



WEB COPY

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 09.03.2020**

CORAM

**THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN
W.P (MD) No. 3165 of 2015**

**and
M.P. (MD) Nos. 2 and 3 of 2015**

1.D.Dharmavel

2.P.Vishalatchi

3.G.Kalavathy

4.R.Kannaki

5.G.Sukumar

6.T.Venkatachalapathy

7.S.Ashok Kumar

...Petitioners

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary,
Department of Rural Development
and Panchayat Raj,
Fort St.George,
Chennai - 600 009.

2.The Director of Rural Development,
Panagal Building, Saidapet,
Chennai - 19.

3.The District Collector,
Collectorate, Ramanathapuram,
Ramanathapuram District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration declaring the recruitment process without any public notification with regards to the method of selection for recruitment to the post of Road Inspector Grade II in Ramanathapuram District by the third respondent as illegal.

For Petitioners

:Mr.T.Lajapathi Roy

For Respondents

:Mr.J.Gunaseelan Muthiah
Additional Government Pleader

**ORDER**

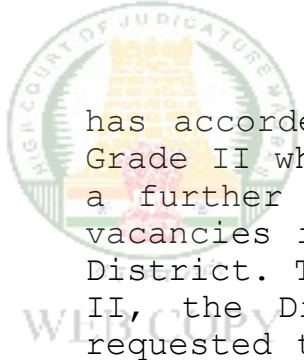
The Petitioners have prayed for issuance of a Writ of Declaration declaring the recruitment process without any public notification with regards to the method of selection for recruitment to the post of Road Inspector Grade II in Ramanathapuram District by the third respondent as illegal.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3. The case of the petitioners is that they have studied up to higher secondary and also they have qualified themselves for the post of Road Inspector Grade II. They had completed the course of training at Government Industrial Training Institute, Ramanathapuram and passed the prescribed trade test in the trade of Draughtsman (Civil). They have also registered their educational qualification with the District Employment Office, Ramanathapuram and it was renewed periodically. It is the contention of the petitioners that in the year 2006, when recruitment was made for filling up the vacant posts of 32 Road Inspector Grade II in Ramanathapuram District, they were issued with call letters for selection. However, the said recruitment notification was stayed by this Court in M.P.No.2 of 2000 in W.P.No.50062 of 2006. Thereafter, in the vacate stay petition, this Court was pleased to hold that 50% of the posts might be filled pending disposal of the main writ petition. In pursuant to the order of this Court, though there were 34 posts of Road Inspectors Grade II in Ramanathapuram District in total, only 9 posts alone were filled by the third respondent.

4. It is the further contention of the petitioners that in the year 2013 also, around 8 posts of Road Inspector Grade II were filled up without any public notification and therefore, they could not apply for the same. On 28.01.2015 the news item published in 'Dhinanthi' about the recruitment to the post of Road Inspector Grade II in Ramanathapuram District, stating that the persons who are all having 35 years can apply for the said post. The petitioners would also contend that due to the ban on the recruitment, they are not in a position to apply for the same and therefore, they seek for relaxation of age limit, so that they may be selected to the said post. Further, the petitioners would contend that the appointments should be in a transparent manner and should be properly notified by a public notification with the method of selection and the number of posts and the distribution of vacancies and that the instant recruitment process is not in accordance with law and therefore, it is illegal and liable to be set aside.

5. In the counter, it is stated that on the proposal sent by the second respondent to fill up 50% of vacancies in the posts of Overseer, Junior Draughting Officer and Road Inspector Grade II by direct recruitment through Employment Exchange, the first respondent



has accorded permission to fill up 328 vacancies of Road Inspector Grade II whereas the total vacancies 657. Thereafter, on 15.12.2006, a further direction was issued for filling up the remaining 50% vacancies in the post of Road Inspector Grade II for Ramanathapuram District. Therefore, to fill up the 18 posts of Road Inspector Grade II, the District Employment Officer, Ramanathapuram District was requested to sponsor a list of eligible candidates, but the officer has not sponsored the petitioners' names. In the meantime, the temporary appointees have filed a writ petition in W.P.No.50062 of 2006, wherein this Court has granted stay for filling up the said post. Subsequently, while disposing the writ petition, this Court has permitted to fill up 50% of the vacancies. Hence, 9 posts were filled up in the year 2006 through direct recruitment. Thereafter, during the year 2013 also the remaining posts were filled up through District Employment Exchange, but the petitioners names have not been sponsored by the Employment Exchange. Therefore, the recruitment process was made transparently and hence, this writ petition is liable to be dismissed.

6.It is to be seen from the Government Order in G.O.Ms.No.13, Rural Development and Panchayat Raj (E3) Department, dated 14.01.2008, which was passed pursuant to the order of this Court in W.P.(MD)No.11660 to 11668 of 2006 etc., wherein it is stated that 183 persons were filed writ petitions before this Court. This Court, on humanitarian grounds, has directed the Government to give relaxation to 74 persons, who were beyond the said period of 40 years of age and be appointed. As the writ petitions were pending from 1997, they were working and they absorbed in their job in the year 1997. It is also found that if the persons were not working in the Rural Development Department as on 15.12.2006, they were not eligible for absorption as per the Judgment of this Court. As per the settlement entered into between the parties, due to the out of Court settlement, 183 cases were withdrawn and they were permitted to be filled up in the above said posts. As per the list, 268 persons were found to be qualified as Road Inspector Grade II. Out of which, 74 persons were beyond the age limit. Therefore, the same cannot be applied to the petitioners herein as those candidates were working from 1997 and they have been finding for their appointment from that day and only by considering their age and other factors, the Government, on humanitarian ground extended their hand and appointed the said 268 persons and it has been taken as a special age by relaxing the Rule by direct recruitment from the Employment Exchange. Hence, the petitioners herein cannot compare themselves with those persons and seek for jobs on par with them. It is also made clear that on the date of issuance of ban order for recruitment, these petitioners were aged about 31, 30, 27, 25 and 24 years respectively and during the ban period, five years is taken into account, they were already aged about 36, 35, 32, 30 and 29 respectively. Thereafter, after taking five years of relaxation they are aged about 41, 39, 37, 35 and 34 respectively. Further, as per the G.O.Ms.114, Personal and Administrative Reforms (S) Department, dated 11.08.2010, if a person is affected due to the ban of direct



recruitment that was imposed on 29th November, 2001, the upper age limit shall be raised to a maximum period of five years reckoned on and from the 17th July, 2006, ending with the 16th July, 2011 and this period alone has to be taken into account while considering the upper age limit for a person, who will be affected by the ban order issued by the Government. But all the petitioners herein have crossed that age on the date of issuance of ban order and accordingly, the petitioners are not entitled to get any relaxation of age for recruitment through employment exchange.

7. Further, the decision relied on by the learned counsel appearing for the petitioners in **STATE OF UTTAR PRADESH AND OTHERS v. ARVIND KUMAR SRIVASTAVA AND OTHERS**, reported in **2015 (1) SCC 347**, does not applicable to the present case on hand, since it is not a case of relaxation of upper age limit in appointment and it is a case regarding the relief of parity, exceptions, delay/laches/acquiescence and entitlement to benefit of judgment in rem with intention to benefit all similarly situated persons irrespective of whether they had approached Court or not. When a particular set of employees is given relief by Court, all other identically situated persons should be treated alike by extending same benefit since not doing so would amount to discrimination and be violative of Article 14 of the Constitution of India. But herein is a case that these petitioners have not been employed in the said department and they were not called for by the Employment Exchange as they were crossed the upper age limit prescribed by the Government.

8. In view of the above discussion, I am of the opinion that the Employment Exchange has rightly not sponsored the names of the petitioners for the said posts and accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (AS)

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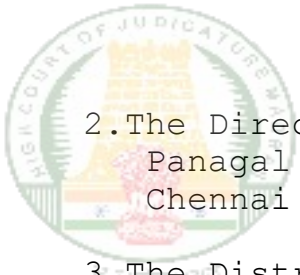
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Sub Assistant Registrar (CS)

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To

1. The Secretary to Government,
Department of Rural Development
and Panchayat Raj,
Fort St. George,
Chennai - 600 009.



2.The Director of Rural Development,
Panagal Building, Saidapet,
Chennai - 19.

3.The District Collector,
Collectorate, Ramanathapuram,
Ramanathapuram District.

+1 CC to SPL.GP (SR-10755[F] dated 10/03/2020)

+1 CC to Mr.T.LAJAPATHI ROY, Advocate (SR-10720[F]dated
10/03/2020)

W.P (MD) No.3165 of 2015
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VB (18.06.2020) 5P 6C