



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2021

CORAM:

THE HON'BLE M R. JUSTICE D.KRISHNAKUMAR

W.P.No.26219 of 2021

N.Kathiravan

.. Petitioner

vs.

1.The Superintending Engineer,
Mechanical Engineering Department,
Corporation of Chennai,
Chennai-600 003.

2.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai-600 003.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent passed in E.Po.Th.Na.Ka.No.M6/349/2021 dated 24.08.2021 and quash the same and direct the respondents to regularize the service of the petitioner in the post of Driver from 2009.

For Petitioner : Mr.H.Adaikala Arockiaraj

For Respondents : Mr.M.Ganesan, Standing Counsel
for Corporation of Chennai.

ORDER

By consent of both the parties, the writ petition is taken for final disposal.

2. The writ petitioner was appointed as temporary Driver under the 2nd respondent on 08.10.1993. While he was in service he was falsely implicated in a criminal case and arrested by the police in connection with a private dispute. The said fact was not informed to the authorities, therefore he was removed from service on the ground of unauthorised absence. The writ petitioner has filed a petition before the Labour Court in I.D.No. 477 of 2004 and a award came to be passed on 29.09.2009



by directing the 2nd respondent /Corporation to reinstate the petitioner into service without any back wages. The said award of the Labour Court is confirmed by this Court by order dated 11.10.2012 made in W.P.No. 15863 of 2011 and the same was in Writ Appeal in W.A.No. 678 of 2013 by the Hon'ble Division Bench of this Court with a direction to consider the petitioner for regularisation with prospective effect, since he has been in continuous employment of temporary driver since 2009. Without considering the directions issued by this Court, the impugned order passed by the respondent, rejecting the request of the petitioner, stating reasons that the petitioner did not possess the required educational qualification viz., SSLC(10th Standard). Challenging the same, the present writ petition is filed.

3. According to the learned counsel for the petitioner, as per the Chennai Corporation Engineering Subordinate Services By Law 2009 and the Greater Chennai Corporation Engineering Subordinate Services revised By Law 2017, the minimum educational qualification for the post of Driver is a pass in 8th Standard with possessing Heavy Duty Driving License. Since he was fully eligible for the said post, he was appointed as driver by the respondent-Corporation. Subsequently, the said qualification has been amended in the By law by fixing the minimum qualification as 10th Standard for appointment of driver. As per the award of the Labour Court in I.D.No. 477 of 2004 dated 29.09.2009 the petitioner was reinstated into service during year 2009 and he has been continuing as driver in the respondent-Corporation.

4. On the other hand, the learned Standing Counsel appearing for the respondent-Corporation has strongly objected the submissions made by the learned counsel for the petitioner and submitted that as per By Law in existence, the prescribed qualification for the post of driver is a pass in 10th Standard, since the petitioner is not possessing the required qualification as per By Law, the impugned order came to be passed by the respondents, rejecting the request made by the petitioner. Therefore, the impugned order passed by the respondent is perfectly valid and does not require any interference by this Court.

5. Heard both sides and perused the documents available on record.

6. Admittedly, the writ petitioner was removed from service by the respondent-Corporation since he was involved in a private criminal dispute. Subsequently, the aforesaid criminal case was ended in acquittal. The petitioner had filed a petition before the Labour Court in I.D.No. 477 of 2004 and a award came to be passed on 29.09.2009 directing the respondents to



reinstate the petitioner without any back wages. Challenging the aforesaid award, the petitioner has filed a writ petition before this Court and the same was disposed of with directions to the respondent-Corporation to implement the award passed by the Labour Court. As against the said order of this Court, the petitioner had preferred Intra Court Appeal before the Hon'ble Division Bench of this Court. The said Writ Appeal was also disposed of with the observation to consider for regularisation as expeditiously as possible, since the petitioner is still continuing as a temporary driver since from the year 2009. Apart from that at the time of appointment itself the petitioner had satisfied the respondent Corporation with regard to the educational qualification, therefore he was appointed by the respondent-Corporation as driver. The present impugned order rejecting the petitioner's plea on the ground the he did not possess the required qualification for the post of driver cannot be accepted as the said ground was not raised by the respondent-Corporation before the Labour Court as well as this Court.

7. Therefore, in view of the observations made by the Hon'ble Division Bench of this Court in W.A.No. 678 of 2013 dated 13.03.2019 and in the absence of grounds before the Labour Court and before this Court, the contentions of the learned counsel for the respondent-Corporation that the petitioner did not possess the required educational qualification for the post of driver cannot be accepted and hence, the impugned order passed by the respondents-Corporation requires interference by this Court.

8. Accordingly, the impugned order is quashed and remitted to the first respondent to consider afresh on merits and pass appropriate orders, in accordance with law, as expeditiously as possible, preferably within a period of twelve (12) weeks from the date of receipt of the copy of this order.

9. In the result, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Superintending Engineer,
Mechanical Engineering Department,
Corporation of Chennai,
Chennai-600 003.



2.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai-600 003.

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+1cc to Mr.Adaikala Arockiaraj, Advocate, S.R.No.65952
+1cc to Mr.M.Ganesan, Advocate, S.R.No.66240

W.P.No.26219 of 2021

PCH (CO)
SB (11/02/2022)