



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.7459 of 2019

A.Mookkan

... Petitioner

-vs-

1.The Government of Tamilnadu,
Rep., by its Secretary to Home Department,
Fort St. George, Chennai-600 009.

2.The Director of Fire and Rescue Services,
Tamilnadu, 17, Rukmani Lakshmipathy Road,
Egmore, Chennai-600 008.

3.The Deputy Director of Fire Service,
South Zone, Madurai.

4.The Divisional Officer,
O/o. The Divisional Officer of Fire and
Rescue Services Department,
Tirunelveli.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the proceeding of the 2nd respondent in RC No.21293/B3/2018 dated 27.02.2019 and to quash the same and consequently direct the respondents to grant notional promotion to the petitioner to the post of Station Fire Officer with effect from the date when it was due and consequentially to pay the amount due to him and to revise his retirement and pensionary benefits accordingly within the period that may be fixed by this Court.

For Petitioner : Mr.V.Kannan

For Respondents : Mr.N.Satheesh Kumar,
Additional Government Pleader

O R D E R

The claim of the writ petitioner for promotion to the post of Station Fire Officer with effect from the date on which it was due and consequently, pay the arrears of retirement benefits and pensionary benefits was rejected by the 2nd respondent in proceedings



dated 27.02.2019. Thus, the petitioner is constrained to move the present writ petition.

2.The petitioner was appointed as Fireman on 23.07.1979. He was promoted to the post of Leading Fireman on 26.06.2004. The petitioner was allowed to retire from service as Leading Fireman on attaining the age of superannuation on 31.05.2010.

3.After retirement, the petitioner filed W.P.(MD) No.4364 of 2013 with a prayer to quash the order passed by the 2nd respondent therein dated 23.01.2013 and direct respondents 2 to 4 therein to revise and regularize the service seniority and give notional promotion to the post of Leading Fireman from the year 1989 along with all consequential benefits. The writ petition was dismissed by this Court on 12.03.2018 with the following observations:-

"5.The relief sought is to grant regularisation of services including Seniority for notional promotion in the post of Leading Fireman. Even as per the affidavit filed in support of the writ petition the writ petitioner was actually promoted as Leading Fireman with effect from 26.06.2004. Now the petitioner claims that he ought to have promoted to the post of Leading Fireman with effect from 1989. However, the present writ petition is filed after a lapse of 24 years from the date of which, the petitioner claims that his claim for promotion ought to have been considered by the respondents.

6. ...

7. ...

8.Retrospective regularisation after a lapse of 24 years cannot be claimed by the writ petitioner. The writ petitioner is seeking retrospective regularisation in the post of Leading Fireman by granting notional benefits with effect from the year 1989 onwards. The said claim cannot be now considered more specifically after a lapse of 24 years and after the retirement of the writ petitioner.

9.This Court is of an opinion that the promotion can never be claimed as a matter of right. Consideration for promotion alone is fundamental right. Even if the writ petitioner was not considered during the appropriate time, the writ petitioner ought to have approached the proper forum during the relevant point of time.

10.The writ petition is filed in the year 2013 and the claim of the writ petitioner for notional promotion is from the year 1989. Thus, there is an enormous delay on the part of the writ petitioner, even to claim for notional promotion. Thus the writ



petition is liable to be rejected on the ground of latches also.

11.This apart, the benefit as applicable was already disbursed to the writ petitioner and the writ petitioner has not made out any ground in respect of the claim of retrospective regularisation and notional promotion. In these circumstances, this Court is of an opinion that the writ petitioner had not established any legal right to consider his right of retrospective regularisation and notional promotion with effect from 1989 in the post of Leading Fireman. Accordingly, this Writ Petition is dismissed. No costs.

4.The petitioner filed Writ Appeal in W.A.(MD) No.1460 of 2018 and the Hon'ble Division Bench of this Court directed the petitioner to submit a fresh representation seeking notional promotion and further directed the authorities to consider the representation on merits. Based on the order passed in the writ appeal, the petitioner again submitted a representation on 10.12.2018, that was considered on merits by the Director of Fire and Rescue Services and the order impugned dated 27.02.2019 was issued rejecting the claim of the writ petitioner mainly on the ground as stated in paras 5 and 6, which read as follows:-

"5.The Fireman fit for promotion to the post of Leading Fireman being District Level Seniority and also merit and ability, seniority being considered only merit and ability are equal vide rule 2 (b) (i) & (ii) of Tamil Nadu Fire Sub-Ordinate Service Rules. Hence, the promotion for the post of Leading Fireman awarded to Thiru.A.Mookkan, L.F.4952 (Retd), was in order based on District wise seniority of the above said rules. He joined in the post of Leading Fireman was 26.06.2004 based on the C List approved for the post Leading Fireman in the District Office, Tirunelveli. Based on his representation vide ref. 2nd cited it was verified with the records of Thiru.S.Ramaiah and found that he was promoted as Leading Fireman on 05.03.1996 as per order of Deputy Director, Central Region, Trichy. Hence, the question of belated promotion as Leading Fireman does not arise. Further, Leading Fireman fit for promotion to the category of Assistant Station Officer/Station Officer being State wise seniority based on the date of promotion as Leading Fireman vide rule 2(b) (i) & (ii) of Tamil Nadu Fire Sub-ordinate Service Rules. Hence, Thiru.A.Mookkan, L.F.4952 Retd., was a junior most person in the category of Leading Fireman.

6.Therefore, the petitioner's (Thiru.A.Mookkan, L.F.4952 Retd.,) grievance of seeking notional



promotion as Station Officer with monetary benefits vide reference 2nd cited being rejected as devoid of merits."

5.This Court is of the considered opinion that the original claim set out by the petitioner in the year 2013 itself was highly belated and on that ground, the writ petition was dismissed in the year 2018. The Hon'ble Division Bench has gone into the merits of the matter and directed the petitioner to submit a fresh representation for considering the same by the authorities. Therefore, once again the authorities have considered the case of the petitioner on merits and again formed an opinion that the service records of the petitioner were verified and his claim in comparison with his junior was also verified and ultimately found that the petitioner was the junior most person in the category of Leading Fireman. When the Department found that the petitioner was the junior most person in the category of Leading Fireman as per his service records, now again after a lapse of many years, the petitioner has chosen to file the present writ petition with a prayer for retrospective promotion.

6.The petitioner was allowed to retire from service in the year 2010. The first writ petition was filed in the year 2013 and thereafter, the writ appeal was filed in the year 2018 and the authorities considered the representation and rejected the same in the year 2019 and under these circumstances, the initiation of the writ petitioner for setting out the claim itself is highly belated and further it is found that the petitioner was not eligible, as he was found that he was the junior most person in the cadre of Leading Fireman. This being the factum established, this Court is of the opinion that the petitioner is not entitled for the relief as such sought for in the present writ petition and there is no infirmity with reference to the reasonings given in the impugned order dated 27.02.2019.

7.Accordingly, this Writ Petition stands dismissed. However, there shall be no order as to costs.

Sd/-

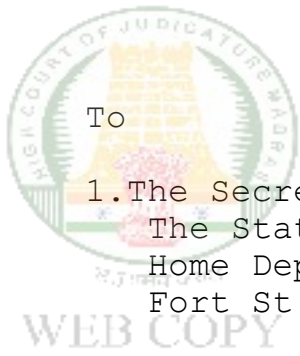
Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

abr



To

- 1.The Secretary to Government,
The State of Tamilnadu,
Home Department,
Fort St. George, Chennai-600 009.
- 2.The Director of Fire and Rescue Services,
Tamilnadu, 17, Rukmani Lakshmipathy Road,
Egmore, Chennai-600 008.
- 3.The Deputy Director of Fire Service,
South Zone, Madurai.
- 4.The Divisional Officer,
O/o. The Divisional Officer of Fire and
Rescue Services Department,
Tirunelveli.

+1 CC to M/s.SPL GP (SR-7766[F] dated 22/02/2022)

W.P. (MD) No.7459 of 2019
21.02.2022

RK(02/03/2022) 5P 6C