

(2011) 07 MAD CK 0388

In the Madras High Court

Case No : Writ Petition No. 8547 of 2008

Tamil Nadu Arasu Nedunchalaithurai Salaipani Aluvalar
Maththia Sangam

APPELLANT

Vs

The Secretary to Government, Highways Department and The
Chief Engineer (General), Highways Department

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 07 MAD CK 0388

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : J. Ashok, for the Appellant; S. Bharathi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The Petitioner has invoked the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India, with a prayer for issuance of a Writ in the nature of Certiorari, to quash G.O.Ms. No. 193 Highways & Minor Ports (HK3) Department dated 01.08.2008, with regard to laying down the qualification of 10th Standard for Gang Mazdoors to be appointed as Road Inspectors Grade II. Consequential relief is also prayed for, to direct the Respondents herein, to fix the qualification as pass in 9th Standard for the recruiting Gang Mazdoors as Road Inspectors Grade II under G.O.Ms. No. 856 Public Works Department dated 01.06.1977.

2. The prayer made by the Petitioner in this writ petition, on the face of it, is not maintainable.

3. The right of the Government to frame Rules is absolute, which cannot be regulated by the Court proceedings, unless it is shown that the exercise of power is arbitrary or it is contrary to the Statutory Regulation or the Statute.

4. It is not possible for this Court to direct the Respondents to fix a particular qualification for the post, as claimed in the present writ petition.
5. Faced with this situation, the learned Counsel for the Petitioner contends, that the grievance of the Petitioner, is that the Respondents are taking steps to fill up even those posts, which were in existence before coming into force the amended Rule, by applying the new Rule. There is No. material placed on record in support of this contention. Therefore, it will not be possible for this Court to adjudicate on this question in absence of any material particulars.
6. As and when any such attempt is made by the Respondents, it will be open to the Petitioner to challenge the action of the Government, by giving details of the posts which were said to be in existence, before coming into force of amended rules.
7. Needless to mention here, that in view of the settled law, the Respondents will be well advised, to follow the law, that the posts, which fell vacant, prior to coming into force of amended Rule, are to be filled up under the old Rule.
8. With the above said observation, this writ petition is dismissed. No. costs.