

CWP-20218-2023

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2024:PHHC:038368

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-20218-2023

Date of decision : 18.03.2024

Bhupinder Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Lekh Raj Sharma, Advocate,
Ms.Niti Sharma, Advocate and
Mr.Kabir Sharma, Advocate
for the petitioner.

Mr.T.P.S. Walia, AAG, Punjab.

Mr.Rohit Kapoor, Advocate
for respondents no.5.

None for respondents no.6 and 7.

VIKAS BAHL, J.(ORAL)

1. This is a civil writ petition filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the judgments dated 03.08.2023 (Annexures P-8 and P-9) passed by respondent no.2 whereby he has accepted the appeal no.105 of 2022 instituted on 12.05.2022 (Annexure P-6) and appeal no.217 of 2022 instituted on 14.07.2022 (Annexure P-7).

2. On 13.09.2023, this Court was pleased to pass the following order:-

“Inter alia contends that in the present case, the petitioner was granted one permit with one return ticket vide order dated 23.02.2021 and the said order has been set aside vide impugned orders dated 03.08.2023

(Annexure P-8 and P-9) on two appeals filed by Amarpreet Sandhu and Venus Arora on two grounds. The first ground raised was that the petitioner was less qualified than the said two persons. With respect to the same, it is submitted that qualification of a person is not a relevant consideration as per the provisions of Section 71(d) of the Motor Vehicles Act 1988 as the primary consideration for granting permit is financial stability of the applicant and the other factors that have been mentioned in Clause (d) which do not include any educational qualification. It is further submitted that with respect to the survey report not being in accordance with law, the said aspect has not been challenged by either of the two private respondents who had filed the said appeals and for the said purpose, reference has been made to the grounds of appeal (Annexure P-6 and P-7). It is stated that the petitioner has the permit in his favour and by virtue of the observations made in the impugned order, although the matter has been remanded, the petitioner would now not get the permit as it has been observed that he is less qualified than the appellant.

Notice of motion for 30.11.2023.

Till the next date of hearing, respondent no.3 is restrained from passing any final order.

September 13, 2023”

3. A perusal of the report of the Registry would show that respondents no.6 and 7 have been served but no one had appeared on behalf of respondents no.6 and 7, which was recorded on 30.11.2023 and the matter was adjourned to 13.03.2024 and on 13.03.2024, the matter was adjourned to today. Today also, no one has appeared on behalf of respondents no.6 and 7.

4. During the course of arguments, learned counsel for the petitioner as well as respondent no.5 have jointly submitted that in the present case there are two issues involved. The first one pertaining to the inter se merits between the petitioner and the private respondents and the second issue pertaining to defects in the survey report. It is jointly submitted that the advertisement in the present case was with respect to 4 permits with 4 return trips and the Secretary, Regional Transport Authority, Hoshiarpur,

vide order dated 23.02.2021 had considered the applications of 7 persons for the grant of 4 stage carriage permits for plying 4 return trips daily, which was in consonance with the advertisement. It is further submitted that although in the survey report, it was suggested that 5 permits with 3 return trips each be considered but the Secretary, Regional Transport Authority, after taking into consideration the advertisement, correctly considered the grant of only 4 permits for 4 return trips and granted 3 separate permits to the General Manager, Punjab Roadways, Moga, Bhupinder Singh (petitioner) and Kamna respectively, with one return trip each and reserved one permit with one return trip for the State Transport Authority as per the ratio fixed under the scheme and thus, the slight illegality in the survey report was duly taken into consideration and rectified by the Secretary, Regional Transport Authority. It is stated that against the said order, two appeals were filed and neither of the appellants raised any issue with respect to the survey report or the impugned order being bad on account of there being some defect in the survey report. It is further stated that none of the other applicants either challenged the order of the Secretary, Regional Transport Authority dated 23.02.2021 or raised any objection on the said count but however the State Transport Appellate Tribunal by commenting upon the alleged illegality in the survey report has remanded the matter to the Secretary, Regional Transport Authority. It is submitted that the remand orders dated 03.08.2023 (Annexure P-8 and P-9) passed on the said two appeals are illegal and thus, deserve to be set aside and the matter is required to be reconsidered by the State Transport Appellate Tribunal for grant of permits without taking into consideration the aspect as regards the alleged illegality in the survey report as the Secretary, Regional Transport

Authority in the order dated 23.02.2021 had already taken into consideration the said aspect. It has been jointly agreed by the counsels for the contesting parties that the present writ petition be partly allowed and the impugned orders dated 03.08.2023 (Annexure P-8 and P-9) be set aside and the State Transport Appellate Tribunal be directed to reconsider the matter considering all aspects except the aspect of the alleged illegality in the survey report.

5. Keeping in view the abovesaid facts and circumstances, the present writ petition is partly allowed and the impugned orders dated 03.08.2023 (Annexure P-8 and P-9) are set aside and the matter is remanded to the State Transport Appellate Tribunal, Punjab, to re-decide both the appeals i.e, the appeal no.105 of 2022 instituted on 12.05.2022 (Annexure P-6) and appeal no.217 of 2022 instituted on 14.07.2022 (Annexure P-7) after taking into consideration all the points raised by the parties, in accordance with law, except on the aspect of the survey report.

6. The parties are directed to appear before respondent no.2 on 06.05.2024.

(VIKAS BAHL)
JUDGE

March 18, 2024
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No