

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.02.2015

PRONOUNCED ON : 19.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

W.P.No.30847 of 2014

1.J.Kalidas
2.K.Ravichandiran
3.Ilanzezhian Petitioners

Vs.

1.The Union of India
Rept. by the Secretary to Government (Fire Service)
Home Department
Government of Puducherry
Puducherry

2.The Divisional Fire Officer
Fire Service Department
Government of Puducherry
No.34, Canteen Street
Puducherry

3.Anandaraj. R
4.Santhosh Kumar
5.Kathiresan. K
6.Rajesh. K
7.Sathipragash
8.Prabhakaran. P

9.The Registrar
Central Administrative Tribunal
High Court Campus
Chennai

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus to call for the records relating to the common impugned order dated 15.09.2014 passed by the 9th respondent in O.A.Nos.268, 270 & 271 of 2013 on the file of Central Administrative Tribunal, Madras Bench and quash the same and consequently direct the respondent Nos.1 to 2 to reinstate the petitioners into service with all monetary and non-monetary benefits and continuity of service.

For Petitioner : Mr.Prakash Adiapadam

For Respondents : Mr.R.Syed Mustafa,
Spl. Govt Pleader (Puducherry)
for R1 and R2

ORDER

P.R.SHIVAKUMAR, J.

This writ petition is one filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorarified Mandamus to quash the order of the Central Administrative Tribunal, Madras Bench, Chennai dated 15.09.2014 made in O.A.Nos.268, 270 and 271 of 2013 and for a consequential direction to the respondents 1 and 2 to reinstate the petitioners 1 to 3 in the writ petition into service with all monetary and non-monetary benefits and continuity of service.

2. The second respondent issued Notification No.1953/DFO/F12007 dated 01.11.2007 inviting applications from prospective candidates of the Union Territory of Puducherry for filling up the post of Fire Man, Group D, Non-Gazetted and Non-Ministerial Post. The total number vacancies notified was 52 and the same was divided into region-wise. For Puducherry region, the total number of vacancies notified was 40 (OC : 20, MBC : 8, OBC : 6 and SC : 6). The petitioners applied for appointment as Firemen towards the notified vacancies reserved for SC. After being declared fit in the physical measurement test and in the physical efficiency test, they were allowed to appear in the written competitive examination held on 28.10.2012. The result of the written examination was published in the Internet on 29.10.2012 by the second respondent vide Notification No.1953/Home/PPT-III/2011-Vol.II dated 29.10.2012.

3. In the result thus published in the Internet, the first petitioner was shown to have secured 48 marks and was placed in Sl.No.2 against the SC quota for Puducherry Region. The second and third petitioners were shown to have secured 42 marks and 43 marks respectively and they were placed at Sl.Nos.6 and 4 against the SC Quota for Puducherry region. The marks obtained by the persons selected against SC Quota for Puducherry region as per the results published on 29.10.2012 in the Internet are tabulated below:

SCHEDULE CASTE (SC)			
Sl.No.	Hall Ticket No.	Name	Marks Obtained
1	10953	Raguvarman. P	49
2	10383	Kalidas. J	48
3	10186	Jayassandiran. R	48

SCHEDULE CASTE (SC)			
4	10114	Ilanzhezhian. K	43
5	10515	Selladurai. V	43
6	10834	Ravichandran. K	42

4. The petitioners were issued appointment orders and were posted as Firemen at D.Nagar Fire Station, Puducherry. They were also given vigorous training for 4 1/2 months. While so, on 19.02.2013, the second respondent issued a Notice of Termination in Form-I under Rule 5(1) of Central Civil Services (Temporary Services) Rules, 1965 to the petitioners and removed them from service while they were undergoing training. The same was done on the basis that the petitioners were given appointment in preference to six other persons who had secured higher marks. As against the said order of removal, the petitioners filed separate Original Applications in O.A.Nos.268, 270 and 271 of 2013 before the Central Administrative Tribunal, Madras Bench, Chennai. Despite the fact that the Tribunal granted an order of interim stay, the petitioners were not permitted to continue their training. When a complaint alleging contempt was preferred by the petitioners before the CAT seeking a direction to respondents 1 and 2 to comply with the interim order granted by the Tribunal, the second respondent preferred writ petitions in W.P.Nos.20684 to 20687 of 2013 on the file of this Court. This court, by order dated 29.07.2014 dismissed the writ petitions directing the CAT, Madras Bench, Chennai to dispose of the original applications as expeditiously as possible. Thereafter, the CAT, Madras Bench, Chennai, by the common order dated 15.09.2014 impugned in this writ petition, dismissed all the three original applications. Hence the petitioners are before this court with the present writ petition challenging the impugned common order of the Tribunal dated 15.09.2014 made in O.A.Nos.268, 270 & 271 of 2013.

5. We have heard the arguments advanced by Mr.Prakash Adiadam, learned counsel for the petitioners and by Mr.I.Syed Mustafa, learned Special Government Pleader (Puducherry).

6. The contention of the writ petitioners that they had secured 48 marks, 42 marks and 43 marks respectively among the Scheduled Caste candidates for the Puducherry region is not disputed. The maximum and minimum marks secured by the candidates selected under SC quota for Puducherry region as per Notification No.1953/Home/PPT.III/2011-Vol.II dated 29.10.2012 were 49 and 42 respectively. However, some of the non-selected candidates made self evaluation with the help of the question papers, key to answers and carbon copies of the coding sheets supplied to them and on such self evaluation they found that they ought to have been awarded more marks than the marks secured by the selected candidates. Accordingly they made a representation to the concerned authorities to verify the selection process. Therefore, the entire selection process was verified as a result of which it came to be noticed that persons who secured less marks had been

preferred to the persons who secured more marks. Hence a modified selection list was issued in Notification No.4889/Home/PPT.III/2012 dated 28.12.2012.

7. The maximum marks and minimum marks scored by the selected candidates as per the modified selection notification, are as follows:

Sl .N o.	Category	Puducherry Region		Karaikal Region		Mahe Region	
		Maximu m Mark	Minimu m Mark	Maximu m Mark	Minimu m Mark	Maximu m Mark	Minimu m Mark
1	Unreserve d (UR) / General	75	58	66	48	50	50
2	Most Backward Class (MBC)	59	58	40	40	-	-
3	Other Backward Class (OBC)	67	56	56	56	-	-
4	Scheduled Caste (SC)	54	50	48	45	-	-

We are not concerned with the selection in respect of the other Regions, namely Karaikal Region, Mahe Region and MSP (Puducherry Region). The selection made in respect of Puducherry Region alone is made the subject matter of the dispute before the Tribunal as well as this court. It is also not in dispute that total number of vacancies reserved for Scheduled Castes in Puducherry Region was 6.

8. The contention of the respondents that after the publication of results in the Internet as per Notification No.1953/Home/PPT-III/2011-Vol.II dated 29.10.2012, the non-selected candidates made a self-verification with the help of the question papers, key to answers and the carbon copy of coding sheets and thereafter they made a representation for verification of the entire selection process has not been disputed by the petitioners. Based on such representation, the entire process of selection was verified again leading to the detection of the anomaly, as a result of which, a modified selection list came to be published in Notification No.4889/Home/PPT.III/2012 dated 28.12.2012 superseding the earlier selection list published in Internet as per notification dated 29.10.2012. As per the revised Notification dated 28.12.2012 the maximum and minimum marks scored by the scheduled caste candidates entitled to be selected for the Puducherry Region were respectively 54 and 50. Pursuant to the notification of the new selection list, the petitioners were

served with the notice of termination in Form-I on 19.02.2013. As per the modified notification, the following persons belonging to Scheduled Caste of Puducherry Region got selected:-

SCHEDULE CASTE (SC)			
Sl.No.	Hall Ticket No.	Name	Marks Obtained
1	10427	Anandaraj. R	54
2	11229	Santhoshkumar. A	54
3	10654	Katherasan. K	52
4	10833	Rajesh K	51
5	11260	Sathiparagash	50
6	10156	Prabhakaran. P	50

Since all the selected candidates secured more marks than the petitioners, the termination of their services on the basis of supersession of earlier selection list by the subsequent revised selection list cannot be termed an act of victimisation or attaching any stigma.

9. It is not the case of the writ petitioners that the candidates selected as per the revised notification issued after verification did not get such higher marks, namely 54, 54, 52, 51, 50 and 50 respectively. It is also not in dispute that the petitioners secured 48, 42 and 43 marks respectively. An error/mistake that crept in while preparing the selection list was sought to be rectified on verification of the entire selection process on the representation of the persons, who claimed to have scored more marks on the basis of their self-evaluation. Such correction has not been shown to be incorrect or malafide showing favouritism or nepotism. When the entire selection process is reviewed based on the representation of the aggrieved candidates supported by concrete evidence and such review of the selection process results in publication of a fresh selection list superseding the erroneous earlier selection list, the persons who had been selected as per the superseded selection list cannot complain that they have been wronged. It cannot also be contended that since the writ petitioners were given appointment and made to undergo training which was nearing completion, they could claim estoppel not to terminate them when the wrong selection list came to be superseded by a rectified selection list.

10. In this regard, the learned counsel for the petitioners relied on the judgment of the Hon'ble Supreme Court in Vikas Pratap Singh and Ors. Vs. State of Chhattisgarh and others made in C.A.Nos.5318-5319 of 2013 (batch) and contended that though their selection would be improper and the other persons who secured more marks as per the modified notification would have been given appointment, the petitioners should be accommodated at least against the existing vacancies or future vacancies without

Court, re-evaluation came to be made on the basis of irregularities in evaluation. Such evaluation resulting in inclusion of the deserving candidates in the selection list and removal of the names of the undeserving candidates selected as per the original selection list could not be said to result in illegality. However, the persons, who were to lose their job on such re-evaluation contended that having undergone training, assumed charge at their respective places of posting and worked for a considerable period, they should not be visited with the order of the ouster. Sympathetically considering the submissions and also taking into account the fact that some of the persons had become over aged and had lost the opportunity of appearing in the subsequent examinations, the Supreme Court directed that the persons facing threat of ousting be placed at the bottom of the fresh merit list drawn in accordance with the re-evaluation.

11. However in District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another v. M.Tiripura Sundari Devi reported in (1990) 3 SCC 655 and Union of India and others v. M.Bhaskaran reported in 1995 Suppl. (4) SCC 100 it was held that no legal right in respect of appointment to a post would vest in a candidate who obtained employment by fraud, mischief, misrepresentation or malafide. In Vinodan T. and Ors. vs. University of Calicut and Ors. reported in (2002) 4 SCC 726 it was held that a person appointed erroneously on a post must not reap the benefits of wrongful appointment jeopardising the interest of the meritorious and worthy candidates. However, when wrongful, irregular appointments were made without any mistake on the part of the appointees and the appointees face the threat of termination, on discovery of such error or irregularities, the courts have to take a sympathetic view in the light of various factors including the bonafide of such appointee and length of his service after such appointment. Applying the principles and taking note of the fact that the appellants before the Supreme Court had successfully undergone the training and were efficiently serving the State for more than three years, the Supreme Court held that their termination, undoubtedly, would not only impinge upon the economic security of the appellants therein and their dependants, but also would adversely affect their career. Based on the said observation, the Apex Court held on the facts and circumstances of the said case, that it would be highly unjust and grossly unfair to the appellants therein who were innocent appointees of an erroneous evaluation of answer scripts. However, the Apex Court hastened to add that their continuation in service should neither give any unfair advantage to the appellants, nor cause undue prejudice to the candidates selected qua the revised merit list. Accordingly, the Apex Court directed placing of the appellants therein at the bottom of the selection list granting age relaxation to those who had crossed the age limit for appointment.

12. The said case can be distinguished from the case on hand. In the above said case, based on re-evaluation on detection of mistakes in the question papers and resultant irregularities in the evaluation, fresh selection list came to be issued and those persons who got selected as per the original selection list were sought to be removed at a time when they had already completed their training and put in more than three years of regular service. The same was the reason why the Apex Court showed indulgence and directed accommodation of such persons by placing them at the bottom of the revised selection list.

13. On the other hand, in the case on hand, within two months from the date of original selection and before ever the writ petitioners had completed their training, the irregularity came to be noticed by a verification of the evaluation based on the representation of the unselected candidates, who according to their self-evaluation based on question paper, answer key and the xerox copies of the coding sheets supplied to them ought to have been awarded more marks. On such verification, it was found that six other persons by names Anandaraj, Santhoshkumar, Katherasan, Rajesh, Sathi Paragash and Prabhakaran had secured more marks and without selecting those persons, the persons who secured lesser marks, including the petitioners herein, came to be selected and appointed. The same would show that there was a large-scale irregularity by which favouritism came to be shown by selecting the persons non-meritorious candidates in preference to meritorious candidates and that the same was done by awarding lesser marks to the meritorious candidates. The anomaly was found out and rectified within a period of two months and revised notification was issued, as a consequence of which the impugned notice of termination came to be issued to the petitioners removing them from service and relieving them from training on 19.02.2013.

14. We do not find it to be a fit case to which the leniency shown by the Supreme Court in Vikas Pratap Singh's case cited supra can be applied. While showing such indulgence in favour of the persons who got selected due to irregular evaluation, the court should also take into consideration the fact that, by allowing such persons to continue in service shall in a way result in depriving a more meritorious prospective candidate who may seek appointment in respect of future vacancies. Taking into consideration all the above said aspects, we are of the considered view that neither the prayer for quashing the order of the second respondent, nor the prayer of the petitioners for their accommodation applying the principle of estoppel by allowing them to continue in service shall be granted in favour of the petitioners. The Tribunal committed no wrong in dismissing the original applications. We do not find any reason to interfere with the order of the Tribunal, which is impugned in this writ petition. Hence the writ petition deserves dismissal.

In the result, the writ petition is dismissed. However, there shall be no order as to cost.

Sd/-

Asst.Registrar (CS II)

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Sub Asst. Registrar

asr

To

- 1.The the Secretary to Government (Fire Service)
Home Department
Government of Puducherry
Puducherry
- 2.The Divisional Fire Officer
Fire Service Department
Government of Puducherry
No.34, Canteen Street
Puducherry
3. The Registrar
Central Administrative Tribunal
High Court Campus
Chennai

1 cc to Government Pleader, Sr. 9317

1 cc to Mr. Prakash Adiapadam, Advocate sr. 9252

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