



WEB COPY



W.P.No.23101 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20.12.2023

DELIVERED ON:02.02.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.DHANABAL

W.P.No.23101 of 2017
and WMP.No.24209 of 2017

K.K.Jijesh

Vs.

.. Petitioner

1.Union of India, represented by the
Govt. of Puducherry through the
Secretary to Govt. for Fire Service Department,
Chief Secretariat, Puducherry.

2.The Divisional Fire Officer,
Fire Service Department,
Puducherry.

3.Vinod, P.V. working as Fireman,
Fire Service Department, Puducherry.

4.The Registrar,
Central Administrative Tribunal,
Madras.

.. Respondents



W.P.No.23101 of 2017

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the 4th respondent in O.A.No.206 of 2013 dated 18.12.2015 and to quash the same.

For Petitioner : M/s.V.Ajayakumar

For Respondents : M/s.R.Syed Mustafa,
Special Government Pleader for R1 & R2

Ms.Kavitha for R3

R4-Tribunal

ORDER

D.KRISHNAKUMAR, J.

The petitioner, aggrieved by the dismissal of the original application in O.A.No.206 of 2013, challenging the selection list dated 29.10.2013 for the post of Fireman, has filed the writ petition.

2. The brief case of the petitioner is as follows:

2.1. The Government of Puducherry has notified 52 vacancies for the post of Fireman, vide notification dated 01.11.2007, out of which one vacancy was earmarked for Mahe region in the General category. The petitioner, who belongs to OBC category, availed age relaxation and



W.P.No.23101 of 2017

participated in the recruitment process in the vacancy earmarked for Mahe Region and obtained 54 marks. According to the petitioner, though he has obtained 54 marks, he was not selected and whereas the third respondent, who had obtained 50 marks was given appointment. Challenging the selection of the third respondent, the petitioner filed an Original Application in O.A.No.206 of 2013 and the same was dismissed vide order dated 18.12.2015, against which the present writ petition has been filed.

3. The learned counsel for the petitioner contended that the petitioner has to be selected under General category on the basis of the marks obtained in the written examination, instead of the third respondent and the Tribunal has dismissed the application on the ground that persons belonging to OBC category, who got age relaxation, cannot be considered as an open category candidate. It is further contended that the Tribunal failed to consider the fact that fee concession and age relaxation deals with the issue of eligibility of a candidate to participate in the selection process and has nothing to do with the selection at all and age relaxation/fee concession will not dis-entitle a reserved candidate



W.P.No.23101 of 2017

from getting the benefit of merit he has obtained in the selection process and therefore, prays for setting aside the order of the Tribunal and allowing of this writ petition.

4. *Per contra*, Mr.R.Syed Mustafa, learned Special Government Pleader appearing for the respondents 1 and 2 would contend that as per the recruitment notification No.1953/DFO/F1/2007 dated 01.11.2007, only one post was notified for Mahe region and the same was earmarked for Unreserved (UR)/General category and even if the reserved candidates applied for the post, they must satisfy the eligibility condition under UR/General category. It is further contended that as per the aforesaid recruitment notification, candidate who opts to apply for the post of Fireman under UR category must be between 18 and 25 years as on 01.09.2007 and since the petitioner and the third respondent secured equal/same marks, the third respondent being elder in age to the applicant, has been included in the select list and whereas the petitioner was aged 26 years, 9 months and 22 days as on 01.09.2007 and the maximum age for UR candidates as stated in the notification was 24 years as on 01.09.2007 and as such, the name of the petitioner was not



W.P.No.23101 of 2017

included in the selection list and prayed for dismissal of the writ petition.

5. The learned counsel for the third respondent has drawn the attention of this Court to the counter affidavit and the office memorandum of DOP&T No.36011/1/98-Estt.(Res.) dated 01.07.1998 which clarified that only SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against general vacancies. It is further contended that the above OM dated 01.07.1998 applies to the Government of Puducherry also and since the petitioner has availed age relaxation, he can be counted only against reserved category and he will be deemed to be unavailable for consideration against unreserved vacancies and therefore, prayed for dismissal of the writ petition.

6. This Court has considered the rival submissions and also perused the materials available on record.

7. The fact remains that the respondent issued notification dated 01.11.2007 for filling up of vacancies for the post of Fireman, totaling to 52 vacancies for three zones viz., Puducherry, Karaikal and Mahe



W.P.No.23101 of 2017

regions. Only one vacancy was notified under General Category for Mahe Region. The maximum age limit prescribed as per the notification was between 18 and 24 years as on 01.09.2007. Age relaxation of 5 years has been given to candidates belonging to Scheduled Caste (SC) and 3 years in the case of Most Backward Class / Other Backward Class categories, as per the notification. The petitioner was aged 26 years, 9 months and 22 days as on 01.09.2007. Since the petitioner was over aged at that point of time and as he belongs to OBC category, had availed age relaxation as per the notification and applied for General / Unreserved category in the Mahe Region and participated in the written examination and secured 54 marks.

8. It is the primordial contention of the petitioner that though he had obtained 54 marks in the written examination, he was not selected in the select list published on 29.10.2012 and whereas the third respondent, who had obtained 51 marks has been selected in the General / Unreserved Category. According to the respondents, even if the reserved candidates applied for the said post, they must satisfy the eligibility condition under Unreserved / General category. In the case on hand, the petitioner in



W.P.No.23101 of 2017

WEB COPY

order to satisfy the age criteria for participation, has obtained age relaxation under OBC category and participated in the one post under Unreserved / General category, earmarked for Mahe Region. It is the contention of the petitioner that age relaxation is only for the purpose of getting eligibility in selection process and the same does not amount to conferring reservation benefits. According to the petitioner, once reserved candidates gets eligibility to participate, they can compete both for reserved and unreserved posts and if he is found more meritorious, he is to be selected against Unreserved Post. According to the respondents, the merit list was prepared region wise separately for Puducherry, Karikal and Mahe region and therefore the comparison of marks between the petitioner and the third respondent, who applied under OBC category, is legally unsustainable.

9. A bare perusal of the recruitment notification would disclose that age relaxation of 5 years has been prescribed for SC category and 3 years for MBC/OBC category and there is no age relaxation prescribed for Unreserved /General Category. It is nowhere stated in the recruitment notification that the candidate applying under General / Unreserved



W.P.No.23101 of 2017

category can claim age relaxation based on communal status. The age relaxation is given for a particular category, provided the candidate apply for recruitment to the post under the very same category. In the case on hand, the petitioner having applied under General category for Mahe region, ought to have satisfied the age limit prescribed for such General category, namely 24 years as on 01.09.2007, but whereas the petitioner was aged about 26 years, 9 months and 22 days as on 01.09.2007. The petitioner, having applied for the post of Fireman under General / Unreserved Category under Mahe Region, under the guise of OBC category, had obtained age relaxation of 3 years and participated in the written examination and thereafter, competing under General category with the third respondent on the basis of marks, is totally misconceived and contrary to the recruitment notification.

10. It is the normal rule of practice that candidates applying under OBC/MBC category on availing age relaxation cannot claim appointment in General / Unreserved Category and can be appointed only against the vacancy notified under the reserved quota. The petitioner, who participated in the selection process on availing age relaxation under OBC category, cannot be considered in General / Unreserved quota on the basis



W.P.No.23101 of 2017

of his rank in the merit list. The Tribunal has considered these aspects in proper perspective and this Court finds no reason to interfere with the order of the Tribunal and finds no merit in this writ petition.

11. In the light of the reasons assigned above, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

[D.K.K., J.] [P.D.B., J.]
02.02.2024

Index:yes/no

Internet:yes

Jvm

To

1.The Secretary to Government,
Govt. of Puducherry, Fire Service Department,
Chief Secretariat, Puducherry.

2.The Divisional Fire Officer,
Fire Service Department,
Puducherry.



WEB COPY



W.P.No.23101 of 2017

**D.KRISHNAKUMAR, J.,
&
P.DHANABAL, J.**

Jvm

**Order in
W.P.No.23101 of 2017**

02.02.2024