



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No. 4067 of 2015

and

M.P(MD) .Nos.1 and 2 of 2015

WEB COPY

A.Selvam

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep by its Secretary to Home Department,
Fort St.George, Chennai-600 009.
2. The Director of Fire and Rescue Services,
Tamilnadu,
17, Rukumani Lakshmipatty Road,
Egmore, Chennai-600 008.
3. The Deputy Director of Southern Region,
Fire and Rescue Services,
Madurai-01.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 2nd respondent in Na.Ka.No.12265/A1/2014 dated 25.02.2015 and quash the same and consequently, direct the respondents No.2 to 3 to give the promotion for the post of Station Officer on the basis of the 39(a)(i) the General Rules of Tamil Nadu State and Subordinate Services Rules and posted to the Fire and Rescue services.

For Petitioner : Mr.A.Rajaram
For Respondents : Mr.G.Arjunan
Government Advocate

ORDER

The relief sought for in the present writ petition is to redress the grievances of the writ petitioner in the matter of promotion to the post of Station Officer, on the basis of Rule 39(a)(i) of the General Rules of Tamil Nadu State and Subordinate Services Rules.

2.The grievances of the writ petitioner is that his junior were promoted to the post of Station Officer and he was not promoted. The petitioner was appointed as Fireman on 01.06.1984 and promoted as Leading Fireman on 26.05.2009. Therefore, promotion to the post of



Station Officer was not considered on par with his junior. Thus, the petitioner is constrained to move the present writ petition.

3.Regarding the seniority dispute of Leading Fireman and Station Officer, a new procedure has been adopted by fixing State Wide Seniority and the Principle Bench of Madras High Court also considered the said issue elaborately and passed an order in W.P.Nos.16219 and 28407 of 2018, dated 19.02.2020. The relevant portions of the order are extracted hereunder:

"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 <http://www.judis.nic.in> W.P.Nos.16219 & 28407 of 2018 and Cont.P.Nos.525 & 574 of 2019 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 <http://www.judis.nic.in> W.P.Nos.16219 & 28407 of 2018 and Cont.P.Nos.525 & 574 of 2019 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.<http://www.judis.nic.in> W.P.Nos.16219 & 28407 of 2018 and Cont.P.Nos.525 & 574 of 2019 (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, <http://www.judis.nic.in> W.P.Nos.16219 & 28407 of 2018 and Cont.P.Nos.525 & 574 of 2019 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 the 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."

4.In view of the above judgment, the case of the petitioner is also to be considered along with all other eligible candidates, who all are aspiring to secure promotion to the post of Station Officer. It is made clear that the case of the petitioner is to be considered in accordance with the directions issued by this Court as well as in consonance with the Rules in force. Accordingly, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The Secretary to Home Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The Director of Fire and Rescue Services,
Tamilnadu,
17, Rukumani Lakshmipatty Road,
Egmore, Chennai-600 008.
3. The Deputy Director of Southern Region,
Fire and Rescue Services, Madurai-01.

+1 CC to M/s.A.RAJARAM, Advocate (SR-23243[F] dated 30/11/2020)

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PV(CO)

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