

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No. 17569 of 2010 and
M.P.Nos.1 & 2 of 2010

A.Dhakshanamoorthy

...Petitioner

-Vs-

1. The Principle Chief Conservator of Forests,
Panagal Building,
Saidapet, Chennai.

2. Conservator of Forests,
Coimbatore.

3. Conservator of Forests,
Virudunagar.

4. The District Forest Officer,
Nilgiri South Division,
Udhagamandalam.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order in Ref.No.LL2/7355/2007 dated 21.7.2010 passed by the first respondent herein and quash the same and further direct the respondent not to revert the petitioner from the post of Night Watchman to Plot Watcher.

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

O R D E R

The prayer in the writ petition is for a certiorarified mandamus to call for the records relating to the order impugned in Ref.No.LL2/7355/2007 dated 21.7.2010 passed by the 1st respondent herein and quash the same and further direct the respondent not to revert the petitioner from the post of Night Watchman to Plot Watcher.

2. The case of the petitioner is that he was appointed temporarily as Plot Watcher on 01.02.1981 and served for more than 29 years without any adverse remarks. For regularisation purpose, the petitioner along with eight others filed T.A.No.229/1999 before the Tamil Nadu Administrative Tribunal and the Tribunal passed an order directing the respondents to regularise the services of the petitioner and other similarly placed persons, who were before the Tribunal. As against that order, the 1st respondent filed W.P.No.1662 of 2002 before this Court and the same was dismissed. As against which, a Review Petition also was filed and the same was also dismissed. The respondents further preferred SLP before the Hon'ble Supreme Court as against the order of dismissal in the Review Petition as well as the Writ Petition and the said S.L.P. (c) No.2713/2008 (Civil Appeal No. 6549 of 2009) also was dismissed on 29.9.2008.

3. In the meanwhile, the respondents brought a Government

Order in G.O.Ms.No.95, Environmental and Forest Department dated 07.08.2009 whereby the Government wanted to give a solace to those who are working as Social Forest Workers and Plot Watchers, who worked as casual workers on daily wage basis for more than ten years. The said Government Order further proceeds to say that there are 3058 such persons, who are working as such, temporarily, for more than ten years, can be appointed in supernumerary post of Plot Watcher with a special time scale of Rs.2500-5000 and Grade Pay of Rs.500/-.

4. In the meanwhile, during the pendency of the writ petition filed by the respondents as set out above, in the year 2007, the 2nd respondent issued an order of appointment by order dated 01.11.2007 by which the petitioner was appointed as Office Watchman. Pursuant to that order, the petitioner joined on 01.11.2007 itself and has been working as such from that date. Subsequently, during the hearing of the special leave petition before the Hon'ble Supreme Court, the Government brought the said G.O.Ms.No.95 and the same was brought to the notice of the Hon'ble Apex Court and taking note of the content of the said Government Order, recording the same, the said SLP/Civil Appeal was dismissed on 29.9.2008.

5. After all these legal battle and the issuance of G.O.Ms.No.95, in 2010, by order dated 21.7.2010, the 1st respondent has passed the impugned order against the writ petitioner wherein the respondents placed the writ petitioner in the post of Village Social Forestry Worker from the post of Office Watchman and regularised the same as Plot Watchman in terms of G.O.Ms.No.95, Environmental and Forest Department dated 07.08.2009. Paragraph 9 of the said order further states that the writ petitioner is appointed by regularising his services as Plot Watcher in terms of G.O.Ms.No.95, dated 07.08.2009 and allotted to Virudhunagar Division. Challenging the said order, the petitioner has come out with the present writ petition.

6. Heard the respective counsels for the parties.

7. The learned Government Pleader appearing for the respondents quoting paragraphs 5,6, and 7 of the counter would submit that the writ petitioner was appointed in the year 2007 as Office Watchman only on temporary basis that too in pursuance of the orders of this Court and also under the situation where the State officials are facing contempt proceedings at the instance of the petitioner. Subsequently, inorder to give solace to thousands of workers, who had been working as Plot Watchers temporarily on daily

basis, Government as a policy brought G.O.Ms.No.95 and regularised more than 3000 persons and the same also has been brought to the notice of the Hon'ble Apex Court during the pendency of the said SLP. Since a number of such persons having been regularised on the basis of G.O.Ms.No.95, the writ petitioner also should be appointed and regularised only on the basis of G.O.Ms.No.95 under which the post called Plot Watcher had been created for thousands of people as a supernumerary post with special time scale of pay.

8. The learned Government Pleader appearing for the respondents would submit that the present impugned order appointing and regularising the writ petitioner as a Plot Watcher on permanent basis pursuant to G.O.Ms.No.95, is a sustainable one and therefore, the writ petition is liable to be dismissed.

9. Per contra, the learned counsel appearing for the petitioner would submit that he had been working in the 4th respondent department as Plot Watcher for more than 20 years from 1981 and so he should have been regularised long back which the respondent failed to do. Therefore, the petitioner approached the Administrative Tribunal and got succeeded there. Thereafter, the respondents attempted to file writ petition and further Review Petition which went

in futile and ultimately, the SLP also did not pass any orders in favour of the Government, insofar as the writ petitioner is concerned, as G.O.Ms.No.95 is a general policy which enables thousands of such persons to be rescued from daily wages to regular employment.

10. The learned counsel for the writ petitioner would further submit that moreover, the petitioner was appointed in the year 2007 and had been working as such atleast from 2007 as Office Watchman for the alleged reason as given by the respondents that he is lesser in height which is actually required for the Plot Watcher. When that being so, the subsequent Government Order in the year 2009, cannot be put against the petitioner and based on such Government Order, the petitioner cannot be brought back once again to the post of Plot Watcher with a special time scale of pay for the supernumerary post of Plot Watcher throughout the State.

11. I have considered the rival submissions made by the respective counsels and the documents filed by both parties.

12. It is an admitted fact that the petitioner had been working in the department for 29 years, whether it is temporary or casual basis, the continuous work for nearly about three decades cannot be

disputed. Moreover, the Administrative Tribunal considering the long services put in by the petitioner, directed the authorities to regularise the services of the writ petitioner as against which, the attempt made by the respondents by filing the writ petition and Review Petition ended against the respondent in favour of the writ petitioner. During the pendency of the writ petition, the respondent issued an appointment order on 01.11.2007 appointing the petitioner as Office Watchman and that position is a regular one and the petitioner had been given regular time scale of pay. After that, it is the policy of the Government to give solace to those who worked as temporary or daily wages casual Plot watchers on a permanent basis and only to that effect the G.O.Ms.No.95 was brought in and in order to implement the same, several thousands of people according to the statistics given by the respondents, more than 3000 had been absorbed in the post of Plot Watchers by way of supernumerary positions with special time scale of pay. This import of G.O.Ms.No.95, in the opinion of this Court cannot be put against the petitioner, who has already been appointed in the year 2007 in a different position that too after considering his physical fitness. The G.O.Ms.No.95 issued is not meant for persons, who have already been appointed in a regular post working with the respondent officials. If such a proposal of giving retrospective effect even for appointment and regularisation is allowed, that will upset the

settled position of employee that too pursuant to the long legal battle.

13. Therefore, this Court is of the view that the case of the respondents cannot be accepted and on that basis, the impugned order putting the petitioner in a position of Plot Watcher of supernumerary post pursuant to G.O.Ms.No.95, cannot be sustained. Therefore, the impugned order is quashed. Since the petitioner has been enjoying the interim order of stay as against the impugned order and it is informed that he has not been disturbed in the original post and has been continuing the same, he can be permitted to continue in the said post in accordance with the relevant service rules governing the petitioner.

14. In the result, the writ petition is allowed and the impugned order is quashed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Index: Yes/No
Internet: Yes/No
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R.SURESH KUMAR,J.

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