



W.A.(MD).No.257 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : **15.03.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**
and
THE HONOURABLE **MR.JUSTICE K.K.RAMAKRISHNAN**

W.A.(MD).No.257 of 2017
and
C.M.P.(MD).No.2662 of 2017

- 1.The Director,
Tamil Nadu Fire and Rescue Department,
Chennai -8.
- 2.The Deputy Director,
Tamil Nadu Fire and Rescue Department,
Madurai -1.
- 3.The District Fire Officer,
Tamil Nadu Fire and Rescue Department,
Theni District.

... Appellants

Vs.

- 1.A.Ramaiah
- 2.R.Venkatesan

... Respondents

Prayer: Writ Appal is filed under Clause 15 of Letters Patent, against the order of this Court in W.P.(MD).No.2176 of 2009, dated 30.01.2017.



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For Appellants : Mr.A.K.Manikkam
Special Government Pleader
For R1 : Mr.Suhil
for M/s. Ajmal Associates

J U D G M E N T

(Judgment of the Court was delivered by **V.BHAVANI SUBBAROYAN, J.**)

This writ appeal has been filed against the order of the learned single Judge passed in W.P.(MD).No.1374 of 2017, dated 09.10.2017, wherein the petitioner has challenged the panel of the Fireman fit for promotion to the post of leading Fireman issued by the second respondent dated 16.03.2009 and sought for a direction to the second respondent to consider the petitioner for promotion to the post of leading Fireman by including his name in the said panel in the place of the fourth respondent.

2. The case of the petitioner is that he was appointed as Fireman in the Fire and Rescue Services, Periyakulam on 15.02.1991 and he was aged about 58 years. The fourth respondent was appointed as Fireman on the same date and he was aged about 37 years. As per the practice followed in the Department of Fire and Rescue Services, the petitioner was given Serial No.



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2774 and the fourth respondent was given Serial No.2462, on the basis of the height. There are four vacancies in the cadre of leading Fireman as on 28.02.2009 in Theni District. A panel of Fireman fit for promotion to the post of leading Fireman was drawn by the third respondent. In the said panel, the name of the fourth respondent was included in Serial No.5 with recommendation for appointment to the post of leading Fireman by promotion. However, in the said panel, the petitioner's name has been included in Serial No.16. The third respondent, in order to favour the fourth respondent, included his name in Serial No.5 of the impugned panel. Hence, he has made a representation to the third respondent on 09.03.2009, requesting him to intervene in the matter and to consider the petitioner for promotion to the post of leading Fireman on the basis of seniority. The third respondent, by letter dated 26.06.2008, informed the petitioner that his request for promotion would be considered after the disposal of the writ petition pending before this Court in W.P.(MD).No.10775 of 2007. Hence, the petitioner has filed the writ petition seeking to quash the impugned panel of the Fireman fit for promotion to the post of leading Fireman issued by the second respondent dated 16.03.2009. The learned single Judge of this Court disposed of the writ petition on 30.01.2017, directing the second respondent to consider the petitioner's representation dated 09.03.2009, by giving personal opportunity to the petitioner by considering the G.O.(Ms.)No.



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806 and the Rule 35(A) (aa) of the Tamil Nadu Subordinate Service Rules for including the name in the panel for the post of Fireman and promote the petitioner with the consequential benefits. Challenging the same, the present writ appeal has been filed by the Tamil Nadu Fire and Rescue Department.

3. The learned Special Government Pleader appearing for the appellants would submit that the first respondent/writ petitioner neither challenged the seniority list from the date of his appointment nor preferred any representation for revising the seniority list published periodically. The petitioner has raised his objection by way of representation only on 26.01.2008, after lapse of 17 years from the date of his appointment with regard to seniority, contrary to Rule 35(F) of the Tamil Nadu State and Subordinate Service Rules, which was inserted by way of issuing G.O.(Ms.).No.1140, Personnel and Administrative Reforms (Per-P) Department, dated 02.12.1983, which mandated three years period from the date of appointment for making application for revision of seniority. In the instant case, the first respondent was placed as junior from the date of his appointment and the same was not questioned by the learned single Judge of this Court. Further, the writ petitioner shall not claim the seniority under Rule 35(A) (aa) of the Tamil Nadu State and Subordinate Service Rules, based on his age only and it should be based on



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merit and ability, as per the Fire Service Rules at the time of selection and the marks awarded by the Department at the time of training. The promotion is not automatic under the service jurisprudence and the Government servant shall fulfil other criteria for considering next promotion. As such, the impugned order requires interference of this Court.

4. In the counter affidavit filed by the Deputy Director (Southern Region), Tamil Nadu Fire and Rescue Department, it is stated that right from the formation of Tamil Nadu Fire Services now re-designated as Tamil Nadu Fire and Rescue Services, the selection of candidates for the category of Fireman is made only by Direct Recruitment. The scheme of recruitment of Fireman on compassionate ground came into being only after 2002 - 2003. Hence, the contention of the writ petitioner that he is senior to the fourth respondent by virtue of his age and he should be called for to appear before the promotion board is not at all correct. Further, as per G.O.(Ms).No.34, P & AR dated 30.01.2008, Firemen, who were qualified to be considered were alone called for as against 4 vacancies by the third respondent. Since the 4th respondent holds 5th position in the Divisional seniority list drawn up by the third respondent, he was called for to appear before the promotion board by the third respondent, which was conducted on 23.03.2009. Since the petitioner



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holds 16th position in the Divisional Seniority List, he was not called for.

Further, mere calling for candidates to appear before the promotion board will not confer any right for inclusion of the names in the promotion panel. Even if the petitioner had been called for to appear for the promotion board, the inclusion of the names of Fireman in the promotion panel are purely on the basis of merit and not on the basis of seniority.

5. It is further stated that the petitioner gave a petition on 09.03.2009 and 23.03.2009, just before the commencement of the board to the second respondent. A reply was given to the petitioner on 24.03.2009, by the second respondent through the third respondent stating that he has interpreted the contents of G.O.(Ms.)No.806, P & AR (Per -P) in his favour and he is not eligible to claim his right under the pretext of age alone and similar type of case is pending before this Court in W.P.(MD).No.10775 of 2007, preferred by one Ramasamy of Muthukulathur Fire Station and the petitioner may await till the judgment of the writ petition is delivered. Further, the Tamil Nadu State and Subordinate Service Rules 35(aa) says that the seniority of the person shall be determined with reference to the date on which he is appointed to the services class category or grade. The fourth respondent and the petitioner were appointed on the same day ie., on 15.02.1991. As per the inter seniority list, the



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fourth respondent comes in seniority No.4 and the petitioner comes in Seniority No.15. The above said Rule does not mention about the age seniority. It says only about the date of appointment and there is no provision or special Rules to give promotion on the basis of age. Hence, the petitioner's claim is not correct.

6. Heard the learned Special Government Pleader appearing for the appellants and the learned counsel appearing for the first respondent/writ petitioner and perused the materials available on record.

7. After considering the arguments made on either side, the learned single Judge was of the view that as per G.O.(Ms.)No.806 – P & AR (Per.P) dated 13.07.1978, under Rule 35(A) (aa) of Tamil Nadu Subordinate Service Rules, this petitioner should have put in the seniority list above 4th respondent and that should be considered by the second respondent with proper manner. Accordingly, the writ petition should be disposed of with a direction to the second respondent to consider the petitioner representation dated 09.03.2009, within a period of two weeks from the date of receipt of a copy of this order, on merits and in accordance with law, for fixing the seniority of the petitioner at the appropriate place, by taking into consideration of the order of the Full Bench of this Court and the G.O.(Ms.)No.806 and the Rule 35(A)(aa) of Tamil



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Nadu Subordinate Service Rules.

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8. Rule 35(A)(aa) of the Tamil Nadu State and Subordinate Service

Rules reads as follows:

35 (a) The seniority of a person in a service, class or category or grade shall unless he has been reduced to a lower rank as a punishment be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other Appointing Authority, as the case may be, subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.

**(aa) The seniority of a person in a service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade;*

Provided that where the junior appointed by a particular method or recruitment happens to be appointed to a service, class, category or grade, earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed:

Provided further that the benefit of the above proviso



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shall be available to the senior only for the purpose of fixing inter-se-seniority:

Provided also that where persons appointed by more than one method of recruitment are appointed or deemed to have been appointed to the service, class, category or grade on the same day, their inter-se-seniority shall be decided with reference to their age.

**Substituted in G.O.Ms.No.523, P & AR, dt.4-6-82, w.e.f.13-7-78.*

9. It is seen from the records that the first respondent/writ petitioner has not raised any objection to the panel for promotion to the post of leading Fireman at the earlier point of time. The fourth respondent name shown in S.No.5, whereas the name of the petitioner shown in S.No.16. It is further seen that the petitioner was an Ex-Serviceman and he was appointed in the post of Fireman through employment exchange. Both the writ petitioner and the fourth respondent were appointed on the same day ie., on 15.02.1991. At the time of joining, the petitioner has given S.No.2774 and the fourth respondent has given S.No.2462, on the basis of height only. As per the seniority, promotions were granted. The writ petitioner, after attaining superannuation, seeks for retrospective promotion, which is not acceptable. It is also seen that the petitioner was given seniority below the said R.Venkatesan, the fourth respondent in the writ petition and the petitioner has not challenged the same



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earlier and similarly placed person also filed a writ petition in W.P.(MD).No. 8200 of 2010 and the same was dismissed by this Court. Hence, the claim made by the writ petitioner could not be considered by this Court and the appellants' case is accepted.

10. In the result, this Writ Appeal is allowed and the order of this Court in W.P.(MD).No.2176 of 2009, dated 30.01.2017 is set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

[V.B.S.,J.] & [K.K.R.K.,J.]
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Index : Yes/No
Internet : Yes/No
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