



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2016

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Writ Petition (MD) Nos.2213 to 2216 of 2013

WEB COPY

M.Saravanan	... Petitioner in W.P(MD)No.2213 of 2013
M.Veerasingam	... Petitioner in W.P(MD)No.2214 of 2013
R.Elango	... Petitioner in W.P(MD)No.2215 of 2013
R.Arockiadoss	... Petitioner in W.P(MD)No.2216 of 2013

Vs.

1.The Secretary to Government,
Department of Highways and Minor Ports,
Fort St., George,
Chennai 600 009.

2.The Director General (Highways),
Department of Highways,
Chepauk, Chennai.

3.The Divisional Engineer (Highways)
Department of Highways,
Sivagangai.

... Respondents in all W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the Respondents to revise the petitioners appointment as Junior Assistant with effect from their date of appointment viz., 09-06-2008, 19.11.2008, 19.06.2008 and 16.08.2008 respectively and further direct them to provide subsequent promotions from the cadre of Junior Assistant along with back wages and other monetary benefits within a time frame as may be stipulated by this Court.

For Petitioners	: Mr.J.Pooventhera Rajan
For Respondents	: Mr.R.Anand Raj,
(In all Wps)	Government Advocate.

COMMON ORDER

The petitioners have come up with the writ petitions for the issue of a writ of mandamus to direct the respondents to revise their appointment as Junior Assistant with effect from their date of appointment and also to provide them with subsequent promotion from the cadre of Junior Assistant along with backwages and monetary benefits.

2.Admittedly, all the petitioners have been given appointment on compassionate grounds. It is the case of the petitioners that even though they have possessed S.S.L.C qualification befitting them to be appointed as Junior Assistants, they were appointed as Road Gang Mazdoor in the respondent department on 09.06.2008, 19.06.2008, 14.08.2008 and 18.11.2008 respectively. Therefore, placing reliance on the orders passed by this Court in various writ petitions, in various circumstances, the petitioners have come up with the above writ petitions. According to them, G.O.Ms.No.1499, Labour and Employment Department, dated 03.08.1989



is squarely applicable to them.

3.The writ petitions are challenged by the respondents by filing the counter affidavit. It is the specific case of the respondents that the petitioners have voluntarily and wilfully opted out for the post of Road Gang Mazdoors and they have also signed and relinquished their rights to be appointed as Junior Assistants. As they have voluntarily forgone their rights to be appointed as Junior Assistants, the claim of realignment of their employment after five years does not arise. It is further submitted that any compassionate appointment would be made only based on the waiting list prepared by the second respondent and in the waiting list of the second respondent, Serial Numbers of the petitioners namely, Sl.Nos.682, 720, 415 and 592 were given. He would further contend that in order to avoid delay and not to wait till their chances would come, they have consented to appoint them for the above said post. Therefore, the respondents prayed for the dismissal of the writ petitions.

4.Relying on G.O.Ms.No.1499 Labour and Employment Department, dated 03.08.1989, learned counsel for the petitioners submitted that as per the said Government Order, the appointing authorities are precluded from appointing a dependent of a deceased Government servant to a lower post than the post of Junior Assistant when the dependent possessed the educational qualification sufficient to the said post.

5.Heard the submissions made by the learned counsel on either side.

6.Admittedly, the very appointment itself is on compassionate grounds which was given based on the availability of vacancy. In G.O.Ms.No.1499, Labour and Employment Department, dated 03.08.1989, the interest of the dependent of a deceased Government servant is safeguarded. As the said Government Order is very carefully worded not to deprive the dependents to get into a lower post, they cannot take advantage of the same and raise an issue at a later point of time.

7.The petitioners had volunteered to relinquish their rights and given open declaration stating that they would accept the available appointment and will not claim for the post of Junior Assistant at a later point of time. In this regard, the relevant portion of the counter affidavit filed by the respondent is usefully extracted hereunder:-

"....Based on his willingness the respondents 1 and 2 issued orders to appoint him as Gang Mazdoor and the petitioner also submitted his assurance as follows:

That "though I am qualified for the post of Junior Assistant and above I submit my willingness for the appointment of Gang Mazdoors and in future and on any circumstances and my reason therefore, I won't demand to appoint me as Junior Assistant" (Copy of form of assurance in stamp paper signed by the petitioner enclosed for perusal please). Thus the petitioner wilfully forgoes his chance as Junior Assistant".



8.While so having obtained the said appointment as Road Gang Mazdoors and enjoyed the benefits of the said appointment on compassionate grounds, the petitioners are now estopped from going back on their stand to claim the benefit under G.O.Ms.No.1499, Labour and Employment Department, dated 03.08.1989.

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9.The petitioners were fully aware that for the post of Road Gang Mazdoor the required qualification is a pass in fifth standard. Though they were eligible even on the date of appointment for the post of Junior Assistant, having relinquished voluntarily with full knowledge, the petitioners cannot seek consideration under G.O.Ms.No.1499, Labour and Employment Department, dated 03.08.1989. The petitioners cannot ask for realignment of the post in the same Department as Junior Assistants, by virtue of their experience and seniority, but their chance of promotion as Grade II Road Inspector of Highways can be considered by the respondents. The respondents shall extend the said benefits to them, if there is no impediment. The writ petitions are dismissed accordingly. No costs.

Sd/-

Assistant Registrar (CO Dept.)

/True copy/

Sub Assistant Registrar

To

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Department of Highways and Minor Ports,
Fort St., George,
Chennai 600 009.

2. The Director General (Highways),
Department of Highways,
Chepauk, Chennai.

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Department of Highways,
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+1 CC to the Special Government Pleader, SR No.12129

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sms

SH/JGB-DP:17.03.2016:3P/5C