



W.A.(MD)No.477 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.07.2022

PROUNOUNCED ON : 26.07.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.477 of 2022
and
C.M.P.(MD)Nos.4476 and 4478 of 2022

Ragavan

... Appellant

Vs.

The Member Secretary,
Tamil Nadu Forest Uniformed Services
Recruitment Committee (TNFUSRC),
No.1, Jennis Road, Panagal Maaligai,
8D-Floor, Saidapet,
Chennai – 600 015.

... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.2308 of 2021, dated 18.04.2022.

For Appellant :Mr.G.Kannan

For Respondent :Mr.S.P.Maharajan

Special Government Pleader



WEB COPY



W.A.(MD)No.477 of 2022

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

This Writ Appeal is filed challenging the order passed in Writ Petition W.P.(MD)No.2308 of 2021, dated 18.04.2022.

2. The prayer in the writ petition is for issuance of a Writ of Certiorarified Mandamus, to quash the order of rejection of candidature issued by the respondent through website, dated 27.01.2021, in so far as the petitioner (S.No.59, in (Reg No.20020045637) is concerned for the post of Forest Guard with License and consequently, to direct the respondent to accept the petitioner's Driving Experience Certificates and select and appoint the petitioner to the post of Forest Guard with license within the stipulated time.

3. The brief facts of the case are that the appellant has completed 10th standard in March, 2008, 12th standard in



W.A.(MD)No.477 of 2022

March 2010, has completed B.Tech. (Petro Chemical) and possess LMV driving license, dated 13.12.2011. The appellant had worked as a driver from 22.06.2015 to 04.06.2017 in M/s. Shinsung Petrochemical Private Limited and now is working as a driver in M/s. SRJ Roadways from July 2017 till November 2020 for a period of 3 years.

4. The petitioner has applied for the post of Forest Guard and Forest Guard with license post as per the Advertisement No.2 of 2019 through website on 30.11.2019. The number of vacancies in respect of Forest Guard was mentioned as 227 and Forest Guard with driving license with current vacancy 2 posts and carry forward vacancies 91 posts totally 320 vacancies. The Educational qualification prescribed for this post is pass in Higher Secondary Course (+2) with physics, chemistry, biology, zoology or botany as one of the subject for the post of Forest Guard. For Forest Guard with driving license, the prescribed qualification is same as



W.A.(MD)No.477 of 2022

Forest Guard with further qualification of a valid driving license issued by competent authority and also certificates from a reputed firm that the candidate should possess experience in driving of Light Motor Vehicle and Heavy Motor Vehicle for a period of not less than 3 years after getting driving license and also that the candidate must possess First Aid Certificate by recognized organization. The petitioner had submitted an application on 07 / 08.02.2020 through online for both the above said posts, i.e., for forest guard with or without license through online. The respondent through another notification in website, dated 07.03.2020 for the same posts issued Advertisement No.2 of 2019, dated 30.11.2019, whereby increased the vacancies for the said posts of 320 vacancies to 406.

5. Heard Mr.G.Kannan, the Learned Counsel for the appellant and Mr.S.P.Maharajan, the Learned Special Government Pleader and this Court after active consideration



W.A.(MD)No.477 of 2022

is passing the following order.

6. The contention of the appellant is that he is having driving experience from 22.06.2015 to 04.06.2017 that is more than 23 months in M/s. Shinsung Petrochemical Private Limited and in another institution M/s. SRJ Roadways from July 2017 till November 2020 i.e. more than 40 months. The appellant is processing more than 63 months and the experience required is only 36 months. The issue raised by the respondent is that the appellant is in possession of driving experience certificate from the 22.06.2015 to 04.06.2017 from M/s.Shinsung Petrochemical Private Limited which is 23 months and from another institution M/s. SRJ Roadways, which indicates the appellant has worked from July 2017 to November 2020. Since the second certificate indicates that the appellant is serving until November 2020, which means that the appellant was not in possession of the said certificate as on the date of application i.e. on 0802.2020. The respondent is



W.A.(MD)No.477 of 2022

giving a very strict interpretation by referring to the paragraph No.8 subclause B(iii) where it has been stated as under:

“iii. Must possess a certificate from a reputed firm or company to the effect that the candidate possesses experience in driving of light motor vehicles / heavy motor vehicles for a period of not less than 3 years after getting the driving license. ”

7. The respondent is giving an interpretation that since the appellant was not in possession of the second certificate as on the date of application i.e. on 08.02.2020 and it had been issued by covering the period of November 2020, the respondent had come to the conclusion that the second certificate of the appellant is not in “possession”. The certificate only indicates that the appellant is having experience and admittedly the appellant is having experience. That too the advertisement states three years experience, i.e. 36 months experience. The appellant is having 63 months of



W.A.(MD)No.477 of 2022

experience. The appellant is in “possession of experience” as on the date of application and only point is he is not having certificate as on the date of application, but has produced the certificate covering the subsequent period also. The claim of the appellant is that since he has been continuously servicing in the said institution, he has taken the certificate during November 2020 and attended the certificate verification which was conducted in January 2021.

8. Since the appellant is having more than 23 months from the first certificate, the second certificate covers more than 40 months and the respondent seeking only 36 months experience (three years), the balance of seven months from the second institution shall be taken. The respondent ought to have taken that the appellant is in possession of certificate by considering the period from July 2017 to February 2018 by covering the said seven months and should consider the second certificate issued by M/s. SRJ Roadways as valid



W.A.(MD)No.477 of 2022

certificate.

WEB COPY

9. This Court is absolutely concerned to note that the appellant is qualified B.Tech. (Petro Chemical) but serving as a driver in M/s. SRJ Roadways. Now, he is seeking for a better opportunity in the Forest Department. B.Tech. graduate is seeking a forest watcher opportunity. If the said second certificate is not considered, the appellant would be seriously prejudiced.

10. The explanation of the appellant that since the appellant is in continuous employment, in M/s. SRJ Roadways, getting experience certificate from the firm during the period of employment may lead to certain suspicion that he would leave the job and that anxiety ought to be taken into account. For all these practical difficulties, the appellant should be considered by “functional interpretation” of the notification. Whenever there is “logical defect in spirit of law”, functional



W.A.(MD)No.477 of 2022

interpretation ought to be invoked. In *Girdhari Lal & Sons Vs Balbir Nath Mathur & others* reported in AIR 1986 SC 1499 it has been held as under:

“Once Parliamentary intention is ascertained and the object and purpose of the legislation is known, it then becomes the duty of the court to give the statute a purposeful or a functional interpretation. this is what is meant when, for example, it is said that measures aimed at social amelioration should receive liberal or beneficent construction. Again, the words of a statute may not be designed to meet the several un contemplated forensic situations that may arise. The draftsman may have designed his words to meet what Lord Simon of Glaisdale calls the 'primary situation'. It will then become necessary for the court to impute an intention to Parliament in regard to 'secondary situations'. Such 'secondary intention' may be imputed in relation to a secondary situation so as to best serve the same purpose as the primary statutory intention does in relation to a primary situation.”

In the present case the appellant is possessing the experience for the three years as stated supra and it is only the second certificate was obtained covering the subsequent period will not vitiate the conditions in the notification. The respondent is directed to consider the candidature of the appellant by considering the period from July 2017 to February 2018 by covering the said seven months and should consider the



W.A.(MD)No.477 of 2022

second certificate issued by M/s. SRJ Roadways as valid certificate and include him in the selection list. The said exercise shall be completed within a period of three weeks from the date of receipt of a copy of this judgment.

11. With the above said observation, the Writ Appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.] [S.S.Y., J.]
26.07.2022

Index : Yes / No

Tmg

To

The Member Secretary,
Tamil Nadu Forest Uniformed Services
Recruitment Committee (TNFUSRC),
No.1, Jennis Road, Panagal Maaligai,
8D-Floor, Saidapet,
Chennai – 600 015.



WEB COPY



W.A.(MD)No.477 of 2022

S.S.SUNDAR, J.

and

S.SRIMATHY, J.

Tmg

W.A(MD)No.477 of 2022

26.07.2022