

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2020

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THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 9997 of 2013

P. Balakumaran

..Petitioner

Vs.

1. The Government of Tamil Nadu
rep.by its Secretary,
Transport Department,
Chennai -600 009.

2.Tamil Nadu State Transport Corporation (Vpm. Div-I) Ltd.,
Rep.by its Managing Director,
3/137, Salamedu,
Valudhareddy Post,
P.B.No. 56, Villupuram-605602.

3. The Professional and Executive Employment Office,
rep. by its Assistant Director,
Sathome, Chennai.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents pertaining to the Order of the 2nd respondent in the letter No. 10667-2976 (116)/PIO/TNSTC(V)/2013, dated 03.04.2012 and quash the same and consequently directing the respondents herein to sponsor the name of the petitioner to the post of Assistant Engineer (Mechanical) in any one of the Transport Corporation under the control of the 1st respondent herein to enable him to get appointment.

For Petitioner : Mr. Mathivanan
for M/s.Muthumani Doraisamy

For Respondents : Mr. J. Ramesh, AGP - For R1

Mr. M. Natarajan - For R2
No Appearance - For R3

O R D E R

Writ Petition is filed to call for the records of the respondents pertaining to the Order of the 2nd respondent in the letter No. 10667-2976(116)/PIO/TNSTC(V)/2013, dated 03.04.2012 and quash the same and consequently directing the respondents herein to sponsor the name of the petitioner to the post of Assistant Engineer (Mechanical) in any one of the Transport Corporation under the control of the 1st respondent herein to enable him to get appointment.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent. Perused the documents available on record.

3. The learned counsel for the petitioner submitted that the petitioner has completed B.E in Mechanical Engineering and acquired 62.48% and got 2nd class in the aforesaid course. The petitioner subsequently underwent apprenticeship training under the Apprentices Act 1961 at Tamil Nadu State Transport Corporation Limited, Villupuram Division-I from 15.10.1998 to 14.10.1999 in the subject of Mechanical Engineering. He has also registered his apprenticeship training with the 3rd respondent employment office on 12.06.2001. The Government in G.O. (Ms)No. 18 , Labour and Employment (N2) Department, dated 26.02.2008 had reviewed the existing Government Orders and Guidelines regarding fixation of ratio for sponsoring the candidates from the employment exchanges to fill up the vacancies for various categories of posts. Accordingly, fixed ratio of 1:5 for sponsoring the candidates by the employment exchange. Since, the petitioner is the senior most, the authorities ought to have sponsor the name of the petitioner.

4. The learned counsel for the petitioner further submitted that he obtained particulars through RTI wherein, it is stated that the eligibility for the post of Assistant Engineer (Mechanical) is B.E First Class. With reference to the requirement of B.E First Class, the writ petitioner relied upon the Judgment of this Court passed in W.A.No.758 of 2010 dated 08.06.2010. The relevant portion is extracted below;

"6. Having heard the submissions of the learned counsel on either side, after having perused the entire materials available on record, we are convinced that there was no material available to establish that there is a valid amendment the common service rule, introducing first class in B.E degree as the essential qualification, which is a statutory rule. According

to the learned counsel appearing for the appellant, the qualification of first class degree has been insisted upon based on the amended common service rule. However, no such amended notification was either placed for consideration of the learned Judge, while the writ petition was heard or during the hearing of the present appeal. The learned counsel for the appellant submitted that the Government had passed order directing amendment of the service Rule and therefore, there is no error in the action of the appellant. However, copy of the Government Order was not placed before this Court and no notification was brought to our notice amending the existing common service rule. As observed earlier, the information officer of the State Express Transport Corporation Limited by reply dated 01.06.2009 has in clear terms stated that no amendment has been carried out to the common service rule. It is not in dispute that the State Express Transport Corporation as well as the appellant and the sixth respondent State Transport Corporation are all Government of Tamil Nadu undertaking and follow a common service rule, therefore this communication dated 01.06.2009 cannot be brushed aside while deciding the case on hand.

Hence, for all the above reasons, we find no good grounds to interfere with the order passed by the learned Judge in the writ petition. Accordingly, the writ appeal fails and dismissed. Connected Miscellaneous Petition is closed. However, there shall be no order as to costs"

5. Hence it is the argument of the petitioner that in the light of the aforesaid decision of the Hon'ble Division Bench of this Court, the writ petitioner is entitled for the relief of sponsoring his name to recruitment for the aforesaid post.

6. On the other hand, the learned Additional Government Pleader submitted that the writ petitioner had registered his educational qualifications with the 3rd respondent office in the year 1997, which is still live. It is further submitted that, sponsoring the name of any candidate is based on the criteria's such as age, community, qualification, priority and non priority mentioned by the concerned Employer in their notification form in the 1:5 ratio. The employment exchanges are acting as sponsoring agencies to the employers of State/State Quasi/Central/ Central Quasi/Local bodies and the recruitment process is done by the concerned employer only. In the present

case, the qualification is prescribed by the employer i.e the 2nd respondent only, there is no role for employment exchanges to prescribe the qualification of a particular post.

7. The learned counsel appearing for the 2nd respondent/Transport Corporation submitted that each corporation is separate entity registered under the Companies Act. As directed by the Secretary to Government in letter ref.no.59967/C1/87-2, dated 16.10.1987 amended the Common Service Rule with regard to the qualification for the post of Assistant Engineer as First Class Graduate and has been following the same by this Corporation.

8. The learned counsel appearing for the Transport Corporation further submitted that the writ petitioner cannot rely upon the aforesaid judgment of the Hon'ble Division Bench of this Court for the reason that the said appeal was dismissed on the ground that the amendment made in the Common Service Rules was not placed before the learned Single Judge. Now the said amendment notification has been placed before this Court, which reads as follows;

PART -A Supervisory Group
Assistant Engineer (Mech) - Must possess a degree in Automobile or Mechanical Engineering in First Class awarded by a recognised university.

9. As per the aforesaid amended Rules, it is clear that the candidates who acquired First Class Degree in B.E(Mechanical) are only eligible to apply for the said recruitment. The writ petitioner though strongly relied upon the Judgment of the Hon'ble Division Bench of this Court, in view of the aforesaid amendment produced by the learned counsel appearing for the 2nd respondent corporation, the writ petitioner's name cannot be considered as prayed for as the writ petitioner did not possess the required qualification.

10. Therefore, this Court find no force on the contentions raised by the learned counsel for the petitioner accordingly, the writ petition is dismissed as not maintainable. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Transport Department,
Chennai -600 009.
2. The Managing Director,
Tamil Nadu State Transport Corporation (Vpm. Div-I) Ltd.,
3/137, Salamedu, Valudhareddy Post,
P.B.No. 56, Villupuram-605602.
3. The Assistant Director,
The Professional and Executive Employment Office,
Sathome, Chennai.

+1cc to Mr.R.Annamalai, Advocate SR.10360

+1cc to M/s.Muthumani Doraisamy, Advocate SR.10690

+1cc to the Government Pleader SR.11370

W.P.No. 9997 of 2013

SSV(CO)
CB(18/06/2020)



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