

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2019

CORAM:

**THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA**

W.A.No.1511 of 2018

1.S.Nandakumar

.... Appellant

-vs-

1.Tamil Nadu Public Services Commission
Represented by its Secretary,
Frazer Bridge Road,
V.O.C.Nagar,
Park Town,
Chennai – 600 003.

2.Controller of Examination,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C.Nagar,
Park Town,
Chennai – 600 003.

.... Respondents

Write Appeal filed under Clause 15 of Letter Patent against the order in W.P.No.8710 of 2016 dated 14.06.2018 on the file of the High Court of Judicature at Madras.

For Appellant : Mr.V.Prakash
Senior Counsel
for P.Ganeshram

For Respondents : Mr.M.Loganathan

J U D G E M E N T

[Judgment of the Court was delivered by P.T.ASHA,J.]

The above Writ Appeal is filed challenging the order passed in W.P.No.8710 of 2016, which was a Writ Petition filed by the appellant herein for issue of a Writ of declaration, to declare the action of the respondents in not calling him for interview to the post of Motor Vehicle Inspector Grade II pursuant to his application dated 29.06.2012 and the written examination on 26.08.2012, and for not including his name in the professionally selected candidates as illegal, arbitrary and contrary to law and consequently direct the respondents to call him for interview and appoint in the post of Motor Vehicle Inspector Grade II.

2. The facts in brief necessary for disposal of the above Writ Appeal are as follows: सत्यमेव जयते

3. Appellant's Case:

3.1.The appellant herein had completed his SSLC in April 1993 and had passed Diploma in Mechanical Engineering in April 1997 after finishing his +2 in March 1995. Thereafter, he had acquired a Post Diploma in Automobile Engineering in April 1999.

3.2 Post his education, the appellant had worked as a Supervisor with Stanes Motors (South India Limited), Coimbatore, for a period of two years. Thereafter, he was working as a Heavy Vehicle Driver for a period of one year with Rhishikesh Lorry Service, Sivakasi, and as a Mechanic in Neushath Automobiles, Erode, for a period of one year and as Service Engineer with ABT Industries from 08.11.2004 to 31.12.2005 and from 01.11.2006 to 12.07.2008 as a Deputy Manager (Service).

3.3 The 1st respondent had issued a notification dated 25.06.2012, inviting applications online for the post of Motor Vehicle Inspector Grade II, Tamil Nadu Transport Subordinate Services. The notification had prescribed the Educational qualification and the following work experience:

"(i) Experience of having worked for a period of not less than one year both on vehicles fitted with Petrol Engines and Vehicles fitted with Deisel Engines on a full time basis in an Automobiles workshop which undertakes repairs of Light Motor Vehicles. Heavy Goods Vehicles and Heavy Passenger Motor Vehicles.

AND

(ii) Must hold a Driving Licence Authorizing him to Drive Motor Cycle. Heavy Goods Vehicles and Heavy Passenger Motor Vehicles.

AND

(iii) Must have experience in Driving Heavy

Transport Vehicles for a period of not less than six months.”

3.4 The notification had provided a scheme of selection, which was to be on the basis of written examination and oral test. The minimum qualifying marks for selection in the open quota was 136 and the relaxation in so far as for the SC/ST, MBC and BC was 102 marks. The instructions had further stated that based on the written examination marks, the candidates would be called for an interview and the number of post for which the applications were called for was 17 and thereafter it was increased to 21.

3.5 The appellant would contend that he had applied online for the above post and on 26.08.2012, he was called for written examination. The appellant would contend that as per the key answers that was given by the respondents and comparing the answer sheet retained by him, he found that he had correctly answered 175 questions out of 200 questions and would therefore be entitled to a total of 262.5 marks.

3.6 The 2nd respondent, on completion of the examination, had directed the appellant vide his letter dated 05.04.2013, to produce all the documents mentioned in the said letter. On receiving this letter, the appellant had forwarded all his certificates

vide his letter dated 22.04.2013. Though, the appellant had expected an interview call from the respondent, he was disappointed as he did not receive such a call letter. On 06.03.2015, the respondents had released the marks secured by all the candidates who attended the interview. Eventhough all marks had been published in respect of 40 candidates, the appellant's result was withheld though he was the highest scorer.

3.7 The appellant had immediately sent a representation on 22.02.2015, to the 2nd respondent enquiring as to how he had been left out. There was no response to the said representation. The respondents thereafter had conducted an oral test on 05.03.2015 and the provisional list was published on 06.03.2015. Therefore left with no other alternative the appellant had approached this Court.

4. The response of the respondents:

4.1 A joint counter affidavit was filed by both the respondents herein in which they would contend that in his online application, the appellant had claimed that he had a work experience from the following companies:

i)ABT, Industries Limited, Ukkadam, Coimbatore as Service Engineer from 11/2004 to 7/2008.

ii)Neushath Automobiles, 683, Sathy Road, as a Mechanic

from 7/2003 to 8/2004.

iii) Stanes Motors (South India) Ltd, Trichy Road, Coimbatore as Supervisor from 5/2000 to 4/2002.

Apart from the three, the online application did not disclose as to whether the appellant had driving experience which was one of the eligibility criteria for selection.

4.2 In the advertisement, it was clearly mentioned that the person should also have experience in driving Heavy Transport Vehicles for a period of not less than 6 months. In the light of the above, the appellant did not have the prerequisite qualification. However, when forwarding the documents the appellant had enclosed a certificate as evidence of his driving experience, details of which had not been given at the first instance, namely, when online application was made. The candidature of the appellant was rejected only on account of the fact that he did not possess prerequisite qualification of driving Heavy Transport Vehicles for 6 months.

5. Rejoinder of the Appellant:

5.1. The appellant in the rejoinder would contend that in the online application there was no provision for indicating the driving experience and therefore he had failed to mention the same.

However, in the letter dated 05.04.2013, the respondents had directed the appellant to forward all his documents and copies. Therefore, the appellant would contend that the response was nothing but an after thought.

6. Order of the learned Single Judge:

6.1 By order dated 14.06.2018, the learned Single Judge of this Court was pleased to dismiss the Writ Petition. The dismissal was on account of the fact that while making the online application the appellant has not claimed that he had a prerequisite driving experience and it was only at the time of scrutiny of documents that he had forwarded the said certificates.

7. Arguments:

7.1. Mr. V. Prakash, learned Senior Counsel appearing on behalf of the appellant would once again reiterate the contentions raised in the Writ Petition and rejoinder. He would submit that the online application did not make provisions for giving details about the driving experience. Further even before the results were announced the appellant, at the time of the scrutiny of documents, had forwarded the certificate which would clearly show that he had the prerequisite driving experience. He would therefore contend that the rejection of his application by the respondents is totally

misconceived and the learned Single Judge had failed to consider the above.

7.2. Mr.M.Loganathan, learned counsel appearing on behalf of the respondents would contend that instructions to the candidates had clearly mentioned that the candidates should possess the driving licence and work experience in driving Heavy Transport Vehicles for a period of not less than 6 months.

7.3 The experience being a prerequisite for being considered, the failure on the part of the appellant to make a mention about the same at the time of submitting the online application has led to his candidature being rejected and the appellant cannot find fault with the respondents. He would therefore contend that the order of the learned Single Judge is a well considered order and does not require interference.

8.Discussion:

8.1 From a perusal of the instructions given to the candidates in the column "experience" it has been clearly mentioned that the candidate who is making the application should necessarily possess experience in driving Heavy Transport Vehicles for a period not less than 6 months.

8.2 Clause 12 (vi) of the Instructions clearly stipulates as follows:

"Request for change/correction in any particulars in the Application form shall not be entertained under any circumstances AFTER THE LAST DATE FOR Editing/Updating application details specified. TNPSC will not be responsible for any consequences arising out of furnishing of incorrect and incomplete details in application or omission to provide the required details in the application form."

8.3 Further in Clause 13 (f), it is clearly stated that *"Candidates are not required to submit along with their application any certificates **in support of their claims** regarding Age, Educational Qualifications, Experience, Community Certificates and Certificates regarding their Physical Disability, etc., They should be submitted when called for by the Tamil Nadu Public Service Commission."*

8.4 A perusal of the online application would clearly show that a column has been given which reads as follows:

"Qualification work experience (Start from present Employer)"

8.5 Therefore the contention of the learned senior counsel that no column has been provided for showing the experience in driving is totally misconceived. Another point that has been put

forward was that in the letter dated 05.04.2013, the respondents themselves asked the appellant to submit documents relating to his experience in driving Heavy Transport Vehicles for a period of not less than 6 months as on the date of notification. This submission had been made on the basis of tick mark that had been made along side this clause in the letter dated 05.04.2013. We had asked the Standing Counsel for the Public Service Commission to produce the original of this letter which had been sent by the respondents to verify as to whether the original letter contains such a tick mark. Though the learned Standing Counsel was not able to produce the same, the appellant had produced the said letter. A perusal of the same would show that the letter which was forwarded to the appellant did not contain such a tick mark. The letter appeared to be a cyclostyled format sent to all the candidates with just the Name, Register Number and the address being filled up for each and every candidates.

8.6 There was no claim made by the appellant in his application online with regard to his experience. The Certificate of Experience was introduced for the first time, on receipt of the letter directing production of the certificates mentioned in the application. When there is no mention in the application about the experience, it should be construed that the appellant had no previous experience as mandated by the eligibility criteria, in the notificaton for

selection.

8.7 In the instant case work experience in driving Heavy Transport Vehicles for a period of not less than 6 months is an information which was a prerequisite. The omission to include this detail in the online application cannot be rectified. In short, the omission disentitles the appellant from seeking the relief claimed by him.

8.7 Therefore from a perusal of the above records, it is clear that the appellant had failed at the first instance to give details about the driving experience. Even the documents that has subsequently been filed does not exude much confidence in us.

9. We do not find any ground for interfering with the order passed by the learned Single Judge. The Writ Appeal stand dismissed. There shall be no order as to costs.

(K.K.SASIDHARAN,J.) (P.T.ASHA, J.)

21 June 2019

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To

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K.K.SASIDHARAN, J.

And

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