



WEB COPY

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.125 of 2020
and
WMP.Nos.157 to 159 of 2020

1.M.Ramasubramanian

2.R.Murugesan

3.K.Selvan

...Petitioners

V.

1. The State of Tamil Nadu
rep. by its Principal Secretary to Govt.,
Home (Police) Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Chairman/Director,
State Recruitment and Promotion Board,
Directorate of Fire and Rescue Services,
Egmore, Chennai-600 008.
3. The DGP/Director,
Fire and Rescue Services, (FAC)
O/o.The Directorate of Fire and Rescue Services,
Egmore, Chennai-600 008.
- 4.V.Veeranan
- 5.T.Kathiresan
- 6.K.Shanmugaraja
- 7.S.Jayachandran
- 8.S.K.Sangar
- 9.R.Thoulatbathusha
- 10.K.Devaraj



11.J.Varatharajan

12.P.Muthuselvam

13.M.Udhayakumar

...Respondents

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the third respondent in Rc.No.16803/B1/2019 dated 08.11.2019 and to quash the same and consequently directing the respondents 1 to 3 to prepare the year wise panel for promotion to the post of Station Officer from the panel year 2016-17, 2017-18 and 2018-19 by including the names of petitioners and other eligible persons in the panel as per Special Rules for Tamil Nadu Fire and Subordinate Services, as amended, by reckoning the seniority in the feeder post of Leading Fireman and consequently grant promotion to the petitioners to the post of Station Officer by including their names in the appropriate panel year and by replacing the temporary promotees with regular promotion, with all consequential and other attendant benefits, within a time frame as fixed by this Court.

For Petitioner : Mr.G.Sankaran

For Respondent : Mrs.K.Bhuvaneswari, AGP
Nos.1 to 3

O R D E R

The present Writ Petition has been filed challenging the proceedings of the third respondent dated 08.11.2019 and for a direction to the respondents 1 to 3 to prepare a year wise panel for promotion to the post of Station Officer as per the Special Rules for Tamil Nadu Fire and Subordinate Services.

2. The case of the petitioners is that as per the Special Rules for Tamil Nadu Fire and Subordinate Services, the next avenue of promotion for Leading Fireman/Driver Mechanics is to the post of Station Fire Officer (Transport). The Special Rules also provide for considering the promotion of the candidates. According to the petitioners, they are qualified to be considered for promotion to the post of Station Fire Officer and according to them, they are entitled to be included in the panel for the years 2016-17, 2017-18 & 2018-19 respectively.

3. The State Government had issued orders in G.O.Ms.No.352, Home Department, dated 14.05.2012 upgrading 165 posts of Driver



Mechanics as Station Officer (Transport). While issuing the order, there was a direction that the existing personnel seniority for elevation to the level of Station Officer and Station Officer (Transport) will be placed on the original seniority at the level of Fireman. A proposal was forwarded by the third respondent and based on the same, the State Government had issued orders in G.O.Ms.No.997, Home (Police) Department, dated 14.08.2018, wherein it was directed that promotion to the post of Station Officer/Station Officer (Transport) will be based on enlistment and state seniority. Accordingly, the enlistment seniority viz., the date of appointment for promotion to the post of Station Officer will be taken into consideration. The related Special Rules prescribing the seniority in the feeder post of Leading Fireman was not amended. Steps were taken to fill up the post of Station Officer on temporary basis without reference to the seniority in the post of Leading Fireman. Consequently, several persons were given temporary promotion to the post of Station Officer disregarding the Rules.

4. At a later point of time, the Special Rules were amended in G.O.Ms.No.179, Home Department, dated 20.03.2019 and as per the amended Rule, the post of Leading Fireman in Category-2, Class (II) is the feeder post for promotion to the post of Station Officer and the promotion should be made from the list of qualified candidates suitable for promotion prepared on state wide basis. This amendment to the Special Rules was notified in Government Gazette on 27.03.2019. As per the Special Rules, year wise panel should be prepared for the post of Station Officer and after fulfilling the conditions prescribed therein. The petitioners claimed that they fulfill all the qualifications and conditions.

5. The grievance of the petitioners is that even after the amendment of the Special Rules, the third respondent had issued the impugned proceedings dated 08.11.2019, granting promotion to the post of Station Officer on temporary basis under Section 47 (1) of the Tamil Nadu Government Servants (Conditions of Service) Act 2016 (hereinafter referred to as 'the Act 2016') without preparation of year wise panel and granting regular promotions for the eligible candidates working in the post of Leading Fireman as per the Special Rules.

6. Mr.G.Sankaran, learned counsel appearing on behalf of the petitioners submitted that after the amendment of the Special Rules which was also notified in the Government Gazette dated 27.03.2019, the respondents ought to have prepared the year wise panel and ought to have considered the promotions of all eligible candidates on regular basis. However, the third respondent had resorted to granting temporary promotions to the persons who are not eligible as per the Special Rules and



thereby restricting the regular eligible candidates/Leading Fireman from getting promoted under the Special Rules. The learned counsel also placed reliance upon Clause (20) and Section 7(1) of the Act 2016 and submitted that executive order has been passed by the third respondent contrary to the Rules and as per the said Clause, where the posts are governed by the Rules for promotions or appointments, it should not be made contrary to the Rules and it cannot be made on the basis of such executive orders.

7. In order to substantiate the said submission, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in K.Kuppusamy and another V. State of Tamil Nadu and others reported in 1998 (8) SCC 469. The relevant portions of the judgment is extracted hereunder:

"3. The short point on which these appeals must succeed is that the Tribunal fell into an error in taking the view that since the Government had indicated its intention to amend the relevant rules, its action in proceeding on the assumption of such amendment could not be said to be irrational or arbitrary and, therefore, the consequential orders passed have to be upheld. We are afraid this line of approach cannot be countenanced. The relevant rules, it is admitted, were framed under the proviso to Article 309 of the Constitution. They are statutory rules. Statutory rules cannot be overridden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules does not mean that the rule stood obliterated. Till the rule is amended, the rule applies. Even today the amendment has not been effected. As and when it is effected ordinarily it would be prospective in nature unless expressly or by necessary implication found to be retrospective. The Tribunal was, therefore, wrong in ignoring the rule.

4. For the above reason, we set aside the order of the Tribunal and remit the matter to the Tribunal for disposal in accordance with law and in the light of what we have said above. The appeals will stand allowed accordingly with no order as to costs.

8. The learned counsel further submitted that the temporary promotions came to be issued by reckoning the enlistment seniority in the post of Fireman and it is in violation of the

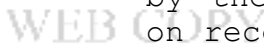


Amended Service Rules. According to the petitioners, the seniority in the post of Fireman which is the feeder post, is the basis for promotion for the post of Leading Fireman.

9. The learned counsel further submitted that the temporary promotion that has been granted by the third respondent without reference to the Special Rules is causing prejudice to the persons working in the post of Leading Fireman, having eligibility and seniority, who ought to be considered for promotion to the post of Station Officer. After the amendment of the Special Rules dated 20.03.2019, the respondents have not proceeded to prepare the year wise panel as per the Special Rules. In insisting for the preparation of the year wise panel, the learned counsel would submit that the Hon'ble Supreme Court has repeatedly held that it is mandatory to prepare the year wise panel based on vacancies of such posts and temporary promotions cannot take away the rights of the eligible candidates.

10. The learned counsel concluded his submission by submitting that the vacancies in this case has arisen from the year 2016 onwards. According to the petitioners, the vacancies for the panel years prior to G.O.Ms.179, Home (Police) Department, dated 20.03.2019, will be governed only by the pre-existing Rules to fill up the posts by promotion. In order to substantiate his submission, the learned counsel relied upon the decision of the Hon'ble Supreme Court in Y.V.Rangaiah and others V. J.Sreenivasa Rao and others reported in 1983 (3) SCC 284 and the subsequent judgment of the Hon'ble Supreme Court in State of Rajasthan V. R.Dayal and others reported in 1997 (10) SCC 419. The learned counsel therefore submitted that the respondents 1 to 3 must be directed to prepare the year wise panel in accordance with the Rules and consider the promotion of all the eligible candidates.

11. Per Contra, Mrs.K.Bhuvaneswari, learned Additional Government Pleader appearing on behalf of the respondents 1 to 3 submitted that the impugned order which is the subject matter challenge in the present Writ Petition is only a temporary promotion order issued by the third respondent. The learned counsel submitted that this step was taken in order to immediately tide over the situation and also to ensure the smooth functioning of the Department. The learned Additional Government Pleader submitted that temporary promotion order that has been passed by the third respondent is not going to remain permanent and it will be only in force till regular promotions are made as per the existing Rules. The learned counsel submitted that steps are being taken to empanel all the eligible candidates and make regular promotions to the post of Station Officer.



12. This Court has carefully considered the submissions made by the respective counsels and perused the materials available on record.

13. This Court is not inclined to interfere with the impugned order dated 08.11.2019 passed by the third respondent, whereby the temporary promotion has been granted to nearly 172 candidates to the post of Station Officer. This order came to be passed by virtue of the interim order granted by this Court being vacated, wherein this Court found that in view of the administrative exigencies, temporary promotions must be granted on the basis of seniority. Therefore, the respondents have thought it fit to make use of Section 47(1) of the Act 2016 and fill up the post of Station Officer on a temporary basis in order to restore the normal functioning of the Fire and Rescue Stations. This Court only hopes that the order passed by the third respondent is really considered to be temporary and is not made a ruse to continue with the position forever. The very scope of Section 47(1) of the Act 2016 is only to tide over the situation and not to make it as a norm and deprive those candidates who are eligible to be promoted on regular basis. It is to be borne in mind that it is the fundamental right of every public servant to be considered for promotion if he fulfills all the qualifications and depriving the same will be in violation to Articles 16 and 14 of the Constitution of India.

14. In view of the above observations, this Court is not inclined to interfere with the impugned order of temporary promotions issued by the third respondent dated 08.11.2019. However, in view of the fact that the promotions to the post of Station Officer is governed by the Service Rules and there are candidates who are eligible to be considered for regular promotion to the said post, certain directions can be issued by this Court to complete the process of regular promotions within a stipulated period and till such time, the temporary promotion order passed by the third respondent dated 08.11.2019 can be in force.

15. There shall be a direction to the respondents 1 to 3 to prepare a year wise panel for promotion to the post of Station Officer from the panel years 2016-17, 2017-18 and 2018-19 by including all the eligible persons in the panel as per the Special Rules for Tamil Nadu Fire and Subordinate Services, as amended by reckoning the seniority in the feeder post of Leading Fireman. On such preparation of panel and giving promotion orders, consequential service and monetary benefits shall also be granted to the promoted candidates. This process shall be



completed within a period of three months from the date of receipt of a copy of this order. The temporary promotion order passed by the third respondent dated 08.11.2019 shall remain in force only till the regular promotion is granted by the respondents 1 to 3, within the time stipulated by this Court. By giving such a direction, it can be ensured that candidates who are eligible will be considered for regular promotions and at the same time, during the interregnum period, the normal functioning of the Fire and Rescue Station will continue with the help of the temporarily promoted persons by virtue of the order of the third respondent dated 08.11.2019. It is made clear that time is the essence of this order and this Court expects respondents 1 to 3 to complete the process within the time stipulated by this Court.

16. The Writ Petition is disposed of with the above directions. Consequently, connected Miscellaneous Petitions are closed. No costs.

s/d-
Assistant Registrar(CS-III)

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Sub-Assistant Registrar

DP
To

1. The Principal Secretary to Govt.,
State of Tamil Nadu
Home (Police) Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Chairman/Director,
State Recruitment and Promotion Board,
Directorate of Fire and Rescue Services,
Egmore, Chennai-600 008.
3. The DGP/Director,
Fire and Rescue Services, (FAC)
O/o.The Directorate of Fire and Rescue Services,
Egmore, Chennai-600 008.

+1 CC to The Govt. Pleader sr 1354
+1 CC to Mr.G.Sankaran, Advocate sr 1118.

W.P.No.125 of 2020
and
WMP.Nos.157 to 159 of 2020

PP(CO)
SP(13/01/2020)