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W.P.(MD)No.6418 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.6418 of 2016

and

W.M.P.(MD)Nos.5593 and 5594 of 2016

S.Chandrasekaran

... Petitioner

vs.

1.The Director,
Rural Development and Panchayat
Raj Department,
Panagal Building,
Saidapet, Chennai-600 015.

2.The Chief Engineer (General),
Highways Department,
Chepauk, Chennai-5.

3.The Superintendent Engineer,
Highways Department,
Tirunelveli-2.

4.The Secretary to Government,
Highways Department,
Fort St.George, Chennai.

... Respondents



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***(R4 suo motu impleaded by this Court,
vide this order, dated 21.02.2023, in
W.P.(MD)No.6418 of 2016)***

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in connection with the impugned order of rejection to regularize the service passed in his proceedings in Roc.No.11192/14/EE3, dated 11.04.2014, based on the impugned order reply of the 2nd respondent issued in Letter No.32397/N5(2)/04, dated 26.10.2006 and to quash the both as illegal and arbitrary and consequently, to direct the respondents to regularize the petitioner's service in the post of Overseer with effect from 03.09.1981 based on the temporary promotion order issued by the Superintending Engineer (H&RW), Tirunelveli in his proceedings in No.31/81/B1, dated 24.08.1981 and thereby, to grant all service and monetary benefits within the time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu

For R1 to 4 : Mr.N.Muthu Vijayan
Special Government Pleader



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ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order of rejection dated 11.04.2014 passed by the 1st respondent based on the impugned order reply of the 2nd respondent, dated 26.10.2006 and to quash both as illegal and arbitrary and consequently, to direct the respondents to regularize the petitioner's service in the post of Overseer with effect from 03.09.1981 based on the temporary promotion order issued by the Superintending Engineer (H&RW), Tirunelveli in his proceedings, dated 24.08.1981 and thereby, to grant all service and monetary benefits within the time limit that may be stipulated by this Court.

2. The petitioner belongs to backward community. The petitioner completed Diploma in Civil Engineering in May 1981 and enrolled himself in the Employment Exchange. In the year 1980, there was recruitment to the post of Assistant Draughtsman and Overseer in the



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respondent Highways Department for four regions, namely Chennai, Trichy, Coimbatore and Triunelveli. The appointment for the post of Assistant Draughtsman is direct recruitment with ITI qualification. For the post of Overseer is by direct recruitment or by promotion from the post of Assistant Draughtsman having qualification of Diploma in Civil Engineering.

3. The contention of the petitioner is that he had Diploma in Civil Engineering. The petitioner was appointed to the post of Assistant Draughtsman under Rule 10(a)(i) of Tamil Nadu State and Subordinate Service Rules. Thereafter, the 2nd respondent, vide proceedings, dated 24.09.1980, has issued a direction to all the Superintending Engineers to promote all eligible Assistant Draughtsman with D.C.E. qualification as Overseer in preference to the candidates sponsored through Employment Exchange. The 3rd respondent, vide proceedings, dated 24.08.1981, ordered for temporary promotion to the post of Overseer from the



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category of Assistant Draughtsman and the petitioner was promoted and posted as temporary Overseer by the Divisional Engineer, vide proceedings, dated 28.08.1981. The petitioner joined as Overseer on 03.09.1981. But for 40 days again the petitioner was directed to service as Assistant Draughtman from 20.04.1983 to 31.05.1983. Again posted as Junior Draughting Officer for a period from 04.08.1983 to 08.06.1983. For easy understanding the service particulars of the petitioner is is tabulated hereunder:

S. No.	Period	Post	Proceedings order of the Superintending Engineer, Tirunelveli	Remarks
1.	04.08.81-02.09.81	Assistant Draughtsman	29.07.1981	--
2.	03.09.81-20.04.83	Overseer	24.08.1981	Ought to have regularized from 3.9.81
3.	20.04.83-31.05.83	Assistant Draughtsman	18.04.1983	--
4.	04.08.83-08.06.86	Junior Draughting Officer	04.08.1983	--



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5.	09.06.86-29.11.88	Overseer	29.11.1988	Regularized my service from 9.6.86 only
6.	30.11.88-30.12.88	Junior Draughting Officer	24.12.1988	--
7.	30.12.88-30.06.10	Overseer		--
8.	01.06.10-till date	Junior Engineer		--

4. The contention of the petitioner is that the respondents have failed to take the petitioner's service in the post of Assistant Draughtsman from 04.08.1981. Thereafter, as Junior Draughting Officer from 04.08.1983 to 08.06.1986. There is no dispute between the petitioner and the respondents from 09.06.1986 until his superannuation (2019). The dispute between the parties was from 04.08.1981 to 08.06.1986.

5. The further contention of the petitioner is even though he was qualified to be appointed as Overseer since the petitioner had completed the Diploma in Civil Engineering in May 1981, the respondents



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appointed the petitioner as Assistant Draughtsman on 04.08.1981 and served from 04.08.1981 to 02.09.1981. Immediately, after 28 days, the petitioner was posted in the post of Overseer on 03.09.1981 and he was serving for two years in the said post until 20.04.1983. Hence, the petitioner claims that he ought to be posted as Overseer based on the qualification of Diploma in Civil Engineering. Even though the petitioner was placed as Assistant Draughtsman from 20.04.1983 to 31.05.1983 for want of vacancy thereafter, from 04.08.1983 to 08.06.1986, the petitioner was promoted as Junior Draughtsman Officer. Further the petitioner relies on a G.O.Ms.No.1542, Highways and Rural Works Department, dated 04.11.1992.

6. The contention of the respondents is that from the post of Assistant Draughtsman, the next promotion is Junior Draughting Officer. Thereafter, from Junior Draughting Officer, the further promotion is to the post of Overseer. Therefore, the period of Overseer from 03.09.1981



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to 20.04.1983, cannot be accounted as regular service for two reasons. One is because the petitioner's appointment is under 10(a). Moreover, Overseer post is a promoted post.

7. Heard Mr.G.Thalaimutharasu, the Learned Counsel appearing for the petitioner and Mr.N.Muthu Vijayan, the Learned Special Government Pleader appearing for the respondents and perused the records.

8. It is seen a similar claim was raised by 378 Union Overseers who were appointed in August 1980 as 10(a)(i) appointment, but there were two breaks in service from May 1983 to July 1983 and from June 1988 to December 1988. In the present case, the petitioner is also having break in service in June 1983 and July 1983. However, the petitioner is not having a break in the year 1988 at all. But the respondents submitted that the G.O., is not applicable to the petitioner and it is covers only to



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377 overseers who were appointed in August 1980. The petitioner was appointed on 04.08.1981 and he is not in the list which covers 377 persons.

9. The petitioner was appointed in 1981 so he is entitled to same treatment. Therefore, the 1st respondent is directed to submit the proposal to the Government but the Government is not a party in this writ petition. This Court is suo motu impleading Government as 4th respondent. The 1st respondent is directed to submit the proposal to the 4th respondent. The 4th respondent shall pass orders in light of G.O.Ms.No.1542, dated 04.11.1992 and regularize the service from 03.09.1981 to 08.06.1986 and grant notional benefit to the petitioner. The petitioner is entitled to the said benefit from the pensionary benefits and the petitioner is not entitled to any monetary benefits.

10. The further contention of the petitioner is that the petitioner



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had the qualification to be appointed as Overseer since as on the date of consideration the petitioner was having the qualification of Diploma in Civil Engineering. But the contention of the respondents is that the Overseer post is a promotive post. This is refuted by the petitioner and submitted that the said post shall be filled up by direct recruitment or by promotion from Assistant Draughtsman. It is seen that the petitioner was appointed through Employment Seniority. When the post of Overseer is available then the petitioner is entitled to be considered. Infact the claim of the overseer was considered by the respondents in G.O.Ms.No.1542, dated 04.11.1992 and the petitioner is also entitled to be considered like similarly placed person. Hence the impugned order declining to regularize from the date of appointment is erroneous and the impugned order is liable to be quashed.

11. Therefore the impugned order is quashed and the respondents are directed consider the claim of the petitioner in the light of the



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similarly placed petitioners in G.O.Ms.No.1542, dated 04.11.1992 and pass orders within a period of eight weeks from the date of receipt of the order. It is made clear the petitioner is not entitled to any backwages, but only for the purpose of pension alone.

12. With the above said observation, the writ petition is allowed.

No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No

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Internet : Yes

NCC : Yes / No

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Rural Development and Panchayat
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- 2.The Chief Engineer (General),
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