



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

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Writ Petition (MD).No.14425 of 2019
and
W.M.P. (MD).Nos.10860 and 10861 of 2019

Shabeer Ahmed Sayeed

... Petitioner

Vs.

The Principal Commissioner,
O/o. The Commissioner of Customs (Preventive),
No.1, Williams Road,
Cantonment,
Tiruchirapalli.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned "G" Card examination notification issued by the respondent vide Public Notice No.1 of 2019, dated 30.01.2019 and quash the same so far as relating to vivo voce and consequently direct the respondent to give "G" Card License to the petitioner.

For Petitioner	:	Mr.R.S.Sivaram
For Respondent	:	Mr.B.Vijay Karthikeyan Senior Standing counsel

O R D E R

The writ petition has been filed in the nature of Certiorarified Mandmaus to call for the records relating to the impugned notification regarding examination issued by the respondent viz., the Principal Commissioner, Office of the Commissioner of Customs (Preventive), No.1, Williams Road, Cantonment, Tiruchirapalli, with respect to screening and selection of candidates from "H" Card to "G" Card and for permission to hold "G" Card license.

2. This notice was issued on 30.01.2019, in Notice No.1 of 2019. The petitioner is a "H" Card license holder. He is a Customs Broker. The minimum educational qualification required is 10 + 2. With the basis of "H" Card license, a photo identity card is given to him and he can transact work at the Customs Station. He must produce the identity card whenever demanded by any Officer in the Customs Station. The Customs Brokers Licensing Regulations 2018 issued a Notification No.41/2018 - Customs (N.T.) dated 14.05.2018, specifying that a Customs Broker is a person licensed under the regulations to act as an agent on behalf of the importer or an



exporter for purposes of transaction of any business relating to the entry or departure of conveyances or the import or export of goods at any Customs Station including audit.

3. There are three kinds of card holders. "F" card holder, "G" card holder and "H" card holder. On qualifying of a written examination as stipulated under the Regulations referred above, he can be appointed as a "G" card holder. As a "G" card holder he will have the permission of signing the documents.

4. The learned counsel for the petitioner had drawn the attention of this Court to the manner in which "H" card license holders are selected to become "G" card license holder in other port authorities across the country. The illustrations of Noida, Jodpur, Mundra, Kandla and Kolkata had been drawn to this Court. It is seen that in all those stations, the Regulations stipulated that a written examination alone is conducted for selection of candidates from "H" card holder to "G" card holder. Those Regulations have been stipulated by those Customs Authorities on the basis of the Customs Brokers Licensing Regulations 2018. Under these Regulations "G" and "H" card holders are defined as follows:

(h) "G card holder" means a person who has passed the examination referred to in regulation 13 and has been issued a photo identity card in Form G;

(I) "H card holder" means a person who has not passed the examination referred to in regulation 13 and has been issued a photo identity card in Form H;

5. Regulation 13 again referred to relates to Engagement or Employment of persons.

6. Sub Clause 5 of Clause 13 relates to the manner in which a "H" card holder is selected. It is seen that he must pass a written examination. Regulation 13 relates to "G" card holder. However, in the impugned Notification, the Trichy Customs Authorities have not only imposed a condition to pass written examination but also oral examination. The petitioner had passed his written examination. He did not qualify in the oral examination. Conducting an oral examination is beyond the scope of the authorities. The writ petition has been filed to quash the said conducting of oral examination.

7. A counter affidavit has been filed on behalf of the respondents, in which it has been stated that neither the writ petitioner nor any other person had approached the office for clarification regarding oral examination. It was stated that based on the Public Notice issued in this regard, 41 eligible candidates appeared for the written examination on 04.04.2019 and the results were declared on 09.04.2019. Out of 41 candidates who appeared for the written examination, 22 candidates passed in the written



examination. The petitioner also passed in the written examination. Oral examination was conducted on 30.04.2019. The result of the oral examination was declared on 06.05.2019. Only 2 candidates had passed.

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8. It is clear that the respondent authorities have conducted the examination not with a view to upgrade the licence holder, but with a view to reject the upgradation from "H" to "G". The object of any examination is to ensure that the qualified candidate is promoted to the next post. If an examination is conducted with the object to reject candidates, then the examination itself has to be struck down. In this case, the respondent had no right to conduct any oral examination. It is not provided in the Rules. The Rules stipulate that written examination alone must be conducted. Other State authorities have conducted only written examination and they have not called upon the qualified candidates to again appear for an oral examination. The reasons are obvious. During oral examination, an element of bias can always take place. To eliminate such bias, it has been consistently held that the marks allotted for oral examination should be less than 25% of the total marks.

9. In the present case, for the written examination, the maximum mark was 100 and the qualifying mark was 50 and separately, for oral examination 100 marks were allotted as a maximum and the qualifying mark was given as 50. It is not known what is the nature of oral examination, which was conducted and how the candidates were assessed. Those details are absent in the counter affidavit. Except merely stating that only two candidates passed in the oral examination, no other specific details have been given in the counter affidavit. The counter affidavit has to be rejected. The conducting of the examination on 30.01.2019 and the Public Notice No.1 of 2019, wherein both the written examination and the oral examination were stipulated, has to be struck down and accordingly struck down. A direction is issued to the respondent, insofar as the petitioner is concerned, since he has passed the written examination, to appoint him as "G" card licence holder on or before 31.03.2020, if he is otherwise eligible. Accordingly, the writ petition is allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (co)

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Sub Assistant Registrar(CS)



To

The Principal Commissioner,
O/o. The Commissioner of Customs (Preventive),
No.1, Williams Road,
Cantonment,
Tiruchirapalli.

+1 CC to Mr.R.S.SIVARAM, Advocate (SR-11145[F] dated 11/03/2020)

+1 CC to Mr.B.VIJAY KARTHIKEYAN, Advocate (SR-11207[F] dated
11/03/2020)

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