

(2011) 08 MAD CK 0203

Madras High Court

Case No: Writ Petition No. 25759 of 2009

P. Sivasuriyan

APPELLANT

Vs

The Managing Director Tamil
Nadu State Transport
Corporation Ltd. and The
General Manager (Operations)
Tamil Nadu State Transport
Corporation Ltd.

RESPONDENT

Date of Decision: Aug. 5, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 16(2), 19(1)

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: R.N. Amarnath, for the Appellant; T. Chandrasekaran, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

The Petitioner originally filed the writ petition seeking for a direction to appoint him to the post of Junior Engineer in the Respondent State owned Transport Corporation considering the seniority in the employment exchange registration as well as qualification including apprenticeship training. Subsequently, the Petitioner has filed M.P. No. 3 of 2009 seeking an amendment of the prayer. As per the amended prayer, he sought for a direction to fill up the vacancies to the post of Junior Engineer on the basis of the combined employment exchange seniority in all the six districts, i.e., Villupuram, Vellore, Cuddalore, Tiruvannamalai, Kancheepuram and Tiruvallur, which come within the jurisdiction of the first Respondent Transport Corporation having headquarters at Villupuram and for a consequential direction to grant him an appointment.

2. In the writ petition, notice of motion was ordered on 05.01.2010. Subsequently, it was admitted on 15.07.2010. Pending the writ petition, this Court declined to grant any interim relief in M.P. Nos. 1 and 2 of 2009 and dismissed both the applications on 02.11.2010.

3. On notice from this Court, the Respondents have filed counter affidavit, dated 30.7.2011. It was admitted by the Respondents that the first Respondent Transport Corporation has operational jurisdiction over six districts named above. Hence the appointment to the post of Junior Engineer for the Corporation will have to be resorted only through calling for names from the employment exchanges at these six districts. It was stated that the Petitioner's name was not sponsored by the District Employment Exchange at Villupuram when they had notified the vacancies. It was further stated that the persons who are having professional qualifications such as B.E., B.L., MBBS and Master degree are registered and their seniority was maintained at the State level in professional employment exchange at Chennai, whereas the seniority of other qualifications such as Bachelor Degree and Diploma holders' registration is done at District level. The names cited by the Petitioners M/S. Santhosh and Vimalraj got their names sponsored from the Kancheepuram Employment exchange when the vacancy was notified. Therefore, the Petitioner's contention that he was waiting for 14 years for appointment cannot be accepted. The Corporation had never adopted any illegal mode of recruitment.

4. It was also stated that since the operational jurisdiction of the Corporation is spread over six districts, they will have to provide employment to candidates who have registered their names in all the six employment exchanges. They had filled up most vacancies, which arose during the year 2008 on the basis of candidates sponsored under priority quota which included Ex-serviceman, land losers and differently abled. But between the years 2008 and 2009, as new rules were introduced increasing fleet strength of the Corporation, it had resulted in more number of vacancies. Certain technical supervisory staff were also promoted to the Assistant Manager cadre consequent upon the vacancies. Therefore, 26 vacancies were filled up from the list of candidates sponsored from Kancheepuram Employment exchange. It was also stated that under the common service rules, candidates should have completed apprenticeship training either in any one of the transport corporation or anywhere else.

5. Therefore, the short question that arises in the writ petition is whether the Respondent Corporation can get sponsorship only from one District Employment exchange or all the six District Employment exchanges, over which it has got jurisdiction?

6. Though the Respondents had correctly stated that they have jurisdiction over six districts which are its operational area, but in paragraph 7 of the counter, they have not explained as to how all the 26 vacancies were filled up by getting candidates from Kancheepuram Employment exchange alone. Such conduct on the part of the

Respondents is reprehensible and not in consonance with the spirit of the Articles 14 and 16 of the Constitution. In such matters, the Respondents should call for names from all the employment exchanges. Otherwise, their selection process can be questionable and the court will have no hesitation to set aside such selection which was confined to only one District.

7. A division bench of this Court in *National Life Insurance Employees' Association v. The Life Insurance Corporation of India* reported in 1989 (6) WLR 420 in paragraph 7 had observed as follows:

7.... The crux of the matter is to find out, whether by the advertisement, there is an indication that only persons residing in the said District are to be considered or the opportunity of employment had been thrown open to every eligible candidate in the country. If it be made out from the advertisement the persons residing in a particular area is "preferred for employment" then Article 16(2) is offended..... A reading of these two paragraphs in the advertisement leads to the irresistible conclusion that by resorting to recruitment confined to these Employment Exchanges, the Corporation is aiming to prefer applicants residing in the concerned districts....

8. The said judgment came to be subsequently referred and followed by a subsequent division bench in *Unemployed Secondary Grade Teachers Welfare Association v. State of Tamil Nadu* reported in 2008 (4) LLN 560 and in paragraph 34, it was observed as follows:

34... In a very recent decision, the Supreme Court has expressed its grave concern relating to possible balkanization of the country because of the spread of non-tolerance displayed in some parts of the country. The submissions which are now being made by the learned Additional Advocate General or the counsel for the Interveners bring only to fore the above unwelcome trend. We do not think that such a course can ever be countenanced. As a citizen of India one has to imbibe the spirit of the Constitution and follow the adage made famous by no less a personality than Justice Krishna Iyer that "Kashmir to Kanyakumari, India is one". However, a reading of the counter filed by the State Government and the stand so painstakingly put forth by the learned Addl. Advocate General, though more in desperation rather than with any conviction, one gets the feeling that even though Kashmir to Kanyakumari -India may be one, Dharmapuri to Kanyakumari -Tamil Nadu is not one. The net result of the policy hitherto followed by some curious logic is that a duly qualified person, who is born in one part of the Tamil Nadu and gets himself registered in the district of his residence, cannot seek employment under the Government in another district of the very same State. If this does not amount to denial of right to equality under Article 14 and more particularly Article 16(2) and the right under Article 19(1), we fail to imagine what else can be the denial of such fundamental rights.

9. In view of the above, though the Petitioner cannot be granted relief as prayed for, but a direction is issued to the Respondents to adhere to the constitutional norms in calling for names for filling up any post in the corporation which is undoubtedly a public employment. Accordingly, the writ petition is disposed of. No costs.