



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.03.2022**

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P (MD)No.3262 of 2022

and

W.M.P (MD)No.2867 of 2022

P.Kandeepan

: Petitioner

.vs.

1.The Chairman/The Director General
of Police,
The Tamil Nadu Uniformed Services
Recruitment Board,
Chennai.

2.The Director,
Directorate of Fire Services and Rescue Department,
No.17, Rukmani Lakshmipathi Salai,
Egmore,
Chennai-600 008.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to draw seniority list as per merit and marks at the time of selection by considering the representations of the petitioner dated 14.12.2021.

For Petitioner

:Mr.J.Anand Kumar
for Mr.Sekar

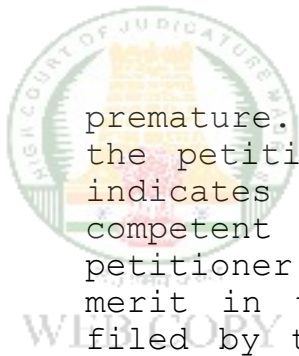
For Respondents

:Mr.M.Ramesh
Government Advocate

ORDER

The relief sought for in the present writ petition is to direct the respondents to draw the seniority list as per merit and marks at the time of selection, by considering the representation of the petitioner dated 14.12.2021.

2.The learned Government Advocate appearing for the respondents, at the first instance, made a submission that the seniority list is yet to be drawn. Therefore, this writ petition is



premature. Even as per the relief sought for in the writ petition, the petitioner seek a direction to draw the seniority list which indicates that the seniority list is yet to be drawn by the competent authority. However, the apprehension of the writ petitioner is that whether the list is to be prepared based on the merit in the selection list. In this regard, counter affidavit filed by the respondents reveals that the seniority list will be prepared, as per the Rules in force and specifically Section 40(1) of the Tamil Nadu Government Servants (Condition and service) Act. In this regard, Para Nos.6 and 7 of the counter affidavit are relevant to extract hereunder:

"6.The category of fireman is the feeder category for the next level of promotion viz., Leading Fireman / Fireman Driver. Earlier as per the Tamil Nadu Fire Sub ordinate Service rules promotion lists shall be prepared on Divisional basis for the post of Leading Fireman/ Fireman Driver / Driver Mechanic. Subsequently, certain Firemen have challenged the aforesaid rules before the Hon'ble High Court of Madras and their prayer is for effecting promotions to the post of Leading Fireman / Fireman Driver / Driver Mechanic by following the original seniority of firemen ie., enlistment and state seniority. A proposal to follow enlistment and state seniority was sent to the Government. The Government vide G.O.Ms.No.179 Home (Pol.17) Department dated 20.03.2019 issued necessary amendment to the Tamil Nadu Fire Sub-ordinate service rules. The extract of amendment is as follows:

"iii)The Seniority of persons recruited to the post of Fireman through employment exchanges at District level shall be as per the state seniority based on the date of joining in the said post. The seniority of persons recruited to the post of Fireman from the year 1996 through Tamil Nadu Uniformed Services Recruitment board shall be as per the selection list furnished by the Tamil Nadu Uniformed Services Recruitment Board."

The above said amendment takes effect from the date of publication of the above said rules in the Government gazette. The amendment to rules were published in the Gazette notification dated 27.03.2019. It is pointed out that prior to the amendment, the promotion to the category of Leading Fireman/Fireman Driver/Driver Mechanic was carried out based on district seniority as per the rules in force at that time.

7.With reference to para 6 to 10 of the affidavit, it is submitted that the Section 40(1) of Tamil Nadu Government Servants (Conditions of Service) Act, 14/2016 read as follows:



"Section 40(1): The seniority of a person in a service, class category or grade shall, unless he has been reduced to a lower rank as punishment, be determined in the order of his placement in the list prepared by the recruitment agency or appointing authority, as the case may be, in accordance with the rule of reservation and the order of rotation specified in Schedule-V, where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority."

It is submitted that the Tamil Nadu Uniformed Services Recruitment Board is an agency for selection of candidates for the posts of police constables jail warden and firemen. Moreover, the Tamil Nadu Uniformed Services Recruitment Board selected the candidates for appointment to the aforesaid posts based on their willingness and marks obtained. As per Tamil Nadu Fire Sub-ordinate Service Rules, the selected candidates have to pass the prescribed test at the time of completion of their foundational training in firemen post. Under the above circumstances as stated above, the seniority in firemen category is assigned as per G.O.Ms.No.179 Home (Pol.17) Department dated 20.03.2019 and also as per Section 40(1) of Tamil Nadu Government Servants (Conditions of Service) Act, 14/2016."

3.It is needless to state that while preparing the seniority list, the authorities competent are bound to follow the procedures in accordance with the rules in force and based on the service particulars of the employees.

4.With these clarification, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

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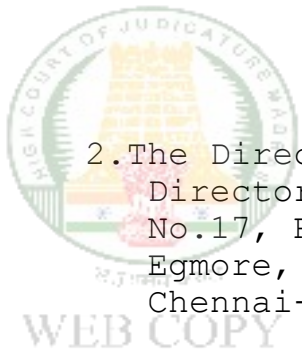
/ /2022

Sub Assistant Registrar(CS)

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To

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ORDER MADE IN
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W.M.P (MD) No.2867 of 2022
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