



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2020

CORAM

THE HON'BLE MRS. JUSTICE J.NISHA BANU

WEB COPY

W.P. (MD)No.5153 of 2015

and

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

P.Dhandapani

... Petitioner

Vs.

1.The Director General (Highways),
Construction and Maintenance
Highways and Minor Ports Department,
Chepauk,
Chennai -5.

2.The Chief Engineer,
Construction and Maintenance,
Highways and Minor Ports Department,
Chepauk,
Chennai -5.

3.The Divisional Engineer,
Construction and Maintenance,
Highways and Minor Ports Department,
Dindigul,
Dindigul District.

4.V.Arulsamy

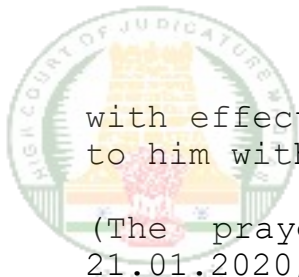
5.N.Ariyanayagi

6.R.Perumal

7.C.Sravanan

... Respondents

PRAYER: 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 dated 22.07.2015 passed in the proceedings in No.Ku.No.108/2015/A2 of the third respondent and the order dated 06.03.2015 in Se.Mu.Ka.No.3361/2013/A3 of the 3rd respondent and quash the same in respect of the respondents 4 to 7 who are promoted by the order dated 06.03.2015 in Se.Mu.Ka.No.3361/2013/A3 overlooking the seniority of the petitioner and consequently promote the petitioner from the post of Road Inspector Grade II to Road Inspector Grade I



with effect from 06.03.2015 and pay the arrears of monetary benefits to him within a time frame.

(The prayer amended, as per the order of this Court dated 21.01.2020, made in W.M.P.(MD).No.16209 of 2019)

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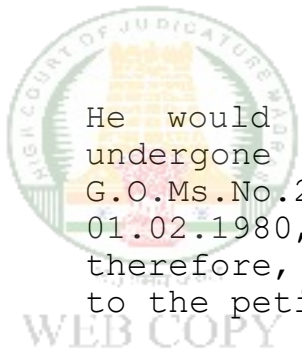
For petitioner : Mr.I.Suthakaran
For respondents 1 to 3 : Mr.D.Muruganandham
Addl. Government Pleader
For respondents 4 to 7 : Mr.L.Shaji Chellam

ORDER

This writ petition has been filed by the petitioner challenging the order refusing to grant promotion to the petitioner and also the order of promotion of the respondents 4 to 7, who are juniors to the petitioners.

2. The learned counsel for the petitioner submitted that based on the recommendation of the Employment Exchange, on 19.05.2009 the third respondent had sent a call letter to the petitioner for attending interview for the post of Road Inspector Grade - II. On 20.11.2009 the petitioner was appointed in the said post. On 09.02.2011, the service of the petitioner was regularised. As per G.O.Ms.No.1858/Public Works Department dated 22.10.1969 and G.O.Ms.No.856/Public Works Department, dated 01.06.1977, an employee, who completed 5 years of service in the post of Road Inspector Grade II, is eligible to get promotion as Road Inspector Grade-I. But, the petitioner was not promoted to the post of Road Inspector Grade-I, even after completion of five years of service and hence, he had sent a representation to the respondents 1 to 3. The 3rd respondent, by order dated 05.03.2015, has rejected the said representation stating that one Lakshmi Praba has filed a writ petition in W.P.(MD).No.5108 of 2014 challenging the very appointment of the petitioner and till the completion of the same, promotion cannot be given to the petitioner. Then, the 3rd respondent, by order dated 06.03.2015, promoted the respondents 4 to 7 who are juniors to the petitioner. But, subsequently, the third respondent withdrew the order dated 05.03.2015 and issued another order dated 22.07.2015, whereby it is stated that even before the date of appointment ie. on 09.02.2009 itself, the petitioner has reached the upper age limit and therefore, his very appointment in the post of Road Inspector Grade-I is illegal and the decision in respect of the same will be informed to the petitioner.

3. The learned counsel for the petitioner would further submit that now this Court, by order dated 05.08.2019, dismissed W.P.(MD). No.5108 of 2014. The date of birth of the petitioner is 15.05.1972 services due to him have been wrongly calculated by the third respondent.



He would further submit that if one year period of training undergone by him deducted from the upper age limit, as per G.O.Ms.No.202, Labour and Employment Department, Madras dated 01.02.1980, he would be eligible to be appointed in the post, and therefore, the 3rd respondent is not correct in denying the promotion to the petitioner. Thus, he prayed to allow this writ petition.

4. The learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that even before the petitioner was called for interview ie., on 09.02.2009 the petitioner had reached upper age limit and without considering the same, he was appointed and therefore, his appointment can be construed only as illegal appointment and as the issue with regard to his very appointment is pending, he cannot be given promotion. Thus, he prayed to dismiss this writ petition.

5. Heard the learned counsel for both sides and perused the materials available on record.

6. The third respondent denied promotion to the petitioner on two grounds ie., (a) the writ petition challenging the very appointment of the petitioner has been pending; and (b) the petitioner was overaged even before his appointment. It is seen that now W.P.(MD).5108 of 2014 filed by one Lakshmi Praba challenging the very appointment of the petitioner has been dismissed by this Court on 05.08.2019 as there is no merit in the case. Therefore, now the official respondents cannot deny promotion to the petitioner on such ground.

7. Though in the impugned order, dated 22.07.2015, it is stated that on 09.02.2009 itself the petitioner was overaged, the petitioner submitted that his date of birth is 15.05.1972 as per the certificate and the said fact has been overlooked by the third respondent. Apart from that, in G.O.Ms.No.202, dated 01.02.1980, it is stated that the crucial date for determining the upper age limit of a trained apprentice for absorption in an Industrial establishment against various posts/services in group 'C' and 'D' is to be determined by deducting from his/her age, the period of training undergone by him/her under the Apprentices Act, 1961. The relevant portion in G.O.Ms.No.202, dated 01.02.1980, is reproduced hereunder:

"3.The Government have examined the proposal of the Director of employment and Training and direct that the upper age limit of a trained apprentices for absorption in regular employment under Group 'C' and 'D' on completion of apprenticeship Training undergone by him in the same organisation or in the same line of work/trade in the State Government and Public Section Undertakings shall be determined by deducting from



of training undergone by him as prescribed under the Apprenticeship Act, 1961.

8. Admittedly, in this case, the petitioner had undergone apprenticeship training from 18.07.1996 to 17.07.1997 in the Trade of Draughtsman Civil and he has also filed a copy of National Apprenticeship Certificate to that effect in the typed set of papers. When that be so, the benefit of G.O.Ms.No.202 can be extended to the petitioner. Therefore, the appointment of the petitioner need not be treated to be overaged, that too after extracting about six years of service. Without considering the said aspects, the official respondents had unnecessarily denied promotion to the petitioner and promoted his juniors.

9. In view of the above, the impugned order dated 22.07.2015 alone is set aside and the respondents 1 to 3 are directed to promote the petitioner to the post of Road Inspector Grade-I on par with his immediate junior from 06.03.2015 and to pay arrears of salary to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

10. This Writ Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Gcg

To

1.The Director General (Highways),
Construction and Maintenance
Highways and Minor Ports Department,
Chepauk,
Chennai -5.

2.The Chief Engineer,
Construction and Maintenance,
Highways and Minor Ports Department,
Chepauk,
Chennai -5.

3.The Divisional Engineer,

<https://hcservices.ecourts.gov.in/hcservices/>



Construction and Maintenance,
Highways and Minor Ports Department,
Dindigul,
Dindigul District.

+1 CC to M/s.L.SHAJI CHELLAN, Advocate (SR-2255[F] dated 21/01/2020)

+1 CC to M/s.I.SUTHAHARAN, Advocate (SR-2356[F] dated 22/01/2020)

+1 CC to M/s.SPL.GP (SR-2322[F] dated 22/01/2020)

W.P. (MD) No.5153 of 2015
21.01.2020

AP(18.03.2020) 5P 7C