



W.P.No.31823 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.2886 of 2012

and

M.P.No. 1 of 2012

A.Krishnaraj

... Petitioner

Vs.

1. The Director of Fire and Rescue
Services,
Chennai-8.

2. The Deputy Director of Fire and
Rescue Services,
West Zone, Coimbatore Division,
Coimbatore.

3. Fire and Rescue Service Officer,
Salem.

4. V.Arimuthu

5. S.P.Ganesan

6. S.Selvakumar

7. S.Chandrasekar

8. M.Dharmaraja

... Respondents



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Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 3rd respondent in Ooa. Mu.No.10086/Aaa.1/2011, dated 15.09.2011 and quash the same and direct the respondents to prepare select list, according to the Enlistment Seniority for the post of leading Fireman and give promotion to the petitioner.

For Petitioner : Ms. S.Thendral for
M/s.C.S.Associates

For Respondents : Mr.M.Bindran,
Addl. Govt. Pleader for R1 to R3

R4 to R8 – No appearance

ORDER

Heard *Ms.S.Thendral*, learned counsel for petitioner and *Mr.M.Bindran*, learned Addl. Government Pleaders appearing for respondents 1 to 3.

2. The Writ Petition is filed challenging the impugned order of 3rd respondent dated 15.09.2011. By the said order, the respondents 4 to 8 were placed above the Writ Petitioner in the order of seniority.

3. The case of petitioner is that the petitioner as well as respondents 4 to 8 joined service on the same day i.e. on 14.11.1988. They were appointed pursuant to sponsorship from Employment Exchange. The petitioner's Enlistment Rank is 905. Whereas the respondents 4 to 8 are ranked below



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the petitioner in the Enlistment List. Therefore, when the respondents 4 to 8 are juniors to the petitioner, they cannot be placed above the petitioner when the seniority list/panel is published.

4. The Writ Petition is resisted by the respondents 1 to 3 by filing a counter affidavit. It is their case that as per the proviso to Rule 35(aa) of Tamil Nadu State Subordinate Service Rules(from now on 'the Rules'), as between the same persons, who are appointed on a single day by a common selection, the seniority has to be fixed by taking into account of their date of birth. Accordingly, by taking into account the date of birth, the petitioner who is younger was placed below the respondents 4 to 8. Therefore, there is no error whatsoever in the fixation of seniority.

5. The learned counsel for respondents producing a memorandum dated 15.09.2011, would submit that the Enlistment Register will become relevant only if a selection is made for direct recruitment. There the Enlistment Register will reflect the merit. In the instant case, no selection was made by the respondent and therefore, *inter-se* merit is not comparable. Therefore, as per the Rule, the date of birth is followed as a criterion.

6. I have considered the rival submissions made on either side and



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perused the material records of the case.

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7. As per the memorandum, it can be seen that the seniority has to be fixed as per Rule 35(aa) of the Rules. Proviso to Rule 35 (aa) provides that in respect of persons, who are appointed to a service on the same day, the *inter-se* seniority shall be decided by taking into account the age. The Enlistment Register will have to be taken into account if only there is a selection process and when the fixation of seniority as per Rule 35(a) of the Rules. Admittedly, in the instant case, there was no selection. Names have been called for from the Employment Exchange. As per communal rotation, the petitioner and the respondents 4 to 8 have been appointed. Therefore, merely because, the ranking has been given high to the petitioner in the Enlistment Register, it cannot be said that it has been given by following the method of selection. There is no material placed before to hold that there was a consideration of inter-se merit and the petitioner was more meritorious than the respondents 4-8. In the absence thereof, proviso to Rule 35(aa) would be applicable and the respondents 1 to 3 are right in fixing the seniority by taking into account their date of birth/age. Accordingly, finding no merit in the Writ Petition, the same stands dismissed. There shall be no order as to costs. Consequently, connected Writ Miscellaneous Petition is closed.



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Index: Yes/No
Internet: Yes/No
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To

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D.BHARATHA CHAKRAVARTHY, J.

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