



W.P.(MD).Nos.3481 of 2014, 6130 of 2017 and 12702 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :02.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.3481 of 2014, 6130 of 2017 and 12702 of 2017
and
W.M.P.(MD).Nos.4829, 4830, 6294 and 16932 of 2017

W.P.(MD).No.3481 of 2014:

M.Saravanakumar

... Petitioner

Vs.

1.The Superintendent Engineer (C & M),
Highways Department,
Tirunelveli.

2.The Divisional Engineer (C & M),
Highways Department,
Thoothukudi.

3.A.Murugan,
Road Inspector Grade-I,
Sathankulam Range,
Highways Department,
Thoothukudi.

4.S.Durai,
Road Inspector Grade-I,
Sathankulam Range,
Highways Department,
Thoothukudi.



W.P.(MD).Nos.3481 of 2014, 6130 of 2017 and 12702 of 2017

5.N.Kathiresan,
Road Inspector Grade-I,
Oottappidaram Range,
Highways Department,
Thoothukudi.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent herein in செயல்முறை கடித எண். 4709/2013/ஆ3 dated 27.01.2014 and quash the same and further direct the first and second respondents herein to initiate a fresh process for promotion to the post of Road Inspector Grade - I, Thoothukudi Division in the light of the judgment dated 01.02.2013 in WP.Nos.4842 to 4847 of 2012 on the file of the Principal Bench of this Court.

For Petitioner : Mr.Niranjan S.Kumar

For R-1 and R-2 : Mr.P.Thambi Durai,
Government Advocate.

For R-3 to R-5 : No Appearance.

W.P.(MD).No.6130 of 2017:

K.Shanmugasundaram

... Petitioner

Vs.



W.P.(MD).Nos.3481 of 2014, 6130 of 2017 and 12702 of 2017

- 1.The Director General (Highways),
Office of the Director General,
Guindy,
Chennai – 25.
- 2.The Chief Engineer (General),
Highways Department,
Guindy,
Chennai – 25.
- 3.The Superintending Engineer,
Highways (Construction & Maintenance),
Tirunelveli.
- 4.The Divisional Engineer,
Highways (Construction & Maintenance),
Tuticorin.
- 5.M.Christy Helan Rose,
Road Inspector Grade-II,
Highways (Construction & Maintenance),
Tuticorin Sub Division,
Tuticorin.
- 6.N.Aachi Vimala,
Road Inspector Grade-II,
Highways (Construction & Maintenance),
Tiruchendur Sub Division,
Tiruchendur.
- 7.N.Kalyana Sundari,
Road Inspector Grade-II,
Highways (Construction & Maintenance),
Ottapidaram Sub Division,
Ottapidaram.



W.P.(MD).Nos.3481 of 2014, 6130 of 2017 and 12702 of 2017

8.V.Vivekanandan,
Road Inspector Grade-II,
Highways (Construction & Maintenance),
Tiruchendur Sub Division,
Tiruchendur.

9.M.Vasanthi,
Road Inspector Grade-II,
Highways (Construction & Maintenance),
Tiruchendur Sub Division,
Tiruchendur.

10.A.Jeyasobhi,
Road Inspector Grade-II,
Highways (Construction & Maintenance),
Thiruvaikundam Sub Division,
Thiruvaikundam.

11.S.Jeya Ramalakshmi,
Road Inspector Grade-II,
Highways (Construction & Maintenance),
Ottapidaram Sub Division,
Ottapidaram.

12.P.Jecab Samraj,
Road Inspector Grade-II,
Highways (Construction & Maintenance),
Tuticorin Sub Division,
Tuticorin.

13.A.Sankara Kumar,
Road Inspector Grade-II,
Highways (Construction & Maintenance),
Ottapidaram Sub Division,
Ottapidaram.



W.P.(MD).Nos.3481 of 2014, 6130 of 2017 and 12702 of 2017

14.R.Jeyakumari,
Road Inspector Grade-II,
Highways (Construction & Maintenance),
Ottapidaram Sub Division,
Ottapidaram.

15.P.Radhakrishnan,
Road Inspector Grade-II,
Highways (Construction & Maintenance),
Tuticorin Sub Division,
Tuticorin.

16.R.Subburaj,
Road Inspector Grade-II,
Highways (Construction & Maintenance),
Kovilpatti Sub Division,
Kovilpatti.

17.B.Pethuramesh,
Road Inspector Grade-II,
Highways (Construction & Maintenance),
Tiruchendur Sub Division,
Tiruchendur.

18.K.Ravi,
Road Inspector Grade-II,
Highways (Construction & Maintenance),
Kovilpatti Sub Division,
Kovilpatti.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned order passed by the fourth respondent vide proceedings Reference No. Kaditha No. 69/2017/A5 dated 23.3.2017 and quash the same and consequently direct the respondents 1 to 4 to prepare a



W.P.(MD).Nos.3481 of 2014, 6130 of 2017 and 12702 of 2017

proper promotion panel to the post of Road Inspector Grade I from Road Inspector Grade II on the basis of merit, ability and in case both merit and ability are equal then consider the seniority as contemplated in G.O.Ms.No. 1858 dated 22.10.1969 and G.O.Ms.No.856 dated 01.06.1977 and thereafter promote the eligible candidate as per the vacancy.

For Petitioner : Mr.Niranjana S.Kumar

For R-1 to R-4 : Mr.P.Thambi Durai,
Government Advocate.

For R-6, R-8, R-15,
R-16 and R-18 : Mr.P.Pethu Rajesh

For R-9 : Mr.G.Prabhu Rajdurai

For R-17 : Mr.S.Balamurugan

For R-5, R-7, R-10,
R-11, R-12, R-13
and R-14 : No Appearance.

W.P.(MD).No.12702 of 2017:

Shanmugasundaram

... Petitioner

Vs.

The Divisional Engineer,
Highways (Construction & Maintenance),
Tuticorin.

... Respondent



W.P.(MD).Nos.3481 of 2014, 6130 of 2017 and 12702 of 2017

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Certiorarified Mandamus, calling for records relating to the impugned order passed by the respondent vide proceedings in Ka.No: 881/ 2016-17/ A5 dated 08.05.2017 and quash the same as illegal and consequently direct the respondent to prepare the promotion panel to the post of Road Inspector Grade-I only on the basis of Merit, Ability and only if both merit and ability are equal, then consider the seniority, as contemplated in the G.O.Ms.No.1858 dated 22.10.1969 and G.O.Ms.No.856 dated 01.06.1977 issued by the Public Work Department.

For Petitioner : Mr.Niranjan S.Kumar

For Respondent : Mr.P.Thambi Durai,
Government Advocate.

COMMON ORDER

The issues to be decided in all these writ petitions are similar. The relief sought for are also one and the same. Thus, all the writ petitions are taken together for hearing and a common order is passed.

2. These Writ Petitions are filed for Writ of Certiorarified Mandamus to quash the impugned order dated 27.01.2014, 23.03.2017 and 08.05.2017 with a



W.P.(MD).Nos.3481 of 2014, 6130 of 2017 and 12702 of 2017

consequential relief to direct the official respondents to initiate fresh process for promotion to the post of Road Inspector Grade-I in the light of judgment dated 01.02.2014 passed in W.P.Nos.4842 to 4847 of 2012 before Principal Bench as well as on the basis of Merit, Ability and only if both merit and ability are equal, then consider the seniority, as contemplated in the G.O.Ms.No.1858 dated 22.10.1969 and G.O.Ms.No.856 dated 01.06.1977 issued by the Public Work Department.

3. The contention of the petitioner in W.P.(MD).No.3481 of 2014 is that he was appointed as Road Inspector Grade –II on 08.01.2010. At the time of petitioner's appointment, he had completed SSLC with ITI Draughtsman Civil / Surveyor course as per the rules read with the Government Orders in G.O.Ms.No.1858 Public Works Department dated 22.10.1969 and G.O.Ms.No.856 dated 01.06.1977. The petitioner has completed diploma course and he is eligible for promotion to the next level of post. As per the rules of Tamil Nadu Highways Engineering Subordinates Work Charged Service Rules and as per G.O.Ms.No.1858 and G.O.Ms.No.856, the Road Inspector Grade-II post have to be filled up by direct recruitment and the eligibility criteria is that the candidate should complete SSLC with ITI Draughtsman Civil / Surveyor



W.P.(MD).Nos.3481 of 2014, 6130 of 2017 and 12702 of 2017

course. In G.O.Ms.No.856, there was an amendment by which proviso clause was included wherein, the candidates who were working as Gang Mazdoors are also eligible for appointment as Road Inspector Grade-II if they have completed 5 years and has passed IV Form in a recognized School. In the year 2008, the State Government issued a notification that the vacancies in the post of Road Inspector Grade-II shall be filled up by direct recruitment 75% and by promotion from the post of Gang Mazdoors for 25%. The next level of promotion from Road Inspector Grade-II is Road Inspector Grade-I and as per Rules, it shall be filled up only by promotion from the feeder category-Road Inspector Grade II. The eligibility for promotion to the post of Road Inspector Grade-I is that the candidates must have service experience of not less than 5 years in the post of Road Inspector Grade-II (feeder category) and on merit and ability. The 5 years qualification in Road Inspector Grade-II post is only a service experience. Therefore, the point for consideration is only the “merit and ability”. In Tirunelveli District, there are 22 vacancies in Road Inspector Grade-II post and the contention of the petitioners is that the respondents are taking steps to fill up the vacancies from the post of Gang Mazdoors on completion of 5 years without considering the merit and ability. The second respondent through impugned order promoted the respondents 3 to 5 to the post



W.P.(MD).Nos.3481 of 2014, 6130 of 2017 and 12702 of 2017

of Road Inspector Grade-I without considering the merit and ability. The petitioner contended that he is more qualified than other persons, since the petitioner has completed SSLC with the Surveyor course and he is having more merit and ability than other candidates promoted from the Gang Mazdoors. The petitioner already submitted a representation dated 19.12.2013 and filed W.P. (MD).No.1213 of 2014 to consider the representation. This Court vide order dated 24.01.2014 directed the second respondent to consider and pass orders. In the said order, it has also been stated that the representation shall be considered in the light of orders passed in W.P.(MD).Nos.4842 to 4847 of 2012. In the aforesaid order passed in W.P.(MD).No.4842 of 2012, it has been stated that the respondents have automatically promoted the candidates on completion of 5 years, the rule only specifies the qualification to be considered for promotion is 5 years. It is not the question of upgradation, it is the question of promotion and 5 years experience is only qualification. However, the respondent Department is promoting the candidates on completion of 5 years which is against service jurisprudence. Therefore, the learned Single Judge directed the respondents to consider the candidates for promotion on merit and ability as well. Since the same was not considered, the petitioner is aggrieved and has come before this Court.



W.P.(MD).Nos.3481 of 2014, 6130 of 2017 and 12702 of 2017

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4. In one of the similar writ petition filed in W.P.(MD)No.2777 of 2017 this Court has passed final order dated 17.02.2017 directing the respondents to consider the petitioner's representation in the light of the Government orders referred therein and also the plea raised therein by the petitioner and after considering the same, suitable orders with reasons shall be passed. Since the respondents have not passed order, the contempt petition in Cont.Pet.(MD)No. 1147 of 2017 was filed.

5. The respondents have filed a counter along with vacate stay petition stating that after passing of the judgment in W.P.(MD).No.4842 of 2012, batch the respondents are considering the candidates only as per the conditions prescribed in the rules. The condition is that the candidates should have served 5 years in the post of Road Inspector Grade-II. Thereafter, such candidates will be considered based on the merit and ability. The contention of the petitioners is that the merit and ability should be considered based on the educational qualification. But the same cannot be considered, since the education qualification prescribed is only pass in 10th standard. If the petitioner is having more qualification than 10th standard qualification, that would not be a criterion



W.P.(MD).Nos.3481 of 2014, 6130 of 2017 and 12702 of 2017

to consider the petitioner's candidature. Therefore, the claim of the petitioner cannot be entertained and the respondents prayed to reject this Writ Petition.

6. After hearing rival submissions on all sides, this Court has given its anxious consideration. For the appointment to the post of Gang Mazdoor, the candidates should have passed IV Form in the recognized School. Subsequently, for the appointment of Gang Mazdoor, the education qualification was revised and it has been prescribed as 10th Standard. For the promotion of the Road Inspector Grade-I, the candidates should have rendered service in Gang Mazdoor post for the period of 5 years, thereafter, they will be considered for promotion to the Road Inspector Grade-II post. Again, from Road Inspector Grade-II post to Road Inspector Grade-I post, they should have served in the said Grade-II post for 5 years and also the candidates will be considered only based on merit and ability. The plea that was raised by the petitioner is that the word merit would mean that if any candidate is possessing higher qualification, then they are more meritorious than others. The petitioner is having diploma qualification, which is higher than the 10th standard pass, hence he claims he is more meritorious than others. This contention of the



W.P.(MD).Nos.3481 of 2014, 6130 of 2017 and 12702 of 2017

petitioner was refuted by the learned Government Pleader and submitted that the merit of the candidate will be considered and the same would mean that the candidate should work properly without absenting and should execute the work properly and should obey the order of the higher authorities. All these factors will come under the word 'merit'. Moreover, the candidate should not face any disciplinary proceedings. This Court is of the considered opinion that the interpretation submitted by the petitioner cannot be accepted, since the qualification prescribed for promotion is only 10th Standard. Having more educational qualification than 10th standard cannot be considered as more meritorious than others. The petitioner is interpreting the word and supplementing more into the word, thereby misconstruing the word “merit”. If the petitioner’s interpretation is accepted, then it would attract the principles of *casus omissus*. The plain meaning of the word “merit” would mean “the quality of being good”. Therefore, the contention of the petitioner cannot be accepted and the contention of the Government Pleader is absolutely right. Therefore, this Court is not inclined to accept the contention of the petitioner that if a candidate is possessing higher qualification that will be the yardstick to assess the meritorious candidate. Therefore, promotion granted through the impugned order is legally sustainable.



W.P.(MD).Nos.3481 of 2014, 6130 of 2017 and 12702 of 2017

7. For the reasons stated above, the Writ Petitions are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

02.02.2023
(1/2)

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

- 1.The Superintendent Engineer (C & M),
Highways Department,
Tirunelveli.
- 2.The Divisional Engineer (C & M),
Highways Department,
Thoothukudi.
- 3.The Director General (Highways),
Office of the Director General,
Guindy,
Chennai – 25.
- 4.The Chief Engineer (General),
Highways Department,
Guindy,
Chennai – 25.



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W.P.(MD).Nos.3481 of 2014, 6130 of 2017 and 12702 of 2017

S.SRIMATHY, J.

Nsr

W.P.(MD).Nos.3481 of 2014, 6130 of 2017 and 12702 of 2017

01.02.2023
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