

(2009) 03 MAD CK 0205

In the Madras High Court

Case No : M.P. No's. 2 and 3 of 2008 in W.A. No's. 4 and 215 of 2008

D. Vinothkumar and A. Nambivenkatesh

APPELLANT

Vs

The Secretary, The Controller of Examination and The Section
Officer Tamil Nadu Public Service Commission

RESPONDENT

Date of Decision : 25-03-2009

Acts Referred:

Citation : (2009) 3 CTC 1

Hon'ble Judges : V. Dhanapalan, J;S.J. Mukhopadhaya, J;P. Jyothimani, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The basic issue involved in these cases under Reference is about the interpretation of Clause 5(B)(v) of the Notification/Advertisement issued by the Tamil Nadu Public Service Commission (TNPSC) in respect of recruitment to the post of Motor Vehicles Inspector Grade-II in the Tamil Nadu Transport Subordinate Service (2001-2006). The said Clause 5(B) in the Notification/Advertisement dated 18.04.2007, is as follows:

5. QUALIFICTION:

(A) AGE: xxxxx

(B) EDUCATIONAL QUALIFICATION: Candidates should possess the following or equivalent or higher qualifications on the date of this Notification viz., 18.04.2007:

(i) Minimum General Educational Qualification as defined in paragraph 7 of the Commission's Instructions, etc. to Candidates.

AND

(ii) A Diploma in Automobile Engineering (3 years course) or a Diploma in Mechanical Engineering (3 years course) awarded by the State Board of Technical

Education and Training, Tamil Nadu.

AND

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

AND

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

AND

(v) Must have experience in Driving Heavy Transport Vehicles for a period of not less than six months:

Provided that other things being equal, preference shall be given to those who possess Post Diploma Automobile Engineering awarded by the State Board of Technical Education and Training, Tamil Nadu.

Explanation: "Automobile workshop" shall mean--

(A) An Automobile workshop owned by the Government or the State Transport Corporation OR

(B) An Automobile workshop recognised or approved or certified by the Transport Commissioner or the Director, Motor Vehicles Maintenance Department for carrying out all kinds of repairs.

2. While construing the said Clause 5(B)(v) of the Notification/Advertisement stated above, a Division Bench of this Court consisting of the then Hon'ble the Chief Justice Mr. A.P. Shah and F.M. Ibrahim Kalifulla, J. in the judgment dated 11.01.2008 made in W.A. No. 4 of 2008, has held that the certificates issued in favour of the appellant therein, viz., D. Vinoth Kumar by M/s. V.S.T. Service Station dated 13.08.2002 and SKLS Lorry Services dated 28.02.2007 are in conformity and in accordance with Clause 5(B)(v), thereby holding that the experience stated in the said certificates are adequate in terms of the above said Clause and accordingly, set aside the learned Single Judge's order, wherein it was held that the said Certificates are not in conformity with the said Clause and directed the TNPSC to declare the result of the appellant in accordance with law.

The Certificates issued by the M/s. V.S.T. Service Station dated 13.08.2002 and SKLS Lorry Services dated 28.02.2007 are reproduced hereunder:

Certificate dated 13.8.2002 issued by V.S.T. Service Station:

TO WHOMSOEVER IT MAY CONCERN

This is to certify that D. VINOTH KUMAR, S/o. Mr. R. Dorai Raj has worked

efficiently both on vehicles fitted with Petrol engines and vehicles fitted with Diesel engines on a full time basis in our Automobile Workshop which undertakes repairs of Light Motor vehicles, Heavy goods vehicles and Heavy passenger motor vehicles from 14.6.2001 to 16.6.2002. His nature of work includes driving and testing of Heavy Transport vehicles.

His conduct and character have been good.

For V.S.T. SERVICE STATION P. LTD.,

K. RAJAGOPAL

Dy. General Manager

Certificate issued by SKLS. Lorry Service dated 28.2.2007:

TO WHOMSOEVER IT MAY CONCERN

This is to certify that D. Vinoth kumar, S/o. Mr. R. Dorairaj has worked efficiently on vehicles fitted with diesel engines on a full time basis in our Automobile workshop, which undertakes repairs of light motor vehicles, heavy goods vehicles from 20.1.2006 to 28.2.2007. During the above period, he had the experience in driving the heavy transport vehicles also. His conduct and character were good.

For SKLS. LORRY SERVICE

(D. MUTHUKUMAR)

Proprietor

3. Subsequently, when similar Clause of the Notification dated 18.04.2007, came to be interpreted again, another Division Bench consisting of K. Raviraja Pandian and P.P.S. Janarthana Raja, JJ. by judgment dated 12.03.2008 rendered in W.A. No. 215 of 2008, has held that similar certificates issued by M/s. T.V. Sundaram Iyengar & Sons Limited dated 11.07.2007 and M/s. Aruppukottai Sri Jayavilas Ltd., dated 19.03.2007 are not in conformity with the requirements of Clause 5(B)(v) of the Notification/Advertisement dated 18.04.2007, thereby holding that the said certificates are the evidence showing only that the appellant therein, viz., A. Nambivenkatesh, was having training in attending the major and minor repairs of light motor and heavy passenger motor diesel vehicles and that cannot be treated as experience in driving heavy transport vehicles and confirmed the order of the learned Single Judge by dismissing the Writ Appeal.

4. Since according to the TNPSC these two judgments are in conflict, it has filed M.P. Nos. 2 and 3 of 2008 in W.A. Nos. 4 and 215 of 2008 respectively, seeking clarification, as to which of the said judgments are to be followed. Having found that there is apparent conflict, the Hon"ble First Bench has made the present reference to this Larger Bench to resolve the conflict.

5. Before going to answer the Reference, it is relevant to point out that the judgments rendered in W.A. No. 4 of 2008 dated 11.01.2008 and W.A. No. 215 of

2008 dated 12.03.2008 have become final and are not challenged before the higher forum, and therefore, the same are to be implemented in accordance with the judgments rendered therein. The finding under this reference can be made applicable only in respect of similar appointments being made based on the advertisement issued in similar manner for the above said post in future.

6. Now, coming to the issue under reference, on a harmonious reading of both the judgments with reference to Clause 5(B)(v) of the Notification/Advertisement of TNPSC dated 18.04.2007, we are of the considered view that both the judgments are correct in their respective spheres and there is no real conflict.

7. As enumerated above, a reading of the educational qualifications prescribed under Clause 5(B) of the Notification/Advertisement issued by the TNPSC makes it clear that the requirements in various sub-clauses (i) to (v) are to be present simultaneously. In this regard the term "AND" found after each and every sub-clause in sub-clauses (i) to (v) of Clause 5(B) makes it clear that each one of the requirements is expected to be present independently. When the experience in driving heavy transport vehicles for a period not less than six months is a requirement, it is independent of obtaining driving licence authorising him to drive motor vehicles, heavy goods vehicles and heavy passenger motor vehicles.

8. Likewise, the experience required for a period not less than one year in automobile work shop as contemplated under sub-clause (iii) of Clause 5(B) of the Notification/Advertisement, is also independent. In addition, the term "Automobile work shop" is also explained to mean the automobile work shop owned by the Government or State Transport Corporation or an automobile work shop recognised or approved or certified by the Transport Commissioner or the Director of Motor Vehicles, Transport Department, for carrying out all kinds of repairs. Therefore, even the work experience as required in sub-clause (iii) must be obtained from the automobile work shop as per the explanation given in the Notification/Advertisement. Therefore, every one of the requirements is to be independently present for the purpose of having required qualifications for the post of Motor Vehicles Inspector Grade-II.

9. Further, when it is proved that during the period of working in a automobile work shop undertaking repairs of light motor vehicles, heavy goods vehicles and heavy passenger motor vehicles, it is the work of a person to go for test drive after the completion of mechanical aspect of work to check-up as to whether the mechanical work is complete, there is no reason to take any separate experience in driving heavy motor vehicles for a period of not less than six months during the course of his one year period in the automobile work shop. The word "six months period" found in sub-clause (v) need not be attributed to a separate period of six months and during the period of one year working in the automobile work shop, if the person had experience in driving of such heavy transport vehicle, such experience should be taken into consideration as it would fulfil the requirement found in Clause 5(B)(v) of the Notification/Advertisement dated 18.04.2007, independently. Therefore, the Reference is answered to the effect

that if it is proved that during the period of one year work in the automobile work shop, a person had experience in driving heavy transport vehicles, which is for a period not less than six months, it should be construed harmoniously to conform both sub-clauses (iii) and (v) of Clause 5(B) of the Notification/Advertisement dated 18.04.2007 of the TNPSC, thereby making the person eligible as qualified, provided he is a holder of driving licence as independently required under Clause 5(B)(iv) of the Instructions to the Candidates.