



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.06.2021
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.18344 of 2020

and

WMP (MD)No.15324 of 2020

WEB COPY

R.Murugesh

... Petitioner

Vs.

The Assistant Commissioner of Customs,
(CBLR) Section,
Custom House,
Tuticorin.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned PUBLIC NOTICE No.48/207, dated 26.12.2017, issued by the respondent on 26.12.2017 and quash the same as illegal and consequentially direct the respondent to issue 'G' Card License to the petitioner.

For Petitioner

: Mr.N.Anandakumar

For Respondent

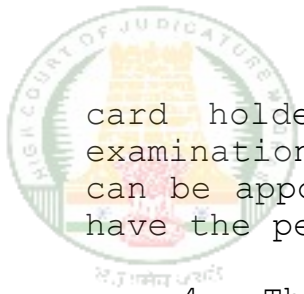
: Mr.R.Aravindan

O R D E R

The writ petition has been filed in the nature of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned PUBLIC NOTICE No.48/207, dated 26.12.2017, issued by the respondent on 26.12.2017 and quash the same as illegal and consequentially direct the respondent to issue 'G' Card License to the petitioner.

2. The case of the petitioner is that 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. 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 respondent, in which it has been stated that the petitioner has passed the G card written examination conducted as per Regulation 17 (3) of CBLR, 2013 and failed in the oral examination. Only to ascertain the adequacy of knowledge, the written as well oral examination pattern was being followed like F-Card examination (Regulation 6 of CBLR, 2013 and 2018), till the date of implementation of CBLR 2018 wherein only written examination has been prescribed. So far, the respondent office has not conducted any G card examination under Regulations of CBLR, 2018. Since the petitioner himself admitted that he did not qualify the above said G card examination, he was not considered for issuance of 'G' Card.

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 takes 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 03.03.2018 and the Public Notice No.48 of 2017, 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 within a period of four weeks from the date of receipt of a copy of this order.

10. Accordingly, the writ petition is allowed, as indicated above. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MPK

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



To

The Assistant Commissioner of Customs,
(CBLR) Section,
Custom House,
Tuticorin.

W.P (MD) No.18344 of 2020
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