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W.P. No. 18364 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2025

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P. No. 18364 of 2018

and

W.M.P. No. 21674 of 2018

P. Sivaraj

... Petitioner

Vs.

1.State of Tamil Nadu Represented by
The Secretary to Government,
Home (Police XVIII) Department,
Fort St. George, Chennai – 600 009.

2.Director of Fire and Rescue Services,
O/o Directorate of Fire and Rescue Services,
Egmore, Chennai – 600 008.

3.Joint Director, Northern Region,
O/o Directorate of Fire and Rescue Services,
Egmore, Chennai – 600 008.

4.Divisional Fire Officer,
Fire and Rescue Service Department,
Chennai City North, Chennai – 600 104.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the respondents 2 & 4 to constitute the Promotion Board as provided under statutory Rules 2(b) (ii) of Tamil Nadu Fire and Rescue Service Subordinate Rules for selecting qualified Fireman fit for promotion to the post of Leading Fireman for the existing vacancies upto panel year 2017-2018 and for further vacancies for the panel year 2018-2019 with respect to the respective cut-off



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date of 15th July of every year.

For Petitioner : No Appearance
For Respondents : Mrs. R.L. Karthika,
Government Advocate

ORDER

Heard and perused the materials available on record.

2. The petitioner was appointed on 01.12.2002 as Fireman. The post of Fireman is comprised in category-5, Class II of Tamil Nadu Fire and Rescue Subordinate Service Rules. The first level of promotion to the post of Fireman is Leading Fireman and further promotion is Station Fire Officer in one channel vide item 2 in Class II and item 2 in category 2 as prescribed under appointment Rule 2(a) read with annexure – I. The next and first level of promotion for the petitioner is fireman queue is the post of Leading Fireman. It is a merit and selection post as per the provisions contained in Rule 2(b) (i) of the Service Rules. As per the provisions contained in Rule 2(b) (ii), the promotion list which shall be prepared on a divisional basis for the post of Leading Fireman since the Divisional Authority is an appointing Authority for the feeder category of Fireman as stated in the Table under Service Rule 3. The petitioner is seeking promotion to the post of Leading Fireman and for that purpose he is seeking to constitute a promotion board as per Rule 2(b) (ii) of Tamil nadu Fire and Rescue Services Subordinate Rules.

3. In the counter affidavit filed by the respondents, it is averred that the request



of the petitioner to Constitute the promotion board and select the qualified Fireman fit for promotion to the post of Leading Fireman for the existing vacancies upto panel year 2017-2018 and for further vacancies for the panel year 2018-2019 cannot be able to comply, since the Government in G.O.Ms.No.997, Home (Police-17) Department, dated 14.08.2018 ordered that promotions to Fireman Driver/Leading Fireman / Driver Mechanic will be purely based on Enlistment and State Seniority and directed to consider the merit and ability while granting promotion based on the date of enlistment and State Seniority.

4. Learned Additional Government Pleader appearing for the respondents would submit that, as per orders issued in G.O.Ms.No.777, Home (Police-17) Department, dated 23.07.2018 for Personnel oriented upgradation promotion, the petitioner who has completed 15 years of service as on 30.11.2017 has granted promotion as Upgraded Leading Fireman with effect from 01.12.2017. It is further stated that promotion to the petitioner will be granted only as and when he reached the zone of consideration as per the Enlistment and State Seniority List.

5. The only relief sought by the petitioner in this writ petition is to constitute Promotion Board as per Rule 2(b) (ii) of the Tamil Nadu Fire Subordinate Service Rules.

6. Hence, it is necessary to look into relevant Rule 2 (b) (ii) of the Tamil Nadu Fire Subordinate Service Rules, as extracted herein under:-



“2. Appointment.-

(ii) Promotion shall be made from a list of qualified candidates suitable for promotion, prepared on a state-wise basis in respect of each of the posts mentioned in items (1) and (2) above. The list shall be prepared on a Divisional basis in respect of the posts mentioned in items (3) to (6) above. State promotion lists shall be prepared by the State Recruitment and Promotion Board. This Board shall consist of Director of Fire Service who will act as its Chairman and the Deputy Director of Fire Service, Northern and Southern Regions who will be its members. In the absence of a Deputy Director of the Fire Service, the Director of Fire Service shall be the Chairman and the other Deputy Director of Fire Service shall be the member of the said Board. The Divisional Promotion list shall be initially prepared by the Divisional Fire Officer concerned assisted by the respective Assistant Divisional Fire Officer and be finally approved by the Deputy Director of Fire Service.”

7. On bare perusal of the Rule 2(b) (ii), it came to understand that, State Promotion lists shall be prepared by the State Recruitment and Promotion Board. This Board shall consist of Director of Fire Service who will act as its Chairman and Deputy Director of Fire Service, Northern and Southern Regions who will be its members. The procedure to be followed to constitute the Board and the composition of Board is clearly provided under this Rule. It is not the case of the respondents that, as on date, the Rule 2 (b) (ii) is struck down by any Court or it is repealed by the

State Government.

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8. It is an admitted fact that, the Rule 2(b) (ii) is in force, as on date. As such, in the considered opinion of this Court, the petitioner is justified in asking to constitute State Recruitment and Promotion Board, by following the relevant Rule. It is the duty of the respondents to constitute Board as per Rule 2 (b) (ii) of the Tamil Nadu Fire Subordinate Service Rules.

9. The contention of the respondents is that, the request of the petitioner is not able to comply. This Court is unable to accept the contentions of the respondents. By issuing executive instructions, like G.O.Ms.No.997, Home (Police-17) Department dated 14.08.2018, the respondents cannot takeaway the statutory Rules, which provides for Constitution of Promotion Board. It is settled law that the statutory Rules should not be taken away by the State by issuing executive instructions, as the executive instructions are not having any statutory force.

10. For the reasons stated above, this Court is of the considered opinion that the petitioner has made out a strong case warranting interference of this Court under Article 226 of the Constitution of India and accordingly, he is entitled for the relief sought in this writ petition.

11. Accordingly, this Writ Petition is allowed with a direction to the



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respondents 1 and 2 to constitute Selection and Promotion Board as per Rule 2(b) (ii) of the Tamil Nadu Fire Subordinate Service Rules, within a period of six weeks from the date of receipt of a copy of this order to consider promotion of qualified Fireman fit for promotion to the post of Leading Fireman for the existing vacancies upto panel year 2017-2018 and for further vacancies for the panel year 2018-2019 by taking into the respective cut-off date fixed in the relevant Rules.

12. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index :Yes/No

Neutral Citation :Yes/No

AT



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