



W.P.(MD)No.5696 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

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1. Retired Road Inspector Association,
Register No.51/2015,
Road Inspector Association Building,
Panchayat Union Road,
Dindigul
represented by its General Secretary,
S.M.Jeyaseelan.

2. R.Rengarajan

... Petitioners

Vs.

1. Secretary to the Government,
Government of Tamil Nadu,
Highways and Minor Ports Department,
Secretariat,
Chennai – 600 009.
2. The Secretary to Government of Tamil Nadu,
Rural Development and Panchayat Department,
Secretariat,
Chennai – 600 009.



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3. The Director General,
Highways Department,
H.R.S. Campus,
Guindy,
Chennai – 600 025.
4. The Director of Rural Development and Panchayat Department,
Panagal Building,
saidapet,
Chennai – 600 015.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order passed by the 3rd respondent as directed by the 1st respondent in his Letter No.16748/Nir 4(1)/2018 dated 11.7.2019 and quash the same and consequently direct the 1st respondent to include the Non Provincialised service rendered by the members of the Petitioners Association for moving to the Selection Grade and Special Grade on completion of 10 years and 20 years of service with all other consequential monetary and other service benefits including retirement benefits.

For Petitioner	:	Mr.R.Rengaramanujam
For Respondents	:	Mr.G.Vairam Santhosh Additional Government Pleader



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ORDER

This writ petition has been filed challenging the impugned order passed by the 3rd respondent as directed by the 1st respondent in his Letter No.16748/Nir 4(1)/2018 dated 11.7.2019 and to quash the same and consequently direct the 1st respondent to include the Non Provincialised service rendered by the members of the Petitioners Association for moving to the Selection Grade and Special Grade on completion of 10 years and 20 years of service with all other consequential monetary and other service benefits including retirement benefits.

2. The case of the petitioners is that the petitioners Association has made a detailed representation dated 25.04.2019 to the first respondent, seeking to grant selection grade and special grade, considering the non-provincialised service rendered in the post of Road Inspector Grade-I. But the said representation was rejected. Challenging the same, the present writ petition has been filed.



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3. The learned counsel appearing for the petitioners would submit that the petitioners Association is the Road Inspector Association and Road Inspector Grade - II is the feeder post to the promotion post of Road Inspector Grade - I. G.O.(Ms.)No.856, Public Works Department, dated 01.06.1977, held that the nature of work in respect of Road Inspector Grade - I and Grade - II is one and the same. It is only an upgradation and not a promotion and after completion of five years, the Road Inspector Grade - I is entitled for selection grade and subsequently special grade for completion of respective years. However, the said benefit was not extended in favour of the petitioners, which is not sustainable one. Hence, this Court may set aside the impugned order passed by the third respondent and remand the matter back to the third respondent to consider the petitioner's representation dated 25.04.2019, in terms of G.O.(Ms.)No.856, Public Works Department, dated 01.06.1977, and pass appropriate orders.

4. The learned Additional Government Pleader appearing for the respondents has filed a counter stating that the Government has issued



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amendments to the Special Rules for Tamil Nadu Highways Engineering Subordinate Service vide G.O.(Ms.).No.1858, Public Works Department, dated 22.10.1969, whereby the posts of Road Inspector Grade I and Road Inspector Grade II were constituted, the qualifications for the said posts were prescribed and the Rules were framed. By G.O.(Ms).No.856, Public Works Department, dated 01.06.1977, amendments were issued to the Special Rules for Tamil Nadu Highways Engineering Subordinate Service, whereby the method of recruitment and qualifications were amended to the post of Road Inspector Grade I. The post of Road Inspector Grade I is only a promotional post and not a upgradation post. The completion of five years in Road Inspector Grade II is one of the eligibility criteria prescribed for the promotion to Road Inspector Grade I. Hence, completion of five years in Road Inspector Grade II alone is not eligible for promotion of Road Inspector Grade I. Therefore, as per the Rules, it is not possible to provide the retrospective promotion for the post of Road Inspector Grade I on completion of five years service in Road Inspector Grade II post and consequential benefits of Selection Grade and Special Grade.



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5. It is further stated that the claim of the petitioners Association to consider the Non provincialised service for promotion to the post of Road Inspector Grade I, selection grade and special grade was denied, based on G.O.(Ms.).No.893, Public Works Department, dated 22.08.1994, wherein it is clearly stated that the non provincialised period of service under work charged establishment rendered by all the work charged personnel of Public Works and Highways Department, whose service are provincialised or brought into regular establishment be counted for calculation of pension. Therefore, the claim of the petitioner to count the non provincialised service for promotion and upgradation is not genuine and not in accordance with the existing Rules and therefore denied.

6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.



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7. The facts in the present case are not in dispute. Admittedly, the petitioners Association is the Road Inspector Association and their grievance is that the benefit of G.O.(Ms).No.856, Public Works Department, dated 01.06.1977, was not extended to the members of the petitioners Association. Therefore, they agitated the claim before the third respondent and the same was negated. Against which, the present writ petition has been filed. Admittedly, there was an amendment in Special Rules for Tamil Nadu Highways Engineering Subordinate Service vide G.O.(Ms.).No.1858, Public Works Department, dated 22.10.1969, whereby the posts of Road Inspector Grade I and Road Inspector Grade II were constituted. The basic qualification for the said post is SSLC and the post of Road Inspector Grade II shall be filled up by direct recruitment and the post of Road Inspector Grade I shall be filled up by promotion from Road Inspector Grade II, who have put in not less than ten years of service. Promotion shall be made on the grounds of merit and ability and seniority being considered only where merit and ability are approximately equal.



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8. Subsequently, by G.O.(Ms).No.856, Public Works Department, dated 01.06.1977, amendments were issued to the Special Rules for Tamil Nadu Highways Engineering Subordinate Service, whereby the method of recruitment and qualifications were amended to the post of Road Inspector Grade I. The post of Road Inspector Grade I shall be made only by promotion from among the holders of the posts of Road Inspectors Grade II, who have put in not less than 5 years of service. Promotion shall be made on the grounds of merit and ability, seniority being considered only where merit and ability are approximately equal. Thus, the Road Inspector Grade I post is a promotional post and not a upgradation post. The completion of five years in Road Inspector Grade II is one of the eligibility criteria prescribed for promotion to Road Inspector Grade I. Further, mere completion of five years as Road Inspector Grade II is not sufficient to get promotion.

9. When the very same issue came up for consideration, this Court in W.P.(MD)Nos.4842 to 4847 of 2012, held as follows:



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“25. As stated above, as per G.O.Ms.No.1858 and 856, the Road Inspectors Grade II would come within the zone of consideration for promotion to the post of Road Inspector Grade I. Just because an employee comes within the zone of consideration, he cannot claim promotion since the promotion depends on existence of vacancies and further the same is based on merit and ability.

26. But promotions were given contrary to service jurisprudence. Employees were wrongly given promotion just on completion of five years of service with monetary benefits, thereby causing heavy loss to public exchequer.”

10. Challenging the same, writ appeals in W.A.Nos.810 to 815 of 2013 have been filed, wherein, this Court has held as follows:

“9. The Rule is very clear that promotion would be made on the grounds of merit and ability alone and seniority would be relevant only in case the merit and ability are approximately equal. The fact that the Highways Department earlier promoted some of the Road Inspector Grade I without assessing the relative merit and ability cannot be a reason to direct the Department to violate the special Rules. We are therefore of the view that there is absolutely no merit in the contention taken by the appellants.



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10. The learned single Judge has considered the Special Rules and rightly dismissed the writ petitions.”

11. Further, the petitioners Association has made a representation as if even after completion of five years or ten years, pay of several persons was not modified. However, if at all any individual is affected for not providing the benefit, the individual has to approach the authorities independently and the petitioners Association have no grievance. Hence, the representation made by the petitioners Association is misconceived and the impugned order will not be interfered with. Accordingly, this Writ Petition is dismissed. No costs.

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Index : Yes / No

Speaking Order : Yes / No

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