

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.12.2017

CORAM

THE HONOURABLE Mr. JUSTICE **V.PARTHIBAN**

W.P.No.1531 of 2012

V.Subramani

... Petitioner

Vs.

1.Government of Tamil Nadu
Rep. By its Secretary,
Environment and Forest Department
Fort St. George,
Chennai – 600 009.

2.The Principal Chief Conservator of Forests,
Panagal Building, Saidapet,
Chennai – 600 015.

3.The District Forest Officer,
Tirupattur Division,
Tiruppattur
Vellore District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the Government Letter No.16097/FR-2/2010-2 dated 17.09.2010 on the file of the first respondent quash the same and consequently direct the respondents to include the name of the petitioner in the State wide seniority list so as to enable the respondents to bring him under time scale of pay.

For Petitioner : Mr.S.Mani

For Respondents : Mr.L.Manoharan

Additional Govt. Pleader (Forest)

ORDER

The petitioner has approached this Court for seeking the following reliefs:

"To issue a Writ of Certiorarified Mandamus calling for the records relating to the Government Letter No.16097/FR-2/2010-2 dated 17.09.2010 on the file of the first respondent, quash the same and consequently direct the respondents to include the name of the petitioner in the State wide seniority list so as to enable the respondents to bring him under time scale of pay.

2.The case of the petitioner is that he is employed as Plot Watcher in the Forest Department from 01.04.1983 on daily rated basis. According to him, he had been working from the date of his appointment till date with artificial breaks on few occasions during the entire period of his employment. Such artificial breaks was entirely due to the administrative reasons and the same cannot be attributable to the conduct of the petitioner.

3.Like the petitioner, there were hundreds of Plot Watchers on daily rated basis without any service benefits as enjoyed by the

regular employees of the Forest Department. Therefore, there were representations on behalf of such employees seeking regularisation of their services. In response to the demand of the casual employees, the Government has issued G.O.Ms.No.64, Environment and Forest Department, dated 08.03.1999 providing for regularisation of services of casual employees. The qualification prescribed in the G.O. was only the ability to read and write coupled with physical fitness. On the basis of the said G.O., State wide seniority list was drawn up and on the basis of seniority list, the casual employees were regularised in a phased manner.

4. Since the petitioner's name was left out in the seniority list without any valid reasons, the petitioner was constrained to approach this Court earlier and filed W.P.No.19870 of 2009. This Court, by order dated 23.03.2010, directed the petitioner to submit all the details of his service with the 1st respondent and the 1st respondent was directed to consider the claim of the petitioner.

5. In the meanwhile, it appears that the Government has passed yet another Order in G.O.Ms.No.95, Environment and Forest Department, dated 07.08.2009 by bringing all the Plot Watchers/ Social Forestry Workers in a regular time scale of pay by creating supernumerary posts. This was done in order to tide over the situation that the regularisation of such casual employees in a

phased manner would take very long years and the same was not practicable.

6. In pursuance of the direction in the aforesaid W.P.No.19870 of 2009 dated 23.03.2010, the comprehensive service details have been submitted by the petitioner to the authorities concerned. Unfortunately, the 1st respondent issued communication dated 17.09.2010 rejecting the claim of the petitioner on the ground that the petitioner was not working at the time of preparation of the State wide seniority list and therefore, his name was not included. However, in the said communication, it is admitted that the petitioner had been employed from 1983 with some breaks and from July, 1999 and till date of the passing of the rejection order dated 17.09.2010.

7. Since the rejection order is on untenable grounds, in view of the fact that the breaks in service were not attributable to the petitioner, the petitioner before this Court assailing the communication of the 1st respondent dated 17.09.2010.

8. The learned counsel appearing for the petitioner would, at the outset, submit that the entire issue has been squarely covered by various orders passed by this Court with reference to the same Department and with reference to the same post viz., Plot Watchers

and those decisions are binding on the Department, yet the Department has taken a stand against the petitioner and rejected the regularisation of the petitioner, which runs contrary to the directions issued by the learned Single Judge and Hon'ble the Division Bench of this Court, which has also been confirmed by the Hon'ble Supreme Court of India.

9. The learned counsel for the petitioner would draw the attention of this Court that an order passed by a Division Bench of this Court dated 28.04.2010 in W.A.No.549 of 2010. The Division Bench of this Court, after adverting to the submissions of the parties, has clearly held that the petitioners were entitled to be regularised despite breaks in service. The operative portion of the order passed by the Division Bench of this Court, in paragraph Nos.5 and 6, are reproduced below:

"5.It is relevant to note that the second appellant by proceeding dated 18.9.2009 has stated that the Village Social Forest Workers/Plot Watchers who have completed ten years as Daily Wagers in supernumerary posts were considered in the seniority list. In para 2 of the said proceedings of the second appellant, a reference has been made to G.O.Ms.No.95, Environment and Forests (FR.II) Department, dated 7.8.2009, in which it is stated that some of the Plot

Watchers would have been stopped in interim period due to administrative reasons or for want of funds or for want of plan schemes approval which is not due to the fault of the individuals and such interim break period need not be considered and appropriate orders may be issued. Thus the contention raised by the appellants that owing to break in service the writ petitioner's case cannot be considered, is not tenable. It is pertinent to note that the third appellant, in his proceedings dated 22.11.2007, has specifically stated that the break in service of the writ petitioner is not attributable to him. Hence we find that the stand taken by the appellants is wholly unjustified.

6.In view of the above reasons, we are of the view that the order made in W.P.No.21067 of 2007 dated 1.12.2009, calls for no interference and accordingly the Writ Appeal fails and is dismissed. No costs. Connected M.P.No.1 of 2010 is also dismissed."

10. According to the learned counsel for the petitioner, number of decisions have been rendered on the same issue following the Division Bench Judgment and he had drawn the attention of the other decision passed by the learned Single Judge [as he then was]

in W.P.No.8978 of 2012 dated 04.04.2012. The learned Judge allowed similar claim by following the order passed by the Hon'ble Division Bench as aforementioned. The learned counsel would also submit that the Division Bench Judgment has been confirmed by the Hon'ble Supreme Court of India.

11.Upon notice, Mr.L.Manoharan, learned Additional Government Pleader has entered appearance on behalf of the respondents and filed counter statement.

12.The facts as stated in the affidavit are not disputed by the learned Additional Government Pleader appearing for the respondents. The counter affidavit has only reiterated the contents of the impugned communication passed by the 1st respondent dated 17.09.2010. The learned counsel appearing for the respondents would premise his argument only on the ground that at the time when the seniority list was prepared, the petitioner was not in service.

13.The above said submission on the part of the learned counsel appearing for the respondents cannot be countenanced both in law and on facts, for the simple reason that such contention was considered by various decisions of this Court particularly the decision of the Division Bench of this Court in W.A.No.549 of 2010

dated 28.04.2010. The Division Bench discountenanced the said contention and held that the employee therein was entitled to be regularised, despite artificial breaks which could not be attributable to the employee.

14. In the instant case, it is an admitted fact by the respondents themselves that there were some breaks between 1983 and 1996 due to administrative reasons and thereafter, from 1996 or 1999 or so the petitioner had been continuously employed as on date. That being the case, this Court does not find any justification for not regularising the service of the petitioner on par with the other similarly placed persons, whose services were regularised by the Department.

15. The issue as rightly contended by the learned counsel for the petitioner, it is directly covered by the decisions and the facts having not been controverted, the petitioner is entitled to succeed in the writ petition.

16. Therefore, ***the Writ Petition is allowed.*** The impugned order of the 1st respondent in Letter No.16097/FR-2/2010-2 dated 17.09.2010 is set aside and there shall be a consequential direction to the respondents to include the name of the petitioner in the State wide seniority list and the Department is also directed to take further action of bringing the petitioner on a regular time scale of

pay as per benefits conferred on the other similarly placed persons with reference to the Government Orders as aforesaid. The above directions shall be complied with by the respondents within a period of eight weeks from the date of receipt of copy of this order. No costs.

14.12.2017

Speaking /Non Speaking Order

Index : Yes/No

Internet : Yes/No

Sgl

To

1.The Secretary,
Government of Tamil Nadu
Environment and Forest Department
Fort St. George, Chennai - 600 009.

2.The Principal Chief Conservator of Forests,
Panagal Building, Saidapet,
Chennai - 600 015.

3.The District Forest Officer,
Tirupattur Division,
Tirupattur, Vellore District.

V.PARTHIBAN, J.

Sgl



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