

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.05.2017

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.13317 of 2017

V.Aavan

... Petitioner

Vs

1. The State of Tamil Nadu,
rep.by its Secretary to Government,
Environment and Forest Department,
Fort St.George, Chennai-9.
 2. The Principal Chief Conservator of Forests,
Panagal Building, Saidapet,
Chennai-15.
 3. The District Forest Officer,
Trichy Forestry Division,
Trichy.
- Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents 1 and 2 to appoint the petitioner as Mali with effect from the date of his juniors promotion on 24.01.1995 as Forest Watcher by considering his representation in the light of the order passed in W.P.No.9708 of 2014 dated 12.09.2014, W.A.No.1703 of 2014 dated 20.01.2015, SLP(Civil) No.12056 of 2015 dated 05.07.2016, Cont.P.No.679 of 2015 dated 19.10.2016 and with all consequential benefits within a time frame.

For Petitioner : Ms.K.Jenitha

For Respondents : Mr.M.Santhanaraman,
Additional Government Pleader
(Forests)

ORDER

By consent of the learned counsel on either side, the main writ petition itself is taken up for final disposal.

2.The petitioner states that he was appointed as Plot Watcher on 27.07.1979 at Trichy Social Forestry Division.

Thereafter, as per G.O.Ms.No.64, Environment and Forest Department, dated 08.03.1999, his name was included in the State-wide Seniority List vide Sl.No.561. Subsequently on 04.03.2003 he was appointed as Forest Watcher by proceedings of the District Forest Officer, Sathiyamangalam Division in Pa.O.No.13/03. Thereafter, his appointment to the post of Forest Watcher was withheld and he was appointed as Mali by proceedings of the Conservator of Forests, Research Division, Chennai in Pa.O.No.39/2004 dated 20.07.2004. The petitioner states that he has rendered more than 37 years of unblemished service without any remark and he is to attain the age of superannuation on 31.05.2017. A direction was issued by the Tamil Nadu Administrative Tribunal, to prepare a State-wise Seniority List of Plot Watchers and Social Forestry workers as per their joining dates. Based on the recommendation of the Forest Department, G.O.Ms.No.64, Environment and Forest Department, dated 08.03.1999 was issued for preparation of State-wide seniority list. Subsequently, State-wide Seniority List was prepared with a cut-off date of 01.02.1993. The temporary Plot Watchers and Social Forestry Workers were included in the seniority list and they were appointed as Forest Watchers as and when the vacancy arose. The first appointment was made from the State-wide Seniority List which was prepared as per G.O.Ms.No.64. The Chief Conservator of Forests, in his proceedings, has ordered appointment for the vacancies upto S.No.377 for the post of Forest Watchers. In that panel for promotion, out of 377 persons, 178 persons were above 163 c.m., in height and the other 199 persons were below 163 c.m., in height. All the workers in the above proceedings having above 163 c.m., in height and below 163 c.m., in height were also appointed as permanent Forest Watchers. Thereafter, in February 2003, a separation was made in the State-wide Seniority List for the Plot Watchers and Social Forestry Workers who are above 163 c.m., and below 163 c.m., in height and below height persons were ordered to be appointed as Mali. In view of the separation, the Plot Watchers and Social Forestry Workers above 163 c.m., in height, got appointment as Forest Watchers, but the workers below 163 c.m., in height were compelled to wait for their appointment as Mali to their turn, for long years. The candidates who were in the height of 163 c.m., and above have marched over and overlooked the persons having the height below 163 c.m., and still they are waiting for their appointment and some of them have attained the age of superannuation. In order to comply with the order passed by this Court, G.O.(2D)No.56, Environment and Forest Department, dated 06.09.2006 was passed in which one Sivanesan, though he was lacking in height by 2 cms, was given appointment, relaxing the rules, as Forest Watcher. Based on this G.O., a writ petition filed by a similarly placed person in W.P.No.6327 of 2005 has been disposed of with a direction to appoint the petitioner therein as Forest Watcher with effect from 07.09.2004, by relaxing the rules, as was done

in the case of Sivanesan. Similarly placed persons filed W.P.Nos.15561 of 2006 and 23374 of 2008 before this Court and the same were disposed of on 10.03.2008 and 30.10.2009 respectively, with a direction to consider their claim for appointment as Forest Watcher on par with their juniors. The appeals filed by the Department against these orders were also dismissed.

3.The petitioner states that another similarly placed person, who is the junior of the petitioner herein, has approached this Court by filing W.P.No.9708 of 2014 and this Court has allowed the said writ petition. An appeal filed by the Department in W.A.No.1703 of 2014 against the said order was dismissed with a direction to appoint him as Forest Watcher by giving relaxation. Since the respondents have not complied with the order, a contempt petition was filed. Immediately, the respondents filed SLP No.12056 of 2015 before the Supreme Court and the same was dismissed on merits. Thereafter, a counter was filed in the contempt petition stating that there is no possibility in the service rule to appoint the petitioner therein as Forest Watcher by giving relaxation to the physical measurements. In view of the said counter filed, the Division Bench had given a direction to the respondents to appoint the petitioner therein to the post of Mali with effect from the date of his junior's appointment as Forest Watcher.

4.Reiterating the above, the learned counsel for the petitioner submits that even though the petitioner herein was appointed as Mali on 20.07.2004, the respondents failed to consider his seniority and not appointed him as Mali on par with his junior's appointment as Forest Watcher. He submitted that as per the orders of this Court, the petitioner herein is entitled for appointment to the post of Mali with effect from the date of promotion of his juniors as Forest Watcher. He also submitted that the petitioner has made a representation dated 24.01.1995 to the respondents in this regard.

5.Mr.M.Santhanaraman, learned Additional Government Pleader (Forests), takes notice for the respondents.

6.It is seen that a Division Bench of this Court in Cont.P.No.679 of 2015, by order dated 19.10.2016, considered the issue in respect of a similarly placed person like that of the petitioner, and issued a positive direction to consider the case of the petitioner therein on par with his juniors appointed in the post of Forest Watchers. As the juniors of the writ petitioner therein were appointed in the post of Forest Watcher, the writ petitioner's requirement in the post of Mali, was also directed to be considered from the date of his juniors' appointment in the Post of Forest Watcher. It was also directed that the seniority of the writ petitioner therein has to be

maintained in the manner compared to his juniors in the said post of Forest Watcher.

7.Following the above, the respondents herein are directed to consider the case of the petitioner herein on par with his juniors appointed in the post of Forest Watchers. Since the juniors of the writ petitioner herein were appointed in the post of Forest Watcher, the writ petitioner's requirement in the post of Mali, is also directed to be considered from the date of his juniors' appointment in the Post of Forest Watcher. The seniority of the writ petitioner herein has to be maintained in the manner compared to his juniors in the said post of Forest Watcher.

8.The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Secretary to Government,
Government of Tamil Nadu,
Environment and Forest Department,
Fort St.George, Chennai-9.
2. The Principal Chief Conservator of Forests,
Panagal Building, Saidapet,
Chennai-15.
3. The District Forest Officer,
Trichy Forestry Division,
Trichy.

+1cc to Mr.K.Jenitha, Advocate, S.R.No.38108
+1cc to the Special Government Pleader(Forest), S.R.No.38105

W.P.No.13317 of 2017

SKS (CO)
CA(14/06/2017)