

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.06.2015

CORAM

The Honourable Mr.Justice D.HARIPARANTHAMAN

W.P.No.1341 of 2015

and

M.P.No.1 of 2015

1. C.Ganesan

2. P.Panneerselvam

... Petitioners

Vs

The Principal Chief Conservator of Forest
having Office at Panagal Maaligai
Saidapet Chennai 15

... Respondent

Prayer: Writ petition is filed under Article 226 of Constitution of India, seeking a writ of certiorarified mandamus to call for the entire records which culminated in issuing the proceedings in Na. Ka. No. A. Aa.1/9501/2014 dt 4.7.2014 on the file of the respondent quash the same and consequently direct the respondent to include the name of the petitioners in the panel drawn for promotion to the post of Forester in the year 2011 give promotion to the petitioners to the post of Forester with effect from 22.12.2011 on par with their juniors without insisting for completion of Vaigai Dam Training with all consequential benefits and pass further suitable orders.

For Petitioners : Mr.S.Mani

For respondents : Mr.N.Inbanathan,
Government Advocate (F)

O R D E R

Heard the learned counsel for the petitioners and Mr.N.Inbanathan, learned Government Advocate appearing for respondent.

2.The petitioners have filed this writ petition seeking to quash the order dated 4.7.2014 of the respondent and consequently direct the respondent to include their names in the panel drawn for promotion to the post of Forester in the year 2011 and give promotion to them to the post of Forester with effect from 22.12.2011 on par with their juniors, without insisting for completion of Vaigai Dam Training, with all consequential benefits.

3. The petitioners were absorbed as Forest Watchers on 23.01.1995, which was on notional basis. The said absorption was pursuant to the order of this Court dated 31.01.2012 made in W.P.No.25262 of 2011. Thereafter, both the petitioners were promoted as Forest Guards by orders dated 20.09.2013 and 24.10.2013 with effect from 18.06.2004.

4. The grievance of the petitioners is that their junior by name Arunachalam was promoted as Forester by an order dated 22.12.2011. Hence, the petitioners made representations to the respondent to promote them also as Foresters in 2011, when their junior was promoted. Their representations were rejected by the impugned order dated 04.07.2014. Hence, the present writ petition.

5. The respondent has filed a counter affidavit. The crux of the counter affidavit is that the petitioners had not undergone the prescribed training as per the rules for promotion to the post of Forester. The counter affidavit does not dispute the averments of the petitioners that they are senior to the said Arunachalam. It is stated in the counter affidavit that the petitioners were sent for training on 01.11.2013 and they completed the same on 30.04.2014 and their names will come under the zone of consideration in the ensuing panel of the year 2013-14.

6. As rightly contended by the learned counsel for the petitioners, a Government employee cannot be denied promotion on the ground that he did not possess the service qualification, which is not at his hands. The issue is squarely covered by the decision of this Court made in W.P.No.26784 of 2013 dated 03.12.2013 (S.Premathi and 3 others vs. The Additional Chief Secretary/Commissioner of Revenue and 2 others), wherein, this Court, relying on two other decisions of this Court, has allowed the writ petition. Paragraph Nos.5 and 6 of the said order read as follows:-

"5.The learned counsel for the petitioners heavily relied on the decision dated 12.10.2011 in S.Sasisivanandam v. District Collector, Thoothukudi District, Thoothukudi and another reported in (2012 (1) MLJ 634) wherein, in paragraph No.16, it has been held as follows:-

"16.The learned counsel for the petitioner has rightly contended that the judgment of this Court dated 04.09.2007 in W.P.Nos.47872 and 47885 of 2006 and 7791 of 2007 is squarely application to this case. The relevant portion of the above judgment reads as follows:-

"8.Under these circumstances, the petitioners cannot be denied the benefit of inclusion in the panel, on the ground that they did not possess the service qualification. After all, the service qualification cannot be equated

to the qualification of a pass in the departmental test. While the pass in a departmental test may be in the hands of the individual, the posting of the individual to a particular post, is not within the hands of the individual. Therefore, the respondents ought to have formulated and implemented a policy providing equal opportunity to all persons to acquire the service qualifications. Since the respondents have failed to do so, the petitioners were not at fault and on that ground, they should not have been omitted to be included in the panel."

6. In an identical case, in W.P.No.15180 of 2013 on 14.06.2013, this Court has passed the following order:-

"13. Accordingly, the writ petition is allowed. A direction is issued to the respondent No.2 and 3 to promote the petitioners as Assistant from the date of his immediate juniors were promoted for the year 2012. The respondent No.2 and 3 are also directed to complete the exercise within a period of six weeks from the date of receipt of copy of this order."

7. It is not the case of the respondent that the petitioners were sent for training, but they failed to undergo the same. If the department fails to post them at a particular place for the training, the employee could not be blamed for the same, as rightly observed by this Court in the aforesaid decision.

8. In view of the same, the impugned order dated 04.07.2014 is quashed and the writ petition is allowed. The respondent is directed to include the name of the petitioners in the panel for the year 2011 and promote them as Foresters from the date on which their junior Arunachalam was promoted, on notional basis. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rg

To

The Principal Chief Conservator of Forest
having Office at Panagal Maaligai
Saidapet
Chennai 15

+2cc's to Mr.S.Mani, Advocate, S.R.No.26067
+1cc to the Special Government Pleader, S.R.No.25823

W.P.No.1341 of 2015

VGI (CO)
CA(10/06/2015)



WEB COPY