

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.09.2018

Coram

The Hon'ble Mr.Justice Satrughana Pujahari

Writ Petition No. 3748 of 2018

and

W.M.P.No.4574 of 2018

1.B.Bubalasingam

2.K.Kumar

... Petitioners

Vs.

1. The Government of Tamil Nadu,
Rep. by the Secretary to the Government,
Highways (HK3) and Minor Ports Department,
Fort St. George, Chennai - 600 009.

2. The Chief Director,
The Office of the Director (HW),
Department of Highways,
Guindy, Chennai - 600 025.

3. The Chief Engineer,
Construction and Maintenance,
Highways Department,
Guindy, Chennai - 25.

4. The Superintending Engineer,
Highways, Construction and Maintenance,
Coimbatore Circle,
Trichy Road, Coimbatore - 18.

5. The Divisional Engineer,
Highways, Construction and Maintenance
Coimbatore Division,
Trichy Road, Coimbatore - 18.

6. M. Murugan

7. S. Udayakumar

... Respondents

(Respondent Nos. 6 & 7 are impleaded
as per the order of this Court dated 17.09.2018
in WMP. No. 18747/2018).

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records pertaining to the Memorandum No.1465/Nir4(3)/2018 dated 08.02.2018 issued by the second respondent, quash the same to the extent it fixed cutoff date for attaining eligibility for promotion to the post of Junior Engineer and consequently direct the respondents to include the Road Inspectors Grade - I, who hold Diploma and have completed 4 years of service before preparation of panel for empanelment, for promotion to the Post of Junior Engineer.

For Petitioner : Mr.Balan Haridas
for M/s. S. Meenakshi

For Respondents : Mr.S.R. Rajagopal,
Additional Advocate General,
assisted by Mrs. R.Janaki
Additional Government Pleader,
(for Respondent Nos. 1 to 5)
Mr.P.Rajendran,
(for Respondent Nos. 6 & 7)

ORDER

Heard, Mr.Balan Haridas, the learned counsel appearing for the petitioner and Mr.S.R. Rajagopal, the learned Additional Advocate General, assisted by Mrs. R.Janaki, the learned Additional Government Pleader for the respondents 1 to 5 and Mr.P.Rajendran, the learned counsel, who accepts notice on behalf of the respondents 6 & 7. With the consent of the learned counsel on either side, the Writ Petition is taken up for disposal at the stage of admission.

2. From the pleading of the writ petitions filed by the petitioners, it appears that the petitioners are working as Road Inspector Grade-I, in the work charged establishment of the Tamil Nadu Highway Engineering Department and have Diploma in Civil Engineering, so also they have four years of service experience in the aforesaid capacity. The petitioner therefore have acquired the qualifications for being considered for promotion to the post of Junior Engineer, a service in category I of Tamil Nadu Highway Engineering Subordinate Service and governed by the Special Rules for Tamil Nadu Highway Engineering Subordinate Service Rules (hereinafter referred to as Special Rules in short), which provides for filling up the post of 25 % of Junior Engineers by way of promotion from among the post of Grade Inspector Gr-I, Survey Assitant, Field Assistant and Research Assistant Gr-II, who possesses Diplome in Civil Engineering / Licenciate in civil Engineering or Diploma in Mechanical Engineering or Licenciate in Mechanical Engineering qualification and have rendered service not less than four years in the respective post with the stipulation that the vacancy

shall be filled up with the cycle order of the first such rotation by direct recruitment, second by the Drafting Officer, third, fourth and fifth by the Junior Drafting Officer, Sixth and Seventh by the Road Inspector Grade-I, eighth by the Survey Assistant, ninth by the Field Assistant and tenth by the Research Assistant Gr-II, with a further stipulation that if any of the rotation is not filled up due to non availability of the qualified candidates, that vacancy shall be allotted to the next rotation in the said cyclical order. Though the Tamil Nadu State and Subordinate Service Rules, which is followed by Tamil Nadu Government (Condition of Service) Act, 2016 prescribes to draw approved list of persons eligible for promotion every year which shall remain valid for one year from day following the crucial date and to be utilised for filling up the vacancy that occurred in such promotional post and such crucial date are required to be made available in the relevant special rules, there was no crucial date in the aforesaid special rules and the respondents also failed to draw the approved list every year fixing the crucial date and continue to promote persons from the feeder post taking into consideration the eligibility criteria, they have by the time the panel is drawn. The aforesaid can be visualised from the fact that three Road Inspectors namely one Mr. Ramachandran, one Mr. Radhakrishnan and one Mr. Vaidyalingam, though had not completed four years in the panel year of 2010-2011 by 15th of July, but they were promoted as by the time the panel was drawn they had the service experience. However for the year 2015-2016, 2016-2017 and 2017-2018, no approved lists were drawn. The vacancy was estimated in the month of January 2018 to be 53 for promotion. The panel list shall remain valid for the panel year only. However on expiry of the panel year 2017-2018 an approve list is going to be prepared to fill up the vacancy by promotion fixing the crucial date 15th July 2017 for the Road Inspector only as revealed from the communication of the Director General of Highway Department to all Superintending Engineers to seek willingness application from Road Inspector Grade-I and sent the same of Road Inspector having the required qualification and service experience on such crucial date. However, no such crucial date has been fixed for other feeder post as revealed from the intra office communication of the Director General of Highway Department made on 08.02.2018 in this regard to all the Superintending Engineers. Therefore the same being discriminatory and without any basis the petitioners have come to challenge the same to quash such fixation of crucial date in respect of the petitioners and consider their case for promotion against the rotation of Road Inspector Grade-I by taking note of the service experience acquired by them by the date the panel is drawn.

3. In the reply affidavits filed the Government respondent however, have disputed the fact that no yearwise panel was drawn

and without fixation of any crucial date earlier promotions were given, so also promotions were given to three Road Inspectors named in the pleading of the petitioners without having the requisite service qualifications of four years inasmuch as they were given promotion in the year 2010-2011. So also it is disputed that the crucial date has been prescribed for the Road Inspector only and not for other services. It is specifically pleaded that for every year 15th of July has been considered as the crucial date and the same has been made applicable to all feeder posts and though three persons were promoted only in the year 2012 and 2013 by which they had already the service qualification. However, it is also contended that for the panel year 15-16 and 16-17 a null panel was drawn and for the panel year 2017-2018, 53 vacancy have been estimated fixing the crucial date 15th of July 2017 and for administrative difficulties the same as could not be taken up during that panel year, the cases of the persons in the feeder posts shall be considered only if they have the requisite qualifications by the said crucial date as mandated in the rule without any discrimination, therefore the case of the petitioners being without any substance the same is liable to be dismissed.

4. The private respondents that is respondents No.6 and 7 also in their pleading have taken the stands as aforesaid and has made a prayer to allow the promotion to be made in the aforesaid manner and the cases of the petitioners who are unqualified persons being without any substance, is liable to be dismissed.

5. The learned counsel appearing for the petitioners would submit that it being the mandate of the Tamil Nadu State and Subordinate Services Act which is followed by the Tamil Nadu Government condition of Service Act, 2016 that for promotion the vacancy are required to be filled up by promotion, a zone of consideration of eligible candidates are required to be made every year considering their seniority in the ratio prescribed and from the same, an approved list of eligible candidates are required to be drawn to fill up the vacancies that occurred within one year from the day following the crucial date, therefore crucial date being material for reckoning the qualification for such promotion. In the executive instruction being that the crucial date shall be available in the relevant Special Rules concerned and in this case, admittedly in the special rule no such crucial date being available, on earlier occasions also, no such crucial date of 15th July was prescribed and promotion were taken up for two to three panel years simultaneously, considering the eligibility qualification on the date the panel is prepared, hence the action of the respondent in fixing the crucial date as 15th July 2017 to draw a approved list for 2017-2018 panel year that too after lapse of the panel

year therefore is solely designed to debar the petitioners who in the meanwhile though qualified, were not qualified for consideration of the aforesaid crucial date. The same is moreso in view of the fact that in earlier occasions three road inspectors as named in the pleading were given promotion as by the time their promotion were taken up they had the four years of experience, as they were promoted against the vacancy for the panel year 2010-2011. So also in this case when the intra office communication such a crucial date has not been given for other feeder posts, prescribing for same road inspectors only is nothing but in a discriminatory and as such the same is liable to be quashed. Furthermore in earlier occasions also when promotion for more than one panel years is taken up together and the petitioners in the meanwhile who have been qualified to be absorbed against their quota, having been promoted, the respondents be directed to draw the panel for both the years simultaneously and considered the case of the petitioners.

6. In response, the learned Additional Advocate General strenuously objects such a submission as according to him, the submissions advanced are contrary to the records. But, during the course of hearing, it is submitted that though in earlier occasions, the approved list have been drawn for more than one panel year but the same taking into consideration the crucial date for all to be 01.08.2018 as revealed from the record. The aforesaid was made taking note of the fact that though in the special rule, no crucial date was prescribed but in the Highway Department for Divisional Accountant such a crucial date was there the same was earlier adhered to. However, the post to be filled up being in the Engineering Department and in the Highway Engineering Service crucial date of 15th July having been prescribed for promotion for Engineers, this year the same has been adhered to. The same no way cause prejudice to the petitioner inasmuch as even if the earlier crucial date is adhered to, the petitioner shall not have the qualification for being considered for promotion as by then they would have also been short of the service qualification of four years. The aforesaid service qualification notwithstanding in the intra office memo was not communicated to the respective authorities while inviting willingness for promotion from other feeder posts, needless to say shall be adhered to while considering their promotion. The estimated vacancy are for the panel year 2017-18. In such premises, the petitioner cannot be heard of saying that the aforesaid crucial date was discriminatory and fixed without any reasons with a sole purpose to discriminate th petitioner, moreso when there is no material to indicate that any of the persons having not the requisite qualification as prescribed in the earlier crucial date fixed was promoted much less being any material to indicate that the three road inspector as aforesaid were appointed against the vacancy for

the panel year 2010-2011. They were promoted in the panel year 2012-2013. No doubt the crucial date is required to be made available in the special rules, but here in this case the special rule being silent, the Government is not bereft of jurisdiction to fix a crucial date to draw the panel taking into consideration the facts and situations. There being no deviation in fixation of such crucial date earlier and at no point of time, persons having no qualification on such crucial date though had acquired qualification by the date promotion, accorded promotion, the petitioners as such have no case inasmuch as they were unqualified persons to be brought under the zone of consideration on the crucial date prescribed. Hence the writ petition filed by the petitioner is devoid of merits and liable to be dismissed.

7. The learned counsel for the 6th and 7th private respondents who have joined as intervenors have also taken the similar stand as taken by the Government respondent.

8. Before appreciating the contention raised with regard to sustainability of the prescription of crucial date for promotion to the post of Junior Engineer governed by the Special Rules, it would be apposite to mention here that whenever promotion is taken up for any post from the feeder post, the Tamil Nadu Government Servants (Condition of Service) Act, in Section 7 mandates to draw a list of approved candidates annually for promotion estimating the vacancies that would arise during the course of a year and also the manner in which the vacancies are to be estimated with the further stipulation that such approved list shall remain valid for a year. The aforesaid estimation of vacancies and also the approved list has a nexus to the crucial date, which is otherwise also called the cut off date. Taking into consideration the qualification prescribed for such promotion of such employee in the feeder post by the crucial date / cut off date, the approved list has to be drawn to fill up the vacancies that occurs in the promotional post within one year from the day following the cut off date / crucial date, is the mandate of the aforesaid act. The aforesaid was also the provisions in the Tamil Nadu State and Subordinate Service Rules before the enactment of the Tamil Nadu Government Servants (Condition of Service) Act. It is also the mandate that the crucial date shall be made available in the relevant special rules governing the post in the service for which the promotion panel / the approved list is drawn. However in this case strangely there is no prescription of any crucial date in the special rules applicable to the promotional post of Junior Engineer in the Subordinate service of the Highway Engineering Department of the State of Tamil Nadu. But as it appears promotion is being accorded to the said post in the panel year 2012-2013, 2013-2014 and 2014-2015 prescribing the crucial date

to be the 1st August of the said panel year uniformly. No executive instructions however is also made available to this Court for prescription of such crucial date to be the 1st August for preparation of the promotion panel to the said post. No doubt in the absence of the Rule, the Government is not bereft of jurisdiction to issue executive instruction in this regard, however such executive instruction as stated earlier has not been placed before this Court nor such an executive instruction is there in the case of Government respondent. For the panel year 2015-2016 and 2016-2017, a nil panel was drawn as seen from the documents produced and for the panel year 2017-2018. To draw the panel for the panel year 2017-2018, the process was initiated though in the month of July 2017. The crucial date prescribed has been made 15th of July 2017. Nothing has been produced also before this Court why such a crucial date was changed in respect of the aforesaid panel year. Admittedly, the promotion was also not taken up in the said panel year though the vacancies stated to have been estimated to be 53 that was likely to occur within one year day following the crucial date. So also in the communications made Director of Highway Department to all the Superintending Engineers seeking willingness from the qualified candidates in the feeder post on 08.02.2018 no such crucial date has been given except to fill up the rotation. In such premises, the contention of the petitioners challenging the fixation of such crucial date and seeking a direction to extend the crucial date to include the petitioners has to be addressed to.

9. As it appears though in the averment made, it was not specifically pleaded by the respondent what was the crucial date in earlier years but it has been justified that crucial date was fixed for every year and from the pleading it can be gathered according to the respondent the same was 15th of July every year. However, in the typed set of papers, the proceeding of promotion granted for the year 2012-2013, 2013-2014 as well as 2014-2015, it appears to this Court that 1st of August has been taken to be the crucial date for according promotion and on that day the qualification of all the candidates have been considered. Nothing is there in the record therefore to indicate that earlier promotions were accorded without prescribing any crucial date and taking note of the service qualifications of persons having the necessary educational qualification in the feeder, post they were promoted as revealed from the proceedings of promotion. The specific instance that was given by the petitioner indicating the fact that three road inspectors namely Radhakrishnan, Vaidyalingam and Ramachandran who were promoted in the panel year 2010-2011 though having no service qualification for being considered for promotion as by the time they were promoted they had acquired the necessary service qualification, appears to be contrary to the records. The aforesaid persons were promoted in respect of the panel year

2012-2013 taking into consideration the vacancy that were estimated then carrying forward the vacancy of the year 2011-2012 and 2012-2013. Therefore the contention advanced by the learned counsel appearing for the petitioner in this regard to justify that crucial date for the first time was prescribed to discriminate them, appears to be without any substance. To fill up the vacancy in the next panel year also that is 2013-2014 and 2014-2015 for which simultaneous consideration were made, the aforesaid crucial date of 1st August of the respective panel years was taken into consideration and promotion was accorded. Nothing has been brought to the notice of this Court indicating the fact that any of the persons who was not qualified by the aforesaid crucial date with regard to the service qualifications was ever accorded for promotion and as such it cannot be said that the crucial date was prescribed for the first time to accord promotion and as such the same was illegal and arbitrary. However, in the absence of any prescription of any crucial date, in the special rules and also the executive instructions in this regard whether prescription of a crucial date can be said to be just and proper. It has been brought to the notice of this Court that since for the post of Divisional Accountant in the Highway Department in the Special Rules crucial date of 1st August was there in the relevant special rules in the said department, the department had followed the aforesaid crucial date earlier. But the service being one in the Engineering Department and the special rules for the Highway Engineering Service which has link with the post of Junior Engineers to be filled up in Highway Department Subordinate Service in estimation of vacancies, prescribes 15th July of every year to be the crucial date, the same was adhered to this year. Though such a contention to justify the crucial date fixed earlier and change of the same this year though cannot be accepted there being no pleading and also any decision in this regard but considering the fact that a crucial date is uniformly fixed for all services in the earlier panel years for consideration for promotion to the post of Junior Engineers to be the 1st August and even if in this year the same is not adhered to and was changed to 15th of July on the ground as submitted for which there is also no materials on record to substantiate, this Court is not inclined to interfere with change of such crucial date inasmuch as the change of the same also noway going to enure to the benefit of the present petitioners. Since a crucial date is fixed uniformly earlier and promotion is accorded and also the State makes commitment to taking into consideration while according promotion for all services in the feeder post such crucial date and the vacancies are to be filled up estimated for the said panel year, this Court is not inclined to accept the contention challenging such fixation of such crucial date to be discriminatory and extend the same on the ground that no crucial date having been fixed earlier and promotion being granted by

taking into consideration the service qualification by the date the panel is prepared inasmuch as the same appears to be without any substance. However, considering the fact that the aforesaid panel year has already lapsed for which the panel is going to be drawn and the estimated vacancies are going to be filled up and the mandate of the Tamil Nadu Government Servants (Condition of Service)Act is to draw approved list for every year for such promotion and in earlier occasions also simultaneous promotion of more than one panel year has been considered by the Government respondent, this court dispose of this writ petition with a direction to the Government respondent to invite the willingness from the eligible candidates of feeder post for promotion for the panel year 2018-2019 indicating crucial date of 15th July 2018 and prepare approved list of candidates eligible for promotion on the crucial date of the panel year concerned and fill up the vacancies that accrued in accordance with the mandate of the Tamil Nadu Government Servants (Condition of Service) Act. Such exercise has to be done within a period of two months from the date of receipt of a copy of this order.

10. With the aforesaid order, this writ petition stands disposed of. Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Government of Tamil Nadu,
Rep by the Secretary to the Government,
Highways (HK3) and Minor Ports Department,
Fort St. George, Chennai - 600 009.

2. The Chief Director,
The Office of the Director (HW),
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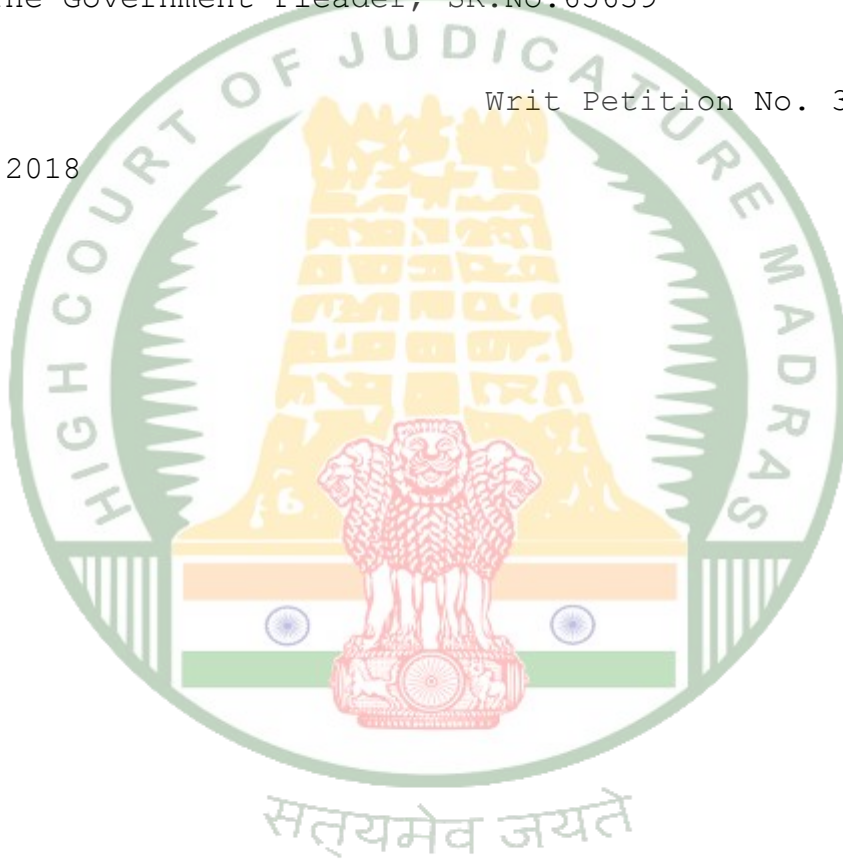
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5. The Divisional Engineer,
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Trichy Road, Coimbatore - 18.

+1 cc Mr.P.Rajendran, Advocate, SR.No. 65725
+1 cc M/s.Meenakshi, Advocate, SR.No. 65658
+1 cc to The Government Pleader, SR.No.65639

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CSL/24.10.2018



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