

(2011) 01 MAD CK 0031

In the Madras High Court

Case No : Writ Petition (MD) No. 7197 of 2008

Soundararajan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 27-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 01 MAD CK 0031

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : V. Thirumal, for the Appellant; D. Sasikumar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—The Petitioner has filed the present writ petition seeking a relief of Certiorarified Mandamus to call for the records of the

first Respondent in his letter No. 46853/C2 004-11 dated 12.02.2997 and subsequent to the fourth Respondent's proceedings No. ME.KU. No.

PA.A1/1231/04 (347/07) Na. Pa, 3 10VARU/dated 28.02.2007 and the subsequent communication of the Assistant Executive Engineer, Gundar

Basin Sub-Division, Thirumangalam, Madurai District in No. ME. KU. No. 108(4)G/2007(142) dated 06.03.2007 and quash the same and

consequently direct the first Respondent to regularize the service of the Petitioner in the post of Work Inspector Grade II with effect from

01.01.1985 and to direct the Respondents to sanction at all the attendant and monetary benefits thereof.

2. The learned Counsel for the Petitioner submits that the Petitioner has been appointed as N.M.R(Nominal Mazdoor Roll) in the Office of the

Fourth Respondent/The Executive Engineer, Water Resources Organization, Public Works Department, Gundar Basin Circle ,Tallakulam,

Madurai-2, on 03.06.1974. His job as per G.O. Ms. No. 193, Public Works Department, dated 25.01.1990 has been regularized with effect

from 01.01.1985 as Head Mazdoor. In the meanwhile, for the period from 10.07.1985 to 24.01.1980, he has been working as Works Inspector

Grade-II post for more than 41/2 years under the control of the Fourth Respondent.

3. It is the contention of the Petitioner that the qualification for the Work Inspector Grade-II, earlier has been fixed by the Government as per G.O.

Ms. No. 461, Public Works Department, dated 15.03.1989, namely, the qualification for appointment of a person must be in S.S.L.C. passed

with complete the course of Bifurcated Engineering. After the year 1970, the Bifurcated Engineering Course has not been conducted by any of the

Institutions in the State. The Government required the Employment Exchange not to sponsor for the post of Work Inspector Grade II. But, no

qualified individual possessing the Bifurcated Engineering Course enrolled in the Employment Exchange in the State.

4. The Government of Tamil Nadu has relaxed the qualification of the candidates to pass S.S.L.C as per G.O. Ms. No. 193, Public Works

Department, dated 30.03.1999. As per G.O. Ms. No. 783, Public Works Department, dated 01.06.1992, wherein, the Government has relaxed

the educational qualifications and the Maistry, Road Inspector and Work Inspector have also been treated in the same cadre in the Public Works

Department and their salary has also been fixed as the same.

5. The plea of the Petitioner is that he has appeared in the old 11th Standard which is equivalent to the 10th pass as per the letter Rc. No.

43945/B5-81 dated 15.10.1981 of the Tamil Nadu Public Service Commission, whereby the Government has fixed the minimum general

educational qualifications for Government service. In this letter, the Government has clarified that a candidate who appeared S.S.L.C public

examination after eleven years regular schooling irrespective of the fact whether he has passed or failed in that examination, can be considered to

possess the minimum general educational qualification for appointment of Junior Assistant in the Tamil Nadu Ministerial Services and that the

question of promoting to higher posts arises only if the other conditions laid down in the Rules and the G. Os are complied with. Therefore, this

Petitioner is possessing the required qualification to the post of Work Inspector Grade-II also. As per G.O. Ms. No. 788, Public Works

Department, dated 01.06.1992 he is entitled to the said post in the light of the Circular of the Tamil Nadu Public service Commission, whereby his

qualification is construed to be passed in S.S.L.C.

6. The Petitioner filed O.A. No. 1980 of 2004 before the Tamil Nadu Administrative Tribunal, seeking a direction to the Fourth Respondent to

consider his representation as regards regularization of his posts as Work Inspector Grade-II with effect from the date of his appointment.

However, the Tribunal directed the authority to consider the representation of the Petitioner and pass orders within a period of twelve weeks from

the date of receipt of the order dated 30.04.2004. The Fourth Respondent in pursuance of the orders of the Tribunal by his letter No.

C4/2716/2005 dated 04.09.2006 sent a proposal to the Deputy Secretary, Public Works Department, Secretariat, Chennai and requested for the

issuance of orders to appoint him as Work Inspector Grade-II as per G.O. Ms. No. 461, Public Works Department, dated 23.11.1981, by

relaxation in the Adhoc Rules 6(1)(b) etc. The Government issued G.O. No. 788, Public Works Department, dated 01.06.1992, wherein the

Government has regularized 305 Nominal Mazdoor Roll persons.

7. As per G.O. Ms. 193, Public Works Department dated 25.01.1994, the 7 services of the Petitioner have been regularized in the post of Head

Mazdoor with effect from 01.01.1985. The services of O. Pandian and K. Palani who are similarly placed persons like the Petitioner, and were

working as Work Inspectors from 01.04.1984, have been regularized in the very same in the post of Work Inspector Grade-II. Added further, K.

Raja, S. Solai, M. Karuppiahm M. Subramanian and K. Vanavan, have been regularized by relaxing the relevant rule for appointment as Work

Inspector Grade- II and orders have been issued in G.O. Ms. No. 788, Public Works Department, dated 01.06.1992, notwithstanding that he has

completed ten year of service in the post of Works Inspector Grade-II on the date of regularization.

8. It is the contention of the learned Counsel for the Petitioner, that one Moopan

who is similarly placed like the Petitioner, filed a writ petition in

W.P. No. 472 of 2007 before this Court and as per the order of this Court, a proposal has been sent by the official concerned to the Government

to appoint the said Moopan in the post of Work Inspector Grade-II and the said his educational qualifications has been relaxed. Later, one A.

Subramanian, Head Mazdoor working in the Petitioner's Division and filed a writ petition in 8 W.P. No. 27265 of 2005, which is an identical case

as that of the Petitioner. Again, on the direction of this Court in W.P. No. 27265 of 2005, the post of A. Subramanian has been modified to Work

Inspector Grade -II from the post of Head Mazdoor in terms of G.O. Ms. No. 297, Public Works (C2) Department dated 14.09.2007.

9. The learned Counsel for the Petitioner puts forward a plea that the Petitioner has served nearly five years as NMR in the post of Work

Inspector Grade-II and his bonafide request has been rejected by the First Respondent in letter No. 46853/C2/004-11 dated 12.02.2007, on the

ground that the Petitioner is not possessing the required qualification notwithstanding that the Third Respondent has submitted a detailed proposals

about the Petitioner.

10. In short, the contention of the learned Counsel for the Petitioner is that the act of the First Respondent is illegal, arbitrary and violative of

Article 14 of the Constitution of India. Significantly, in paragraph "4" of the counter filed by the Fourth Respondent/The Executive Engineer, it is

averred 9 as follows:

4. It is submitted that the averment of writ Petitioner in para 4 of the writ petition is not correct. But the qualification of the post of Work Inspector

Grade-II is concerned that the person has passed in S.S.L.C completed with the course of Bifurcated Engineering as per G.O. Ms. No. 461,

Public Works Department dated 15.03.1989.

Thereafter the government relaxed the qualification and refixed the qualification that the person to pass S.S.L.C and gained experience in the field

work as per G.O. Ms. No. 193 Public Works Department dated. 25.01.1990.

Also, in paragraphs 5 and 6, it is stated hereunder:

5. It is submitted that admittedly the writ petition has appeared the old 11th standard (Book No. 0886430) and as per the circular issued by the

Tamil Nadu Public Service Commission, the writ Petitioner's qualification is equal to S.S.L.C pass and he is already having knowledge in the field

work in the very same post of his claim in the writ petition and rest of averment is not correct.

6. It is submitted that, the writ petition filed an O.A.1980/2004 before Honourable Tamil Nadu Administrative Tribunal. On 30.04.2004, the

Honourable Tamil Nadu Administrative Tribunal was pleased to pass an order directed the first Respondent herein to consider the representation

of the writ Petitioner and pass order with in a period of 12 weeks from the date of receipt of the order.

Thereafter the third Respondent/Chief Engineer, Public Works Departments, Madurai Region, submitted his proposal in Letter No. C4/2716/2005

dated 04.09.2006 to the 10 Deputy Secretary, Public Works Department, Chennai and requested to issue order to appoint the writ Petitioner in

the post of Work Inspector Grade II as per G.O. Ms. No. 461, Public Works Department dated 23.11.1981 and G.O.788 Public Works

Department dated 01.06.1992 by relaxing the relevant rules and Adhoc rules. The order of Honourable Tamil Nadu Administrative Tribunal and

Honourable High Court regarding to similar issue involved in this case in our department regularized some persons mentioned in the writ affidavit of

this case and necessary Government order was also issued to bring them under regular establishment and rest of the averment in para 6 of the writ

petition is incorrect.

11. The learned Counsel for the Petitioner submits that the Chief Engineer of Water Resources Organization, PWD, Madurai, sent a

communication dated 10.08.2005, to the Second Respondent, Chief Engineer, Water Resources Organization, Chennai-5, stating that Bifurcated

Engineering course is not conducted in any of the institutions in the State and hence, the qualification of S.S.L.C with field experiences is suffice for

the the post of Work Inspector Grade-II, which is not admittedly and is not disputed in the present writ petition. In G.O.(Ms) No. 286, Public

Works (C2)Department dated 05.10.2005, the provision of Rule 6(1)(b) of the Adhoc Rules, is issued in G.O. Ms. No. 461, Public Works

Department, dated 11 15.03.1980, as amended in G.O(MS) No. 1966 Public Works Department, dated 23.11.1981 in respect of one V.

Narayana, Head Mazdoor, Building, Construction and Maintenance, Sub-Division, Public Works Department, Kumbakonam, so as to enable him

to brought into regular establishment with effect from 01.07.1988 in the category of Work Inspector Grade-II. It is not out of place for this Court

at this stage, that the said V. Narayana has filed O.A. No. 7463 of 1995 before the Tamil Nadu Administrative Tribunal and the said Tribunal has

passed order on 15.12.2003. As an outcome of the order passed in O.A. No. 7463 of 1995, the present G.O. Ms. No. 286, Public Works

Department, dated 05.10.2005 has been passed by the First Respondent.

12. As far as the present writ petition is concerned, with the similarly placed persons like that of the Petitioner namely K. Raja, S. Solai, M.

Karuppiahm M. Subramanian and others and also one V. Narayana who have been given the relaxation in respect of relevant rule for appointment

of Work Inspector Grade-II, as per G.O. Ms. No. 286, Public Works Department, dated 05.10.2005, the Petitioner's service is directed to be

regularized in the post of Work Inspector Grade-II with effect from 01.01.1985 and he is 12 entitled to get all the attendant and monetary benefits

as per Rules and this exercise shall be done by the authorities concerned within a period of eight weeks from the date of receipt of a copy of this

order otherwise, the ingredients of Article 14 of the Constitution of India, will be a glaring spectator for injustice being meted out, in the considered

opinion of this Court.

13. Be that as it may, inasmuch as the First Respondent in his letter No. 46853/C2/004-11, dated 12.02.2007 has not considered the relevant

factual aspects in a proper perspective, this Court sets aside the order of the First Respondent in his letter No. 46853/C2/004-11, dated

12.02.2007 and also the subsequent communication of the Assistant Executive Engineer, Gundar Basin Sub-Division, Thirumangalam, Madurai

District in No. ME.KU. No. 108(4)G/2007(142) dated 06.03.2007.

14. With the above directions, this writ petition is allowed leaving the 13 parties to bear their own costs.