



W.P.(MD).No.22025 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.12.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

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V.Sakthivel

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary,
Highways and Minor Ports Department,
Secretariat, Chennai-600 009.

2.The Director General,
Highways Department,
Guindy, Chennai- 600 025.

3.The superintending Engineer,
Highways (Construction and Maintenance),
Tirunelveli.

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

... 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 connected with impugned order passed by the 1st respondent in Letter No.2518/H.R.1/2018-6 dated 27.06.2019 and quash the same and consequently



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direct the respondents to notionally promote the petitioner as Road Inspector Grade-I with effect from 01.02.2007 and refix the petitioner's pay in the post of Road Inspector Grade-I and grant revised pension and other retirement benefits.

For Petitioner : Mr.S.Govindan

For Respondents : Mr.N.Muthuvijayan
Special Government Pleader

ORDER

This writ petition has been filed to quash the order of the 1st respondent, dated 27.06.2019 and consequently direct the respondents to notionally promote the petitioner as Road Inspector Grade-I with effect from 01.02.2007 and refix the petitioner's pay in the post of Road Inspector Grade-I and grant revised pension and other retirement benefits.

2. The petitioner was originally appointed as Welder cum Gas Cutter Grade-II on 18.06.1975 and his service was regularized on 01.01.1981. Due to some eye defect, he was appointed as Hot Mix Plant Assistant Operator in National Highways Department on 01.02.1990 and he was granted Selection Grade with effect from 01.01.1991. Thereafter, he was granted Special Grade with effect from 01.01.2001. Consequent to the closure of Mechanical Wing of



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the Highways Department, the petitioner was redeployed as Road Inspector Grade-II in accordance to the qualification of the petitioner with pay protection under G.O.Ms.No.217 Highways (HR2) Department dated, 20.11.2001. The petitioner was posted to Highways Ambasamudram Sub-Division of Tirunelveli Division and joined on 01.02.2002. After satisfactory service, he retired on 31.05.2011.

3. The contention of the petitioner is in terms of G.O.Ms.No.856 PWD dated 01.06.1977, the petitioner is entitled to Road Inspector Grade-I post on completion of 5 years with pass in IV Form, from the category of Road Inspector Grade-II. The 3rd respondent vide letter, dated 18.02.2004 had given instructions to fill up the post of Road Inspector Grade-I. In the above circular, total number of posts of Road Inspectors sanctioned for Tirunelveli Division is 72 of which, 24 posts of Road Inspectors were upgraded as Road Inspector Grade-I by following the ratio of 1:2. The Road Inspector Grade-I and Road Inspector Grade-II are one and the same. Since, there was no promotion opportunities in the category of Road Inspector and in order to avoid stagnation, the post of Road Inspector Grade-I was created in the ratio of 1:2 and accordingly, 24 posts of Road Inspector Grade-I were allotted to the



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Highways Tirunelveli Division. The respondents did not take any steps to fill up the post in spite of several vacancies due to retirement of incumbents. The respondents informed the petitioner that is not eligible for the said post, since he is not having S.S.L.C qualification. Earlier through G.O.Ms.No.856 Public Works Department dated 01.06.1997, the qualification prescribed is to possess five years experience in the post of Road Inspector Grade-II with educational qualification of pass in IV Form. Subsequently, the respondents amended the Special Rules through G.O.Ms.No.193 Highways Department, dated 01.08.2008 and G.O.Ms.No.16 Highways Department, dated 21.02.2009 and the educational qualification was prescribed as pass in 10th standard for the promotion post Road Inspector Grade-I. The contention of the petitioner is that the said Rules are applicable subsequently. The further contention of the petitioner is that several persons were granted Road Inspector Grade-I, who were servicing along with the petitioner and the said persons were granted promotion notionally after retirement. The petitioner was not granted promotion on par with the similarly placed persons. Hence, the petitioner has filed the present writ petition.



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4. The respondents have filed a counter stating that as per G.O.Ms.No. 1858 Public Works Department, dated 22.10.1969, the qualification prescribed for the Road Inspector Grade-I post is that the candidate ought to have served 10 years in the Grade-II post. The said qualification was subsequently modified by issuing G.O.Ms.No.856 Public Works Department, dated 01.06.1977. The said 2 Government Orders would indicate the candidates possessing such qualifications would come under the zone of consideration. Just because an employee comes within the zone of consideration, he cannot claim promotion as a matter of right. The promotion depends on merit and ability and on availability of vacancies. The petitioner has filed the present writ petition after 6 years of his retirement in W.P(MD)No.3278 of 2017 and this Court vide order, dated 24.02.2017 directed the respondents to consider and pass orders. Thereafter, the petitioner's representation was considered and the impugned order was passed. The promotion to the Road Inspector Grade-I and Grade-II would be considered based on the division wise and it is not state wise seniority. If there is any vacancy in the division, the same may be considered. Moreover, in Tirunelveli Division, the promotion was not considered while the petitioner was in service. Subsequently, only when vacancies arose, but by the time petitioner had retired from service. Therefore, the petitioner cannot claim



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any promotion retrospectively. Further contention of the respondent is it is only a promotional post and not an up-gradation post. The promotion is not automatic, it depends upon the vacancy and merit and ability. Therefore, the respondents prayed to dismiss the writ petition.

5. Heard Mr.S.Govindan, learned counsel for the petitioner and Mr.N.Muthuvijayan, learned Special Government Pleader for the respondents and perused the records.

6. The 1st contention that was raised by the respondents is that the petitioner is not having 10 years of service to be considered for the Road Inspector Grade-I and relied on G.O.Ms.No.1858 Public Works Department, dated 22.10.1969. The said plea cannot be considered, since subsequently in the year 1977, the respondents had issued G.O.Ms.No.856 where the service qualification of 10 years is reduced to 5 years. The contention of the petitioner is that in the year 2007, he has completed 5 years. Therefore, the petitioner has come within the zone of consideration. This Court is of the considered opinion that as on 2007, the petitioner has come within the zone of consideration as per G.O.Ms.No.856, dated 01.06.1977.



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7. The next plea that was raised by the respondents is that the petitioner has filed this writ petition and an earlier writ petition after his retirement of 6 years. This contention cannot be entertained, since the claim of the petitioner is not considered at all even though he had come within the zone of consideration. On perusal of counter affidavit filed by the respondent, it is seen that the respondents have deliberately mixed up with G.O.Ms.No.1858 and G.O.Ms.No. 856 where the prescription of 5 years and 10 years were given. Therefore, the claim of the respondents that the issue has been agitated belatedly cannot be accepted. If the respondents have considered the case in the year 2007 itself and rejected based on some other reasons, the claim of the respondents is acceptable. When the respondents deliberately have not considered the case of the petitioner, then the belated claim cannot be a ground to reject the claim of the petitioner. The next contention raised by the respondent is also rejected.

8. The next plea of the respondents is that the promotion is not an upgradation and the petitioner cannot claim it as a matter of right, promotion is based on merit and ability as well as availability of vacancies. The claim of the petitioner is that his name was not even considered. If the respondents have



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considered and rejected based on rules, then the same would be acceptable. In the present case, the respondents have not even considered the case of the petitioner. Therefore, the petitioner's name ought to be considered for promotion in accordance to law.

9. The learned counsel for the petitioner further submitted that similarly placed person, namely Jeyamani was granted promotion notionally on 26.05.2009. Therefore, the respondents are directed to consider the claim of the petitioner in the light of promotion granted to Jeyamani. It is made clear that the respondents shall not reject the claim of the petitioner by stating that the original appointment of Turner, Fitter and Welder will not be considered. All these categories were taken into consideration for similarly placed persons. Therefore, this Court set aside the impugned order. The 2nd and 3rd respondents are directed to consider the case of the petitioner within a period of twelve (12) weeks from the date of receipt of a copy of this order. If the petitioner is otherwise eligible, the effect of the benefits shall be granted in the pensionary benefits. However, the petitioner is not entitled to any backwages for the said post.



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10. In view of the above, this writ petition is allowed. No costs.

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Index : Yes / No

Internet : Yes/ No

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To

- 1.The Secretary,
The Government of Tamil Nadu,
Highways and Minor Ports Department,
Secretariat, Chennai-600 009.
- 2.The Director General,
Highways Department,
Guindy, Chennai- 600 025.
- 3.The superintending Engineer,
Highways (Construction and Maintenance),
Tirunelveli.
- 4.The Divisional Engineer,
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S.SRIMATHY, J.

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