclusion in the facts and circumstances of the case. The employer of the petitioner cannot be expected to maintain all the records in respect of each of the employees for all times to come. Therefore, the conclusion of the first respondent/Tamilnadu Public Service Commission, which is merely on the basis of absence of records, without any corroborative material, cannot be countenanced in Law.

18. For the above said reasons, the petitioner is entitled to succeed and the Writ Petition is allowed. There shall be a direction to the First Respondent/The Tamil Nadu Public Service Commission to forward the name of the petitioner to the second and third respondent for his appointment as Motor Vehicle Inspector Grade-II, under GT category, in pursuance of the Notification dated 24.02.2009. The Second and Third Respondent, on such recommendation, shall appoint the petitioner as Motor Vehicle Inspector Grade-II with effect from the date on which the other candidates, who participated along with the petitioner, were appointed in the subject selection. The petitioner is also entitled to all attendant benefits except the salary for the period in question. The respondents are directed to comply with this direction within a period of three months from the date of receipt of copy of this order."

(v) Aggrieved by the abovesaid final order made in the writ petition, appellant, filed WMP SR No.8513 of 2018, seeking leave of the writ Court to file a review application. Since, he being a third party to the writ petition and his impleading petition being rejected, Registry objected to the same, and the matter was listed before the writ Court for maintainability.

(vi) Upon hearing the appellant, Writ Court upheld the objection raised by the Registry and declined to grant the relief prayed for. Relevant portion of the order reads thus:

"5. While the writ petition was allowed by this Court in favour of the writ petitioner, the present W.M.P., has been filed seeking grant of leave to file a Review Petition to review the rejection order of the impleading petition.

6.This Court is unable to appreciate as to how such W.M.P could be conceived when the writ petition itself was decided and disposed of by this Court on 06.07.2018 and in such circumstances, the question of entertaining the present W.M.P., by the impleading party, did not arise at all. Therefore, the office has rightly raised a maintainability issue against the petitioner herein.

7.The learned Senior counsel Mr.R.Venkatramani would attempt to argue that the writ petitioner has played a fraud by producing a bogus certificate and therefore, the matter is required to be heard afresh.

8.This Court, once again is unable to appreciate as to how such argument could be entertained on behalf of a person who had not even made a party in the writ petition and his attempt to get impleaded in the writ petition was found to be without merits and the same was rejected by this Court. When this Court has taken a decision to reject the petition for impleadment of the present petitioner on merits and in accordance with law, the question of approaching this Court, once again, seeking leave of this Court to file review against the order passed in the writ petition, does not arise, in the circumstances of the case. The present petition appears to be an abuse of process of the Court by seeking leave to review the rejection of impleading petition. By such attempt, the petitioner herein is indirectly seeking review of the order passed by this Court in the main W.P.No.11869 of 2011, dated 06.07.2018. What the petitioner herein could not achieve directly is attempted to be achieved indirectly by such ingenious method being adopted by seeking leave of this Court to review the order passed in the writ petition, in regard to his impleading petition.

9.In view of the above, this Court upholds the objection raised by the Registry that the present W.M.P filed by the petitioner is not maintainable. Accordingly, W.M.P.SR.8513 of 2019 in W.P.No.11869 of 2011 is not maintainable in law and therefore, the same is rejected."

3. Being aggrieved, the present appeal is filed on the following grounds.

(i) writ Court ought to have seen that the 1st respondent / writ petitioner, Madhivanan has practiced fraud by producing bogus experience certificate dated 07.08.2000 before the Public

Service Commission in order to prove his experience. As the 1st respondent /writ petitioner, has not come with clean hands in the process of recruitment, writ Court ought to have permitted the appellant as a necessary party in the writ petition for proper adjudication of the matter instead of dismissing the application for impleading even before entertaining the same.

(ii) Writ Court has failed to appreciate the fact that the Hon'ble Supreme Court now and then, in number of decisions held that any person who is seeking public employment should produce documents of unimpeachable nature at the time of securing employment. The 1st respondent /writ petitioner, produced an experience certificate dated 29.7.2004 along with an application and subsequently after the cut off date, he produced another certificate dated 07.08.2000, the said certificate dated 07.08.2000 was not produced before the Service Commission when the same petitioner earlier applied for recruitment to the same post in the years 1999, 2001 and 2007. The certificate dated 07.08.2007 was produced for the purpose of recruitment made in the year 2009 that too after the cut off date. The fact that the certificate could not have been issued on 07.08.2000 prima facie on a perusal of the document would necessarily prove that the 1st respondent /writ petitioner, has produced an ante dated certificate in order to sustain his claim of experience in the Bharati Bus Service. When there is sufficient evidence to show that a false certificate has been produced to secure employment irrespective of the fact whether the certificate is genuine or not, the 1st respondent /writ petitioner, is not entitled to get employment to the post of Motor Vehicle Inspector, Gr-11 in view of the special circumstances of the case. The appellant though filed an application to implead himself as a party, but even before it is put to the knowledge of this Hon'ble Court his application was rejected at the time of admission itself by the writ Court and passed the final order on the same day. Hence in view of the special circumstances, order of the writ Court is liable to be set aside.

(iii) Writ Court, ought to have found that there is there is no necessity for the 1st respondent /writ petitioner, to send another certificate dt 7.8.2000 after the cut off date. It is submitted that the certificate produced on 29.7.1994 is not genuine, which is revealed by the fact that an investigation was done by the department, which shows that there are no back records available, which itself proves that the certificate has been produced by the 1st respondent /writ petitioner, is bogus as if he has served in Bharathi Bus Service at that point of time. Court below ought to have accepted the order of Public Service Commission instead of rejecting the application of the petitioner in the absence of any back records and his certificate ought not to have been accepted since there is prima facie and apparent error on the face of the record and on this

ground also the order of the writ Court is liable to be set aside.

(iv) Writ Court, while considering the certificate dt 29.7.1994 has held that the 1st respondent /writ petitioner, having produced the certificate in the previous selection in the years 1999 and 2001 and the service commission did not raise any objection with reference to the certificate cannot now raises any objection that the back records are not available. It is relevant to mention that the 1st respondent /writ petitioner, has participated in the previous selection for the years 2001 & 2007, wherein he had produced the certificate dated 29.07.1994, but he did not reach the cut off mark. Hence there was no occasion for the Service Commission to send the certificate for verification in order to find out the genuineness and authenticity of the document. From the above fact, it is clear that the certificate dt 29.7.1994 was not the subject matter of verification in the previous recruitment, wherein the writ petitioner has participated. Hence the findings of the court below that the respondent having accepted the certificate dt 29.7.94 in the previous recruitment cannot agitate now, does not hold water and the entire finding is liable to be set aside.

(v) Appellant submits that he is the next meritorious candidate available in the wait list prepared by TNPSC and the candidature of the Appellant has to be considered for appointment to the post of Motor Vehicle Inspector, Gr-11.

4. Heard the learned counsel for the parties and perused the materials available on record.

5. Material on record shows that the appellant has filed WMP No.6374 of 2018 in WP No.11869 of 2011, for impleading himself as a party respondent. Finding that he is not a necessary and proper party for effective adjudication of the lis, writ Court, vide order dated 06.07.2018 has dismissed the impleading petition. He has not chosen to challenge the order.

6. While that be the position, after the disposal of the writ petition, appellant has chosen to file a review petition in WMP SR.No.8513 of 2018, for which Registry, by raising objections as to the maintainability of the review petition, has placed the same before the writ Court. While addressing the submission of the learned Senior Counsel for the review petitioner / appellant at paragraph No.8 of the order dated 29.01.2019 made in WMP SR.No.8513 of 2018, writ Court has ordered thus.

8.This Court, once again is unable to appreciate as to how such argument could be entertained on behalf of a person who had not even

made a party in the writ petition and his attempt to get impleaded in the writ petition was found to be without merits and the same was rejected by this Court. When this Court has taken a decision to reject the petition for impleadment of the present petitioner on merits and in accordance with law, the question of approaching this Court, once again, seeking leave of this Court to file review against the order passed in the writ petition, does not arise, in the circumstances of the case. The present petition appears to be an abuse of process of the Court by seeking leave to review the rejection of impleading petition. By such attempt, the petitioner herein is indirectly seeking review of the order passed by this Court in the main W.P.No.11869 of 2011, dated 06.07.2018. What the petitioner herein could not achieve directly is attempted to be achieved indirectly by such ingenious method being adopted by seeking leave of this Court to review the order passed in the writ petition, in regard to his impleading petition.

7. Though the learned counsel for the appellant, has raised several grounds on the merits of the writ petition, when the writ Court has negatived his plea for impleading himself as a necessary and proper party in the writ petition and when the said order remained unchallenged, we are of the view that the appellant by a circuitous method, cannot seek to achieve his objective of hearing on the merits of the case, by filing a review petition. Effect of dismissal of an impleading petition is that, party who seeks to implead is not a necessary and proper party, for deciding the lis before the Court and in such circumstances, review petitioner / appellant cannot advance any submission in the lis before the Court. While that be the position, as rightly held by the writ Court, he cannot file another application, under the caption 'Review Application' and advance the very same submission made in the impleading application. Going through the entire material, we do not find any error in the order of the writ Court, warranting interference.

8. In the light of the above discussion, instant writ appeal is dismissed. No Costs.

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Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary  
Tamil Nadu Public Service Commission,  
Greens Road, Chennai.

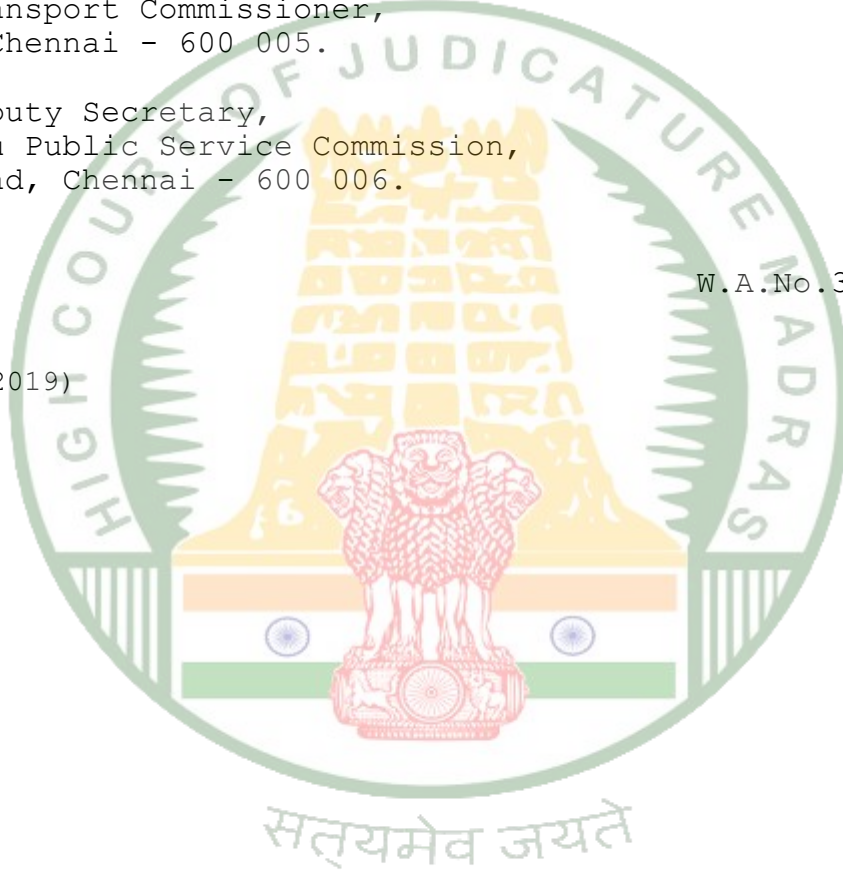
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