



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.11.2022

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.7634, 8302, 16782 and 16788 of 2020

and

**W.M.P.(MD)Nos.7121, 7122, 7697, 7700, 7705, 9990,
14014 & 16695 of 2020**

In W.P.(MD)No.7634 of 2020 : -

- 1.Er.S.Maheswaran
- 2.Er.S.Sharmila
- 3.Er.C.Peria Thirumal
- 4.Er.M.Balaji
- 5.Er.Ganeshkumar
- 6.Er.K.Sangeetha
- 7.Er.K.Sathasivam
- 8.Er.P.Arivazhagan
- 9.Er.C.Karthik Kumar
- 10.Er.R.Rajkumar
- 11.Er.A.Soundrarajan
- 12.Er.P.Manikandan
- 13.Er.M.Sundarapandi
- 14.Er.M.S.Mohammed Shagul Hameedraja
- 15.Er.V.Mahalakshmi
- 16.Er.S.Naganathan
- 17.Er.V.Mahalakshmi



18.Er.G.Chelva Kumar

19.Er.M.Ramanathan

20.Er.T.P.Rajeswari

21.Er.A.Yazhini

22.Er.A.V.Ashok Pandian

23.Er.M.Azhagenthiran

24.Er.S.Pon Murali

25.Er.A.Perumalsamy

26.Er.P.Gayathri

27.Er.P.Rajapandi

28.Er.S.Jeganathan

29.Er.P.Sathish Ajay

30.Er.P.T.Rangarajan

31.Er.D.Priya

32.K.Selvaganapathy

33.V.Suresh

34.M.Venkatesh

35.P.Ramalingam

36.M.Velayutham

37.Er.M.Ravichandran

38.Er.S.Suresh

39.Er.S.C.Vadivelkumaran

40.S.Balakrishnan

41.V.Rameshkumar

42.Er.P.Suresh

43.Er.S.Senthilkumar

44.Er.K.Babu Saravanan



45.Er.C.Poonkodi

46.Er.R. Vidya

47.Er.M.Yogavel

48.Er.A.Benazeer Fathima

49.Er.P.Arunadevi

50.S.Yashmeen Sulthana Barveen

51.M.Venkatesh

52.A.Arun Prakash

53.P.Mohamed Althaf

54.K.Raja

55.S.Siva Nanthini

56.Er.M.Arivezhil

57.Er.K.Vairamuthu

58.Er.T.Selvan

59.Er.R.Marikani

60.Er.K.Geetha

61.Er.R.Jose Antony Syril

62.Er.M.Mathan Kumar

63.Er.T.Vishnuvardhan

64.Er.T.Nagaraja

65.Er.J.Jemi Shalini

66.Er.M.Balaganesh

67.Er.T.S.Rajesh Kumar

68.Er.M.Kalai Kannadasan

69.Er.K.Krishnakumar

70.Er.S.Raja

71.Er.M.Sheik Mohamed



72.Er.M.Palavesam

73.Er.F.Alfin Ashmita

74.Er.P.Rajendran

75.Er.P.Saravanan

76.Er.P.Lavanya

77.Er.G.Krishnakumar

78.Er.J.Dominic Amalesh

79.Er.A.R. Venodkumar

80.Er.P.Prem Sankar

81.Er.K.S. Vignesh

82.Er.M.Paramasivam

... Petitioners

Vs.

1.The State of Tamil Nadu,
Rep.by the Secretary,
Highways and Minor Ports Department,
Fort St.George, Chennai – 9.

2.The Director General, Highways Department,
Guindy, Chennai.

3.The Secretary, Tamil Nadu Public Service
Commission, Chennai.

4.N.Indhumathi

5.S.Thirumalai Dhathachari

6.S.S.V.S.Raja

7.P.Philip Prabakaran

8.P.Balajisingh

9.V.Ramamoorthy

... Respondents



Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent vide G.O (Ms) No.61, Highways and minor port (HK1) Department dated 23.03.2020 and 2nd respondent vide proceedings Na.Ka.No.3620Nir 1(1)/2019 dated 08.05.2019 (originally passed on 08.05.2020) and quash the same as illegal as devoid of merits and direct the respondents to get concurrence on inter-se-seniority list for the promotion to the post of Assistant Divisional Engineer in Highways Department between directly recruited Assistant Engineers and promotive Junior Engineers from the third respondent/Tamil Nadu Public Service Commission from the year 2008 onwards (prayer amended vide court order dated 14.06.2021 in WMP(MD)No. 9988 of 2020).

For Petitioner : Mr.Raja Karthikeyan

For Respondents : Mr.Veera Kathiravan,
Additional Advocate General
assisted by Mr.A.K.Manikkam,
Special Government Pleader for R1 & R2

Mr.J.Anandkumar for R3

Mr.S.Govindan for R4 to R10

In W.P.(MD)No.8302 of 2020: -

1.Er.M.Rohini

2.Er.P.Ashokkumar

3.Er.K.Sriram

4.Er.C.Natarajan



5.Er.M.Arunraj

6.Er.Thiyagarajan

... Petitioners

vs.

1.The State of Tamil Nadu, rep.by its Secretary,
Highways and Minor Ports Department,
Fort St.George, Chennai – 9.

2.The Director General,
Highways Department, Guindy, Chennai.

3.The Secretary,
Tamil Nadu Public Service Commission,
Chennai.

4.The State of Tamil Nadu,
Rep.by the Secretary,
Personal & Administrative Reforms
Department, St.George Fort,
Secretariat, Chennai.

5.N.Indhumathi

6.S.Thirumalai Dhathachari

7.S.S.V.S.Raja

8.P.Philip Prabakaran

9.P.Balajisingh

10.V.Ramamoorthy

11.K.Tholkapian

... Respondents



Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent vide proceedings Na.Ka.No.3620/Nir1(1)/2019 dated 08.05.2019 (originally passed on 08.05.2020) and quash the same as illegal as devoid of merits and direct the 2nd respondent to get concurrence on inter-se-seniority list for the promotion to the post of Assistant Divisional Engineer in Highways Department between directly recruited Assistant Engineers and promotive Junior Engineers from the third respondent/Tamil Nadu Public Service Commission from the year 2008 onwards.

For Petitioner : Mr.Raja Karthikeyan

For Respondents : Mr.Veera Kathiravan,
Additional Advocate General
assisted by Mr.A.K.Manikkam,
Special Government Pleader for R1, R2 & R4

Mr.J.Anandkumar for R3

Mr.S.Govindan for R5 to R11

in WP(MD)No.16782 of 2020 :-

Er.P.Gayathri

... Petitioner

v.

- 1.The State of Tamil Nadu,
Rep.by the Secretary,
Highways and Minor Ports Department,
Secretariat, St.George Port, Chennai.
- 2.The Director General, Highways Department,
Guindy, Chennai.



3.The State of Tamil Nadu,
Rep.by the Secretary,
Personal & Administrative Reforms
Department,
Secretariat, St.George Port,
Chennai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the first and second respondents to forbear from revising the panel for the promotion to the post of Assistant Divisional Engineer in the time barred/lapsed panel for the year 2018-19 and further direct the first and second respondents to strictly adhere the procedures contemplated under Sections 7 and 40 of Tamil Nadu Government Servants (Conditions of Service) Act.

in WP(MD)No.16788 of 2020 : -

Er.E.V.Ashok Pandian

... Petitioner

v.

1.The State of Tamil Nadu, Rep.by the Secretary,
Highways and Minor Ports Department,
Secretariat, St.George Port, Chennai.

2.The Director General, Highways Department,
Guindy, Chennai.

3.The State of Tamil Nadu,
Rep.by the Secretary,
Personal & Administrative Reforms
Department,
Secretariat, St.George Port,
Chennai.

... Respondents



Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the first and second respondents to forbear from revising the panel for the promotion to the post of Assistant Divisional Engineer in the time barred/lapsed panel for the year 2018-19 and further direct the first and second respondents to strictly adhere the procedures contemplated under Sections 7 and 40 of Tamil Nadu Government Servants (Conditions of Service) Act.

in WP(MD)Nos.16782 & 16788 of 2022 : -

For Petitioner : Mr.Raja Karthikeyan
For Respondents : Mr.Veera Kathiravan,
Additional Advocate General
assisted by Mr.A.K.Manikkam,
Special Government Pleader

COMMON ORDER

Heard the learned counsel for the petitioner and the learned Additional Advocate General for the respondents and the learned counsel for the private respondents.

2.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petitions. He also filed notes of submissions. He raised host of contentions. According to him, the crucial date



was erroneously reckoned. He would also state that the private respondents are not at all eligible to be promoted as Assistant Executive Engineers and the official respondents have not considered the petitioners case on merits.

3.The learned Additional Advocate General and the learned counsel for the private respondents raised their preliminary objection and they also submitted that the issue on hand had already been raised before this Court in WP Nos.8870 of 2008 etc., and that it had been answered against the direct recruits. This decision was questioned in W.A Nos.1334 and 1335 of 2009 and the Hon'ble Division Bench vide order dated 21.01.2010 confirmed the judgment of the learned Single Judge. They also submitted that the petitioners do not have any cause of action and that these writ petitions are liable to be dismissed as not maintainable.

4.I carefully considered the rival contentions and went through the materials on record. The petitioners are directly recruited Assistant Engineers. On the other hand, the private respondents were promoted as Junior Engineers from the feeder category of Junior Drafting Officer. As per the service rules, the vacancies in the post of AEEs are to be filled up on a 3:1 ratio. 25% of the vacancies has been reserved for the promotees. The learned counsel for the



petitioners would contend that the crucial date if properly reckoned for the year 2018-19, it would be seen that the private respondents were not eligible and once this Court comes to the conclusion that the private respondents were not eligible on the crucial date, the vacancies should go to the direct recruits. Though this contention on the face of it appears to be attractive, as rightly contended by the learned Additional Advocate General, this has already been dealt with in the decision reported in **CDJ 2009 MHC 3933 (D.Aravindan v. The Government of Tamil Nadu)**. Paragraphs 20 and 25 of the said decision reads as follows :

“20.Rule 9(a) has to be read conjointly with the other rules to understand its purport and meaning and it cannot be read in isolation. Merely because Rule 9(a) begins with the phrase "so far as qualified and suitable candidates are available", it cannot be misunderstood to give a go-by to 3 : 1 ratio contemplated under the said rule between AEs (degree-holders) and JEs (diploma-holders). The phrase used "so far as the qualified and suitable candidates are available" should be taken into consideration along with Rules 9(b) and 10 prescribing qualification and experience as eligibility criteria for the promotion to the post of ADE.

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25. *The quota of 3:1 ratio prescribed under rule 9(a) between AEs (degree-holders) and JEs (diploma-holders) is proportionate to their qualification and experience. It is pertinent to note that even as per Rule 18 a similar quota is fixed in respect of the post of AEs stipulating 75% of the vacancies arising in the Section Offices shall be reserved to be filled by the degree holders and 25% of vacancies shall be filled by the diploma holders. In view of such clarity in the said rules, neither the AEs (degree holders) embark into the quota of JEs (diploma holders) nor JEs (diploma holders) embark into the quota reserved for AEs (degree holders). As held by the Hon'ble Apex Court in the decision cited supra, there is a water tight compartment for AEs (degree holders) and JEs (diploma holders) as per the above said rules and they are entitled for promotion only on the basis of their respective quotas. Even in the event of non-availability of qualified and suitable candidates in either of the categories, one cannot embark into the quota of the other as the said rule 9(a) does not contemplate such situation. Such being the position, it is not possible for the Court to add or delete words in statutory rules.*”

It has been already noted that this decision was confirmed by the Hon'ble Division Bench. Admittedly, the case on hand relates to filling up of the vacancies in the post of AEs as against 25% quota. It has also been noted that



the direct recruits cannot have any grievance against the manner in which the 25% quota has been filled up in the promotion of Junior Engineers. The preliminary objection raised by the respondents is sustained. These writ petitions are not maintainable. They stand dismissed. No costs. Connected miscellaneous petitions are also stand dismissed.

30.11.2022

Index : Yes / No
Internet : Yes/ No
skm

To

- 1.The Secretary,
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Fort St.George, Chennai – 9.
- 2.The Director General, Highways Department, Guindy, Chennai.
- 3.The Secretary, Tamil Nadu Public Service Commission, Chennai.



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G.R.SWAMINATHAN, J.

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