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W.P.No.11227 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.11227 of 2012

1.N.Gnanasekaran
2.P.Venkatesan
3.M.Vijay Senthil Kumar

...Petitioners

Vs

1.The Secretary to Government of
Tamil Nadu,
Highways Department,
Secretariat, Chennai - 600009.

2.The Chief Engineer (General),
Highways Department,
Chepauk, Chennai - 600 005.

3.The Divisional Engineer,
Highways Division,
Nagappatinam.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to appoint the petitioners herein in the existing or future vacancies as Gang Mazdoors in regular time scale of pay in light of the orders passed by this Court in W.P.No.36623 of 2004 which was upheld by the Division Bench of this Court



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in W.A.No.1260 of 2008 and confirmed by the Hon'ble Supreme Court in C.C.No.14093 of 2010.

For Petitioners : Mr.R.Rengaramanujam

For Respondents : Mr.K.Karthik Jegannath,
Government Advocate

ORDER

Heard Mr.R.Rengaramanujam, learned counsel for the petitioners and Mr.K.Karthik Jegannath, learned Government Advocate appearing on behalf of the respondents.

2. The petitioners herein seek for appointment in the existing or future vacancies as Gang Mazdoors in the regular time scale of pay, in the light of the order passed by this Court in W.P.No.36623 of 2004, which was upheld by the Division Bench of this Court as well as the Hon'ble Supreme Court.

3. The similar prayer was already considered by me in the case of ***M.Vijayakumar and another Vs. The State of Tamil Nadu, Highways Department and others passed in W.P.No.10142 of 2013*** and by order dated 15.11.2016, the Writ Petition was allowed and the respondents were directed



to appoint the petitioners therein in the existing or future vacancies as Gang

Mazdoors. The relevant portion of the order reads as follows:-

"The petitioners claim that they have been working as NMR's from the year 1987 onwards under the second respondent. According to the petitioners, they ought to have been absorbed in the regular vacancies in view of the continuous service and several Government orders which enable them to be absorbed by the second respondent department.

2. In this connection, the petitioners had given several representations when they were in service, for absorption and the same were not considered. Ultimately on 28.02.1992, the second respondent had orally terminated the service of the petitioners.

3. In the mean time, the Government has issued a Government Order in G.O.Ms.No.371 Highways (HM2) dated 19.08.1997 and created the posts of Gang Mazdoors and Road Inspector in regular time scale of pay. Since the petitioners were employed earlier under the second respondent as NMRs and also since they have local residence in the area, according to them,



preference should be given to them for appointment. However, it was not done so. Subsequently, in G.O.Ms.184 Highways dated 29.05.1997, 764 posts were created to absorb the existing NMRs. In the said G.O., it has been clearly stated that for considering the cases of the NMRs, who had gone and obtained order for regularization, this G.O. came to be passed.

4. The learned counsel for the petitioner, at this juncture would point out that he had earlier filed writ petitions in W.P.No. 25051, 25052 and 47629 of 2006 seeking for regularization of service. By order dated 13.12.2006, the petitioners' claims were directed to be considered, in the light of G.O.Ms.No. 67, Highways (HRW) Department, dated 25.03.1998 and G.O.Ms.No.223, Highways (HW3) Department, dated 02.11.2016 within a period of four weeks.

5. Pursuant to the above said order, the second respondent had informed the petitioner through his letter dated 21.11.2007, that their claim for regularization will be positively considered. However, till date no orders have been passed and served on them. Aggrieved against the inaction of the respondents



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the petitioners have filed this writ petition.

6. Heard Mr.G.Punniyakotti, learned counsel for the petitioners and Mr.R.Govindasamy, learned Special Government Pleader for the respondents.

7. It is unfortunate that, in spite of an earlier order of this Court directing the respondents to consider the case of the petitioners for the purpose of regularization, the respondents have not considered their case, which is in total dis-regard to the direction of this Court. More over, identically placed persons, like the petitioners, have filed a writ petition in W.P.No. 36623 of 2004 and by order dated 09.12.2005, wherein this Court had directed the respondents therein to regularize their services. As against the order, the Government had filed a writ appeal in W.A.No.1260 of 2008 and Special Leave Petition in C.C.No.14093 of 2010, both of which came to be dismissed.

8. Since the petitioners are similarly placed as that of the petitioners in W.P.No. 36623 of 2004, they are also entitled to for the same relief. As a matter fact, by G.O.Ms. No. 26, dated 01.03.2012 the Government



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had regularized the service of 27 persons, who are the petitioners in W.P.No.36623 of 2004.

9. There is no justification on the part of the respondents in discriminating the petitioners, who also have obtained orders like that of the petitioners in W.P.No.36623 of 2004. Hence, the petitioners are also entitled to be appointed to the post of Gang Mazdoors and Road Inspector in the regular time scale of pay.

10. Under such circumstances, there shall be a direction to the third respondent to consider the case of the petitioners and appoint them in the existing or future vacancies as Gang Mazdoors and Road Inspector in the regular time scale of pay, in the light of the order passed by this Court in WP.No. 36623 of 2004, within a period of six weeks from the date of receipt of a copy of this Order. The writ petition is allowed. No costs."

4. The aforesaid extract is self explanatory and has also been implemented by the respondents. Since the cause of action in the prayer sought for in this Writ Petition is similar to that of W.P.No.10142 of 2013, the



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present Writ Petition also deserves to be allowed.

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5. In the light of the above observations, there shall be a direction to the respondents to consider the case of the petitioners and appoint them in the existing or future vacancies as Gang Mazdoors in the regular time scale of pay, within a period of six weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition stands allowed. No costs.

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Index:Yes/No
Speaking order/Non-speaking order
hvk

To

- 1.The Secretary to Government,
Highways Department,
Secretariat, Chennai - 600009.
- 2.The Chief Engineer (General),
Highways Department,
Chepauk, Chennai - 600 005.
- 3.The Divisional Engineer,
Highways Division,
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M.S.RAMESH,J.

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