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(2014) 02 KL CK 0181

High Court Of Kerala

Case No: WP (C) No. 1004 of 2014

K. Shibin		APPELLANT
	Vs	
The Transport Commissioner, Government Secretariat, The Regional Transport Authority and The Assistant Licensing Authority		RESPONDENT

Date of Decision: Feb. 24, 2014

Hon'ble Judges: K. Vinod Chandran, J

Bench: Single Bench

Advocate: P.M. Habeeb, by Adv, Advocate for the Appellant; R. Rema, R1 to R3 by Government Pleader, Advocate for the Respondent

Final Decision: Dismissed

Judgement

K. Vinod Chandran, J.

The petitioner is aggrieved by the denial of a Badge under Rule 8 of the Central Motor Vehicles Rules, 1989 (for brevity "CMV Rules"). The petitioner''s contention is that he has been issued with a Driving Licence under Rule 6 of the Kerala Motor Vehicles Rules, 1989 (for short "KMV Rules") and, hence, there should be no impediment in issuing a Badge, which alone would entitle him to drive a Public Transport Vehicle.

2. The learned Government Pleader, however, points out the specific prohibition in Rule 8 of the CMV Rules and contends that the rejection was proper.

3. The petitioner admittedly does not have the qualification prescribed under Rule 8 of the CMV Rules. The petitioner, however, would contend that the Hon''ble Supreme Court has in National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, held that a driver, who has a valid licence to drive a Light Motor Vehicle, was also authorised to drive a Light Goods Vehicle. The facts disclosed in the said case is, a Goods Carriage Vehicle was involved in an accident and the driver therein

though possessing a valid licence to drive a Light Motor Vehicle, did not have authorisation to drive a Transport Vehicle. The Insurance Company, hence, claimed that they are absolved from the liability and they should be discharged from satisfying any award made with respect to the accident. Such a declaration made by the Hon"ble Supreme Court is in totally different circumstances, where the insurer sought for being absolved from the liability, which cannot be imported into the present case, wherein the Motor Vehicles authorities have validly declined issuance of Badge, disentitling the petitioner from driving a Transport Vehicle. Further the declaration of law relates to a period prior to the amendment in 2001, when the definition of "light motor vehicle" continued to cover light passenger carriage vehicle and light goods carriage vehicle. It was after 2001 that the entries were substituted to include transport vehicle.

4. A learned Single Judge of this Court has also considered the proviso to Rule 6 of KMV Rules, which stipulates, 4th Standard as the minimum qualification for issuing a valid driving licence and the consequence of the stipulation made in Rule 8 of the CMV Rules in Ousephkutty, V. T Vs. Regional Transport Officer and another, . It has been categorically held that in the teeth of the stipulation in Rule 8 of the CMV Rules, the stipulation in Rule 6 of the KMV Rules is void. In such circumstance, this Court is not persuaded to hold that the petitioner is entitled to a Badge.

5. The learned counsel has also an alternate contention that, in so far as the petitioner, he has appeared for and failed in an examination which is equivalent to 10th Standard. What is to be specifically noticed is that the qualification prescribed in Rule 8 of CMV Rules is a pass in 8th Standard and if the petitioner had qualified the examination which is considered as equivalent to 10th Standard, necessarily the petitioner would have been entitled to a Badge as stipulated in Rule 8 of the CMV Rules. However, the petitioner, having not passed the 8th Standard, had appeared for an examination in an open system, for which age alone is treated as a qualification to sit for the examination. The appearance alone cannot be treated as a pass in the 8th Standard.

In the circumstances stated above, the writ petition is dismissed, however, with no order as to costs.