

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No. 3461 of 2020

R.Jaisankar

...Petitioner

Vs.

- 1 The Director General of Training
Ministry of Skill Development and Entrepreneurship
Employment Exchange Building
Library Avenue, PUSA Campus
New Delhi -110 012
- 2 The Commissioner of Employment & Training
Guindy, Chennai - 600 032.
- 3 The Regional Joint Director (Training)
Chennai Region
Guindy, Chennai - 600 032.
- 4 The General Manager
Indian Red Cross Society
Tamilnadu Branch
No.50 Montieth Road
Egmore Chennai 8.

...Respondents

This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 and 2 to issue National Trade Certificate to the petitioner in the Turner Trade bearing Roll No. 526420 for the year 1992-1994.

For Petitioner : Mr.S.Kamadevan

For Respondent-1 : Mr.L.J.Vengatesan
Central Government Standing Counsel

For Respondents 2 & 3: Mrs. V. Annalakshmi
Government Advocate

For Respondent-4 : Mr.Narayanasamy

ORDER

This writ petition has been filed for the issue of Writ of Mandamus directing the respondents 1 and 2 to issue National Trade Certificate to the petitioner in the Turner Trade bearing Roll No. 526420 for the year 1992-1994.

2. The case of the petitioner is that the petitioner is a physically challenged person with 80% disability and joined in the Turner Trade during the academic year 1992-1994 in a private ITI, run by Indian Red Cross Society, Tamil Nadu Branch, which is now closed and not functioning. The said private ITI sought permission to grant affiliation to start the Turner Trade from August 1992. Subsequently, the Standing Committee has also conducted inspection and recommended for affiliation from 1992 onwards, but the first respondent granted affiliation only from August 1994. The second respondent granted permission to admit the students pending affiliation.

3. The petitioner was admitted in the year 1992 and completed his course in the year 1994, took his examination in July 1994 and was issued with Provisional National Trade Certificate. Thereafter, the petitioner got selected as an Apprentice by the then Tamil Nadu State Transport Corporation Ltd., Dharmapuri and underwent Apprentice Training from 11.12.1996 to 10.12.1997 and on successful completion of the said training, National Apprenticeship Certificate was also issued and subsequently, the petitioner got appointment as Skilled Assistant in January 2014 and now working at Government Polytechnic College, Krishnagiri. Though, the petitioner got appointment on the basis of the Provisional National Trade Certificate issued by the second respondent, the regular National Trade Certificate is being insisted upon often by his Employer whenever the issue regarding regularisation and pay fixation sought for and the Employer issued a notice dated 30.01.2020 stating that the petitioner has not produced the National Trade Certificate till date and if the same was not produced on or before 07.02.2020, his regularisation would be cancelled. Hence, the petitioner is before this Court seeking for appropriate direction.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

5. The issue that has been raised in this writ petition is directly covered by the judgment of this Court in W.P.No.292 of 2015. The relevant portion in the judgment is extracted hereunder:-

2.The petitioner Institution seeks for issuance

of a writ of mandamus to direct the respondents to issue National Trade Certificates to 40 students of its Institution, who were issued with provisional certificate by the 2nd respondent.

3. An identical issue was considered by this Court in WP.Nos.7645 and 7663/2010, wherein the prayer was to direct the respondents therein to issue the National Trade Certificates to the students of the said Institutions, which were private Industrial Training Institutions. This Court, after hearing the parties, passed an order on 22.04.2010, following the order passed by the Division Bench of this Court in WA.No.801/2006, dated 07.08.2009 and the writ petitions were allowed as prayed for and a direction was issued to issue the National Trade Certificates to the students. The operative portion of the said order reads as follows:-

"6. In the judgment made in W.P.No.21113 of 2006 dated 3.1.2007, in paragraph 8(c) onwards, it is held as follows:-

"(c) As a matter of fact, the practice adopted by the first respondent in the matter of grant of affiliation, conduct of examination and the issue of Certificates, appear to be very peculiar. As per the Training Manual for ITIs and ITCs, the first respondent acts as the affiliating body and he conducts examinations and issues Certificates only through the second respondent, who is described as "The State Director". The question papers are dispatched to the second respondent who conducts the examination. Ultimately, blank National Trade Certificates are also dispatched by the first respondent to the second respondent, who is empowered to issued those Certificates after filling up the blanks. Clause (vii) of the said Training Manual reads as follows:-

"The State Director may seek permanent affiliation by forwarding the inspection report (Annexure III) to the Secretary, NCVT, New Delhi. The State Director need not wait for any instruction in this matter from Secretary, NCVT. He may grant permission to the management of the Institute to admit trainees in the trades/units which have been

recommended for permanent affiliation by the Standing Committee. It should however be made clear that in case permanent affiliation is not granted, final trade test and certification would be the responsibility of respective SCVT."

The above clause makes it clear that even without waiting for orders of affiliation, the State Director can permit the courses to be commenced.

(d) The first respondent has also admitted in para-17 of his counter that students can be admitted to the trades/units, for which a recommendation is made by the second respondent, subject to the grant of permanent affiliation by the first respondent. According to the first respondent, if permanent affiliation is eventually granted, the first respondent will issue National Trade Certificates (NCVT) and if permanent affiliation is refused, the second respondent will issue State Trade Certificates (SCVT). In this case, the second respondent has agreed to grant State Trade Certificates (SCVT), thereby indicating that the State Director permitted the admission of students for the two additional units for the batch 1995-1997. Ultimately, the first respondent has also granted permanent affiliation, in June 1997, though with effect from August, 1996.

9. Therefore, the following conclusions become inevitable, from the sequence of events narrated above, which are not in dispute:-

(a) that the petitioner admitted students with the permission of the State Director, who is empowered to grant such permission;

(b) that the students admitted against the additional units are entitled to Trade Certificates

issued by SCVT; and

(c) that affiliation is always granted by NCVT (first respondent), only post facto and hence neither the petitioner nor the students can be found fault with.

10. In view of the foregoing conclusions, the only objection taken by the first respondent for refusing to issue National Trade Certificates to the 1995-1997 batch of students, is illegal and the writ petition is liable to be allowed."

11. Accordingly the writ petition is allowed and the respondents are directed to issue National Trade Certificates for the 1995 batch of Trainees, in the trades of Electrician and Fitter, who took the examinations in July 1997 and the supplementary examinations thereafter, within a period of three months from the date of receipt or production of a copy of this order, subject to the students being found otherwise eligible for the grant of the Certificates. "

7. In the light of the above decision of this Court in an identical matter, the students are entitled to get Trade Certificates from the first respondent. Hence, a direction is given to the respondents to issue National Trade Certificates for the batch of trainees who appeared for the examination for which permanent affiliation is granted in the subsequent year. The respondents are directed to issue the N.C.V.T., certificates within a period of three months from the date of receipt of a copy of this order subject to verification of other details of the respective students."

6. The learned counsel appearing for the petitioners submitted that the issue involved in these cases are already decided in the above writ petitions and therefore, the same order may be passed. The learned counsel further submitted that one similar case which was filed earlier was dismissed namely, W.P.No.38340 of 2005 dated 06.04.2006 by a learned single Judge and the said order was challenged in W.A.No.801 of 2006

and the Division Bench of this Court dated 07.08.2009, paragraph 9 to 14 held as follows:

"12.....9. Therefore, the following conclusions become inevitable, from the sequence of events narrated above, which are not in dispute;-

(a) that the petitioner admitted students with the permission of the State Director, who is empowered to grant such permission;

(b) that the students admitted against the additional units are entitled to Trade Certificates issued by SCVT; and

(c) that affiliation is always granted by NCVT (first respondent), only post facto and hence neither the petitioner nor the students can be found fault with.

10. In view of the foregoing conclusions, the only objection taken by the first respondent for refusing to issue National Trade Certificates to the 1995-1997 batch of students, is illegal and the writ petition is liable to be allowed.

11. Accordingly the writ petition is allowed and the respondents are directed to issue National Trade Certificates for the 1995 batch of Trainees, in the trades of Electrician and Fitter, who took the examinations in July 1997 and the supplementary examinations thereafter, within a period of three months from the date of receipt or production of a copy of this order, subject to the students being found otherwise eligible for the grant of the Certificates.

Following the above referred judgment, Mr. Justice N. Paul Vasanthakumar allowed batch of writ petitions in W.P. Nos. 44489, 43551 and 43552 of 2006 and W.P. No. 7894 of 2007, dated 21.11.2008. We are in full agreement with the said judgment.

13. But unfortunately, the aforesaid decision has not been brought to the notice of the learned single Judge which has resulted in the dismissal of the writ petition. In the light of the above decision of this Court, in an

identical matter, the students are entitled to get Trade Certificates from the first respondent.

14. For the aforesaid reasons, we are of the considered view that the order of the learned single Judge dated 06.04.2006 made in W.P.No.38340 of 2006 is liable to be set-aside and accordingly the same is set-aside. The writ appeal is allowed. However, there will be no order as to costs. Hence, a direction is issued to the respondents to issue National Trade Certificates for the batch of trainees who appeared for the examination for which permanent affiliation is granted in the subsequent year. The respondents are directed to issue the N.C.V.T., certificates within a period of three months from the date of receipt of a copy of this judgment subject to verification of other details of the respective students."

7. The learned counsel also submitted that as against the order passed by the Division Bench in W.A.No.801 of 2006 dated 07.08.2009, the first respondent filed the Special Leave Petition in S.L.P.No.3596 of 2010 and the Special Leave Petition was also dismissed by the Hon'ble Supreme Court on 15.03.2010 and therefore, the Division Bench order arriving at the judgment of mine dated 21.11.2008 has become final and the same order may be passed.

8. The learned counsel appearing for the respondents are unable to dispute the said submission.

9. In the light of the order passed by me, the Division Bench of this Court and the order passed in the Special Leave Petition, these writ petitions are allowed as prayed for. The first respondent is directed to issue the National Trade Certificates to the students of the petitioners, within a period of four weeks, from the date of receipt of a copy of this order.

10. The writ petitions are allowed with the above direction. No costs."

4. The respondents preferred a writ appeal as against the said order in WA.No.2150/2011 and the Division Bench of this Court by the Judgment dated 23.11.2011 dismissed the writ appeal. The operative

portion of the said Judgment reads thus:-

"Heard the learned counsel appearing for the parties, and perused the impugned order passed by the learned Single Judge in WP.No.7645 of 2010. The learned Single Judge, following the earlier judgments rendered by this Court, allowed the writ petition. In the light of the decisions referred to in the said order and also following the recent judgments of this Court in WA.Nos.1163 & 1122/2008 dated 20.07.2010 [Director of Employment & Training Vs. ICWS Industrial Training Institute & Another] and WA.No.1954/2011 dated 15.11.2011 [Director of Employment & Training & another V. Kalathur V.Subramania Iyer], we do not find any merit in this appeal. The appeal is, therefore, dismissed. No costs. Consequently, miscellaneous petition is closed."

5.Subsequently, another batch of cases were disposed of by this Court in WP.No.28731/2013 etc., batch dated 14.02.2014 following the earlier orders. Since the prayer sought for by the petitioner Institution is also identical, this writ petition is allowed as prayed for by following the earlier orders and there will be a direction to the respondents to issue the National Trade Certificate to 40 students of the petitioner Institution for the relevant trade, within a period of four weeks from the date of receipt of a copy of this order. No costs.

6. In the above judgment, this Court had considered the earlier order passed by this Court and had granted the relief. Therefore, the above judgment can be followed and the same relief can be given to the petitioner also.

7. In view of the above, there shall be a direction to the respondents to issue National Trade Certificate to the petitioner, bearing Roll No. 526420, in the Turner Trade for the year 1992-1994, within a period of four weeks from the date of receipt of copy of this order.

8. This writ petition is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1 The Director General of Training
Ministry of Skill Development and Entrepreneurship
Employment Exchange Building
Library Avenue, PUSA Campus
New Delhi -110 012
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Guindy, Chennai - 600 032.
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- 4 The General Manager
Indian Red Cross Society
Tamilnadu Branch
No.50 Montieth Road
Egmore Chennai 8.

+1 cc to M/s.M.Narayanasamay, Advocate Sr.No. 27238

+1 cc to The Government Pleader, Sr.No. 27574

W.P.No.3461 of 2020

PA(CO)
RMP(14/09/2020)

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