

IN THE HIGH COURT OF JUDICATURE AT MADRAS

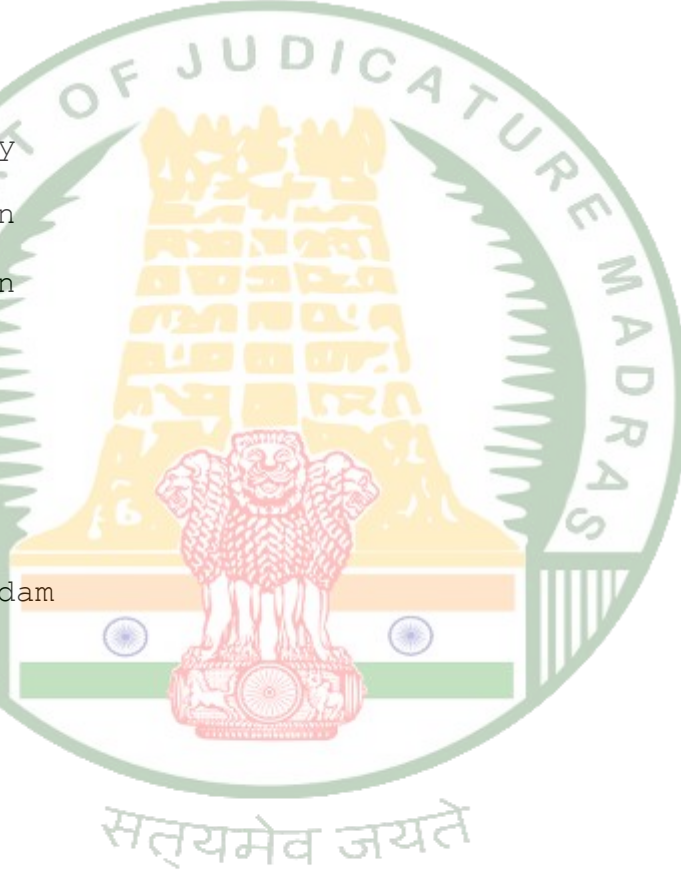
DATED : 22.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.40881 of 2016

1 K.Anbalagan
2 A.Paul Raj
3 S.Manoharan
4 S.Antony Raj
5 S.Paranjothi
6 V.Thirumoorthy
7 V.Ramar
8 K.Sithu Rangan
9 M.Namburajan
10 C.Tamilazhagan
11 S.Kannadasan
12 P.Selvan
13 K.Jothi
14 R.Appanasamy
15 D.Shanmugaraj
16 P.Natarajan
17 R.Sadaiyandi
18 P.Subramani
19 S.Gnanasambandam
20 C.Pandi
21 P.Selvendran
22 P.Selvam
23 P.Periyasamy
24 P.Mohan
25 P.Velupandi
26 S.Mari Pappu
27 T.Muniammal
28 G.Murugan
29 K.Gopal
30 M.Pandian
31 P.Kannian



WEB COPY

... Petitioners

Vs.

1 Government of Tamilnadu
rep. by its Secretary
Environment and Forest Department,
Fort St. George,
Chennai - 600 009.

2 The Principal Chief Conservator of Forest
Office at Panagal Maaligai,
Saidapet, Chennai - 600 015.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to include the names of the petitioners in the panel drawn for promotion to the post of Forester for the year 2011-2012, give promotion to the petitioners to the post of Forester on par with their juniors without insisting for completion of Vaigai Dam Training within a specified period, with all consequential service and monetary benefits and pass further suitable orders that may be deemed fit and proper in the facts and circumstance of the case.

For Petitioners : Mr.S.Mani
For Respondents : Mr.N.Inbanathan
Government Advocate (Forests)

O R D E R

By consent, the writ petition is taken up for final disposal.

2.The present writ petition has been filed seeking a Mandamus directing the respondents to include the names of the petitioners in the

panel drawn for promotion to the post of Forester for the year 2011-2012, give promotion to the petitioners to the post of Forester on par with their juniors without insisting for completion of Vaigai Dam Training within a specified period, with all consequential service and monetary benefits.

3.The petitioners were absorbed as Forest Watchers during the year 1995, which was on notional basis. The said absorption was pursuant to the order of this Court dated 22.07.2010 made in W.P.No.15998 of 2010. Thereafter, the petitioners were promoted as Forest Guards with effect from 22.07.2004.

4.The grievance of the petitioners is that their juniors were promoted as Foresters by an order dated 18.04.2013. Hence, the petitioners made representation to the respondent to promote them also as Foresters on par with their juniors. Their representation was not considered solely on the ground that the petitioners did not complete the six months Vaigai Dam Training within the specified time. Hence, the present writ petition.

5.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."

6.It is the case of the petitioners that they have not been deputed to Vaigai Dam Training for a long time. 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.

7.In view of the same, the respondents are directed to include the name of the petitioners in the panel for the year 2011-2012 and promote them as Foresters from the date on which their juniors were 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.

8.With the above direction, the present writ petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1 Government of Tamilnadu
rep. by its Secretary
Environment and Forest Department,
Fort St. George,
Chennai - 600 009.
- 2 The Principal Chief Conservator of Forest
Office at Panagal Maaligai,
Saidapet, Chennai - 600 015.

+5cc to Mr.Mani, Advocate, S.R.No.67590
+1cc to the Government Pleader, S.R.No.67901

mu (CO)
md(23/12/2016)

W.P.No.40881 of 2016