



WEB COPY



W.A.No.3401 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.A.No.3401 of 2024 and
C.M.P.No.26410 of 2024**

1. The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Home Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2. The Director General of Police /
Director Tamil Nadu Fire and Rescue Services,
No.17, Rukmani Lakshmipathy Road,
Egmore,
Chennai.

... Appellants

-Vs-

Dr.Meenakshi Vijayakumar,
Joint Director (Fire and Rescue Service),
State Training Centre,
Tambaram Sanitorium,
Chennai - 600 047.

... Respondent

PRAYER : Appeal filed under Clause 15 of Letters Patent, to set aside the order in W.P.No.33857 of 2023 dated 07.03.2024 and allow the above writ appeal.

For Appellants : Mr.M.Alagu Goutham
Government Advocate

For Respondent : Mr.S.N.Ravichandar



W.A.No.3401 of 2024

J U D G M E N T

WEB COPY

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This intra-Court appeal has been directed against the order passed by the writ Court dated 07.03.2024 in W.P.No.33857 of 2023.

2. In order to fill up the post of Deputy Divisional Fire Officer in the Tamil Nadu Fire Service for the year 1997-98, selection process went on and completed by the Tamil Nadu Public Service Commission. Totally 84 candidates were selected including the respondent herein. The Tamil Nadu Public Service Commission published the Provisional Selection List of all qualified candidates for appointment on 03.03.2001. However, insofar as the present respondent / writ petitioner is concerned, though she came out successful in the examination and despite the fact that, she has been provisionally selected, her results were withheld on the pretext of pending production of physical standard certificate for the post of Divisional Fire Officer.

3. In this context, it is to be noted that, the Tamil Nadu Public Service Commission has sent a communication to the respondent / writ petitioner that the respondent has been selected provisionally.



W.A.No.3401 of 2024

4. Pursuant to the said selection process, out of 84 candidates, 81 candidates have been given appointment for various posts like Deputy Collector and Deputy Superintendent of Police etc., however, in respect of three candidates including the respondent / writ petitioner, that has been withheld for want of certain clarification with regard to the physical fitness. All those appointments had been given admittedly well prior to 01.04.2003, the date on which, the State Government introduced a New Pension Scheme, i.e., Contributory Pension Scheme.

5. Insofar as the respondent / writ petitioner is concerned, after compliance of such clarification, the Government had come forward to issue appointment order on 01.08.2003, thereafter, she joined in service.

6. Now the controversy is whether the respondent / writ petitioner is entitled to get the pensionary benefits under the Old Pension Scheme which was prevailing prior to 01.04.2003 or she is entitled only to claim the pensionary benefits under the New Pension Scheme which came into effect from 01.04.2003.



W.A.No.3401 of 2024

7. When this was questioned and a request had been made by the respondent / writ petitioner to treat her as the member of the Old Pension Scheme which was prevailing prior to 01.04.2003, that was negated by issuing order by the first appellant on 06.09.2023 which was under challenge in the said writ petition.

8. The writ Court having considered these factual matrix especially in the context of the selection having been made in respect of all these 84 candidates including the writ petitioner and 81 candidates out of 84 candidates had been given appointment and they joined services well prior to 01.04.2003, for want of certain clarification, the appointment to the writ petitioner was delayed and she was given appointment only on 01.08.2003, held that such a benefit accrued on the writ petitioner to become eligible for joining in the Old Pension Scheme that is prior to 01.04.2003 cannot be denied and therefore, on that ground, the learned Judge has set aside the order dated 06.09.2023 which was impugned before the writ Court and the writ petition was allowed, as against which, the present appeal has been directed.

9. Heard Mr.M.Alagu Goutham, learned Government Advocate appearing for the appellants and Mr.S.N.Ravichandhar, learned counsel appearing for the respondent.



W.A.No.3401 of 2024

10. It is the fact that, the selection process commences long back as the Group-I vacancies of the year 1997-98, for which, the selection list has been published well prior to 01.04.2003, 81 selectees, out of 84 selectees, who had been selected for various posts in Group-I Service, had been given appointment and they joined service and they are all covered under the Old Pension Scheme. Insofar as the writ petitioner is concerned, for want of clarification with regard to the physical fitness, as certain amendment was required which was also made and relaxation had been given by the Government through G.O.(Ms)No.52, Home (Police-XVII) Department, dated 14.01.2003 that is also well prior to 01.04.2003, the appointment has been delayed and it was given only on 01.08.2003.

11. Merely because such a delay caused and the appointment order was delayed in giving on 01.08.2003, the petitioner cannot be singled out from the entire selection list as the co-selectees of the writ petitioner had been given appointment and they joined service prior to 01.04.2003 and they are all enjoying the benefit of Old Pension Scheme, whereas, such benefit cannot be denied to the respondent / writ petitioner for the reasons that giving an appointment order since has been delayed even though the Government Order to that effect has been issued on 14.01.2003, is a procedural delay caused only



W.A.No.3401 of 2024

by the employer, therefore, such a delay cannot be attributable on the part of the employee, i.e, the writ petitioner.

12. Having considered all these aspects and also by taking into account the decision of the Hon'ble Supreme Court in the case of *Union of India Vs. Tushar Ranjan Mohanty* reported in *1994 (5) SCC 450* and also the judgment of the Delhi High Court in *W.P(C)No.8208 2020 etc., batch dated 15.01.2021*, the learned Judge of the writ Court has allowed the said writ petition. The reasoning given by the learned Judge based on the facts of the case which we have discussed herein above cannot be found fault with and therefore, we are not inclined to interfere with the order which is impugned herein.

13. Resultantly, this Writ Appeal fails and hence, it is liable to be dismissed, accordingly, it is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) (C.S.N., J.)

27.11.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji



W.A.No.3401 of 2024

WEB COPY

To
The Joint Director (Fire and Rescue Service),
State Training Centre,
Tambaram Sanitorium,
Chennai - 600 047.



WEB COPY



W.A.No.3401 of 2024

**R.SURESH KUMAR, J.
and
C.SARAVANAN, J.**

vji

**W.A.No.3401 of 2024
and
C.M.P.No.26410 of 2024**

27.11.2024