



WEB COPY

W.P.(MD)Nos.3324, 6843 and 17238 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 06.12.2021
DELIVERED ON : 08.01.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P(MD)Nos.3324, 6843 and 17238 of 2013

and
M.P(MD)Nos.1, 2 and 3 in W.P(No)No.17238 of 2013
and
M.P(MD)No.3 of 2013 in W.P(MD)No.6843 of 2013

W.P(MD)No.3324 of 2013:

K.Karthikeyan

... Petitioner

vs

1.The Principal Secretary,
The Government of Tamil nadu,
Highways and Minor Ports(HK3) Department,
Fort St.George,
Chennai-600 009.

2.The Chief Engineer,
State Highways,
Chepauk,
Chennai.

3.The Divisional Engineer,
State Highways,
Virudhunagar.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the entire records pursuant to the seniority list of salai panaialargal published on 14.02.2013 by the third respondent and quash the same.

For Petitioner : Mr.T.P.Prabakaran
For Respondents : M/s.D.Farjana Ghousia
Special Government Pleader

W.P(MD)No.6843 of 2013:

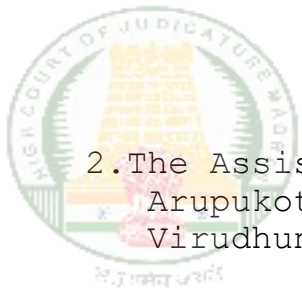
M.Murugapandi

... Petitioner

vs

1.The Divisional Engineer(Highways),
Virudhunagar.

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



2.The Assistant Divisional Engineer(Highways),
Arupukottai,
Virudhunagar 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 of the impugned order dated 05.04.2013 in Lr.No.614/2009/B2 on the file of first respondent and quash the same as illegal and consequently to direct the first respondent to give promotion to the petitioner to the post of Road Inspector Grade-II.

For Petitioner : Mr.J.Anand Kumar

For Respondents : Mr.D.Sasikumar

Additional Government Pleader

W. P (MD) No.17238 of 2013:

M.Murugapandi

... Petitioner

vs

1.The Divisional Engineer(Highways),
Virudhunagar.

2.The Assistant Divisional Engineer(Highways),
Arupukottai,
Virudhunagar District.

3.Ku.Kannan

4.R.Jeyagopalan

5.N.Lakshmanan

6.V.Kasirajan

7.K.Suresh

8.P.Jothimurugan

9.S.Ayyasamy

10.A.Selvakumar

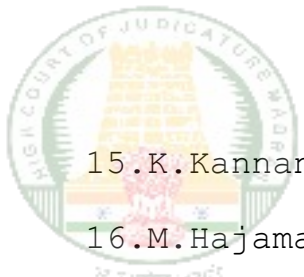
11.M.Muthuraj

12.Mu.Kottairajan

13.M.Duraipandi

14.R.Sankaranarayanan

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



15.K.Kannan

16.M.Hajamaithin

17.S.Selvaraj

18.M.Radhakrishnan

19.P.Rajagopal

20.M.Kumaresan

21.S.Muthusamy

22.K.Thirukkumar

23.S.Pothiraj

24.M.Habibadhullah

25.K.Kumaresan

26.V.Renganathan

27.R.Nadarajan

28.P.Yockobu

... 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 relating to the impugned seniority list dated 14.02.2013 in Ku.No.201/2012/Aa2 on the file of first respondent in respect of petitioner alone and consequential order of the first respondent dated 14.09.2013 in his proceedings Ku.No.201/2012/Aa3 promoting respondents 3 to 6 as Road Inspector Grade II, quash the same as illegal and consequently, to direct the first respondent to place the petitioner above the respondents 3 to 28 in the seniority and to give promotion to the petitioner to the post of Road Inspector Grade-II.

For Petitioner : Mr.J.Anand Kumar

For Respondents : Mr.D.Sasikumar
Additional Government Pleader
for R1 and R2
No appearance
for R3 to R28



O R D E R

The petitioner Murugapandi has filed two writ petitions one is W.P.(MD)No. 6843 of 2013 and the other is W.P. (MD) No.17238 of 2013.

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2. The prayer in W.P. (MD) No. 6843 of 2013 is to quash the impugned order, dated 05.04.2013 and consequently direct the first respondent to give promotion to the petitioner to the post of Road Inspector Grade-II. In the impugned order the promotion was denied to the petitioner stating that the promotion panel is based on seniority list, the promotion panel has been prepared for the year 01.08.2008 to 30.07.2009 and the panel is valid only for one year, the vacancy position for the period 01.08.2008 to 30.07.2009 has already been filled. The impugned order directs the petitioner to show cause for not presenting the truth about his educational qualification and hence the petitioner is not entitled to promotion.

3. The second writ petition in W.P.(MD)No.17238 of 2013 is filed to quash the seniority list, dated 14.02.2013 and consequential order, dated 14.09.2013, promoting the respondents 3 to 6 as Road Inspector Grade - II and consequently, direct the respondent to place the petitioner above the respondents 3 to 28 in the seniority and to give promotion to the petitioner to the post of Road Inspector Grade-II.

4. The third Writ Petition in W.P.(MD)No.3324 of 2013 is filed by K. Karthikeyan to quash the impugned order dated 14.02.2013, which is the seniority list.

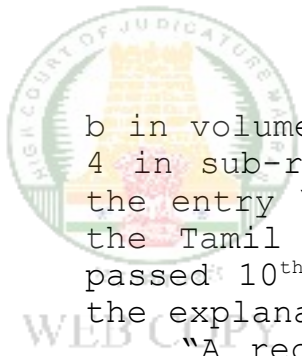
5. The brief facts of the case are that the petitioner Muthupandi was working as a Salaipaniyalargal, in the second respondent office from 1997 and the service was regularized on 23.03.1999 and the petitioner has put up 9 years of service during the year 2008. The petitioner was considered for the next avenue of promotion as Road Inspector Grade-II. The respondent herein has prepared a panel for the said post and the petitioner's name was in S.No.8 and the petitioner was granted promotion on 25.09.2008. One Mr. Alaguraj, filed a writ petition in W.P. (MD) No. 9116 of 2008, claiming promotion to said post on the ground of his education qualification of Pre-Foundation Course is equivalent to X std. The above said writ petition was ordered and directed the respondents to consider his name for the promotion. In order to implement the order, the first respondent, vide proceedings, dated 15.04.2009 reverted the petitioner. Challenging the order of reversion, the petitioner has filed a writ petition in W.P.(MD)No.3358 of 2009 and the same dismissed on the ground that the order of reversion is only an order of implementation because of the order passed in another writ petition in W.P. (MD) No. 9116 of 2008. Thereafter, the respondent



has issued the notice, dated 12.04.2009, calling for explanation for initiation of disciplinary proceedings under 17(b) alleging that the petitioner has not completed X std at the time of joining the post of Salaipaniaalargal. The contention of the petitioner is that he had completed X std in the year 1989. Initially the petitioner appeared for the exams in March 1988 and failed in two subjects and thereafter, appeared in October 1988 and cleared one subject and again appeared in October 1989 and completed the same. The petitioner joined the post of Salainpaniaalar in the year 1997 and at that time the required qualification is only V standard pass and the petitioner has submitted all the details before the authorities. But the petitioner was not aware, whether it has been entered in the service book. However, on receipt of the notice, the petitioner has requested time to submit an explanation, vide letter, dated 06.05.2009.

6. Pending the proceedings, since the petitioner was not granted promotion, the petitioner requested the respondent to grant promotion. Since the same was not considered, the petitioner has filed a writ petition in W.P.(MD)No.8073 of 2012 and the same was disposed of, vide order, dated 15.06.2012, directing the respondents to consider the representation and pass orders. Since, the respondent did not pass orders, the petitioner has filed a contempt petition in Cont. P. (MD) No.419 of 2013. In the meanwhile, under Right to Information Act the petitioner sought information to the status of the Charge Memo issued earlier and the respondents replied that it is pending for the petitioner's explanation. In the contempt petition, the respondents have produced an order, dated 05.04.2013, rejecting the claim for promotion. The petitioner's claim is that in the seniority list he was shown as S.No.27 and the respondents ought to have placed the petitioner in No.1, since the petitioner has been in the seniority list from 2008 onwards, he is the senior most person among all. But the petitioner was not granted any promotion.

7. The brief facts of the case as stated by the writ petitioner K. Karthikeyan in W.P. (MD) No.3324 of 2013 is that the petitioner was posted as Trainee Salai Panialar on 10.11.1997 and then confirmed in the said post on 10.11.1998. the 3rd respondent published seniority list by placing 38 persons who obtained 10th standard qualification by open university system and who were not having 10th standard qualification at the time of joining the service as salai panialayargal on 10.11.1997. The petitioner name appeared in Serial No. 42 but in the earlier list published in the year 2008 the petitioner name was in Serial No. 12. In the earlier list the serial numbers 1 to 10 were already granted promotion or attained superannuation. As per the letter dated 14.02.2013 there are four vacancies and the petitioner is eligible for the same. The respondents have issued G.O. Ms. No. 193 Highway and Minor Ports (HK3) Department dated 01.08.2008 and amended the Special Rules for the Tamil Nadu Highways Engineering Subordinate Service (Section 15



b in volume III of the Tamil Nadu Services Manual (1970) and in Rule 4 in sub-rule (b) in the table for item (1) in Column (2) against the entry "Recruitment by Transfer from the post of Gang Mazdoor in the Tamil Nadu Basic Service in Column (1) the words "must have passed 10th standard from a recognized school" was substituted. In the explanation the following explanation was substituted,

"A recognized school shall mean a school maintained by or approved by the Government of Tamil Nadu or for which recognition has been accorded under the Tamil Nadu Educational Rules"

The 1st respondent issued another amendment in G.O. Ms. No. 16 dated 21.01.2009 amending the qualification criteria specified in G.O. Ms. No. 193 dated 01.08.2008 as follows:

"Must have passed 10th standard examination from a recognized school or its equivalent examination from a recognized school or its equivalent examination duly recognized by Government of Tamil Nadu"

The petitioner Karthikeyan had challenged the said amendment in W.P. (MD) No. 5667 / 2009 in Principle Bench and the said writ petition was dismissed on 13.09.2012 for non-prosecution, the petitioner had filed an application to restore the writ petition and the same is pending. In the meanwhile, the petitioner has challenged the seniority list in the present writ petition.

8. The respondents have filed a counter affidavit stating that the petitioner was appointed as Gang Mazdoor Trainee on 10.11.1997 and was regularized on 10.11.1998. The respondents have drawn the approved list for the year 2008 on 25.08.2008 for 19 members and only 8 members were selected. Since the promotion was granted in the ratio 3:1, three persons from direct recruitment and one person from transfer promotion. In the list, the petitioners name was in S.No.8 and he was granted promotion. One Mr.Alaguraj who has completed five year of service and who has passed X standard by open University was not included in the list. Aggrieved over the same, the said Alaguraj has filed a writ petition in W.P. (MD) No.9116 of 2008 and this Court, vide order, dated 27.01.2009, directed the respondents to place him in the respective place and grant promotion. Therefore, the respondents reverted the junior most in the list which happens to be a present writ petitioner, namely, Murugapandi. The officials have stated that the Murugapandi was reverted based on the order of this Court. Aggrieved over the same, the petitioner has preferred a writ petition in W.P. (MD) No.3358 of 2009 and the same was dismissed showing the earlier order passed in the writ petition in W.P.(MD)No.9116 of 2008. The respondents have stated that the qualification for the Salaipaniaalar is V standard pass, but the petitioner has reported as X standard fail and has given false information, thinking that he may not be selected for



the post of Salaipaniyalar, if his educational qualification shown as X std pass. Therefore, the respondents have initiated the disciplinary proceedings against the petitioner under Section 17(b).

9. In the meanwhile, the petitioner has preferred a writ petition in W.P.(MD)No.8073 of 2012 and this Court, vide order, dated 15.06.2012, directed the respondents to consider the petitioner's representation for granting promotion. Since the same was not complied, the petitioner has preferred a contempt petition in Cont. P. (MD)No.419 of 2013. Thereafter, his claim was rejected, vide impugned order, dated 05.04.2013. However, his name was included in the revised list in the place of 27. The petitioner's name was in the panel for the year 2008 in S.No.8 i.e., 2008 but the said panel lapsed after one year.

10. Heard the Learned Counsel for the petitioners and the Learned Special Government Pleader Mrs. Farjana Ghoushia in W.P. (MD) No. 3324 / 2013, Learned Additional Government Pleader Mr. Sasikumar in W.P. (MD) No. 6843 / 2013 and W.P. (MD) No. 17238 / 2013. No appearance for the respondents 3 to 28 in W.P. (MD) No. 17238 / 2013

11. Admittedly, the petitioner has failed in two subjects in X standard in March 1988. Thereafter, the petitioner had passed in one subject in October 1988 and then cleared one more subject in October 1989 and the petitioner had passed the SSLC in the year 1989. Unfortunately, the petitioner was not considered because of one Mr. Alaguraj, who has claimed that he has completed Pre-Foundation Course, which is equivalent to X standard and he ought to have been considered and this Court, granted the relief and the present petitioner was reverted back.

12. The issue of whether the Pre-Foundation Course is equivalent to X standard was considered in W.A.(MD)No.213 of 2018 and it has been held that pre-foundation is not equivalent to X standard and the relevant portion is extracted as under:

"33. In view of the above said discussion and in view of the changed situation, the petitioner cannot now after 2009, claim to be eligible, to be considered for selection to the posts included in the Combined Subordinate Services Examination-I, because his graduation degree now cannot be considered to be a valid, in view of the fact that he has not either passed the 11th standard public examination under the old pattern or the 12th standard public examination under the new pattern and because of the fact that the Government in the year 2009 have issued G.O.Ms.No.144, Personnel & Administrative Reforms Department, dated 20.11.2017 and in subsequent clarifications, taken a consistent stand that graduation degrees obtained on the basis of foundation courses conducted by Madurai



Kamaraj University would not be considered as valid degree, to be eligible for appointment in public services"

13. It has been clearly stated that graduation degrees obtained on the basis of foundation courses conducted by Madurai Kamaraj University would not be considered as valid degree. The Government has also passed G.O.Ms.No.144, Personnel & Administrative Reforms Department, dated 20.11.2017 and has held as under

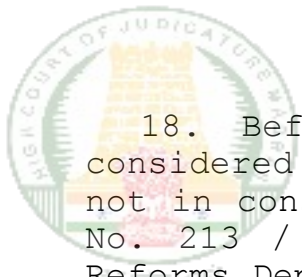
"6. As the recommendations of the Equivalence Committee confirms the clarification that the Pre-Foundation Course and Foundation Course offered by various Universities in the state are not equivalent to SSLC and Higher Secondary Course (+2) respectively, Government emphasis to follow the clarification issued in the Government letter seventh read above scrupulously"

14. It is stated that Equivalence Committee also had confirmed the clarification that the Pre-Foundation Course is not equivalent to SSLC and Foundation course is not equivalent to Higher Secondary Course (+2). Now the issue is settled that the Pre-Foundation Course cannot be considered as equivalent to SSLC. Also the Foundation Course is not equivalent to Plus Two. In these circumstances, the impugned seniority list, dated 14.09.2013 is liable to be quashed.

15. The Writ Petition in W.P.(MD)No.3324 of 2013 is filed by K. Karthikeyan to quash the impugned order dated 14.02.2013, which is the seniority list. Since the writ petitions in W.P. (MD)No.17238 of 2013 and W.P. (MD) No.6843 of 2013 are allowed based on the G.O.Ms.No.144 Personnel & Administrative Reforms Department, dated 20.11.2017, read that the Division Bench order dated 19.07.2019 in W.A.(MD)No. 213 / 2018, wherein it is held that Pre-Foundation Course is not equivalent to SSLC. Hence all the seniority list ought to be redrawn placing the SSLC candidates above and the Pre-Foundation course candidates below them.

16. Therefore, this Court directs the respondents to redraw the seniority list as per the G.O.Ms.No.144, Personnel & Administrative Reforms Department, dated 20.11.2017 and thereafter grant promotion.

17. Hence, the Writ Petitions filed in W.P(MD)No.17238 of 2013, W.P. (MD) No.6843 of 2013 and W.P.(MD)No.3324 of 2013 are allowed and the impugned orders are quashed. Consequently, the seniority list shall be redrawn by placing the SSLC candidates above and the Pre-Foundation course candidates below them. No costs. Connected miscellaneous petitions are closed.



18. Before closing the writ petition this Court is of the considered view the amendment in G.O. Ms. No. 16 dated 21.01.2009 is not in consonance with the judgment 19.07.2019 rendered in W.A.(MD) No. 213 / 2018 and the G.O.Ms.No.144, Personnel & Administrative Reforms Department, dated 20.11.2017, therefore this Court is of the considered opinion the G.O. Ms. No. 16 dated 21.01.2009 ought to be reconsidered. The government is directed to reconsidered the same and withdraw the amendment, so that the issue can be put to rest.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

jbr

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

- 1.The Principal Secretary,
The Government of Tamil nadu,
Highways and Monor Ports(HK3) Department,
Fort St.George,
Chennai-600 009.
- 2.The Chief Engineer,
State Highways,
Chepauk,
Chennai.
- 3.The Divisional Engineer,
State Highways,
Virudhunagar.
- 4.The Divisional Engineer(Highways),
Virudhunagar.
- 5.The Assistant Divisional Engineer(Highways),
Arupukottai,
Virudhunagar District.

+2 CC to M/s.J.Anandkumar, Advocate (SR.No.4670 & SR.No.4671)

+1 CC to M/s.SPL GP (SR.No.5057 & 4974)

W.P. (MD)Nos.3324, 6843 and 17238 of 2013

08.01.2022

MGJ(17.02.2022) 9P 9C

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