

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.Nos.40607 and 40608 of 2016
&
W.M.P.Nos.34599 and 34600 of 2016

S.Saraswathi ... Petitioner in W.P.No.40607
of 2016

P.Nirosha ... Petitioner in W.P.No.40608
of 2016

Vs.

The Principal Chief Conservator
of Forests (Head of Department),
Panagal Building,
Saidapet, Chennai-600 015. ... Respondent in both the
Writ Petitions

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writs of Mandamus to direct the respondents to include the name of the petitioner in 2016 panel for promotion to the post of Superintendent and consequently promote the petitioner to the post of Superintendent retrospectively on par with juniors with all consequential and other attendant benefits including arrears of salary in the promoted post and other benefits in the light of the orders passed by this Court in W.P.(MD).No.2649 of 2011, dated 15.03.2012, within a time frame to be fixed by this Court.

For Petitioners : Mr.G.Sankaran

For Respondents : Mr.N.Inbanathan, Govt. Advocate

ORDER

The petitioners have filed these Writ Petitions praying for issuance of Writs of Mandamus to direct the respondents to include the name of the petitioner in 2016 panel for promotion to the post of Superintendent and consequently promote the petitioner to the post of Superintendent retrospectively on par with juniors with all consequential and other attendant benefits

including arrears of salary in the promoted post and other benefits in the light of the orders passed by this Court in W.P. (MD).No.2649 of 2011, dated 15.03.2012, within a time frame to be fixed by this Court.

2. The petitioner in W.P.No.40607 of 2016 was initially appointed as Tally Clerk in the Forest Department on 09.03.1988 and promoted as Junior Assistant on 21.08.1991 and Assistant on 28.08.2000. The petitioner in W.P.No.40608 of 2016 was initially appointed as Junior Assistant on 07.02.1993 and promoted as Assistant on 25.09.2000 and her original name is N.Krishnaveni and subsequently she changed her name as P.Nirosha, duly notified in the Government Gazette.

3. It is the case of the petitioners that their next avenue of promotion is to the post of Superintendent and the promotion will be effected by preparation of panel every year as on crucial date 15th March every year as per Service Rules. The respondent has issued proceedings in Ref.No.W2/5757/2012, dated 21.02.2012 calling for proforma particulars of eligible persons to be included in the panel for promotion to the post of Superintendent for the panel year as on crucial date 15.03.2012, in which their names were included in Annexure-I. Subsequently, the promotion panel was finalised and their names were included in the regular panel issued by the respondent, as per the proceedings No.W2/5757/2012, dated 29.06.2012. Therefore, after more than 12 years service in the feeder post, the petitioners were selected and included in the panel for promotion to the post of Superintendent in the panel year 2012. It is the further case of the petitioners that before issuance of posting orders in operation of the panel, the petitioners submitted representations to the respondent, requesting to consider them for posting in Anamalai Tiger Reserve of Coimbatore Circle due to their family circumstances. However, without considering their applications, they were posted as Superintendent in a different place and their request for posting within Coimbatore Circle, was not considered.

4. Hence, the petitioners were constrained to relinquish their promotion to the post of Superintendent on temporary basis and made a request for relinquishment of promotion for temporary period of three years by referring to their family circumstances. The petitioners submitted representations to the respondent for temporary relinquishment, which were considered and orders were passed by the respondent. Accordingly, their request for temporary relinquishment of promotion to the post of Superintendent from the panel year 2012, had been accepted by the respondent. Therefore, the petitioners have relinquished promotion to the post of Superintendent for a period of three panel years, namely 15.03.2012 to 14.03.2013, 15.03.2013 to 14.03.2014 and 15.03.2014 to 14.03.2015. Since the petitioners'

names were included in the panel for the year 2012 prepared as on 15.03.2012, their period of temporary relinquishment would operate for three panel years upto the panel year 2014-2015. It is further stated by the petitioners that after expiry of the period of relinquishment for the above stated three panel years, they are entitled to be included in the panel year as on 15.03.2016, i.e. 4th panel year.

5. It is the further case of the petitioners that the respondent called for particulars for promotion to the post of Superintendent in the Forest Department for the year 2016 as on 15.03.2016 as per the proceedings, vide Ref.No.W2/14141/2016, dated 10.05.2016. However, their names were not included in the panel sought to be prepared as on 15.03.2016. Therefore, the petitioners submitted applications to the respondent on various dates, by referring to the fact that the period of relinquishment was over and thereby, their names ought to have been considered in the 2016 panel, whereas, the respondents proceeded to issue the panel as per the proceedings in Ref.No.W2/14141/2016, dated 30.08.2016. Since the request of the petitioners had not been considered by the respondent, the petitioners have preferred these Writ Petitions.

6. When the Writ Petitions were taken up for consideration, learned counsel for the petitioners made his submissions by adverting to the averments made in the affidavits filed in support of the Writ Petitions and stated that the petitioners have temporarily relinquished their promotion for a period of three panel years starting from 15.03.2012 and ending with 14.03.2015, as stated above. The crucial date for 2016 panel is 15.03.2016. But the respondent has not considered the request of the petitioners for inclusion of their names in the panel for the year 2016. Without considering the request of the petitioners, the respondent proceeded to prepare the panel for the year 2016, which is legally not sustainable.

7. Learned counsel for the petitioners relied on an order of this Court in W.P.(MD).No.2649 of 2011 (N.Murali and K.Vijayalakshmi Vs. The Principal Secretary, Commissioner of Treasuries and Accounts, Chennai and another), dated 15.03.2012, wherein this Court, while quoting Rule 47(2) of the Tamil Nadu State and Subordinate Services Rules, directed the second respondent therein to consider the names of the petitioners therein for inclusion in the panel from 01.04.2009 and pass fresh orders and also directed that the revised order shall be passed by the second respondent therein within a period of six weeks from the date of receipt of a copy of the order.

8. Learned Government Advocate appearing for the respondent relied on G.O.Ms.No.173, Personnel and Administrative Reforms Department, dated 15.03.1988, regarding the clarification issued

on the temporary relinquishment. He submitted that the petitioners' request can be considered only for the next panel year.

9. Keeping in mind the above submissions made on either side, I have carefully considered the same and perused the materials available on record.

10. As relied on by the learned counsel for the petitioner, in similar circumstances, this Court in W.P.(MD).No.2649 of 2011, dated 15.03.2012, has passed the following order:

"3. The petitioners request was rejected by the impugned order dated 8.10.2010, wherein it is mentioned that the petitioners having submitted their relinquishment letter on 26.4.2006, three year period can be counted only from that date and not from 1.4.2006.

4. According to the learned counsel for the petitioners, the said stand taken by the respondents cannot be accepted in view of the Rule position as well as the relinquishment letter given by the petitioners. Petitioners have given up their right for promotion for 2006-2007, 2007-2008 and 2008-2009, i.e. from 1.4.2006. Three year period having been expired on 31.3.2009, the petitioners are entitled to get their names included in the panel for promotion in terms of Rule 47(2) of the Tamil Nadu State and Subordinate Service Rules. The said Rule reads as follows;

"Relinquishment of a right or privilege for a temporary period shall be accepted if it is made for a period of not less than three years subject to the condition that after the expiry of the said period, the claim of the right or privilege relinquished will be with reference to the state of affairs that exist on the date of expiry of period of relinquishment and without restoration of original seniority. If relinquishment of right or privilege is made permanently and is accepted subsequent claim of the relinquished rights or privileges shall not be entertained."

5. Applying the said Rule, the impugned order is set aside and the second respondent is directed to consider the names of the

petitioners for inclusion in the panel from 1.4.2009 and pass fresh orders. The revised order is directed to be passed by the second respondent within a period of six weeks from the date of receipt of a copy of this order.

6. With the above direction, this writ petition is disposed of. No costs."

11. In view of the above order of this Court, the submissions made by the learned Government Advocate are not acceptable. It is stated that the above said order of this Court has also been complied with by the respondents therein. Hence, following the above said order of this Court, the present Writ Petitions are disposed of, with a direction to the respondent to include the names of the petitioners in the 2016 panel for promotion to the post of Superintendent and the respondent is directed to prepare fresh panel for the year 2016 and pass revised orders, within a period of four weeks from the date of receipt of a copy of this order. No costs. W.M.Ps. are closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

cs

Copy to
The Principal Chief Conservator
of Forests (Head of Department),
Panagal Building, Saidapet,
Chennai-600 015.

+2 ccs to M/s.G.Sankaran Advocate sr 69045

+1 to the Special Government Pleader sr 69222

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