
(2022) 11 TEL CK 0020
In the Telangana High Court
Case No : Writ Petition No. 22928 Of 2021

B.Harinatha Reddy

APPELLANT

Vs

State Of Telangana And 8 Others

RESPONDENT

Date of Decision : 09-11-2022

Acts Referred:

Citation : (2022) 11 TEL CK 0020

Hon'ble Judges : P.Madhavi Devi, J

Bench : Single Bench

Advocate : Hari Sreedhar, M.V. Rama Rao

Final Decision : Partly Allowed

Judgement

1. This Writ Petition is filed by the petitioner, seeking a writ of mandamus declaring the Memorandum of respondent No.2 in RC.No.11817/E1/2003, dated 30.08.2021 disturbing the seniority of the petitioner, which was confirmed 8 years back as arbitrary, illegal and contrary to law laid down by Hon'ble Supreme Court and consequently to set aside the same and pass such other order as this Court deems just in the circumstances of the case.

Brief facts :

2. The petitioner was appointed through Direct Recruitment as Divisional Fire Officer on 14.11.2012. The said post is redesignated as District Fire Officer. It is submitted that on 02.09.2013 the respondent No.2 has published the Confirmed Seniority List of District Fire Officers after calling for objections and the petitioner was placed at serial No.11 in the said Seniority List and respondent No.3, 4 and 9 were placed at serial Nos.20, 21 and 22 respectively. It is submitted that the names of respondents did not figure in the list anywhere. It is further submitted that after bifurcation of combined State of Andhra Pradesh, the Government for the State of Telangana notified the Tentative Allocation-cum-Seniority List in respect of employees of respondent No.2 on 24.06.2015, containing combined Seniority of all the District Fire Officers and others allocated to Telangana State

and State of Andhra Pradesh and also fixing their Seniority. In the said Combined Seniority List the petitioner's name is figured at Serial No.10 and his seniority rank was fixed at serial No.5 amongst the District Fire Officers allocated to Telangana State. The name of the 3rd respondent figured at Serial No.14 in the Combined Seniority List and his seniority was 8 amongst the District Officers allocated to Telangana State. The name of 4th respondent figured at Serial No.15 in the Combined Seniority List and his seniority rank was 9 amongst the District Fire Officers allocated to Telangana State. The name of 5th respondent figured at Serial No.23 in the Combined Seniority List and his seniority rank was 16 amongst the District Fire Officers allocated to Telangana State. The name of 9th respondent figured at Serial No.16 in the Combined Seniority List and his seniority rank was 10 amongst the District Fire Officers allocated to Telangana State. The names of respondent Nos.5, 7 & 8 did not find place in the said Allocation-cum-Seniority List of District Fire Officers dated 24.06.2015 as by that date they were not promoted, even on adhoc basis to the post of District Fire Officers. It is submitted that on 12.07.2016, while considering the promotion to the two (2) vacant posts of Regional Fire Officer from the Post of District Fire Officer, the 2nd respondent sent a list of 7 names from the Confirmed Seniority List of District Fire Officers as per their seniority as on 12.07.2016 to the Departmental Promotion Committee (DPC). The name of the petitioner figured at serial No.4 and the respondent No.3 to 9 were placed below the petitioner.

3. It is submitted that the persons placed at serial Nos.1 and 2 in the Confirmed Seniority List were promoted as Regional Fire Officers and petitioner became serial No.2 in the Seniority List of District Fire Officers. It is further submitted that on 27.08.2020 the respondent No.2 issued Provisional Seniority List for fixing seniority of those who are subsequently promoted/appointed through direct recruitment as District Fire Officers. Even in that list, the petitioner is shown at serial No.2 and the respondents names were shown at serial No.5, 6, 8, 9, 11, 12 and 14 respectively. It is submitted that on 30.08.2021 the respondent No.2 issued an impugned Memorandum in RC.No.11817/E1/2003, dated 30.08.2021 proposing to disturb the seniority of the petitioner by placing respondent Nos.3 to 9 above the petitioner, thereby disturbing the seniority of the petitioner, which was confirmed 8 years back and by the said letter, the objections of the persons affected were called for. The petitioner immediately submitted two representations seeking some information from respondent No.2 on 16.09.2021 and thereafter, on 17.09.2021 challenging the memorandum dated 30.08.2021 this Writ Petition has been filed.

4. The learned counsel for the petitioner has drawn the attention of this Court to all the relevant documents relating to the petitioner and also respondents No.3 to 9, who are not direct recruits and were placed as juniors to the petitioner. It is submitted that only by the impugned memo proceedings dated 30.08.2021, the petitioner has been shown as junior to the respondents No.3 to 9. He submitted that the respondents No.3 to 9 were promoted as District Fire Officers on adhoc basis and their promotion was not confirmed against any substantive vacancy by

the date of the appointment of the petitioner as direct recruit. Therefore, their tenure of working in the District Fire Officer cannot be considered for the purposes of assigning the seniority.

5. He further submits that since the Confirmed Seniority List dated 02.09.2013 has not been challenged, the same has become final and the subsequent provisional seniority list after bifurcation of the State has also not been challenged and has thus become final and hence, the respondents should not have disturbed the said seniority list without notice to the petitioner. He further submits that unless the adhoc promotion given to the respondent Nos.3 to 9 as District Fire Officers is regularized against substantive vacancies filled in the promotion quota, their seniority cannot be fixed. Further, the learned counsel for the petitioner has drawn the attention of this Court to the averments of the counter affidavit filed by respondents No.1 and 2 stating that he has no authority for fixing the seniority in the cadre of District Fire Officer but the matter has to be referred to the State of Andhra Pradesh. The respondent No.2 has no authority to fix the seniority or even to recommend and therefore, the said recommendation of the respondent No.2 proposing to place respondents No.3 to 9 above the petitioner in seniority is unsustainable. He therefore, seeks a Writ of Mandamus setting aside the provisional seniority list dated 30.08.2021.

6. The learned Special Government Pleader appearing for the respondent Nos.1 and 2 placed reliance upon the averments in the counter affidavit and submitted that the post of Station Fire Officer as well as Assistant Fire Officer posts belong to District posts in the State of Telangana and therefore, the respondent No.2 has power to prepare the seniority list of the Officers in the said cadre.

7. It is submitted that it is only the District Fire Officer, which is a State post. Therefore, the remarks/recommendations of the respondent No.2 have been forwarded to the Government of Andhra Pradesh for taking a decision on the final seniority list. It was submitted that there was a dispute regarding Station Fire Officer post which has travelled up to Hon'ble Supreme Court and the time taken for adjudication was a decade and as per the directions of the Hon'ble Supreme Court, the seniority of the Station Fire Officers i.e., respondents No.3 to 9 or similarly placed officers are accordingly replaced for giving effect to the order of the Hon'ble Supreme Court and the provisional seniority list has been drawn up. It is submitted that the provisional seniority list is only a show cause notice calling for objections and the petitioner could have raised all the contentions that he has raised in the present writ petition as objections and instead of doing so, the petitioner has filed the present writ petition. Therefore, according to the learned Government Pleader, this Writ Petition is not maintainable. He further submits that the date of appointment of the petitioner had not been altered and therefore, no prejudice has been caused to the petitioner.

8. The learned counsel representing respondents No.3 to 9 submit that there was a delay in revision of the seniority list of Station Fire Officer due to litigation which is beyond the control of the respondent Nos.3 to 9 and therefore, they

cannot be blamed. It is submitted that the provisional seniority issued by the respondents is only to give effect to the orders/judgment of one Hon'ble Supreme Court. In reply to the contention of the petitioner that the respondents have not been regularized in the post of Assistant District Fire Officer, he submits that in the year 2019, notional promotion has been given to respondents No.3 to 9 and thereafter, as District Fire Officers.

9. In reply to the contention of the petitioner that the respondents No.3 to 9 were mere working against the vacancies of direct recruiters, he submitted that the direct recruiters already working were found to be in excess of required quota and therefore, the respondents No.3 to 9 were not promoted. They were working at the available places on adhoc basis only, and therefore, they cannot be deprived of the seniority in the said positions as they were working on adhoc basis. He accordingly seeks dismissal of the writ petition.

10. In rebuttal, the learned counsel for the petitioner submits that the averments in the counter affidavit filed by respondent Nos.1 and 2 does not appear to be a mere proposal and recommendation of the respondent No.2 but it is the determination of the right of petitioner and his seniority. He further submits that after a lapse of nearly 8 years publishing the provisional seniority list, the respondents ought not to have disturbed the seniority of the petitioner by placing him below the respondents No.3 to 9.

11. Having regard to the rival contentions and the material available on record, it is noticed that the petitioner has been appointed as the District Fire Officer by virtue of direct recruitment and has joined the service on 14.11.2012. The respondents No.3 to 9 are reportedly recruited to the post of Station Fire Officer, which is a feeder category to the post of Assistant District Fire Officer. In view of the litigation with regard to the eligibility of the respondents No.3 to 9 to be promoted to the next post subject to their passing of the test and the Hon'ble Supreme Court has held that there was no justification on the part of the Government to have issued G.O dated 22.05.2012 for determination of entire seniority by making classification, the Hon'ble Supreme Court, therefore, concurred with the findings of the High Court and consequently, the respondents concerned had to implement the orders of the High Court. The respondent No.2 being the appointing/controlling authority had to prepare the Provisional Seniority List in the rank of Station Fire Officer and thereafter, the notional promotion as Assistant District Fire Officer and thereafter, as District Fire Officer in the order of seniority were to be given. However, as rightly pointed out by the learned counsel for the petitioner, the respondents themselves, in the memo dated 27.08.2020 have stated that there was no objection with regard to the seniority list published on 12.07.2016 and only with regard to the remaining candidates in the category of District Fire Officer that the seniority has been decided and communicated after receipt of the orders from the Hon'ble Supreme Court and the orders of the Government. In the said order of seniority list also the petitioner has been placed at serial No.2 while the respondent No.3, 4 and 9

are placed as juniors to the petitioner. Without giving any justification as to why the petitioner has been placed at serial No.9 i.e., below the respondent Nos.3 to 9 who are placed at serial No.2 to 8, the issuance of letter dated 30.08.2021 is not justified.

12. In view of the above, though this Court is also of the opinion that the writ petition is premature as it is not against the final seniority list prepared by the respondents, the respondents are directed that the objections/contentions raised in the writ petition shall be treated as objections of the petitioner to the provisional seniority list and they shall be considered and appropriate orders be passed thereon, before taking any action on the provisional seniority list dated 30.08.2021. The respondents shall also not promote to the next higher post i.e., Divisional District Fire Officer till a decision is taken on the objections of the petitioner as well as any other persons who raised objections against the provisional seniority list.

13. In the result, the writ petition is partly allowed.

14. Miscellaneous applications, pending if any, shall stand closed.