

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.08.2018
CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.20015 of 2011and
M.P.No.2 of 2011

- 1.S.Anbarasan
- 2.M.Arulmozhi
- 3.T.Manimaran
- 4.R.Muthukumaran
- 5.P.Velmurugan
- 6.D.Satishkumar
- 7.T.Murugaiyan
- 8.P.K.Ravichandran
- 9.D.Mathialagan
- 10.T.Antony Jagan
- 11.R.Vinayagamurthy
- 12.S.Panchanatham
- 13.B.Ganesh
- 14.R.Senthikumaran

... Petitioners

Vs

- 1.The Secretary to Government,
Govt. of Tamil Nadu,
Home (Fire) Dept.,
Fort St.George, Chennai-9.
- 2.The Director of Fire & Rescue Services,
Rukmani Lakshmipathi Salai,
Egmore, Chennai-8.
- 3.The Deputy Director of Fire & Rescue Services,
Central Division, Trichy.
- 4.The Divisional Fire & Rescue Services Officer,
Nagapattinam.
- 5.Thiru.P.Anbalagan

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in connection with the impugned order passed in Circular memo issued in Na.Ka.No.22868/AA1/2010, dated 08.08.2011 and the consequential seniority list issued by the 4th respondent in Na.Ka.No.5204/AA1/2011 dated 18.08.2011 and quash the same and further direct the respondents to prepare the seniority list

following the memo issued by the 2nd respondent in Na.Ka.No.22868/AA1/2010 dated 03.10.2010 and conduct the promotion board for the post of Leading Fireman for the year 2011-12.

For Petitioners : Mr.K.Venkataramani, SC for
Mr.M.Muthappan

For Respondents : Mr.J.Pothiraj,
Special Government Pleader
for RR1 to 4

: No appearance for R5

O R D E R

Heard Mr.K.Venkataramani, learned senior counsel for the petitioners and Mr.J.Pothiraj, learned Special Government Pleader appearing for the respondent Nos.1 to 4.

2. The petitioners have approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in connection with the impugned order passed in Circular memo issued in Na.Ka.No.22868/AA1/2010, dated 08.08.2011 and the consequential seniority list issued by the 4th respondent in Na.Ka.No.5204/AA1/2011 dated 18.08.2011 and quash the same and further direct the respondents to prepare the seniority list following the memo issued by the 2nd respondent in Na.Ka.No.22868/AA1/2010 dated 03.10.2010 and conduct the promotion board for the post of Leading Fireman for the year 2011-12."

3. The case of the petitioners is as follows:-

These petitioners are all working as Fireman in the second respondent Department, having been selected by the Tamil Nadu Uniformed Services Recruitment Board. All of them were appointed in service on 09.09.1996. All the petitioners were posted at Nagapattinam Division of the second respondent Department and on successful completion of the training, they become full member of the Service.

4. According to the petitioners, the seniority in the cadre of Fireman is maintained Division wise and further promotion is effected on the basis of the seniority as maintained in the Division. The next avenue of promotion for the Fireman is Leading Fireman and promotion Board was conducted in the Division level based on the vacancies available in the Division for the post of Leading Fireman. Every selection for promotion

to the post of Leading Fireman was conducted at the Division level and on the basis of available vacancies, promotions were effected.

5. Since the seniority in respect of Fireman was maintained at Division level, any inter divisional transfer of an employee from other Division, will have to forego his seniority where he was originally posted and in the new Division, his seniority has to be kept below the approved probationer in the Division where he was transferred. This has been a rule position, which has not been disputed by the respondents. In fact, the respondents in their counter affidavit have admitted in unequivocal terms that the seniority of the Fireman was maintained only at the Division Level and further promotions were effected within the Division upto a point.

6. While matter stood thus, the second respondent issued a Circular on 08.08.2011, providing that any Fireman who was transferred from one Division to another Division, will get seniority based on the date of appointment and he will be placed in the seniority on the top of the seniority based on the date of his appointment of his batch mates instead of keeping him at the bottom of the seniority list of the Fireman, which means, in the inter divisional transfer, there will be no loss of seniority at all for the person seeking inter divisional transfer. The said Circular which apparently alters the rule position is the subject matter of challenge in the present writ petition.

7. The fifth respondent herein was selected and appointed as Fireman in Thanjavur Division in 1991, was transferred to Nagapattinam Division on the basis of his request and reported for duty as Fireman on 26.04.2010. As per the relevant rule, he had to be placed below the approved list of Fireman in Nagapattinam Division. But, on the basis of the impugned Circular dated 08.08.2011, he was placed at serial No.1 in the seniority list prepared in 18.08.2011, by taking into consideration his date of appointment as Fireman in 1991, which seniority was inappropriate and violative of statutory rules. The fifth respondent who is an outsider, would be the first one to be promoted to the next higher grade namely Leading Fireman, overlooking the accrued right of the petitioners already working in Nagapattinam Division.

8. The learned senior counsel for the petitioners would submit that it is a settled law that any executive instruction like Circular, cannot override the statutory provisions. In this case, admittedly, as per the relevant rule, in the cadre of Fireman, seniority is maintained only at the Division level. When such is the position, it is not within the authority of the second respondent to issue a Circular on 08.08.2011, literally

altering the said rule position and allowing the seniority of Fireman state wise. Such action on the part of the second respondent is impermissible and the same is without the authority of law.

9. Upon notice, learned Special Government Pleader appearing for the respondents entered appearance and made his submissions. The learned Special Government Pleader would submit that since the persons working in Nagapattinam Division were not willing to be posted Thalainayuru Town Panchayat, willingness was called for from the neighbouring District and the fifth respondent who expressed his willingness, was posted, was accommodated by transferring him to Nagapattinam Division. Since the posting of the fifth respondent was in public interest, the position of loss of seniority did not arise at all. Therefore, he would submit that once the posting of the fifth respondent was only made in furtherance of public interest, the fifth respondent cannot be allowed to suffer loss of seniority.

10. This Court has considered the rival submissions of the learned senior counsel for the petitioners as well as the learned Special Government Pleader appearing for the respondents. Though notice has been served on the fifth respondent, there has been no appearance on his behalf nor the fifth respondent has chosen to appear in person in the present proceedings. As rightly contented by the learned senior counsel for the petitioners that it is an admitted case that the seniority of Fireman was maintained at Division level as per Tamil Nadu Fire Subordinate Service Rules. Once the Division level seniority is being maintained for the cadre of Fireman, this Court does not understand how by way of simple Circular, such rule can be amended or altered. Merely because the person has expressed willingness to be posted at the other District, it cannot give raise to passing of Circular like what is impugned in the present writ petition. If such executive instructions are allowed to operate in the administrative field, no sanctity could ever be attached to the statutory rules. As rightly contented by the learned Senior Counsel, once these petitioners were working in one Division, accrued right to them for further promotion on the basis of the Division wise seniority, cannot be allowed to suffer negation by issuing the Circular like the present one, only to accommodate the interest of a particular individual from another Division.

11. Therefore, it is very clear from the materials and pleadings placed on record that the impugned Circular issued by the second respondent suffers from vice of mala fide, arbitrariness and therefore, violative of the Article 14 of the Constitution of India. Moreover, in the face of the clear statutory provisions, such Circular issued by the second respondent is clearly a colourable exercise of power. Therefore,

the same cannot be sustained in law.

12. For the above said reasons, the impugned Circular in Na.Ka.No.22868/AA1/2010, dated 08.08.2011 and the consequential seniority list issued by the 4th respondent in Na.Ka.No.5204/AA1/2011 dated 18.08.2011, are hereby set aside. The respondents are directed to prepare the seniority list on the basis of Division wise and effect promotion on such basis to the next higher cadre of Leading Fireman for the appropriate year. The consequential direction shall be complied with by the official respondents, within a period of eight weeks from the date of receipt of a copy of this order.

13. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Govt. of Tamil Nadu,
Home (Fire) Dept.,
Fort St.George, Chennai-9.
- 2.The Director of Fire & Rescue Services,
Rukmani Lakshmipathi Salai,
Egmore, Chennai-8.
- 3.The Deputy Director of Fire & Rescue Services,
Central Division,Trichy.
- 4.The Divisional Fire & Rescue Services Officer,
Nagapattinam.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.52673
+1cc to the Government Pleader, S.R.No.52900

W.P.No.20015 of 2011

KJI (CO)

rrs 26/09/2018