

IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 20.11.2020

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.17789 of 2010

R.Kesavan

... Petitioner

Vs

- 1.The Chief Engineer (General),
Highways Department,
Chennai - 600 005.
- 2.The Divisional Engineer,
Highways Department,
Nagapattinam.
- 3.R.Panneer Selvam,
Road Inspector,
Highways Department,
Sirkazhi Sub Division,
Nagapattinam District.
- 4.R.Mathiazhagan
Road Inspector,
Highways Department,
Mayiladudurai Sub Division,
Nagapattinam District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the records connected with the impugned order passed by the second Respondent in Proc.Lr.No.1741/2007/4 dated 03.03.2009 and quash the order passed therein and consequently direct the second Respondent to restore the Petitioner's original position in the panel and promote him along with others from the date of his original promotion order of second Respondent dated 18.10.2008.

For Petitioner : Mr.Sudangan
for M/s.R.Rengaramanujam

For Respondents : Mr.G.K.Muthukumar
Spl. Govt. Pleader for R1 and R2

O R D E R

This writ petition is directed against the order dated 03.03.2009 of the second Respondent. By the said order, the Petitioner's temporary promotion as a Road Inspector Grade-II was reversed and he was reverted to the post of Gang Mazdoor.

2. The Petitioner was appointed as a trainee Gang Mazdoor on 10.11.1997 on a consolidated salary of Rs.1500/- per month. Upon completion of the one year training period, he was appointed on a regular time scale of pay with effect from 10.11.1998. The next avenue of promotion from the post of Gang Mazdoor is to the post of Road Inspector Grade-II. The educational qualification for the post of Road Inspector Grade-II is a pass in the 10th standard. As per G.O.Ms.No.193, Highways and Minor Ports (HK3) Department dated 01.08.2008 (G.O.Ms. No.193), Rule 4(b) of the Special Rules of the Tamil Nadu Highways Engineering (Work Charged) Subordinate Service was amended by prescribing 10th standard pass from a recognized school as the educational qualification for recruitment by transfer from the post of Gang Mazdoor in the Tamil Nadu Basic Service. Shortly after G.O.Ms.No.193 was issued on 01.08.2008, a panel for Road Inspector Grade-II was prepared on 17.09.2008 and the Petitioner's name was included in the said panel. Pursuant thereto, by promotion order dated 10.10.2008, the Petitioner was promoted temporarily as a Road Inspector Grade-II subject to the conditions specified therein. These conditions included the condition that the promotee would not claim any priority based on the said promotion and that the promotee may be reverted from the promoted post without prior notice. Subsequently, by G.O.Ms.No.16, Highways and Minor Ports (HK3) Department dated 21.01.2009 (G.O.Ms. No.16), Rule 4(b) of the aforesaid special rules was amended, once again, with retrospective effect from 01.08.2008. In terms of the said amendment, the prescribed educational qualification was modified to the limited extent that employees who passed the 10th standard from a recognized school or its equivalent examination duly recognized by the Government of Tamil Nadu would be eligible for recruitment by transfer.

3. The impugned proceedings/order dated 03.03.2009 came to be issued after G.O.Ms.No.16 was issued. By the impugned proceedings, it was communicated that the name of R.Panneer Selvam and R.Mathiazhagan had been inadvertently omitted from

the seniority list and panel dated 17.09.2008. It was further stated that these two persons are senior to K.Ravichandran (the Petitioner in W.P. No.17481 of 2010, which was withdrawn) and R.Kesavan (the Petitioner herein) who had been temporarily and conditionally promoted as Road Inspector Grade-II on 10.10.2008. Consequently, both Ravichandran and the Petitioner were reverted to their original post and the promotion was offered instead to R.Panneerselvam and R.Mathiazhagan. After issuing a representation dated 26.05.2009, initially, the Petitioner challenged G.O. Ms. No.16 by filing W.P. No.4351 of 2009. Subsequently, W.P. No.4351 of 2009 was dismissed as withdrawn on 08.04.2010. The present writ petition was filed thereafter in August 2010.

4. I heard the learned counsel for the Petitioner and Mr.G.K.Muthukumar, the learned Special Government Pleader for Respondents 1 and 2.

5. The learned counsel for the Petitioner submitted that the Petitioner was appointed as a trainee Gang Mazdoor on 10.11.1997 and his services were regularized with effect from 10.11.1998. On the contrary, the services of the 3rd and 4th Respondents, namely, R.Panneerselvam and R.Mathiazhagan were regularized on 13.11.1998 and 11.11.1998, respectively. His next submission is that it is incorrect to state that the Petitioner did not have the prescribed educational qualification as on the date of his appointment. Although this submission is contrary to the statements in paragraph 2 of the affidavit in support of the writ petition, by way of substantiation, he referred to the SSLC Certificate dated 17.06.1995 and pointed out that the Petitioner had obtained the requisite 10th standard pass from a recognized school at the examination conducted in March 1995, which preceded the date of his appointment as a Gang Mazdoor. Thus, the learned counsel contended that the Petitioner was duly qualified for the post of Road Inspector Grade-II and was senior to both R.Panneerselvam and R.Mathiazhagan on account of being regularized on an earlier date. Moreover, the impugned proceedings dated 03.03.2009 were issued without prior notice or an opportunity of hearing; therefore, the principles of natural justice were violated. Thus, the impugned reversion order is vitiated.

6. On the contrary, the learned Special Government Pleader submitted that the Petitioner is admittedly junior to both R.Panneerselvam and R.Mathiazhagan. In support of this contention, he referred to the table at paragraph 3(a) of the counter affidavit, wherein the seniority positions are specified as follows: R.Panneerselvam: 13; R.Mathiazhagan:58; R.Kesavan (Petitioner): 137. After pointing this out, Mr.Muthukumar

contended that the seniority list has not been challenged by the Petitioner. Indeed, he submits that the panel prepared on 17.09.2008, which is at page 8 of the typed set of papers filed by the Petitioner, indicates that the Petitioner is in the 137th position as regards seniority. Whenever recruitment is by more than one method, he submits that seniority would be determined with reference to the date of appointment and not the date of regularisation as per Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules (the TNSSS Rules). His next contention is that the Petitioner has not challenged G.O.Ms.No.16 by virtue of which a person who qualifies at an equivalent examination duly recognized by the Government of Tamil Nadu is also entitled for appointment by transfer as a Road Inspector Grade-II. On account of failing to challenge G.O.Ms.No.16, Mr.Muthukumar submits that the Petitioner is not entitled to the relief prayed for. In other words, his contention is that both R.Panneerselvam and R.Mathiazhagan satisfied the educational qualification requirements and are senior to the Petitioner inasmuch as they occupied the 13th and 58th positions, respectively. The last contention of Mr.Muthukumar is that the conditional and temporary order of promotion dated 10.10.2008 itself stipulates that the Petitioner may be reverted to his original post without prior notice and that no priority can be claimed on the basis of the temporary promotion order. He also submits that such temporary promotion is permissible under Rule 39 of the TNSSS Rules. Therefore, he submits that the Petitioner is not entitled to subsequently resale from the conditions subject to which temporary promotion was granted.

7. By way of rejoinder, the learned counsel for the Petitioner submitted that he is not aggrieved by G.O.Ms.No.16 inasmuch as the Petitioner fulfilled the educational qualification of 10th standard pass even before taking up employment as a Gang Mazdoor, and that the promotion of the 3rd and 4th Respondents is not under challenge on the ground that they do not fulfil the requisite educational qualification. Instead, their promotion is challenged on the ground that the Petitioner was regularised before they were regularised and, therefore, should have priority. As regards the seniority list, he submits that he could not challenge the said list because the seniority list was not circulated in contravention of the applicable rules.

8. I considered the submissions of the learned counsel for the respective parties and examined the materials on record.

9. The admitted position is that the Petitioner was appointed as a trainee Gang Mazdoor on 10.11.1997 and that his services were regularized on 10.11.1998 by appointing him on a time scale of pay. From paragraph 3(a) of the counter affidavit

of the Respondents 1 and 2, it appears that the Petitioner, Respondents 3 and 4 and K.Ravichandran, who had filed and withdrawn W.P.No.17481 of 2010, were all appointed on 10.11.1997. As regards the date of regularization, it appears that the Petitioner was regularized on 10.11.1998, whereas the third and fourth Respondent were regularized on 13.11.1998 and 11.11.1998, respectively. However, as regards seniority, the third and fourth Respondents are in the 13th and 58th position and the seniority list is not under challenge in the present writ petition. The other salient factor to bear in mind is that G.O. Ms. No.16 was challenged by the Petitioner by filing W.P. No.4351 of 2009, which was withdrawn on 08.04.2010. Consequently, it is no longer open to the Petitioner to challenge G.O. Ms.No.16 or the promotions of the third and fourth Respondents on that basis.

10. The main plank of the Petitioner's case is that he was duly promoted on 10.10.2008 on account of fulfilling the requisite educational qualifications but was unjustly reverted to the earlier post by the impugned order dated 03.03.2009, which was issued without prior notice. The justification of the official Respondents is that the third and fourth Respondents are eligible and senior to the Petitioner. The learned Special Government Pleader also contended that the appointment to the post of Road Inspector Grade-II is both by direct recruitment and by transfer in a specified ratio, and that the names of R.Panneerselvam and R.Mathiazhagan had been inadvertently omitted when the panel dated 17.09.2008 was prepared in spite of the fact that they are senior to the Petitioner. I find that there is no proper explanation for the alleged inadvertent omission of the names of R.Panneerselvam and R.Mathiazhagan in the panel for promotion as Road Inspector Grade-II on 17.09.2008. A plausible explanation could be that they did not possess the requisite educational qualification when the panel was prepared on 17.09.2008, whereas they became eligible by virtue of G.O. Ms. No.16, which was given retrospective effect from 01.08.2008. In any event, definitive conclusions cannot be drawn from the materials on record.

11. The promotion order dated 10.10.2008 stipulated that it is subject to conditions, including reversion without notice. Nonetheless, the requirements of natural justice may be read into such orders and the official Respondents should have put the Petitioner on notice before issuing the impugned order dated 03.03.2009 whereby the Petitioner was reverted to the post of Gang Mazdoor and instead R.Panneerselvam and R.Mathiazhagan were promoted. Be that as it may, the fact remains that G.O. Ms. No.16 was challenged in an earlier writ petition, which was withdrawn later, the seniority list is not under challenge herein and the third and fourth Respondents were promoted as

early as on 03.03.2009. Consequently, at this juncture and in the context of there being no challenge to the seniority list and the withdrawal of the writ petition challenging G.O. Ms. No.16, I am not inclined to interfere with the promotions of the third and fourth Respondents.

12. As a corollary, it is made clear that the disposal of this writ petition does not preclude the Petitioner, subject to applicable rules, from challenging the seniority list. In the alternative, in view of the above conclusion regarding violation of the principles of natural justice, the Petitioner is permitted to request for the disposal of the representation dated 26.05.2009 or submit a fresh representation in relation to his reversion. If such request or representation is submitted, the order/proceedings dated 03.03.2009 shall not preclude the consideration of the representation as regards the reversion of the Petitioner. Such representation shall be considered, on merits, in accordance with the applicable general and special rules and disposed of within a period of one month from the date of receipt thereof. The writ petition is disposed of on the above terms. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Chief Engineer(General),
Highways Department,
Chennai - 600 005.

2.The Divisional Engineer,
Highways Department,
Nagapattinam.

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W.P.No.17789 of 2010

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