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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.8583 OF 2011

C.Vijaya Kumar

... Petitioner

Vs.

1. The Superintending Engineer (Highways),
Construction and Maintenance,
Tiruppur, Tiruppur District.
2. The Assistant Divisional Engineer (Highways),
Krishnarajapuram, Karur District.
3. P.Kumar
Driver, Office of the Assistant Divisional Engineer
(Highways), NABARD and Rural Roads Division,
Erode, Erode District.

... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent in Se.Mu.Aa.No.68/2011/A1 dated 28.02.2011 and quash the same insofar as the promotion given to the petitioner's junior, namely, Mr.P.Kumar, the third respondent herein is concerned and direct the respondents 1 and 2 to promote him to the post of Driver with effect from the date of the impugned order, namely, 28.02.2011 and grant all consequential benefits to the petitioner.

For Petitioner : Mr.P.Rajendran

For Respondents: Mr.P.Ganesan,
Government Advocate [for R1 & R2]
No appearance for R3



ORDER

The petitioner herein, who held the post of Gang Mazdoor, seeks for appointment to the post of Driver in the Highways Department on the ground that his junior has been promoted to the said post by overlooking his candidature.

2. The first respondent in their counter-affidavit have stated that the eligible selected candidates were subjected to the driving test conducted by the Regional Transport Officer, Karur and since the petitioner herein had not qualified in the driving test, his Junior was appointed.

3. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the first and second respondents.

4. Though the learned Government Advocate appearing for the first and second respondents, was called upon to get instructions on the status of the case from the first and second respondents and the learned Government Advocate also having called upon them to give instructions to them to the Government Advocate's Office, the respondents 1 and 2 have not abided by it and hence, the Writ Petition is taken up on the strength of the averments made in the counter-affidavit filed by the first respondent.

5. Originally, the mode of appointment to the post of Drivers in the Highways Department was prescribed under G.O.Ms.No.169, Transport (M) Department, dated 16.02.1983, by providing such appointments through recruitment by transfer from the category of Cleaners working in the trade of basic servants of Highways and Rural Works Department and by direct recruitment. Subsequently, through G.O.Ms.No.171, Transport (M) Department, dated 16.02.1983, the post of Gang Mazdoor was brought under the purview of Tamil Nadu Basic Service. Highways Department was a part of the Transport Department at the time of issue of the Government Order and therefore, the Adhoc Rules for the Tamil Nadu Highways Engineering State Service was amended by incorporating the post of Gang Mazdoor as a feeder category for the post of Driver.

6. G.O.Ms.No.169 dated 16.02.1983, prescribes the qualifications and other requirements for promotion to the post of Driver which states that the promotee should possess driving license for heavy vehicles; should have 5 years experience as Driver or Cleaner in the Trade or as a basic Government Servant; should be able to attend minor faults in vehicles; must possess driving experience for a period of not less than 2 years.



7. It is not in dispute that the petitioner is in possession of all this required qualifications prescribed under G.O.Ms.No.169, dated 16.02.1983. The only reason that the respondents had not chosen to promote the petitioner is that he was disqualified in the driving test conducted by the Regional Transport Officer. G.O.Ms.No.169 however, does not provide for such a driving test as a mandatory qualification for being promoted to the post of Driver. While that being so, the respondents seem to have adopted a novel idea of introducing "road test" as a criteria for rejecting the petitioner's candidature and promoting his junior, who is the third respondent herein, for the post of Driver.

8. The seniority list as on 31.12.2010, has been produced by the petitioner before this Court which evidences that the third respondent herein was the junior of the petitioner. When G.O.Ms.No.169 does not mandate the passing of the road test as a required qualification for promotion, the action of the respondents in subjecting him to a road test and thereby, disqualifying him, is not only illegal but also arbitrary.

9. Though the petitioner herein challenges the appointment of the third respondent herein, this Court is of the view that if the respondents are directed to notionally promote the petitioner from the date on which the third respondent was appointed, the ends of justice will be served.

10. In the light of the above observations, there shall be a direction to the first respondent herein to pass appropriate orders, granting notional promotion to the petitioner for the post of Driver with effect from 28.02.2011, when the third respondent herein was promoted as a driver, together with all service and monetary benefits. The first respondent shall also revise the seniority list in accordance with this order. The first respondent shall pass such orders within a period of eight (8) weeks from the date of receipt of a copy of this order.

With the above directions, this Writ Petition stands allowed and the impugned order dated 28.02.2011 is quashed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintending Engineer (Highways),
Construction and Maintenance,
Tiruppur, Tiruppur District.
2. The Assistant Divisional Engineer (Highways),
Krishnarajapuram, Karur District.

+1cc to Mr.P.Rajendran, Advocate, S.R.No.18719
+1cc to the Government Pleader, S.R.No.19482

W.P.No.8583 of 2011

GMR(CO)
PM/01/04/2022