

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2021

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THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 4640 of 2012

K.Chelladurai

... Petitioner

-vs-

The Director,
Tamil Nadu Fire and Rescue Services,
Egmore, Chennai - 600 008.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the respondent to promote the petitioner regularly as Station Fire Officer and regularise the petitioner's service in the same post and to permit the petitioner to retire as Station Fire Officer.

For Petitioner : Mr.S.Ilamvaludhi

For Respondent : Mrs.K.Bhuvaneswari
Additional Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the respondent to promote the petitioner regularly as Station Fire Officer and regularise the petitioner's service in the same post and to permit the petitioner to retire as Station Fire Officer.

2. The petitioner was working as Leading Fire Man at the respondent department. His next avenue of promotion is Station Fire Officer. For the purpose of giving promotion as Station Fire Officer for the year 2011-2012, according to the respondent, there had been estimated vacancies of 100. Therefore, 100 eligible persons in the feeder category were listed and the said list was approved by the Competent Authority by proceedings of Director concerned dated 30.12.2011. In the said list, the petitioner's name is found at Serial No.88.

3. It is also to be noted that, the petitioner was superannuating on 31.03.2012 and before his superannuation, in

the fire station, where the petitioner was working, he had been placed as In-charge Station Fire Officer and therefore, as an In-charge Station Fire Officer, he was working just prior to his superannuation.

4. In this context, the petitioner in order to get promotion at least on temporary basis, by invoking rule 39(a) (i) of the Tamil Nadu State and Sub-ordinate Service Rules, has made a request on 05.02.2012 to the respondent and since the same has not been considered, the petitioner had filed this Writ Petition with the aforesaid prayer.

5. Mr.S.Illamvaludhi, learned counsel appearing for the petitioner would rely upon the order dated 17.09.2010 passed by the Director, i.e., respondent, who having invoked the rule 39(a)(i) of the Tamil Nadu State and Sub-ordinate Service Rules, has given such ad hoc or temporary promotion to one Deivanayagam as Station Fire Officer. Therefore, such adhoc promotion sought for by the petitioner could have been given to the petitioner in view of his superannuation on 31.03.2012. However, the said adhoc promotion has not been given to the petitioner, hence, he seeks indulgence of this Court to give a direction to the respondent to consider the plea of the petitioner which has been projected in his representation dated 05.02.2012 to confer such status of temporary promotion on notional basis as that would be helpful to the petitioner to have a minimum enhancement of pensionable benefits.

6. Per contra, Mrs.K.Bhuvaneswari, learned Additional Government Pleader appearing for the respondent, having relied upon the averments made in the counter affidavit, has submitted that, though, there has been an estimated vacancies of 100 for the year 2011-2012 and for which, the list was prepared including the 100 eligible persons in the feeder category including the petitioner, as on 31.03.2012, the date on which, the petitioner superannuated, there were only 46 vacancies arose and therefore, the petitioner since has been placed at Serial No.88 could not reach the turn and not only the petitioner, several other persons in this regard who were also due to retire in various capacities in the year 2012 also retired from service without reaching promotional avenue to the post of Station Fire Officer and therefore, such kind of promotion cannot be expected to be given to the petitioner, since he admittedly retired on 31.03.2012 and as on that day, there were only 46 vacancies available and since the petitioner was in Serial No.88, he could not reach the turn. Therefore, his plea to consider for promotion does not arise.

7. The learned Additional Government Pleader appearing for the respondent would also submit that, insofar as the invocation of rule 39(a)(i) of the Tamil Nadu State and Sub-ordinate Service Rules is concerned, the same has been invoked in respect of one Deivanayagam as that might have been an isolated case and the same cannot be compared with each and

every incumbent like the petitioner, therefore, such request cannot be considered and granted by the respondent as that could have been made only due to administrative contingency, she submitted.

8. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

9. As has been rightly pointed out by the learned Additional Government Pleader appearing for the respondent that, though the estimated vacancies was 100, based on which, for the year 2011-2012, a list of 100 persons from feeder category has been prepared by proceedings dated 30.12.2011, where the petitioner has been named in Serial No.88, it cannot confer automatic right on the petitioner to get the promotion, if his service is not continued beyond 31.03.2012 because of his superannuation.

10. Had he been continued in service beyond 31.03.2012 for a longer period, certainly he would have reached the position or turn, i.e., at 88 and earned the promotion.

11. However, as on 31.03.2012, since there were only 46 vacancies arose, it cannot be expected that, the petitioner's turn would also come either on regular basis.

12. But sometime, the petitioner, before superannuation, had been put In-charge of the Station Fire Officer when he had been working as Leading Fire Man and in that position, i.e., In-charge of Station Fire Officer, he was working till his superannuation.

13. It is also to be noted that, in such contingency, it is for the employer, i.e., respondent herein can very well invoke 39(a)(i) of the Tamil Nadu State and Sub-ordinate Service Rules and such invocation has already been effected and in this regard, at least by the proceedings dated 17.09.2010 it was issued in favour of one Deivanayagam which has been quoted by the learned counsel appearing for the petitioner.

14. Though a defence has been taken by the learned AGP appearing for the respondent by relying upon para 7 of the counter affidavit stating that, Deivanayagam was given temporary promotion on administrative reason by then Director of Fire and Rescue Services, seeking similar order for petitioner is not a feasible one, this Court feels that, it is not an irregular, illegal or illogical demand made by the petitioner in view of the facts that the petitioner admittedly having been put In-charge as Station Fire Officer before his superannuation. Therefore, such kind of benefit of conferring the temporary promotion by invoking rule 39(a)(i) could have

very well been extended in respect of the petitioner also.

15. 'X' may be the Director or 'Y' may be the Director, the order passed by the Director, i.e., respondent can very well be taken as a precedent for comparison to extend similar relief to the employee who is similarly placed. Therefore, it cannot be stated that, equals cannot be treated equally. Accordingly this Court is of the view that the representation given by the petitioner dated 05.02.2012 can very well directed to be considered.

16. Accordingly, this writ petition is disposed of with the following orders:

(i) That there shall be a direction to consider the request of the petitioner's representation dated 05.02.2012 and accordingly, decide the same on merits and in accordance with law.

(ii) While deciding the same, the power of the respondent to invoke 39(a)(i) of the Tamil Nadu State and Sub-ordinate Service Rules can be explored and in this context, the fact that the petitioner had been put In-charge as Station Fire Officer before his superannuation shall also be taken into account. By taking all these aspects, a reasoned order can be passed by the respondent on the representation of the petitioner dated 05.02.2012 as indicated above within a period of three months from the date of receipt of a copy of this order."

17. With these directions, this Writ Petition is disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

vji

To

The Director,
Tamil Nadu Fire and Rescue Services,
Egmore, Chennai - 600 008.

+1cc to Mr.S.Ilamvaludhi, Advocate SR.No.20485

+1cc to Government Pleader SR.No.21027

W.P. No. 4640 of 2012

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GM (13/07/2021)

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