



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.20035 of 2014

and

M.P. (MD)Nos.1 and 2 of 2014

WEB COPY

Arul Jothi

... Petitioner

vs.

1.The Superintending Engineer,
(Construction and Maintenance)
Tirunelveli District.

2.The Executive Engineer,
(Construction and Maintenance),
Highways Department,
Thoothukudi.

3.Marichamy

4.Shanmugaraja

5.Rajendran

... 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 pertaining to the proceedings issued by the 2nd respondent in No.2021/2014/B3, dated 06.08.2014 and rejection order issued by the 2nd respondent, vide Memo.No. 2021/2014/B3, dated 30.09.2014, whereby, the request of petition for promotion was rejected and to quash the same and consequently, to direct the 2nd respondent to promote the petitioner to the post of Road Inspector with effect from 06.08.2014.

For Petitioner	: Mr.C.Jeganathan for M/s.Veera Associates
For R1 and R2	: Mr.J.John Rajadurai Government Advocate
For R3 to R5	: Mr.H.Arumugam

O R D E R

This writ petition is filed for issuance of writ of Certiorarified Mandamus, to quash the proceedings dated 06.08.2014 of the 2nd respondent and rejection order issued by the 2nd respondent, dated 30.09.2014, whereby, the request for promotion was rejected and consequently, to direct the 2nd respondent to promote the petitioner to the post of Road Inspector with effect from 06.08.2014.



2. The petitioner had joined as Mazdoor after completing 10th standard. Subsequently, he has completed the SSLC during the year 2008-2009 and the same was entered in the service register. The petitioner had obtained prior permission before acquiring the additional qualification of SSLC. The service rules applicable to the second respondent prescribes the qualification of pass in SSLC for further promotion with the 5 years experience as Mazdoor. This amendment was brought in the service rules in the year 2008. Therefore, the petitioner and similarly placed persons took earnest effort to qualify themselves under the available courses. The Madurai Kamaraj University conducted pre-foundation and foundation courses and those were considered as equivalent to SSLC and HSC respectively, by the Government vide G.O.Ms.No.528 Personnel and Administrative Department dated 18.05.1985. Subsequently said G.O. was put to challenge and several petitions were filed. In the meanwhile, the Government formed Equivalence Committee, wherein the Committee had submitted a report stating the pre-foundation and foundation courses are not equivalent to 10th and 12th standard respectively. The Government had issued G.O.Ms.No.107 Personnel and Administrative Department dated 18.08.2009, wherein the report of the Equivalence Committee was accepted. Thereafter the Hon'ble Division Bench of Madras High Court had considered the issue in W.A.No.213 of 2018 in the case of Mohamed Hasan Refayee Vs. TNPSC and another and vide order dated 19.07.2019 had held that the persons who are qualified pre-foundation and foundation courses prior to 18.08.2009 (the date of issuance of G.O.Ms.No.107) are eligible to be considered for promotion, thereby the cutoff dated was fixed as 18.08.2009.

3. Thereafter the Government had issued another G.O.Ms.No.144 Personnel and Administrative Department dated 20.11.2017, whereby the government had declared that the pre-foundation and foundation courses are not equivalent to 10th and 12th standard respectively. Again, the issue was raised before the Hon'ble Division Bench of High Court of Madras in W.A.(MD)Nos.497 to 500 of 2022. The Hon'ble Division Bench, vide order, dated 05.07.2022, has held that the Government has declared the pre-foundation and foundation courses are not equivalent to 10th and 12th standard through G.O.Ms.No.144 Personnel and Administrative Department dated 20.11.2017. In G.O.Ms.No.107, Personnel and Administrative Reforms Department, dated 18.08.2009, the government has only accepted the Equivalence Committee's report. Therefore, the Hon'ble Division Bench has held since the government had declared that pre-foundation and foundation courses are not equivalent to 10th and 12th standard in G.O.Ms.No.144 and hence from 20.11.2017 onwards the candidates are not eligible for promotion. However if any candidate had passed pre-foundation and foundation courses prior to 20.11.2017, then they are eligible for promotion.

4. In the present case the petitioner and respondents 3 to 5 have not completed the pre-foundation and foundation courses prior to



2017 itself and therefore are all eligible for promotion and Inspectors.

5. The petitioner further contended that the 5th respondent has completed the foundation course without obtaining prior permission from the higher authorities. The said contention cannot be entertained, since the Government has issued G.O.s, stating if the candidates have not obtained prior permission, they are liable for disciplinary action only and the benefits cannot be denied. Therefore, the 5th respondent is entitled to the benefits and consequently, entitled to the promotion also. However, the 5th respondent is liable for disciplinary action and this court is leaving open for taking disciplinary action in accordance with the law. The petitioner and the respondents 3 to 5 are entitled to promotion. **(*) "Hence, the impugned order, dated 30.09.2014, is quashed and the order, dated 06.08.2014, is upheld. The respondents 1 and 2 shall consider the case of the petitioner and confer promotion and consequential benefits that is applicable in accordance to law within a period of eight weeks from the date of receipt of a copy of this order."**

6. With the above said observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (A.E)

(*) Corrected as per the order of this court dated 11/01/2023 made in WP(MD).No. 20035 of 2014

Sd/-

Assistant Registrar (A.E)

// True Copy //

/02/2023

Sub Assistant Registrar (CS)

TMG

(*) To be substituted the order already despatched on 10/01/2023

To

1. The Superintending Engineer,
(Construction and Maintenance) Tirunelveli District.

2. The Executive Engineer,
(Construction and Maintenance), Highways Department, Thoothukudi.



W.P.(MD)N



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+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-61837[F] dated 14/12/2022)

+1 CC to M/s.SPL.GP (SR-62413[F] dated 15/12/2022)

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AMS (06.01.2023) 4P 5C

KB (03.01.2023) 4P 5C