

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T. RAJA

W.P. No. 4957 of 2015

&

M.P. Nos. 1 & 2 of 2015

S. Rajakumaran

..Petitioner

Vs.

1. The Director,
Fire & Rescue Services,
Greams Road, Chennai - 6.

2. The Deputy Director,
Fire & Rescue Services,
Central Region, Trichy.

3. The District Fire Officer,
Thiruvarur District,
Thiruvarur.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records of the respondents in connection with the impugned order passed by the 1st respondent in Na.Ka.No. 14225/Aa1/2013 dated 29.07.2013 and the consequential orders passed by the 2nd respondent in Na.Ka.No. 4124/Aa1/2013, Pa.Aa. No. 231/2013 dated 30.01.2014 and Na.Ka.No. 5163/Aa1/2013 dated 06.01.2015 and quash the same in so far as the petitioner is concerned and further direct the respondents to include the name of the petitioner in the list of Leading Fireman for the year 2013-14 in Thiruvarur District and promote him as Leading Fireman in pursuance to the test conducted on 25.07.2013 and grant him all consequential service and monetary benefits.

For Petitioner :: Mr.K. Venkataramani,
Senior Counsel for
Mr.M. Muthappan

For Respondents :: Mr.R.A.S.Senthilvel
Addl. Government Pleader

O R D E R

This writ petition is directed against the impugned order dated 27.09.2013 issued by the Director, Fire and Rescue Services, Chennai and the consequential orders passed by the 2nd respondent in Na.Ka.No. 4124/Aa1/2013, Pa.Aa. No. 231/2013 dated 30.01.2014 and Na.Ka.No. 5163/Aa1/2013 dated 06.01.2015 and quash the same in so far as the petitioner is concerned and

further direct the respondents to include the name of the petitioner in the list of Leading Fireman for the year 2013-14 in Thiruvarur District and promote him as Leading Fireman in pursuance to the test conducted on 25.07.2013 and grant him all consequential service and monetary benefits.

2. It is the case of the petitioner that while serving as Fireman Driver in Kottur Fire Station, due to his family circumstances and ill-health, gave a letter in April, 2013 requesting the respondents to accept his temporary relinquishment of his promotion to the post of Fireman Driver for a period of three years and with a further request to post him as Fireman. His request was accepted by the Divisional Fire Officer, Thiruvarur, vide proceedings in Mu.Mu. No. 2327/AA/2010 dated 23.04.2010 and an order was issued reverting him to the post of Fireman and he was posted to serve in Kottur Fire Station. After the relinquishment period of three years, the petitioner was allowed to participate in the promotion board in Thiruvarur District on 25.07.2013 and he was selected and included at Serial No.13 of the promotion list as Leading Fireman. According to the petitioner, since the petitioner had given temporary relinquishment from the post of Fireman Driver for a period of three years and thereafter, when the promotion board was conducted for the post of Leading Fireman, he had participated in the same and came out successful, he should have been promoted by including him in the "C" list for the year 2013-2014, which has not been done. But, curiously, the 1st respondent had issued a circular dated 29.07.2013 stating that temporary relinquishment given for a period of three years cannot be treated as temporary relinquishment, but will be treated as permanent relinquishment and directed not to promote such of those who had given temporary relinquishment earlier. Further, the said circular was not communicated to him. Subsequently, based on the said circular, the 2nd respondent, holding that the petitioner having relinquished his promotion as Fireman Driver in the year 2010 for a period of 3 years, it should be construed as permanent relinquishment, had issued the order dated 30.01.2014 deleting the name of the petitioner from the "C" List of Leading Fireman for the year 2013-2014 and had refused to include the name of the petitioner in the regular promotion list for the year 2013-2014. Even the representation given by the petitioner to the 2nd respondent on 05.01.2015 to consider his case was rejected by order dated 06.01.2015. Challenging the circular of the 1st respondent dated 29.07.2013 and the consequential orders of the 2nd respondent dated 30.01.2014 and 06.01.2015, the present writ petition has been filed.

3. According to Mr.K. Venkataramani, learned Senior Counsel for the petitioner, sub-rule (2) of Rule 47 of General Rules for State and Subordinate Service provides for temporary

relinquishment of a promotional post for a period of three years and therefore, the impugned orders are contrary to Rules. Further, the learned Senior Counsel would submit that when in respect of one Ramesh, who was also similarly placed like that of the petitioner, based on the orders of this Court, the respondents have granted promotion as Leading Fireman and all consequential service and monetary benefits, the petitioner is also entitled to similar relief.

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 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."

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 had 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 Thiruvarur 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.Ps are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

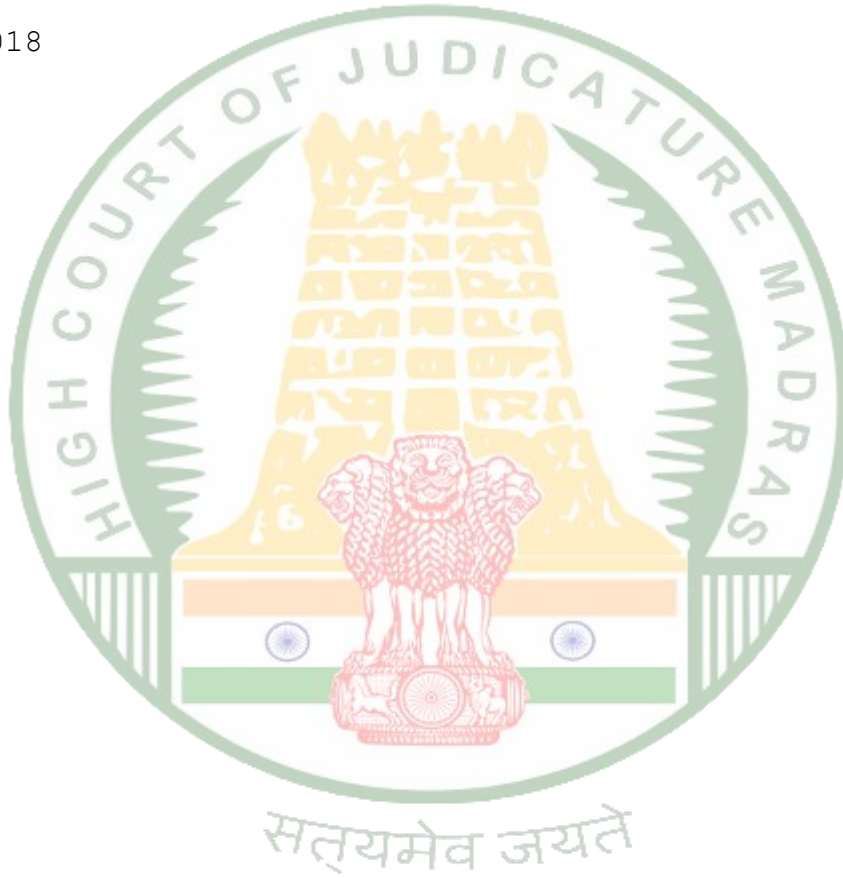
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+1 cc to Mr.M.Muthappan Advocate sr 554
+1 cc to the Govt Pleader sr 223

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