



WEB COPY

W.P.(MD)No.1690 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2021

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.1690 of 2014

and

CONT P(MD)No.229 of 2014

and

M.P. (MD)No.1 of 2014

W.P. (MD)No.1690 of 2014 :

B.Lakshmana Murali

... Petitioner

vs.

1.The District Collector,
Theni District, Theni.

2.The Block Development Officer,
Block Development Office,
Cumbum, Theni District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records the order of the first respondent Na.Ka.No.21417/2012/**201.01.5**, dated 22.01.2014, served to the petitioner on 25.01.2014 and to quash the same and consequently to direct the first respondent to allow the petitioner to serve as Road Inspector Grade II with all monetary and service benefits.

CONT P(MD)No.229 of 2014

B.Lakshmana Murali

... Petitioner/Petitioner/
Petitioner

vs.

1.K.S.Palanisamy, I.A.S.,
District Collector,
Theni District, Theni.

2.Jeevarathinam,
Block Development Officer,
Block Development Office,
Cumbum, Theni District

... Respondents/Respondents/
Respondents

PRAYER: Petition filed under under Section 11 of the Contempt of Court Act, 1971, to punish the respondent for wilfully disobeying and not complying with the order of this Court, dated 31.01.2014, in M.P. (MD)No.1 of 2014 in W.P. (MD)No.1690 of 2014.

In both cases:

For Petitioner

: No appearance

For R1

: M/s.D.Farjana Ghoushia

Special Government Pleader

For R2

: No appearance



COMMON ORDER

This Writ Petition in W.P.(MD)No.1690 of 2014 is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order dated 22.01.2014 passed in Na.Ka.No.21417/2012/21.01.5, and consequently to direct the first respondent to allow the petitioner to serve as Road Inspector Grade II with all monetary and service benefits.

2.The facts of the case are that the petitioner has completed SSLC in the year 2005. Then Diploma in Civil Engineering in the year 2009 and completed Certificate Course of Civil Draftsman with Computer Applications through Tamil Nadu Polytechnic College (Autonomous) Madurai and also completed B.Tech. Civil Engineering in the year 2013. The petitioner enrolled in the District Employment Exchange Office, Theni District, on 29.07.2009 with the Registration Number 2009M11277. After completion of B.Tech. in Civil Engineering, the petitioner again enrolled himself in the Employment Exchange. The petitioner received a call letter from first respondent for written examination for the post of Road Inspector Grade II, vide order, dated 05.08.2013.

3.The petitioner attended the written examination on 14.08.2013 and secured first rank. Thereafter, the petitioner's certificates were verified by the respondents and he was selected, vide order, dated 14.08.2013. He was appointed as Road Inspector Grade II and he joined the service on 17.08.2013.

4. After appointment the respondents issued a show cause notice, dated 21.12.2013, stating that he has over qualification and he is not having the requisite qualification for the post. The petitioner submitted an explanation on 10.01.2014. The petitioner challenged the show cause notice in the Writ Petition W.P.(MD) No.1162 of 2014 and this Court, vide order, dated 23.01.2014, has disposed of the Writ Petition, directing the respondents to consider the petitioner's explanation and pass final orders within a period of eight weeks.

5.Thereafter, the respondents have passed the impugned order, dated 22.01.2014 was passed cancelling the petitioner's appointment. In the impugned order, it is stated that he has not obtained ITI Civil Draftsmanship certificate, but simply has undergone three months training programme. Since the qualification for the Road Inspector Grade II post is a certificate in Civil Draftsmanship from a Government recognized institution is necessary and the petitioner is not possessing that certificate, and therefore he is not entitled to continue in service. Challenging this impugned order, the present Writ Petition is filed. This Court while admitting this Writ Petition has granted an interim stay, vide order, dated 30.01.2014. In spite of the interim order, dated 30.01.2014, the



respondents have not allowed the petitioner to continue in service. Aggrieved over the same, the petitioner has filed the Contempt Petition in Cont. P. (MD)No.229 of 2014.

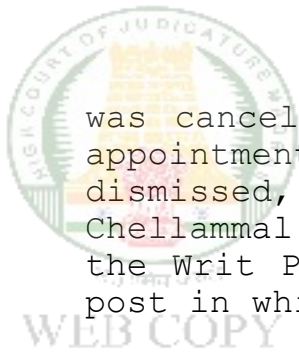
6. On 10.03.2014, the petitioner submitted before this Court that the petitioner seeks to withdraw the Contempt Petition, however the Court observed that the Contempt Petition could be heard along with the Writ Petition on 11.07.2014. The Contempt Petition was posted for hearing, this Court has directed the respondents/contemnors to report compliance on 22.07.2014. On 22.07.2014, since none appeared for the petitioner, the Court has directed the Registry to post the case for final disposal on 13.10.2014. Thereafter, this case was not listed further. The Special Government Pleader circulated the written instructions of the respondents and reiterated the reasons stated in the impugned order. The reason stated is that the petitioner has undergone training course but, has not completed the ITI certificate course from a recognized institution.

7. Heard, M/s.D.Farjana Ghousia, learned Special Government Pleader appearing for the first respondent.

8. The recruitment for the Road Inspector Grade II was conducted in the year 2013. The respondents have conducted this by calling the list from the Employment Exchange. The respondents have not published the necessary qualification for the appointed for the post of Road Inspector Grade II. If there is publication of any qualifications then the petitioner would have a knowledge about the qualifications. The second flaw of the respondents is that the respondents have not called for from the open market, there is no advertisement in the paper and notice was not affixed in any prominent place in the office.

9. In **Hargopal case reported in (1987) 3 SCC 308 and in Excise Superintendent, Malkapatnam VS K.B.N. Visweshwar Rao & others reported in (1996) 6 SCC 216** the Honourable Supreme Court has held that the recruitment shall be conducted by calling candidates from the open market as well apart from calling list from the employment exchange and also recruitment notice should be affixed in prominent places. If the open market procedure was followed, necessary qualifications would have been stated in the advertisement. Therefore, the petitioner cannot be blamed for having over qualification. Moreover the respondents have issued appointment order after verifying the certificates of the petitioner during "certificate verification". The respondents ought to have rejected at that stage itself and having issued appointment order, now cannot turn around and say the petitioner is over qualification and cancel the appointment order.

10. The petitioner's appointment was challenged by one Chellammal and based on her complaint the petitioner's appointment



was cancelled. The said Chellammal has challenged the petitioner's appointment in W.P.(MD)No.1413 of 2014 and the Writ Petition was dismissed, vide order, dated 15.12.2021, stating that the said Chellammal has secured low marks and she has no right to maintain the Writ Petition and has no right to claim any appointment in the post in which the Writ Petitioner Lakshmana Murali was appointed.

11.Hence, the impugned order is quashed and the respondents are directed to restored the appointment order to the petitioner along with service benefits from the date of the impugned order. As far as the monetary benefits is concerned, since the petitioner has not worked, under "no work no pay" principle, the petitioner will not be entitled to monetary benefits. However, since it is not the fault of the petitioner, this Court deems it fit that the respondents shall pay 25% of the monetary benefits from the date of the impugned order till the date of re-appointment.

12.With the above direction, the Writ Petition is allowed and the Contempt Petition is closed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

To

- 1.The District Collector,
Theni District, Theni.
- 2.The Block Development Officer,
Block Development Office, Cumbum,
Theni District.

+1 CC to M/s.SPL GP (SR-39517[F] dated 20/12/2021)

W.P. (MD)No.1690 of 2014
and
CONT P(MD)No.229 of 2014
17.12.2021

RK(10/01/2021) 4P 4C