



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.6149 of 2015

and

M.P(MD)No.1 of 2015

WEB COPY

T.Raghavan

... Petitioner

vs.

1)The Divisional Engineer (Highways),
Ramnad Division,
Ramnad.

2)The Assistant Divisional Engineer(Highways),
Ramnad Division,
Ramnad.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 28.11.2014 and 02.12.2014 in Na.ka.No.801/2014/A3 passed by the respondent and the impugned seniority list and quash the same and consequently direct the first respondent to promote the petitioner to post of Road Inspector Grade II.

For Petitioner : Mr.J.Anandkumar

For Respondents : Mr.S.Dhayalan, Government Advocate

ORDER

The prayer in this writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 28.11.2014 and 02.12.2014 in Na.ka.No.801/2014/A3 passed by the respondent and the impugned seniority list and quash the same and consequently direct the first respondent to promote the petitioner to post of Road Inspector Grade II.

2.Learned counsel for the petitioner would submit that the petitioner completed 10th Standard in 1995 and he was appointed as a Road Worker on 28.11.1997 and his services were regularised from the date of appointment. Pursuant to the direction issued by the Chief Engineer to fill up the posts of Road Inspector, on 23.09.2008, a seniority list for promotion to the post of Road Inspector Grade-II was prepared, in which, the petitioner's name was placed at Serial No.14. While so, he was issued with the



charge memo dated 20.08.2009 on the allegation that he suppressed the higher qualification of pass in 10th Standard while joining duty as a Road Worker. Thereafter, an enquiry was ordered and the Assistant Divisional Engineer, Paramakudi, was appointed to conduct the enquiry. According to the petitioner, the enquiry officer without examining any witness by his report dated 29.12.2010 held the charges as proved. Since the said charge memo was pending, the petitioner was not considered for promotion and therefore, he filed W.P(MD)No.4229/2012 challenging the charge memo which was allowed by order dated 26.06.2012 setting aside the charge memo with a direction to the respondents to consider the petitioner for promotion if he is eligible.

3.It is further submitted that pursuant to the said order, the 1st respondent by proceedings dated 10.08.2012 cancelled the charge memo issued against him. Thereafter, the petitioner submitted a representation dated 05.10.2012 to promote him to the post of Road Inspector Grade-II and since no order was passed thereon, he filed W.P(MD)No.14933/2012 and the same was disposed of by order dated 23.06.2014 recording the submission of the learned Additional Government Pleader that vacancies are very much available in the 1st respondent office and the claim of the petitioner would be considered after obtaining necessary approval from the Government. Since the said order was not complied with, the petitioner filed Contempt Petition No.1157/2014 and after coming to know the filing of the contempt, the 1st respondent by proceedings dated 23.07.2014 issued two separate orders stating that whenever vacancy arose, his grievance will be considered and further stated that he had wrongly mentioned the date of regularization in his writ petition. After receipt of the said proceedings, the petitioner submitted a representation seeking to include his name in the panel as per the orders of this Court.

4.He would further submit that subsequently, the 1st respondent passed the impugned order dated 28.11.2014 stating that only 9 persons who are seniors to the petitioner were promoted and even according to the seniority as on that date, the petitioner was placed at 12th place and therefore, his request cannot be considered. On receipt of the said impugned order, the petitioner made another representation stating that the person placed above him were not acquired the required qualification and they acquired the requisite qualification only after the petitioner's acquisition of the same and therefore, the entire proceedings have to be re-considered. On receipt of the said notice, the 1st respondent issued another impugned order dated 02.12.2014 stating that seniority list was prepared only based on the date of appointment. It is further stated that as per the details mentioned by the 1st respondent, one Vadivel was given promotion in 2011-12, but he completed SSLC only in July 2009 whereas the

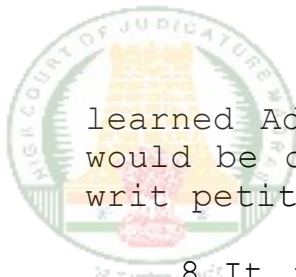


petitioner has completed SSLC in October 1995 itself. Thus, he would pray for setting aside the impugned orders.

5.The 1st respondent filed counter affidavit. Learned Government Advocate appearing for the respondents would state that as per G.O.No.193, dated 01.08.2008 and the proceedings of the Chief Engineer(General), Highways, dated 08.09.2008, 9 sanctioned posts of Road Inspector Grade-II had to be filled up by the respondents during 2008-2009, of them, 7 Gang Mazdoor were promoted as Road Inspector Grade-II who were placed at seniority Nos.1, 2, 3, 5, 6, 7 and 9 and two persons in seniority Nos.4 and 8 were not promoted since their pass in 10th Standard was not informed at the time of appointment like that of the petitioner and the person promoted with seniority No.9 expired on 09.11.2008, in that vacancy a Gang Mazdoor who joined on 24.11.1997 was promoted and in the balance two posts, persons placed at seniority Nos.10 and 13 were promoted. It is further submitted that as per G.O.Ms.No.34, Highways (HKS) Department, dated 29.01.2008, 75% of the vacancies in the post of Road Inspector Grade-II shall be filled up by direct recruitment and the remaining 25% of the posts shall be filled up by recruitment by transfer from the post of Gang Mazdoor who have completed 5 years of service and a pass in SSLC. He would further submit that pursuant to the letter dated 16.11.2011 of the Chief Engineer for filling up three posts of Road Inspector Grade-II by promotion, persons with seniority Nos.4 and 8 whose promotion were stalled in 2008 like the petitioner, were promoted as a result of their charge memos rescinded pursuant to the orders made in W.P(MD)Nos.14193 & 14194/2011 and in the remaining one post one Thiru.M.Vadivelu, Gang Mazdoor was promoted on 30.04.2012 as per G.O.Ms.No.523 dated 04.06.1982. The respondents would state that pending 17(b) charges, the petitioner was not promoted during 2011-12. Thus, he would pray for dismissal of the writ petition.

6.Heard both sides.

7.Perusal of record shows it is not in dispute that the petitioner's name found place in serial No.14 in the list of eligible persons for promotion to the post of Road Inspector Grade-II during 2008-09 and the petitioner's promotion has been stalled by issuance of a charge memo stating that he suppressed his 10th qualification at the time of his joining as Road Worker and that charge memo has been quashed by this Court in W.P(MD) No.4229/2012 dated 26.06.2012 with a direction to consider the petitioner for promotion. Once the charge memo is set aside, the petitioner ought to have been promoted as per 2008 seniority list and even in W.P(MD)No.14933/2012 filed by the petitioner to promote him to the post of Road Inspector Grade-II, this Court only taking into consideration the undertaking given by the



learned Additional Government Pleader that the petitioner's claim would be considered as there were vacancies, disposed of the said writ petition by order dated 23.06.2014.

8. It is also seen from the records that even in the impugned proceedings dated 02.12.2014, it was admitted by the respondents that there are 3 vacancies available during 2011 and 2012 which was filled up by 2 persons who got orders from this Court and the remaining one post was filled up by one Vadivelu who completed 10th Standard in 2009 and the said Vadivelu has not been shown in 2008 seniority panel. Therefore, in my considered opinion, since the charge memo has been quashed, the petitioner ought to have been promoted as per 2008 seniority panel. Hence, the impugned orders dated 28.11.2014 and 02.12.2014 are set aside and the respondents are directed to restore the seniority of the petitioner as per 2008 seniority panel and promote the petitioner from the day his junior in 2008 seniority panel was promoted, within a period of eight weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

BALA

To

1) The Divisional Engineer (Highways),
Ramnad Division, Ramnad.

2) The Assistant Divisional Engineer (Highways),
Ramnad Division, Ramnad.

+1 CC to MR.J.ANANDKUMAR, Advocate (SR-104408[F] dated 11/12/2019)

+1 CC to SPL.GP (SR-104669[F] dated 12/12/2019)

W.P(MD)No.6149 of 2015

11.12.2019

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