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W.P.No.9563 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition No.9563 of 2015

R. Sakthivel

.. Petitioner

Versus

1. The Government of Tamilnadu,
Represented by its Additional Chief Secretary of Government,
Transport (C1) Department,
Fort St.George, Chennai - 600 009.

2. The General Manager,
Tamilnadu State Transport Corporation,
Coimbatore Limited, Erode Division

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondents, especially the first respondent relating to his proceedings made in Letter No.1717/C1/2013-1, dated 17.02.2015, and quash the same as null and void, illegal and invalid and opposed to public policy and consequently directing the respondents to appoint the petitioner as 'Mechanic' (Diesel) pursuant to the 12 declared / notified vacancies by the second respondent as per order of seniority by relaxing the petitioner's over-age of 11 months & 1 day (as on 21.05.2013) with all monetary and service benefits with effect from 21.05.2013.



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For Petitioner : Mr. Maria Joseph David
for Mr. A.Amalraj

For R1 : Mr. S.Yashwanth
Additional Government Pleader

For R2 : Mr. M. Murali Vinodh
Standing Counsel

ORDER

The prayer made in this writ petition is to issue a writ of Certiorarified Mandamus challenging the proceedings dated 17.02.2015, and quash the same as null and void, illegal and invalid and opposed to public policy and consequently directing the respondents to appoint the petitioner as 'Mechanic' (Diesel) pursuant to the 12 declared / notified vacancies by the second respondent as per order of seniority by relaxing the petitioner's over-age of 11 months & 1 day (as on 21.05.2013) with all monetary and service benefits with effect from 21.05.2013.

2. According to the petitioner, he has passed X standard in March 1996 and thereafter he has passed I.T.I Mechanic (Diesel) Trade Certificate in July 1997. It is stated by the petitioner that he had registered his educational qualification with the District Employment Office on 08.04.2002. On the basis



of the said seniority, the name of the petitioner was sponsored by the Employment Exchange to the second respondent and he was selected as an Apprentice in Mechanic (Diesel) on 21.06.2003 for a period of 2 years. According to the petitioner, he had successfully completed the said apprenticeship on 20.06.2005. The second respondent also issued an 'Identification and Attendance Certificate'.

3. The petitioner was disengaged soon thereafter i.e., on completion of two years period. It is submitted that there are vacancies to the post of Mechanic (Diesel) but they were not filled up by the second respondent for a long time. While so, the second respondent initiated selection process for appointment to the post of Mechanic (Diesel) and the petitioner also participated in the same and attended the interview on 03.07.2013. However, upon verification of the testimonials of the petitioner, he was informed that he was over-aged by 11 months and 1 day and he cannot be given appointment to the post of Mechanic (Diesel). The petitioner was also informed that he has not furnished the National Trade Certificate and National Apprenice Certificate as required. Aggrieved by the same, the petitioner submitted a representation to the first respondent seeking to relax the age and to appoint him to the post of Mechanic (Diesel) in the second



respondent corporation.

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4. It is stated that the representation of the petitioner dated 24.07.2013 was not considered. A writ petition in WP No. 24524 of 2013 was filed praying for a Mandamus directing the respondents to consider him for selection and appointment to the post of Mechanic (Diesel) as per seniority and by relaxing over-age of 11 months and 1 day (as on 21.05.2013) by considering his representation dated 24.07.2013. The writ petition was disposed of on 03.11.2014 directing the first respondent to consider the representation dated 24.07.2013 and to pass orders thereon. Pursuant to such direction, the first respondent passed the order dated 24.07.2013 rejecting the claim of the petitioner for appointment on the ground that he is over aged by 11 months and 1 day and for not furnishing the National Apprenticeship Certificate, as required. Aggrieved by the said order, the petitioner has filed the present writ petition.

5. The learned counsel for the petitioner would submit that the petitioner had a legitimate expectation to get appointed to the post of Mechanic (Diesel) on the basis of two years apprenticeship undergone by him with the second respondent corporation. The respondents also did not



consider that the post of Mechanic (Diesel) was lying vacant for a long time.

As a result of the inaction in filling up the vacant post duly, by the time the respondent initiated the selection process, the petitioner was over-aged. It was thus submitted by the learned counsel for the petitioner that the non-selection of the petitioner to the post of Mechanic (Diesel) is arbitrary and illegal and prayed for allowing the writ petition.

6. Per contra, the learned Additional Government Pleader appearing for the respondents would contend that the petitioner cannot, as a matter of right, seek for appointment to the post of Mechanic (Diesel). The candidature of the petitioner was rejected on the ground that he is over-aged besides he did not produce the National Apprenticeship Certificate. Merely because the petitioner had undergone two years apprenticeship in the second respondent corporation, it will not confer any right on the petitioner to seek appointment to the post of Mechanic (Diesel). The employer has imposed conditions for appointment to the post including age, educational qualification etc. Fixing of qualification for appointment falls within the exclusive domain and prerogative of the employer. The petitioner cannot claim any right to be appointed while failing to satisfy the qualification criteria or conditions relating to appointment. That the first respondent has



rightly rejected the candidature of the petitioner and accordingly, the learned Additional Government Pleader prayed for dismissal of the writ petition.

7. Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the first respondent as well as the learned Standing counsel for the second respondent and perused the materials placed.

8. Admittedly, on the date of selection, the petitioner was over-aged by 11 months and 1 day. The petitioner did not produce the National Apprenticeship Certificate called for by the employer. The first respondent has thus passed the order of rejection dated 17.02.2015. The relevant paragraphs of the order dated 17.02.2015 reads as follows:-

" In as much as, you are not full-fill the requisite essential qualification of producing National Apprenticeship Certificate, the Selection Committee has screened the individual as not fulfilled the minimum requirement of possessing NAC Certificate. Therefore, your prayer for relaxing the age limit and reasons quoting for delay from the Employment Exchange is not sustainable."

9. The learned counsel for the petitioner submitted that there is no reference in the employment notification that National Apprenticeship



Certificate has to be produced. However, the learned Standing counsel for the second respondent referred to the interview letter dated 03.07.2013 wherein it was stated in clause 4 that at the time of interview the NTC/NAC Certificate has to be produced. However, inasmuch as the petitioner failed to furnish the said certificate, the respondents did not appoint the petitioner to the said post.

10. It is settled position of law that fixing the qualification for appointment including the age limit falls within the domain of the employer. Admittedly, the petitioner is over aged by 11 months and 1 day besides failed to furnish the National Apprenticeship Certificate, as required in the letter calling for interview dated 03.07.2013. The petitioner has admittedly crossed upper age limit and has not been able to point out any discretion with the employer to relax the age limit. Thus, the prayer in the writ petition to relax the age limit cannot be sustained. In this regard, it may be relevant to refer to the following judgments of the Hon'ble Supreme Court:

i. Thingujam Achouba Singh v. H. Nabachandra Singh, (2020) 20 SCC 312 : 2020 SCC OnLine SC 370 at page 318:



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“16. So far as relaxation of upper age-limit, as sought by the petitioners in one of the writ petitions is concerned, the High Court has directed the competent authority and Executive Council of the Society to consider for providing such relaxation clause. We fail to understand as to how such direction can be given by the High Court for providing a relaxation which is not notified in the advertisement. While it is open for the employer to notify such criteria for relaxation when sufficient candidates are not available, at the same time nobody can claim such relaxation as a matter of right. The eligibility criteria will be within the domain of the employer and no candidate can seek as a matter of right, to provide relaxation clause.”

(emphasis supplied)

ii. Shankarsan Dash v. Union of India, (1991) 3 SCC 47 :

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies.

(emphasis supplied)

10.1. From a reading of the above judgments, it would be clear that the prayer of the petitioner to relax the age limit cannot be granted by this Court



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more so as the petitioner has not been able to show that the employer is vested with such discretion.

11. In fine, the writ petition is dismissed as devoid of merits. No costs.

20.06.2024

Index : Yes / No
Internet : Yes / No
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To

The Executive Director (Personnel),
LIC of India, Central Office,
"Yogashema" Jeevan Bhima Marg,
Mumbai - 400 021.



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MOHAMMED SHAFFIQ, J.

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