

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2018

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.18910 of 2014

S.Subramanian

..Petitioner

Vs.

- 1.The Secretary to Government,
Home (Fire 17) Department,
Fort St. George, Chennai-9.
 - 2.The Additional Director General of Police cum
Director, Tamil Nadu Fire & Rescue Services
Department,
Egmore, Chennai-8.
 - 3.The Deputy Director,
Northern Region,
Tamil Nadu Fire & Rescue Services Department,
Greams Road, Chennai-6.
 - 4.The Divisional Fire Officer,
Sub-urban Division,
Tamil Nadu Fire & Rescue Services Department,
Ambattur, Chennai-59.
- ..Respondents

Petition filed under Article 226 of The Constitution of India praying seeking for issuance of a writ of Certiorarified Mandamus to call for the records of the 2nd respondent in connection with the impugned order passed in Na.Ka.No.11518/B3/2013 dated 14.06.2014 and quash the same and further direct the respondents to restore him the original seniority in the cadre of Fireman and permit him to participate in the promotion test to the post of Leading Fireman and grant such other further relief as this Court may deem fit in the circumstances of the case.

For Petitioner .. Mr.K.Venkatramani, SC
for M/s.Muthappan

For RR1 to 4 .. Mr.J.Pothiraj
Spl. Government Pleader

ORDER

The petitioner has approached this Court seeking the following reliefs:

'To issue writ of Certiorari Mandamus to call for the records of the 2nd respondent in connection with the impugned order passed in Na.Ka.No.11518/B3/2013 dated 14.06.2014 and quash the same and further direct the respondents to restore him the original seniority in the cadre of Fireman and permit him to participate in the promotion test to the post of Leading Fireman and grant such other further relief as this Court may deem fit in the circumstances of the case.'

2. The petitioner was recruited as Fireman in a selection conducted by the Tamil Nadu Uniformed Service Recruitment Board and appointed on 09.09.1996. For the post of Fireman, there were two channels of promotion as under:

Channel-I: Fireman -> Leading Fireman -> Assistant Station Officer -> Station Officer.

Channel-II: Fireman - Fireman (Driver) - Fireman Driver (Mechanic) - Station Officer (Transport).

In terms of the service rules, the petitioner opted to be promoted as Fireman (Driver) and on the basis of his seniority, he was promoted on 30.04.2007, as Fireman (Driver). The next avenue of the promotion in the said channel was to the post of Fireman Driver (Mechanic) and then to the post of Station Officer (Transport).

3. According to the petitioner, the Government has issued G.O.Ms.No.352, Home (Pol.17) Department, dated 14.05.2012, upgrading 273 Driver Mechanics as Station Officer (Transport). By the said action, all the persons who were holding the post of Fireman Driver Mechanic as on 14.05.2012, came to be upgraded as Station Officers (Transport). In view of the en masse upgradation, prospects of promotion to the post of Driver Mechanic from the post of Fireman (Driver) became slim and remote. On the other hand, there prospects of promotion in other channel viz., Fireman to Leading Fireman - Assistant Station Officer - Station Officer, were bright and possible.

4. In the above circumstances, the petitioner appears to have submitted a representation on 27.03.2013, to the respondents 2 to 4 herein, seeking relinquishment of his promotion as Fireman (Driver). However, there was no response

to the representation and therefore, the petitioner approached this Court in W.P.No.15078 of 2013. This Court, vide order, dated 08.03.2014, disposed of the writ petition, by directing the authorities to consider the representation submitted by the petitioner on 27.03.2013. Thereafter, an order was issued on 14.06.2014, by the 2nd respondent, rejecting the claim of the petitioner for relinquishment of his right for reversion from the post of Fireman (Driver) to the post of Fireman. The reason that was set forth in the rejection order is the petitioner having opted to Channel II Promotion and accepted the promotion as Fireman (Driver), cannot seek reversion to the post as Fireman, after serving as Fireman (Driver), for considerable time. The said rejection order is under challenge in this writ petition.

5. Shri K.Venkatramani, learned Senior Counsel appearing for the petitioner would vehemently contend that the Government servant has a right to relinquish his promotion at any time and the said relinquishment cannot be refused by the respondents. According to him, under Rule 47 of the General Rules for State and Subordinate Services, such relinquishment is permissible and the respondents cannot deny the right of the petitioner for relinquishing his promotion for whatever reasons which formed the basis of the relinquishment. In fact, by such relinquishment, the petitioner was only foregoing hard earned promotion and by such relinquishment, he would not be considered for further promotion for three years. Therefore, it is not open to the respondents to reject the claim of the petitioner seeking relinquishment.

6. Learned Senior Counsel for the petitioner would further submit that as per the Proceedings, dated 30.08.2012, a person possessing any Heavy Vehicle Driving Licence can be posted to serve as Fireman (Driver), even if he had not completed probationary period of three years. In that event, persons who are in possession of licence can be straight away appointed as Fireman (Driver) and no public interest is involved if the claim of relinquishment of the petitioner is granted. Learned Senior Counsel would also submit that under similar circumstances, the learned Single Judge of this Court passed an order in W.P.Nos.3207 & 3997 of 2014, dated 06.06.2014. The learned Judge has held in paragraphs 6 to 10, which are extracted below:

"6. I have considered the above submissions.

7. Admittedly, in this case, relinquishment of the post of Leading Fireman by way of promotion was made on the request of the petitioner by order, dated 23.04.2010. It is the further admitted case of the respondents that the said relinquishment

was entertained in terms of Rule 47 of the said Rules. For better understanding, Rule 47 is extracted hereunder:-

"47. Relinquishment of rights by members-

(1) Any person may in writing, relinquish any right or privilege to which he may be entitled under these rules or the Special Rules if, in the opinion of the appointing authority, such relinquishment is not opposed to public interest, and nothing contained in these rules or the Special Rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished.

(2) Relinquishment of a right or privilege for a temporary period shall be accepted if it is made for a period of not less than three years subject to the condition that after the expiry of the said period, the claim of the right or privilege relinquished will be with reference to the state of affairs that exist on the date of expiry of period of relinquishment and without restoration of original seniority. If relinquishment of right or privilege is made permanently and is accepted subsequent claim of the relinquished rights or privileges shall not be entertained."

8. A plain reading of Sub-Rule 2 of Rule 47 would go to show that there can be a temporary relinquishment. But such temporary relinquishment should be for not less than a period of three years. In this case, admittedly, the petitioner, relinquished the promotion post only for a period of three years. It is very evident from the relinquishment order itself that the temporary relinquishment is only for a period of three years. Therefore, after three years, as per Sub-Rule 2 of Rule 47, the petitioner is entitled for being considered for promotion to the post of Leading Fireman. Sub-Rule 2 of Rule 47 states that if relinquishment of right or privilege is made permanently and is accepted, subsequent claim of relinquished rights or privileges shall not be entertained. Here in this case, admittedly,

as it is seen from the order dated 23.04.2010, the relinquishment is not a permanent one. It is only temporary for a period of three years. Therefore, the inclusion of his name in the "C" List drawn for the year 2013-14 is perfectly valid. The contention of the respondent that the relinquishment is permanent is contrary to the wordings of the relinquishment order dated 23.04.2010.

9. In such view of the matter, the order removing the name of the petitioner from the "C" List for the year 2013-14 as well as the order reverting him from the post of Leading Fireman are liable to be set aside.

10. In the result, both writ petitions are allowed. The impugned orders are set aside with a direction to the respondents to give promotion to the petitioner as Leading Fireman by retaining his name in the "C" List for the year 2013-14, with effect from the date on which his immediate junior was promoted and give him all service benefits. Such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

As against the order of the learned Judge, the writ appeal in W.A.Nos.1659 and 1660 of 2014, dated 12.12.2014, have been filed, but the same came to be dismissed by the Division Bench of this Court on 12.12.2014.

7. Learned Senior Counsel for the petitioner would further draw the attention of yet another order passed recently by the learned Single Judge of this Court in W.P.No.4957 of 2015, dated 02.01.2018, to paragraphs 4 to 7 of the order, are extracted below:

"4. Heard the learned Additional Government Pleader for the respondents, who would support the impugned orders passed by the 1st and 2nd respondents.

5. The relevant provision, namely, Rule 47(2) of the General Rules for State and Subordinate Service reads as hereunder:

"Relinquishment of rights by members -

(1)

(2) Relinquishment of a right of privilege for a temporary period shall be accepted if it is made for a period of not less than three years subject to the condition that after the expiry of the said period, the claim of the right or privilege relinquished will be with reference to the state of affairs that exist on the date of expiry of period of relinquishment and without restoration for original seniority. If relinquishment of right or privilege is made permanently and is accepted subsequent claim of the relinquished rights of privileges shall not be entertained.'

Therefore, it is seen that sub-rule (2) of Rule 47 of the aforesaid Rules provides for temporary relinquishment for a period not less than three years and it is also evident from the proceedings dated 23.04.2010 that the relinquishment given by the petitioner was temporary and it was only for a period of three years.

6. Further, it has been brought to the notice of this Court by the learned Senior Counsel for the petitioner that one Mr. Ramesh, similarly placed like that of the petitioner, who has also temporarily relinquished the post of Fireman Driver and was reverted as Fireman by proceedings dated 23.04.2010 along with the petitioner and who, after serving as Fireman for a period of three years, was subsequently promoted temporarily as Leading Fireman by proceedings dated 08.06.2013 and was allowed to participate in the promotion board conducted by the respondents on 29.07.2013 and on being selected, was included in the C list of leading Fireman for the year 2013-2014 in Thiruvavarur District, but was subsequently deleted from the "C" List on the ground that the temporary relinquishment offered by him had to be treated as permanent relinquishment and was also ordered to be reverted to the post of Fireman, had challenged both the orders of deleting his name from the "C" list as well as reversion in W.P.Nos.3207 of 2014 & 3997 of 2014 before this Court and by order

dated 06.06.2014, a learned Single Judge of this Court had allowed the writ petitions quashing the orders under challenge and directed the respondents to promote the said Ramesh as Leading Fireman by retaining his name in the "C" List for the year 2013-2014, with effect from the date on which his immediate junior was promoted and give him all service benefits. Moreover, when the above order was taken on appeal before a Division Bench of this Court in W.A.Nos.1659 & 1660 of 2014, the writ appeals were dismissed by judgment dated 01.12.2014 confirming the order passed by the learned Single Judge in the writ petitions. Pursuant thereto, the 2nd and 3rd respondents had also issued orders dated 26.12.2014 for implementing the same. Therefore, it is clear that the issue involved in the writ petition is no longer res integra. In such circumstances, this Court finds no impediment to allow the writ petition.

7. Accordingly, the impugned orders are set aside in so far as the petitioner is concerned and accordingly, the writ petition is allowed. The respondents are directed to include the name of the petitioner in the "C" list for promotion to the post of Leading Fireman for the year 2013-2014 in Thiruvavur District and give him promotion. Needless to mention that the petitioner would be entitled to all consequential service and monetary benefits. No costs. Connected M.P.s are closed."

8. In these circumstances, the learned Senior Counsel for the petitioner would submit that in both the cases referred above, the learned Judges drew reference to Rule 47 of the General Rules for State and Subordinate Service and held that the petitioners were entitled to seek relinquishment from being promoted. According to the learned Senior Counsel, in the earlier cases, one Mr.Ramesh, who was the petitioner therein was also similarly promoted as Fireman (Driver) and after working as such for a period of more than three years, he sought reversion. Therefore, he would submit that merely because the petitioner herein worked for a period of seven years as Fireman (Driver), the respondents cannot reject the claim of the petitioner seeking relinquishment.

9. On the other hand, Mr.J.Pothiraj, learned Special

Government Pleader entered appearance for respondents and a detailed counter affidavit has been filed.

10. Learned Special Government Pleader would submit that if the request of the petitioner is acceded to, that will go against public interest and therefore, the claim of the petitioner was rightly rejected by the 2nd respondent. In fact, he would draw reference to paragraph-6 of the counter affidavit, wherein it is stated that there were shortage of hands in the post of Fireman (Driver) and therefore, it is not open to the petitioner to seek reversion after having worked as Fireman (Driver) for seven years. For better understanding, Paragraph - 6 of the counter affidavit is extracted below:

"6) With regards to the averments made in paragraphs 8 and 9, it is submitted that due to shortage of Fireman Driver's and with a view to tackle the emergency situation during the summer seasons, it was decided to operate the Fire Service Vehicles with the help of personnel who are having heavy licence and having an experience in driving heavy vehicles like Fire Service Vehicles prior to their employment in this Department. Those personnel will be come to the zone of promotion only after completion of Five years as Fireman if they opt Channel-I promotion avenue i.e. Leading Fireman and as Fireman as Three years if they opt for Channel-II promotion avenue i.e. For Fireman Driver. Hence the contention of the Petitioner that the persons worked as Fireman Driver are allowed to participate in the Leading Fireman post is not correct. This Department has only utilized the services of the new personnel who have experience in driving heavy vehicles and having valid heavy licence, which cannot prevent their original promotion chances. Their chances will come only as and when they completed their requisite service in the feeder category for consideration of further promotion. The petitioner contention that those who have been recruited in the year, 2012 have been given option to choose to serve as Fireman Driver for some time and they also allowed to participate to the post of Leading Fireman is not correct heavy licence and

having a experience in driving heavy vehicles, they are not called for to attend the promotion board since they are not completed the requisite service for consideration of further promotion in the feeder category. The petitioner misconstrued that they have given regular promotion. Hence the contention of the petitioner is not correct and the same is denied."

11. Learned Special Government Pleader would submit that the petitioner can be given promotion to the next higher grade channel viz., Station officer and therefore, he cannot in the midway seek reversion by disrupting the official hierarchy after a period of so many years. Further, if the claim of the petitioner is accepted, it would only open the floodgate for many of such Fireman (Driver) who would now seek reversion in order to be considered for promotion to the other channel after a period of three years. The said factual difficulty will not advance the cause for proper administration on the part of the respondent.

12. This Court has considered the rival submissions of the learned Senior Counsel and the learned Special Government Pleader and also perused the materials and pleadings placed on record. Although there is some force in the contention of the respondents that the public purpose will not be served, if such relinquishment to be accepted after seven years, at the same time, the right to relinquish on the part of the employee cannot suffer negation when such right is vested in him under Rule 47 of the General Rules for State and Subordinate Service. As rightly contended by the learned Senior Counsel for the petitioner, the petitioner after all is willing to forego the hard earned promotion and wants to be reverted to the lower post. More over, after relinquishment he would not be considered for further promotion even in other channel for a period of three years, in terms of rule position. Therefore, the petitioner loses his very valuable right of promotion by his relinquishment and once such relinquishment is permissible under Rules, this Court does not see any justification for the respondents to refuse the claim of the petitioner.

13. The above position is further strengthened in view of two decisions cited by the learned Senior Counsel for the petitioner, as extracted supra. When two judgments rendered by this Court are in favour of the petitioner therein under similar circumstances, this Court does not find that the present petitioner can be treated differently, since uniform dispensation of justice is the hallmark of justice delivery

system.

14. The contention put forth by the learned Special Government Pleader that such acceptance of request will open the floodgates cannot be accepted for the reason that once the petitioner, under the rule, is entitled to submit his relinquishment of his promotion, no matter whether others make similar claim, can be put against the petitioner.

15. For the above said reasons, this Court has no hesitation in allowing the writ petition and the impugned order of the 2nd respondent in Na.Ka.No.11518/B3/2013, dated 14.06.2014, is hereby set aside and the respondents are directed to revert the petitioner to the post of Fireman with restoration of his original seniority. It is made clear that the petitioner since being reverted to the post of Fireman on his relinquishment he can be considered for promotion in the other channel only after expiry viz., relinquishment period as in terms of the rule position. The respondents are directed to pass orders and comply with the direction within a period of eight weeks from the date of receipt of a copy of this order.

16. In view of the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Home (Fire 17) Department,
Fort St. George, Chennai-9.
- 2.The Additional Director General of Police cum
Director, Tamil Nadu Fire & Rescue Services
Department,
Egmore, Chennai-8.
- 3.The Deputy Director,
Northern Region,
Tamil Nadu Fire & Rescue Services Department,
Greams Road, Chennai-6.

4.The Divisional Fire Officer,
Sub-urban Division,
Tamil Nadu Fire & Rescue Services Department,
Ambattur, Chennai-59.

+1cc to Mr.M.MUTHAPPAN, Advocate, S.R.No.47940
+1cc to the Government Pleader, S.R.No. 47628

W.P.No.18910 of 2014

KK (CO)
TR(30/07/2018)



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