



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2018

CORAM:

**THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs. JUSTICE R.THARANI**

W.A. (MD) .No.1441 of 2017
and
C.M.P. (MD) No.10984 of 2017

The Joint Director (Administration),
Highways Department,
Chepauk, Chennai-600 005. ... Appellant/3rd Respondent

Vs.

1. V.Magudeeswaran
2. The Secretary to Government,
Government of Tamil Nadu,
Highways and Minor Ports Department,
Secretariat, Chennai-9.
3. The Director General,
Highways Department,
Chepauk, Chennai-600 005. ... Respondents 2 & 3/Respondents 1&2

PRAYER: This appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 26.11.2015 in W.P. (MD) No.21031 of 2015.

Prayer in WP(MD). 21031/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to consider the claim of the petitioner along with others for appointment to the post of junior Draughting Officer by relaxing the maximum age limit fixed in the notification No. 12390/Nir 5(1)/ 2014 dated 26.10.2015 calling for applications for filling up the post of Junior Draughting Officer in the Highways Department in respect of the petitioner in terms of Rule 12(d) and Rule 50 of the Tamil Nadu State and Subordinate Service Rules.

For Appellant : Mr.V.R.Shanmuganathan
Special Government Pleader
For Respondent -1 : Mr.M.Govindan

**JUDGMENT**

(Judgment of the Court was delivered by **T.S.SIVAGNANAM, J**)

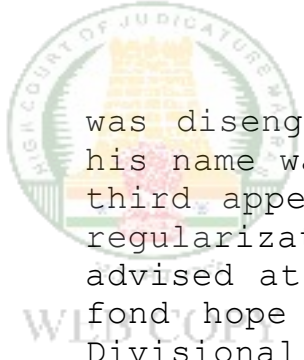
Heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the appellant and Mr.M.Govindan, learned counsel appearing for the respondent 1.

2.This appeal by the State is directed against the order made in W.P.(MD)No.21031 of 2015, dated 26.11.2015. The first respondent/writ petitioner filed the said writ petition to direct the appellant to consider his claim along with others for appointment to the post of Junior Draughting Officer by relaxing the maximum age limit fixed in the notification No.12390/NIr5/(1)/2014 dated 26.10.2015, calling for application for filing up the post of Junior Draughting Officer in the Highways Department in respect of the writ petitioner in terms of Rule 12(d) and Rule 50 of the Tamil Nadu State and Subordinate Service Rules. The writ petition was disposed of by the impugned order. Though the relief sought for was not granted, the Court issued the following directions:-

"(ii)The first respondent is directed to pass orders therein relating to the regularisation of the service of the petitioner based on the proposals sent by the second respondent as per the aforesaid direction, within a period of eight weeks from the date of receipt of the proposal from the second respondent."

3.The State is on appeal, against the said order. The writ petitioner working as NMR candidate from 02.07.2000 to 31.10.2006 in the post of Technical Assistant. Thereafter, his services were disengaged and was not in employment with the appellant in any category of post. Further, when he applied for the post of Junior Draughting Officer on 26.10.2015, the notification stipulated age limit. As on the date of notification, the first respondent cannot apply as he was age bared. It appears that there was other similarly placed candidates as that of the first respondent/writ petitioner, who has also continued to work as NMR for a long number of years. Those candidates were also disengaged and they have approached the Court and obtained an order. Pursuant to the Court order, many were granted the benefit of absorption in the permanent post either at the discretion of the Government or by way of implementation of the order passed by this Court. One such candidate is S.Jayenthi, who had filed W.P.(MD)No.20836 of 2015, who had been granted identical relief as that of the relief sought the first respondent/writ petitioner in the impugned order.

4.The learned Special Government Pleader pointed out that the said S.Jayenthi worked in the department for more than 20 years. Though it may be true that the respondent/writ petitioner



was disengaged with effect from 2008 onwards, much prior to that his name was in the list of candidates which were furnished by the third appellant to the first appellant for being considered for regularization. It appears that the respondent was not properly advised at the relevant point of time. He had been waiting with a fond hope that the Service particulars which were submitted by Divisional Engineer to the second respondent on 22.04.2008 would yield results.

5.The learned counsel for the first respondent/writ petitioner has drawn the attention of this Court to other similarly placed persons who were working on daily wages basis and absorbed in service. One such case was that of the case of the said Jeyanthi, as noticed above. The only hindrance in the first respondent's case is that beyond 2008, he had neither been working with the department nor approached the Court for securing any interim order to protect his employment. The selection for the post of Junior Draughting Officer though notified in the order 2015, has now being scraped.

6.Thus considering the factual position of the case, we are of the view that taking note of the proposal of the Divisional Engineer dated 22.04.2008, the respondent/writ petitioner can be considered for suitable appointment in the appellant department, since this benefit had been extended to other similarly placed persons based on Court order which took note of the proposal sent by Divisional Engineer. While doing so, the respondent/writ petitioner should not be non suited on the ground of age qualification, since at the relevant point of time, when he applied for the post, he was a graduate Engineer belonging to backward community the age restriction was not applicable.

7.In the light of the above, we dispose of the writ petition by modifying the direction issued by the Writ Court by directing the appellants to consider the proposal of the Divisional Engineer, Dindigul dated 22.04.2008 and taking note of the fact that the respondent/writ petitioner had applied for the post of Junior Draughting Officer pursuant to the notification dated 26.10.2015 and consider the case of the respondent/writ petitioner for appointment in a suitable post in the appellant department without the reference to the age of the respondent/writ petitioner as on date. It is needless to state that the respondent/writ petitioner has been out from employment since 2008, no benefit will accrue to him on account of past service as



NMR in the post of Technical Assistant and by way of implementation of the direction issued by us. The employment offered to the respondent shall be a fresh employment. No Costs. Consequently, C.M.P.(MD)NO.10984 of 2017 is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Joint Director (Administration),
Highways Department,
Chepauk, Chennai-600 005.
2. The Secretary to Government,
Government of Tamil Nadu,
Highways and Minor Ports Department,
Secretariat, Chennai-9.
3. The Director General,
Highways Department,
Chepauk, Chennai-600 005.

+ 1 cc TO Mr.S.Govindan , Advocate in SR No. 55753

Mrn
AE/MMS/SAR4/28.05.2018/4P/5C

W.A. (MD) .No.1441 of 2017
15.03.2018