

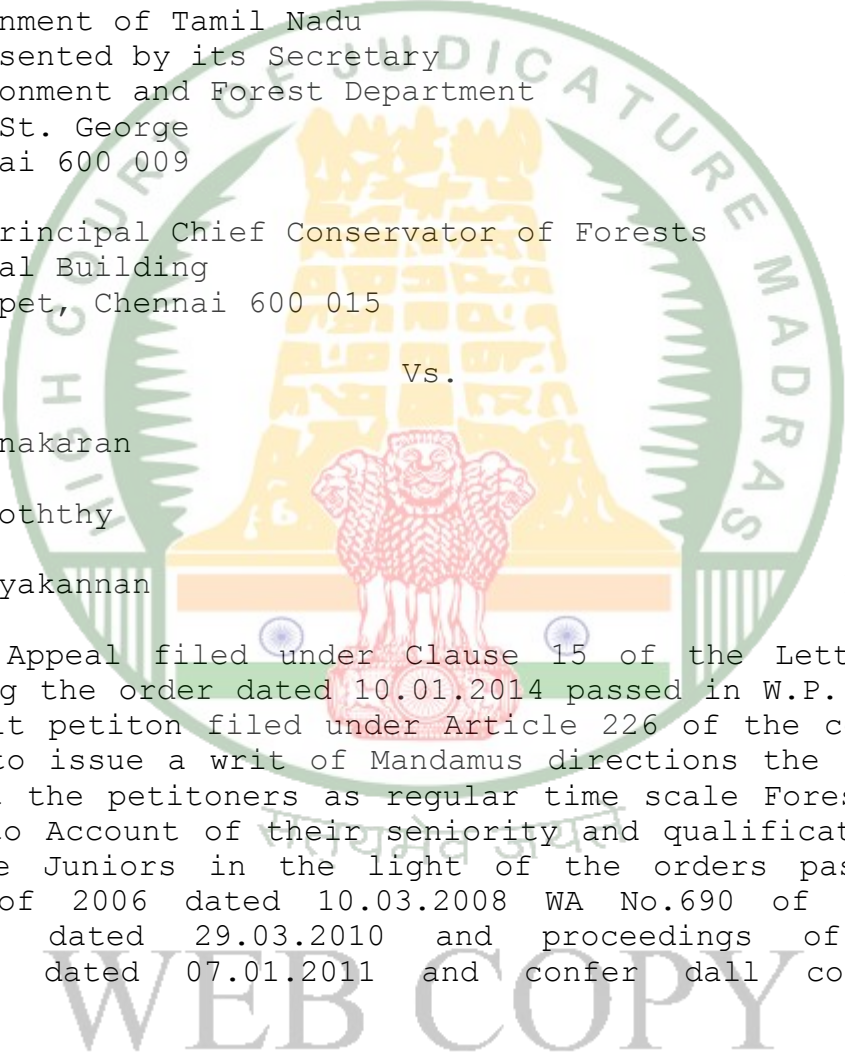
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE DR. JUSTICE P. DEVADASS

W.A. No.1677 of 2015 and M.P. No.1 of 2015

- 
- 1 Government of Tamil Nadu
represented by its Secretary
Environment and Forest Department
Fort St. George
Chennai 600 009
- 2 The Principal Chief Conservator of Forests
Panagal Building
Saidapet, Chennai 600 015
- Appellants
- Vs.
- 1 R. Dinakaran
- 2 H. Ayoththy
- 3 M. Mayakannan
- Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 10.01.2014 passed in W.P. No.1006 of 2014. WRit petition filed under Article 226 of the constitution of India to issue a writ of Mandamus directions the respondents to appoint the petitioners as regular time scale Forest Watchers taking into Account of their seniority and qualification on for with there Juniors in the light of the orders passed in WP No.15501 of 2006 dated 10.03.2008 WA No.690 of 2008 dated 13.10.2009 dated 29.03.2010 and proceedings of the 2nd respondent dated 07.01.2011 and confer dall consequential benefits.

For appellants

Mr. N. Inbanathan
Government Advocate - Forest

JUDGMENT

(delivered by SATISH K. AGNIHOTRI, J.)

The instant intra-Court appeal arises from the order dated 10 January 2014, whereby and whereunder, the Writ Court, while allowing the writ petition filed by the respondents herein, following the earlier orders passed in identical matters, directed the respondents-State/appellants herein to consider the case of the writ petitioners/respondents herein for appointment as Forest Watchers in the regular time scale of pay, taking into account, their seniority and qualification.

2 Indisputably, the writ petitioners / respondents were initially appointed and joined in the Forest Department on daily wage basis in November 1982. Their names also find a place in the State-wide seniority list drawn in the year 1994 at Serial Nos.1281, 1283 and 1289 respectively. The State appellants decided to appoint Plot Watchers and Social Forestry Workers under the regular post of Forest Watcher and Mali. The writ petitioners were duly interviewed. However, their case was rejected on the ground that the requisite height for Forest Watcher is 163 cms, when the writ petitioners have 159 cms., 161 cms. and 161 cms. height respectively.

3 Similarly placed employees, viz., A. Gopalakrishnan and 12 others, filed a writ petition, being W.P. No.32498 of 2013, seeking a direction to the appellants to appoint them as Forest Watchers, taking into account, their seniority and qualification. This Court, by order dated 28.11.2013, disposed of the said writ petition, as under:

"3. The issue involved in this writ petition is already settled by this Court in W.A. No.607 of 2010 dated 20.03.2010 and W.P. No.23374 of 2008 dated 30.10.2009. In view of that, the writ petition is allowed directing the respondents to appoint the petitioners in the regular time scale of Forest Watchers by taking into account of their seniority and qualification on par with their juniors and in the light of the earlier orders of this Court, within a period of sixteen weeks from the date of receipt of a copy of this order. No costs."

4 The Writ Court, relying on the said decision, passed the following order:

"6. In view of the above, the writ petition is allowed, directing the respondents to appoint the petitioners in the regular time scale of Forest Watchers by taking into account of their seniority and qualification on par with their juniors, in the light of the earlier orders of this Court, within a period of six weeks from the date of receipt of a copy of this order. No costs."

5 The question that arises in the appeal is as to whether writ petitioners/respondents, who were duly appointed in accordance with law and allowed to continue for more than 25 years, may be declined regularisation on the post of Forest Watcher on the ground that their height is short by 4,2 and 2 cms. respectively.

6 An identical issue came up for consideration before this court in W.A.No.1703 of 2014 [State of Tamil Nadu and 2 others Vs. M.Kanniyappan]. A Division Bench of this court, by order dated 20th January, 2015, relying on a decision of the Supreme Court in Ghan Sham Sunder and others Vs. State of Punjab and others¹, held as under :

"9. There is no dispute that to be a Forest Watcher, one should possess physical requirement of height of 163 cms. and 79 cms. of chest with 5 cms. expansion. It appears that in the case of the writ petitioner/respondent herein, there is no deficiency in chest measurement. However, there is some deficiency in his height. The appellants have failed to establish as to how the deficiency in his height would substantially affect his performance, especially, when he has been working as Plot Watcher for the last 25 years. The appellants had, indisputably, granted the benefit to other employees. Thus, in the light of the same, we are of the considered view that the order passed by the Writ Court, which is sought to be impugned in the instant appeal, does not warrant interference in the facts of the case. However, we make it clear that the question of law involved in the case on hand is left open to be decided in the appropriate case."

1 (2004) 9 SCC 508

7 In view of the foregoing, this writ appeal is dismissed in the same terms. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

cad/vvk

To

- 1 The Secretary
Environment and Forest Department
Government of Tamil Nadu
Fort St. George
Chennai 600 009
 - 2 The Principal Chief Conservator of Forests
Panagal Building
Saidapet, Chennai 600 015
- +1 cc to Special Government Pleader, sr.65889

W.A. No.1677 of 2015

lrs co
kra 25.01.2016

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