

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No. 13457 of 2013

R.Sundaram

.. Petitioner

- Vs -

1. The Government of Tamil Nadu,
Rep. By Secretary to Government,
Home Police,
Fort. St.George, Chennai.

2. Director,
Fire and Rescue Service,
Egmore, Chennai 600 008.

3. Deputy Director (Admn) (F.A.C)
Fire and Rescue Service,
Tamil Nadu, Egmore,
Chennai 600 008.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified Mandamus, calling for the records of the 3rd respondent pertaining to the seniority list of Leading Fireman for the year 2012-2013 (upto 26/5/2009) in Na.Ka.No.20531/A1/2012 dated 12.04.2013 and quash the same and direct the 2nd respondent to send necessary draft amendment proposals to the Government based on G.O.Ms.NO.352 Home (Police-XVII) Department dated 14.05.2012 and further direct the respondents to implement and ratify such draft amendment proposal.

For Petitioner : No appearance

For Respondents: Mr.A.N.Thambidurai, Spl.G.P

ORDER

The Writ petition has been filed by the petitioner, to call for the records of the 3rd respondent pertaining to the seniority list of Leading Fireman for the year 2012-2013 (upto 26/5/2009) in Na.Ka.No.20531/A1/2012 dated 12.04.2013 and quash the same and direct the 2nd respondent to send necessary draft amendment proposals to the Government based on G.O.Ms.NO.352 Home (Police-XVII) Department dated 14.05.2012 and further

direct the respondents to implement and ratify such draft amendment proposal.

2. Though the case was initially listed on 21.08.2020, there was no representation for the petitioner, hence the matter was again listed today. Even today, there is no representation for the petitioner. Considering the fact that the petition has been filed way back in the year 2013 and has been pending on the file of this Court since then, this Court proceeds to decide the case on merits and pass orders.

3. The respondent has field counter affidavit in support of their contentions.

4. This Court perused the materials available on record. On perusal of the affidavit, it reveals that the petitioner has joined the Tamil Nadu Fire and Rescue Department in the year 1987, as fireman. As per the service rules, it provides for two channels for promotion under Channel -I-Fireman -Leading Fireman -Assistant Station Officer -Station Officer and so on. Under Channel II-Fireman - fireman driver - Driver Mechanic -Station Officer (Transport). However the entry level for both the channels is Fireman and all the fireman are equally trained and are similarly qualified. The grievance of the petitioner is that after serving the department for 10 years as fireman, he was promoted as fireman driver, which is a stagnant post; however at that time he was not aware about the stagnation in the post of fireman, but for which he could have had the opportunity to become Deputy Director of the Department. Though he is similarly qualified as other fireman, his career advancement is handicapped due to a faulty policy of the department. The dichotomy was brought to the notice of the Government as early as 1995, the Government in G.O.Ms.No.1525 Home (Police XVII) Department dated 11.10.1995 had directed the 2nd respondent to send draft proposals for merging the two channels, however no action has been taken by the 2nd respondent or the Government to merge the various channels and to afford equal opportunity. The Government in G.O.Ms.No.325 Home (Police XVII) Department dated 14.05.2012 had directed that that in future only one category will exist for promotion from the level of fireman, all fireman will be trained in Driving before declaration of probation. As for existing personnel the number of posts of driver mechanic and Station Officer (Transport) will be so regulated and this matter has also been taken up by the Government in the Legislative Assembly. Consequently the 2nd respondent has sent a draft proposal to the government to give equal opportunity to fireman driver, however no progress has been made in that direction, and the petitioner continued to be a fireman driver with no scope of promotion. Now that the 2nd respondent has sent a proposal there is a chance that he could get a meaningful

promotion at par with fireman in Channel I. However the 3rd respondent has released a seniority list for leading fireman and in this list petitioner's name was not found. He joined as fireman driver on 06.02.1997 and till this day he is a fireman driver. Therefore, challenging the said seniority list prepared by the 3rd respondent, this petition has been filed with the above said prayer.

5. Learned Special Government pleader appearing for the respondents submitted his contentions based on the counter affidavit, that for the station officer post the Feeder category is Assistant station officer/Leading Fireman. Hence the seniority list of Assistant station Officer/Leading Fireman was released for the year 2012-2013 by the second respondent vide its memorandum dated 12.04.2012. Since in G.O.Ms.NO.352 Home dated 14.05.2012 already 165 driver mechanic posts are upgraded as station officer (Transport) and thus over all 170 station officer (Transport) Post exists for the Feeder Category of Driver Mechanic, the Petitioner cannot compel or insist the respondent to include the petitioner's name along with the leading fireman.

5.1. Further he submitted that the petitioner during the year 2012, the petitioner has given his non-willingness application for Driver Mechanic Post, hence his name was not considered. His juniors were given promotion as Driver Mechanic. The scope of promotion for Fireman Driver and Leading Fireman are equal, except few personnel in the cadre of leading fireman, who reached the level of Assistant Divisional Officer and in between these period most of them attained superannuation. As per G.O.Ms. No.352, Home, dated 14.05.2012, the Government did not order to publish the seniority list combined together, but it was order that seniority for elevation to the level of station officer or station officer (Transport) from the post of driver mechanic, the original seniority at the level of fireman has to be taken into account, and, therefore, the seniority list does not cause any prejudice to the petitioner, since he is holding the post of fireman driver and the same is not applicable for the petitioner. Further more, during the year 2012, the petitioner has given his unwillingness for the post of driver mechanic, thereby he has no loco standi seeking quashment of the aforesaid seniority list.

6. Considering the facts and circumstances of the case, it appears that the petitioner has misunderstood the contents of the Government Order while filing this Writ petition. In the Government Order it was clearly stated that for the existing personnel the original seniority in Fireman post to be taken into account for promotion to the level of station officer or station officer (Transport); the government did not order to

combine these two posts, however it is ordered that for giving promotion to these posts, for the existing personnel, the original seniority in fireman post to be taken into account. Without reaching the feeder category for promotion to the post of station officer (Transport) post, the claim of the petitioner for further promotion is wholly misplaced and, therefore, the relief sought for by the petitioner cannot be granted.

7. For the reasons aforesaid, this writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed. However there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
The Government of Tamil Nadu,
Home Police,
Fort. St.George, Chennai.
2. Director,
Fire and Rescue Service,
Egmore, Chennai 600 008.
3. Deputy Director (Admn) (F.A.C)
Fire and Rescue Service,
Tamil Nadu, Egmore,
Chennai 600 008

+1cc to the Government Pleader in SR.NO..28130

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VP(CO)
RV(06/10/2020)