



**W.A.(MD)No.2039 of
2023 etc. batch**

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.A.(MD) Nos.2039, 975, 1396, 1447 and 1584 of 2023
and
C.M.P.(MD) Nos.16242, 7633, 10953, 11139 and 12232 of 2023**

W.A.(MD)No.2039 of 2023:-

The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai - 600 009.

... Appellant

vs.

1.M.Amuthavanan

2.R.Elangovan

3.The Tamil Nadu Public Service Commission,
Rep. by its Secretary,
TNPSC Road, Park Town,
Chennai - 600 003.

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order,
dated 01.06.2023, passed in W.P.(MD)No.6962 of 2023, on the file of this Court.



WEB COPY

W.A.(MD)No.2039 of
2023 etc. batch

For Appellant : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by
Mr.S.R.A.Ramachandran
Additional Government Pleader

For R1 and R2 : Mr.M.Ajmalkhan
Senior Counsel
for M/s.Ajmal Associates

For R3 : Mr.V.Panneer Selvam
Standing Counsel

COMMON JUDGMENT

[Judgment of the Court was made by **R.SUBRAMANIAN, J.**]

All these appeals are against the order of the Writ Court dated 01.06.2023, made in W.P.(MD)No.6962 of 2023.

2. The said Writ Petition arose under the following circumstances:-

2.1. The third respondent / Tamil Nadu Public Service Commission called for applications for the post of Road Inspector in the Rural Development and Panchayat Raj Department. The petitioners, who had obtained an I.T.I. Certificate in Civil Draughtsmanship, were qualified for the said post. The Notification dated 13.01.2023, calling for applications permitted the persons with Diploma in Civil Engineering or a Bachelors Degree in Civil Engineering to



W.A.(MD)No.2039 of
2023 etc. batch

WEB COPY apply for the post of Road Inspector.

2.2. The petitioners challenged the said Notification contending that the Notification is against the Special Rules that were in place for recruitment of Road Inspectors.

2.3. Their primary contention was that the Special Rules for recruitment to the post of Road Inspector require a candidate to have obtained an I.T.I. Certificate in Civil Draughtsmanship from a Government recognized Institute. According to them, inasmuch as the Special Rules make possession of an I.T.I. Certificate in Civil Draughtsmanship mandatory, the persons with Diploma in Civil Engineering or Graduation in Civil Engineering cannot be allowed to apply for the said post, if they do not possess the basic and essential qualification namely, an I.T.I. Certificate in Civil Draughtsmanship.

2.4. This claim was refuted by the third respondent / Tamil Nadu Public Service Commission as well as the Rural Development and Panchayat Raj Department contending that the I.T.I. Certificate in Civil Draughtsmanship is only the basic qualification and the proviso enables preference to be given to the candidates with higher qualification namely, Diploma in Civil Engineering and



W.A.(MD)No.2039 of
2023 etc. batch

WEB COPY Graduation in Civil Engineering.

2.5. Reliance was also placed on Section 25 of the Tamil Nadu Government Servants [Conditions of Service] Act, 2016 [hereinafter referred to as "the Act"], which recognizes higher qualification.

2.6. The Writ Court on an examination of the rule position, concluded that the Diploma in Civil Engineering or Bachelor of Engineering [Civil] are not higher qualifications for I.T.I. Certificate in Civil Draughtsmanship. The learned Single Judge also followed the well settled principle of law that a proviso cannot be interpreted to expand the meaning of the main Rule.

2.7. Reliance was also placed on Section 68 of the Act, which provides that in case of inconsistency, the provisions of the Special Rules alone would prevail. On the said conclusions, the learned Single Judge allowed the Writ Petition.

2.8. Aggrieved, some of the candidates with Diploma in Civil



**W.A.(MD)No.2039 of
2023 etc. batch**

Engineering or Bachelors Degree in Civil Engineering, the Tamil Nadu Public Service Commission as well as the Government have come up with these Writ Appeals.

3. When W.A.(MD)No.2039 of 2023 was listed earlier before a Division Bench of this Court, the Division Bench had passed the following orders:-

"We heard the learned Additional Advocate General for the appellant, the learned Senior Counsel for the respondents 1 and 2 and the learned Standing Counsel for the third respondent.

2. Under the impugned judgment, the persons eligible to apply to the post of Road Inspector was subject matter of consideration.

3. The qualification for the Road Inspector is under:-

<i>Road Inspector</i>	<i>Direct Recruitment</i>	<i>Must possess an ITI Certificate in Civil Draughtsmanship from a Government recognized Institute: Provided that preference shall be given to the persons possessing a Diploma in Civil Engineering.</i>
-----------------------	---------------------------	---

4. The learned Single Judge interpreted the same in the manner



**W.A.(MD)No.2039 of
2023 etc. batch**

WEB COPY

that a person applying for the post of Road Inspector should necessarily possess I.T.I. Certificate in Civil Draughtsmanship from a Government recognized Institute. The learned Single Judge also held that even if a person possesses Diploma in Civil Engineering, but does not possess the qualification of I.T.I. Certificate in Civil Draughtsmanship would be ineligible to apply.

5. According to the learned Additional Advocate General, a higher qualification can always be accepted and as such, a person possessing Diploma in Civil Engineering, though not possessing I.T.I. Certificate in Civil Draughtsmanship, would be eligible. We cannot fathom such an argument.

6. A diploma in Civil Engineering would not necessarily be a higher qualification to I.T.I. certificate in Civil Draughtsmanship. I.T.I. Certificate in Civil Draughtsmanship is a Certificate in a specialised course i.e., Civil Draughtsmanship, whereas, Diploma in Civil Engineering would not necessarily mean specialisation in Draughtsmanship, so as to render it as a higher qualification.

7. The meaning of the proviso that preference shall be given to the persons possessing a Diploma in Civil Engineering would mean that if there are two candidates possessing I.T.I. Certificate in Civil Draughtsmanship and both are equal, then, the person possessing Diploma in Civil Engineering would be given a preference. However, Diploma in Civil Engineering is not a substitute for the qualification of an I.T.I. Certificate in Civil Draughtsmanship, which is a specialised



**W.A.(MD)No.2039 of
2023 etc. batch**

WEB COPY

Course in Draughtsmanship. In view of that, prima facie, we do not feel any error committed by the learned Single Judge.

8. At this stage, it is submitted that the Tamil Nadu Public Service Commission has also filed an appeal and other persons have also filed appeals.

9. In the light of the fact that other appeals have been filed, we have not disposed of the appeal.

10. Place the present appeal along with W.A.(MD)No.975 of 2023 and W.A.(MD)Nos.1178, 1396, 1447 and 1584 of 2023 on 07.12.2023."

4. The Division Bench has reached a specific conclusion that a Diploma in Civil Engineering or Bachelor of Engineering would not necessarily be a higher qualification to I.T.I. Certificate in Civil Draughtsmanship.

5. The contention of the learned Additional Advocate General that a person possessing Diploma in Civil Engineering though not possessing I.T.I. Certificate in Civil Draughtsmanship would be eligible was straightaway rejected. The scope of the proviso was also discussed by the Division Bench in Paragraph 7 of the said order. Paragraph 9 discloses that the Division Bench has almost concluded the issue, but, had adjourned the appeal only since a representation



W.A.(MD)No.2039 of
2023 etc. batch

WEB COPY was made as other appeals are pending.

6. Today, we have heard Mr.Veera.Kathiravan, learned Additional Advocate General appearing for the Government, Mr.V.Panneer Selvam, learned Standing Counsel appearing for the Tamil Nadu Public Service Commission, Mrs.Nalini Chidambaram, learned Senior Counsel appearing for the appellants in W.A.(MD)No.1447 of 2023, Mr.M.Ajmalkhan, learned Senior Counsel appearing for the Writ Petitioners, Mr.K.K.Senthil, learned counsel appearing for the respondents 4 to 37 in W.A.(MD)No.975 of 2023 and Mr.A.K.Athiban Vijay, learned counsel for the appellants in W.A.(MD)Nos.1396 and 1584 of 2023.

7. Mr.Veera.Kathiravan, learned Additional Advocate General appearing for the Government and Mrs.Nalini Chidambaram, learned Senior Counsel appearing for the appellants in W.A.(MD)No.1447 of 2023 would vehemently contend that the opinion expressed by the Division Bench on 01.12.2023 is only a *prima facie* opinion and the same is not binding on us. Therefore, we are entitled to examine the issue once again. The other counsels appearing for the parties would also adopt the very same argument.



W.A.(MD)No.2039 of
2023 etc. batch

WEB COPY 8. We do not think that we can venture upon such an exercise, particularly, due to the language used by the Division Bench, in its order dated 01.12.2023. The contention of the learned Additional Advocate General that Diploma in Civil Engineering can be considered to be a higher qualification to I.T.I. Certificate in Civil Draughtsmen ship was specifically rejected. The Division Bench has also distinguished between the qualifications namely, I.T.I. Certificate in Civil Draughtsmanship and Diploma in Civil Engineering.

9. The impact of the proviso was also considered by the Division Bench. Therefore, we do not opine that the order can be considered as a *prima facie* opinion, nor does it *prima facie* suggest that an error was committed by the learned Single Judge. A concrete opinion has been expressed by the Division Bench and we are constrained to adopt the same. We do not think we can transgress and re-examine the position.

10. In the light of the above, all the Writ Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes / No
Index : Yes / No

[R.S.M., J.] [L.V.G., J.]
13.08.2024



W.A.(MD)No.2039 of
2023 etc. batch

WEB COPY smn2

To

The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, Park Town,
Chennai - 600 003.



WEB COPY



W.A.(MD)No.2039 of
2023 etc. batch

R.SUBRAMANIAN, J.
and
L.VICTORIA GOWRI, J.

smn2

Common judgment in
W.A.(MD) Nos.2039, 975, 1396, 1447 and 1584 of 2023
and
C.M.P.(MD) Nos.16242, 7633, 10953, 11139 and 12232 of 2023

13.08.2024