



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P. (MD) No.9179 of 2014

and

M.P. (MD) No.1 of 2014

Murugapandi

: Petitioner

-Vs-

The Divisional Engineer,
Highways,
Virudhunagar.

: Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Charge Memo in No.7-1/2014/Aa2 dated 25.04.2014 of the respondent and quash the same, and consequently, direct the respondent to promote the petitioner to the post of Road Inspector Grade II.

For Petitioner : Mr.J.Anand Kumar

For Respondent : Mr.M.Murugan,
Government Advocate.

O R D E R

This writ petition has been filed to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Charge Memo in No.7-1/2014/Aa2 dated 25.04.2014 of the respondent and quash the same, and consequently, direct the respondent to promote the petitioner to the post of Road Inspector Grade II.

2.The respondent issued the charge memo dated 25.04.2014 stating that the petitioner has suppressed his higher qualification of X standard while joining the duty as Road Worker. It is the case of the writ petitioner that he joined duty in the year 1997 as Road Worker and his service was regularised vide proceedings dated 23.03.1999. Now he is due for promotion as Road Inspector Grade II and at that time, he was served with the charge memo, which is impugned in this petition.



3. Heard the learned counsel for the petitioner and the learned Government Advocate.

4. This Court in W.P.(MD).No.4229 of 2012, by an order dated 26.06.2012, has quashed the charge memo issued to the petitioner therein, who was also similarly placed. Similarly this Court in W.P.(MD).No.2161 of 2009 etc., by an order dated 20.07.2010 has quashed the charge memo issued to the persons, who were also similarly placed. Paragraph Nos.7, 8 and 9 of the order made thereunder is extracted hereunder:-

"7. In this case it is admitted that qualification prescribed for the Road Worker is only pass in the 5th standard and the age limit is 35 years and the candidate must have good physic. In respect of age and physical condition there is no dispute and the petitioners are aged less than 35 years and they have good physic. The only question that arises for consideration is whether the conduct of the petitioner in suppressing the pass in S.S.L.C. Examination while entering the service amount to misconduct as per the Charge Memo.

8. As stated supra, in G.O.Ms.No.371, dated 19.08.1997 it is stated that the candidate must have passed 5th standard and there is no prohibition that the candidates who have passed 10th standard are disqualified from applying for the post. Therefore, even though the petitioners who have passed 10th standard on the date of recruitment they are eligible to be considered for the post and on that basis, they were recruited.

9. According to me, the petitioners cannot be found fault with for not stating the fact that they have passed 10th standard while they were appointed. In my opinion, it is not a wilful suppression and it has not been asked at the time of joining service whether they have passed 10th standard or not. Had there been such question raised to the petitioners and they deliberately gave a reply that they have not passed 10th standard, in that event, action can be taken against them for giving false answers. In this case, the only requirement is that they must have passed 5th standard. Accordingly, they have given certificate to prove that they have passed 5th standard and there is no question of suppression of pass in 10th standard as framed in the charge memo. In this case, suppression on the part of the petitioner in not informing the pass in 10th standard will not amount to any illegal act or misconduct as claimed by the respondents. Hence, the charge memo is liable to be quashed and the writ petition is allowed. In W.P.Nos.2136, 2137, 2161 and 2160 of 2009 the petitioners filed writ of mandamus for their promotion and the petitions are allowed as the petitioners are qualified for the post of Road Inspector



Grade II. In the result, all the writ petitions are allowed. No costs. Consequently, connected M.P.s are closed."

5. The learned Government Advocate is also not disputed the judgment passed by this Court in the above writ petitions. Since there is no provision that the candidates who have passed X standard are disqualified from applying for the post of Road Worker and merely because the factum of X standard passed has not been indicated in the application, that itself cannot be a ground to construe that there is a serious misconduct. What has to be seen is only qualification required for the particular post. If really the petitioner has given wrong information with regard to the required qualification, then it can be very well stated that there was suppression of material facts and it was made willfully only in order to get the job. Whereas in this case, the minimum qualification set out for the job is 5th standard pass at the relevant time. The petitioner in fact has passed the 5th standard. He was eligible for appointment at the relevant point of time. Therefore, merely because he has passed in X standard that cannot be construed as a misconduct warranting action under Tamil Nadu Government Servant Conduct Rules. Hence, I am of the view that the charge memo issued by the first respondent is liable to be quashed. It is further to be noted that the charge memo was issued on 25.04.2014. Admittedly, the petitioner joined the service in the year 1997 and charge memo was issued after a period of 17 years that itself shows that the same is attached with malice that too at the time of promotion due. Hence, I am of the view that the charge memo issued by the respondent is liable to be quashed. Accordingly, the same is quashed. The consequential prayer sought by the petitioner is left open. The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To
The Division Engineer,
Highways, Virudhunagar.

+1 cc to Mr.J.Anand Kumar , Advocate in SR.No. 74981
+1 cc to The Special Government Pleader in SR.No.75056

Myr/smi
AE/SV MMS/SAR2/08.09.2017/3P/4C