

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2019

DELIVERED ON : 31.10.2019

CORAM :

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.3417 of 2005

A.Mohamed Abu Bucker ... Petitioner

Vs.

1.The Secretary to Government,
Department of Highways,
Secretariat, Chennai - 600 009.

2.The Chief Engineer,
Highways (General),
Chepauk, Chennai - 600 005.

3.The Accountant General (A & E),
Anna Salai, Chennai - 600 018.

4.The Superintending Engineer,
Highways Circle Office,
Reserve Line Road,
Palayamkottai,
Tirunelveli - 627 002.

5.The Divisional Engineer,
Highways Division Office,
Nagercoil - 629 001.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus calling for and examining the entire records relating to and connected with the proceedings of the 4th respondent herein in No.10855/2004-7/B1 resulting in his order dated 27.12.2004 and quashing the same and directing him consequently fix the scale of pay of the petitioner treating the date of his appointment as Road Inspector namely 22.05.1972 as the date of initial appointment considering his representations dated 13.11.1989 and 01.02.2003 and to send his pensionary proposals to the 3rd respondent herein preparatory to his retirement shortly.

For Petitioner : Mr.S.M.Hameed Mohideen

For Respondents: Mr.S.N.Parthasarathi,
Government Advocate (R1, R2, R4 & R5)

Mrs.T.S.Selvarani (R3)

O R D E R

The above Writ Petition has been filed by the petitioner to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the 4th respondent dated 27.12.2004 and to quash the same and to direct the 4th respondent to fix the scale of pay of the petitioner treating the date of his appointment as Road Inspector namely 22.05.1972 as the date of initial appointment considering the representations dated 13.11.1989 and 01.02.2003 and to send the pensionary proposals to the 3rd respondent.

2.It is the case of the petitioner that he was initially appointed as Gang Mazdoor on 17.07.1969 and was later appointed as Contingent Watchman and Gang Mazdoor on 04.05.1970. Subsequently, the petitioner was appointed as Road Inspector on 10.02.1972 and he was ousted from the service as Road Inspector on 25.03.1972 for want of vacancy. The petitioner was reverted as Gang Mazdoor on 26.03.1972 and was re-appointed as Road Inspector on 22.05.1972. In the year 1974, vacancies arose for the post of Record Clerk and option was sought from Road Inspectors willing to be appointed as Record Clerk. By his letter dated 27.04.1974, the petitioner expressed his willingness to be appointed as Record Clerk without prejudice to his seniority in the category of Road Inspector as on 22.05.1972. The petitioner was appointed as Record Clerk on 02.05.1974. Thereafter, the petitioner made representation to the 4th respondent on 13.11.1989 to fix his pay scale in the post of Road Inspector, taking his initial date of appointment as Road Inspector as 22.05.1972. Since there was no response, the petitioner made another representation on 01.02.2003. The 4th respondent, by order dated 27.12.2004, rejected the petitioner's representations. Challenging the said order, the petitioner has filed the above Writ Petition.

3.In the year 1974, since vacancies arose for the post of Record Clerks, options were sought from Road Inspectors willing to be appointed as Record Clerks. By his letter dated 27.04.1974, the petitioner expressed his willingness to be appointed as Record Clerk without prejudice to his seniority in the category of Road Inspector as on 22.05.1972. However, the 5th respondent, by order dated 02.05.1974, appointed the petitioner as Record Clerk under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Services. While issuing the appointment order, the 5th respondent has not given any

specific undertaking to the petitioner to consider the seniority of the petitioner in the category of Road Inspector as on 22.05.1972. In spite of the fact that the 5th respondent has not stated anything about the seniority of the petitioner in the category of Road Inspector, the petitioner chose to join the post of Record Clerk. When the respondents have not given any positive reply to the petitioner in respect of the seniority in the appointment order, the petitioner cannot now claim seniority from 22.05.1972. Though the petitioner was not recruited through Employment Exchange, his services were regularized with effect from 03.05.1974 as per G.O.Ms.No.1240, Transport Department, dated 04.11.1988 in the cadre of Record Clerk and all the benefits, including Special Grade Record Clerk and additional increment, were sanctioned to him.

4.It is pertinent to note that the petitioner's initial appointment as Road Inspector was purely on temporary basis and he was not recruited through Employment Exchange and his services in the cadre of Road Inspector was not brought into provincialised services. Therefore, it is clear that the petitioner did not have lien in the post of Road Inspector. The previous services of the petitioner as Contingent Watchman, Gang Mazdoor and Road Inspector were also not regularized since he was appointed purely on temporary basis. His services were regularized only in the post of Record Clerk as per the order dated 04.11.1988. The petitioner was appointed as non-provincial temporary Road Inspector on 22.05.1972 without consulting the Employment Exchange. Since the petitioner was appointed after the issuance of the Government Order in G.O.Ms.No.790, Labour Department, dated 05.07.1971, the same is not applicable to him.

5.For the reasons stated above, the 4th respondent rejected the petitioner's representations dated 13.11.1989 and 01.02.2003 by the impugned order dated 27.12.2004.

6.The reasoning given by the 4th respondent in the impugned order dated 27.12.2004 is proper. I do not find any error or irregularity in the order passed by the 4th respondent. The Writ Petition is liable to be dismissed. Accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

va

To

1.The Secretary to Government,
Department of Highways,
Secretariat, Chennai - 600 009.

2.The Chief Engineer,
Highways (General),
Chepauk, Chennai - 600 005.

3.The Accountant General (A & E),
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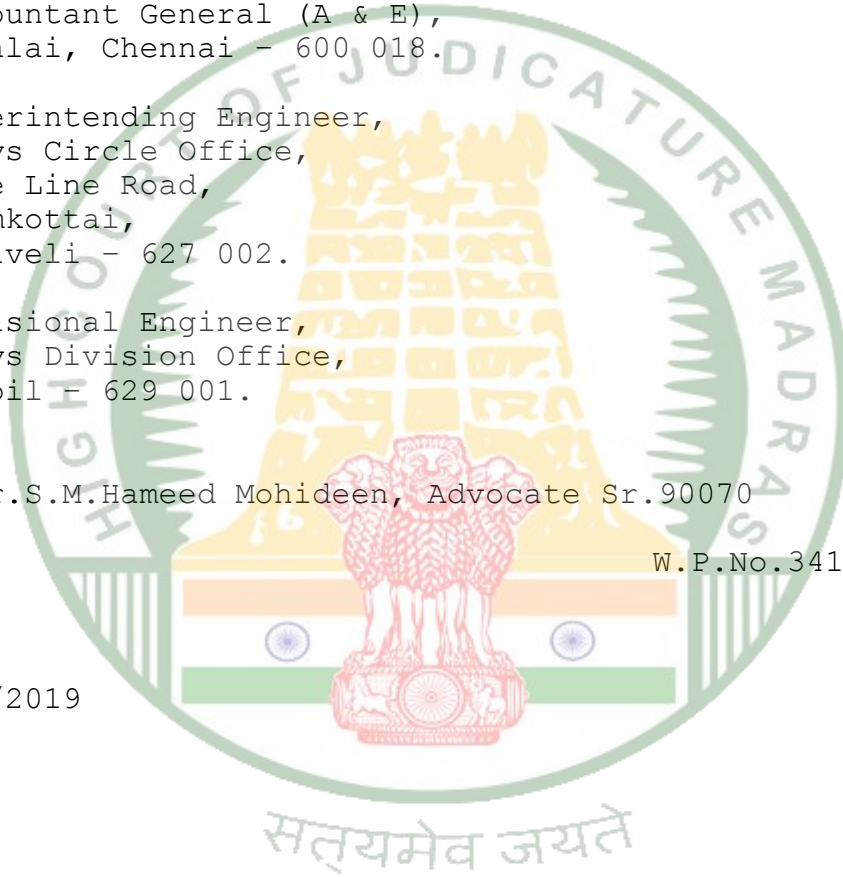
4.The Superintending Engineer,
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5.The Divisional Engineer,
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+1cc to Mr.S.M.Hameed Mohideen, Advocate Sr.90070

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srg 25/11/2019



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