

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.16219 & 28407 of 2018

and

Cont.P.Nos.525 & 574 of 2019

and

W.M.P.Nos.19313, 19314, 33123 & 33124 of 2018

W.P.No.16219 of 2018

1.J.D.Prassana

2.E.Muthu

3.P.Ramesh

4.V.Parasuraman

5.M.Elangovan

6.S.Subbiah

7.S.Inbaraj

....Petitioners

Vs.

1.State of Tamil Nadu represented
Secretary to Government,
Home (Police XVIII) Department,
Fort St.George, Chennai - 600009.

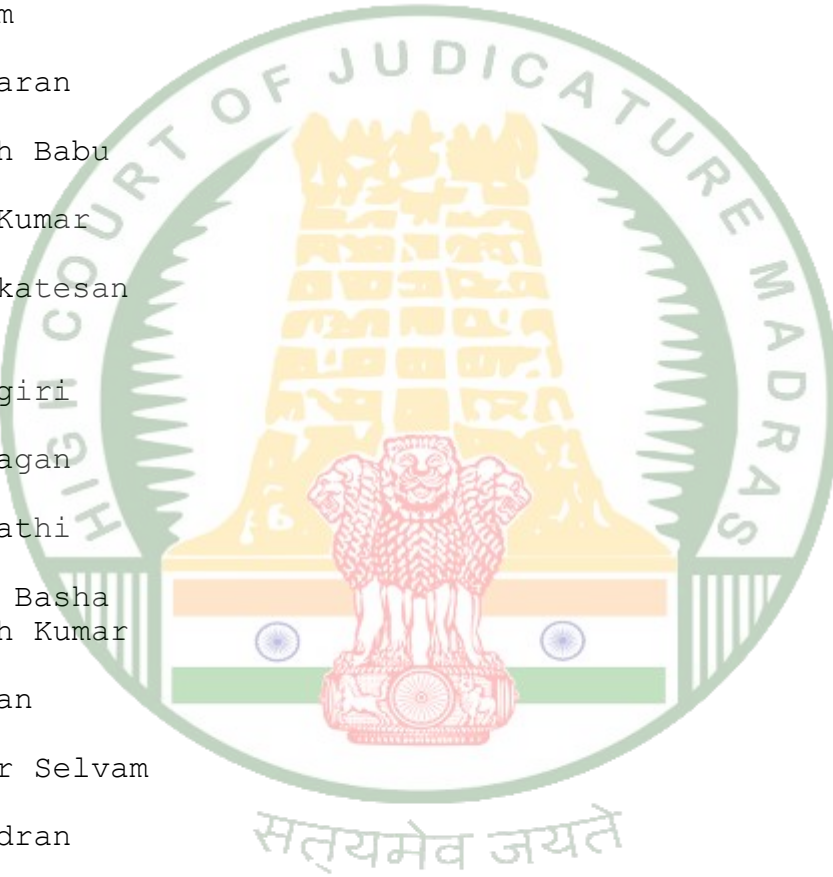
2.The Chairman/Director,
State Recruitment and Promotion Board,
Directorate of Fire and Rescue Services,
Egmore, Chennai - 600008.

3.The Director of Fire and Rescue Services,
O/o. Directorate of Fire and
Rescue Services,
Egmore, Chennai - 600008.

4.The Joint Director, Northern Region,
O/o. Directorate of Fire and
Rescue Services,
Egmore, Chennai - 600008.

5.Deputy Director, North Western Region,
Fire and Rescue Service Department,
Vellore.

- 6.R.Rolan
- 7.V.Dhinakar
- 8.T.Mookaiah
- 9.S.Thangasamy
- 10.J.Vijayan
- 11.B.Janarathanam
- 12.B.Selvam
- 13.Rajasekaran
- 14.R.Ramesh Babu
- 15.R.Uday Kumar
- 16.K.P.Venkatesan
- 17.C.Raja
- 18.S.Arunagiri
- 19.A.Anbalagan
- 20.G.Ragupathi
- 21.D.Kamal Basha
- 22.S.Ramesh Kumar
- 23.V.Murugan
- 24.P.Paneer Selvam
- 25.S.Rajendran
- 26.B.Mathappan
- 27.M.Ravikumar
- 28.R.Ramesh
- 29.M.Murugadhas
- 30.T.Murugiah
- 31.M.Karunanithi



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32.R.Neelakandan

33.B.Amirthalingam

34.D.Manickam

35.B.Jawahar

36.M.Johnson

37.M.Shanmugam

38.R.Murugesan

39.M.Baskar

40.M.Ramasubramanian

41.A.Ramachandran

42.V.Edwin

43.A.Vijayan

44.K.Selvan

45.C.Nandakumar

...Respondents

(R6 to R36 are impleaded vide order dated 15.02.19 made in WMP.Nos. 29989/18 & 4276/19 in WP.No. 16219/18)

(R37 to R44 impleaded vide order dated 25.07.19 made in WMP.No. 18504/19 in WP.No.16219/18)

(R45 impleaded as per order dated 08.01.2020 made in WMP.No. 33155/19 in WP.No.16219/18)

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to direct the 3rd respondent to constitute the 2nd respondent/State Recruitment and Promotion Board as provided under statutory rules 2(b) (ii) of Tamil Nadu Fire and Rescue Services Subordinate Rules for selecting qualified Leading Fireman fit for the post of Station Fire Officer for being promoted for the existing vacancies in the panel year 2016-2017 and 2017-2018 and for vacancy for the panel year 2018-2019 from the selected Leading Fireman state wise seniority list approved on 25.02.2015.

For Petitioners: Mr.N.S.Nandakumar

For Respondents: Mr.Vijayanarayanan,
Advocate General
Assisted by Mr.V.Kadhirvelu,
Special Government Pleader
for R1 to R5

Mr.V.Vijay Shankar
for R6 to R36

Mr.G.Sankaran
for R37 to R44

Mr.L.Chandrakumar
for R45

W.P.No.28407 of 2018:

M.Elangovan ...Petitioner

Vs.

1.State of Tamil Nadu represented
Secretary to Government,
Home (Police XVIII) Department,
Fort St.George, Chennai - 600009.

2.The Secretary to the Government,
The Personnel and Administrative
Reforms Department,
Fort St.George, Chennai - 600009.

3.The Director of Fire and Rescue Services,
O/o. Directorate of Fire and
Rescue Services,
Egmore, Chennai - 600008.

4.The Joint Director, Northern Region,
O/o. Directorate of Fire and
Rescue Services,
Egmore, Chennai - 600008.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in G.O.(Ms).No.997 Home (Police-XVII) Department dated 14.08.2018 on the file of the 1st respondent and quash the entire proceedings.

For Petitioner : Mr.N.S.Nandakumar

For Respondents: Mr.Vijayanarayanan,
Advocate General
Assisted by Mr.V.Kadhirvelu,
Special Government Pleader

Cont.P.No.525 of 2019:

S.Subbiah

...Petitioner/6th
Respondent in WMP No.36725
of 2018 & in WMP No.19313 of 2018
Vs.

Thiru.K.P.Mahendran, IPS DGP,
Director of Fire and Rescue Services,
O/o. Directorate of Fire and
Rescue Services,
Egmore, Chennai - 600008. ...Respondent/3rd Petitioner
in WMP No.36725 of 2018

Prayer: Contempt Petition filed under Section 11 of Contempt of
Courts Act, 1971, to punish the respondent for flouting,
violating and willfully disobeying the order dated 15.02.2019
made in W.M.P.No. 36725 of 2018 in W.M.P.No.19313 of 2018 in
W.P.No.16219 of 2018 under the provisions of the Contempt of
Courts Act.

For Petitioner : Mr.N.S.Nandakumar

For Respondent : Mr.P.H.Aravind Pandian
Additional Advocate General
Assisted by Mr.A.N.Thambidurai
Special Government Pleader

Cont.P.No.574 of 2019
M.Elangovan

...Petitioner/5th
Respondent in WMP No.36725
of 2018 & in WMP No.19313 of 2018
Vs.

Thiru.K.P.Mahendran, IPS DGP,
Director of Fire and Rescue Services,
O/o. Directorate of Fire and
Rescue Services,
Egmore, Chennai - 600008. ...Respondent/3rd Petitioner in WMP
No.36725 of 2018

Prayer: Contempt Petition filed under Section 11 of Contempt of Courts Act, 1971, to punish the respondent for flouting, violating and willfully disobeying the order dated 15.02.2019 made in W.M.P.No. 36725 of 2018 in W.M.P.No.19313 of 2018 in W.P.No.16219 of 2018 under the provisions of the Contempt of Courts Act.

For Petitioner : Mr.N.S.Nandakumar

For Respondent : Mr.P.H.Aravind Pandian
Additional Advocate General
Assisted by Mr.A.N.Thambidurai
Special Government Pleader

COMMON ORDER

The Writ Petitions are filed to direct the first respondent/Secretary to Government, Home (Police XVIII) Department and to direct the third respondent to constitute the second respondent/State Recruitment and Promotion Board as provided under statutory rules 2(b) (ii) of Tamil Nadu Fire and Rescue Services Subordinate Rules for selecting qualified Leading Fireman fit for the post of Station Fire Officer for being promoted for the existing vacancies in the panel year 2016-2017 and 2017-2018 and for vacancy for the panel year 2018-2019 from the selected Leading Fireman State wise seniority list approved on 25.02.2015 and to quash the entire proceedings of the first respondent made in G.O.(Ms).No.997 Home (Police-XVII) Department dated 14.08.2018.

2.In view of subsequent developments of preparation of State wide seniority list, now the seniority list approved on 25.02.2015 cannot be acted upon. The relief sought for in W.P.No.16219 of 2018 to direct the first respondent to direct the third respondent to constitute the State Recruitment and Promotion Board as provided under statutory rules 2(b) (ii) of Tamil Nadu Fire and Rescue Services Subordinate Rules also cannot be considered, in view of the fact that the Government amended the rules, through notification dated 27.03.2019 and in this regard, Government issued G.O.Ms.No.179, Home (Police-XVII) Department, dated 20.03.2019. Thus, all the promotions hereafter is to be made strictly in accordance with the amended rules.

3.The controversy that arose in nutshell is that the petitioners were initially appointed as Fireman in the Department of Fire and Rescue Services and thereafter, they were promoted to the post of Leading Fireman based on the existing rules in force. As all these writ petitioners are working as Leading Fireman and they claim that they are fully eligible for

promotion to the post of Station Officer, their case is to be considered strictly in accordance with the seniority list published by the respondent on 25.02.2015 and accordingly, they should be promoted to the post of Station Officer.

4.This Court initially granted an order of interim stay and the State filed an application to vacate the interim order and this Court passed an order on 15.02.2019 and the directions issued are extracted hereunder:

11.In view of the submissions made by the learned Advocate General, the following orders are passed:

1) The interim order granted by this Court on 03.08.2018 in W.M.P.No.19313 of 2018 in W.P.No.16219 of 2018 stand vacated.

2) The respondents are directed to expedite issuance of amendment of rules pursuant to the proposals submitted by the Director of Fire and Rescue Services and issue necessary orders as expeditiously as possible.

3) On issuance of the amended rules, State wide seniority list is to be prepared, after considering the objections, if any, submitted by the aggrieved employees, in accordance with the rules and by following the procedures.

4) On preparation of the State wide seniority list, the temporary promotions granted under Rule 47 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, shall be reviewed and suitable actions are to be taken to settle the seniority and regulate the promotions in accordance with seniority.

12.The respondents are directed to grant temporary promotions with reference to Rule 47 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and accordingly, grant promotions to all the eligible persons, including the writ petitioners as per the tentative seniority list.

13.Respondents are directed to comply with all the directions scrupulously and without any scope for further confusions or anomalies in the matter after following the service rules as well as the procedures to be followed for preparation of seniority list and grant of promotions.

5.Based on the directions issued as stated above, contempt applications are filed by the petitioners in Cont.P.Nos.525 and 574 of 2019 and when the contempt petitions are taken up for hearing, the writ petitions are also tagged along with that for final disposal. The matters were taken together, pursuant to the

orders of the Hon'ble Chief Justice and thus, this Court heard the matter at length for determining the rights of the parties.

6.The learned counsel for the writ petitioners mainly contended that the petitioners were appointed as Fireman and thereafter promoted to the post of Leading Fireman. They are fully qualified and eligible for further promotion to the post of Station Officer and the respondents have now taken steps to tamper the seniority list by preparing another State wide seniority list, wherein the names of the petitioners are placed far below than that of their juniors. It is contended that in the proposed State wide seniority list, the names of the petitioners are placed below their juniors and therefore, such a seniority list prepared is in violation of the rules, which was in force. Their right in the post of Leading Fireman is to be protected and they have a right to be promoted to the post of Station Officer, taking into consideration the length of services rendered in the post of Fireman. Now, the persons who were promoted to the post of Leading Fireman, after the promotions of the petitioners, are promoted to the post of Station Officer and therefore, the proposed State wide seniority list is in violation of the rules.

7.The learned counsel for the petitioners reiterated that as far as the vacancies arose during the years 2016-17, 2017-18 and 2018-19 are concerned, they are to be filled up only by preparing the list of Leading Fireman fit for promotion to the post of Station Officer, based on the rules which were prevailing during the particular year and certainly not in accordance with the amended rules, which came to be enforced with effect from 27.03.2019. For this reason, the proposed draft State wide seniority list cannot be acted upon and suitable directions, as sought for in the writ petitions to follow the State wide seniority list that was approved on 25.02.2015, are to be followed for grant of promotion to the post of Station Officer.

8.The learned counsel appearing on behalf of the impleaded respondents 6 to 36 also supported the contentions raised on behalf of the petitioners and stated that the services of the impleaded respondents in the post of Leading Fireman is to be protected. Admittedly, the writ petitioners as well as the impleaded respondents were already promoted to the post of Leading Fireman and their right in the said post is to be protected.

9.The learned Advocate General spontaneously intervened and informed this Court that the existing right of these employees will be protected and therefore, their apprehension in this regard need not be considered.

10.The learned counsel further is of the opinion that the impleaded respondents as well as the writ petitioners were promoted as Leading Fireman long back and their services are to be taken into account for promotion to the post of Station Officer. Thus, the impleaded respondents also supported the contentions raised on behalf of the petitioners and emphasized that the previous rules, which was existing when the vacancy arose in the post of Station Officer, is to be followed and the amended rules cannot be followed at all.

11.The learned counsel appearing on behalf of the impleaded respondents 37 to 44 also reiterated the grounds raised on behalf of the writ petitioners as well as the impleaded respondents and made a submission that the seniority list which was published on 25.02.2015 is to be followed for further promotion to the post of Station Officer and further, in respect of the vacancies arose during the years 2016-17, 2017-18 and 2018-19, the rule which was prevailing at that point of time is to be followed and the amended rule cannot be applied with retrospective effect, so as to grant promotion by fixing a new State wide seniority list.

12.The learned Advocate General disputed all these contentions by stating that, previously, the promotion to the post of Leading Fireman was granted based on District wide seniority and therefore, an anomaly arouse that a junior most Fireman could secure promotion to the post of Leading Fireman and the senior most, who has put more than 20 years of service, is unable to get promotion to the post of Leading Fireman. To protect the morale of the Uniformed services and in order to keep the promotions intact and in accordance with the respective seniority of the employees working in the Fire Service Department, the Director of Fire and Rescue Services submitted a proposal to the Government for issuing necessary amendments in the rules, so as to ensure that promotions are granted strictly in accordance with the rules with reference to the seniority, which are applicable to the particular post. The said proposal was considered by the first respondent-Government and the amendment to the Rules are notified in the Tamil Nadu Government Gazette, dated 27.03.2019.

13.Even before passing of the amendment, the writ petition in W.P.No.16219 of 2018 was filed to follow the State wide seniority list approved on 25.02.2015. This Court granted an interim order and further the vacate stay petition was filed and as referred above, this Court issued directions to expedite the issuance on amendment of rules and prepare a State wide

seniority list and thereafter, settle the issues regarding promotions by reviewing the temporary promotions granted during the interregnum period.

14.The learned Advocate General contended that based on the directions issued by this Court in the order dated 15.02.2019, the respondents have taken steps to amend the rules, which were issued and notified in the Government Gazette on 27.03.2019 and thereafter, the State wide seniority list is prepared. The draft State wide seniority list in the post of Leading Fireman is now placed before this Court and referring to the same, the learned Advocate General emphasized that the discrimination that was prevailing for long years are rectified and the persons, who are all aggrieved for many years, are to be redressed. In other words, to redress the long standing grievance of those senior employees, efforts are taken to prepare a revised State wide seniority list, so as to set right the anomaly atleast in respect of the promotions, which are to be considered hereinafter.

15.While stating so, the learned Advocate General, in clear terms, contended that the existing service rights of all the employees, who all are working in the cadre of Leading Fireman, will be protected. Thus, the Leading Fireman, who are all holding the post, will not be reverted back to lower post and their services will also be considered. Thus, the very apprehension raised in this regard deserves no merit consideration, as the State is in the process of rectification of certain anomalies that arose on account of the fact that the senior most Leading Fireman are deprived of promotion and in order to rectify such anomalies, the Government had changed the policy and issued necessary amendments to the Service rules.

16.The learned Advocate General further stated that the draft State wide seniority list will be finalised soon, by providing opportunities to all the employees for submitting their respective objections, if any, and on receipt of such objections, the same will be considered in accordance with the rules and a final State wide seniority list of Leading Fireman will be published at the earliest possible enabling the authorities to set right the promotions to be given to the post of Station Officer in accordance with the rules.

17.Considering the arguments as well as the issues raised, this Court is of the considered opinion that the strength in the Fire Service Department was less previously and now, the strength has been increased considerably and under these circumstances, Government thought it fit to re-consider the issues with reference to the rules in force. Large number of

senior employees of the department submitted representations by stating that, junior most Firemen were promoted to the post of Leading Fireman and the seniors are deprived of their promotion. This made the Government to re-consider the entire issue. While considering this issue, various writ petition were filed, interim orders were granted, the authorities were prevented from concluding the process and therefore, there is a lapse of time to finalise all these issues, including preparation of State wide seniority list of Leading Fireman.

18. In order to understand the grievance of senior employees, the learned Advocate General solicited the attention of this Court with reference to the draft State wide seniority list now prepared. This Court has taken an example of Serial Nos. 568 to 588 and the details are hereunder:

Sl. No	Name	Rank No.	Present place of work	Date of birth	Date of Enlistment of Fireman	Date of Promotion as leading Fireman	Date of retirement
568	Pr.Ganesan	6016	Sivagangai/ Sivagangai	13.06.1973	09.09.1996	2014.06.06	30.06.2031
569	V.Mohan	6020	Dindigul	15.06.1969	09.09.1996	24.02.2019	30.06.2027
570	Pabanasam.M	6021	Tiruchendur/ Thoothukudi	08.05.1970	09.09.1996	25.02.2019	31.05.2028
571	R.Pandiarajan	6022	Melur	25.07.1973	09.09.1996	25.02.2019	31.07.2013
572	C.MohanKumar	6025	Suramangalam/ Salem	20.05.1970	09.09.1996	25.02.2019	31.05.2028
573	N.Jothibas	6026	Kudavasal/ Thiruvavur	10.04.1968	09.09.1996	04.02.2014	30.04.2026
574	D.Prabhakaran	6027	Rajbhavan	02.06.1973	09.09.1996	06.07.2011	30.06.2031
575	S.Jeevans	6028	Nagercoil, Kanyakumari	10.07.1974	09.09.1996	26.05.2014	31.07.2032
576	V.Rangaraj	6030	Sathiyamangalam	28.05.1971	09.09.1996	01.06.2014	31.05.2029
577	E.Manikandan	6033	Pollachi	02.06.1972	09.09.1996	25.02.2019	30.06.2030
578	P.P.Saravanan	6036	Omalar/ Salem	23.07.1971	09.09.1996	25.02.2019	31.07.2029
579	R.Udayakumar	6039	Suramangalam/ Salem	05.06.1968	09.09.1996	25.02.2019	30.06.2026
580	R.Manivannan	6041	R.S.Mangalam	29.07.1971	09.09.1996	26.05.2014	31.07.2029
581	T.Vivek Anandan	6043	Athoor	02.11.1972	09.09.1996	24.02.2019	30.11.2030
582	M.Muruganandam	6046	Manali/Chennai suburban	02.06.1975	09.09.1996	07.05.2011	30.06.2033
583	S.Selvam	6047	Palacode/ Dharmapuri	15.05.1972	09.09.1996	25.02.2019	31.05.2030
584	S.Parmeshwaran	6049	Fire Control	22.04.1972	09.09.1996	22.06.2011	30.04.2030
585	G.Senthilkumar	6050	Ariyalur/ Perambalur	05.06.1972	09.09.1996	02.06.2012	30.06.2030
586	Sundararaj.M	6053	Kalugumalai/ Thoothukudi	17.03.1971	09.09.1996	25.02.2019	31.03.2029
587	D.Shanmugam	6054	Thiruvannamiyur	15.05.1970	09.09.1996	06.07.2011	31.05.2038
588	G.Sankar	6056	Sethiyathoppu/ Cuddalore	03.03.1967	09.09.1996	01.06.2014	31.03.2025

Sl. No	Name	Rank No.	Present place of work	Date of birth	Date of Enlistment of Fireman	Date of Promotion as leading Fireman	Date of retirement
589	M.Raja	6057	Vallioor/ Tirunelveli	12.04.1973	09.09.1996	04.09.2013	30.04.2031
590	V.Prabakaran	6064	Dharapuram	26.05.1975	09.09.1996	01.06.2014	31.05.2033
591	A.Sekar	6065	Valappady/ Salem	01.05.1975	09.09.1996	25.02.2019	30.04.2023
592	S.Raja	6066	Jayankondam/ Perambalur	01.07.1971	09.09.1996	31.05.2014	30.06.2029
593	L.Senthilkumar	6067	STS, Tambaram	10.04.1972	09.09.1996	25.02.2019	30.04.2030
594	T.Srinivasan	6069	Thanjavur/ Thanjavur	22.04.1972	09.09.1996	25.02.2019	30.04.2030
595	K.Karikalan	6071	Rasipuram/ Namakkal	10.06.1967	09.09.1996	25.02.2019	30.06.2025
596	S.Mugunthan	6072	Vanur/Villupuram	04.05.1975	09.09.1996	17.05.2014	31.05.2033
597	K.Krishnakumar	6073	State Training Centre	28.12.1970	09.09.1996	06.07.2011	13.12.2028

19.The tabular column reveals that all the persons shown in the above list were enlisted as Fireman on the same date, i.e., on 09.09.1996. The next column provided is the date of promotion in the post of Leading Fireman. The said column shows that the first person one Mr.Ganesan (S.No.568), who was promoted as Fireman appointed on 09.09.1996, was promoted as Leading Fireman on 06.06.2014 and the next person Mr.V.Mohan (S.No.569), who was also appointed on the same day along with Mr.Ganesan, was promoted to the post of Leading Fireman only on 24.02.2019. Mr.S.Jeevans (S.No.575) in the said list was promoted as Leading Fireman on 26.05.2014 and all the other persons in the list were promoted on various dates between 2011 and 2019. Under these circumstances, the department has taken an effort to set right the seniority, so as to eradicate the discriminations among these employees.

20.Equal opportunity in promotions is the constitutional mandate to be followed scrupulously by the competent authorities, but, as far as the employees are concerned, promotion per se cannot be claimed as a right. However, consideration for promotion is a fundamental right of an employee. No employee can claim promotion as a matter of right and, only when the administrative decision is taken to grant promotion and a panel is prepared, then the names of all the eligible persons are to be considered strictly in accordance with the rules and by following the seniority.

21.This being the principles to be followed, this Court is of the considered opinion that constitution of promotion board in accordance with the rules need not be considered, in view of the fact that the rule for promotion to the post of Station

Officer is amended and simultaneously a revised State wide seniority list is under preparation, which is to be finalised as expeditiously as possible.

22.A question arose, whether the new State wide seniority list can be prepared by the Government in this regard. It is pertinent to note that the long standing grievance of the senior most employees working in the category of Fireman were considered by the State and the fact remains, junior most Firemen in many districts were promoted to the post of Leading Fireman and the seniors are made to work under their juniors. This created hot burning issue among the employees and the morale in the uniformed services would be affected. Therefore, once the Government identified the discrimination in the matter of promotion to the higher posts and such a discrimination is to be eliminated, then the Government is empowered to change the policy regarding promotions. While changing the policy regarding promotion, the only point to be considered by the authorities is with regard to the protection of the service rights in the respective cadres, in which the existing employees work. As stated earlier, further promotion can never be claimed as a matter of right. However, the existing right in the post in which they are working is to be protected. The service rights in respect of the present post held by the petitioners and the impleaded respondents are alone to be protected and in respect of the future promotion, the change of policy taken by the Government cannot have any implications with reference to the existing right of the employees. The employees cannot claim any other right other than the right ensured in respect of the post in which they are working. Thus, the Government has got powers to change the policy regarding promotions and it is an administrative prerogative of the Government and such a right of the Government would not be interfered even by the Courts. Courts cannot normally interfere with the policy of the Government in the matter of promotion and only if such policy is unconstitutional, then alone the Courts can interfere.

23.In the present case on hand, the Government took a policy to change the nomenclature of the promotion, in view of the fact that large number of Fireman, who are working in the same cadre for more than 20 years are deprived of their promotion to the post of Leading Fireman and a considerable number of Fireman, who served for about 8-10 years were promoted to the post of Leading Fireman and the seniors were superseded not only in the post of Leading Fireman and even to the post of Station Officer.

24.This Court is of the view that undoubtedly, it is a serious anomaly, which ought to have been rectified long back. However, the department has not taken effective steps on account of laxity in settling this issue and such anomalies ought to

have been rectified at the first instance and the delay has caused multiplicity of litigations and now the department is struggling to settle the issue, inspite of the directions issued by this Court, as many number of such persons, who are juniors, filed writ petitions for stalling the preparation of State wide seniority list and for granting promotion to the post of Section Officer.

25.The bird's view of the draft State wide seniority list reveals that many such cases of juniors getting promoted to the post of Leading Fireman is able to be identified and many seniors in the cadre of Fireman are deprived of their promotion to the post of Leading Fireman for long years and their further promotion to the post of Station Officer is also curtailed. Under these circumstances, a revised State wide seniority list with reference to the amended rules is just and necessary. This Court has earlier directed to prepare State wide seniority list and thereafter, review all the temporary promotions granted, by preparing the regular seniority list for promotion to the post of Station Officer.

26.The very contention raised on behalf of the writ petitioners as well as the impleaded respondents that in respect of the earlier vacancies, the old rule should be followed for promotion to the post of Stating Officer, cannot be accepted, because the writ petitioners and the impleaded respondents are admittedly working in the post of Leading Fireman and their service rights in the said post alone is to be protected and with reference to further promotion, they have no right absolutely. Therefore, the old rule, which was prevailing in the year 2016-17, cannot be followed in respect of the vacancies arose during the particular year. The fact remains that the posts, which remained vacant in the year 2016-17 were not filled up on regular basis and temporary promotions were granted. The temporary employees cannot claim for seniority based on the fact that they served in the post. This being the rules in force, with reference to the temporary promotions, all those temporary employees cannot claim any right in respect of such promotions and their rights are to be considered in the regular panel, with reference to their eligibility, seniority and qualifications in accordance with the rules.

27.In this regard, it is relevant to cite the Judgement of the Hon'ble Supreme Court in the case of Union of India and others vs Krishna Kumar and others reported in (2019) 4 SCC 319, wherein the Hon'ble Supreme Court made the following observations:

10.In considering the rival submissions, it must, at the outset, be noted that it is well-

settled that there is no vested right to promotion, but a right be considered for promotion in accordance with the Rules which prevail on the date on which consideration for promotion takes place. This Court has held that there is no rule of universal application to the effect that vacancies must necessarily be filled in on the basis of the law which existed on the date when they arose. The decision of this Court in Y.V. Rangaiah Vs. Sreenivasa Rao¹ has been construed in subsequent decisions as a case where the applicable Rules required the process of promotion or selection to be completed within a stipulated time frame. Hence, it has been held in H.S. Grewal Vs. Union of India² that the creation of an intermediate post would not amount to an interference with the vested right to promotion. A two-Judge Bench of this Court held thus:

"13.....Such an introduction of an intermediate post does not, in our opinion, amount to interfering with any vested rights cannot be interfered with, is to be accepted as correct. What all has happened here is that an intermediate post has been created 1 (1983) 3 SCC 284 2 (1997) 11 SCC 758 prospectively for future promotions from Group-B Class-II to Group-A Class-I. If, before these rules of 1981 came into force, these officers were eligible to be directly promoted as Commandant under the 1974 rules but before they got any such promotions, the 1981 Rules came in obliging them to go through an intermediate post, this does not amount to interfering with any vested rights."

11. In Deepak Agarwal Vs. State of Uttar Pradesh³, this Court observed thus:

"26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the 'rules in force' on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. 3 (2011) 6 SCC

725 Unless, of course, the applicable rule, as in Y.V. Rangaiah's case (supra) lays down any particular time frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants have been taken away by the amendment.

27.The judgments cited by learned counsel for the appellants namely B.L. Gupta Vs. MCD (supra), P. Ganeshwar Rao Vs. State of Andhra Pradesh (supra) and N.T. Devin Katti & Ors. Vs. Karnataka Public Service Commission & Ors (supra) are reiterations of a principle laid down in Y.V. Rangaiah's case (supra)."

12.Recently, in State of Tripura Vs. Nikhil Ranjan Chakraborty⁴, another two-Judge Bench of this Court held thus:

"9.The law is thus clear that a candidate has the right to be considered in the light of the existing rules, namely, "rules in force on the date" the consideration takes place and that there is no rule of absolute application that vacancies must invariably be filled by the law 4 (2017) 3 SCC 646 existing on the date when they arose. As against the case of total exclusion and absolute deprivation of a chance to be considered as in the case of Deepak Agarwal (supra), in the instant case certain additional posts have been included in the feeder cadre, thereby expanding the zone of consideration. It is not as if the writ petitioners or similarly situated candidates were totally excluded. At best, they now had to compete with some more candidates. In any case, since there was no accrued right nor was there any mandate that vacancies must be filled invariably by the law existing on the date when the vacancy arose, the State was well within its rights to stipulate that the vacancies be filled in accordance with the Rules as amended. Secondly, the process to amend the Rules had also begun well before the Notification dated 24.11.2011."

28.The Hon'ble Apex Court in the above Judgement held that there is no vested right for promotion, but a right be considered in accordance with the rules which prevails on the date on which consideration for promotion takes place. The Hon'ble Supreme Court reiterated the earlier Judgement in the

case of Deepak Agarwal vs State of U.P and held that the right to be considered in the light of the existing rules can be claimed with reference to the promotion, which implies the "Rules in force on the date" the consideration took place. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Thus, there cannot be any retrospective consideration, with reference to the prevailing rules which were amended subsequently.

29.The Hon'ble Supreme Court also relied on the Judgement in the case of State of Tripura vs Nikhil Ranjan Chakraborty and held that a candidate has the right to be considered in the light of the existing rules, namely, "rules in force on the date" the consideration takes place and that there is no rule of absolute application that vacancies must invariably be filled by the law existing on the date when they arose, in view of the fact that the year of vacancy have no implications with reference to the date of consideration to be made for promotion.

30.The admitted fact is that in respect of of the vacancies arose during the years 2016-17, 2017-18 and 2018-19, as of now, no regular panel has been prepared and consideration has not been shown. However, the rule was amended with effect from 27.03.2019. Now, the revised State wide seniority list is to be finalised and thereafter, all the eligible persons are to be considered for promotion to the post of Station Officer strictly in accordance with the amended rules and by following the revised State wide seniority list, which is to be finalised.

31.This being the factum, the following orders are passed:

(1) The relief as sought for in the writ petitions stand rejected.

(2) The respondents R1 to R5 are directed to circulate the Draft State Vide Seniority List now placed before this Court, by publishing the same in the Notice Boards of all the Fire Service Offices across the State of Tamil Nadu and call for objections from the employees concerned. The said communication is directed to be made within a period of one(1) week.

(3) All the petitioners, impleaded respondents and all other employees concerned are at liberty to submit their respective objections with reference to the State Vide Seniority List within a period of fifteen (15) days from the date of Publication of the Draft State Vide Seniority List in their respective offices.

(4) On receipt of the objections, if any submitted to the competent authority, the authorities competent are bound to consider the objections with reference to the amended rules and based on the service particulars of the individual employees and thereafter, publish the final State Vide Seniority List within a period of six(6) weeks therefrom.

(5) After publication of the final State Vide Seniority List, the respondents R1 to R5 / competent authorities are bound to prepare the regular panel for promotion to the Post of Station Officer and accordingly, grant promotions strictly in accordance with the amended rules and with reference to the service particulars of the individual employees.

(6) At the time of granting regular promotions, the temporary promotions already granted to the employees are to be reviewed in consonance with the State Vide Seniority List and all suitable orders are to be passed without causing any undue delay.

(7) The respondents R1 to R5 are directed, not to revert the employees already working in the cadre of Leading Fireman on account of the revision of the State Vide Seniority List. It is made clear that the service rights in respect of the present post, in which, such employees are working, are to be protected.

32. Accordingly, the Writ Petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

33. As far as the Contempt Petitions are concerned, this Court is of the considered opinion that there is a delay in completion of process on account of various factors, which are convincing. Hence, this Court is of the view that the respondents have not committed any contempt of Courts willfully. Thus, the Contempt Petitions stand closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Home (Police XVIII) Department,
Fort St. George, Chennai - 600009.

2. The Secretary to the Government,
The Personnel and Administrative
Reforms Department,
Fort St. George, Chennai - 600009.

3.The Chairman/Director,
State Recruitment and Promotion Board,
Directorate of Fire and Rescue Services,
Egmore, Chennai - 600008.

4.The Director of Fire and Rescue Services,
O/o. Directorate of Fire and
Rescue Services,
Egmore, Chennai - 600008.

5.The Joint Director, Northern Region,
O/o. Directorate of Fire and
Rescue Services,
Egmore, Chennai - 600008.

6.The Deputy Director, North Western Region,
Fire and Rescue Service Department,
Vellore.

+1cc to Mr.G.Sankaran, Advocate Sr.14505

+1cc to Mr.L.Chandrakumar, Advocate Sr.14496

+2cc to Mr.N.S.Nandakumar, Advocate Sr.14445

W.P.Nos.16219 & 28407 of 2018
and

Cont.P.Nos.525 & 574 of 2019
and

W.M.P.Nos.19313, 19314, 33123 & 33124 of 2018

mr[co]
srg 13/03/2020

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