

(2008) 09 MAD CK 0037

In the Madras High Court

Case No : Writ Petition No. 17743 of 2008 and M.P. No. 1 of 2008

M. Ravi

APPELLANT

Vs

Tamil Nadu State Transport Corporation (Salem) Limited

RESPONDENT

Date of Decision : 16-09-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 21, 22

Citation : (2008) 09 MAD CK 0037

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : Mushtaq Ahmed, for the Appellant; C. Kanagaraj, for the Respondent

Judgement

N. Paul Vasanthakumar, J.—By consent of both sides, the writ petition is taken up for final disposal.

2. The prayer in the writ petition is to issue a writ of mandamus directing the Respondents to continue the employment of the Petitioner along with

conferment of permanent status pursuant to the interview conducted on 22.5.2007 for selection to the post of Conductor.

3. The case of the Petitioner is that he has obtained conductor licence on 20.11.1992 and passed Plus Two (+2) examinations in the year 1994.

Petitioner registered his name in the District Employment Exchange, Dharmapuri on 7.12.1992. He belongs to Most Backward Class community.

According to the Petitioner, the first Respondent employed him as Conductor on daily wage basis from September, 2006, and he has worked for

more than 240 days in a calendar year. On 11.5.2007 Petitioner was issued with an interview call letter directing the Petitioner to appear for the

interview on 22.5.2005 for selection to the post of conductor. Petitioner attended

the interview, however he was not given selection intimation

though number of his juniors registered in the Employment Exchange in the years 1994, 1995, 1997 and 1998 were given appointment as

Conductors. Petitioner issued counsel notice on 6.5.2008 and called upon to issue appointment order and having not received any reply, filed this

writ petition.

4. The learned Counsel for the Petitioner at the time of arguments submitted that even though he has prayed for a larger relief, Petitioner is

confining the prayer to select and ap-point him as Conductor based on the interview held on 22.5.2007.

5. The first Respondent has filed counter affidavit wherein it is stated that the Petitioner was employed as casual employee from September, 2006

for some time as Conductor. Respondent Transport Corporation is one of the Transport Undertaking of the Tamil Nadu Government and all

appointments can be made only through the Employment Exchange. The candidates sponsored by the Employment Exchange have to appear for

interview, field test and medical fitness examination and thereafter selected candidates will be given appointment order. The same is the procedure

followed for regular appointments. According to the first Respondent, during the year 2007, the Transport Corporation, Dharmapuri Region, by

notification called for list of candidates for 150 vacancies for the post of Conductor to Dharmapuri and Krishnagiri Employment Exchanges

apportioning the same as 88 and 62 vacancies respectively. As per Rule 16 of the Common Service Rules, the Managing Director constituted a

Selection Committee to conduct interview and select persons for the post of conductor consisting of (1) Deputy Manager (Personnel & Legal), (2)

Deputy Manager (Commercial & Traffic), and (3) Senior Assistant Engineer (Technical). Interview commenced on 2.4.2007 and concluded on

5.6.2007. The Dharmapuri and Krishnagiri Employment Exchanges sponsored 3532 candidates, who were interviewed on various dates besides

verification of the testimonials and physical standards as well as oral interview. Petitioner was also interviewed and his serial number was 410. As

per Rule 15 of the Common Service Rules and the Government Orders the reservation for appointment is - Open Category 31%; Backward

Class 30%; Most Backward Class 20%; Scheduled Caste 18%; and Scheduled

Tribe 1 %. The Managing Director created a reserve crew for spare buses at 0.6 per bus for Drivers and Conductors i.e. 10% of the total staff as per G.O. Ms. No. 41 dated 16.3.2007. The Respondent Corporation issued appointment orders to 1507 Conductors of which 553 conductors belong to Most Backward Class communities. It is further stated in the counter affidavit that the Petitioner was not found meritorious and he secured only 40 out of 100 marks.

6. The learned Counsel for the Petitioner submitted that the Petitioner having secured 40 out of 100 marks and having found to be physically and medically fit for the post of Conductor, is entitled to be selected.

7. However, the learned Counsel appearing for the Respondents submitted that 50 out of 100 marks was fixed as minimum marks for selection and the Petitioner having scored only 40 marks, he was not selected and therefore he is not entitled to get selected.

8. From the above pleadings following issues arise for consideration:

(1) Whether the Respondents having invited applications for 150 vacancies for the post of Conductors and having received a list of 3532

candidates in the ratio of 1:20, are entitled to select more than the notified vacancies numbering 1507 persons?

(2) Whether the Respondents are justified in not following the reservation policy of the Government by selecting 553 conductors from MBC

category out of the total selected conductors of 1507 which is more than 20% of M.B.C. quota?

(3) Whether the Respondents are justified in fixing 50/100 as minimum marks for selection in the absence of any rule to fix minimum marks?

(4) To what relief the Petitioner is entitled to?

9. It is the specific case of the Respondents that for filling up 150 vacancies, applications were called for, and interview was conducted from

2.4.2007 and concluded on 5.6.2007. Petitioner has also attended the interview on 22.5.2007 and secured 40 marks out of 100 marks. It is also

the specific case of the Respondents as admitted in the counter affidavit that Government rule with regard to reservation is to be followed by the

Transport Corporation as it is fully owned by the Government of Tamil Nadu.

10. The question as to whether more than the notified vacancies, candidates can be selected came up for consideration before the Honourable

Supreme Court in the decision reported in Prem Singh and Others Vs. Haryana State Electricity Board and Others, . In paragraphs 25 and 26 the

Supreme Court held thus,

25. From the above discussion of the case-law it becomes clear that the selection process by way of requisition and advertisement can be started

for clear vacancies and also for anticipated vacancies but not for future vacancies. If the requisition and advertisement are for a certain number of

posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more

candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances

only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is

challenged the court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a

manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be

granted in such cases would depend upon the facts and circumstances of each case.

26. In the present case, as against the 62 advertised posts the Board made appointments on 138 posts. The selection process was started for 62

clear vacancies and at that time anticipated vacancies were not taken into account. Therefore, strictly speaking, the Board was not justified in

making more than 62 appointments pursuant to the advertisement published on 2-11-1991 and the selection process which followed thereafter.

But as the Board could have taken into account not only the actual vacancies but also vacancies which were likely to arise because of retirement

etc. by the time the selection process was completed it would not be just and equitable to invalidate all the appointments made on posts in excess

of 62. However, the appointments which were made against future vacancies -- in this case on posts which were newly created -- must be

regarded as invalid. As stated earlier, after the selection process had started 13 posts had become vacant because of retirement and 12 because of

deaths. The vacancies which were likely to arise as a result of retirement could have been reasonably anticipated by the Board. The Board through

oversight had not taken them into consideration while a requisition was made for filling up 62 posts. Even with respect to the appointments made

against vacancies which arose because of deaths, a lenient view can be taken and on consideration of expediency and equity they need not be

quashed. Therefore, in view of the special facts and circumstances of this case we do not think it proper to invalidate the appointments made on

those 25 additional posts. But the appointments made by the Board on posts beyond 87 are held invalid. Though the High Court was right in the

view it has taken, we modify its order to the aforesaid extent. These appeals are allowed accordingly. No order as to costs.

(Emphasis Supplied)

The said principle is followed by the Supreme Court in the subsequent decision reported in *State of U.P. and Others Vs. Rajkumar Sharma and*

Others, . In paragraph 13 of the judgment, the Supreme Court held that filling up of vacancies over and above the number of vacancies advertised,

would be violative of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India.

11. In the light of the above decision of the Supreme Court and having regard to the selection of candidates ten times more than the vacancies for

which the interview call letters were issued, the action of the Respondents cannot be justified.

12. Similarly, even as per the counter affidavit more number of MBC candidates i.e., 553 out of 1507 have been selected, which comes to

36.96%. Even according to the counter affidavit in para 6, only 20% seats are reserved for MBC candidates. Thus, reservation quota for other

category of candidates are violated by selecting more number of MBC candidates than the prescribed quota. The said action of the Respondents is

also to be treated as improper.

13. From the Mark Statement produced before me, it is evident that the selected candidates from Sl. No. 1 to 384 are uniformly given 90 marks

out of 100; Sl. No. 385 to 552 are awarded 80 marks out of 100; Sl. No. 553 to 896 are awarded 70 marks out of 100; Sl. No. 897 to 935 are

awarded 60 marks out of 100; Sl. No. 936 to 965 are awarded 50 marks out of 100; and all other candidates upto Sl. No. 1492 are awarded 40

marks out of 100 marks. The award of marks at 90, 80, 70, 60, 50 and 40

uniformly to several hundreds of candidates establishes the attitude of the Respondents in mechanically awarding of marks and not awarding of the actual marks scored by each candidate, without any valid reason.

14. The contention of the Respondents that even though the Petitioner is called for interview for selection of 150 candidates and he having not secured the minimum of 50 marks out of 100, he was not selected, cannot be justified in view of the fact that as per the rules, no minimum mark is prescribed for selection. Further, separate cut-off marks for OC, BC, MBC, SC and ST is neither stated in the counter affidavit nor mentioned in the mark list produced before me. In the absence of any minimum mark prescribed under the rules, the Respondents are not justified in denying selection to the Petitioner on the sole ground that the Petitioner has secured only 40 marks out of 100.

15. Similar issue was considered by the Supreme Court in the decision reported in K. Manjusree Vs. State of A.P. and Another, wherein minimum marks for interview was prescribed without prescription of the same in the rule of selection. The Supreme Court disapproved the prescription of minimum marks in the oral interview and directed to prepare a fresh list without reference to their marks in the written test and interview without applying any minimum marks for interview and directed to finalise selection in accordance with law. The said view is reiterated in the decision reported in AIR 2008 SCW 3205 (Hemani Malhotra v. High Court of Delhi). In paragraph 9 the Supreme Court held thus:

9. From the proposition of law laid down by this Court in the above mentioned case it is evident that previous procedure was not to have any minimum marks for viva voce. Therefore, prescribing minimum marks for viva voce was not permissible at all after written test was conducted.

There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the Respondent

at viva voce, test was illegal.

16. From the above narrated facts it is evident that the Transport Corporations are appointing persons in the posts of drivers and conductors

without reference to the number of vacancies notified, not following communal reservation as contemplated under Rule 22(a) of the Tamil Nadu

State and Subordinate Service Rules, and without following uniform mode of selection. The Transport Corporations being the Undertakings of the

Government of Tamil Nadu and fully owned by the Government, are bound to follow the policies of the Government. In W.P. No. 426 of 2008,

order dated 19.8.2008 (B. Kali Jothi v. Metropolitan Transport Corporation (Chennai) Ltd., Chennai and Ors.), I had an occasion to consider the

claim of a destitute woman, who was not selected as conductor in spite of 30% horizontal reservation given to women candidates as per G.O. Ms.

No. 89 P&AR Department dated 17.2.1989 as well as Rule 21(b) of the Tamil Nadu State and Subordinate Service Rules, prescribing

reservation for destitute widows. The attitude of the Respondents seems to be that it is not bound by any law or the Constitutional provisions,

particularly Articles 14 and 16 of the Constitution of India. At least in future, the Government must see that the Respondents must follow the policy

decisions of the Government, which are not followed hitherto and the validly enacted laws are not violated.

17. The learned Counsel for the Respondents submitted that as on today there is no vacancy available. Petitioner also has not chosen to challenge

the selection of any candidate by impleading them as party Respondents. In the absence of any vacancy even though Petitioner has established his

right to selection, I am unable to issue any direction to select the Petitioner, since the selected candidates are not made as party before this Court.

Even though their selection is found to be not justified, I am of the view that their selection could not be set aside at this stage. It is also the fact that

by selecting ten times more than the notified vacancies, the Petitioner's right to participate in future selections are denied several times and hence

the Petitioner is entitled to get a remedy. Therefore, I am of the view that the interest of justice would be met by directing the Respondents to select

and appoint the Petitioner in the next available vacancy in the post of conductor before calling for fresh list from the Employment Exchange.

The writ petition is disposed of on the above terms. No costs. Connected miscellaneous petition is closed.