



W.P.(MD).Nos.22760 to 22763 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.03.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.22760 to 22763 of 2018

and

W.M.P.(MD).Nos.9559, 16011, 16012, 16013, 16014 of 2019

W.P.(MD).No.22760 of 2018:

S.Balasubramanian (Died)

Mohana

... Petitioner

(Petitioner substituted as LRs vide Court Order dated 16.03.2023 in W.M.P.(MD).No.5774 of 2021 in W.P.(MD).No.22760 of 2018)

Vs.

- 1.The Secretary to the Government,
Government of Tamil Nadu,
Highways and Minor Ports Department,
Secretariat,
Chennai – 600 009.
- 2.The Secretary to Government of Tamil Nadu,
Rural Development and Panchayat Department,
Secretariat,
Chennai – 600 009.
- 3.The Director General,
Highways Department,
H.R.S.Campus,
Guindy,
Chennai – 600 025.



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4.The Director of Rural Development,
And Panchayat Department,
Panagal Building,
Saidapet,
Chennai – 600 015.

5.The Block Development Officer,
Panchayat Union,
Reddiarchatram,
Dindigul District – 624 622.

6.The Accountant General (A&E), Tamil Nadu,
No.361, Anna Salai,
Chennai – 600 018.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first respondent to consider the representation of the petitioner dated 20.12.2017 for extending the benefit of upgrading the post of Road Inspector Grade-II as Road Inspector Grade-I on completion of 5 years of service by including the Non-Provincialised pensionable service for the purpose of up-gradation and for moving to the Selection Grade and Special Grade by issuing necessary clarification sought for by the 6th respondent in his letter dated PEN30/3/1-81/2016-17/103427 DT.31/1/17 within a reasonable time.

W.P.(MD).No.22761 of 2018:

S.Mohamed Mohideen

... Petitioner



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Vs.

- 1.The Secretary to the Government,
Government of Tamil Nadu,
Highways and Minor Ports Department,
Secretariat,
Chennai – 600 009.
- 2.The Secretary to Government of Tamil Nadu,
Rural Development and Panchayat Department,
Secretariat,
Chennai – 600 009.
- 3.The Director General,
Highways Department,
H.R.S.Campus,
Guindy,
Chennai – 600 025.
- 4.The Director of Rural Development,
And Panchayat Department,
Panagal Building,
Saidapet,
Chennai – 600 015.
- 5.The Block Development Officer,
Panchayat Union,
Vadamadurai,
Dindigul District – 624 801.
- 6.The Accountant General (A&E), Tamil Nadu,
No.361, Anna Salai,
Chennai – 600 018.

... Respondents



W.P.(MD).Nos.22760 to 22763 of 2018

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W.P.(MD).No.22762 of 2018:

M.Amaranathan (Died)

Muthulakshmi

... Petitioner

(Petitioner substituted vide Court Order dated 16.03.2023 in W.M.P.(MD).No.18967 of 2021 in W.P.(MD).No.22762 of 2018)

Vs.

- 1.The Secretary to the Government,
Government of Tamil Nadu,
Highways and Minor Ports Department,
Secretariat,
Chennai – 600 009.
- 2.The Secretary to Government of Tamil Nadu,
Rural Development and Panchayat Department,
Secretariat,
Chennai – 600 009.



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3. The Director General,
Highways Department,
H.R.S.Campus,
Guindy,
Chennai – 600 025.
4. The Director of Rural Development,
And Panchayat Department,
Panagal Building,
Saidapet,
Chennai – 600 015.
5. The Block Development Officer,
Panchayat Union,
Vedasandur,
Dindigul District – 624 701.
6. The Accountant General (A&E), Tamil Nadu,
No.361, Anna Salai,
Chennai – 600 018.

7. Deepa

... Respondents

(R-7 is impleaded vide Court order dated 16.03.2023 in W.M.P.(MD).No.18969 of 2021 in W.P.(MD).No.22762 of 2018)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first respondent to consider the representation of the petitioner dated 20.12.2017 for extending the benefit of upgrading the post of Road Inspector Grade-II as Road Inspector Grade-I on completion of 5 years of service by including the Non-Provincialised pensionable service for the purpose of up-gradation and for moving to the Selection Grade and Special Grade by issuing necessary clarification sought for by the 6th respondent in his letter dated PEN30/3/1-81/2016-17/103427 DT.31/1/17 within a reasonable time.



W.P.(MD).Nos.22760 to 22763 of 2018

W.P.(MD).No.22763 of 2018:

S.Palanivelu

... Petitioner

Vs.

- 1.The Secretary to the Government,
Government of Tamil Nadu,
Highways and Minor Ports Department,
Secretariat,
Chennai – 600 009.
- 2.The Secretary to Government of Tamil Nadu,
Rural Development and Panchayat Department,
Secretariat,
Chennai – 600 009.
- 3.The Director General,
Highways Department,
H.R.S.Campus,
Guindy,
Chennai – 600 025.
- 4.The Director of Rural Development,
And Panchayat Department,
Panagal Building,
Saidapet,
Chennai – 600 015.
- 5.The Block Development Officer,
Panchayat Union,
Dindigul,
Dindigul District – 624 001.
- 6.The Accountant General (A&E), Tamil Nadu,
No.361, Anna Salai,
Chennai – 600 018.

... Respondents



W.P.(MD).Nos.22760 to 22763 of 2018

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first respondent to consider the representation of the petitioner dated 20.12.2017 for extending the benefit of upgrading the post of Road Inspector Grade-II as Road Inspector Grade-I on completion of 5 years of service by including the Non-Provincialised pensionable service for the purpose of up-gradation and for moving to the Selection Grade and Special Grade by issuing necessary clarification sought for by the 6th respondent in his letter dated PEN30/3/1-81/2016-17/103427 DT.31/1/17 within a reasonable time.

(In W.P.(MD).No.22760, 22761 and 22763 of 2018):

For Petitioners : Mr.R.Rengaramanujam
For R-1 to R-5 : Mr.P.Thambidurai
For R-6 : Mr.P.Gunasekaran,
Accountant General Standing Counsel.

(In W.P.(MD).No.22762 of 2018):

For Petitioner : Mr.M.E.Ilango
For R-1 to R-5 : Mr.P.Thambidurai
For R-6 : Mr.P.Gunasekaran,
Accountant General Standing Counsel.



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3. The brief facts of the case as stated in W.P.(MD)No.22760 of 2018 is that the petitioner was appointed as Road Inspector Grade-II on 30.06.1971 in terms of G.O.Ms.No.1856 Public Works Department dated 22.10.1969 and as per the above G.O. the qualification for appointment to Road Inspector Grade-II is a pass in IV form (9th standard) and one should not have completed 25 years of age and on completion of 10 years of service he can be promoted to Road Inspector Grade-I. Thereafter the aforesaid period of 10 years was reduced to 5 years. The contention of the petitioner is that though he is entitled to promotion on completion of five years, he was not considered.

4. There is no promotional opportunities and one who was appointed as Road Inspector and has to retire as Road Inspector. Hence in order to provide promotional opportunities on completion of 10 years as Road Inspector Grade-II the post was upgraded as Road Inspector Grade-I, which is subsequently reduced to 5 years. There is no change in duties and responsibilities in respect of upgradation and does not carry any higher responsibility than the post of Road Inspector Grade-II, hence the pay was not fixed as per provisions of FR 22(b), but on contrary it is fixed in the next higher stage of the lower pay scale or in the same stage of the higher pay scale intended for the post of Road Inspector Grade-I as per the provisions of FR23.



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5. The said issue was already considered by the High Court in W.P.(MD)Nos.7738 to 7749 of 2008, which was implemented by the respondents. Hence based on the aforesaid order the revised pension proposals were submitted to the 6th respondent through 5th respondent. But the same was returned with an endorsement stating that “clarification from the government has been sought for vide PEN30/3/1-81/2016-2017/103427, dated 31.01.2017 regarding the regularization of non provincialised service from the date of appointment and it is still pending. Hence the petitioners are before this Court.

6. The respondents have not filed counter. However relied on the earlier orders, especially the order passed in *W.P.Nos.8036 and 8037 of 2013* in the case of *T.Ganesan and R.Natarajan Vs The State of Tamil Nadu*, where it has been specifically stated that the post of Road Inspector Grade-I is a promotive post and it is not the post of upgradation. Therefore, the petitioners cannot seek Selection Grade and Special Grade by counting the said 5 years (where it was reduced from 10 years to 5 years) and seek Selection Grade and Special Grade after completion of 10 years and 20 years. Moreover, in this case, one S.Palanivelu in W.P.(MD).No.22763 of 2018, the Selection Grade in the post of Grade-II post was granted on 01.01.1998, but on the same date, the said Palanivelu was granted promotion to the post of Road Inspector Grade-I i.e. on



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01.01.1998 itself. Therefore, the learned counsel appearing for the sixth respondent submitted that fraud has been committed by the Highways authorities. In fact, in the above stated Writ Petition in W.P.(MD).No.8036 of 2013, the learned Single Judge has also held that fraud has been committed among the workers in the Highways Department. Therefore, the respondents prayed to dismiss the Writ Petitions.

7. Heard Mr.R.Rengaramanujam and Mr.M.E.Ilango, learned counsel for the petitioners, Mr.P.Thambidurai, learned Government Advocate, appearing for the respondents 1 to 5 and Mr.P.Gunasekaran, learned Accountant General Standing Counsel, appearing for the respondent no.6 and perused the records.

8. Pending Writ Petition, the writ petitioners in W.P.(MD).Nos.22760 and 22762 of 2018 died and their legal heirs are substituted vide order dated 16.03.2023.

9. The learned counsel appearing for the petitioners submitted that the learned Single Judge in W.P.(MD).Nos.7738 to 7749 of 2008 dated 12.12.2012 has already granted relief sought for by the similarly placed persons and relied on the relevant portion which is extracted hereunder:



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7. A perusal of G.O.Ms.No.856, Public Works Department, dated 01.06.1977 shows that it had dealt with the qualification to the post of Road Inspectors Grade-II as well as qualification to the promotion to the post of Road Inspectors Grade-I. Therefore, there is absolutely no quarrel with regard to the qualification prescribed to the post of Road Inspectors Grade-II. When admittedly all these petitioners have been appointed as Road Inspectors Grade-II much earlier to the passing of G.O.Ms.No.856, Public Works Department, dated 01.06.1977, the qualification prescribed in the said G.O.Ms.No.856, Public Works Department, dated 01.06.1977 cannot be applied to the petitioners. But, while dealing with the qualification to the post of Road Inspectors Grade -I by promotion, the said G.O. has prescribed only 5 years of service as Road Inspectors Grade-II and it does not make any distinction between the persons who possess the qualification prescribed as contemplated under the G.O.Ms.No.856, Public Works Department, dated 01.06.1977 as well as the persons who have been appointed prior to the said G.O.Ms.No.856, Public Works Department, dated 01.06.1977. When such being the position, the petitioners cannot be denied of their benefit under the said G.O.Ms.No.856, Public Works Department, dated 01.06.1977 and consequently they are also entitled to be considered for promotion to the post of Road Inspector Grade-I, immediately after their completion of 5 years of service as Road Inspector Grade-II.

8. The respondents are not justified in interpreting the said G.O. only to say that the persons who are possessing the said enhanced qualification alone are entitled to the promotion to the post of Road Inspector Grade-I. As already stated supra, the qualification prescribed to the post of Road Inspector Grade-I are totally different and distinguishable and therefore, the respondents cannot confuse the issue and consequently, to deny the benefit of the petitioners. Accordingly, by considering all the facts and circumstances of the case, I find every force in the



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claim made by the petitioners and consequently, I set aside the impugned order passed by the first respondent and direct the respondents to implement G.O.Ms.No.856, Public Works Department, dated 01.06.1977 in the case of the petitioners by giving communal promotion also and disburse all the benefit available to them within a period of 12 weeks from the date of receipt of a copy of this order.

10. Pursuant to the aforesaid order, the respondents have preferred Writ Appeal in W.A.(MD).Nos.262 to 273 of 2016. When the Writ Appeal was taken up for hearing, the learned Additional Government Pleader submitted before the Court that already order has been passed and the amount would be released at the earliest. Recording the said submission, the Writ Appeals were dismissed as infructuous. However, it was the contention of the Department that such instructions were not given. Therefore, they preferred SLP before the Hon'ble Supreme Court and the same was dismissed as withdrawn without prejudice to any other remedy available in law to the respondents.

11. The contention of the respondents is that as against the order of learned Single Judge, the respondents have preferred Review Petition and the same is pending. However, this fact is refuted by the petitioners stating that such review application is not pending before this Court.



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12. After hearing rival submission it is seen that there are two different judgments rendered by Learned Single Judges, one is W.P.(MD).Nos.7738 to 7749 of 2008 (Thirunavukkarasan case) and other one is W.P.(MD).Nos.8036 and 8037 of 2013 (T.Ganesan case). The Learned Single Judge in Thirunavukkarasan case has held that the respondents ought to have uniformly applied the 10 years service to all the stake holders, but the respondents have granted promotion to some of the employees on completion of 10 years of service and to the other persons, the respondents have taken only 5 years of service. The another Learned Single Judge in the case of T.Ganesan has held that the 5 years service is one of the qualification prescribed for promotion to the post of Road Inspector Grade-I and has held that the provisions of the Act specifically uses the word “promotion” and has not used the word “upgradation”. However, the higher officials in the Highways Department however have treated the promotion as upgradation and has conferred promotion to some of the employees by giving retrospective promotion. For example, the writ petitioner in W.P.(MD)No.22760 of 2018 namely Balasubramanian was appointed as Grade-II Road Inspector on 30.06.1971 and he would be entitled to promotion on completion of 10 years as per old law that is on 30.06.1981. But the respondents have granted promotion in the year 1990 but has given effect from 1981 which means the respondents are conferring



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promotion by giving retrospective effect. The Learned Single Judge has come down heavily on the respondents and held the respondent are virtually treating the word “promotion” as “upgradation” and granted promotion to the stake holders thereby wasted the Government money. Generally, the promotion should be granted based on merit and ability, when merit and ability are equal, seniority should be taken into account. However, promotion will be granted based on the sanctioned post in availability of vacancies. Such policy was never followed by the Highways Department at all. The learned Single Judge has elaborately dealt with the legal provisions in T.Ganesan case. However, the learned Single Judge in Thirunavukkarasan case has not dealt with the provisions rather has not discussed the provisions at all. Therefore, this Court is constrained to follow the judgment rendered in T.Ganesan and not on the judgment of Thirunavukkarasan case, since it has not specifically taken into account the provisions of law, more so when the word “promotion” is used and not “upgradation”. Therefore, this Court is of the considered opinion that the petitioners are not entitled to claim automatic promotion or automatic upgradation.

13. Now, the respondents are facing Contempt proceedings in Thirunavukkarasan case. In order to get over the same, the respondents are



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filed Review Application and the same is in SR stage. This fact is simply recorded.

14. The next contention of the petitioners are that as per G.O.Ms.No.893 Public Works (HM2) Department dated 22.08.1994, the non-provincialised service has been taken into account for the purpose of pension and other retirement benefits. Therefore, the petitioners are seeking to grant Selection Grade and Special Grade in the post of Road Inspector Grade-I by taking into the reduction of period from 10 years to 5 years. Also contended that the similarly placed persons have already filed Writ Petitions and obtained an order and that order has attained finality. Since the petitioners were similarly placed person, the petitioners are seeking same benefits that was extended to 12 other persons. This Court is of the considered opinion that as far as the Selection Grade and Special Grade is considered, if the petitioners are stagnating in the Road Inspector Grade-II post without promotion or upgradation, then they are entitled to Selection Grade on completion of 10 years in the post of Road Inspector Grade-II. Likewise entitled to Special Grade on completion of 20 years in the post of Road Inspector Grade-II. Since because the qualification period was reduced from ten years to five years, the petitioners are seeking Selection Grade on completion of five years and Special Grade on completion



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of 10 years is totally against the concept of Selection Grade and Special Grade and also against the rules and regulations. Therefore, this Court is not inclined to grant any relief in this issue as well and the writ petition ought to be dismissed.

15. With the above observations, the Writ Petitions are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

30.03.2023

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



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To

- 1.The Secretary to the Government,
Government of Tamil Nadu,
Highways and Minor Ports Department,
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- 2.The Secretary to Government of Tamil Nadu,
Rural Development and Panchayat Department,
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- 5.The Block Development Officer,
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- 6.The Block Development Officer,
Panchayat Union,
Vadamadurai, Dindigul District – 624 801.
- 7.The Block Development Officer,
Panchayat Union,
Vedasandur, Dindigul District – 624 701.
- 8.The Block Development Officer,
Panchayat Union,
Dindigul,
Dindigul District – 624 001.
- 9.The Accountant General (A&E), Tamil Nadu,
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Chennai – 600 018.



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S.SRIMATHY, J.

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