



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.08.2016
CORAM :
THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)Nos.981 and 982 of 2015
and
M.P(MD)Nos.1, 1 and 2 of 2015

P.Munishkumaran

... Petitioner in both WPs

vs.

- 1)The Director,
Fire and Rescue Service Department,
No.1, Greems Road,Chennai-600 006.
 - 2)The Joint Director,
Fire and Rescue Service Department,
Western Region, Coimbatore.
 - 3)The Divisional Fire Officer,
Fire and Rescue Service Department,
Dindigul Division, Dindigul District.
 - 4)The Station Fire Officer,
Nilakottai Fire and Rescue Station,
Dindigul District.
 - 5)T.Ramadoss,
Station Fire Officer,
Fire and Rescue Station,
Egmore, Chennai-600 008.
 - 6)S.Mayilraj,
Station Fire Officer,
Fire and Rescue Station,
Palani, Dindigul District.
 - 7)S.Pradeepkumar,
Station Fire Officer,
Fire and Rescue Station,
Kanyakumari,Kanyakumari District.
 - 8)P.Vijayakumar,
Station Fire Officer,
Fire and Rescue Station,
Keelpauk, Chennai.
 - 9)P.Suresh Chandrakanth,
Station Fire Officer,
Fire and Rescue Station,
Dharapuram, Tiruppur District.
 - 10)P.Sivakumar,
Station Fire Officer,
Fire and Rescue Station,
Nilakottai, Dindigul District
- ...Respondents in W.P(MD) 981/15



- 1) The Director,
Fire and Rescue Service Department,
No.1, Greems Road,
Chennai-600 006.
- 2) The Joint Director,
Fire and Rescue Service Department,
Western Region, Coimbatore.
- 3) The Divisional Fire Officer,
Fire and Rescue Service Department,
Dindigul Division, Dindigul District.
- 4) The Station Fire Officer,
Nilakottai Fire and Rescue Station,
Dindigul District.
- 5) P.Sivakumar,
Station Fire Officer,
Fire and Rescue Station,
Nilakottai, Dindigul District. ... Respondents in W.P(MD)982/15

W.P(MD)981/15 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent herein relating to the impugned orders in Rc.No.9844/B1/07 dated 30.11.2007, Na.Ka.No.13089/Aa1/2008 dated 18.11.2009, Na.Ka.No.13089/Aa1/2010 dated 08.01.2011 and Na.Ka.No.13089/Aa1/2011 dated 19.02.2011 and quash the same as illegal and consequently directing the respondents 1 to 3 to promote the petitioner as Leading Fireman.

W.P(MD)982/15 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the entire records of the 2nd respondent herein relating to the impugned order in Na.Ka.No.613/A1/2014-1 dated 19.01.2015 and quash the same as illegal.

For Petitioner (both WPs)	: Mr.S.Alagarsamy
For R1 to R4 in W.P(MD)981/15 & R1 to R4 in in W.P(MD)982/15	: Mr.T.R.Janarthanam Additional Government Pleader
For R5 to R10 in W.P(MD)981/15 & R5 in in W.P(MD)982/15	: Mr.M.S.Jeyakarthik

COMMON ORDER

Learned counsel for the petitioner would submit that P.Munishkumaran/petitioner in both the writ petitions, who was appointed as a Fireman on 22.11.2002, by the Director, Tamil Nadu Fire and Rescue Service Department, is presently serving in the 4th respondent office at Nilakottai. He came to know that the 10th respondent is also working as a Station Fire Officer at Nilakottai. On verification, it was found that the 10th respondent



while appearing before the Tamil Nadu Uniformed Services Recruitment Board in the year 2000 along with the petitioner, he was not qualified in the physical measurement test, therefore, he was not selected as Fireman, but surprisingly, after sometime, he was appointed as a Typist/Junior Assistant on compassionate grounds in the office of the District Fire Officer in the year 2000. When he is not qualified to render service in the Fire and Rescue Department, it is not known how the 10th respondent, who was appointed on compassionate grounds as a Typist/Junior Assistant and got promoted as Assistant and Superintendent in the Ministerial service, was appointed as Station Fire Officer in Fire and Rescue Service Department.

2. Adding further, he would submit that the respondents 5 to 10 in W.P(MD)981/15 were appointed as Typists/Junior Assistants on compassionate grounds on various dates, but within 11 years from the date of entry into service on compassionate grounds, the 10th respondent became a Station Fire Officer and he is presently working at Nilakottai. When the petitioner has rendered meritorious service for the past 12 years, the respondents 5 to 10 ought not to have been given promotion as Station Fire Officers, because they have not rendered service as Fireman and Leading Fireman, but from the post of Assistant, they have been promoted and appointed as Station Fire Officers in various places.

3. Continuing his arguments, he would submit that respondents 5 to 10 in W.P(MD)981/15 have been appointed as Station Fire Officers without any basic qualification prescribed under the rules, therefore, it is unjust and unreasonable on the part of the respondents 1 and 2, in permitting them to continue in the present posts. After noticing the irregular appointments and irregular promotion given to the respondents 5 to 10, a representation was made by the petitioner to the 1st respondent on 10.03.2014, questioning their illegal promotion from the ministerial service. In the said representation, the petitioner has requested the respondents 1 to 3, to grant permission to initiate legal proceedings before this Court, as against the illegal promotion and appointments issued by the respondents 1 to 3 to the respondents 5 to 10 in W.P(MD)981/15. Only on 26.10.2014, the Deputy Director (Admin), Fire and Rescue Service, Greems Road, Chennai has enclosed the four impugned orders, relating to the respondents 5 to 10 and thereafter, the petitioner has challenged the same in W.P(MD)981/15.

4. It is further contended by the learned counsel for the petitioner that when the respondents 5 to 10 were appointed by the 1st respondent as Typists/Junior Assistants in Tamil Nadu Ministerial Service, they should not have been appointed as Station Fire Officers, for the reason that their original appointments were made on compassionate grounds.

5. Concluding his arguments, learned counsel for the petitioner that he would submit that when the respondents 5 to 10 were disqualified on earlier occasion by the Tamil Nadu Uniformed



Services Recruitment Board in the year 2000, on mere transfer from the Tamil Nadu Ministerial Service, after appointment on compassionate grounds, they cannot be allowed to come to the Fire and Rescue Services Department, by recruitment by transfer, moreover, they should not be allowed to march over the petitioner, who is already working before they were appointed in the ministerial service.

6. Separate counter affidavits have been filed by the 1st respondent/Director, Fire and Rescue Service Department, Chennai, and the 10th respondent in W.P(MD)981/15. Learned Additional Government Pleader appearing for the official respondents would submit that the respondents 5 to 10, were originally appointed as Junior Assistants on compassionate grounds in Fire and Rescue Service Department in the Tamil Nadu Ministerial Service and subsequently their services were also regularised from the date of their appointments by the Government. For appointment as Junior Assistant, there is no need to conduct any physical test as physical fitness certificate from the medical officer alone is required, moreover, the post of Junior Assistant is also coming under the purview of the Tamil Nadu Public Service Commission.

7. He further submitted that the contention made by the petitioner that persons selected as Fireman by the Tamil Nadu Uniformed Services Recruitment Board alone are eligible to be appointed as Station Fire Officer, is not correct, since the appointment to the post of Station Officer under Class-I - Category-II, can be made by direct recruitment or by promotion from Category 2 of Class-II or by recruitment by transfer from the Tamil Nadu Ministerial Service, hence, applying the above rule, which describes the method of appointment to the post of Station Officer in Class-I Category-II, by direct recruitment or by promotion from the rank of Leading Fireman (Category-II Class-II) or by recruitment by transfer from the Tamil Nadu Ministerial Service, the respondents 5 to 10, who were appointed as Junior Assistants on compassionate grounds in Fire and Rescue Services Department in Tamil Nadu Ministerial Service, subsequently after the fulfillment of the requirements to the post of Station Officer, were considered for the said post. They also underwent physical efficiency test and medical tests and based on the eligibility of both physical and medical, they were given four months basic training required for the post of Station Officer and subsequently appointed in Fire and Rescue Service Station.

8. Adding further, he would submit that after their appointments in the ministerial service, the respondents 5 to 10 by recruitment by transfer, came to the Fire and Rescue Subordinate Service from the Ministerial Service, as per the rule provision and the percentage earmarked for the ministerial service namely, 1% is earmarked for ministerial service for appointment as Station Officer.

9. Continuing his arguments, he would submit that in Tamil Nadu Fire and Rescue Subordinate Service Rules, 4% is earmarked for



direct recruitment, 5% is earmarked for promotion from the post of Leading Fireman and 1% is earmarked for the ministerial service. Further, as on the date of appointments of the respondents 5 to 10 as Station Fire Officers, 340 posts of Station Officer were available, therefore, based on the above rule, 34 posts were earmarked for ministerial service, but only 6 persons were appointed based on their willingness, hence, he pleaded, it is not open to the petitioner to contend that he has lost his promotional opportunity because of the promotion given to the respondents 5 to 10.

10. It is his further contention that when the respondents 5 to 10 were appointed as per the rule only within 1% reservation given to the Tamil Nadu Ministerial Service and out of 34 posts earmarked for the ministerial service, 6 persons alone have been appointed based on their willingness and even as on today, 28 vacancies are available, without challenging the rule giving way for direct recruitment by promotion from the Tamil Nadu Ministerial Service, the petitioner cannot maintain W.P(MD)981/15. Moreover, the writ petition challenging the old impugned orders, appointing the respondents 5 to 10 is liable to be dismissed, since it is hit by long delay. This Court finds merit in the submissions made by the learned Additional Government Pleader appearing for the official respondents.

11. Reiterating the same contentions, learned counsel for the respondents 5 to 10 also submitted that when the petitioner is also working in the very same department, it is not known how he can maintain this writ petition with huge and unexplained delay. Moreover, the respondents 5 to 10 were appointed on compassionate grounds as Junior Assistants and by virtue of 1% reservation, when they have been appointed as Station Officers, the petitioner without challenging the Rule, giving them a right to enter into the present post, cannot file W.P(MD)981/15, challenging only their appointments and promotion. I also find merit in the submission made by the learned counsel for the respondents 5 to 10.

12. This Court is not inclined to entertain the writ petition challenging the appointments and promotion given to the respondents 5 to 10, for two reasons. Firstly, the writ petition is hit by huge and unexplained delay. Secondly, even on merits, the rule provides 1% reservation by recruitment by transfer from the Tamil Nadu Ministerial Service to the Tamil Nadu Fire and Rescue Subordinate Service. As I mentioned above, out of 34 posts earmarked for the ministerial service, only 6 persons were appointed based on their willingness and the respondents 5 to 10 were appointed as Station Officers only after they fulfilled all the requirements to the said post. As a matter of fact, they underwent physical efficiency test and medical tests and based on the eligibility of both physical and medical, they were given four months basic training required for the post of Station Officer and subsequently, they were appointed in Fire and Rescue Service



Station. Moreover, as per the special rules for the Tamil Nadu Fire and Subordinate Service as amended in G.O.Ms.No.1987, Home (Police-V) Department, dated 28.07.1986 and guidelines issued in G.O.Ms.No.1169, Home (Police-V) Department, dated 25.05.1988, the respondents 5 to 10 were properly appointed as Station Officers, therefore, this Court is not able to find any error in their appointments, hence, W.P(MD)No.981/15 stands dismissed.

13.In so far as W.P(MD)982/15 challenging the correctness of the impugned transfer order, transferring the petitioner to Sathyamangalam Fire and Rescue Service Station from Nilakottai, is concerned, it is submitted that the petitioner has joined the transferred place and has completed more than 1½ years of service, therefore, this Court is not inclined to entertain this writ petition, accordingly, W.P(MD)No.982/15 is dismissed. No costs. M.P(MD)Nos.1, 1 and 2 of 2015 are closed.

Sd/-

Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

To

- 1)The Director,
Fire and Rescue Service Department,
No.1, Greems Road,
Chennai-600 006.
- 2)The Joint Director,
Fire and Rescue Service Department,
Western Region, Coimbatore.
- 3)The Divisional Fire Officer,
Fire and Rescue Service Department,
Dindigul Division, Dindigul District.
- 4)The Station Fire Officer,
Nilakottai Fire and Rescue Station,
Dindigul District.

+1cc to M/S.M.S.JEYA KARTHICK, ADVOCATE SR NO: 43047

nbi

JA-SK-SKN-30.08.2016-6P:6C

W.P(MD)Nos.981 and 982 of 2015
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