

(1996) 02 MAD CK 0115

In the Madras High Court

Case No : Writ Petition No. 10258 of 1995

M. Patchirajan

APPELLANT

Vs

Tamil Nadu Transport Department and Others

RESPONDENT

Date of Decision : 06-02-1996

Acts Referred:

Citation : (1996) 74 FLR 2576 : (1997) 1 LLJ 332

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Judgement

1. Notice of motion was ordered on August 3, 1995. Again private notice was ordered to the second respondent Kattabomman Transport Corporation, Tirunelveli, on August 24, 1995. It is now represented that the second respondent has been served through Court on August 11, 1995, itself. The first respondent has not filed any counter and the third respondent filed a counter-affidavit. Learned counsel for the first respondent received written instructions and on the basis of the same, learned Government advocate advanced his arguments. The above writ petition has been filed by the petitioner for a mandamus directing the second respondent to appoint the petitioner to the post of clerk or typist in the Kattabomman Transport Corporation. Since respondent Nos. 1 and 3 have entered appearance and also filed counter-affidavit and received written instructions, I admit this writ petition and by consent of all parties, take up the main writ petition itself for final disposal.

2. The petitioner states that he was appointed as commercial apprentice in Kattabomman Transport Corporation Ltd., Tirunelveli, by the Managing Director on January 16, 1988, and he had undergone apprentice training from and January 19, 1988, to January 18, 1989, and his apprenticeship Registration No. is 2056/FR-88. On completion of one year training he was relieved from the apprentice training. The petitioner states that he passed the provisional national apprenticeship examination held in the month of November, 1990, conducted by the Department of Employment and Training and also passed senior grade

typewriting English and junior grade typewriting Tamil in July, 1991, conducted by the Department of Technical Education. He also passed conductor examination and has conductor license bearing badge No. 11472 issued by the Licensing Authority, Tirunelveli, on August 30, 1986. He has also registered his name and qualification at the District Employment Office, Tirunelveli, on August 23, 1991. The Government regulated the recruitment of commercial apprentices in G.O.Ms No. 63 dated January 13, 1984 directing that the State Transport undertakings shall provide regular appointment to commercial apprentices who have undergone apprenticeship training in that Corporation and have passed National Apprenticeship Certificate Examination and whose name has been sponsored by the employment exchange. The Government further directed that in addition to this appointment of candidates sponsored by the employment exchange the State transport undertaking may obtain non-availability certificate from the employment exchange and fill up the vacancies by appointing those who have undergone apprenticeship training but have not passed the National Apprenticeship Examination subject to the condition that they will be on probation till they pass either the test conducted by them or the National Apprenticeship Certificate Examination. The above Government order further directed that the commercial apprentices who have already successfully completed their apprenticeship training in the State Transport undertakings and also completed the maximum age limit for appointment in the State transport undertakings shall be appointed by relaxation of age rule. According to the petitioner the second respondent is taking steps for appointing clerks and typists in their transport corporation. The petitioner states that the scheme of training had been introduced to promote chances of employment of educated unemployed persons and that if employers would not provide employment to the qualified apprentices the same would amount to destruction of developed human resources and hence other things being equal trained apprentices should be given preference in case of employment.

3. Mr. Manoj Pandian, learned counsel for the petitioner, however contended that from the provisions of the Apprentices Act, 1961, it is clear that the Legislature did desire and make adequate provisions to see that the competent persons receive due training to cater to the need of increasing demand for skilled craftsmen on the one hand and to improve the employment potential of the trainees on the other and as such good amount of money which would be public money in case of public bodies like the corporation, is also spent on training the apprentices. Further, during the period of training, the apprentices are put under a discipline akin to that of regular employee and the training imparted is desired to be result oriented. Therefore, learned counsel for the petitioner contended that the trained apprentices should be given preference over direct recruits and the trainee would not be required to put his name sponsored by any employment exchange but it would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the service rule concerned. He has also invited my attention to the judgment of the Apex Court in

Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh and others, at the time of hearing, in support of his contention. Therefore, the petitioner prayed for a mandamus directing the second respondent to appoint him to the post of clerk or typist in the Kattabomman Transport Corporation run by them. Counsel for the first respondent received written instructions and on that basis he advanced his arguments. According to the first respondent, seven candidates who had qualified by having passed the National Apprenticeship Certificate Examination were sponsored by the employment exchange during July 1989, and the petitioner's name was not sponsored through the employment exchange at that time since the petitioner had not passed the National Apprenticeship Certificate Examination. Further, no vacancies had arisen for the post of junior assistant or typist and this apart, the second respondent-Corporation which is solely owned by the Government of Tamil Nadu and registered under the Companies Act is bound to implement the G.O.Ms. No.63 dated January 13, 1984 issued by the Government of Tamil Nadu. However, it is not in dispute that the petitioner has successfully completed his training in November 1990. The third respondent filed a counter stating that the petitioner has not registered his name for the conductor post on January 5, 1987, as per the entries in his original index card, eliminated from his index card, while re-registering on October 29, 1991, under NCO 350.10 obviously due to restriction of maintaining only three alternative occupation assignment as indicated in paragraphs 2 and 3 of his counter. It is further stated that no vacancies from the employer concerned was notified to the office in the recent years for the post of clerk and the employment exchanges shall only nominate to the appointing authorities suitable candidates against notified vacancies as per seniority in registration and with reference to rule of reservation of vacancies against communal roster and priority/non priority categories and also based on age, educational qualification. The process of selection and making appointment rests only with the employer concerned. Since no vacancy was notified during the recent years, the employment exchange had no occasion to sponsor any name.

4. One thing is clear in this case that admittedly the petitioner had undergone his apprenticeship training and completed the same in November 1990. Therefore, he is eligible to be considered for any future appointment without being sponsored by any employment exchange. In fact, the Supreme Court in U.P. State Transport Corporation's case (supra) has indicated that the following would be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training (at page 858)

"(1) Other things being equal, a trained apprentice should be given preference over direct recruits.

(2) For this, a trainee would not be required to get his name sponsored by any employment exchange.

(3) If age bar would come in the way of the trainee, the same would be relaxed

in accordance with what is stated in this regard, if any, in the service rule concerned. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

(4) The training institute concerned would maintain a list of the persons trained year-wise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior."

5. Even though notice has been served on the second respondent, there is no representation on their behalf. Therefore, the second respondent is directed to act in accordance with what has been stated regarding the entitlement of the trainees. While considering the cases of the trainees for giving employment in suitable posts, what has been laid down in the service regulations of the corporation shall be followed. It is apparent that before considering the cases of the trainees, the requirement of their names being sponsored by the employment exchange would not be insisted upon. In so far as the age is concerned, the same shall be relaxed as indicated in the above Supreme Court judgment.

6. Therefore, the second respondent is directed to consider the name of the petitioner for employment in their transport corporation as and when the vacancy arises and consider the name of the petitioner for appointment to the post in question, keeping in mind, to maintain guidelines referred to above in the judgment of the Supreme Court referred to above. The writ petition is accordingly disposed of. No costs.