



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.06.2017
DELIVERED ON : 17.07.2017

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CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) .No.4825 of 2017
and
W.M.P. (MD) Nos.3850 and 3851 of 2017
and
W.M.P. (MD) Nos.6469 and 8350 of 2017

T.Pandi

...Petitioner

Vs.

1.The Secretary to Government,
Home (Police-17) Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600 009.

2.The Tamil Nadu Public Service Commission,
Represented by its Secretary,
Chennai.

3.The Director,
Fire & Rescue Services,
Chennai - 600 006.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned Notification of the second respondent vide Notification No.19/2016 dated 09.11.2016 and quash the same in so far as Sl.No.6 calling for application to fill up 8 posts of District Fire Officer/Divisional Fire Officer is concerned and consequently direct the respondents to fill up the existing vacancies immediately by transfer of service as per the Tamil Nadu Fire Service Rules considering the petitioner's right of promotion.

For Petitioner : Mr.Veerakathiravan,
Senior Counsel
For M/s.Veera Associates
For Respondents : Mr.B.Pugalendhi,
Addl. Advocate General,
Assisted by Mr.K.K.Senthil



O R D E R

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, to quash the recruitment notification issued by the second respondent dated 09.11.2016 insofar as the same relates to Sl.No.6 calling for application to fill up eight posts of District Fire Officer/Divisional Fire Officer and to direct the respondents to fill up the existing vacancies immediately by transfer of service as per Tamil Nadu Fire Service Rules.

2. The case of the petitioner in the affidavit filed in support of the Writ Petition are as follows:

2.1.The petitioner was originally appointed as Station Officer Grade-I in the Tamil Nadu Fire Subordinate Services under the third respondent. The petitioner was promoted in the year 2011 as Assistant District Fire Officer, now known as Assistant Divisional Fire Officer. Upto the posts of Assistant District Fire Officer / Assistant Divisional Fire Officer, the employees come under the Tamil Nadu Fire Subordinate Service Rules and from the next post of Divisional Fire Officer/District Fire Officer, the employees come under the purview of the Tamil Nadu Fire Service Rules. The appointing Authority to the post of Divisional Fire Officer is the first respondent. The post, which was previously known as District Fire Officer is re-designated as Divisional Fire Officer by the first respondent. The post of Divisional Fire Officer comes under Clause-2 of Category-II of the Tamil Nadu Fire Service Rules.

2.2. The said post can be filled up by promotion and also by direct recruitment in the ratio of 2:1. The feeder category for the post is the Assistant Divisional Fire Officer. Though it is called as promotion, actually it is a transfer of service from the Tamil Nadu Fire Subordinate Service Rules. The Government issued in G.O.(D) No.119 Home (Police-17) Department dated 18.02.2015, declaring the total sanctioned post of Divisional Fire Officer as 17. Since the category cadre strength of Divisional Fire Officer, which is a permanent post is only 17 and already 5 persons, who were directly recruited as Divisional Fire Officers are working, out of the remaining vacant posts, which represent 2/3 of the cadre strength has to be filled up only by promotion, from the post of Assistant Divisional Fire Officer. The petitioner, who is working in the feeder category for more than 6 years is entitled to be considered for promotion. However, by the impugned notification, the second respondent has called for applications to fill up 8 vacancies in the post of Divisional Fire Officer/District Fire Officer.

<https://hcservices.ecourts.gov.in/hcservices/> 2/3
Regarding regard to the sanctioned cadre strength of Divisional Fire Officer, there is no vacancy that can be filled up by direct recruitment by the respondents. Since already 1/3



vacancies meant for direct recruitment had been filled up, all the remaining vacancies are only to be filled up either by promotion or by transfer of service. Though there are 17 temporary posts created in the recent years, the permanent post alone can be filled up and therefore by creating temporary post, there cannot be fresh recruitment which is not permissible under the service Rules. Since the 8 posts of District Fire Officer/Divisional Fire Officer which are meant for accommodating the Assistant Divisional Fire Officer, the feeder category, the impugned notification calling upon applications by direct recruitment is illegal in as much as no post is vacant for direct recruitment as per the Rules. It is only for the above reason, it is stated that the petitioner is constrained to file the present Writ Petition challenging the recruitment notification insofar as the same relates to the filling up of 8 post of Divisional Fire Officer/District Fire Officer.

3.The third respondent file a detailed counter *inter alia* pointing out the following facts:

3.1. It is stated in the counter that the post of District Fire Officer was re-designated as Divisional Fire Officer is not correct as the post of Divisional Fire Officer has been re-designated as District Officer, Fire and Rescue Services from the year 2013. In the year 2001, 111 eligible candidates including the petitioner were appointed as Station Officer-Grade-I, vide proceedings dated 21.05.2001. The selection of the candidates was through Tamil Nadu Public Service Commission in the year 2000. The petitioner was promoted as Assistant District Fire Officer with effect from 01.08.2011. Subsequently the nomenclature of Tamil Nadu Fire Service Department was renamed as Tamil Nadu Fire and Rescue Services Department and the names of the posts were also renamed. From the year 2013, the post of Divisional Fire Officer was renamed as District Officer, Fire and Rescue Services and the post of Assistant Divisional Fire Officer was re-designated as Assistant District Officer, Fire and Rescue Officer.

3.2. When action was taken to draw promotional list from the post of Station Officer to the Assistant District Officer, 6 Station Officers from the list filed a Writ Petition in W.P.(MD) Nos.8290 of 2008 to 8295 of 2008 before this Court to revise their seniority according to the marks obtained by them. It was their case that the roaster system was followed only for the appointment purpose and not for the purpose of seniority. Though the Writ Petition was allowed by learned single Judge of this Court on 25.11.2010, the Government as well as the private respondents filed Writ Appeals in W.A.(MD) Nos. 860 to 865 of 2011 before this Court. Though the Honourable Division Bench of this Court by <https://hcmis.cemts.gov.in/hcmis/02.11.2012> set aside the order of learned single Judge and issued a direction to prepare seniority list, another set of Writ Petitions were filed in W.P.(MD) Nos.16819 to 16823 of

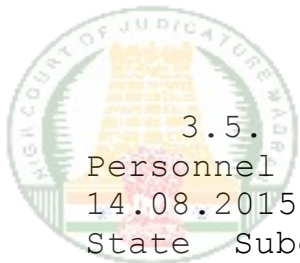


2012 before this Court, in which interim direction was given that the seniority list should not be implemented till the disposal of the Writ Petitions. It was on account of the pendency of the Writ Petitions, the seniority among the directly recruited Station Officers of 2001 batch could not be finalized.

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3.3. In the meanwhile the Government of Tamil Nadu Enacted Act 14, of 2016 namely the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which came into effect from 15.09.2016, on which date the Act was published in the Tamil Nadu Government Gazette. As per Section 40 of the said Act, which was given retrospective effect, seniority has to be reckoned based on the roaster. Section 70 of the Act contains the validating provision to the effect that the Act will have the effect notwithstanding any judgment or order etc. However by a common order dated 30.01.2017, the Writ Petitions in W.P.(MD) Nos.16819 to 16823 of 2012 and two more Writ Petitions in W.P.(MD) Nos.127 and 128 of 2015 were disposed of by quashing the provisional seniority list drawn vide proceedings dated 11.8.01.2013 and by directing the respondents to prepare the seniority list on the basis of the mark and ranks obtained by the candidates as per the results published by Tamil Nadu Public Service Commission.

3.4. Aggrieved by the common order passed in the Writ Petitions, the private respondents filed Writ Appeal in W.A.(MD) No.129 of 2017 and the same is pending. The official respondents have also decided to file an appeal based on the legal opinion given by the Advocate General. It was on account the pendency of the Writ Appeal and the decision of the respondents to file a separate Appeal, the seniority of the petitioner and his batchmates i.e. the directly recruited 2001 batch Station Officers, who were selected and appointed in the post of Station Officer during the year, 2001 through Tamil Nadu Public Service Commission could not be determined and finalized. It was therefore regular panel of Assistant District Officer could not be drawn by the respondents. Hence, without determining and finalizing the seniority of the petitioner and his batchmates, the further promotion of the petitioner and his batchmates cannot be decided. The first respondent approved the vacancy of the post District Officer in the year 2014-2015 as 17 and out of the same, 15 has to be filled up by recruitment by transfer and the balance by direct recruitment. While approving the estimate of vacancy for the year 2014-2015, the total cadre strength of District Officer was 34, out of which, 14 posts came under permanent establishment and 20 posts came under temporary establishment. Out of 14 permanent posts, 5 were earmarked for direct recruitment and 9 posts earmarked by recruitment by transfer. Since 3 posts of District Officer were filled up by direct recruitment as against 5 posts, the first respondent approved the estimate of vacancy of 2 posts for direct recruitment for the year 2014-2015.



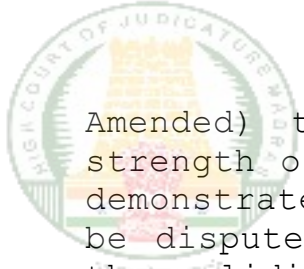
3.5. Subsequently, the Government issued G.O.Ms.No.91, Personnel and Administrative Reforms (S) Department, dated 14.08.2015, amending the Rule 6 of General Rules for Tamil Nadu State Subordinate Services. According to this amendment, the temporary posts, which are in existence for more than five years should be treated as permanent posts. It is by virtue of the said amendment, the Government issued a letter dated 02.09.2016 approving the estimate of vacancy in the year 2015-2016 by earmarking 6 posts for direct recruitment and 15 posts for recruitment by transfer. By virtue of the amendment to Rule 6 of General Rules for Tamil Nadu State Subordinate Services, the total permanent posts are 33 out of which 11 posts were earmarked for direct recruitment and 22 posts earmarked for recruitment by transfer. Since only 3 direct recruited District Officers are available against 11 posts, the impugned recruitment notification has been issued calling for applications to fill up 8 posts of District Officers by direct recruitment.

4. The stand taken by the respondents in the counter is therefore that the impugned notification calling for applications to fill up 8 posts of District Officers, is according to Rules and the notification does affect the rights of the petitioner as the remaining 22 vacancies will be filled up only by recruitment by transfer. It is further stated in the counter affidavit that the petitioner is placed at serial No.56 as per the seniority list maintained in the office of third respondent. Due to the pendency of Writ Appeals, the petitioner's name may not be considered for promotion.

5. It is specifically stated in the counter affidavit that the petitioner has filed the present Writ Petition with the sole intention to delay the process of recruitment, pursuant to which, the department is unable to fill up the vacancies by recruitment by transfer as well as by direct recruitment.

6. The learned Additional Advocate General appearing for the respondents has demonstrated before the Court that as on date, only 3 directly recruited District Officers are working in the cadre of District Officer, out of whom, the names of 2 District Officers were included in the panel of Deputy Director for the year 2015-2016. Therefore, it was the contention of the learned Additional Advocate General that out of the 33 posts, only 11 posts were earmarked to direct recruitment and 22 posts were earmarked to recruitment by transfer. Hence the ratio 1:2 is fully complied with. Further it is submitted by the learned Additional Advocate General that the recruitment process commenced long back and after a lapse of 4 months, the petitioner has filed the present Writ Petition, as could be seen from the dates and events.

7. The crucial question is regarding the sanctioned strength of District Officer and the vacancy that are now available in the said post. By virtue of Rule 6 of amendment in General Rules of Tamil Nadu State Subordinate Service (As



Amended) there are 33 permanent posts out of the total cadre strength of 35 posts of District Officer. This fact has been ably demonstrated by the learned Additional Advocate General and cannot be disputed by the petitioner. The petitioner has not questioned the validity of the amendment and its implication in calculating the total cadre strength of permanent posts of District officer. If the total cadre strength is accepted as 33, 11 posts can be identified and earmarked for direct recruitment. Since the petitioner has not filed any reply affidavit disputing the fact that only 3 posts are filled up by direct recruits, this Court is inclined to accept the contention of the respondents that 8 posts are available for direct recruits. As a matter of fact, as contented by the learned Additional Advocate General the strength of direct recruits of the Government has been reduced to one because of the prospective promotion of two more direct recruits for the post of District Officer. Having regard to the factual position analyzed, this Court found that the contention of the petitioner that the recruitment notification is contrary to the service Rules and it will affect the promotion of the petitioner cannot be accepted.

8. In the result, this Writ Petition is dismissed as devoid of merits. Consequently, the connected W.M.P.(MD) Nos.3850 and 3851 of 2017 and WMP(MD)Nos.6469/2017 and 8350/2017 are closed. No Costs.

Sd/-

Assistant Registrar(Records)

/ True Copy /

Sub Assistant Registrar(C.S.)

To

- 1.The Secretary,Home (Police-17) Department,
Government of Tamil Nadu,Fort St.George, Chennai - 600 009.
- 2.The Secretary,
The Tamil Nadu Public Service Commission,Chennai.
- 3.The Director, Fire & Rescue Services, Chennai - 600 006.

+2cc to M/S.K.K.SENTHIL, Advocate SR.No.65810
gsp/cmr
MAS/SKN-RSK/SAR2:18.07.2017:6P-6C

ORDER MADE IN
W.P. (MD) .No.4825 of 2017

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W.M.P. (MD) Nos.3850 and 3851 2017
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