



Cont.P.(MD)No.1174 of 2021
Rev.Aplc.(MD)No.53 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserving the order	Date of Pronouncing the order
15.02.2023	27.02.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Cont.P.(MD)No.1174 of 2021
in
W.A.(MD)No.289 of 2020
and
Rev.Aplc.(MD)No.53 of 2021
and
C.M.P.(MD)No.5967 of 2021

Cont.P.(MD)No.1174 of 2021:-

T.Raghavan

... Petitioner

vs.

Mr.G.Murugan,
Divisional Engineer (Highways), (C & M),
Ramnad Division,
Ramnad.

... Respondent

Prayer :- Contempt Petition filed under Section 11 of the Contempt of Courts Act, to punish the respondent for his wilful disobedience in not complying with the order dated 26.03.2021, passed by this Court in W.A.(MD)No.289 of 2020.

For Petitioner

: Mr.T.Lajapathi Roy
Senior Counsel
for Mr.J.Anandkumar



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For Respondent

: Mr.Veera.Kathiravan
Additional Advocate General

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Rev.Aplc.(MD)No.53 of 2021:-

1.The Divisional Engineer (Highways),
(C & M) Ramanathapuram Division,
Ramanathapuram.

2.The Assistant Divisional Engineer (Highways),
(C & M) Ramanathapuram Division,
Ramanathapuram.

... Review Applicants

vs.

T.Raghavan

... Respondent

Prayer :- Review Application filed under Order 47 Rules 1 and 2 read with Section 114 of C.P.C. to review the order dated 26.03.2021, passed by this Court in W.A.(MD)No.289 of 2020.

For Review Applicants

: Mr.Veera.Kathiravan
Additional Advocate General

For Respondent

: T.Lajapathi Roy
Senior Counsel
for Mr.J.Anandkumar

COMMON ORDER

DR.G.JAYACHANDRAN, J.

T.Raghavan, the petitioner in W.P.(MD)No.6149 of 2015 filed the Writ Petition seeking issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the orders dated 28.11.2014 and 02.12.2014 and quash the same.



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2. According to the writ petitioner, he joined as a Road Worker in the Highways Department on 28.11.1997. At that time, he had completed 10th Standard.

His service was regularized from the date of his appointment. The post of Road Inspector is to be filled up at the ratio of 3:1, *i.e.*, 3 from direct recruitment and one from promotion. The feeder category to the Road Inspector post is Road Worker. When the seniority list was drawn for Road Inspector Grade-II from the feeder category, he was placed at Serial No.14. While so, on 20.08.2009, a charge memo was issued to him alleging that he has given wrong information regarding his educational qualification at the time of appointment as Road Worker. The Assistant Divisional Engineer, Paramakudi, was appointed to conduct the enquiry. Though he furnished all necessary documents, the Enquiry Officer held the charges proved. Therefore, when the post of Road Inspector Grade – II was filled, he was not considered in view of proven charge. Thus, his promotion was deprived. His juniors were promoted as Road Inspector. The finding of the Enquiry Officer was challenged in W.P.(MD)No.14933 of 2012. In the said Writ Petition, the Department assured that T.Raghavan will be promoted after obtaining necessary approval from the Government. Hence, the Writ Petition was disposed of to complete the said exercise within a period of six weeks. In spite of the time bound direction, the Department failed to promote him. Hence, he filed Cont.P.(MD)No.1157 of 2014. After the Contempt Petition filed, the Divisional Engineer passed order dated 23.07.2014, promising his request for promotion will be considered when vacancy



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arises. Instead of promoting him as Road Inspector Grade – II, seniority list was prepared, wherein T.Raghavan was placed at Serial No.12 as on 01.10.2014. The said order dated 28.11.2014 was communicated to him stating that 9 persons, who were seniors to him, were promoted as Road Inspector Grade – II in the vacancy and T.Raghavan, who is at 12th place could not be accommodated for want of vacancy. The learned Single Judge, vide order dated 11.12.2019, set aside two orders *i.e.*, the order dated 28.11.2014, fixing the seniority of the writ petitioner at Serial No.12 and the order dated 02.12.2014, indicating that the seniority list prepared based on the date of appointment and the persons, who were facing departmental proceedings and charge memo, were not considered for promotion and allowed the Writ Petition with the following observation:-

"7.Perusal of record shows it is not in dispute that the petitioner's name found place in serial No.14 in the list of eligible persons for promotion to the post of Road Inspector Grade&-II during 2008-09 and the petitioner's promotion has been stalled by issuance of a charge memo stating that he suppressed his 10th qualification at the time of his joining as Road Worker and that charge memo has been quashed by this Court in W.P(MD)No.4229/2012 dated 26.06.2012 with a direction to consider the petitioner for promotion. Once the charge memo is set aside, the petitioner ought to have been promoted as per 2008 seniority list and even in W.P(MD)No. 14933/2012 filed by the petitioner to promote him to the post of Road Inspector Grade-II, this Court only taking into



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consideration the undertaking given by the learned Additional Government Pleader that the petitioner's claim would be considered as there were vacancies, disposed of the said writ petition by order dated 23.06.2014.

8.It is also seen from the records that even in the impugned proceedings dated 02.12.2014, it was admitted by the respondents that there are 3 vacancies available during 2011 and 2012 which was filled up by 2 persons who got orders from this Court and the remaining one post was filled up by one Vadivelu who completed 10th Standard in 2009 and the said Vadivelu has not been shown in 2008 seniority panel. Therefore, in my considered opinion, since the charge memo has been quashed, the petitioner ought to have been promoted as per 2008 seniority panel. Hence, the impugned orders dated 28.11.2014 and 02.12.2014 are set aside and the respondents are directed to restore the seniority of the petitioner as per 2008 seniority panel and promote the petitioner from the day his junior in 2008 seniority panel was promoted, within a period of eight weeks from the date of receipt of a copy of this order."

3. The Department being aggrieved by the said order of the learned Single Judge, preferred an intra Court appeal in W.A.(MD)No.289 of 2020. A Division Bench of this Court, after considering the grounds of appeal and the records held that, no junior to T.Raghavan been promoted in the post of Road Inspector Grade-II and considering the list prepared for the year 2020, wherein the name of T.Raghavan



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found at Serial No.6 on the crucial date *i.e.*, 01.04.2020, the appeal was disposed of, directing the Department/appellant to conclude the process on giving promotion to the writ petitioner within eight weeks from the date of receipt of a copy of that order. Since that order was not given effect to, the Writ Petitioner has filed Cont.P.(MD)No. 1174 of 2021, alleging that there is wilful disobedience on the part of the Department in not complying the positive direction issued by the Division Bench of this Court, vide judgment dated 26.03.2021. Whereas, the Department has filed Review Application on 01.06.2021 setting out reasons for review. According to the Department, as per G.O.Ms.No.34, Highways (HKS) Department, dated 29.01.2008, 75% of the vacancies in the post of Road Inspector Grade – II to be filled up by direct recruitment and the remaining 25% of the posts to be filled up by recruitment by transfer from the post of Gang Mazdoor, who have completed 5 years of service and a pass in SSLC. T.Raghavan, who had 17(b) charges during the year 2011-2012, was not placed in the promotional seniority panel and in the following years, his name was included in the list for want of vacancy, he could not be promoted.

4. The judgment of the Division Bench of this Court, dated 26.03.2021, issuing the positive direction to promote T.Raghavan as Road Inspector Grade – II, when there is no vacancy for 25% quota meant for Gang Mazdoor promotees, will amount to march over his seniors. To buttress the submission, the learned Additional Advocate General appearing for the Department had furnished a copy of the seniority



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panel from the years 2008 to 2022 to show that no junior to T.Raghavan was promoted as Road Inspector Grade – II. The variants in the seniority in each panel is due to exclusion of certain names of the persons, who were facing charge memo or inclusion of the persons after the currency of punishment or the check period. The copy of seniority panel prepared on 03.01.2022 furnished by the Department indicate that the writ petitioner T.Raghavan is placed at Serial No.9. The list indicates that the seniority is fixed based on the date of joining. Though the date of declaring probation and the date of acquiring the educational qualification of 10th Standard pass varies, date of joining the duty is fixed for seniority and if the same is accepted, then, we find no juniors to T.Raghavan have been placed above him or promoted ahead of him.

5. The learned Senior Counsel appearing for the writ petitioner submitted that the writ petitioner, who was placed at Serial No.6 while drawing the panel for the year 2020, cannot be pushed back to Serial No.9 after giving promotion to two persons, by name, Kumar and Kannusamy.

6. Per contra, the learned Additional Advocate General appearing for the Department submitted that while drawing panel for the year 2020, some of the Road Workers were excluded from the list due to currency of punishment. Their names find place in 2022 list after expiry of the punishment period. In any event, the writ



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petitioner, who was at Serial No.6 in the panel of the year 2020, could not be accommodated in that year, since the quota for promotees is only 25% and two of them were promoted at that point of time. Since the restriction of 25% for the promotional post from the Road Workers cannot be violated and the said restriction has not been brought to the notice of the Division Bench of this Court, the order dated 26.03.2021, requires review and modification.

7. Accordingly, this Court modify the order dated 26.03.2021, to the effect that the writ petitioner T.Raghavan to be considered for promotion in the quota meant for promotees namely, the Road Workers as per his seniority *i.e.*, the date of his appointment. This modified order is passed in view of the Tamil Nadu Highways Engineering (Works Charged) Subordinate Service Rules. Rule 15-B of the said Rules prescribes the method of recruitment for the post of Road Inspector Grade - II as below:-

Category 2 Road Inspector, Grade II	(i) By direct recruitment; and (ii) By recruitment by transfer from among the holders of the post of Gang Mazdoors in the Tamil Nadu Basic Service in the ratio of 3:1 Provided that recruitment by transfer shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal: Provided further that if no suitable persons are available in the category of Gang Mazdoor, such vacancies shall be filled up by direct recruitment.
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8. In fine,

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(i) Rev.Aplc.(MD)No.53 of 2021 is allowed and the judgment of the Division Bench of this Court dated 26.03.2021, is modified as stated above. Consequently, connected Miscellaneous Petition is closed.

(ii) As a consequence, Cont.P.(MD)No.1174 of 2021 is closed.

(iii) No order as to costs.

NCC : Yes
Index : Yes / No
Internet : Yes / No
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[G.J., J.] [K.K.R.K., J.]
27.02.2023

To

Mr.G.Murugan,
Divisional Engineer (Highways), (C & M),
Ramnad Division,
Ramnad.



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DR.G.JAYACHANDRAN, J.
and
K.K.RAMAKRISHNAN, J.

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PRE-DELIVERY COMMON ORDER MADE IN
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DATED : 27.02.2023