



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2020

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD
W.P(MD)No.20746 of 2017
and
W.M.P(MD)Nos.17036, 17037 of 2017 & 8582 of 2018**

- 1.P.Soorian
- 2.M.Raja
- 3.P.Raja
- 4.S.Mathialagan
- 5.S.Veerashamy
- 6.S.R.Vasudevan
- 7.S.Senthamari
- 8.L.Avadayappan
- 9.S.Samy
- 10.P.Muthaiah
- 11.N.Kumaresan
- 12.G.Ram Raj
- 13.S.Mohanaraj
- 14.A.Anbu
- 15.D.Reji Kumar
- 16.D.Gopal
- 17.M.Chandran

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
represented by its
Principal Secretary,
Department of Youth Welfare and Sports Development,
Fort St. George,
Chennai - 600 009.
- 2.The National Cadet Corps Directorate (TN, P & AN),
represented by its
Deputy Director General,
Fort St. George,
Chennai - 600 009.
- 3.Tamil Nadu Ex-Servicemen's Corporation Limited (TEXCO),
represented by its
General Manager,
2, West Mada Street,
Srinagar Colony,
Saidapet,
Chennai - 600 015.



4.National Cadet Corps Group Headquarters,
Madurai.
Represented by its
Group Commander,
Visalakshipuram,
Reserve Police Line,
Madurai - 625 014.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Declaration, declaring the impugned order in G.O.Ms.No.36, dated 04.08.2017 on the file of the first respondent and consequential impugned order in No.1304/1/SC/6605 (III), dated 20.09.2017 on the file of the second respondent as null and void and consequently, permit the petitioners to continue with their employment until the attainment of the age of retirement within the time stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader

O R D E R

[Order of the Court was made by
The Hon'ble Chief Justice]

The learned Counsel for the petitioner has raised several grounds challenging the validity of fixing of upper age limit in engaging drivers on regular basis contending that the same is in violation of certain Rules of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

2. We do not find any such foundation having been raised in the petition by incorporating necessary pleadings on facts as well as on law as held by the Honourable Supreme Court in the case of **Bharat Singh v. State of Haryana** reported in **AIR 1988 SUPREME COURT 2181**. Paragraph 13 thereof is extracted hereinunder:

"13. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a



point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit."

3. The learned Counsel for the petitioner, then, prays that he may be permitted to withdraw and file a fresh writ petition with a better affidavit.

4. Accordingly, this writ petition is dismissed with such liberty. No costs. Consequently, W.M.P(MD)Nos.17036 and 17037 of 2017 are dismissed and W.M.P(MD)No.8582 of 2018 is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rsb

To

1.The Principal Secretary,
State of Tamil Nadu,
Department of Youth Welfare and Sports Development,
Fort St. George,
Chennai - 600 009.



2.The Deputy Director General,
National Cadet Corps Directorate (TN, P & AN),
Fort St. George,
Chennai - 600 009.

3.The General Manager,
Tamil Nadu Ex-Servicemen's Corporation Limited (TEXCO),
2, West Mada Street,
Srinagar Colony,
Saidapet,
Chennai - 600 015.

4.Group Commander,
National Cadet Corps Group Headquarters,
Madurai.
Visalakshipuram,
Reserve Police Line,
Madurai - 625 014.

+1 CC to SPL.GP (SR-8423[F] dated 26/02/2020)

ORDER MADE IN
W.P (MD) No.20746 of 2017
and
W.M.P (MD) Nos.17036, 17037 of 2017 & 8582 of 2018
25.02.2020

VB (04.03.2020) 4P 6C