

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.20854 of 2012

P.Rajendran

... Petitioner

Vs.

1. The Government of Tamil Nadu
rep. by its Principal Secretary to
Government, Fort St. George,
Secretariat, Chennai - 9.
2. The Principal Chief Conservator
of Forests, Forest Department,
No.1, Genies Road, Panagal Maligai,
Saidapet, Chennai - 15.
3. The Conservator of Forests,
Dharmapuri Region,
Dharmapuri - 5.
4. The District Forest Officer,
Dharmapuri Forest Division,
Dharmapuri, Dharmapuri District.

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the respondents to include the petitioner's name in the Statewide seniority list and regularise petitioner's service and appoint the petitioner as a Forest Watcher in the supernumerary post of fourth respondent division and pay monetary benefits within stipulated time.

For Petitioner : Mr.M.R.Jothimanian

For Respondents : Mr.M.Santhanaraman,
Addional Government Pleader

ORDER

Seeking a direction to the respondents to include the petitioner's name in the Statewide seniority list, regularise his service and appoint him as a Forest Watcher in the supernumerary post of fourth respondent division and pay monetary benefits within stipulated time, the present writ petition has been filed.

2.The case of the petitioner is that he joined the services as a Plot Watcher under the control of the fourth respondent on 01.12.1984 and he continued to work as such upto March 1989. Thereafter, due to non-availability of funds and in the absence of project in the respondent Department, the petitioner was not permitted to work for some period from 1989 till 2002. Thereafter, he was taken back in service in 2002 and working with the respondent Department for more than ten years.

3.In 1999, the Government has issued G.O.Ms.No.64 Environment and Forest (FR2) Department dated 06.03.1999 to prepare statewide seniority list of Plot Watchers, who are all working for more than ten years as such for the purpose of regularisation of their services. In pursuance of the Government Order, he had submitted a representation to respondents 3 and 4 for inclusion of his name in the seniority list along with relevant service particulars for the purpose of regularisation of his services. However, despite his application seeking for regularisation on legitimate basis, his name was not included in the statewide seniority list.

4.While matter stood thus, the Government has issued another Government Order in G.O.Ms.No.95 Environment and Forest (FR.2) Department dated 07.08.2009 to regularise the services of all Plot Watchers/Social Forest Workers who were working in the Department for more than ten years and the petitioner's name was also recommended and forwarded to the second respondent by the fourth respondent in 2009 but the same has been kept pending. The petitioner had also made a representation on 28.08.2011 to the first and second respondents and there was no action forthcoming for regularising the services inspite of the fact that the petitioner has rendered more than ten years of service as Plot Watcher. According to the petitioner, if the initial date of his appointment is taken into consideration he had rendered more than 28 years of service till the date of filing of the writ petition, ignoring the break in service, which was not attributable to the petitioner as his services came to be discontinued only for paucity of funds and for non-availability of the project. According to the petitioner, other persons who are similarly placed like the petitioner, whose services had been regularised in terms of G.O.Ms.No.95 Environment and Forest

(FR.2) Department dated 07.08.2009 in compliance with the various orders passed by this Court in several writ petitions. Since his name was recommended by the competent authority for regularisation of his service, the petitioner does not see any impediment for grant of relief to him, however, for some strange reason, no decision has been taken by the first and second respondents in regularising his services.

5. Upon notice, Mr. M. Santhanaraman, learned Additional Government Pleader entered appearance on behalf of the respondents and filed counter affidavit resisting the claim of the petitioner. According to the counter affidavit, it is stated that the services of the petitioner could not be regularised when similar names were considered in 1989 and during that crucial period, the petitioner absconded and left the service and re-entered the service only on 1st April 2002. Moreover, it is stated in the counter affidavit that the petitioner had completed only 9 years and 5 months as on 30.01.2009 after ten years break of service and therefore, the case could not be considered along with other persons whose services were ultimately came to be regularised by the application of the above said Government Orders.

6. Rebutting the averments contained in the counter affidavit, a reply statement has been filed on behalf of the petitioner that discontinuance of his service from 1989 till 1st April 2002 was not due to the conduct of the petitioner but it was only because of the fact of non-availability of funds and the project and therefore, such break ought to have been condoned and the services ought to have been construed to be as continuous with effect from the date when he was originally appointed in 1984. Learned counsel appearing for the petitioner would specifically draw this Court's attention to the proceedings of the second respondent dated 18.09.2009, in which, in para 1, it is clearly stated that the persons whose services had been discontinued due to paucity of funds, such break had to be condoned and need not be considered as ineligible for the purpose of completion of ten years of service. In view of the proceedings which clearly stipulates that such break in service shall not be considered as one of break in service for the purpose of counting the completion of ten years of service as contemplated in the above said Government Orders, the petitioner's services ought to have been regularised as was done in the case of similarly placed persons. Learned counsel appearing for the petitioner would also draw this Court's attention to para 6 of the G.O. Ms. No. 95 Environment and Forest (FR.2) Department dated 07.08.2009 wherein more than 3000 daily wage employees were working as Plot Watchers have been brought on the regular time scale by creating supernumerary posts from the date of issue of the Government Order. Therefore, he would

pray for allowing the writ petition as otherwise the petitioner would be deprived of his right to seek parity in the matter of regularisation of his services.

7.This Court has considered the rival submission of the learned counsels after perusing the records and the pleadings.

8.While considering the objections putforth by the respondents, this Court is of the view that the discontinuance of the petitioner for the period from 1989 till 01.04.2002 was not due to the conduct of the petitioner or his absence on his own volition but because of the non-availability of funds and the project. This fact which was highlighted in the reply statement has not been disputed by the respondents. In the said circumstances, the contention of the respondents that the petitioner did not complete ten years of service cannot be countenanced both on facts and in law. That being the case, the claim of the petitioner squarely falls within the frame work of G.O.Ms.No.95 Environment and Forest (FR.2) Department dated 07.08.2009 and also other Government Orders, which are referred to supra. While holding so, this Court has no hesitation to grant the mandamus sought for in the writ petition.

9.In the said circumstances, there shall be a direction to the respondents to include the name of the petitioner in the state wide seniority list and regularise the services by appointing him as Forest Watcher by creating a supernumerary post in case of non-availability of vacancy in terms of G.O.Ms.No.95 Environment and Forest (FR.2) Department dated 07.08.2009 with all other attendant and consequential benefits as granted to other similarly placed persons. The said exercise shall be initiated and completed by the respondents within a period of three months from the date of receipt of a copy of this order.

10.The writ petition stands allowed on the above terms. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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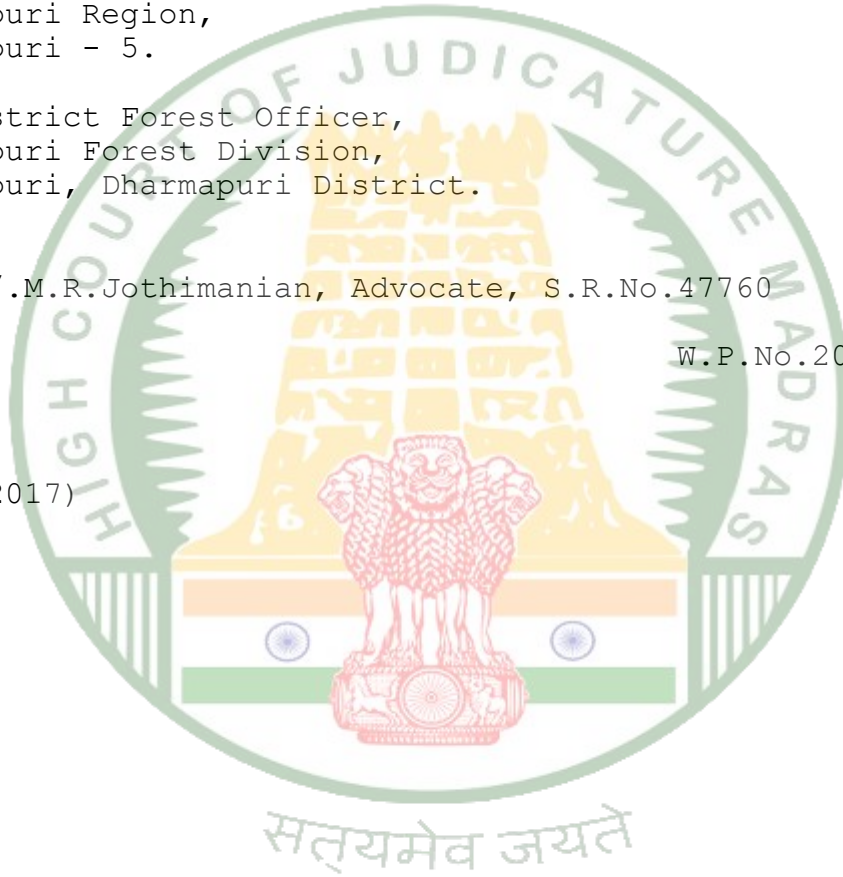
To

1. The Principal Secretary to
Government, Fort St. George,
Secretariat, Chennai - 9.
2. The Principal Chief Conservator
of Forests, Forest Department,
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Dharmapuri Region,
Dharmapuri - 5.
4. The District Forest Officer,
Dharmapuri Forest Division,
Dharmapuri, Dharmapuri District.

+1cc to M/.M.R.Jothimanian, Advocate, S.R.No.47760

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CA(08/09/2017)



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