

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.02.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.A. NO. 1954 OF 2012

AND

M.P. NO. 1 OF 2012

1. The Secretary to
Government of Tamil Nadu
Highways Department
Secretariat, Chennai - 600 009.
2. The Chief Engineer (General)
Highways Department
Chepauk, Chennai-5
3. The Divisional Engineer
Highways Division
Villupuram District. ... Appellants/ Respondents

- Vs -

1. V.Ravichandran
2. R.Sridhar
3. C.Mayakannan
4. C.Durairaj ... Respondents/ Petitioners

Writ Appeal filed against the order dated 05.07.2012 passed by the learned Single Judge in W.P. No.15319 of 2012.

Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents to appoint the petitioners herein in the existing or future vacancies as Gang Mazdoors in regular time scale of pay in light of the orders passed by this Honourable court in W.P.No.36623 of 2004 which was upheld by the Division Bench of this Honourable High Court In WA.NO.1260 of 2008 and confirmed by the Honourable Supreme court in C.C.No.14093 of 2010.

For Appellants : Mr. R.Ravichandran, AGP

For Respondents: Mr. G.Punniyakoti

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

The respondents herein filed the writ petition for a direction on the appellants herein to appoint them in the existing or future vacancies of Gang Mazdoors in regular time scale of pay in the light of the order of this Court in W.P. No.36623/04, which was affirmed by the Division Bench and, thereafter, by the Supreme Court.

2. It is the case of the petitioners/respondents herein that they were employed as Gang Mazdoors on daily wage basis under the control of the third respondent for several years. However, in view of the abolition of work charge establishment with effect from 1.1.1977, they were engaged to carry out maintenance of road works. It is the further case of the petitioners/respondents herein that they also had requisite qualification to be employed in the said posts. The Government, vide G.O. Ms. No.371, Highways Department dated 19.8.97 had created 9813 posts of Gang Mazdoors. The petitioners/respondents herein, though possessed the requisite qualification and experience, were not appointed in the said post. Vide another G.O. Ms. No.184, Highways Department dated 29.5.97, 764 posts were created to absorb the existing NMRs.

3. During pendency of the writ petition filed by the petitioners/respondents herein, similarly placed persons have been appointed, after orders passed by this Court in W.P. No.36623/04, which was affirmed by the Division Bench of this Court and confirmed by the Supreme Court, which is quoted hereunder for better clarity :-

"6. During the pendency of these writ petitions, similarly placed persons filed W.P. No.36623 of 2004, seeking to regularise their services and the said writ petition was disposed of by the learned Single Judge of this Court on 9.12.2005, by directing the respondents as under :-

"1. The services of those applicants who have been working for three years and more as N.M.Rs. with short breaks, shall be regularised in their posts. If there is a gap of more than three months between the period of termination and reappointment, that period may be excluded in computing the three year period.

2. The process of identifying the persons, who have been working for three years and more as N.M.Rs. with short breaks as above, shall be completed on or before 30.04.2006.

3. Depending upon the needs, those casual

workers/N.M.Rs., who have been working for less than three years, shall continue to be engaged, according to the seniority and eligibility, till their services are regularised in a phased manner depending upon the financial constraints.

4. There shall not be any new recruitment of N.M.Rs. till the services of the aforesaid applicants are regularised.

5. Such of those applicants, who are entitled to the benefit of G.O. Ms. No.702, Transport Department, dated 18.06.1981, G.O. Ms. No.135, Transport Department, dated 07.02.1983 and G.O. Ms. No.95, Transport Department, dated 04.02.1988 shall be given the benefit of the same. This process shall be completed on or before 30.04.2005."

Since the case of the petitioners/respondents herein have not been considered by the appellants, the present petition was filed.

4. Learned single Judge, following the abovesaid order in W.P. No.36623/2004, which order was upheld by the Division Bench of this Court in W.A. No.1260/2008 and the said order having not been interfered with by the Apex Court, held that since similarly placed persons like the petitioners/respondents herein have already been given the benefit vide order in W.P. No.36623/2004, held that the petitioners/respondents herein are entitled to similar relief and, accordingly, disposed of the writ petition in the following manner :-

"8. Since similarly placed persons were absorbed pursuant to the order of this Court in W.P. No.36623/2004, confirmed by the Division Bench of this Court in Writ Appeal No.1260 of 2008, which was also not interfered by the Apex Court as stated above, these writ petitions have to be allowed in terms of the order dated 09.12.2005 passed in W.P. No.36623 of 2004.

9. Accordingly, this writ petition is disposed of directing the respondents to follow the earlier order insofar as the petitioners are concerned and pass orders within a period of three months from the date of receipt of a copy of this order. No costs."

Aggrieved by the said order of the learned single Judge, the present writ appeal has been filed.

5. Heard the learned Addl. Government Pleader appearing for the appellants and the learned counsel appearing for the respondents and perused the materials available in the typed set of documents.

6. Though a plea has been taken in the grounds of appeal by the appellants that the respondents herein are not similarly placed to those of the persons in W.P. No.36623/2004, however, no material document has been placed before this Court to substantiate the said stand. In the absence of any material to substantiate the plea taken above, this Court is of the considered view that no interference is warranted with the order passed by the learned single Judge.

7. In the result, finding no merit, this writ appeal fails and same is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

GLN

1 cc to Government Pleader, Sr. 7501

1 c to Mr.G. Punniyakotti, Advocate, Sr. 7287

W.A. NO. 1954 OF 2012

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