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WP.No.4126 of 2023

In the High Court of Judicature at Madras

**Reserved on :
12.9.2024**

**Delivered on :
18.9.2024**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.4126 of 2023 &
WMP.Nos.4180, 4182, 4183 & 4185 of 2023

K.Maruthachalam

...Petitioner

Vs

- 1.The Government of Tamil Nadu,
rep.by its Secretary, Highways
& Minor Ports Department,
Fort St.George, Chennai-9.
- 2.The Director General,
Highways Department,
Guindy, Chennai.
- 3.The Chief Engineer,
Highways Department,
Guindy, Chennai.
- 4.The Superintendent Engineer
(Highways), Construction &
Maintenance, Coimbatore-114.
- 5.The Divisional Engineer
(Highways), Pollachi Division,
Pollachi-1.



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- 6.Mr.T.K.Selvaraj, Road Inspector
Grade II, Kinathukadavu/
Sulthanpettai.
- 7.Mr.S.Murugan, Road Inspector
Grade II, Pollachi
- 8.Mr.R.Perumal, Road Inspector
Grade II, Valparai
- 9.Mr.P.Manikandan, Road Inspector
Grade II, Pollachi
- 10.Mr.V.Shanmugasundaram,
Road Inspector Grade II,
Aanaimalai
- 11.Mr.M.Devaraj, Road Inspector
Grade II, Kinathukadavu/
Sulthanpettai
- 12.Mr.D.Shanmugavadivel,
Salaipaniyalar, Aanaimalai
- 13.Mr.K.Rajan, Salaipaniyalar,
Kinathukadavu/Sulthanpettai
- 14.Mr.V.Janakiraman,
Salaipaniyalar, Aanaimalai
- 15.Mr.P.Manikandan,
Salaipaniyalar, Pollachi
- 16.Mr.M.Shanbasha,
Salaipaniyalar, Aanaimalai



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17.Mr.A.Kuppusamy,
Salaipaniyalar, Pollachi

18.Mr.A.Senthilkumar,
Salaipaniyalar, Anaimalai

R6 to R18 through the Divisional
Engineer (Highways), Construction
& Maintenance, Pollachi Division,
Pollachi

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records pertaining to the seniority list vide Ku.No.8/2022/Aa2 dated 14.3.2022 read with the order No.Se.Mu.Aa.No.8/2022/Aa2 dated 05.12.2022 issued by the 5th respondent, quash the same and consequently direct respondents 1 to 5 to restore the seniority list dated 01.1.2018 and to promote the petitioner to the post of Road Inspector Grade II based on the seniority list with effect from 05.12.2022 with seniority arrears and all other consequential benefits.

For Petitioner	:	Mrs.S.Meenakshi
For R1 to R5	:	Mr.P.Balathandayutham, SGP
For R6, R8 to R14 & R16 to R18	:	Mr.V.Govardhanan for Mr.R.Thirumoorthy
R7 & R15	:	served & no appearance



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ORDER

This writ petition has been filed challenging the seniority list dated 14.3.2022 and the order dated 05.12.2022 issued by the fifth respondent and for a consequential direction to the official respondents to restore the seniority list dated 01.1.2018 and to promote the petitioner to the post of Road Inspector Grade-II with all attendant service and monetary benefits.

2. The case of the petitioner is as follows :

(i) The petitioner joined in the service as a Salaipaniyalar in Pollachi Division on 05.11.1997. The petitioner was initially appointed as a trainee for one year on consolidated pay. After satisfactory completion of the one year training period, through the order dated 13.12.1998 passed by the fifth respondent, the services of the petitioner were regularized with effect from 05.11.1998. The next avenue of promotion to the petitioner is to the post of Road Inspector Grade-II. Initially, the candidate must have passed 5th Standard or equivalent standard and must possess five years experience to be considered for promotion. Thereafter, the Special Rules for the Tamil



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Nadu Highways Engineering Subordinate (Work Charged) Services (for short, the Special Rules) were amended and the qualification for recruitment has been prescribed as completion of 10th Standard.

(ii) As per the seniority list dated 01.1.2008, the petitioner was placed at S.No.36. In the year 2019, the eligible candidates up to S.No.27 were promoted to the post of Road Inspector Grade-II. Thereafter, the petitioner was expecting that he would get promotion in the next promotion process. As per the Special Rules, the vacancies to the post of Road Inspector Grade-II are filled up in 1:3 ratio namely one through promotion and three through direct recruitment.

(iii) The grievance of the petitioner is that the fifth respondent issued a fresh seniority list on 14.3.2022, in which, the seniority of the petitioner was pushed down to S.No.66. As a result, the chance for the petitioner to get the promotion to the post of Road Inspector Grade-II became bleak. Further, the order dated 05.12.2022 also came to be passed by the fifth respondent promoting respondents 6 to 11 to the post of Road Inspector Grade-II as per the seniority list prepared on 14.3.2022. Aggrieved by the same, the above writ petition has been filed before this Court.



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3. The official respondents filed a counter affidavit, in which, they took a stand that as per Section 40(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (for brevity, the Act), the seniority of a person can be determined only with reference to the date, on which, he was appointed, apart from that, G.O.Ms.No.193 dated 01.8.2008 stipulates 10th Standard pass from a recognized school to be considered for promotion, that accordingly, the seniority list was prepared, in which, the petitioner is placed in S.No.66 and that therefore, the petitioner was found not eligible for promotion since there were seniors, who had to be considered and promoted in the ratio 1 : 3. Ultimately, the official respondents have sought for dismissal of the writ petition.

4. Heard the learned counsel for the petitioner, the learned Special Government Pleader appearing for the official respondents and the learned counsel appearing on behalf of the contesting respondents.

5. The learned counsel for the petitioner submitted that the date of appointment in this case must be considered only from the date of



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regularization in the year 1998, that the so-called appointment in the year 1997 was merely a training period on consolidated pay, that it was adhoc in nature and that the official respondents had wrongly prepared a seniority list by reckoning the appointment in the year 1997. She also relied upon the judgment of the Apex Court in the case of ***Rashi Mani Mishra Vs. State of U.P. [reported in 2021 (17) SCC 399]***.

6. Per contra, the learned Special Government Pleader appearing for the official respondents submitted that regularization of the services of the petitioner would not have happened without the initial appointment that was made in 1997 and that therefore, for the purpose of promotion, the date of initial appointment alone should be taken into consideration under Section 40(2) of the Act.

7. The learned counsel appearing on behalf of the contesting respondents adopted the arguments advanced by the learned Special Government Pleader appearing for the official respondents. He further contended that the regularization of the services would never happen



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unless a person has already been appointed prior to regularizing the services and that therefore, the date of appointment in the year 1997 alone must be taken into consideration for the purpose of fixing the seniority.

8. This Court has carefully considered the submissions of the respective learned counsel on either side. This Court has also carefully perused the materials available on record and more particularly the impugned proceedings.

9. There is no dispute with regard to the fact that the petitioner entered the service as the Salaipaniyalar through the proceedings dated 29.10.1997 issued by the fifth respondent. The same is the case of the private respondents also. On carefully going through the proceedings dated 29.10.1997, it is seen that the petitioner was temporarily appointed to the post of Salaipaniyalar and he was paid only consolidated pay to the tune of Rs.1,500/- per month and for a period of one year, it was treated as the training period. It was made clear in the appointment order that if the performance was not



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satisfactory, the concerned person would be removed from the services without any notice.

10. The fifth respondent passed the order of regularization dated 13.12.1998. Reference No.2 in this regularization order was the earlier proceedings dated 29.10.1997, through which, the petitioner entered the service as the Salaipaniyalar. The order of regularization stated that by virtue of the earlier proceedings dated 29.10.1997, the one year training period was completed and the petitioner was brought within the time scale of pay and his services were regularized. It has also been mentioned in the order dated 29.10.1997 that the probation would be declared on satisfactory performance of work for a period of one year.

11. The learned counsel appearing for the petitioner submitted that the proceedings dated 13.12.1998 alone must be taken to be the date of regular appointment, that the earlier proceedings dated 29.10.1997 was more in the nature of adhoc appointment and that 29.10.1997 could not be taken to be the actual date of appointment.



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12. On the contrary, the official respondents took a very clear stand that 29.10.1997 must be taken to be the actual date of appointment and that only on completion of the one year training period, the concerned employee was regularized in the year 1998.

13. In the considered view of this Court, in service jurisprudence, the very term 'regularization' will necessarily involve a period prior to that, when the concerned employee is appointed and after he completes a particular tenure, his services will be regularized. The regularization does not happen on the date of appointment. The petitioner wants the date of regularization to be considered as the date of appointment on the ground that the regularization order contemplated a probation period of two years.

14. The petitioner was inducted as the Salaipaniyalar in the year 1997. The services of the petitioner would not have been regularized in the year 1998 had he not joined the services in the year 1997 and undergone the one year period, which was considered to be training period.



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15. In any case, the official respondents recognized the actual date of appointment only when the petitioner and others were brought in/inducted into the service in the year 1997. The official respondents had taken specific note of the initial appointment in the year 1997 while passing the order of regularization in the year 1998. Therefore, there is absolutely no illegality on the part of the official respondents in reckoning the seniority from the actual date of appointment, which took place in 1997.

16. While fixing the seniority of a person, it is trite law that the actual date of appointment is taken into consideration. The official respondents did not treat the appointment in the year 1997 as an adhoc appointment and in fact, they treated that one year period to be a prerequisite for regularization in the year 1998. Therefore, the petitioner cannot try to build up a case that the period from 1997 to 1998 must be construed to be an adhoc employment and that the date of actual employment must be construed only from the year 1998 when the regularization order was passed. Thus, the stand taken by the petitioner is unsustainable.



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17. The judgment relied upon by the learned counsel for the petitioner is a case where the Apex Court was dealing with adhoc appointments Vs. substantive appointments and it was ultimately held that the adhoc appointments could never be deemed to be substantive appointments, that therefore, the date of appointment could only be from the date of regular appointment and that the services rendered prior to that period could not be counted for the purpose of fixing the seniority.

18. It must be borne in mind that in the said judgment relied upon by the learned counsel for the petitioner, the Apex Court was dealing with a case where adhoc appointees were brought into service without any consultation or approval. Only thereafter, the services were regularized by virtue of the order of the Governor. Under such circumstances, the Apex Court held that the seniority could be counted only from the date of regularization and not from the date of adhoc appointment.



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19. In the instant case, the period between 1997 and 1998 was not considered to be an adhoc appointment by the official respondents and this period was considered only to be a prerequisite for passing the order of regularization in the year 1998. Hence, the said judgment of the Apex Court will not come to the aid of the petitioner.

20. In the light of the above discussions, this Court does not find any illegality in both the seniority list prepared by the fifth respondent as well as the consequential promotion given to the private respondents to the post of Road Inspector Grade-II.

21. In the result, the writ petition is dismissed. No costs. Consequently, the connected WMPs are also dismissed.

RS

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- 3.The Chief Engineer,
Highways Department,
Guindy, Chennai.
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(Highways), Construction &
Maintenance, Coimbatore-114.
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Pollachi-1.

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