
(2013) 03 MAD CK 0031

In the Madras High Court

Case No : Writ Petition (MD) No. 7652 of 2010

T. Vijayalakshmi

APPELLANT

Vs

The Managing Director

RESPONDENT

Date of Decision : 28-03-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2013) 138 FLR 293 : (2013) LLR 582

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : A.P. Muthu Pandian, for the Respondent

Judgement

T.S. Sivagnanam, J.—The prayer in the writ petition is for issuance of a writ of mandamus, to direct the respondent to conduct interview for

Women Conductors on the request made by the petitioner in her representation dated 2.3.2010. The petitioner passed her Higher Secondary

Course and she secured a conductor's licence issued by the Assistant Licensing Authority, Madurai South and such licence was issued on

2.8.1996, bearing Badge No. 276/96. The petitioner registered her qualification in the Employment Exchange and the employment card filed along

with the typed set of papers shows that the said qualification obtained by the petitioner has been registered. The respondent Transport Corporation

called for names from the Employment Exchange for filling up the post of Conductors in the Corporation. The petitioner's name was sponsored by

the District Employment Exchange and she attended the interview on 19.2.2010 at 8 a.m. But, however, the Officers of the respondent

Corporation refused to interview the petitioner stating that they do not propose to recruit women candidates for the post of Conductors.

Therefore, the petitioner submitted a representation expressing her anguish and stating that her long cherish dream of functioning as a Women

Conductor has been shattered and only because she is a woman, the employer ought not to have adopted such approach. Since the representation

was not considered, the petitioner approached this Court by way of filing the present writ petition.

2. A counter-affidavit has been filed by the respondent, from which, it is seen that a notification was issued on 27.10.2009 to the District

Employment Exchange, Madurai to sponsor the eligible candidates for the post of Conductor (daily wages), to fill up 182 vacancies. It is stated

that an intimation has been sent to the Employment Exchange stating that not to sponsor women for the post of Conductors. This communication

appears to be sent based upon the Government Order, dated 17.2.1989 and that was reiterated by the respondent Corporation by another letter

dated 16.11.2009. Therefore, it is stated that the Employment Exchange without considering these communications sent by the respondent

corporation wrongly sponsored the petitioner's name. Therefore, it is stated that the respondent corporation will not be in a position to consider

the petitioner's candidature. In the counter affidavit it has been admitted that one Tmt. Vasanthakumari was the first Women Driver appointed by

the Transport Corporation at Nagercoil and the women driver had to meet so many practical problems. Thereafter, no other women driver has

been appointed. Insofar as the post of women conductor is concerned, it is admitted in the counter affidavit that some Transport Corporations

have appointed women conductors without following the Government Orders and the letters issued by the Tamil Nadu Government.

3. With the above facts, the respondent corporation have expressed their inability to consider the case of the petitioner.

4. I have heard M/s. Kara Associates, learned counsel for the petitioner and Mr. A.P. Muthupandian, learned Standing Counsel for the

respondent transport corporation.

5. The copies of Government Order referred to in the counter-affidavit has not been placed before this Court for consideration. Even assuming the

Government has taken such a stand by directing the Employment Exchange not to sponsor the women candidate for the post of Conductors, such

Government Order is held to be bad in law, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. When both the Central Government and the State Government have been evolving various policies for the upliftment of women and to treat them on par with men, it is rather surprising that the State Government has taken such a policy decision not to recruit women conductors. If the Government has taken such a decision, it directly offends Articles 14 and 16 of the Constitution of India. It is to be noted that a women conductors or women drivers cannot seek for appointment to the said post unless they possess a valid driving licence in accordance with the provisions contained under the Motor Vehicles Act and the Rules framed thereunder. The Motor Vehicles Act is a Central enactment, which governs the licensing procedure which are to implement through the Central Motor Vehicle Rules and the Rules framed by the respective State Governments. Admittedly, under the provisions of central enactment, a woman candidate is entitled to a licence as a driver or as a conductor. Therefore, as long as the central enactment provides for grant of such licence, there cannot be any subordinate legislation, which has an effect of making the central enactment unworkable and even assuming if there is such a prohibition, the same is held to be wholly illegal and repugnant to the Central Act. Admittedly, there was no rule framed by the State Government prohibiting recruitment of women conductors. By virtue of execution instructions, the State Government cannot defeat the object and purpose of the central enactment, which provides for grant of conductor licence to women candidates. Therefore, this Court has no hesitation to hold that the said policy decision taken in G.O.Ms. No. 82, dated 17.2.1989, does not satisfy the test of Articles 14 and 16 of Constitution of India. While, the respondent would admit that the first women driver was appointed in the Transport Corporation at Nagercoil, would say that she faced several practical problems. It is common knowledge that every employment has its own practical problems and difficulties, but, only a candidate, who offers herself to take upon such employment would obviously know about the practical problems, which would be peculiar or unique. Here is a candidate, who is bold enough and willing to take by the assignment of a women conductor. Therefore, merely on account of the fact that the first women driver faced certain practical problem should not be a deterrent factor for

considering women candidate for the post of Conductors.

6. On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations

General Assembly. It entered into force as an international treaty on 3 September 1981 after the twentieth country had ratified it. By the tenth

anniversary of the Convention in 1989, almost one hundred nations have agreed to be bound by its provisions. The Convention was the

culmination of more than thirty years of work by the United Nations Commission on the Status of Women, a body established in 1946 to monitor

the situation of women and to promote women's rights. The Commission's work has been instrumental in bringing to light all the areas in which

women are denied equality with men. These efforts for the advancement of women have resulted in several declarations and conventions, of which

the Convention on the Elimination of All Forms of Discrimination against Women is the central and most comprehensive document.

7. Article 11 of Convention on the Elimination of All Forms of Discrimination against Women states that the parties shall take all appropriate

measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the

same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the

right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in

the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as

well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

Therefore, the State Government was under a duty to implement the international treaty as adopted by the UN General Assembly and ensure that there is no discrimination against women in the field of employment.

8. It is seen that the Brihanmumbai Electric Supply and Transport (BEST), during 1998 employed seven female conductors, but this group appears

to have been dismantled during 2006 on a request made by the concerned women conductors and they were absorbed within the organisation for

other jobs. It is stated that the women conductors were" absorbed in the organisation, since several demands were raised by them. At present, it is

stated that BEST has begun employing women as Conductors and has trained and employed three women conductors, who are presently start

from Wadala Depot. The Navi Mumbai Municipal Transport (NMMT) during December 2011, are stated to have been appointed 14 women as

conductors and there has not been any single complaint regarding any of the women conductors and the women conductors are given general shift,

which begins after sunrise and ends before sunset. Thus, it is seen that not only in Transport Corporations within our State, Women Conductors

have been employed in the other Transport Corporations in Mumbai also, the women Conductors have been employed.

9. This Court can take a judicial notice of the fact that the respondent corporation has been operating special services exclusively reserved for

women and children. Therefore, nothing prevents the respondent corporation from utilising the service of women conductors during such special

services, if they cannot be otherwise employed on other routes. The respondent being a Government Organisation should act as a model employer

and treat the women on par with men. Therefore, it is a fit case where the respondent should be directed to consider the petitioner's candidature

for the post of women conductor. For all the above reasons, the Writ Petition is disposed of by directing the respondent to consider the

petitioner's candidature for the post of women conductor, if she otherwise satisfies the qualifications prescribed for the said post. It is seen that the

petitioner was born on 16.3.1978, and as on date she is 34 years old, but since the petitioner secured her conductor's licence in 1996 and she is

patiently waiting for her appointment in the Employment Exchange and she was called for interview in February, 2010, the respondent corporation

shall consider her candidature without rejecting her case on the ground that she is over aged as on date. In all other respects, the petitioner should satisfy the conditions for recruitment. The respondent shall comply with the above direction within a period of six weeks from the date of receipt of a copy of this order. No costs.