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W.P. No. 28796 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P. No. 28796 of 2023

S. Thiruvenkadam

..Petitioner

Vs.

1. Government of Tamil Nadu,
represented by Secretary to Govt.,
Highways Department,
Fort St. George,
Chennai – 600 025.
2. The Chief Engineer,
Highways Department,
Chepauk, Chennai – 05.
3. The Divisional Engineer,
(Construction & Management),
Highways Department,
Krishnagiri, Krishnagiri District.
4. The Assistant Engineer,
(Construction & Management),
Highways Department,
Uthangarai Division,
Krishnagiri District.

..Respondents



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Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus to direct the 3rd respondent to give promotion to the petitioner as Grade II Road Inspector from the date on which his juniors were promoted on the basis of the panel drawn for the year 2008 as indicated to the 2nd respondent by the 3rd respondent vide Letter No. 47/2008/P5 dated 11.09.2009 by considering the representation dated 07.02.2022.

For Petitioner :: Mr.C. VEDIAPPAN

For Respondents :: Mr. Stalin Abimanyu,
Addl. Govt. Pleader

O R D E R

This writ petition is filed for issue of a Writ of Mandamus directing the 3rd respondent to promote the petitioner as Road Inspector Grade II from the date on which his juniors were promoted on the basis of the panel drawn in the year 2008 as indicated to the 2nd respondent by the 3rd respondent vide letter No. 47/2008/P5 dated 11.09.2009 by considering the petitioner's representation dated 07.02.2022 and confer all the consequential benefits.



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2. The case of the petitioner is that he joined the service of the respondent Department as Road Worker in the year 1997. Subsequently, in the year 2000, he passed X standard. Even though, his name was included at the appropriate place in the seniority list, still, he was not considered for promotion to the next higher post of Road Inspector. As such, the petitioner along with other similarly situated persons approached this Court by way of W.P. No. 25778 of 2008 and this Court allowed the writ petition by order dated 06.04.2009 by directing the respondents to consider the petitioner and others for promotion to the post of Road Inspector Grade II. Even though similarly situated persons were thereafter considered pursuant to the promotion panel drawn, in respect of the petitioner alone, the same was not implemented. Even in the year 2010, some of the juniors of the petitioner were promoted and at that time also, the petitioner made representations. The petitioner has been consistently making representations and running from pillar to post to promote him to the next higher post. However, nothing fruitful happened. Hence, the present writ petition.



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3. The respondents have filed counter affidavit. Even as per their stand, the petitioner would be entitled to promotion as per the seniority list.

However, in the Service Register, it has been entered that the petitioner has only the educational qualification of X standard fail. According to the respondents, if really, the petitioner is in possession of SSLC qualification Certificate and furnishes the certificate before the 4th respondent and make an entry as to that effect in the petitioner's Service Register, the 4th respondent is always ready to consider the petitioner for promotion.

4. Heard Mr.C. Vediappan, learned counsel for the petitioner and Mr.Stalin Abimanyu, learned Additional Government Pleader, who reiterated the same submissions as contained in the affidavit and counter affidavit. I have also considered the materials placed on record.

5. In this regard, it could be seen that the petitioner had appeared for the X standard examination in April, 1991 and the same is evident from the Certificate bearing No. AA0026832. In the said examination, the petitioner had cleared four subjects out of five subjects except English.



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Thereafter, the petitioner seems to have appeared for the examination in March, 2000 and cleared the English examination as well. The certificate granted to the petitioner bears the Serial No. SEC 0677122. It can be noted that even in the communication dated 20.03.2008 made by the Assistant Divisional Engineer to the Divisional Engineer, while forwarding the names of eligible Road Workers, the petitioner's name is mentioned as Serial No.1 in the tabular column and it is clearly stated in the said communication that at the time of appointment, the educational qualification of the petitioner was X standard fail and at the time of issuing the communication, the petitioner had passed X standard. Further, it could be seen that in the panel prepared for the year 2008, it had been clearly stated that the said panel had been drawn as per the Service Register. Though it is mentioned that the educational qualification of the petitioner, as on the date of appointment in service, was X standard fail, in the next column relating to details of educational certificate, both the certificates pertaining to X standard of the petitioner have been duly entered. The serial number of the certificate namely 0677122 and the month and year of passing the examination namely March, 2000 have been specifically mentioned in the column itself. The



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heading to the said tabular column clearly states that it is as per the Service Register.

6. In that view of the matter, the statement made in the counter affidavit that the qualification of the petitioner is not entered in the Service Register cannot be accepted and it is a wrong statement. Therefore, for no reason, the petitioner was overlooked and his juniors alone were promoted.

7. However, this is a matter regarding promotion and the petitioner should also have immediately approached this Court at least after the directions given in the earlier round of litigation. It is seen from the affidavit that even in the year 2014, though the petitioner's juniors were promoted, the petitioner did not approach this Court. Be that as it may, the illegality committed by the respondents is gross in this matter and the delay alone will not disentitle the petitioner from getting the relief. In the over all facts and circumstances of the case, this cannot be a fit case to grant the entire backwages to the petitioner. In view of the above, the writ petition is disposed of on the following terms:



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(i) *The respondents are directed to promote the petitioner to the next higher post of Road Inspector Grade II from the date of promotion of his immediate junior and grant further promotion also if such junior has been given promotion, provided the petitioner is eligible;*

(ii) *The petitioner will be entitled to pay fixation, service and other monetary benefits. However, he will not be entitled to backwages/arrears and*

(iii) *The order of this Court shall be implemented by the respondents within a period of eight weeks from the date of receipt of a copy of this order.*

(iv) No costs.

01.04.2024

nv

To

1. The Secretary to Govt.,
Highways Department,
Fort St. George,
Chennai – 600 025.

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D. BHARATHA CHAKRAVARTHY,J.

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2. The Chief Engineer,
Highways Department,
Chepauk, Chennai – 05.
3. The Divisional Engineer,
(Construction & Management),
Highways Department,
Krishnagiri, Krishnagiri District.
4. The Assistant Engineer,
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