

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 01.12.2016

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN**Writ Petition (MD) No.19870 of 2013**

N.Selvaraj

... Petitioner

Versus

1. The State of Tamil Nadu,
Through its Secretary,
Public Works Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

2. The Principal Chief Engineer (Buildings)
and Chief Engineer (Buildings),
Chennai Range & Chief Engineer (General),
Public Works Department,
Chepauk,
Chennai - 5.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order in Letter No.2153/C2/2008-21, dated 02.01.2012 and quash the same and consequently directing the respondents to regularise the petitioner's service in the cadre of Work Inspector Grade - II Post from 01.07.1990 with all attendant monetary benefits within a time frame fixed by this Hon'ble Court.

For petitioner : Mr.M.Venkatesan

For respondents : Mr.K.Guru

1 & 2

Additional Government Pleader

O R D E R

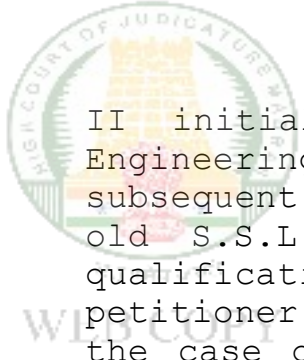
The Writ Petition has been filed challenging the impugned order in Letter No.2153/C2/2008-21, dated 02.01.2012 and consequently directing the respondents to regularise the



petitioner's service in the cadre of Work Inspector Grade - II post from 01.07.1990 with all attendant monetary benefits within a time frame fixed by this Hon'ble Court.

2. The learned counsel appearing for the petitioner submitted that the petitioner completed his S.S.L.C. (Old 11th) on 29.03.1970 and got his name registered in the employment exchange. Pursuant to the same, his name was forwarded to the first respondent and based on that, the petitioner was given temporary employment in the first respondent office as Head Mazdoor on 04.03.1980 and his duty was to assist the Section Officer in inspecting the construction site. Further, on completion of ten years of service, the petitioner was given time scale of pay viz., Rs.3050-75-3950-80-4590. Thereafter, the Superintending Engineer recommended the petitioner for permanent post of Works Clerk Grade-I by his letter dated 11.07.1990, however, the Superintending Engineer vide his letter dated 24.07.1990 altered his recommendation to the petitioner to be regularised as Work Inspector Grade II. Once again by letter dated 15.11.1995, the Superintending Engineer recommended the petitioner for the post of Works Clerk Grade-I. Objecting the said recommendation of the Superintending Engineer, the petitioner made a representation on 26.08.1996. Thereafter, based on the representation of the petitioner, the Superintending Engineer recommended the petitioner to the post of Work Inspector Grade II vide his letter dated 23.09.1996. Thereafter, the petitioner's service was regularised as a Head Mazdoor with effect from 01.07.1990 vide G.O.Ms.No.392, Public Works Department, dated 19.06.1998. The petitioner has made another representation on 16.03.2000 to the second respondent objecting the regularisation of his service as Head Mazdoor and to give Work Inspector Grade II post but the same was rejected by the second respondent.

3. Challenging the said rejection of the second respondent, the petitioner filed O.A.No.7608 of 2001 before the Tamil Nadu Administrative Tribunal at Chennai. After the abolition of Tamil Nadu Administrative Tribunal, the said case in O.A.No.7608 of 2001 was transferred to this Court and the same was renumbered as W.P.No.4399 of 2007. The said Writ Petition was disposed of by an order dated 24.04.2008 with a direction to the second and third respondents to consider the petitioner's representation within a period of four weeks and to pass orders taking note of the order passed in favour of one Mr.A.Subramanian in G.O.Ms.No.297, Public Works Department, dated 14.09.2007. Pursuant to the above order, the petitioner made a representation on 13.06.2008 to consider his claim for the post of Work Inspector Grade II. Pending consideration of the above representation, the petitioner retired on 30.11.2010 as Head Mazdoor (Special Grade). The petitioner would further submit that he possessed the educational qualification for the post of Work Inspector Grade II. The educational qualification for the post of Work Inspector Grade



II initially was fixed as pass in S.S.L.C. and Bifurcated Engineering Course, however, the said qualification was waived by subsequent Government Orders to the effect that pass or fail in old S.S.L.C. and 11th only. Though the petitioner has the qualification and so many persons who are similarly placed as the petitioner have been given the post of Work Inspector Grade-II, the case of the petitioner has not been considered by the first respondent. Hence, the petitioner is before this Court.

4.The learned Additional Government Pleader appearing for the respondents submitted that the second respondent has filed a counter affidavit inter alia stating that the petitioner was temporarily appointed as Head Mazdoor in Public Works Department through Employment Exchange on 07.03.1980. However, the Superintending Engineer vide in his letter dated 24.07.1990 and 26.08.1996 recommended for regularisation of the petitioner's service as Work Inspector Grade II. Since the petitioner had been working as Head Mazdoor, his services were regularised in the post of Head Mazdoor with effect from 01.07.1990. Challenging the said regularisation, he has filed O.A.No.7608 of 2001 before the Tamil Nadu Administrative Tribunal and after abolition of the same, the said case was transferred to this Court and renumbered as W.P.No.4399 of 2007 wherein this Court has passed an order directing the petitioner to submit a fresh representation to the first respondent and further directed the first respondent to pass orders on the said representation taking note of the order passed in favour of one A.Subramanian vide G.O.Ms.No.297, Public Works Department, dated 14.09.2007, within a period of four weeks from the date receipt of such representation from the petitioner.

5.It is further stated in the counter that though the first respondent has not received any representation from the petitioner, in compliance of the order of this Court, considered the case of the petitioner and rejected the claim for the post of Work Inspector Grade II for the reason that the said A.Subramanian was regularised in the post of Work Inspector Grade-II as he was doing the work of Work Inspector Grade II during his service as NMR employee whereas the petitioner was not engaged as a Work Inspector Grade II but he was doing only as a Head Mazdoor during his tenure in NMR service. Further, it is stated that though the petitioner possessed educational qualification, he was never engaged to work as Work Inspector Grade II and hence, his claim was rejected. Therefore, the second respondent prayed for dismissal of this Writ Petition.

6.I heard Mr.M.Venkatesan, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader appearing for the respondents and perused the materials on



7. On a perusal of the documents filed in the typed set of papers and from the submission of the learned counsel for the petitioner, it is seen that as per the amendment by the Government, the petitioner has the qualification to be promoted as Work Inspector Grade-II, as it was given to one Mr.A.Subramanian, pursuant to the direction of this Court. Though the said Mr.A.Subramanian was initially appointed as Head Mazdoor, he was given promotion as Work Inspector Grade II, vide G.O.Ms.No.297, Public Works (C2) Department, dated 14.09.2007. The petitioner herein is also similarly placed person as that of A.Subramanian and denying to give promotion to the petitioner would amount to discrimination, as he was also recommended by the Superintending Engineer, twice earlier.

8. Further, the statement of the second respondent in the counter affidavit that though the petitioner was directed to submit a representation giving all details including the recommendations of the Superintending Engineer before the first respondent, the petitioner did not submit any representation, however, taking into account the order passed by this Court in W.P.No.4399 of 2007, the petitioner's claim was rejected, cannot be accepted for the reason that on 13.06.2007, the petitioner has submitted his representation to the second respondent through the Assistant Engineer, Public Works Department, Buildings (Construction and Maintenance) Division - II, Natham who in turn forwarded the same to the Assistant Engineer, Public Works Department, Buildings (Construction and Maintenance) Sub Division - I, Dindigul, on 16.06.2008. Therefore, it is seen from the records that the case of the petitioner has not been considered properly in consonance with the direction given by this Court earlier in W.P.No.4399 of 2007. Hence, the impugned order dated 02.01.2012 passed by the first respondent rejecting the claim of the petitioner is liable to be quashed.

9. In the result:

(a) the writ petition is allowed by setting aside the impugned order in Letter No.2153/C2/2008-21, dated 02.01.2012;

(b) further the first respondent is hereby directed to consider the case of the petitioner and to pass appropriate orders, giving promotion to the petitioner as Work Inspector Grade-II from 01.07.1990 with all attendant benefits, as given to the similarly placed persons like the petitioner Mr.A.Subramanian;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar()



To

1. The Secretary,
Public Works Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

2. The Principal Chief Engineer (Buildings)
and Chief Engineer (Buildings),
Chennai Range & Chief Engineer (General),
Public Works Department,
Chepauk,
Chennai - 5.

Writ Petition (MD) No.19870 of 2013
01.12.2016

skn/vsa
SDS/MR:KKR/SAR 2/17.08.2017/5P/3C