



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2019

CORAM

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.7889 of 2010

K.Pandian

... Petitioner

vs.

1.The Chief Engineer (General),
Highways Department,
Chennai -05.

2.The Divisional Engineer,
Highways Department,
Theni.

3.The Assistant Divisional Engineer,
Highways Department,
Bodi.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in No.700/10/A5 dated 26.03.2010 and quash the same and consequently to direct the respondents 1 to 3 to promote the petitioner as Road Inspector Grade-II from the date of promotion of his juniors.

For Petitioner : Mr.Gnanagurunathan

For Respondents : Mr.K.Chellapandian
Additional Advocate General
assisted by Mr.M.Jeyakumar
Additional Government Pleader

O R D E R

This is an unfortunate case, where, the petitioner was denied promotion, even after getting an order in the writ petition filed by him earlier.

2.The petitioner joined in the Bodinayakkanur Divisional Engineer Office as Gang Mazdoor. Though his appointment was made on 28.10.1997, his service was regularised in the said post by order of second respondent only on 25.01.1999. When a combined seniority



list for promoting the Gang Mazdoor to the post of Road Inspector Grade-II for Theni Division was prepared as on 01.01.2008 (2007-2008), the petitioner's name was figured at Sl.No.36. The post of Road Inspector Grade-II has to be filled by direct recruitment and recruitment by transfer from the post of Gang Mazdoor.

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3.As per the rules, one of the qualifications for the post of Road Inspector Grade-II, is pass in 10th standard from a recognized school. The petitioner has acquired pre-foundation course offered by Madurai Kamaraj University, which was also recognized as equivalent to SSLC. This position is admitted. When the petitioner's juniors were promoted, ignoring the seniority as per the combined Seniority list for Theni Division as on 01.01.2008, the petitioner filed a writ petition in W.P.(MD)No.10190 of 2008 to quash the order, by which the petitioner's juniors were promoted and to direct the respondents to consider the petitioner's promotion to the post of Road Inspector Grade-II as per the order and seniority list, that was prepared in the year 2008. The writ petition was contested by respondents only on the ground that the petitioner has not passed S.S.L.C. Examination. The juniors, who were promoted, were impleaded as respondents 4 and 5. Paragraphs 5 and 6 of the order in W.P.(MD)No.10190 of 2008 is relevant and the same are extracted below:

"5.It is seen from the typed set of papers that the petitioner has passed Pre-Foundation Course conducted by the Madurai Kamaraj University (Open University) and pass certificate was given to the petitioner on 02.08.2006. Further, as per the G.O.Ms.Nos.528, Personnel and Administrative Reforms (P&AR) Department, dated 18.05.1985, the Pre-Foundation Course has been recognized by the Government as equivalent to the ten years S.S.L.C. Therefore, the petitioner is qualified and to be considered for his promotion to the post of Road Inspector Grade-II and the second respondent is bound to give promotion to the petitioner as he fulfils the qualification.

6.Hence, the impugned order of the second respondent, dated 30.09.2008 is set aside and the second respondent is directed to give promotion to the petitioner as per the seniority and pass orders within a period of four weeks from the date of receipt of a copy of this order."

4.The contentions of the respondents, that the petitioner did not have the qualification of SSLC, was specifically dealt with by this Court and it was held that the pre foundation course completed by the petitioner in Madurai Kamaraj University is equivalent to SSLC, as clarified by the Government vide G.O.Ms.No.193, dated 01.08.2008. The order of this Court in the earlier writ petition was not challenged by respondents 4 and 5 in



the writ petition, who are juniors to the petitioners and were promoted to the post of Road Inspector Grade-II by the impugned order in the previous writ petition. However, the respondents herein preferred an appeal in W.A(MD)No.143 of 2010. The Honourable Division Bench, after considering the facts that the petitioner's juniors are qualified and promoted by the order impugned in the writ petition, and that promotion is based on merit cum seniority inclined not to disturb the promotion but without affecting the rights and privilege of the petitioner to get his place and seniority in the promotional post, as directed by the learned Single Judge, has passed the following order:

"6.Upon hearing the learned Government Advocate appearing for the appellants and the learned Counsel appearing for the 1st respondent/writ petitioner and after going through the records including the order of learned Single Judge, we are of the considered view that the order passed in the writ petition requires interference to the following extent. In our opinion, the learned Single Judge ought not to have set aside the promotion given to the respondents 4 and 4 in the writ petition and two others, as the promotion to the post of Road Inspector Grade-II is based on merit cum seniority basis. The learned Single Judge ought to have directed the 2nd respondent to consider the case of the writ petitioner also for promotions, if he is otherwise qualified, instead of setting aside the entire promotion in respect of other four persons, who are otherwise fully qualified for the promotional post and the learned Single Judge has failed to consider that the eligibility of the writ petitioner to claim promotion cannot in any manner affect the promotional opportunity of the other persons and in the event of his claim being accepted by the court of law, the writ petitioner is always at liberty to claim his seniority suitably re-fixed. As such, the order of the learned Single Judge to that extent warrant interference and modification.

7.In the result, that portion of the order of the learned Single Judge setting aside the promotion given to the respondents 4 and 5 in the writ petition and two others and giving direction to the 2nd appellant/2nd respondent to straightaway give promotion to the writ petitioner, as per his seniority, is set aside. The writ petition is ordered by directing the 2nd appellant/2nd respondent to consider the writ petitioner for promotion to the post of Road Inspector Grade-II in the light of the two Government orders, namely, G.O.Ms.No.16, Highways and Minor Ports (HK3) Department, dated 21.01.2009 and G.O.Ms.No.528, Personnel & Administrative Reforms (P&AR) Department, dated 18.05.1985, and in the event of his



being promoted on merits, the revised seniority in the post of Road Inspector Grade-II shall be drawn. This exercise shall be done within a period of four weeks from the date of receipt of a copy of this order."

5. However, the respondents disregarded the specific direction of the Honourable Division Bench to promote the petitioner and to place him in the seniority list based on merit in the cadre of Road Inspector Grade-II. A vague stand has been taken by the respondents in the counter affidavit that in view of the order passed by this Court in W.A.(MD)No.143 of 2010, a seniority list has been prepared on the basis of Rules and Regulations. It is seen that, in the seniority list prepared by the respondents in the feeder category, the petitioner was placed at Sl.No.10 quiet contrary to the direction of Honourable Division Bench. The respondent has now come forward with the case that the petitioner has been given in third place in the promotional panel. As per the seniority list now produced before this Court, it is seen that one Murugan and Thirupathivasagan, were placed above the petitioners, even though they were far below the petitioner in the panel list prepared in 2008.

6. It is still worse to contend that the petitioner will be given promotion as and when vacancy arose in the promotional post. This Court is able to see that the conduct of respondents is in violation of direction of this Court and it is nothing, but circumventing Court order. The petitioner, who is entitled to get promotion and to get his seniority based on merit in the post of Road Inspector Grade-II, is deprived of his promotion intentionally without any legal basis. The attitude and conduct of the respondents in this matter is serious and the direction of this Court has been flouted. The stand taken by the respondents not only in the counter, but by their conduct, denying promotion to the petitioner for the past 11 years is contumacious. It is pertinent to point out that the respondents never uttered anything about the merits, while considering the promotion of petitioner in 2008. This would show how the respondents have played a role to suit their convenience. When the direction of this Court was to revise the seniority in the post of Road Inspector Grade-II, it is contended by the respondents in the counter that the petitioner's name was included and fixed at Sl.No.10 after revising the list prepared on 01.09.2008 for promotion to the post of Road Inspector Grade-II.

7. The earlier writ petition filed by the petitioner was allowed by order, dated 15.09.2009, and the same was confirmed by the Honourable Division Bench, on 02.03.2010. Even thereafter, the respondents did not comply with the direction of this Court by an erroneous and perverse interpretation, despite the issue is settled by this Court in the first round of litigation in W.P.(MD)No.10901 of 2008 as modified in the writ appeal only with an intention not to



disturb the persons, who are already in service in the promotional post. In such circumstances, this Court is inclined to allow this writ petition with exemplary cost.

8.As a result, this writ petition is disposed of with the cost of Rs.5,000/- payable by the respondents. The respondents are directed to promote the petitioner to the post of Road Inspector Grade-II, forthwith and such promotion shall take effect considering the seniority list prepared for 2007-2008. The respondents are also directed to give all the monetary benefits apart from placing the petitioner suitably in the seniority list in the post of Road Inspector Grade-II. It is open to the State to hold an enquiry against the respondents or anyone, who is responsible for the wrong interpretation of the order passed by this Court in the earlier round of litigation and for taking a stand, as it is reflected in the counter affidavit filed by the respondents, through one M.A.Manikandan, then Divisional Engineer (H) Theni. In case the direction of this Court as per order in the writ appeal in W.A.(MD) No.143 of 2010, dated 02.03.2010, is not obeyed within a period of two weeks from the date of receipt of a copy of this order, the petitioner shall be paid a further sum of Rs.1,00,000/- for the agonies he had undergone for all these years in pursuing the second round. The writ petition is disposed of accordingly.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

To

- 1.The Chief Engineer (General),
Highways Department, Chennai -05.
- 2.The Divisional Engineer,
Highways Department,Theni.
- 3.The Assistant Divisional Engineer,
Highways Department,
Bodi.

+1 CC to M/s.M.GNANAGURUNATHAN, Advocate (SR-89747[F] dated 26/09/2019

W.P. (MD)No.7889 of 2010
26.09.2019

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