

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.A. No.1703 of 2014 and M.P. No.1 of 2014

- 1 State of Tamil Nadu
represented by its Secretary to Government
Environment and Forest Department
Fort St. George
Chennai 600 009
- 2 The Principal Chief Conservator of Forests
Panagal Building
Saidapet
Chennai 600 015
- 3 The Divisional Forest Officer
Chengalpattu Forestry Division
Chentalpattu

Appellants

Vs.

M. Kanniyappan

Respondent

Writ Appeal filed under Clause 15 of the Letters Patent
challenging the order dated 12.09.2014 passed in W.P. No.9708 of
2014.

prayer in W.P. filed under Article 226 of the Constitution of
India praying to issue a writ of mandamus to direct the respondents
to consider the claim with regard to appointment as Forest Watcher
with effect from the date of his juniors promotion in the light of
the Similar Judgement in WP.No. 6327 of 2005 and with consequential
benefits.

For appellants Mr. M.K. Subramaniam
Special Government Pleader - Forest

For respondent Mrs. K. Jenitha

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JUDGMENT

(Judgment of the Court was delivered by SATISH K. AGNIHOTRI, J.)

The instant intra-Court appeal arises from the order dated 12.09.2014, whereby and whereunder, the Writ Court, while allowing the writ petition filed by the respondent herein, directed the respondent-State/appellants herein to consider the case of the writ petitioner/respondent herein for appointment as Forest Watcher with consequential benefits as granted to his junior in P.Subramani vs. The Principal Chief Conservator of Forest, Chennai 600 015 and 3 others (W.P. No.6327 of 2005).

2 The facts, in nutshell, are that the writ petitioner/respondent herein was initially appointed as Social Forestry Worker on daily wage basis on 01.04.1986. His name was also included in the State-wide seniority list as per G.O. Ms.No.64, Environment and Forest Department dated 08.03.1999 at Serial No.4704. The appellants herein decided to bring the Plot Watchers and Social Forestry Workers under the regular post of Forest Watcher and Mali and in that context, the writ petitioner/respondent herein was interviewed on 24.02.1993. Thereafter, again, he was called for interview on 14.04.1993. Though his height is 163 cms., it was recorded as 162 cms. A similarly placed employee, viz., P. Subramani filed a writ petition, being W.P. No.6327 of 2005, seeking a direction to the respondents to appoint him as Forest Watcher with effect from 07.09.2014, by relaxing the rules, as was done in the case of one Sivanesan, by G.O. (2D) No.56, Environment and Forest Department dated 06.09.2006. This Court, by order dated 04.12.2012, disposed of the said writ petition, as under:

"8. x x x x x Hence, the impugned order dated 07.09.2004 passed by the first respondent is quashed and the respondents are directed to appoint the petitioner as Forest Watcher with effect from the date of the impugned order, i.e., 07.09.2004. However, it is made clear that the petitioner is entitled for the monetary benefits of that appointment only from the date on which he joins duty x x x x x x x x x "

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

"7. Considering the same, the respondents are directed to consider the case of the petitioner as Forest Watcher and it is also made clear that the petitioner is entitled for monetary benefits of that appointment only from the date on which he joins duty. As far as fixation of pay is concerned, the petitioner is entitled from the

date on which his junior was promoted till he actually joins the post and pay can be fixed notionally. This direction with regard to pay fixation is given taking into account the fact that after serving for long number of years in the respondent Department, if appointment is directed to be given with effect from today, the petitioner may not get pensionary and other benefits, even to a certain extent also, on his retirement. Hence, the respondents are directed to complete the exercise of giving appointment orders to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. If any relaxation of the Rule is necessary as was done in the case of Sivanesan by G.O. (2D) No.56, Environment and Forest Department dated 06.09.2006, the respondents are directed to take appropriate steps and to get relaxation of the Rules.

8. With the above direction and observation, the writ petition is disposed of. No costs."

4 Challenging the aforesaid order passed by the Writ Court, the State authorities have come up with the instant appeal on the ground that the physical requirement for the post of Forest Watcher is 163 cms. height and 79 cms. chest measurement with 5 cms. expansion. The writ petitioner/respondent herein was lacking 4 cms. of the prescribed height and as such, the writ petitioner/respondent herein cannot be considered for regular appointment on the post of Forest Watcher.

5 Mr. M.K. Subramanian, learned Special Government Pleader (Forest) would submit that the order dated 04.12.2012 passed by this Court in W.P. No.6327 of 2005, though has attained finality, however, had not examined the fact that appointment on the post of Forest Watcher is not an appointment simplicitor, but, it is a promotional post and as such, for want of physical requirement, the writ petitioner/respondent herein cannot be promoted and posted on the said post.

6 On the other hand, it was contended by the learned counsel for the writ petitioner/respondent herein that similarly situated employees of same height as that of the writ petitioner/respondent herein have been considered and appointed on the post of Forest Watcher, without insisting on them, the height, as required for the post of Forest Watcher. Thus, at this stage, the writ petitioner/respondent herein cannot be denied the benefit granted to other similarly situated employees.

7 The learned counsel for the writ petitioner/respondent herein relies on a decision of the Supreme Court in Ghan Sham Sunder and Others vs. State of Punjab and others, [(2004) 9 SCC 508], wherein, the Supreme Court held that the auxiliary Constables, since had rendered service for about more than seven years, their suitability may be adjudged at a much lesser standard than what has been indicated in the circular. Garnering support from the said judgment, the learned counsel would submit that the State Government ought to have considered granting relaxation in the case of the writ petitioner/respondent herein, as well.

8 We have heard the learned counsel for the parties and also perused the pleadings and documents appended thereto.

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.

10 Resultantly, the writ appeal stands dismissed with the above observation. Connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

cad

1 cc to Special Government pleader 9forest), Sr. 26661

1 cc to mr.K. Jenitha, Advocate, sr. 2856

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JP (CO)

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