



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2021

CORAM:

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

W.P.(MD) No.641 of 2013

and

M.P.(MD) No.2 of 2013

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G.Sivakumar

... Petitioner

vs.

1.The Divisional Engineer (C&M),
Office of the Divisional Engineer,
Highways Department,
Sivagangai and District.

2.A.Mohandoss

3.Muthumurugan

4.G.Pandithurai

5.S.Ramasamy

6.S.Murugesan

7.A.Ravichandran

8.A.Saravanan

9.M.Gopalakrishnan

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned seniority lists, dated 08.09.2008 and 09.01.2012 in Ku.No.2242/2011-3/Aa4, issued by the first respondent and quash the same and to direct the first respondent to prepare a fresh seniority list of Road Workers for promotion to the post of Road Inspector in Sivagangai District based on the educational qualification as recorded in the Service Register of the Road Workers while they are joined in service and place the petitioner's candidature in an appropriate place and give promotion to the petitioner's as Road Inspector.

For Petitioner

: Mr.M.Karthikeya Venkatachalapathy

For R-1

: Mr.M.Linga Durai

Government Advocate

For R2, to R5, R7 to R9

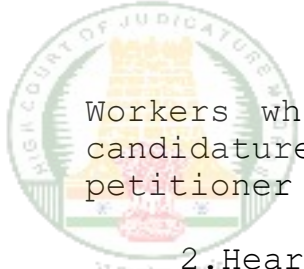
: No Appearance

For R6

: Mr.D.Sadiq Raja

O R D E R

The above Writ Petition is filed to quash the impugned seniority lists, dated 08.09.2008 and 09.01.2012, issued by the first respondent and to direct the first respondent to prepare a fresh seniority list of Road Workers for promotion to the post of Road Inspector in Sivagangai District based on the educational qualification as recorded in the Service Register of the Road



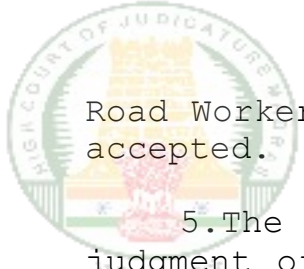
Workers while they joined in service and place the petitioner's candidature in an appropriate place and give promotion to the petitioner as Road Inspector.

2. Heard Mr.M.Karthikeya Venkatachalapathy, learned Counsel for the petitioner, Mr.M.Linga Durai, learned Government Advocate for the first respondent and Mr.D.Sadiq Raja, learned Counsel for the 6th respondent.

3. The brief facts that are necessary for the disposal of this Writ Petition are as follows:

3.1. The Writ Petitioner joined duty as a Road Worker in the year 1997 in the Highways Department, which is under the control of the first respondent. At the time of joining service, the petitioner has passed 10th standard, which was also recorded in the Service Register of the petitioner. The qualification prescribed for Road Worker is only pass in 5th standard and the age limit is 35 years and the candidates must have good physic. It is the case of the petitioner that the respondents 2 to 9 were also originally posted as Road Worker under the control of the first respondent. It is further stated that the respondents 2 to 9, while joining the service, suppressed that they have acquired higher qualification than 10th standard. Stating that the respondents 2 to 9 have deliberately suppressed their educational qualification with ulterior motive and object, the petitioner states that the persons, who has given false particulars regarding their educational qualification, are not entitled to be considered for the next promotion, because of the gravity of misconduct committed by them. It is further stated that the first respondent prepared a seniority list by considering the educational qualification of 10th standard and promoted the respondents 2 to 9 as Road Inspector without considering the ineligibility of respondents 2 to 9, who suppressed their educational qualification with ulterior motive. Hence, the above Writ Petition has been filed to quash the impugned seniority list.

4. The learned Counsel for the petitioner submitted that the false declaration given by the employees while entering into the service amounts to misconduct, as per Conduct Rules and that therefore, inclusion of the names of respondents 2 to 9 should be deleted. As a matter of fact, it is seen that the respondents 2 to 9 have passed 10th standard, when they entered into service. The first respondent prepared the impugned seniority lists, dated 08.09.2008 and 09.01.2012, including the names of respondents 2 to 9. The petitioner has questioned the inclusion of names of respondents 2 to 9 in the seniority list prepared by the first respondent to the post of Road Inspector. Though the petitioner and respondents 2 to 9 are qualified, because of the suppression, where, the respondents 2 to 9 admitted that they have not disclosed their educational qualification at the time of recruitment to the post of



Road Worker, the contention of the the respondents 2 to 9 cannot be accepted.

5.The learned Counsel for the petitioner relied upon the judgment of Honourable Supreme Court in the case of **Manoj Kumar vs Government of NCT of Delhi and others**, reported in 2010 11 SCC 702, wherein, the Honourable Supreme Court had an occasion to consider the case of a Constable, whose date of birth was wrongly given and try to delete the date of birth subsequently. It is held that a candidate, who furnished false particulars and incomplete information in his application, will be debarred from securing employment.

6.The said judgment of the Honourable Supreme Court was subsequently followed by the learned Single Judge of this Court in **Tamil Nadu Nedunchalai Thurai Salaipaniyalar Sangam vs A.Issac Ponraj and others**, in **W.P.Nos.8065 and 19402 of 2009**, dated 18.10.2011 and justified the reversion of petitioners them into lower post. Paragraph 3 of the said judgment is extracted as follows:

"3.It is seen from the records that in the Highways Department, about 10000 Gang Mazdoors were appointed in the year 1997 for supervising and maintaining various roads at the rate of 2 Gang Mazdoors per 8 Km. The minimum qualification prescribed for the post of Gang Mazdoor was a pass in 5th standard. After recruitment, certificates regarding their educational qualifications which were submitted by them were sent to the concerned educational officers for verification. The Educational Officers had subsequently reported that some of the certificates produced by certain employees were not genuine and they were false records. Hence, disciplinary action was initiated against those Gang Mazdoors. Final orders were issued by the disciplinary authority by removing them from service. Aggrieved by the order of removal, those affected Gang Mazdoors had filed various original applications before the Tamil Nadu Administrative Tribunal. The Tribunal by an order dated 27.3.2002 had set aside the removal and ordered to impose a punishment of stoppage of increment for five years with cumulative effect on those applicants. The next avenue of promotion for Gang Mazdoors is Road Inspectors Grade II, for which post, a pass in SSLC has been prescribed as minimum qualification. At the time of preparation of panel for the post of Road Inspector Grade II, once again certain Gang Mazdoors had produced certificates stating that they had passed SSLC. It was totally in conflict with their earlier stand. They had produced certificates at the time of their initial recruitment, wherein they had stated that they had passed



only 5th standard. Thus, the Gang Mazdoors had suppressed the facts about their pass in the SSLC even at the time of their initial recruitment."

7.A counter affidavit has been filed by the first respondent confirming the position that all the respondents 2 to 9 have acquired higher qualification than required and that they have not disclosed their educational qualification in the application.

8.Mr.Sadiq Raja, learned Counsel for the 6th respondent submitted that the 6th respondent though has not given particulars about his educational qualification, his case cannot be treated as one, where, the candidates suppressed particulars about their educational qualification. Since the 6th respondent has not given any false information, it is further stated by the learned Counsel for the 6th respondent that his promotion cannot be derailed, merely because the educational qualification of 6th respondent is suppressed.

9.The respondents 2 to 9 got the job by giving a false declaration as to their educational qualification. Though the respondents 2 to 9 have passed 10th standard and have more educational qualification than required, it cannot be disputed that the respondents 2 to 9 have given false information about their educational qualification.

10.It is seen from the records that the 6th respondent has not given any information about his educational qualification. It is exactly a case of suppression. The others respondents has given false declaration, as fail in 10th standard. The 6th respondent made others to believe that his educational qualification is immaterial. The learned Counsel for the 6th respondent submitted that no motive can be attributed to any of the candidates by giving false declaration, as to their educational qualification and none of the respondents 2 to 9 would gain preference. Though this argument is appealing, this Court unable to appreciate the said argument, in view of the settled principles of law, as approved by the Honourable Supreme Court and this Court in the judgments relied upon by the learned Counsel for the petitioner.

11.Having regard to the stated circumstances, this Writ Petition is partly allowed. The first respondent is directed to frame charges against the respondents 2 to 9 for suppression of educational qualification in their application at the time of joining. While proceeding against the respondents 2 to 9, as per the direction of this Court, the first respondent shall also consider the seniority of the petitioner for the purpose of promotion to the post of Road Inspector by placing the petitioner in the suitable place and pass appropriate orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.



12.This Writ Petition is partly allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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To

The Divisional Engineer (C&M),
Office of the Divisional Engineer,
Highways Department,
Sivagangai and District.

+1 CC to M/s.D.SADIER RAJA, Advocate (SR-25447[F] dated
06/08/2021)

+1 CC to M/s.SPL GP (SR-25482[F] dated 06/08/2021)

W.P. (MD) No.641 of 2013
05.08.2021

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KB(16.08.2021) 5P 4C