

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

W.P.No.34373 of 2017

K.Ganesan

..Petitioner

Vs

1.The State of Tamil Nadu
rep. by Secretary
Department of Transport
Secretariat Building, Fort St.George
Chennai-600 009

2.The Managing Director
TNSTC (CBE) Limited
37, Mettupalayam Road
Coimbatore-641 043

3.The Branch Manager
TNSTC, Sathyamangalam
Covai Main Road
Sathyamangalam

4.The Assistant Director
District Employment Office
Coimbatore -29

..Respondents

R4 impleaded vide order dated 11.02.2019
made in WMP.No.2592 of 2019
in WP.34373 of 2017

Prayer :- This Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Mandamus directing the respondents to appoint the petitioner into the service as a conductor.

For Petitioner : Mr.R.Vijayan

For Respondents : Mr.P.Siva Shanmuga Sundaram
1 and 4 Spl.G.P.,

For Respondents : Mr.R.S.Selvam
2 & 3

ORDER

The case of the petitioner is that the petitioner has already registered his name in the employment exchange, but ignoring the name of the petitioner, some other candidates list has been sponsored by the employment exchange. The District Employment Office has sent a list of 756 candidates vide letter dated 28.12.2010 which was received on 28.12.2010 and then 47 candidates vide their letter dated 11.01.2011 which were received on 13.01.2011 by the Corporation, totally prescribed 861 candidates were called for interview. The candidates have been called for interview on 11.01.2011, 12.01.2011, 13.01.2011, 14.01.2011 and 15.02.2011.

2. Unfortunatley, some of the candidates whose names have been properly registered and renewed in the employment exchange, who possess required qualification for the post of conductor have not been sent from the District Employment Office, and one such candidate is the petitioner.

3. The case of the petitioner is that his name has been purposely not sent, thereby his chance of getting employment is denied and that the petitioner is now overaged and his candidature cannot be considered.

4. The 2nd respondent as well as the 4th respondent filed counter affidavit. The sum and substance of the counter is that interview was conducted based on the list sponsored by the District Employment Office apart from the additional list sent on 10th, 11th, 13th and 19th January 2011. Candidates are sponsored in 1:5 ratio and based on the selection procedure, candidates have been appointed as Conductor and name of the petitioner and 7 others is stated to have been received only on 19.01.2011 and the list was received after the interview was over in the first phase. Hence, the name of the petitioner could not be considered. There is no omission on the part of the 4th respondent in sending the list and it is the duty of the 2nd respondent to call the candidates sponsored by the District Employment Office. The 4th respondent has submitted that they may be relieved from the case.

5. The 2nd respondent has stated that if they had received the list prior to the interview, they would have called the petitioner, but, it was received belatedly. It was further stated that the petitioner was called for interview earlier and he attended the interview on 14.10.2005 and he was not selected due to the fact that he was not qualified for the interview and that was informed to the District Employment Office. Hence the writ petition is to be dismissed.

6. Head both sides.

7. It is not in dispute that the petitioner has registered his name in the District Employment Office and that he was called for interview in the year 2005, but he was not successful and that the 4th respondent office has been duly intimated. Once he was not selected, his name automatically gets restored in the District Employment Office and as to whether the petitioner is qualified in the interview is not the subject matter of the writ petition. There are chances for the petitioner to get selected in the year 2011 when 861 candidates were called for interview, provided his name would have been sponsored much earlier to the commencement of the interview. The age limit for participating in the selection process is 30 years, whereas, relaxation is given to SC/ST candidates and their age limit is 35 years.

8. It is submitted by the learned counsel for the writ petitioner that after 2010, the maximum age limit for SC/ST category is increased in the selection of Conductor and thereby, in view of the fact that all candidates are getting 5 more years relaxation, the petitioner's case could have been considered, as a special case. As such, the 4th respondent cannot try to wash their hands stating that they have already sent the list and it is the duty of the 2nd respondent to get list of candidates for interview when the interview has been conducted between January 10th to 19th 2011, since due to the delay in sending the additional list of seven candidates, it reached the 2nd respondent only after the process of selection by conducting interview i.e., after 19.01.2011, cannot be accepted by this court. The act of the 4th respondent/District Employment office appears to be fishy. In any event, since the candidates have already been selected and appointed by way of conducting interview in the selection process set out in the year 2011, this court is not inclined to stall the same, as the petitioner has slept over the matter for six years and filed the writ petition in the year 2017. Though laches can be held against the petitioner, the act of the 4th respondent appears to be not bonafide.

9. The Supreme Court in number of cases has held that source of recruitment cannot be restricted only to employment exchange and that the course have to be advertised in various dailies and other modes in order to enable the eligible candidate to compete. The Hon'ble Supreme Court in the case of Excise Superintendent, Malkapatnam, Krishna District, Andhra Pradesh vs. K.B.N.Visweshwara Rao and others, reported in (1996) 6 SCC 216, has held as under:

"6. Having regard to the respective contentions, we are of the view that contention of the respondents

is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidates are unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate are deprived of the right to be considered for appointment to a post under the state. Better view appears to be that it should be mandatory for the requisitioning Departments for selection strictly according to seniority and reservation as per requisition. In addition the appropriate Department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news-bulletins: and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.

10. The Hon'ble Apex Court further went on to hold as under in the case of State of Orissa & another vs. Mamata Mohanty, reported in (2011) 3 SCC 436;

"APPOINTMENT / EMPLOYMENT WITHOUT ADVERTISEMENT:

35. At one time this Court had been of the view that calling the names from employment exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the employment exchange does not meet the requirement of the said article of the Constitution."

11. In view of the above discussion, taking note of the facts and circumstances of the case, this court is inclined to direct the respondents that the petitioner's name can be considered while filling up vacancy in any of the departments in the State Government, by giving relaxation of age, taking into account the fact that his name has not been included in the previous list and that is the reason he has not been called for interview by the 2nd respondent at the relevant point of time and on account of failure on the part of the 4th respondent, in not sending the list in advance.

12. In view of the judgments of the Supreme Court mentioned supra, the question as to whether the Employment Office should continue to exist is a moot question. As the process of selection by way of recruitment is thrown open and advertised in media including the Web, Employment Office itself can be closed and that all the eligible candidates would be allowed to compete in the open market.

13. Taking note of the fact that there is a fault on the part of the Employment Office in not sending the name of the petitioner earlier so that he can participate in the interview in the first phase itself, this court, though inclined to impose heavy cost on the 4th respondent, for the reason that the petitioner has slept over the matter for more than five years, the cost is not imposed.

14. The Writ petition is disposed of with the above observation. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Secretary

Department of Transport

Secretariat Building, Fort St.George

Chennai-600 009

WEB COPY

2.The Managing Director
TNSTC (CBE) Limited
37, Mettupalayam Road
Coimbatore-641 043

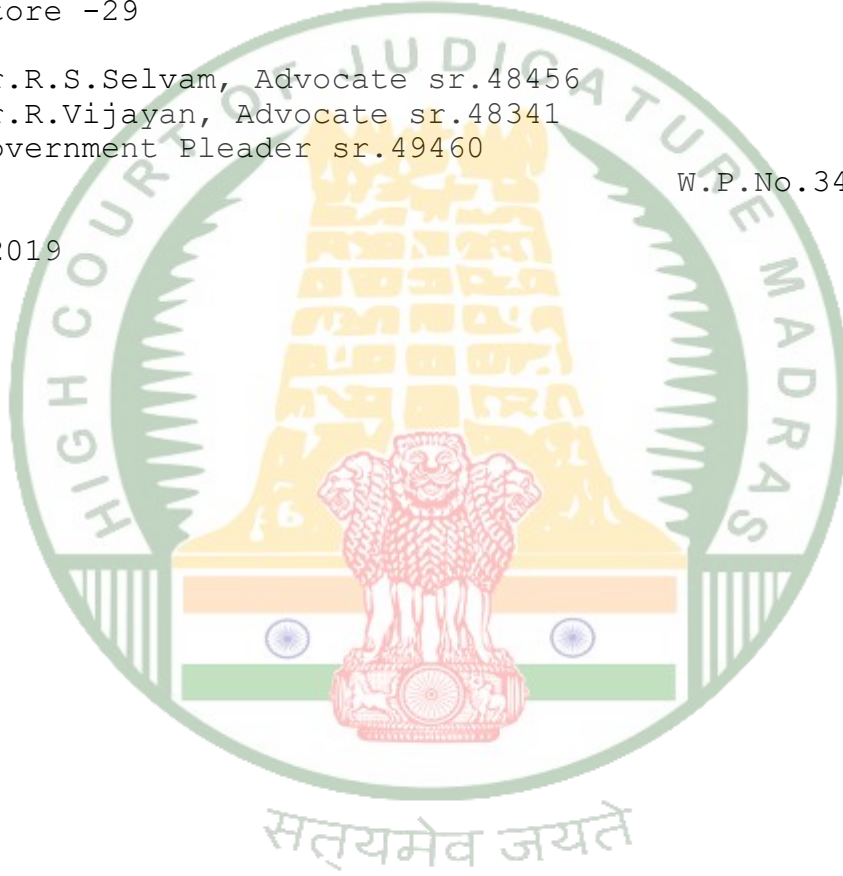
3.The Branch Manager
TNSTC, Sathyamangalam
Covai Main Road
Sathyamangalam

4.The Assistant Director
District Employment Office
Coimbatore -29

+1cc to Mr.R.S.Selvam, Advocate sr.48456
+2cc to Mr.R.Vijayan, Advocate sr.48341
+1cc to Government Pleader sr.49460

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nr 20/08/2019



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