



W.P.(MD)No.3172 of 2009 & 9954 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:23.01.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.3172 of 2009 & 9954 of 2015

and

M.P.(MD)Nos.3 of 2009 & 1 of 2015

W.P.(MD)No.3172 of 2009

1. B. Velladurai
2. A.Madhavan
3. A.Arunachalam

... Petitioners

Vs.

1. The Principal Secretary to the Government,
Highways and Minor Ports Departments,
Secretariat, Fort Saint George,
Chennai – 600 009.
2. The Chief Engineer,
Highways and Minor Ports Departments,
Chepauk, Chennai – 600 005.
3. The Divisional Engineer,
Highways and Minor Ports Departments,
Ettayapuram Road,,
Thoothukudi District – 628 002.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, to call for records from the 3rd respondent pertaining to the recruitment order as per No.5113/2008/3, dated 03.10.2008 and quash the same consequently direct the 3rd respondent to make a new Recruitment list as per the guidelines given in G.O.Ms.No.193 Highways and Minor ports (HK3) dated 01.08.2008.

For Petitioners	: Mr.C.Jeganathan
For Respondents	: Mr.N.Muthuvijayan Special Government Pleader

W.P.(MD)No. 9954 of 2015

B. Velladurai

... Petitioner

Vs.

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2. The Chief Engineer,
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Highways and Minor Ports Departments,
Ettayapuram Road,,
Thoothukudi District – 628 002.
4. C. Poolpandi



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5. S. Rengaraj

6. S. Kannan

7. N. Subramanian

8. U. Murugan

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for the records pertaining to the proceedings issued by the 3rd respondent in No. 4980/2012/A3, dated 30.05.2014 and quash the same and consequently direct the 3rd respondent to promote the petitioner to the post of Road Inspector with effect from, 03.10.2008.

For Petitioner	: Mr.C.Jeganathan
For R-1 to R-3	: Mr.P.Thambidurai Government Advocate
For R-4 to R-8	: Mr.S.C.Herold Singh

COMMON ORDER

W.P.(MD)No.3172 of 2009 has been filed challenging the impugned order, dated 03.10.2008 and consequently direct the 3rd respondent to make a new Recruitment list as per guidelines given in ***G.O.Ms.No.193 Highways and Minor ports (HK3) dated 01.08.2008.***



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2. The 1st and 2nd petitioners have joined service as Gang Mazdoor on 13.11.1997 and the 3rd petitioner has joined service on 25.05.1998. As per G.O.Ms.No.34 Highways (H.K.3) Department, dated 29.01.2008, 53% Grade II Road Inspector posts are to be appointed which is lying vacant. Out of 53%, 25% of Road Inspectors Grade II shall be filled by promotion. Hence, 13 number of Road Inspectors shall be filled through promotion from Gang Mazdoors to Road Inspectors Grade II.

3. In the meanwhile, the Government issued **G.O.Ms.No.193, Highways and Minor Ports (H.K.3) dated 01.08.2008** wherein, the qualification for the promotive post is fixed as 10th standard pass. The petitioners have declared that they have passed 10th standard at the time of appointment.

4. The contention of the petitioner is that in the post of Gang Mazdoor, certain persons have not declared their original qualification at the time of joining. This was brought to the knowledge of the respondents after the passing of the said G.O.Ms.No.193. After issuance of the said G.O. there were several litigations.



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5. The further contention of the petitioner is that, out of 32 employees only 15 employees have passed their 10th standard at the time of appointment as Gang Mazdoor and rest of them had passed their 10th standard only after appointment. The contention of the petitioner as per G.O.Ms.No.193, the persons who have passed 10th standard after appointment are not eligible for promotion to Road Inspectors Grade II. Moreover, certain employees have not passed 10th standard from the recognized school. On perusal of the said G.O.Ms.No.193, it is seen that there is no such condition that those who have passed prior to the G.O. alone would be consider for promotion. It is seen that prior to this G.O. the qualification prescribed for appointing Gang Mazdoor is pass in 5th standard and subsequently through G.O.Ms.No.193, the qualification was increased to pass in 10th standard. Therefore, the plea of the petitioner that those who had passed prior to G.O.Ms.No.193 alone can be considered for promotion is erroneous and illegal.

6. In the meanwhile, certain employees were promoted and hence the petitioners were aggrieved by the same have filed second writ petition in ***W.P. (MD)No.9954 of 2015***, challenging the promotion granted to the respondents 4 to



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7. The contention of the petitioner is that the respondents 4 to 8 have not obtained prior permission for studying higher education and the respondents are bound to obtain permission pursuant to G.O.Ms.No.200 Personnel and Administrative Reforms Department dated 19.04.1996 and hence the respondents 4 to 8 is not entitled to promotion especially based on their qualification of 10th pass which was obtained without prior permission. On perusal of the said G.O.Ms.No.200, it states that permission shall be obtained from the Head of Department for perusing higher studies and it also states that the employees violating the conditions would be liable for disciplinary proceedings. The said G.O. does not prohibit from granting promotion based on the said qualifications. In the present case the respondents 4 to 8 faced the disciplinary proceedings. Therefore, the claim of the petitioner that the respondents 4 to 8 are not entitled to promotion is not legally sustainable and the said plea is rejected.

8. According to the petitioners, steps were taken to process promotion in the year 2008. In the meanwhile, it was brought to the knowledge that the respondents 4 to 8 are not possessing higher qualification at the time of



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appointment. Hence, disciplinary proceeding was initiated and thereafter, departmental enquiry was conducted. The enquiry order was challenged by way of filing writ petition by the respondents 4 to 8 and then writ appeal. After litigations, the respondents 4 to 8 were imposed punishment of stoppage of increment for five years with cumulative effect. But, on appeal the punishment was reduced to one year. In the meanwhile, the said respondents were demoted. While challenging the demotion order there was an order of stay of the impugned order. The respondents misunderstand that the entire promotion was stayed by this Court and hence, the official respondents denied promotion to the petitioner. On perusal of the stay order and the litigations filed by the respondent Nos.4 to 8 there is no stay for promotion. The petitioner/B.Velladurai's name was found in Sl.No.13, but until Serial No.12 respondents were granted promotion. Hence, this Court is of the considered opinion that the official respondents ought not to have declined promotion to the petitioner and the similarly placed persons, like the petitioners based on the alleged stay order. Therefore, the official respondents are directed to consider the case of the petitioners, after affording opportunity to the petitioners, fix their seniority and grant notional promotion with consequential benefits to the petitioners, if otherwise the petitioners are eligible. The said order



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shall be implemented, within a period of eight weeks from the date of receipt of a copy of the order.

9. With the aforesaid directions, these writ petitions are disposed of.

No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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23.01.2023



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S.SRIMATHY, J

ksa

**Common Order made in
W.P.(MD)Nos.3172 of 2009
& 9954 of 2015**

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