

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM

THE HON'BLE MR. JUSTICE M.S. RAMESH

W.P.No.10142 of 2013

1. M.Vijayakumar  
2. M.Ravichandran

...Petitioners

Vs.

1. The State of Tamil Nadu,  
Rep by its Secretary to Government,  
High Ways Department,  
Fort St. George, Chennai - 600 009
2. The Chief Engineer (General),  
Highways and Rural Works,  
Chepauk, Chennai - 600 005.
3. The Divisional Engineer (Highways),  
Highways Department,  
Erode -2.

...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondent to appoint the petitioners herein in the existing or future vacancies as Gang Mazdoors and Road Inspector in regular time scale of pay in the light of the orders passed by this Hon'ble Court in W.P.No.36623 of 2004 which was upheld by the Division Bench of this Hon'ble Court in W.A.No.1260 of 2008 and confirmed by the Hon'ble Supreme Court in C.C.No.14093 of 2010.

For Petitioners : Mr.G.Punniyakotti

For Respondents : Mr.R.Govindasamy  
Special Government Pleader

O R D E R

The petitioners claim that they have been working as NMR's from the year 1987 onwards under the second respondent. According to the petitioners, they ought to have been absorbed in the regular vacancies in view of the continuous service and several Government orders which

enable them to be absorbed by the second respondent department.

2. In this connection, the petitioners had given several representations when they were in service, for absorption and the same were not considered. Ultimately on 28.02.1992, the second respondent had orally terminated the service of the petitioners.

3. In the mean time, the Government has issued a Government Order in G.O.Ms.No.371 Highways (HM2) dated 19.08.1997 and created the posts of Gang Mazdoors and Road Inspector in regular time scale of pay. Since the petitioners were employed earlier under the second respondent as NMRs and also since they have local residence in the area, according to them, preference should be given to them for appointment. However, it was not done so. Subsequently, in G.O.Ms. 184 Highways dated 29.05.1997, 764 posts were created to absorb the existing NMRs. In the said G.O., it has been clearly stated that for considering the cases of the NMRs, who had gone and obtained order for regularization, this G.O. came to be passed.

4. The learned counsel for the petitioner, at this juncture would point out that he had earlier filed writ petitions in W.P.No. 25051, 25052 and 47629 of 2006 seeking for regularization of service. By order dated 13.12.2006, the petitioners' claims were directed to be considered, in the light of G.O.Ms.No. 67, Highways (HRW) Department, dated 25.03.1998 and G.O.Ms.No.223, Highways (HW3) Department, dated 02.11.2016 within a period of four weeks.

5. Pursuant to the above said order, the second respondent had informed the petitioner through his letter dated 21.11.2007, that their claim for regularization will be positively considered. However, till date no orders have been passed and served on them. Aggrieved against the inaction of the respondents the petitioners have filed this writ petition.

7. Heard Mr.G.Punniyakotti, learned counsel for the petitioners and Mr.R.Govindasamy, learned Special Government Pleader for the respondents.

8. It is unfortunate that, in spite of an earlier order of this Court directing the respondents to consider the case of the petitioners for the purpose of regularization, the respondents have not considered their case, which is in total dis-regard to the direction of this Court. More over, identically placed persons, like the

petitioners, have filed a writ petition in W.P.No. 36623 of 2004 and by order dated 09.12.2005, wherein this Court had directed the respondents therein to regularize their services. As against the order, the Government had filed a writ appeal in W.A.No. 1260 of 2008 and Special Leave Petition in C.C.No.14093 of 2010, both of which came to be dismissed.

9. Since the petitioners are similarly placed as that of the petitioners in W.P.No. 36623 of 2004, they are also entitled to for the same relief. As a matter fact, by G.O.Ms. No. 26, dated 01.03.2012 the Government had regularized the service of 27 persons, who are the petitioners in W.P.No.36623 of 2004.

10. There is no justification on the part of the respondents in discriminating the petitioners, who also have obtained orders like that of the petitioners in W.P.No.36623 of 2004. Hence, the petitioners are also entitled to be appointed to the post of Gang Mazdoors and Road Inspector in the regular time scale of pay.

11. Under such circumstances, there shall be a direction to the third respondent to consider the case of the petitioners and appoint them in the existing or future vacancies as Gang Mazdoors and Road Inspector in the regular time scale of pay, in the light of the order passed by this Court in WP.No. 36623 of 2004, within a period of six weeks from the date of receipt of a copy of this Order. The writ petition is allowed. No costs.

12. With the above directions, the writ petition is allowed. No costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

rts

To

1. The Secretary to Government,  
State of Tamil Nadu,  
High Ways Department,  
Fort St. George, Chennai - 600 009

2. The Chief Engineer (General),  
Highways and Rural Works,  
Chepauk, Chennai - 600 005.
3. The Divisional Engineer (Highways),  
Highways Department,  
Erode - 2.

1 cc to Government Pleader, Sr. 66176  
1 cc to M/s. G. Punniyakotti, Advocate, Sr. 65631

W.P.No.10142 of 2013

SHI (CO)  
kk 23/11



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