

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2016

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.17568 of 2010

& M.P.Nos. 2 of 2010

1. A.Gunasekaran

2. R.Manickaraj

.. Petitioners

Versus

1. The Secretary to Government,
Environment & Forest Department
Fort St. George, Chennai - 600 009.

2. Principal Chief Conservator of Forests
Panagal Buildings, Saidapet,
Chennai - 600 015.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records comprised in the impugned G.O.Ms.No.655 Forest & Fisheries Dept., dated 09.06.1988 and G.O.Ms.No.5, Environment & Forest Department, dated 09.01.2001 of the 1st respondent and the consequential impugned order passed by the 2nd respondent in Ref.C.No.S2/52167/09 dated 28.10.2009 and quash the same and consequently direct the respondents to promote the petitioners as Fieldman Gr.II on the due dates of their completion of 10 years as Kanakkapillai.

For Petitioner : Mr.V.Chokalingham

For Respondents : Mr.N.Inbanathan, GA, Forest

O R D E R

The prayer in the Writ Petition is to call for the records comprised in the impugned G.O.Ms.No.655 Forest & Fisheries Dept., dated 09.06.1988 and G.O.Ms.No.5, Environment & Forest Department, dated 09.01.2001 of the 1st respondent and the consequential impugned order passed by the 2nd respondent in Ref.C.No.S2/52167/09 dated 28.10.2009 and quash the same and consequently direct the respondents to promote the petitioners

as Fieldman Gr.II on the due dates of their completion of 10 years as Kanakkapillai.

2. The learned counsel appearing for the petitioners would submit that the issue pertaining to the petitioners, is only relating to the date of absorption, i.e., on 09.01.2001, as has been provided under G.O.Ms.No.5, Environment & Forest Department, dated 09.01.2001. In respect of the said date, the petitioners should have been absorbed on completion of their 10 years of service as daily wages in the erstwhile Cinchona Department.

3. Heard both sides.

4. The petitioners were appointed as daily wagers as Kanakkapillai on the erstwhile Cinchona Department and the said Department was permanently closed from 03.04.1990, by virtue of the Government order in G.O.Ms.No.221, Environment and Forest Department.

5. Due to the closure of the Cinchona Department, the Government issued G.O.Ms.No.655, Forest & Fisheries Dept., dated 09.06.1988, thereby, 33 members employed in the plantation and factories of Cinchona Department, who have completed more than 10 years of service, should be absorbed permanently. Since all of them had necessary minimum General Educational Qualification and experience for the post of Fieldman, 33 number of supervisory posts were created and in those position, those 33 number of temporarily created Kanakkapillai were absorbed on completion of 10 years of service.

6. Taking cue from the above line of issuance of G.O.Ms.No.655 Forest & Fisheries Dept., dated 09.06.1988, the Government had rehabilitated all those persons, who are numbering 199, who had worked in the Cinchona Department, which came to be closed by 03.04.1990, to be observed and rehabilitated in the Forest Department. However, G.O.Ms.No.275, Environment & Forest Department, dated 06.11.1996 also was issued, through which, almost all the temporarily employed workers / Kanakkapillai in the erstwhile Cinchona Department, were absorbed in the Forest Department, in the respective categories, i.e., Field Workers Grade II.

7. However, only 9 persons who had worked more than 10 years in the erstwhile Cinchona Department and had been continuously working in various other departments as temporary employees, had not been brought into regular service including the petitioners herein. But they were considered for regularisation by the Government Order in the year 2001.

Resultantly, the G.O.Ms.No.5, Environment & Forest Department was issued by which, these 9 persons including the petitioners herein, were permanently absorbed as Forest Watcher Grade - II, from the date of G.O. i.e, 09.01.2001, with time scale of pay as Rs.2550 - 3200. These two petitioners, along with other similarly placed persons, totally 9, were brought into the regular service only from 09.01.2001.

8. The learned counsel appearing for the petitioners would contend that both these petitioners joined in the Department of Cinchona on 29.04.1981 and 23.12.1982, respectively. Since they completed 10 years of service by 28.04.1991 and 22.12.1992, they should have been absorbed from that date itself, instead the respondents by the impugned G.O.Ms.No.5, dated 09.01.2001, have absorbed these petitioners along with others only from the date of G.O. i.e, 09.01.2001, which is palpably wrong.

9. Per contra, the learned Special Government pleader appearing for the respondents, by referring to paras 7, 10 and 11 of the counter affidavit filed, contended that these 9 people including the petitioners, worked only as daily wages in the erstwhile Cinchona Department, which was wound up by virtue of the G.O.Ms.No.221, Environment and Forests department, which is the parent department for the Cinchona Department as on 01.04.1990. They were not regular employees and were not governed under any service rules and therefore they have no statutory rights. Further, the Government in G.O.Ms.5, Environment and Forests Department, dated 09.01.2001 have considered the names of 9 Kanakapillais as daily wages including the petitioners and appointed them on regular basis in the post of Forest Watcher Grade II by creating the said post on humanitarian grounds by a policy decision taken by the Government by absorbing these petitioners from 09.01.2001, that is, the date of G.O.Ms.5, which cannot be found fault with the State Government or the Department, as the petitioners have no vested right to claim absorption previous to the date of G.O.

10. The learned Government Pleader would also rely upon para 11 of the counter affidavit, which would show that the decision to absorb these petitioners from 09.01.2001 is also a decision taken by the Government, as a welfare State to give regular appointment to those persons, who were daily wages. The post of Forest Watcher is governed under the Tamil Nadu Forest Subordinate Service Rules and there is no provision under this Rule to appoint the Kanakapillais on daily wages in the post of Forest Watcher and therefore, there is no further right to the petitioners, to be absorbed from an earlier date than the one now fixed under G.O.MS.No.5.

11. However, the learned counsel for the petitioners would invite the attention of this Court to para 10 of the counter affidavit filed by the respondents, which would show that the proposal dated 06.11.1992 was sent to the Government for absorbing the remaining 9 Kanakapillais (including the petitioners) as Fieldman grade II by creating the said post. The counter further states that while the matter was under consideration before the first respondent, the petitioners had filed Original Applications before the Tamil Nadu Administrative Tribunal to direct the respondents to absorb them as Fieldman grade II and after abolition of the Tribunal, the O.As. were transferred to this Court and numbered as W.P.Nos.26977 of 2006 and 25724 of 2006. Both the Writ Petitions were disposed by this Court on 24.06.2008 and 14.11.2008 respectively, with a direction that the case of the petitioners for promotion could be considered as having been already considered in respect of others, as per G.O.Ms.No.655, Forest and Fisheries, dated 09.06.1988.

12. The above averments made by the respondents in their very counter affidavit themselves clearly establish that the Government had taken a policy decision as early as in the year 1992 itself and that is the reason why the proposal sent on 1992 for absorption of these 9 persons including the petitioners, was halted by the case of these litigants and others. Ultimate direction was issued to the respondents by this Court on 24.06.2008 and 14.11.2008 for consideration of the case of the petitioners along with the similarly placed persons, who were already considered in the Government G.O.Ms.No.655, Forest and Fisheries, dated 09.06.1988.

13. These factors clearly establish the case in favour of the petitioners, that is, with reference to 10 years service on the erstwhile Cinchona Department, the petitioner enabled to claim for absorption in the year 1991 and 1992 respectively. Hence, the Petitioners' service should be regularised from that date and not from the date that has been fixed by the Government in G.O.Ms.No.5, dated 09.01.2001. The statement made by the learned Special Government Pleader appearing for the respondents that it is a policy decision and the date fixed by the Government, cannot be found fault against the Government and the petitioners have no vested right to seek absorption from the earlier date, cannot have any weightage, for the simple reason that the earlier decision taken in the year 1992 has been rightly pointed out by the learned counsel for the petitioners quoting para 10 of the counter affidavit by the respondents.

14. These two petitioners are similarly placed, among the other workers who had worked in the erstwhile Cinchona

Department and those people were given regularisation on the date of their completing 10 years and that date ought to have been properly examined by the respondents. It is also the decision of the Government, which cannot be held in favour of the respondents and therefore, the petitioners, in the opinion of this court, are entitled to get the benefit of the absorption / regularisation on the date of their completion of temporary service of 10 years which ultimately falls on 28.04.1991 and 22.12.1992 for the petitioners 1 and 2 respectively.

15. Therefore, this Court has no hesitation to hold that the petitioners 1 and 2 are entitled to get regularisation and absorption in the department and have to be absorbed as per G.O.Ms.No.5, 09.01.2001 from 28.04.1991 and 22.12.1992 instead of 09.01.2001.

16. In the result, the Writ Petition is partly allowed and the respondents are directed to regularise the service of the petitioners from 28.04.1991 and 22.12.1992 respectively as Forest Watcher Grade II and consequently, all service benefits including financial benefits available to them under the relevant Rules, which are in vogue, shall be provided within a period of 8 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar pvs

To

1. The Secretary to Government,
Environment & Forest Department
Fort St. George, Chennai - 600 009.
2. The Principal Chief Conservator of Forests
Panagal Buildings, Saidapet,
Chennai - 600 015.

+lcc to Mr.V. Chokalingham, Advocate, S.R.No.60448
+lcc to the Government Pleader, S.R.No.61040

NR(CO)
md(18/11/2016)

W.P.No.17568 of 2010
& M.P.Nos.1 & 2 of 2010