



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.A(MD)No.1292 of 2012

WEB COPY

Maniyara Manickam

... Appellant/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai Division II) Limited,
Tirunelveli - 627 003.

... Respondent/Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order, dated 25.11.2011 made in W.P(MD)No.10476 of 2010 on the file of this Court.

Prayer in WP(MD). 10476/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF MANDAMUS or any other appropriate writ, order or direction, directing the respondent to appoint the petitioner with effect from 25.05.1997 instead of on 10.09.2007 with all service benefit par with the persons who had participated in interview conducted on 13.08.1997.

For Appellant : Mr.S.Kumar

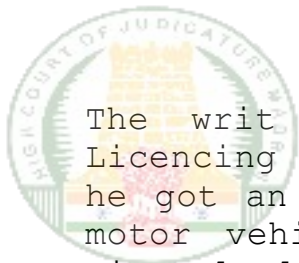
For Respondent : Mr.K.Sathiya Singh
Standing Counsel

JUDGMENT

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)**

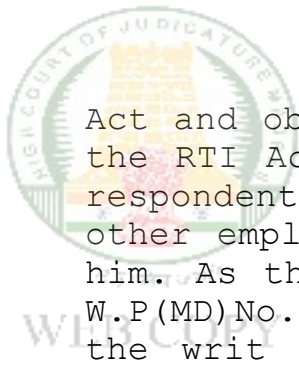
This Writ Appeal is directed against the order passed by the learned Single Judge in W.P(MD)No.10476 of 2010, dated 25.11.2011.

2.The writ appellant is a Driver employed with the respondent Corporation. He seems to have undergone an ordeal before he secured the appointment as a Driver with the respondent.



The writ appellant had obtained a driving licence from the Licencing Authority, Kovilpatti on 16.04.1983 and on 12.11.1987, he got an endorsement for the purpose of driving heavy passenger motor vehicle and enrolled himself in the Employment Exchange, Tirunelveli. On 13.08.1997, there was a call letter from the respondent Corporation and the writ appellant attended the interview by producing the relevant documents required for appointment to the post of Driver. The writ appellant was refused to undergo the driving test on the ground that the licence obtained by him was at the time when he was under age. Hence, the writ appellant filed W.P.No.13337 of 1997 before this Court seeking a Writ of Mandamus to permit him to attend the test. A direction was given to the respondent to permit the writ appellant to attend the test and also to keep one post vacant. Accordingly, the respondent Corporation interviewed the appellant on 20.11.1997. While so, the said Writ Petition was allowed on 07.08.1999 as prayed for. Aggrieved by the same, the respondent Corporation had preferred a Writ Appeal in W.A.No.1881 of 1999, which was dismissed and the S.L.P.No.1517-1518 of 2000 also met with the same fate on 07.02.2000. Thereafter, the respondent Corporation had called the writ appellant for certificate verification including the educational qualification, community certificate, driving licence, first aid badge, medical test and eye test. The writ appellant had submitted the eye test certificate obtained from the Eye Specialist, Government Hospital, Tuticorin, which was rejected by the respondent Corporation contending that it was not valid. Therefore, the writ appellant had sent all the certificates through the registered post to the respondent Corporation. Again on 29.09.2005, the writ appellant appeared before the authorities with relevant documents, after which also, he was not issued with an order of appointment, which constrained the writ appellant to file W.P.No.2500 of 2006. When the said Writ Petition was taken up, it was contended by the respondent Corporation that the minimum eligibility for a Driver was fixed as 10th standard pass as per G.O.No.64, dated 23.02.1999. The said argument was rejected by this Court and allowed the Writ Petition directing the respondent Corporation to consider the appointment of the writ appellant without reference to G.O.No.64, dated 23.02.1999. Accordingly, the writ appellant was appointed as a Driver on 10.09.2007, however, on a daily wage basis. On 07.08.2008, he was brought under time scale of pay and was made permanent and he has been working with the respondent Corporation till today.

3.While so, one Gopalakrishnan and Murugesan, who had participated in the interview conducted on 13.08.1997, had also obtained the licence when they were under age, were appointed as Drivers by the respondent Corporation on 25.09.1997. Therefore, on 15.10.2009, the writ appellant made an application under the RTI



Act and obtained the details. Based on the details obtained under the RTI Act, the writ appellant had made a representation to the respondent Corporation to extend the same benefit given to the other employees, who had participated in the interview along with him. As the respondent Corporation had rejected the said request, W.P(MD)No.10476 of 2010 was filed, seeking a Mandamus to appoint the writ appellant with effect from 25.05.1997 instead of from 10.09.2007 by extending all the service benefits on par with the persons, who had participated in the interview conducted on 13.08.1997.

4.The learned Single Judge, who heard the Writ Petition, had dismissed the same on the ground that a person cannot be promoted with retrospective effect. Challenging the same, the writ appellant has filed the present Writ Appeal.

5.Heard the learned counsel appearing on either side and perused the materials available on record.

6.Already, the writ appellant had moved this Court under Article 226 of the Constitution of India twice. When W.P.No.2500 of 2006 was filed, already the persons named by him, namely Gopalakrishnan and Murugesan were appointed on 25.09.1997. This Court had permitted the writ appellant to be considered for the post of Driver without reference to G.O.No.64, dated 23.02.1999, where the minimum educational qualification is prescribed.

7.Admittedly, the writ appellant has not possessed the required qualification as per the said G.O. Since the recruitment has commenced prior to the said G.O., this Court has not considered the said G.O., based on which others have secured the appointment. As rightly pointed out by the learned Single Judge, if the writ appellant was diligent enough, he could have obtained those details of the persons whom he was referring and the manner of their appointment even in the previous litigation itself. The appointment of the writ appellant itself was only based on the directions from this Court. He had joined duty on 10.09.2007, which was subsequently made permanent on 07.08.2008. He has entered into service in the year 2007 and the Writ Petition was filed in the year 2010 seeking to improve his case based on certain information obtained by him under the RTI Act. When he has accepted the appointment as a daily wager, originally, which was made permanent after an year without any murmur, he cannot be allowed to improve upon his case and claim benefit retrospectively when he was not actually in employment. In other words, admittedly, he has not rendered any service to the respondent Corporation from 1997 to 2007 till he was appointed. No doubt, the time taken in the litigation cannot be attributed to the



appellant. However, it is unfair on the part of the appellant to claim benefits of service for 10 years, when he had actually not joined the service.

8.The learned Single Judge had relied on the decisions of the Hon'ble Supreme Court in **State of Bihar Vs. Akhourri Sachindra Nath** reported in **1991 Supp (1) SCC 334** and **Uttaranchal Forest Rangers' Association (Direct Recruit) Vs. State of Uttar Pradesh** reported in **(2006) 10 SCC 346**.

9.The learned counsel for the appellant relied on the decision of the Hon'ble Supreme Court in **Union of India and others Vs. Pritilata Nanda** reported in **(2010) 8 MLJ 1032 (SC)**, it has been held in paragraph No.21, which reads as follows:-

"21.However, there is a small aberration in the operative part of the impugned order. While the High Court was fully justified in directing the appellants to appoint the respondent from the date persons lower in merit were appointed, but it is not possible to confirm the direction given for payment of full salary with retrospective effect. In our view, the High Court should have directed the appellants to notionally fix the pay of the respondent with effect from the date person placed at Sl.No.12 at the merit list was appointed and give her all monetary benefits with effect from that date."

10.The above case is not applicable to the facts of the instant case. As held by the Hon'ble Apex Court, it is not possible to appoint the writ appellant with effect from 25.05.1997 and to pay all service benefits retrospectively, as the said order was passed on the merits of that case in particular and not applicable to this case. The appellant herein was appointed in the year 2007 only. Therefore, even though the writ appellant had attended the first interview in the year 1997, his actual appointment was made in the year 2007. Hence, his request has been rightly rejected by the learned Single Judge, which does not warrant any interference by us.

11.For the foregoing reasons, the Writ Appeal is dismissed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



Ps

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai Division II) Limited,
Tirunelveli - 627 003.

+1 CC to M/s.K.SATHIYA SINGH, Advocate (SR-13688[F] dated
25/03/2021)

W.A(MD)No.1292 of 2012
24.03.2021

VB (30/04/2021) 5P / 3C