

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 12.3.2015.

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.17786 of 2007
O.A.No.1628 of 2004

J.S.Ambrose

...Petitioner

vs.

1. Government of Tamil Nadu,
rep. by Secretary to Government,
Environment and Forests Department,
Fort St. George, Chennai-9.

2. The Principal Chief Conservator of Forests,
Chennai 600 015.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus call for the records in (i) G.O.Ms.No. 303 Environment and Forests Department dated 07.09.1995 and Govt. Lr.No. 14465/FR .I/96-5 dated 3.11.1996 of the first respondent, quash the Government Letter dated 3.11.1996 in so far as the petitioner is concerned and issue directions to the first and second Respondents to include the name of the petitioner in the panel for promotion as Assistant Conservator of Forests of the year 1993-94 approved in G.O.Ms.No.303, Environment and Forests Department dated 7.9.1995, in the appropriate place therein and to give retrospective effect to the promotion of the petitioner as such from the date of promotion of his immediate junior and to grant consequential service and monetary benefits including promotion as Deputy Conservator of Forests.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.N.Inbanathan,
Govt. Advocate (Forest)

ORDER

This writ petition came on transfer from the Tamil Nadu Administrative Tribunal with a prayer for a direction to include the petitioner's name in the panel for promotion to the post of Assistant Conservator of Forests of the year 1993-94 and also to give promotion with retrospective effect viz., with effect from the date of his immediate junior's promotion with all consequential monetary benefits including promotion as Deputy Conservator of Forests.

2. Mr.M.Ravi, learned counsel appearing for the petitioner would state that the petitioner was appointed through the Tamil Nadu Public Service Commission as Forest Apprentice in the year 1974, subsequently, posted as Forest Ranger in the Government Rubber Plantation on 1.11.1976 and later, on promoted as Assistant Conservator of Forest in 1997. While he was working as Assistant Conservator of Forests in Tirunelveli Forest Division, he became eligible for inclusion of his name in the panel for Assistant Conservator of Forests of the year 1993-94 but, his name was not included in the panel approved in G.O.Ms.No.303, Environment and Forests Department dated 7.9.1995 inspite of the fact that his junior Mr.Paul was included. The reason stated on enquiry shows that he had been imposed with two stoppage of increment for one year by Surveyor of Forests Madurai Circle by order dated 9.10.1987 and another order issued by the Arasu Rubber Corporation dated 28.11.1988 relating to the lapses/irregularities relating to the year 1985 and 1984 respectively. He had further stated that the crucial dates for inclusion of his name in the panel 1992-1993 and 1993-1994 were 15.8.1991 and 15.8.1992 respectively. The Government have also issued clear guidelines in G.O.Ms.No.368, P&A.R Department dated 18.10.1993 making clear that any punishments other than censure imposed on the officer within a period of five years from the crucial date and punishment of censure within a period of one year prior to the crucial date should be held against the officer by passing over his name. At the same time, if the officer was imposed with any of the punishments within the check period for the irregularities which occurred five years prior to the date of punishment, the same need not be held against him. He further submitted by bringing to the notice of this court the latest Government Order in G.O.Ms.No.22 Personnel and Administrative Reforms (S) Department, dated 24.2.2014 that G.O.Ms.No.368 dated 18.10.1993 was replaced by the rules framed in G.O.Ms.No.22 wherein it has been made clear that if a member of service is imposed with punishment for irregularities or delinquencies that were committed five years prior to the crucial

date, his name shall be considered for promotion or appointment to a post, if the member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion. Therefore, admittedly, in the present case, the petitioner, no doubt, suffered two punishments of stoppage of increment for one year by Surveyor of Forests Madurai Circle by order dated 9.10.1987 and another order issued by the Arasu Rubber Corporation dated 28.11.1988 only with regard to the lapses or irregularities relating to the years 1985 and 1984 respectively. Therefore, the respondents ought not to have passed over the name of the petitioner from including in the panel for promotion to the post of Assistant Conservator of Forests of the year 1993-94. When the petitioner repeatedly made representations, a response in Letter No.14465/FR.I/96-5 dated 13.11.1996 came from the first respondent stating that his request was rejected. The said letter also does not whisper anything about the application of the aforesaid guidelines mentioned in G.O.Ms.No.368. Therefore, even on applying the guidelines of the Government, there can be no reason for the respondents to reject the request of the petitioner. Hence, the name of the petitioner ought to have been included in the panel approved in G.O.Ms.No.303 P&A.R. Department dated 7.9.1995 on par with his junior Mr.Paul.

3. In reply, the learned Government Advocate appearing for the respondents would submit that the writ petition is liable to be dismissed since the petitioner has neither challenged the communication issued by the Principal Chief Conservator of Forests dated 3.10.2003 nor the Government Letter dated 13.11.1996, hence, the writ petition is not maintainable since the rejection of the request of the petitioner became final. He would further submit that once the Government have issued G.O.Ms.No.303 Enforcement and Forests, Department dated 7.9.1995 drawing regular panel of candidates fit for promotion as Assistant Conservator of Forests of the year 1993-94 based on the recommendations of the Departmental Promotion Committee, taking a stand that his name should have been included, the petitioner cannot have any grievance. That apart, he was also promoted to the post of Assistant Conservator of Forests in the year 1997 subsequently. Therefore, nothing survives in the writ petition.

4. This contention does not impress this court for two reasons. firstly, the petitioner, by virtue of seniority and qualification was fully qualified to be included in the panel for the promotion to the post of Assistant Conservator of Forests of the year 1993-94. It is the admitted case of both sides that his name was not included in the

panel approved by the Government in G.O.Ms.No.303. Further, the petitioner's junior Mr.Paul has been included in the panel. The reason for his non-inclusion in the panel was that he had been imposed with two stoppage of increments for one year by Surveyor of Forests Madurai Circle by order dated 9.10.1987 and another order issued by the Arasu Rubber Corporation dated 28.11.1988 with regard to the irregularities said to have taken place in the years 1985 and 1984 respectively. When the crucial date for inclusion of the names in the panel of the year 1992-93 and 1993-94 being 15.8.1991 and 15.8.1992 respectively, the guidelines issued in G.O.Lr.Ms.No.248 Personnel and Administrative Reforms(S) Department dated 20.10.1997 is required to be perused and accordingly, it is extracted hereunder:-

"Effect of punishments on inclusion in the panel:

1....

2. Any punishment, other than 'Censure' imposed on an officer within a period of five years prior to the crucial date and a punishment of 'Censure' within a period of one year prior to the crucial date should be held against the officer. In such a case the officer's name should be passed over.

Provided that if the Officer was imposed with any of the punishments within the check period as mentioned above for irregularities/delinquencies which occurred five years prior to the date of punishment, such punishment need not be held against him."

5. Subsequently, G.O.Ms.No.22 Personnel and Administrative Reforms (S) Department dated 24.2.2014 also clearly reiterates the same stand which is also extracted hereunder:-

"(1-H) If a member of service is imposed with punishment for irregularities or delinquencies that were committed five years prior to the crucial date, his name shall be considered for promotion or appointment to a post, if the member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion."

6. A close reading of the above guidelines amply supports the case of the petitioner that if a member of service is imposed with punishment for the irregularities or delinquencies that was committed five years prior to the crucial date, his name shall be considered for promotion provided such member of service is not undergoing any

punishment on the crucial date or on the date of consideration for actual promotion.

7. Admittedly, in the present case, the petitioner comes within the purview of the above condition. As mentioned above, both the punishments imposed against the petitioner viz., stoppage of increments for one year each, one by Surveyor of Forests Madurai Circle by order dated 9.10.1987 and another order issued by the Arasu Rubber Corporation dated 28.11.1988 relating to the irregularities or delinquencies that were committed in the years 1985 and 1984 respectively. Admittedly, as there has been a gap of more than five years between the date of incident and the crucial date as mentioned by the afore mentioned guidelines, the name of the petitioner ought to have been included in the panel approved in G.O.Ms.No.303, Environment and Forests Department, dated 7.9.1995 alongwith his junior Mr.Paul as there was no impediment. This court does not find any justification at all to refuse his promotion alongwith his junior Mr.Paul. No doubt, the petitioner was given promotion in the year 1997 as Assistant Conservator of Forests. Since he became qualified for inclusion in the the panel of the year 1993-94, the respondents are directed to include his name in the panel for promotion to the post of Assistant Conservator of Forests of the year 1993-94 as approved in G.O.Ms.No.303 in the appropriate place and give him the benefits with retrospective effect from the date of promotion given to his junior Mr.Paul and grant all consequential service and monetary benefits. Needless to mention that such an exercise shall be completed within a period of five weeks from the date of receipt of copy of this order. The writ petition is allowed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

ssk.

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To

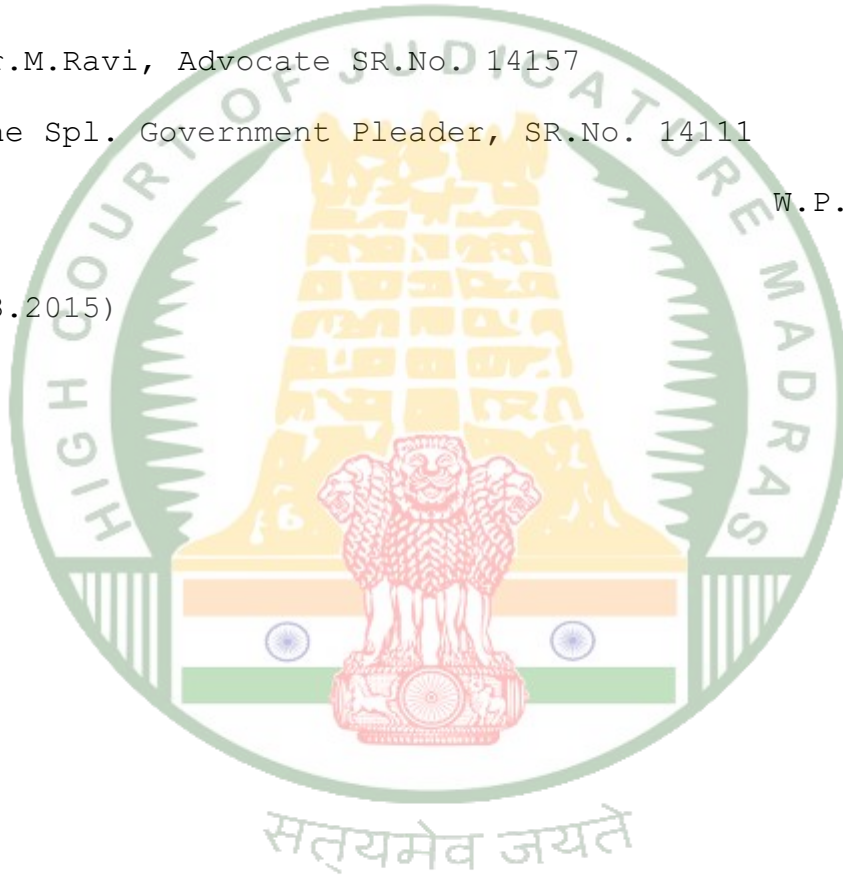
1. Government of Tamil Nadu,
rep. by Secretary to Government,
Environment and Forests Department,
Fort St. George, Chennai-9.
2. The Principal Chief Conservator of Forests,
Chennai 600 015.

1 CC to Mr.M.Ravi, Advocate SR.No. 14157

1 CC to the Spl. Government Pleader, SR.No. 14111

W.P.No.17786 of 2007

CTK (CO)
PSI (27.03.2015)



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