

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.9939 of 2018
and
W.M.P.(MD)No.9106 of 2018

Arulmurugan

... Petitioner

Vs.

1.Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Rep. by its Managing Director,
Kumbakonam.

2.The General Manager,
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Trichy Region, Trichy.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 2nd respondent in Ref.No.TNSTC/Trichy/Pa.Pi-P2/748/2017 dated 01.06.2017 and orders passed by the 1st respondent in Ref.No.TNSTC/Trichy/Pa.Pi-P2/809/2017 dated 19.09.2017 and dated 09.01.2018 and quash the same in so far as denying appointment to the post of Conductor on the ground that the petitioner is not having required height of 160 cm and consequently direct the respondents to re-measure his height by referring him to any Medical Board of Government

Hospital or before any other Government authority and to appoint the petitioner in the post of Conductor with all attendant service benefits payable from 02.03.2013.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.D.Sivaraman,
Standing Counsel.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner was granted license to work as conductor by the competent authority in the year 2000. The petitioner had passed 12th standard. He had also registered his name in the District Employment Exchange Office in the year 2004. When vacancy for the post of conductor arose in the respondent corporation, the petitioner's name was also sponsored by the District Employment Exchange Office, Karur District. The petitioner was called upon to appear for the interview on 18.08.2012. The petitioner appeared for the interview and his credentials were found to be in order. However, he did not receive any call letter selecting him for the said post.

3.After waiting for about six months, the petitioner's mother sent a representation to the Hon'ble Chief Minister Special Cell on 06.02.2013. They also sent representations to authorities of the respondent corporation. However, there was no response. Only when legal notice was issued, the impugned communication was issued indicating that the reason for not selecting the petitioner was that the petitioner did not meet the height requirement. Challenging the same, this writ petition came to be filed.

4.The learned counsel for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He pointed out that as per the relevant rules, the height stipulation is that the candidate must be 160 cm or above. The respondents had erroneously come to the conclusion that the petitioner's height was below 160 cm. He drew my attention to the certificate dated 13.05.2013 which indicates that the petitioner's height was 162 cm.

5.The learned standing counsel for the respondents on the other hand submitted that the writ petition is liable to be dismissed for more reasons than one. He pointed out that the selection process involved three stages namely, (a) certificate verification (b) physical measurement and (c) practical test. The

petitioner cleared stage one but as his height was found to be 158.8 cm, he was not even called to undergo the third test. As per norms governing the selection process, the reason for non-selection is never intimated to the candidates. However, the petitioner knew that he had not been selected. The petitioner did not chose to come to the Court immediately. Even the representations were sent either by his mother or his brother. Finally he sent legal notice. This writ petition came to be filed only in the year 2018. As per the Common Service Rules, if no upper age limit has been prescribed for appointment by direct recruitment, the candidate must not have completed 30 years of age or if he belongs to backward class or most backward class or denotified community, he should not have completed 35 years. The petitioner comes under most backward category. The petitioner is now aged about 44 years. Therefore, directing appointment of the writ petitioner would run contrary to the relevant rules. He also would state that it is hypothetical to assume that the petitioner could have cleared the practical test. It is possible that he would have failed in practical test also. He therefore submitted that the writ petition does not deserve to be allowed.

6.I carefully considered the rival contentions and went through the materials on record. According to the petitioner, his height is 162 cm. The

stand of the respondents is that the petitioner's height is 158.8 cm. Since the petitioner was present in the Court, I directed the Medical Officer of the Dispensary attached to Madurai Bench of Madras High Court to measure the writ petitioner's height in the presence of the learned counsel on either side. The Medical Officer has certified that the petitioner's height is 161 cm by wall measurement and it is 160 cm by scale measurement. The learned standing counsel would suggest that the cause of action arose in the year 2012 and we are now in 2022. It is quite possible that due to posture correction or some other reasons, there could be variation in the height and therefore, this Court should not go by the certificate given by the Medical Officer of Dispensary attached to Madurai Bench of Madras High Court today ie., 06.09.2022. I am not impressed by the said submission. From the side of the writ petitioner, representations had been submitted right from February 2013 onwards. In all fairness, when a candidate appears in selection process and he is not selected, the reason for non-selection ought to be intimated to the candidate concerned. Right to information is now recognized as part of Article 19(1)(a) of the Constitution of India. A non-selected candidate deserves to know as to why he has not been selected. The respondent/management in my view acted with utmost insensitivity by not responding to the representations made on the side of the writ petitioner. The certificate now given by the Medical Officer of the

Dispensary attached to Madurai Bench of Madras High Court clearly states that by scale measurement the petitioner's height is 160 cm and by wall measurement, it is 161 cm. I am more than satisfied that the physical measurement of the writ petitioner was not done properly by the respondents. On this ground, however I cannot direct the respondents to appoint the writ petitioner to the post of conductor. This is for more than one reason. As rightly pointed out by the learned standing counsel, the writ petitioner may not have been informed as to why he was not selected but he certainly knew that he has not been selected. He could have filed the writ petition in the year 2013 itself. He had not done so. There has been real delay on the part of the writ petitioner in approaching the Court. In meanwhile, the age bar set in. If I today direct the respondents to appoint the petitioner to the post of conductor, that would clearly run counter to the Common Service Rules. It is well settled that no Mandamus can be issued contrary to law. It is for this reason, I am not able to grant the relief of appointment to the writ petitioner. The reason for denial of this relief is due to the writ petitioner's own conduct.

7. At the same time, the writ petitioner cannot be sent away empty handed. The materials before me clearly indicate that the petitioner fulfilled the height requirement. I am certain that his height measurement would not have

been 158.8 cm even in the year 2012. The suggestion that the petitioner could have grown in height during the last one decade appears to be too farfetched. In any event, not responding to the representations made repeatedly on the side of the writ petitioner calls for an appropriate response from this Court. Therefore, for these two reasons, namely (a) not measuring the petitioner's height properly and (b) not responding to the petitioner's representations, the respondents will have to compensate the writ petitioner. I quantify the compensation payable to the writ petitioner at Rs.50,000/-. Even while denying the main relief sought for by the writ petitioner, I direct the respondents to pay a sum of Rs.50,000/- to writ petitioner within a period of eight weeks from the date of receipt of a copy of this order.

8.The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

06.09.2022

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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