



W.P. (MD) No. 8713 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.06.2023

PRONOUNCED ON : 28.06.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P(MD).No.8713 of 2023
and WMP(MD).No.7984 of 2023

Balamurugan

...Petitioner

Vs

1.The Chairman
Tamil Nadu Uniformed Services Recruitment Board
Old Commissioner of Police Office Campus
Pantheon Road
Egmore
Chennai 600 008

2.The Director General of Police/Director
Fire & Rescue Services
Chennai – 8

3.The Commissioner of Police
Madurai City
Madurai

...Respondents

Prayer : Writ Petition has been filed under Article 226 of Constitution of India to issue a writ of Mandamus, directing the respondents to allow the petitioner to



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participate in the further selection process of training and consequently appoint him for the post of Firemen in the Tamil Nadu Uniformed Services Recruitment Board.

For Petitioner : Mr.R.Venkatesan

For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by Mr.S.P.Maharajan
Special Government Pleader

ORDER

**(MADE BY D.KRISHNAKUMAR, J.
and
R.VIJAYAKUMAR, J.)**

The writ petitioner who is an aspirant to the post of Grade-II Firemen had made an application for the same in the year 2020. He was not considered for the said post due to his prior involvement in a criminal case.

2.The candidate had filed WP(MD).No.10927 of 2022 for a mandamus to direct the official respondents to appoint the petitioner as Grade-II Firemen in the Tamil Nadu Uniformed Services Recruitment Board 2020 forthwith. The writ Court after hearing both the parties, issued a positive direction to the Director General of Police/Director, Fire and Rescue Services to appoint the candidate to the post of Grade-II Firemen for the year 2020 within a period of



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four (4) weeks from the date of receipt of a copy of the order. However, the Writ Court had made it clear that the petitioner shall not seek for seniority or other monetary benefits, on par with other successful candidates under the common recruitment notification and that his services will be reckoned from the date of the present appointment order. This order was challenged by the official respondents in WA(MD).No.1496 of 2022.

3.The Division Bench by its order dated 10.01.2023 set aside the order of the writ Court and directed the appellants in the writ appeal to consider the candidature of the writ petitioner for the post of Grade-II Firemen in the next selection process. A further clarification was issued in the writ appeal order that the candidate should not claim any seniority or other monetary benefits on par with others who are selected in the year 2020. Therefore, it is clear that the Division Bench has not directed the authorities to consider the candidature of the writ petitioner for the selection year 2020.

4.The writ petitioner taking advantage of the clarification issued in the writ appeal order, has sent a representation to the Director General of Police/Director, Fire & Rescue Services, Chennai on 14.02.2023 to permit him to participate in the further selection of process of training and consequently appoint him for the post of Firemen in the Tamil Nadu Uniformed Services



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Recruitment Board for the selection year 2020 itself. Since the said request was not considered, the petitioner had filed W.P(MD).No.8713 of 2023 for a mandamus to the official respondents to allow him to participate in the further selection process and consequently appoint him.

5. When the writ petition came up before the writ Court, the learned Additional Advocate General who had appeared on behalf of the official respondents had contended that the Division Bench has directed the appointing authorities to consider his candidature only in the next selection process and therefore, the request of the candidate to permit him to participate in the further selection process of the training for the year 2020 is not maintainable. However, the learned counsel for the writ petitioner had relied upon the clarification issued by the Division Bench and has contended that the Division Bench has permitted him to participate in the selection process of the year 2020 with a rider that he should not seek seniority or monetary benefits. Since the writ Court felt that the order in WA(MD).No.1496 of 2022 dated 10.01.2023 has to be clarified only by the Division Bench, after obtaining orders from the Hon'ble Acting Chief Justice, the present writ petition is listed before the same Division Bench which passed order in WA(MD).No.1496 of 2022.



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6. The learned counsel appearing for the writ petitioner had contended that the clarification issued by the Division Bench in the second part of the operative portion in WA(MD).No.1496 of 2022 dated 10.01.2023 permits the candidate to participate in the training for the selection year 2020 with a condition to forego the seniority and monetary benefits. Therefore, the candidate has got a legal right to file a mandamus to allow him to participate in the further selection process for the year 2020 itself.

7. We have considered the submissions made on the side of the writ petitioner and perused the materials available on record.

8. The operative portion of the order dated 10.01.2023 in WA(MD).No. 1496 of 2022 is extracted as follows:

“The order of the learned Single Judge made in W.P(MD).No.10927 of 2022 is set aside and the appellants are directed to consider the respondent/writ petitioner's candidature for the post of Grade-II Firemen in the next selection process. It is made clear that if the petitioner is selected for the said, he shall not seek for seniority or other monetary benefits, on par with the successful candidates under the common recruitment notification for the year 2020 and that his services will be reckoned from the date of the appointment order.

8. With the above modification, this Writ Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.”



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9.The writ Court in WP(MD).No.10927 of 2022 by its order dated 26.08.2022 has given a positive direction to the appointing authority to appoint the writ petitioner in the current selection process of the year 2020. The said order has been specifically set aside by the Division Bench in the first part of the operative portion of the order dated 10.01.2023 in WA(MD)No.1496 of 2022. Therefore, a direction has been issued to consider the candidate in the next selection process. Hence, there is no doubt whatsoever that the candidate cannot be considered for the selection process of the year 2020. Some times the candidates who are selected in the next selection process also demand seniority on the ground that they were wrongly rejected in the previous selection process. Only to avoid such a situation, a clarification was issued by the Division Bench in the second part of the operative portion of the order. Therefore, the clarification in the second part of the order cannot be taken advantage of by the writ petitioner seeking appointment in the selection for the year 2020.

10.When there is a clear direction by the Division Bench to the appointing authorities to consider the candidature of the writ petitioner for the next selection process, the writ petitioner has no legal right whatsoever to seek participation in the further selection process of the year 2020. When there are no legal rights, the question of issuing a mandamus does not arise.



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11. The writ petition lacks merits and the same stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

(D.K.K.J.,)

(R.V.J.,)

28.06.2023

NCC: Yes/No
Index : Yes/No
Internet : Yes/No
msa

To

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**D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR, J.**

msa

Pre-delivery Order made in
W.P(MD).No.8713 of 2023
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28.06.2023