

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. No. 20883 of 2018

A. Suresh

...Petitioner

Vs.

1. Union of India,
By Government of Puducherry,
Rep. By its Chief Secretary,
Secretariat,
Puducherry - 1.
2. The Secretary to Government,
Fire Services Department, Secretariat,
Government of Puducherry,
Puducherry - 1.
3. The Additional Secretary to Government,
Home Department, Secretariat,
Government of Puducherry,
Puducherry - 1.
4. The Divisional Fire Officer,
No. 34, Canteen Street,
Puducherry - 1.
5. The Central Administrative Tribunal, Madras Bench,
By its Registrar,
High Court Buildings,
Chennai - 104

...Respondents

Prayer: Writ Petition filed under Article of 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus or any other order in the nature of a writ, calling for the records of the 5th respondent Tribunal in

O.A 231/2006 dated 02.08.2016 and to quash the same and consequently direct respondents 2 to 4 to promote the petitioner as ADFO, in the vacancy falling in the 7th reserved point in the roster and pass such other suitable orders.

For Petitioner : Mr. P.S. Raman,
Senior Counsel
for Mr.J.Srinivasa Mohan

For Respondents : Mr. R. Syed Mustafa,
Spl. Govt. Pleader for R1 to R4
R5 - Tribunal

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

Challenging the order of the Tribunal which declines the relief sought for by the petitioner, who is working as Station Officer under the Fire Service Department, the present writ petition has been filed.

2. Though there is a larger issue involved with respect to following reservation to a single post, for a subsequent appointment made after the said post had become two, the learned senior counsel appearing for the petitioner would submit that the order of the Tribunal would require interference since two decisions passed by the Central Administrative Tribunal, Ernakulam Bench dated 18.09.2006 in C.G. Sarala v. Union of India (CDJ 2006 CAT Earnakulam 061) and the subsequent order passed by the Principal Bench, Delhi in B.L. Meena v. Union of India dated 18.01.2007 on the very same issue have not been taken note of. Therefore, it is a fit case where the matter will have to be remitted back for fresh consideration.

3. The learned Special Government Pleader appearing for respondents 1 to 4 would submit that the Tribunal has rightly considered the legal position. The judgment of the Apex Court in Post Graduate Institute of Medical Education & Research, Chandigarh v. Faculty Association and Others (1998) 4 SCC 1 has to be seen contextually. Further more, the proposed affected party has not been arrayed as a respondent. In the event of this Court remitting the matter back, it should be made clear that the respondents are given liberty to proceed further by promoting the person concerned as per the Office Memorandum.

4. We have perused the order passed by the Tribunal. We concur with the submission made by the learned senior counsel appearing for the petitioner that the Tribunal has not considered the scope and ambit of the two decisions of the

Central Administrative Tribunals one at Ernakulam and other at Principal Bench, Delhi. Admittedly, these two judgments have not been brought to the notice of the Tribunal. Secondly, we are not able to proceed with the matter on merit since the affected party in the event of the writ petition being allowed has not been arrayed as party respondent.

5. In such view of the matter, while setting aside the order of the Tribunal and remitting the matter back for fresh consideration, we give liberty to the petitioner to array as party respondent the affected party as indicated above. Liberty is given to respondents 1 to 4 to proceed with respect to promotion. In the event of such promotion being made, it is obviously subject to the final decision of the Tribunal.

6. Accordingly, the order of the Tribunal dated 02.08.2016 made in O.A.No.231 of 2006 is set aside and the matter is remitted back to the Tribunal for fresh consideration. The Tribunal is directed to dispose of O.A.No.231 of 2006 within a period of four weeks from the date of receipt of a copy of this order.

7. The petitioner is directed to file appropriate application to implead the proposed party within a period of two weeks from the date of receipt of a copy of this order.

8. The writ petition is allowed on the above terms. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssm/mmi

To

1. The Chief Secretary to Government,
Secretariat, Puducherry - 1.
2. The Secretary to Government,
Fire Services Department, Secretariat,
Government of Puducherry,
Puducherry - 1.

3. The Additional Secretary to Government,
Home Department, Secretariat,
Government of Puducherry,
Puducherry - 1.

4. The Divisional Fire Officer,
No. 34, Canteen Street,
Puducherry - 1.

+2cc to Mr.J.Srinivasa Mohan, Advocate sr.no.77479

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nr 16/11/2018



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