



W.P.(MD)Nos.16807 to 16839 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)Nos.16807 to 16839 of 2024

W.P(MD)No.16807 of 2024:

K.Gopala Krishnan

... Petitioner

Vs.

1. The Secretary to the Government,
Government of Tamilnadu,
Highways and Minor Ports Department,
Secretariat,
Chennai - 600 009.

2. The Secretary to the 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 - 600 015.



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

5. Divisional Engineer (Highways) (Construction and Maintenance),
Divisional Engineer Office,
Thamarai Thotti, K.Pudur,
Madurai,
Madurai District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing respondents to consider the representation dated 21.02.2024 and 12.03.2024 of the petitioner seeking refixation of pay and promotion as per G.O.Ms.No. 1858 (PWD) dated 22.10.1969 and G.O.Ms.No.856 (PWD) dated 01.06.1977 as allowed to similarly placed Road Inspector and extending service benefits including retirement benefits and pensionary benefits.

In all Writ Petitions

For Petitioners : Mr.N.Tamilmani

For Respondents : Mr.VeeraKathiravan

Additional Advocate General

assisted by Mr.S.Shanmugavel

Additional Government Pleader



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COMMON ORDER

Since the issue raised in these writ petitions is one and the same, these writ petitions are disposed of, by way of this common order.

2. Heard Mr.N.Tamilmani, learned counsel appearing for the petitioners, Mr.VeeraKathiravan, learned Additional Advocate General assisted by Mr.S.Shanmugavel, learned Additional Government Pleader appearing for the respondents.

3. The grievance of the petitioners is that as per the latest Government Order issued in G.O.Ms.No.856, dated 01.06.1977, the earlier order rule issued under G.O.Ms.No.1958, dated 22.10.1969, has been amended and the qualifying years of service for promotion is reduced from 10 years to 5 years. The authorities concerned without following the latest Government Order, had chosen to follow the earlier Government Order and given promotion to the petitioners only after 10 years of their service. But the juniors of the petitioners have been given with the benefit of the Government Order in G.O.Ms.No.856, dated



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01.06.1977 and this has caused a disparity between the similarly placed persons.

4. The learned counsel for the petitioners submitted that similarly placed persons have already filed a petition in W.P(MD)Nos.7738 to 7749 of 2008 seeking promotion on the basis of the revised Government Order in G.O.Ms.No.856 dated 01.06.1977 and the same were allowed. The Government has challenged the above orders until Supreme Court, but lost. Hence, the petitioners have also given representations subsequently by extending the benefit to themselves as well. The learned counsel for the petitioners submitted that the representations so given by the petitioners have not been considered so far. Hence, the writ petitions have been filed.

5. The learned Additional Advocate General submitted that the petitioners who have retired in the year 2006, has come out with a novel plea after 18 of their retirement and 32 years from the cause of action. Attention was drawn to the earlier order passed on the appreciation of the similar issue in W.P.(MD)Nos.15616 to 15646 of



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2024, wherein, this Court has held as under :
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“8. Similarly such persons have already filed W.P.(MD)Nos.7738 to 7749 of 2008, in which, an order came to be passed on 12.12.2012. In the said writ petitions it is ordered to give the benefit of G.O.Ms.No.856 dated 01.06.1977 to the petitioners and thereby, the petitioners were allowed to be granted with the retrospective notional effect from the date of completion of five years of service in Grade-II Road Inspector. The Writ Appeal filed by the Government challenging the above order, was withdrawn. As the matter has not been agitated on merits and allowed to be withdrawn, in view of the pending contempt proceedings, Special Leave Petition (SLP) has been filed to challenge the order passed in the writ petitions and the same also withdrawn. It is understandable that the Government has complied with the orders by issuing G.O.Ms.No.58 Highways and Minor Ports (HR1) Department, dated 16.03.2018 by extending the same benefit to the petitioners in the above writ petitions i.e., W.P.(MD)Nos.7738 to 7749 of 2008 of 2008 and granted them the benefit.

9. Now, the petitioners claim that they also fall on the similar line and hence, the above benefit has to be given to them also. Admittedly, the petitioners were



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not parties to the alleged petitions filed in W.P. (MD)Nos.7738 to 7749 of 2008. Until the matter had reached the level of filing S.L.P and taken the shape of the Government Order in G.O.Ms.No.58 Highways and Minor Ports (HR1) Department, dated 16.03.2018, the petitioners did not figure anywhere.

10. Subsequently, the Association has filed a Writ Petition in W.P(MD)No.5696 of 2020 for the same relief and that was dismissed, however, by giving liberty to the individuals to give representation to the authorities concerned. While considering the same, the impugned order came to be passed on the observation that the promotion will not be given automatically even if someone has completed 5 years of service in Grade-II, since the Grade-I Road Inspector post is a selection category post.

11. Even G.O.Ms.No.856, dated 01.06.1977 would also state that the promotion would be given only on merit and ability and seniority will be considered when the merit and ability are approximately equal. In fact, the Government Order has been passed for complying the earlier orders passed by this Court in W.P.(MD)Nos.7738 to 7749 of 2008 and it is also observed that the Government order has been issued by considering the cases as a



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special case and the orders passed by the Government through the above G.O.Ms.No.58, dated 16.03.2018 shall not be quoted as a precedent and that it will not be applicable to any other person.

12. In fact, those petitioners who have filed the Writ Petitions in W.P.(MD)Nos.7738 to 7749 of 2008 have also retired from service in the year 2005. Even though the similar persons have knocked the doors of the Court in the year 2008 itself, the petitioners have watched the proceedings as fence sitters and did not come to the Court. Later, in the years 2018 and 2022, the Association filed Writ Petitions and that were also not allowed and after a lapse of 32 years from getting the promotion from the year 1988, the petitioners have come forward with these writ petitions saying that the delay involved in this matter has already been condoned in view of the liberty given to the petitioners in the earlier writ petition filed by the Association in the year 2018.

13. But the petitioners cannot think that liberty given to give representation itself would be sufficient to get the benefit without the representation is considered on merits. The delay is still hanging on them because the petitioners are answerable, as to how they have been acquiesced to promotional order



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which was granted to them in the year 1988 and they did not choose to challenge the same. Even when their colleagues in their individual capacities have filed the earlier writ petitions in W.P.(MD)Nos.7738 to 7749 of 2008, these petitioners were silent and they did not have any inclination to challenge anything including their seniority which alleged to roll back to the year 1983. Now, at this stretch of time, the petitioners filed these writ petitions claiming that their merits and ability should be taken into consideration from the year 1983, which is not possible.

14. As G.O.Ms.No.856, dated 01.06.1977 itself has stated that the seniority will be considered only when merit and ability are approximately equal, the petitioners cannot expect to pass an automatic order without considering the merits of their claim. Further, in the Government Order which has been passed by way of complying the earlier orders passed by this Court in W.P.(MD)Nos.7738 to 7749 of 2008, it is specifically mentioned that the cases of those petitioners are unique and special and that cannot serve as a precedent.

15 Hence, the petitioners have to stand on their own legs to prove the merit of their claim and cannot cite the earlier Government Orders or the orders



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obtained by the other petitioners who have filed writ petition in the year 2008 as a precedent. Since the petitioners have been quietly enjoying whatever benefits have been granted to them from the year 1988 and got the selection grade and special grade attached to Grade-I Road Inspector Post and allowed to retire in the year 2005 and thereafter, did not choose to participate in any litigation filed by their former colleagues in the year 2008, cannot be allowed rack up the matter by claiming that they are entitled to get the benefits of promotion with retrospective effect in view of G.O.Ms.No.856 dated 01.06.1977.

6. By citing the above judgment, it is argued by the learned Additional Advocate General that the petitioners have also similarly placed persons and hence, the writ petitions are also to be dismissed.

7. Even though the orders have been passed on merits, the representations of the petitioners are still lying in the hands of the respondents without consideration. So nothing will prevent the respondents to consider the representations of the petitioners, however, in the light of the earlier judicial pronouncements.



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8. In view of the above stated reasons, these writ petitions are **disposed of** and the respondents are directed to consider the representation of the petitioners in the light of the earlier judicial pronouncements and pass orders within a period of four weeks from the date of receipt of a copy of this order. No costs.

26.07.2024

NCC :yes/no

Index :yes/no

Internet:yes/no

RM



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R.N.MANJULA, J.

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