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W.P.No.33121 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM

THE HONOURABLE MR.JUSTICE **D. BHARATHA CHAKRAVARTHY**

W.P.No.33121 of 2022  
and WMP.No.32520 of 2022

S. Munusamy

... Petitioner

-Vs-

1. The State of Tamil Nadu  
Rep.by its Secretary  
Highways Department,  
Secretariat, Fort St.George,  
Chennai 600 009.
2. The Director General,  
Highways Department,  
Guindy, Chennai.
3. The Superintending Engineer,  
Office of the Superintending Engineer (C&M)  
Highways Department,  
Teynampet, Chennai 600 006.
4. The Divisional Engineer,  
(Construction and Maintenance)  
Highways Department, Kancheepuram Division  
Kancheepuram District.
5. The Assistant Divisional Engineer,  
Highways Department,  
Uthiramerur Division,  
Kancheepuram District.



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6. The Secretary to Government of Tamil Nadu  
Personnel and Administrative Reforms (M Department)  
Chennai.

... Respondents

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**Prayer :-** Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the fourth respondent in Proc.Lr.No.1073/2022/ENiVu dated 10.10.2022 on the file of the fourth respondent and quash the same and further direct the fourth and fifth respondents to grant promotion to the petitioner as Road Inspector Grade II from 09.12.2019 with continuity of service and monetary benefits.

For Petitioner : Mr.R.Sagadevan

For Respondent : Mr.C.Jayaprakash  
Government Advocate

### **ORDER**

This writ petition is filed for issuance of Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the fourth respondent in Proc.Lr.No.1073/2022/ENiVu dated 10.10.2022 on the file of the fourth respondent and quash the same and further direct the fourth and fifth respondents to grant promotion to the petitioner as Road Inspector Grade II from 09.12.2019 with continuity of service and monetary benefits.



2. The case of the petitioner is that he joined the respondent department as a NMR worker and thereafter appointed as Gang Mazdoor on regular basis with effect from 23.05.1995. At that time, the petitioner had the educational qualification of 5<sup>th</sup> standard pass alone. While so, on 11.04.2014 the petitioner passed pre-foundation course and therefore on the strength of the same the petitioner was promoted as Road Inspector Grade II with effect from 26.06.2014. However, the respondents had issued G.O.Ms.No.107 dated 18.08.2009 holding that the said Pre-Foundation Course cannot be considered as equivalent to SSLC/HSC. Thereafter, a clarification was also issued in G.O.Ms.No.144 P & AR Department, dated 20.11.2017 declaring that the Pre-Foundation Course is not recognised as equivalent to SSLC/HSC. In that view of the matter, the respondents sought to revert the petitioner by an order dated 09.02.2019. The petitioner therefore approached this Court by way of writ petition in W.P.No.20097 of 2021 and this Court by an order dated 21.09.2021 had quashed the order on the ground of non compliance of principles of natural justice, however, with liberty to the respondents to pass fresh order. Upon hearing the petitioner, the present order dated 10.10.2022 was passed thereby refusing the promotion to the petitioner.

3. The learned counsel appearing for the petitioner submitted that firstly



it can be seen that the impugned order has been passed without any application of mind as if the petitioner is asking for promotion. Already reversion order has been quashed by this Court and therefore the order suffers from non application of mind. Secondly, he would submit that the very question is now settled by the Division Bench of this Court in W.A.(M.D).No.497 of 2022 etc., and it has been clarified that the persons who completed the pre-foundation course prior to 20.11.2017 are entitled to promotion.

4. Per contra, the learned Government Advocate placing reliance on paragraph No.7 of the counter affidavit would submit that when the Government Orders are very clear that passing Pre-Foundation Course after the G.O.Ms.No.107 dated 18/8/2009 cannot be considered for the purpose of employment and promotion in public service, the petitioner who obtained the said qualification after the year 2009 is not entitled for promotion. Accordingly he has rightly been reverted to the lower post of Gang man. For better appreciation, Paragraph No. 7 is extracted as hereunder:-

"7. It is submitted that while this being so, Government has issued G.O.Ms.No.144 P & AR Department, dated 20.11.2017 by which declared that the pre-foundation course is not recognised as equivalent to SSLC or HSC and the same was confined in G.O.Ms.No.107 dated 18.08.2009, because of degree obtained through Open University without passing SSLC/HSC. Therefore passing pre-foundation after the G.O.Ms.No.107 dated 18.08.2009, cannot be considered for the purpose of employment and promotion public



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service. According to the petitioner he passed/completed pre-foundation on November 2012 that is after the issuance of the G.O.Ms.No.107 dated 18.08.2009 and hence he was promoted on 26.08.2014 as Road Inspector Grade II erroneously. Therefore the 5th respondent by his proceedings bearing Lr.No.95/2019/ENiVu dated 09.12.2019 passed order of reversion from Road Inspector to Gang Mazdoor. As against the above said order of revision, the petitioner filed W.P.No.20097 of 2021 and the Hon'ble Court passed an order on 21.09.2021 that the order of revision has been passed without issuing any notice to the petitioner and hence the order of reversion shall be treated as show cause notice and the petitioner may give reply if any within a period of 30 days from the date of receipt of a copy of this order".

Therefore he submitted that the petitioner is not entitled for the relief

5. Heard both sides and perused the materials available on record.

6. It can be seen that on an identical writ petition filed by similarly situated Gang Mazdoors who have been promoted as Road Inspector Grade II, the matter was considered by the Division Bench in WA(MD).No.497 of 2022 etc. The Division Bench specifically considered the case of those employees who completed the pre-foundation course in the years both before and after 2009 and considered G.O.Ms.No.144. While the Division Bench agreed with fixing of the cut off date, since the clarification was issued only on 20.11.2017, the Division Bench held that prior to 20.11.2017, the petitioners were all allowed to under go the pre-foundation course and were all being granted



promotion and therefore held that the cut off date cannot be retrospectively determined and it has to be reckoned only from 20.11.2017. Accordingly, the Division Bench held that the persons who have completed the Pre-Foundation Course prior to 20.11.2017 are entitled for promotion. The relevant findings are in paragraph No.24 of the judgment of the Division Bench and the operative portion at paragraph No. 26 is extracted as hereunder:-

"26. Since all the appellants had completed the pre-foundation course prior to 20.11.2017, this Court is of the considered opinion that the appellants are entitled to promotion. After dismissal of the writ petitions, the respondents have reverted the appellants to their original post of Gang Mazdoor. Since writ appeals are allowed the appellants are entitled to promotion. Therefore, the respondents are directed to confer the promotion to all the appellants. the impugned order challenged in the Writ Appeals are set aside and consequently the impugned orders of de-promotion challenged in the writ petitions are set aside. The respondents are directed to implement the judgment within a period of four weeks from the date of receipt of a copy of this judgment."

7. In that view of the matter, following the dictum laid down by the Division Bench of this Court, the impugned order dated 10.10.2022 shall stand quashed and the petitioner is declared to continue in the post of Road Inspector Grade II from the original date of promotion i.e., with effect from 26.04.2014 and the petitioner shall be entitled for all the consequential service and monetary benefits.



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8. This writ petition is allowed on the above terms. No costs.  
Consequently, connected miscellaneous petition is also closed.

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Index : Yes/No

Speaking order/Non-speaking order  
dpq

To

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Chennai 600 009.
2. The Director General,  
Highways Department,  
Guindy, Chennai.
3. The Superintending Engineer,  
Office of the Superintending Engineer (C&M)  
Highways Department,  
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Highways Department, Kancheepuram Division  
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**D. BHARATHA CHAKRAVARTHY, J.**

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