

Ms.Orient Cement Vs. the Assistant Commissioner (Ct)

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Court : Chennai

Decided On : Feb-29-2012

Judge : M.Jaichandren, J.

Appeal No. : Writ Petition No.3482 of 2012

Appellant : Ms.Orient Cement

Respondent : The Assistant Commissioner (Ct)

Advocate for Def. : Mr.A.R.Jayaprathap, Adv.

Advocate for Pet/Ap. : Mr.S.N.Kirubanandam, Adv.

Judgement :

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to permit the petitioner to continue the service as L & D driver in the 2nd respondent Municipality and pay back all the service and monetary benefits for the service of L & D driver from 25.5.2001.

ORDER

1. This writ petition is filed to issue a Writ of Mandamus to direct the respondents to permit the petitioner to continue the service as L & D driver in the 2nd respondent Municipality and pay back all the service and monetary benefits for the service of L & D driver from 25.5.2001.

2. The petitioner in this case joined the services of the second respondent - Municipality as a driver. After certain period of service, he was asked to perform the duty of driving the heavy vehicle more particularly, L & D vehicles. One such vehicle is called as JCB-bulldozer. It is not in dispute that on and from 25.05.2001, the petitioner is performing his duty as L & D vehicle driver and operating the JCB for which, written order has been issued by the second respondent. The petitioner also underwent a test to drive JCB Vehicles on 06.11.2001 and a certificate has also been issued by a private organisation. The second respondent noticing that the driving licence did not have an endorsement by the competent authority to drive the L & D vehicle more particularly JCB- bulldozer, did not permit the petitioner to drive the JCB vehicle, which prompted the writ petitioner to approach this Court as his request went unheeded.

3. The writ petitioner prays for a direction to direct the second respondent-Municipality to continue his service as L & D driver and to pay monetary benefits for the service rendered as L & D Driver from 25.05.2001.

4. Mr. Tamilmani, learned counsel appearing for the second respondent states that there is no dispute that the petitioner was initially appointed as a driver of the municipality and due to exigency faced by the municipality, he was asked to drive the L & D vehicles including JCB-bulldozer from 25.05.2001. That there was a short break in performing the duty as L & D driver and thereafter, he was allowed to drive the L & D vehicle including JCB considering his experience and ability.

5. The first part of the relief sought for by the petitioner i.e. to allow him to continue as L & D driver in the second respondent municipality is not disputed by the second respondent and it is fairly stated that he is continuing as L & D driver. Therefore, the only other issue remains to be considered is whether the petitioner is entitled to monetary benefit in respect of the services rendered by him as the driver of L & D vehicle including JCB-bulldozer.

6. The petitioner is receiving salary as a driver and that is not in dispute. The petitioner claims higher salary for the services rendered as L & D driver in respect of the work entrusted to him to operate the JCB vehicle. For his claim, the petitioner relies upon the proceedings of the Chennai Municipal Corporation where

the drivers of the special vehicles are given special salary.

7. As rightly pointed out by Sri. Tamilmani, learned counsel for the respondents, when the Municipality does not have a sanctioned special post of L & D driver, the question of paying higher or special salary may not be appropriate as it is not authorised by Law and that will be subjected to Audit objection. On the contrary, taking note of the fact that the petitioner is performing duties as L & D driver operating JCB in the second respondent Municipality from 25.5.2001 and also taking note of the fact that the Chennai Municipal Corporation is making payment of higher salary to such specialised or skilled drivers engaged in operating heavy vehicles, this Court is inclined to direct the second respondent to make a proposal to the Government for payment of the differential higher salary to the petitioner for performing duties as L & D driver including JCB-bulldozer from the date on which, the petitioner acquired qualification and underwent the tests to drive such heavy vehicles. Such exercise shall be completed expeditiously, preferably within a period of twelve weeks from the date of receipt of a copy of this order. This writ petition is disposed of accordingly. No costs.

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