

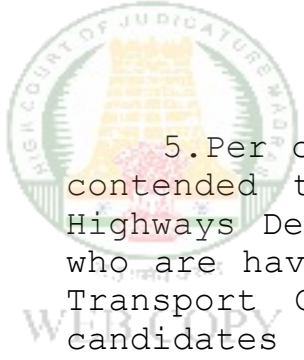
**ORDER**

The petitioner has filed this writ petition for the issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned orders dated 28.02.2011 in Se.Mu.A.No.68/2011/A.1 of the 1st respondent and quash the same in respect of respondents 2 to 10 and consequently direct the 1st respondent to promote the petitioners as driver considering their rank of 16th & 17th respectively in seniority list prepared as on 31.12.2010.

2.The case of the petitioners is that the 1st and 2nd petitioners were joined as Gang Mazdoor in Highways Department, Karur Division on the same date i.e., on 12.11.1997 and their services were regularized on 11.11.1998 and 12.11.1998 respectively. Both of them are passed 10th std. The petitioners have also possessed Light Motor Vehicle License with Badge vide License Number TN47/1999/0003836 dated 31.12.1997 and D.L.No. 19900000787 dated 09.04.1990 respectively and the same were registered in their service register on 28.09.1999.

3.The further case of the petitioner is that the Chief Engineer, Highways by his letter dated 20.09.2010 directed the Director of Highways Department to fill up the Driver post arose in highways department. The Chief Engineer, Highways has also issued a notification on 20.12.2010 by permitting the 1st respondent to fill up the vacancies of driver by promotion from the post of Gang Mazdoor. As per said notification a seniority list was prepared by the 1st respondent among Gang Mazdoor as on 31.12.2010. In the said seniority list the petitioners' names were placed in serial No.16 and 17. In the month of February 2011 there are 16 posts of driver fell vacant in Highways Department and the petitioners were expecting for promotion as driver, since they are qualified to the said post. But to their shock and surprise, the 1st respondent issued impugned order on 28.02.2011 by promoting the respondents 2 to 10 along with others as drivers by overlooking the seniority list in a arbitrary manner, since the respondents 2 to 10 are juniors to them in seniority list. Therefore the petitioners have filed this writ petition by challenging the impugned order of promotion given to the respondents 2 to 10 as illegal and arbitrary and seeking for consequential direction against the 1st respondent to promote them as driver.

4. The petitioners herein have filed rejoinder to the counter affidavit of the 1st respondent, wherein they have specifically pleaded that pending writ petition, the 1st respondent promoted some other Gang Mazdoors to the post of driver following the seniority list alone and they were not sent for driving test.



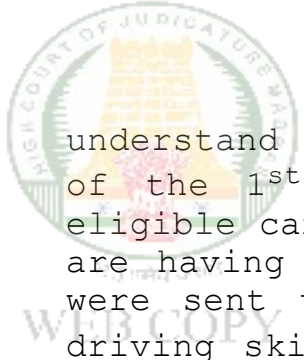
5. Per contra, the 1st respondent has filed a detail counter and contended that based on the letter of the Divisional Engineer, Highways Department has selected twelve members, out of that those who are having driving license with badge was sent to the Regional Transport Office, Karur. Based on the said list, the eligible candidates were called for, for testing their skills to drive the Department Jeep by the Regional Transport Officer and from that they were selected.

6. The petitioners were placed as 5th and 6th persons in the said list of candidates. The said list was not prepared based on the seniority and the petitioners were also called for, for testing their skills and they also attended in the selection before the Regional Transport Officer, Karur for testing their driving skill. The petitioners were not selected by the Regional Transport Officer, Karur, since they do not have enough driving skills, even though they are having driving license and badge. Neither the petitioners nor the Divisional Engineer Office of Highways Department is responsible for the non selection of petitioners to the post of driver. The 1st respondent appointed the Gang Mazdoor, the respondents 2 to 10 who were selected by the Regional Transport Officer, Karur and they are working as driver on 01.03.2011 onwards.

7. On behalf of the selected candidates, the respondents 2 to 10, even though they are represented by the counsel no counter affidavit was filled. However, on behalf respondents 2 to 10 typed set of papers were filed. It could be seen from the typed set of papers filed by the respondents 2 to 10, the Regional Transport Officer, Karur has sent a communication to the Divisional Engineer, Karur, wherein it is stated that after examining the driving skill of the candidates, report is sent to the Assistant Divisional Engineer.

8. I have heard Mr. I. Suthakaran, learned counsel appearing for the petitioners, Mr. Ayiram K. Selvakumar, learned Government Advocate appearing for the 1st respondent and Mr. H. Mohammed Imran, learned counsel appearing for the respondents 2 to 10 and gone through the entire records.

9. That the instant writ petition is filed by the petitioners herein seeking promotion to post of driver. The petitioners are working as Gang Mazdoor and they are having required qualification and possessed Driving License with Badge to the promotion post of driver from Gang Mazdoor. Even though the petitioners were seniors in the seniority list in serial No. 16 and 17, their juniors were given promotion as driver. Being aggrieved over the same, the petitioners have come forward with the present writ petition. A perusal of the case of the respondents, this court would be able to



understand that the seniority alone is not a criteria. The version of the 1st respondent is that they have prepared the list of eligible candidates to be promoted to the post of driver, those who are having driving license with badge and the eligible candidates were sent to the Regional Transport Office, Karur to test their driving skill. The 1st respondent has selected the candidates who have passed in the driving skill test conducted by Regional Transport Officer, Karur and given promotion to the candidates, list submitted by the Regional Transport Officer, Karur for the post of driver.

10. While deciding the issue involved in this writ petition, I have perused the additional typed set papers filed by the petitioners wherein at page 7, RTI reply sent by the Deputy Superintending Engineer of Highways Department dated 18.11.2011, it is stated that the eligible candidates were not asked to drive the vehicle before the Regional Transport Officer and they were not selected based on the marks given by the Regional Transport Officer. It is specifically stated in the said RTI reply that the driver post is given to the persons those who are having driving license based on the seniority list and they are not sent to the RTO, for testing their skill. From the above, this court found that there are contradictory versions by the Highways Department in giving promotion to the post of driver. Further, the 1st respondent has not given any answer to the rejoinder filed by the petitioners. In the rejoinder, the petitioners have clearly stated that pending writ petition; some of the Gang Mazdoors were promoted as Drivers without subjecting them for driving test skill. Therefore, this court is unable to understand that the mode of selection is adopted by the Highways Department in the case of promotion to the post of driver from the post of Gang Mazdoor. In the matter of promotion the authorities should follow a uniform procedure prescribed under law and also the settled principles of law laid down by this Hon'ble Court and the Hon'ble Apex Court.

11. Therefore, I am of the considered view that this writ petition can be disposed of with the following direction. However, it is made clear that this court has not expressed any opinion on the merits of the case.

12. In the result:

a) this writ petition is disposed off with a direction to the petitioner to give a fresh representation by narrating all above averments and

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said representation to the first respondent within a period of two weeks from the date of receipt of a copy of this order;

b) thereafter, on receipt of the said representation, the first respondent is hereby directed



to consider the case of the petitioner by giving personal opportunity to him for the promotion of the petitioner as per seniority list dated 31.12.2010 and pass appropriate order; and

c) the said exercise shall be done within a period of eight weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C)

/TRUE COPY/

Sub Assistant Registrar

To

The Superintending Engineer (Highways)
Office of the Superintending Engineer,
Construction and Maintenance,
Town Hall Road,
Tirupur.

Vsa/skn

sva/pn/10.03.2017/5p/2c

order made in
W.P. (MD) No.3546 of 2011
and
M.P. (MD) No.3 of 2011
30.01.2017