

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2018

CORAM

THE HONOURABLE MR. **JUSTICE R.SURESH KUMAR**

SUB.A.NO.430 OF 2017

IN

CONT.P.NO.332 OF 2017

IN

W.P.NO.17568 OF 2010

1.A.GUNASEKARAN,
FOREST GUARD METTUPALAYAM RANGE ,
METTUPALAYAM, COIMBATORE DISTRICT.

2.T.MANICKARAJ,
FOREST GUARD TADAGAM , COIMBATORE RANGE,
COIMBATORE. ...APPLICANTS/PETITIONERS

Vs

1.MR.MD.NASIMUDIN,I.A.S.,
PRL.SECRETARY TO GOVERNMENT
(ENVIRONMENT & FORESTS),
FORT ST.GEORGE,
CHENNAI-600 009.

2.DR.BASAVARAJ, I.F.S.,
PRL.CHIEF CONSERVATOR OF FORESTS,
"PANAGAL MALIGAI"
1, ZENITH ROAD, SAIDAPET,
CHENNAI-600 015. ...RESPONDENTS/RESPONDENTS

Sub Application filed under Section 151 of CPC
praying this Court to reopen the above Contempt Petition
No.332 of 2017 and punish the second respondent for having
wilfully disobeyed the orders of this Hon'ble Court and
thus render justice.

The above Sub Application coming on this day before this Court for hearing in the presence of Mr.V.Chokalingham, Advocate for Petitioners , herein; and of Mr.Bala Ramesh, learned Special Government Pleader appearing for the Respondents herein; and upon reading the Application and affidavit of A.Gunasekaran, filed herein ; the Court made the following order:-

"This Court, while closing the main Contempt Petition, by order dated 28.07.2017, has passed the following orders:

"2.On notice, the learned Additional Government Pleader appearing for the respondents has produced a Government Order in G.O.M.S.No.89, Environment and Forests (FR.2-I) Department, dated 18.07.2017, wherein proposal sent by the Chief Conservator of Forest has been accepted and the following orders have been passed:

"The Government after careful examination have decided to accept the proposal of the Principal Chief Conservator of Forests to implement the Hon'ble High Court of Madras dated 24.10.2016 in M.P.Nos.1 and 2 of 2010 in W.P.No.17568/2010 and direct that the services of Tvl. A.Gunasekaran and R.Manickaraj be regularized with effect from 28.04.1991 and 22.02.1992 retrospectively, as directed by the Court.

Consequently, the individuals are eligible for all service and monetary benefits from the date of regularization of their service.”

3.The learned Additional Government Pleader submits that, pursuant to this Government Order, consequential order of regularizing the service of the petitioners retrospectively from the date mentioned in the said G.O. and also all other service benefits such as promotion etc., including of monetary benefits shall be given to the petitioners within a short period, and at any rate within a period of six weeks from today.

4.In view of the said G.O. having been passed, and considering the submissions made by the Additional Government Pleader that consequential order, including financial benefits and monetary benefits would be given to the petitioners within a period of six weeks from today, this Contempt Petition is closed.

5.It is made clear that inspite of this submission made by the Additional Government Pleader on behalf of the respondents, if consequential compliance, pursuant to G.O. referred to above, is not made within the time mentioned above i.e. 6 months, it is open to the petitioner to invoke the contempt jurisdiction of this Court.”

2.However, the petitioners have filed this Sub Application with an allegation that the consequential orders giving service benefits to the petitioners have not been extended to them, pursuant to the said G.O.Ms.No.89, Environment and Forests (FR.2-I) Department, dated 18.07.2017.

3.In this Sub Application, on 30.01.2018, the learned Special Government Pleader appearing for the respondents has produced a proceeding in Ref.No.AB1/32550/2017, dated 25.01.2018, wherein it has been provided that the petitioners have been included in the panel for the post of Forester in the year 2012 and 2013 and they were not eligible in the panel of 2011-2012, since they did not qualify to be included in the said panel on the crucial date.

4.On seeing the said communication dated 25.01.2018, this Court wanted a clarification from the respondents and therefore, on 30.01.2018, passed the following orders:

“Mr.Bala Ramesh, learned Special Government Pleader appearing for the respondent has filed a proceedings issue by the Principal Chief Conservator of Forests in Ref.No.AB1/32550/2017, dated 25.01.2018.

As per the said proceedings, the petitioners have completed the training at Tamil Nadu Forestry Training College only on 31.10.2011, since the crucial date (15.08.2011) was already over, they were not included in the panel for the year 2011-2012, but they have been included in the panel for the year 2012-2013.

2.However, now the promotion has been given to the petitioners as Foresters only from the date of latest proceedings i.e., 28.12.2017. Once they included in the panel for the year 2012-2013, promotion need not be detained till December 2017 and therefore, in this regard, the learned Special Government Pleader wants to get clarification from the respondent and report before this Court. Hence, post the matter on 13.02.2018.”

5.Pursuant to the said order passed on 30.01.2018, today, Mr.Bala Ramesh, learned Special Government Pleader (Forest) appearing for the respondents would submit that as per the proceedings dated 25.01.2018, since the petitioners had been included in the panel for the year 2012-2013, they had been

given retrospective promotion as Forester and from that date, they shall be entitled to claim salary and other pay benefits, including the service benefits in the post of Forester.

6.However, the learned Special Government Pleader submits that since they had not worked from the year 2014-2018 as Foresters, the petitioners are entitled to claim their benefits in the post of foresters only from 10.01.2018. In this regard, the learned Special Government Pleader has relied upon the following portion of the order dated 25.01.2018, which is extracted hereunder:

Seniority fixed in Forest Guard panel (Conservator of Forests, Coimbatore vide Proceeding No.E1/6962/2017 dated 24.11.2017)

Sl.No.	Name Tvl	Name of junior Tvl	Date on which seniority restored in the post of Forest Guard	Seniority assigned
1	A. Gunasekaran	Y.Combaiyan	27.03.1999	30 A
2	R.Manickaraj	M.Manickam	19.02.1999	32 A

Seniority fixed in Forester panel (Principal Chief Conservator of Forests Proc.No.AB1/32550/2017, dated 28.12.2017).

Sl.No. In the panel for 2012-13	Name Tvl	Result	Name of junior Tvl.	Sl.No. in the panel	Date of joining as Forester
3A	R.Manickaraj	Selected	P.Pandian	4	11.06.2014
3B	A. Gunasekaran	Selected	P.Pandian	4	11.06.2014

5.I am to state that in its order in W.P.No.17568 of 2010 dated 24.10.2016 has directed to give **all service benefits including financial benefits available them under relevant rules, which are in vogue.** Regarding this, I am to furnish the relevant Fundamental Rule 27 (17) which are in vogue in respect of restoration of seniority as follows:

“(17)In case where a Government servant has been overlooked for promotion/appointment to the next higher post but subsequently promoted/appointed to that higher post after restoration of his original seniority on appeal, his pay shall be fixed **on the date of assumption of charge in the higher post** on par with the pay of his junior provided he has drawn the same rate of pay as his junior in the lower post from time to time. If he has not drawn the same rate of

pay as his junior in the lower post, his pay shall be fixed, on the date of assumption of charge, at the stage at which he would have drawn pay on that date had he been promoted/appointed to the higher post along with his junior. **In cases where seniority has been restored on or after 19th September 1981, arrears of pay and allowance consequent of fixation of pay shall be admissible with effect from the date of assumption of charge in the higher post;** in cases where seniority has been restored prior to 19th September 1981, arrears shall be admissible only with effect from the above date."

In this case, the Writ petitions have assumed the post of Forest Watcher, Forest Guard and Forester are as follows:

<i>Name Tvl</i>	<i>Forest Watcher</i>	<i>Forest Guard</i>	<i>Forester</i>
R.Manickaraj	23.02.2001	14.12.2007	03.01.2018
A.Gunasekaran	09.01.2001	21.09.2007	03.01.2018

I am to state that based on Fundamental Rules 27(17) the District Forest Officer, Coimbatore, has re-fixed the pay of the above writ petitioner vide Proc.No.E1/6827/2016 dated 10.01.2018. The eligible financial benefits as per relevant rules, which are in vogue will be given to the writ petitioners by presenting necessary bills to concern Treasury.”

7.In view of the said order having been passed on 25.01.2018, and recording the said submissions made by the learned Special Government Pleader appearing for the respondents, this Court is inclined to dispose of this Sub Application that the orders passed by this Court have been substantially complied with, hence no more adjudication is required in this Sub Application.

8.However, if the petitioners are having any further grievance over the said proceedings dated 25.01.2018 and if they feel that they have not been given the service benefits, for which they are legally entitled to, it is always open to the petitioners to agitate the issue in the manner known to law.

With these observations, this Sub Application is closed.”

WITNESS THE HON'BLE MS.INDIRA BANERJEE, THE CHIEF
JUSTICE OF HIGH COURT AT MADRAS, AS AFORESAID, THIS THE 13th
DAY OF FEBRUARY 2018.

SD/-
JOINT REGISTRAR(OS)

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER(O.S.)

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RA/20/02/2018

SUB APPLICATION NO(OS).430 OF 2017

IN

CONTEMPT PETITION NO.332 OF 2017

THE HON'BLE MR.JUSTICE

R.SURESH KUMAR

ORDER

DATED :13/02/2018

FOR APPROVAL :20/02/2018

APPROVED ON :20/02/2018

Copy to:

- 1.MR.MD.NASIMUDIN, I.A.S.,
PRINCIPAL SECRETARY TO
GOVERNMENT,
(ENVIRONMENT AND FORESTS),
FORT ST.GEORGE,
CHENNAI - 600 009.
- 2.DR.BASAVARAJ, I.F.S.,
PRINCIPAL CHIEF CONSERVATOR
OF FORESTS,
"PANAGAL MALIGAI"
1,ZENITH ROAD, SAIDAPET,
CHENNAI - 600 015.
- 3.MR.BALA RAMESH,
SPECIAL GOVERNMENT PLEADER,
HIGH COURT OF MADRAS-104.