



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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Orders Reserved On 20.04.2022	Orders Pronounced On 27.04.2022
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W.P. (MD) Nos.8232, 10338, 11318 & 12010 of 2019
and

W.M.P. (MD) Nos.6468, 7966, 8637, 9049,
9986, 9987 & 14335 of 2019 & 11028 of 2020

W.P. (MD) No.8232 of 2019 :-

1. P.Thavam
2. S.Ayyasamy
3. M.Muthurasu
4. P.Marisamy
5. M.Kottairajan
6. A.Selvakumar
7. K.Suresh
8. N.Lakshmanan
9. V.Kasirajan
10. K.Kannan

.. Petitioners

-vs-

1. The State of Tamil Nadu,
Rep., by its Secretary,
Highways Department, Chennai.

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

3. The Divisional Engineer,
(Construction and Maintenance)
Highways Department,
Madurai Division, Madurai.

4. The Divisional Engineer,
(Construction and Maintenance),
Highways Department,
Virudhunagar Division, Virudhunagar.

5. The Divisional Engineer,
(Construction and Maintenance)
Highways Department,
Thoothukudi Division, Thoothukudi.



6. The Secretary to Government of Tamilnadu,
Personnel and Administrative Reforms (M Department),
Chennai. .. Respondents

W.P. (MD) No.10338 of 2019 :-

P.M.Rajasingh .. Petitioner

-vs-

1. The State of Tamil Nadu,
Rep., by its Secretary,
Highways Department, Chennai.

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

3. The Divisional Engineer,
(Construction and Maintenance)
Highways Department,
Madurai Division, Madurai.

4. The Secretary to Government of Tamilnadu,
Personnel and Administrative Reforms (M Department),
Chennai. .. Respondents

W.P. (MD) No.11318 of 2019 :-

S.Baskaran .. Petitioner

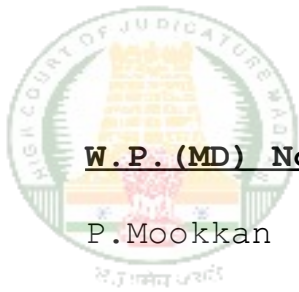
-vs-

1. The State of Tamil Nadu,
Rep., by its Secretary,
Highways Department, Chennai.

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

3. The Divisional Engineer,
(Construction and Maintenance)
Highways Department,
Madurai Division, Madurai.

4. The Secretary to Government of Tamilnadu,
Personnel and Administrative Reforms,
Chennai. .. Respondents



W.P. (MD) No.12010 of 2019 :-

P.Mookkan

.. Petitioner

-vs-

WEB COPY

1. The State of Tamil Nadu,
Rep., by its Secretary,
Personnel and Administrative Reforms (M Department),
Secretariat, Chennai.

2.The Secretary,
Highways and Minor Ports (HK3) Department,
Secretariat, Chennai.

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

4. The Divisional Engineer,
(Construction and Maintenance)
Highways Department,
Madurai Division, Madurai.

5.The Assistant Divisional Engineer,
(Construction and Maintenance)
Highways Department,
Vadipatti Subdivision, Madurai.

.. Respondents

Prayer in W.P.(MD) Nos.8232, 10338 & 11318 of 2019 :- Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus forbearing the respondents from de-promoting the Petitioner/s from the post of Road Inspector Grade II (Skilled Assistant Grade II) to the post of Gang Mazdoor on the ground that the pre-foundation course is not equivalent to SSLC.

Prayer in W.P.(MD) No.12010 of 2019 :- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus forbearing the 4th respondent from de-promoting the Petitioner from the post of Road Inspector Grade II (Skilled Assistant Grade II) to the post of Gang Mazdoor on the ground that the pre-foundation course is not equivalent to 10 years of SSLC in pursuance with the order in G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department dated 20.11.2017 on the basis of his representation dated 03.05.2019.



In W.P. (MD) Nos.8232, 10338 & 11318 of 2019 :-

For Petitioners : Mr.G.Prabhu Rajadurai

In W.P. (MD) No.12010 of 2019 :-

For Petitioners : Mr.B.N.Rajamohamed

In W.P. (MD) No.8232 of 2019 :-

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader

In W.P. (MD) Nos.10338 & 11318 of 2019 :-

For Respondents : Mr.A.K.Manikkam
Special Government Pleader

In W.P. (MD) No.12010 of 2019 :-

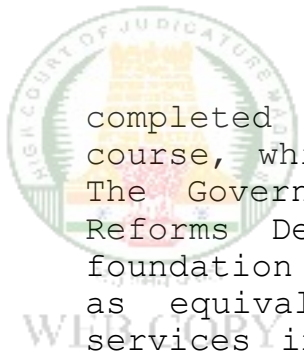
For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

COMMON ORDER

These Writs of Mandamus have been filed to forbear the respondents from de-promoting the petitioners from the post of Road Inspector Grade-II (Skilled Assistant Grade-II) to the post of Gang Mazdoor on the ground that the pre-foundation course is not equivalent to SSLC.

2. The petitioners are presently working as Road Inspectors Grade II (Skilled Assistants Grade-II) in the Highways Department. All the petitioners were initially appointed as Gang Mazdoors.

3. The learned counsels for the petitioners made a submission that the educational qualification fixed for appointment to the post of Gang Mazdoor was V-Standard pass. However, all the petitioners possess the requisite qualification for the post of Gang Mazdoor, but not passed SSLC (X-Standard). The Service Rules for promotion to the post of Road Inspector Grade-II (presently known as Skilled Assistant Grade-II) prescribes the requisite educational qualification as SSLC. Besides the qualification, one must possess the experience as Gang Mazdoor for a period of five years. 25% of the post of Skilled Assistant Grade-II would be filled by way of promotion from the category of Gang Mazdoor and the remaining 75% will be filled up by direct recruitment. Admittedly, all the petitioners are not possessing the requisite educational qualification of SSLC. However, it is contended that the petitioners have passed the pre-foundation course conducted by the Madurai Kamaraj University, which is an equivalent qualification to SSLC. As per the University Rules, candidates, who have not



completed VIII-Standard were permitted to study pre-foundation course, which is an introductory course for a period of one year. The Government vide G.O.Ms.No.528, Personnel and Administrative Reforms Department, dated 18.05.1985 made clear that the pre-foundation course of Madurai Kamaraj University is to be recognised as equivalent to SSLC qualification for entering into public services in the State. Based on the above Government Order, the petitioners have joined the pre-foundation course and completed the same and thereafter, promoted to the post of Skilled Assistant Grade-II.

4. The learned counsels appearing for the petitioners made a submission that all the petitioners were promoted in between the years 2009 and 2014 and as of now, they are working as Skilled Assistants Grade-II. While so, the respondents are initiating steps to revert the petitioners on the ground that the pre-foundation course undergone by the petitioners is not equivalent to the SSLC qualification in the State of Tamil Nadu as per G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017. It is contended that the said Government Order is not applicable to the petitioners, as they were already promoted as Skilled Assistants Grade-II in between the year 2009 and 2014. G.O.Ms.No.144 was issued in the year 2017 and therefore, the said order cannot be retrospectively implemented so as to revert the petitioners from the post of Skilled Assistant Grade-II to Gang Mazdoor.

5. The learned counsel for the petitioners reiterated that when the pre-foundation course is recognised by the Government of Tamil Nadu as early as in the year 1985 and the petitioners underwent the course and got promoted in between the year 2009 and 2014, there is no other reason to revert the petitioners to the post of Gang Mazdoor based on the Government Order issued in G.O.Ms.No.144, dated 20.11.2017.

6. The learned Additional Government Pleader and the learned Special Government Pleader appearing for the respondents objected the contention by stating that G.O.Ms.No.144, dated 20.11.2017 admittedly was issued after the promotion of the petitioners from the post of Gang Mazdoor to the post of Skilled Assistant Grade-II. However, the petitioners even at the time of promotion were found not qualified and the promotion to the post of Skilled Assistant Grade-II was granted by mistake by the authorities and thus, actions were initiated.

7. To substantiate the said contentions, the learned Additional Government Pleader relied on the judgment of the Hon'ble Division Bench of this Court dated 02.09.2021 passed in W.A.No.1863 of 2021. In the said case, the Hon'ble Division Bench dealt with the issue relating to "equivalence" and in paragraphs 17, 21 and 22, the

<https://hcc-judgments.doj.in/cases/> Bench held as follows:-



"17. It is pertinent to note that in the decision rendered in *R. Thirunavukkarasu v. The State of Tamil Nadu*, 2012 (5) CTC 129, various instances where the persons with lesser qualification or degrees obtained by shortcut methods had attempted to get recruited as teachers and the same has been scuttled by the Teachers Recruitment Board and the Government have been stated and in this regard, it is apt to reproduce the following observations :

- "A student cannot be admitted to a 1 st degree course unless he has successfully completed 12 years of schooling.
- No student will be eligible for 1 st degree unless he has successfully completed a three years course.
- The students cannot seek admission to Masters course in any of the faculties unless he has successfully pursued the 1 st degree of three years duration.
- Wherever a degree course of duration of less than three years was in existence at the time of 1985 regulations these institution can award degrees of a duration of two years only as a transitive measure. However, these persons will be eligible for admission to masters course only if they had undergone a one year bridge course."

18. ...

19. ...

20. ...

21. The very same issue was dealt with in detail by another Division Bench of this Court in W.P.No.28040 of 2018, dated 26.10.2018 [*T.Karikalan V. The Secretary, Government of Tamil Nadu, Law Department, Fort St. George, Chennai-9*] and it has been held as follows:

"38. That apart, section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, is virtually the reproduction of G.O.Ms No.107 Personnel and Administrative Reforms Department dated 18.08.2009, which has been upheld by a Hon'ble Division Bench of this court. Needless to state decisions of a Coordinate Bench are binding."

22. From the above, it is clear that G.O.Ms.No.107, dated 18.08.2009, has been brought into effect, as Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, and the said G.O. has been consistently upheld by the Division Benches of this Court. We have to take a similar view, unless and until some valid ground is made out to take a different view."



The writ appeal filed by the Government of Tamil Nadu was allowed.

8. The Hon'ble Supreme Court of India in **Annamalai University, Rep. by Registrar and another vs. Secretary to Government, Information and Tourism Department and Others reported in (2009) 4 SCC 590**, while dealing with the validity of the Open University degrees, settled the principle by stating that the degrees granted by undergoing the regular pattern prescribed by the University Grants Commission alone are to be considered as valid degrees. The Open University degrees are held as invalid. The pattern of education, i.e., 10+2+3+2 as prescribed under the University Grants Commission Regulations alone is to be treated as a valid degree for all purposes and any qualification acquired through Open University system is invalid.

9. The learned Additional Government Pleader made a submission that the pre-foundation course is an Open University course permitting the candidates to study the same without possessing any qualification. Age criteria alone was fixed for admission to the pre-foundation course. After pre-foundation course, the candidates will be admitted in degree course. Therefore, such pre-foundation course cannot be considered as equivalent to SSLC qualification conducted by the Government of Tamil Nadu through Director of Government Examinations.

10. It is contended that even before the promotion of the petitioners, the Hon'ble Supreme Court of India in **Annamalai University** case delivered the judgment. The said judgment was implemented by the Government of Tamil Nadu in G.O.Ms.No.107, Personnel and Administrative Department, dated 18.08.2009. The said Government Order unambiguously stipulates that the earlier Government Orders recognising all those Open University degrees are cancelled and pursuant to the judgment of the Hon'ble Supreme Court, the Government of Tamil Nadu in the said G.O.Ms.No.107 reiterated that candidates, who have studied SSLC (X-Standard) and Higher Secondary Course (+2) and thereafter studied the degree course alone should be considered as persons eligible for entering into Government service. When the Government Order is in force, which was issued in implementation of the judgment of the Hon'ble Supreme Court in **Annamalai University** (supra), the petitioners were promoted mistakenly to the post of Skilled Assistants Grade-II in violation of the Government Order in force. Thus, actions were initiated by the competent authorities.

11. The learned Additional Government Pleader reiterated that though actions were initiated, no final order has been passed reverting the petitioners to the post of Gang Mazdoor. The writ petitions are filed based on certain apprehensions and such writ petitions are not entertainable. When there is no order of

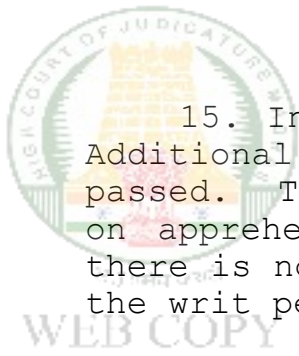


reversion passed by the competent authority, the writ petitions are liable to be rejected.

12. The fact remains that the petitioners do not possess the required qualification of SSLC. However, they have completed the pre-foundation course from Madurai Kamaraj University. The pre-foundation course is an Open University course conducted by Madurai Kamaraj University. It is not considered as a degree and it is an eligible qualification for admission to degree course in Madurai Kamaraj University. Therefore, it is not considered as regular course under the UGC Regulations. Though the Government recognised the pre-foundation course of the Madurai Kamaraj University in the year 1985, the Hon'ble Supreme Court of India in **Annamalai University** case categorically held that those Open University degrees granted in violation of the UGC Regulations cannot be considered as valid course or degree. Thereafter, such Open University degrees were not accepted for entry into public services. The judgment of the Hon'ble Supreme Court was implemented by the Government of Tamil Nadu in G.O.Ms.No.107, dated 18.08.2009. When the Government Order de-recognizing the pre-foundation course as equivalent to that of SSLC was in force during the relevant point of time, the petitioners were promoted to the post of Skilled Assistants Grade-II during the year from 2009 to 2014. Therefore, the contention of the petitioners that actions are initiated by the respondents to revert the petitioners based on G.O.Ms.No.144, dated 20.11.2017 deserves no merit consideration, as the said Government Order is not the basis for any action.

13. Subsequent to the judgment of the Hon'ble Supreme Court of India, this Court also passed several orders following the same and the Open University degrees were declared invalid and only the promotions granted prior to the Government Order issued in G.O.Ms.No.107, dated 18.08.2009 alone were protected.

14. More precisely, if the promotions are granted prior to the Government Order issued in G.O.Ms.No.107, dated 18.08.2009 based on the earlier Government Orders granting equivalence, such promotions alone are held to be valid. However, subsequent promotions granted after the judgment of the Hon'ble Supreme Court, which was implemented by the Government in G.O.Ms.No.107 cannot be considered as valid promotion, as such promotions are granted in violation of the orders of the Supreme Court. Thus, all such promotions are in violation of the judgment of the Hon'ble Supreme Court and in violation of the Government Order and therefore, they are granted either by mistake or otherwise. Such illegal or irregular promotions can never be approved by the Courts, as the promotion itself is in violation of the judgment of the Hon'ble Supreme Court of India in the case of **Annamalai University** (supra).



15. In the present case, as rightly pointed out by the learned Additional Government Pleader, orders of reversion have not been passed. The petitioners have filed the writ petitions merely based on apprehensions. Such writ petitions are not entertainable, as there is no cause for the purpose of filing writ petitions and thus, the writ petitions are premature.

16. For all the above reasons, this Court do not find any reason whatsoever to consider the relief as such sought for. Accordingly, the writ petitions are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Secretary to Government,
The State of Tamil Nadu,
Highways Department, Chennai.
- 2.The Director General,
Highways Department, Guindy, Chennai.
- 3.The Divisional Engineer,
(Construction and Maintenance)
Highways Department,
Madurai Division, Madurai.
- 4.The Divisional Engineer,
(Construction and Maintenance),
Highways Department,
Virudhunagar Division, Virudhunagar.
- 5.The Divisional Engineer,
(Construction and Maintenance)
Highways Department,
Thoothukudi Division, Thoothukudi.
- 6.The Secretary to Government,
The State of Tamil Nadu,
Personnel and Administrative Reforms (M) Department,



7.The Secretary to Government,
The State of Tamil Nadu,
Highways and Minor Ports (HK3) Department,
Secretariat, Chennai.

8.The Assistant Divisional Engineer,
(Construction and Maintenance)
Highways Department, Vadipatti Subdivision, Madurai.

+1 CC to M/s.G. PRABHU RAJADURAI, Advocate (SR-22143[F]
dated 28/04/2022)

+1cc to MR.B.N.RAJAMOHAMED,Advocate, SR.No. 22033 DATED:28.04.2022

+1 CC to M/s.SPL. GP (SR-20061, 20062, 22063, 22359 & 23055[F]
Common Order made in
W.P.(MD) Nos.8232, 10338,
11318 & 12010 of 2019
27.04.2022

NA (CO)
GC(25.05.2022) 10P 12C