



W.P.No.15434 of 2021.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2024

CORAM

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.15434 of 2021

and W.M.P.Nos.16344 & 17887 of 2021

P.Sathyaraj

...Petitioner

Vs.

1.The Additional Chief Secretary,
Principal Secretary to Government,
Revenue and Disaster Management,
Department,
Fort St. George, Chennai-600 009.

2.The Additional Chief Secretary,
Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai-600 005.

3.The Joint Commissioner for Revenue Administration
Ezhilagam, Chepauk,
Chennai- 600 005.

...Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, praying to call for the records of the 3rd respondent passed in impugned order in Na.Ka.No.O.P.1(1)/9747/2021, dated 29.06.2021 and quash the same and direct the 3rd respondent to appoint the petitioner as driver in the said department in time scale of pay of Rs.19,500/-, 62,0000/-(Grade 8) vide அ.ந.1(1)/50740/2019. நாள் 26.12.2020.

For Petitioner : Mr.P.Chandrasekar

For Respondents : Mr.C.Kathiravan

Government Advocate

ORDER

The admitted facts that are relevant for disposal of the writ petition are as under:

The name of the petitioner herein was sponsored by the District Employment Officer, Chennai, along with some other candidates for being considered for appointment to the post of Driver on consolidated pay in the post sanctioned through G.O.M.S.No.357 Revenue Department dated 18.09.2013. Accordingly, after undergoing selection process, the petitioner was appointed as Driver in the office of the 2nd respondent w.e.f. 01.12.2013



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and continuing. It is at that stage the 2nd respondent herein issued the notification dated 26.12.2020 proposing to fill up the two posts of Drivers in the office of the 2nd respondent in the pay scale of Rs.19,500/- to Rs.62,000/-. In response to the said notification, the petitioner who was already working in the office of the 2nd respondent on consolidated pay also submitted an application. However, the petitioner was not called for interview, while others were called for interview. At that stage, the petitioner approached this Court by filing W.P.No.2017 of 2021 and this Court, by an order dated 03.03.2021, directed the respondents to consider the application of the petitioner. Accordingly, the 2nd respondent considered the case of the petitioner by affording an opportunity of hearing, but the said claim of the petitioner was not considered for being appointed as Driver, pursuant to the notification dated 26.12.2020 by passing order dated 29.06.2021. It is aggrieved by the said order, the petitioner approached this Court by filing the present writ petition.

2.This Court while entertaining the writ petition, passed an interim order, subjecting any appointment made pursuant to the notification to the result of this writ petition. Accordingly, further selection process was



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undertaken by the 2nd respondent and two candidates, namely R.Sarathkumar and V.Ranjith Kumar were appointed as Drivers through proceedings dated 03.09.2021 issued by the 3rd respondent. Aggrieved by the said appointment order dated 03.09.2021, the petitioner filed another writ petition in W.P.No.5277 of 2022, but, this Court had disposed of the said writ petition by an order dated 20.07.2023, by taking note of the fact, that very appointment dated 03.09.2021, issued in favour of the two appointees itself were subject to the result of this writ petition, and also considering the fact that the appointment order issued to the apointees itself subjected the said appointment to the result of thier writ petition.

3.On a perusal of the impugned order dated 29.06.2021, issued by the 3rd respondent, makes it clear that the claim of the petitioner was rejected on two grounds. Firstly, on the ground that the petitioner is over aged and his age prescribed for unreserved quota is 32 years and whereas, the petitioner has crossed the age of 34 years as on the date of the submission of the application. Secondly, on the ground that the petitioner is resident of Tiruvannamali District and he has not satisfied the requirements of being the resident of Chennai.



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4.The respondents also filed a counter affidavit reiterating that the petitioner was found ineligible for being appointed to the post of driver on two grounds that are mentioned in the impugned order itself. However, it is further stated that the petitioner in his application itself mentioned his address as resident of Tiruvannamalai District and therefore, the petitioner was found ineligible being a non-resident of Chennai and therefore, his application was rejected.

5.A copy of the application submitted by the petitioner in response to the notification dated 26.12.2020 is placed on record before this Court. The said application is in the form prescribed by the respondents in their Notification. The said form contains a column, namely, Column No.3, requiring the applicant to furnish his permanent address in the said column, and the petitioner had furnished his permanent address which is situated in Tiruvannamalai District and his nativity has also been shown as Tiruvannamalai. There is no column i.e., contained in the said form of application to indicate the present residential address of the petitioner. It is



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basing upon the permanent address that was furnished by the petitioner in the said application, the respondents concluded that the petitioner is not a resident of Chennai, but he is the resident of Trivannamalai District and therefore, he is not eligible for being considered for appointment to the post of Driver notified in the notification dated 26.12.2020. The fact that the petitioner was appointed as Driver in the office of the 2nd respondent on consolidated pay and he has been working in the office of the 2nd respondent since 02.12.2013, is not disputed.

6. According to the learned counsel for the petitioner, the respondents have already submitted their proposals for extending the benefit of scale of pay to the petitioner against the two posts that were sanctioned, which are the subject matter of notification, but the same was rejected by the concerned Authority, resulting in issuing of the impugned notification proposing to fill up the said post and the very fact that the petitioner is working in the 2nd respondent's office since 2013 itself, establishes that the petitioner is a resident of Chennai. Thus, the action of the respondents in concluding that the petitioner is a non-resident of Chennai and he is resident



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of Tiruvannamalai District, basing upon the permanent address furnished by the petitioner in his application, is bound to be declared as illegal. The address that was furnished by the petitioner was only his permanent address, but not his present address.

7. Admittedly, there is no column in the application form prescribed by the respondents to furnish the present address of the petitioner. Further, the respondents were very well aware that the petitioner has been residing in Chennai and he has been working in Chennai for about 7 years by the date of notification and therefore, the respondents are precluded from treating the petitioner as a resident of Tiruvannamali and to disqualify him from being considered for appointment to the post of Driver. The other ground that he is over-aged. Admittedly, the petitioner is working in respondent's office since 2013 on consolidated pay basis and in terms of Section 61 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the age concession is provided for temporary Government employees up to the age of 40 years and actual period of service rendered under the Government on temporary basis, mandatorily is to be excluded in computing the age of the candidate. Section



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61 of the said act reads as under:

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61. Age concession for discharged Government employees or temporary Government employees.

- Notwithstanding anything contained in the Act or in the special rules for the various State and Subordinate Services, in the case of discharged Government employee or a temporary Government employee who has not completed forty years of age, the actual period of his service under the Government, whether continuous or non-continuous shall be excluded in computing his age for appointment to any post under the Government including the appointment made through the Commission. Explanation. - For the purpose of this section, a discharged Government employee is a person who was in the employment of the State and was discharged because of reduction in establishment or for any other reason but not as disciplinary measure."

8. In the light of the above mandate as contained in Section 61 of the said Act, 2016, the respondents ought to have extended the said concession in favour of the petitioner also instead of disqualifying him. By virtue of Section 61 of Act, 2016, the petitioner who is working on consolidated pay in the office of the 2nd respondent since 2013, is entitled to exclude the said period of



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seven years from computing his age for the purpose of ascertaining his eligibility with reference to age criteria. The respondents who are bound by the provisions of the Act 2016, failed to take into consideration the said provision and declared petitioner as not qualified on the ground of age. Thus, the two grounds on which impugned order dated 29.06.2021 came to be passed, are wholly sustainable and respondents acted in an arbitrary manner and passed the impugned order, instead of considering the case of the petitioner along with other candidates who have submitted their application in response to the Notification dated 26.12.2020. In the light of the above, impugned order is liable to be set aside and the same is accordingly set aside.

9.As already noted above, pursuant to the impugned order, dated 26.12.2020, two candidates were already appointed as Drivers through proceedings dated 03.09.2021 but their appointment was subjected to the result of this writ petition and the said two candidates were also informed about the same. In the light of conclusion arrived at by this Court and setting aside the impugned order, the case of the petitioner is required to be considered along with other eligible candidates irrespective of the appointment



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made through the proceedings dated 03.09.2021. Accordingly, the respondents are directed to review the entire selection process by duly considering the case of the petitioner along with other eligible candidates for being appointed to the post of Drivers under notification dated 26.12.2020 and pass appropriate orders thereon as expeditiously as possible at any rate, within a period of two months from the date of receipt of a copy of this order. The appointment which are made through proceedings dated 03.09.2021 in favour of R.Sharathkumar and Ranjith Kumar shall stand cancelled consequent upon setting aside of the impugned order.

10. Accordingly, the writ petition stands allowed. Consequently, connected miscellaneous petitions are closed. No costs.

04.07.2024

vsn

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order



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