
(2012) 03 AHC CK 0179
In the Allahabad High Court
Case No : Writ Petition No. 7478 of 2008

Shabab Haider

APPELLANT

Vs

UP.State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Citation : (2012) 03 AHC CK 0179

Hon'ble Judges : Anil Kumar, J

Final Decision : Allowed

Judgement

Anil Kumar,J.

Heard Sri Pawan Kumar Tiwari, learned counsel for the petitioner , Sri Satyam Maurya , learned counsel for the respondents and perused the record.

By means of the present writ petition , the petitioner has challenged the order dated 19.8.2008 (Annexur no.1) passed by opposite party no.2/Regional Manager , Uttar Pradesh State Road Transport Corporation , Region, Lucknow.

Facts, in brief , of the present case are that in the year 2005 certain posts of Driver were advertised in the Uttar Pradesh State Road Transport Corporation (hereinafter referred to as "Corporation") in pursuance to the same. the petitioner submitted his candidature for appointment on the post of driver in the Corporation .

By an order dated 26.8.2005(Annexure no.2) the petitioner as informed that he has successfully passed the first test in respect to the appointment on the post in question and he was further required to appear before Principal Training Institute of the Corporation for second driving test scheduled to take place from 1.9.2005 and 2.9.2005 alongwith relevant documents .

Learned counsel for the petitioner submits that in pursuance to the above said facts , petitioner appeared in the second driving test as per direction issued in the order dated 26.8.2005, thereafter he was selected for appointment on the

post in question vide order dated 21.9.2005 (Annexure no.3) passed by Regional Manager of the Corporation and in the said list/ order , the name of the petitioner was finds place at serial no.6.

Learned counsel for the petitioner further submits that thereafter he was sent for training vide order dated 26.9.2005 (Annexure no.4) passed by Assistant Regional Manager U.P.S.R.T.C. Gomti Nagar Depot, Lucknow. Accordingly, the petitioner has undergone training and after completing the said training he was sent for medical examination to the Chief Medical Superintendent, Lucknow by an order dated 6.10.2005 (Annexure no.6) and after medically examining the petitioner, a medical certificate was issued by the competent authority of the medical department on 6.10.2005 (Annexure no.7) inter alia stating therein that the petitioner is found fit to be appointed on the post in question.

Learned counsel for the petitioner further submits that thereafter an order dated 14.10.2006 (Annexure no.8) has been issued to the Asistant Regional Manager of Corporation to appoint the petitioner after completing necessary formalities . In the said list/order, the name of the petitioner finds place at serial no.2.

Learned counsel for the petitioner submits that in spite of completing necessary formalities when no heed has been paid by the respondents, the petitioner for redressal of his grievance has approached this Court by filing writ petition No. 2626(S/S) of 2008, disposed of vide order dated 21.5.2008, relevant portion is reproduced as under:

" No Mandamus can be issued by this Court to appoint the petitioner on the post in question. However, keeping in view the facts and circumstances of th cae the petitioner is permitted to make a representation to opposite party no.2 within a period of one month. In case such representation is made by the petitioner within the stipulated period then the competent authority shall decide the same in accordance to law by passing a speaking and reasoned order expeditiously and preferably within a period of three months from the date of submission of the said representation and communicate the decision to the petitioner.

Subject to above, the writ petition is finally disposed of . No order as to costs."

In pursuance of the said order, the case of the petitioner has been considered and rejected vide order dated 19.8.2008 (Anexure no.1 passed by opposite party no.2 interalia stating therein that the petitioner is partially colour blind, so he is not fit for the post of driver .

Aggrieved by the said order, present writ petiton has been filed .

During the course of arguments , it has been submitted by the learned counsel for the petitioner that after passing the impugned order, petitioner was given appointment on contractual basis on the post of driver by means of order dated 6.9.2008 (Annexur no.11) passed by the Station Superintendent, of the Corporation Kaiserbagh, Lucknow and in pursuance of the same , he is still working and discharging his duties on the post in question.

In view of the said fact, learned counsel for the petitioner submits that once the petitioner has been contractually appointed to drive the bus of the Corporation in the capacity of driver since 2008, then there is no justification or reason for not giving permanent appointment to the petitioner on the post in question, thus, the said action on the part of the respondent no.2 thereby passing the impugned order , is wholly illegal and arbitrary in nature and liable to be set aside.

Learned counsel for the petitioner further submits that in view of the provisions as provided under Central Motor Vehicle Rules, 1999, if there is any doubt that the person who has been appointed on the post of driver is not eligible to drive the vehicle of the Corporation in respect to some defect in eye then his case shall be referred to the Medical Board and in this regard he placed reliance on the documents annexed as Annexure RA1 alongwith rejoinder affidavit filed by the petitioner in reply to the counter affidavit filed by the Corporation. Accordingly , it is submitted by the learned counsel for the petitioner that the impugned order dated 19.8.2008 (Annexur no.1) passed by opposite party no.2 is illegal and arbitrary in nature.

Learned counsel for the respondents on the other hand , on the basis of documents on record does not dispute the fact that the petitioner has been regularly selected for the post of driver in the corporation in pursuance to the exercise which has been conducted for appointment on the post in the year 2005, but he submits that in view of the directions given by this Court dated 21.5.2008 in Writ Petition No. 2626 (SS) of 2008, the case of the petitioner has been reconsidered and it was found that the petitioner is partially colour blind, so he is not fit to be appointed on the post of driver, hence there is no illegality or irregularities in the impugned order .

I have heard the learned counsel for the parties and gone through the record.

Needless to mention herein that the facts of the present case are not disputed between the learned counsel for the parties . Thus, in view of the admitted facts after passing the impugned order dated 19.8.2008 (Annexure no.1) passed by opposite party no.2 , petitioner was allowed to work and discharge his duty on the post of driver on contractual basis by means of order dated 6.9.2008 (Annexure no.11) and in this regard an averments has been made in para 6 to the writ petition . The said fact has not been denied by the respondent in the counter affidavit hence the position which emerge out is to the effect that even after passing of the impugned order dated 19.8.2008(Annexur no.1) petitioner is allowed to drive the bus of the Corporation in the capacity of driver as contractual employee.

Further from the perusal of the impugned order , it also transpires that the petitioners case has not been referred to duly constituted Medical Board as per documents contained in annexure no. RA1 alongwith rejoinder affidavit.

In the result, writ petition is allowed. The impugned order dated 19.8.2008(Annexure no.1) passed by Regional Manager , Uttar Pradesh State

Road Transport Corporation, Lucknow is set aside. The opposite parties are directed to consider the case of the petitioner for giving appointment on the post of driver in the Corporation in accordance with law.