

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.16397 of 2008

1. Dr.A.Manimozhi
2. N.Bhaskar
3. Dr.M.Sekar

... Petitioners

Vs.

1. The Government of Tamil Nadu rep.,
by Secretary to Government,
Environment and Forests Department,
Fort St. George,
Chennai - 600 009.
2. The Principal Chief Conservator of Forests,
Panagal Buildings,
Chennai.
3. The Director,
Arignar Anna Zoological Park,
Vandaloor, Chenna - 600 048.
(R3 impleaded as per the Court
order dated 05.11.2008 in
M.P.No.1 of 2008 in W.P.No.
16397 of 2008)

.... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in (1) Proceedings Pa.Aa.No.121/05/P1 dated 17.03.2005 of the third Respondent to the limited extent of the date of effect of regularisation of services of the Petitioners i.e., 23.11.1998, 23.11.1998 and 23.11.1998 and the date of effect of declaration of the petitioner's probation ie., 22.11.2000, 22.10.2000 and 22.11.2000 and (2) Government Lr.No.15195/FR.6/2007-3, Environment and Forests [FR.5] Department, dated 09.01.2008, quash the same and to issue consequential directions to the Respondents to regularise the services of the petitioners in the post of Biologist from the date of their initial appointment as such on daily wage basis i.e., 4.9.1998, 9.7.1989 and 1.2.1991 and to issue revised orders in this regard and to grant consequential service and monetary benefits including fixation of ratio in the Special Rules for their promotion as Forest Ranger.

For Petitioners : Mr.M.Ravi

For Respondents : Mr.M.Shanthanaraman
Special Government Pleader(Forest)

O R D E R

The petitioners sought for a writ of Certiorarified Mandamus to quash the order of the third Respondent in Proceedings Pa.Aa.No. 121/05/P1 dated 17.03.2005 to the limited extent of the date of effect of regularization of services of the Petitioners i.e., 23.11.1998, 23.11.1998 and 23.11.1998 and the date of effect of declaration of the petitioner's probation i.e., 22.11.2000, 22.10.2000 and 22.11.2000 and the order of the first respondent in Government Lr.No. 15195/FR.5/2007-3, Environment and Forests [FR.5] Department, dated 09.01.2008, and further issue directions to the Respondents to regularise the services of the petitioners in the post of Biologist from the date of their initial appointment, which was on daily wage basis i.e., 4.9.1998, 9.7.1989 and 1.2.1991 and further issue revised orders in this regard and grant consequential service and monetary benefits including fixation of ratio in the Special Rules for their promotion as Forest Ranger.

2. There are three petitioners in this writ petition and they filed a single writ petition. The case of the petitioners is that they are working as Biologists in Arignar Anna Zoological Park, Vandalur, Chennai - 48 and they are commonly and collectively aggrieved in the matter of regularisation of their services and promotion to the next higher post. The petitioners would submit that the Arignar Anno Zoological Park was established and opened for public in the year 1985 and it has been attracting more than 10 lakh people per annum. It was one of the biggest Zoos in the South East Asia and one of the best in India. In order to bring the standard up to the international level, lot of scientific methodologies with modern techniques for the better management of the Zoo were taken into account. At the time of opening of the said Zoo, most of the Animal Keepers were illiterate and the Field staff were also not trained in Wild Life. Hence, in order to meet out the scientific methodologies, literature and knowledge in wild life and to manage the Zoo in a more scientific way four Biologists were engaged on daily wage basis with the following duties :-

- (i) Collection of Scientific information and storing.
- (ii) Carryout research programmes in all species and publish in scientific journals.
- (iii) Preparing educative and informative hoardings to each species.

(iv) Creating awareness among public and school children through audio-visual aids.

(v) Giving scientific information to college students whenever come for research to the Zoo.

(vi) Helping the veterinarians in the treatment care of the animals and in maintaining the veterinary records.

(vii) Guiding VIPs and school and college students.

(viii) Assisting the Zoo Administrators whenever necessary in the Management and maintenance of Zoo.

2.1. The petitioners would further submit that the first petitioner Dr.A.Manimozhi's qualifications are M.Sc.(W.L.B), M.Phil(Zoology), B.Ed. (Zoology), Ph.D. (Zoology); the second petitioner N.Bhaskar's qualifications are M.Sc. (W.L.B), B.Ed. (Zoology), Ph.D. (Zoology), and the third petitioner Dr.M.Sekar's qualifications are M.Sc. (W.L.B), M.A. (Tamil), B.Ed. (Zoology), Ph.D. (Tamil). The petitioners were originally appointed on daily wage basis for a sum of Rs.56/- per day.

2.2. While the matter stood thus, the Conservator of Forests, Wild Life Circle, Chennai-48, in his letter dated 16.03.1993, in letter Ref.No.E/1743/93 addressed to the Chief Conservator of Forest and Chief Wild Life Warden, Chennai, recommended for sanction of four permanent posts of Biologists in regular time scale of pay of Rs.1,400 - 2,600. The Chief Conservator of Forests, Wild Life, in turn addressed the same to the Government by letter dated 24.01.1994 in Lr.No.5540/93-E. A report was also submitted by the Conservator of Forests, Wild Life Circle, by letter dated 31.01.1995 in Ref. No.E/1743/1993/ in response to the Government letter dated 18.01.1995, in which, it was pointed that in G.O.Ms.No.99, Forest and Fisheries Department, Dated 21.01.1984, the posts of one Zoo Superintendents, one Sargent and one Carpenter post had been sanctioned and those posts were being kept vacant for long time and those posts may be allowed to be surrendered and in lieu, the post of Biologists may be sanctioned, since the posts of biologists are absolutely essential for the said Zoo. Hence, the Government sanctioned the creation of three posts of Biologists, in and by G.O.Ms.No.344, Environment and Forests Department, dated 23.11.1998, in the scale of pay of Rs.5,000-150-8000. Subsequently, in any by Pro.No.P1/1743/93 dated 1.2.1999, the petitioners herein were brought into regular time scale of pay of Rs.5,000-150-8,000.

2.3. In the mean while, it was contended that G.O.Ms.No.200, Environment and Forests Department, dated 24.10.2002, framed Tamil Nadu Zoo Subordinate Service Rules, 2002 (Basic

Subordinate Service Rule) with retrospective effect from 18.12.1986. The post of Biologists was classified as Class-I-Category-I, in the said Rules. No promotional opportunity has been spelt out in the Rule. As per the said Rule, the petitioners' services were regularised in the post of Biologists with effect from 01.02.1999 and they completed their probation on 31.01.2001. Based on the several representations made by the petitioners, the Director of Arignar Anna Zoological Park issued revised order of regularisation of service of the petitioners from 23.11.1998 ie., from the date on which the post of Biologists was sanctioned by the Government.

2.4. In the mean time, the Government passed G.O.Ms.No.218, Environment and Forests Department, dated 06.12.2005 and included the post of Biologists in the Tamil Nadu Forest Subordinate Service and subsequently by another order in G.O.Ms.No.32, Environment and Forests Department, dated 28.02.2007, the Government, has amended the Special Rule for Tamil Nadu Zoo Subordinate Service and excluded the post of Biologists from the said Rules and included the same in the Tamil Nadu Forest Subordinate Service. The said amended Rules for Tamil Nadu Forest Subordinate Service, which has come into force on 06.12.2005 and the post of Biologists has been classified as Class-II post in Rule 1 and therefore the post of Biologists has to be treated as the feeder category for appointment to the post of Ranger in the Tamil Nadu Forest Subordinate Service. Since the petitioners have been serving as Biologists continuously and uninterruptedly without any breaks from the date of their initial appointment, the petitioners seek that they are entitled to have their regularization of service from the date of their initial appointment in the Forest Department.

2.5 In another Government order in G.O.Ms.No.770, Forest and Fisheries Department, dated 07.07.1982, the Government have framed Adhoc Rules for the temporary post of Biologist in the forest department. It has also been stated that the General and Special Rules applicable to the holders of the permanent posts in the Tamil Nadu Forest Subordinate Service shall apply to the holders of the temporary posts of Biologists in the Forest Department. The education qualifications have been prescribed in Rule 5(b) of the said Rule as second class M.Sc. Degree in Zoology from any recognized University with experience in Research for a period of not less than one year. Since the petitioners herein possess the necessary qualification prescribed therein, their services ought to have been regularized from the date of their initial appointment. But instead of regularizing the services of the petitioners from the

date of their initial appointment, the Government framed separate Rule i.e, Tamil Nadu Zoo Subordinate Service Rule 2002 and regularized the services of the petitioners on the basis of the said Rules framed in G.O.Ms.No.200, Environment and Forest Department, dated 24.10.2003, and excluded the post of Biologists from the Special Rules for Tamil Nadu Zoo Subordinate Service and included the post of Biologist in the Tamil Nadu Forest Subordinate Service and hence the respondents ought to have regularize the services of the petitioners from the date of their initial appointment as per the provisions of the Adhoc Rules framed on 07.07.1982.

2.6. The petitioners had sent a detailed representations on 23.06.2007, with regard to the date of regularization of their services from the date of initial appointment instead of from the date of passing of G.O.Ms.No.344, Environment and Forests Department dated 23.11.1998. Since there was no response, the petitioners filed a writ petition in W.P.No.24491 of 2007, seeking for direction to the first respondent to consider their representations and pass orders within the time frame. The said writ petition was disposed of by order dated 20.07.2007, directing the first respondent to consider the representations within a period of six weeks. The said representations were rejected by the first respondent on 09.01.2008 by letter No.15195/FR5/2007-3, Environment and Forests [FR.5] Department, which is impugned herein. The petitioners raised a ground that the non-speaking order of the first respondent will be quashed and the respondents have failed to consider their claim from the date of their initial appointment since they possessed higher qualification as prescribed.

2.7. The petitioners would contend that the service of the petitioners which is uninterrupted from the date of establishment of the Zoo and the respondents have belatedly realised the said condition and regularization was done, but not from the date of their initial appointment. The petitioners would further submit that the first respondent ought to have regularize the services of the petitioners, after completion of five years, as per G.O.Ms.No.52, Finance Department, dated 14.01.1997. Even though the petitioners served the Zoo, the respondents deprived the petitioners to get benefits prior to 23.11.1998, which would have a telling effect and monetary loss in the pensionary benefits payable to them.

2.8. The petitioners would further contend that even though they completed their M.Sc. (Wile Life Biology) Degree, which is the preferential qualification for appointment as Assistant Conservator of Forests as per G.O.Ms.Nos.493 and 171, they have stagnated in the post of Biologists itself in the Tamil Nadu Forest Subordinate Services for a long time and not being able to be promoted as Forest Ranger, which is the feeder category to the post of Assistant Conservator of Forests. Even though the posts of Biologist were included in the Tamil Nadu Zoo Subordinate Service Rules in the year 2002, it was later excluded from that service and included in the Tamil Nadu Forest Subordinate Services on 28.02.2007 and the petitioners ought to have been regularized from the date of their initial appointment as per the Adhoc rules framed in the Government Order dated 07.07.1982.

2.9. The petitioners would also submit that there will not be any financial burden to the Government, if the petitioners were regularised from the date of their initial appointment, since the posts of Biologists had been sanctioned by surrendering the posts of Zoo Superintendents, Carpenters, Sargent etc. Hence the petitioners seek to allow the writ petition.

3. The counter affidavit has been filed by the third respondent and it could be seen from the said counter that considering the petitioners had been working on daily wages basis from 04.09.1988, 09.07.1989 and 01.02.1991 respectively, they were appointed as Biologists from 01.02.1999 on administrative grounds and that as per the orders issued by the Principal Chief Conservator of Forests in Letter No.S2/67926/2003 dated 10.02.1995, the orders issued by the Director, Arignar Anna Zoological Park, in S.O.No.214/2002, dated 19.11.2002 was cancelled and the services of the petitioners were regularised only from 23.11.1998. It is true that as per G.O.Ms.No.344 E&F (FR-V) Department dated 23.11.1998, three posts of Biologists, subject to the condition that three vacant posts in Arignar Anna Zoological Park i.e., one post of Zoo Superintendent, one post of Carpenter and one post of Sargent should be disbanded and that there shall be no recruitment of Biologists on daily wages in future. As per the proceedings of the Conservator of Forests & Director, Arignar Anna Zoological Park, Vandalur in proceeding No.1743/93/E1 dated 01.02.1998, the petitioners, who were working on daily wages were appointed as Biologists temporarily and they have joined duty on 01.02.1999. Accordingly, the services of the petitioners

can be regularised only from 01.02.1999 as per the Rules. The services of the petitioners on daily wages will not give any right to the petitioners for any appointment retrospectively. They were working on daily wages basis only on their willingness and on considering their representations, three posts of Biologists have been sanctioned on 23.11.1998 and on 01.02.1999, temporarily they were given appointment. The request of the petitioners to regularize their services, before the date of temporary appointment, and before the date of sanction of posts, cannot be considered and it deserves to be dismissed.

3.1. It is also contended in the counter affidavit that the petitioners were appointed as per the policy decision of the Government, which cannot be questioned by the petitioners and the orders passed by the Director, Arignar Anna Zoological Park in S.O.No.118/2005-E-1 dated 17.03.2005 and the order passed by the first respondent dated 09.01.2008 are just and lawful and the petitioners are not entitled for promotion to the post of Ranger and the fixation ratio to Biologists for promotion to the post of Forest Ranger is not feasible and there is no legal entitlement for the same.

3.2. It is further contended that the order passed by the Director of Arignar Anna Zoological Park dated 17.03.2005 has been challenged by the petitioners only after the lapse of three years and the same shall be dismissed on the ground of laches. If the petitioners were aggrieved, they ought to have preferred an appeal before the appropriate authority i.e., the first respondent herein by filing an appeal under Section 57 of Tamil Nadu State and Subordinate Service Rules and without exhausting the appeal remedy, the petitioners straightly approached this Court and filed this writ petition under Article 226 of the Constitution of India, which is contrary to the law.

4. Heard Mr.M.Ravi, learned counsel appearing for the petitioners and Mr.M.Shanthanaraman, learned Special Government Pleader (Forest) and perused the materials on record.

5. It is brought to the knowledge of the Court that the qualification for appointment of Forest Ranger as follows :-

Class Category	Method	Qualification
1	2	3
1. Ranger	Promotion of Foresters	1. Must possess the minimum general educational qualification specified in the Schedule to the General Rules 2. Must have completed successfully a course of training for Foresters in Tamilnadu State Forestry Training College (G.O.Ms.No. 396, F&F, dt.22.3.80) Provided that this qualification shall not be necessary in the case of those persons, who were appointed as Foresters on or before 20th February, 1964. 3. Must have served as Forester for a period of not less than eight years in the case of Forester who have not successfully completed a course of training for Rangers College, Coimbatore or the Northern Forest Rangers College, Dehradun. 4. Must have passed the following Departmental Tests namely : a) Forest Law: b) Office procedure and Accounts (G.O.Ms.No.224, Environment and Forests Department dt. 5.9.94, B1/75008/85) 5. A Forester selected as Ranger by promoting should undergo training for a period of atleast one year in a Forest Ranger College before appointed as Ranger G.O.Ms.No.75, Environment and Forests Department, dt.21.3.96) (B1/30531/89)

Class Category	Method	Qualification
	Transfer from the Members of the Tamilnadu Ministerial Service in the Forest Department	1) i Must possess the qualification prescribed in this rule for recruitment of Forest Apprentices. ii) Must be full member or approved probationers in the Tamil Nadu Ministerial Services in the Forest Department. iii) Must have passed the following tests namely : a) Forest Law b) Office Precedure and Accounts. 2. Must be not less than 163 cm in height. 3. Must be not less than 79 cm round the chest on full expiration. 4. Must have a chest expansion of not less than 5 cm on full inspiration. 5. Must pass a physical test consisting of a walk over 28 kms. to be covered in four hours. A certificate to that effect must be produced from a Gazetted Forest Officer nominated by the Principal Chief Conservator of Forests in this behalf.

6. It is not in dispute that the petitioners were appointed on daily wages basis on 04.09.1988, 09.07.1989 and 01.02.1991 and the appointment of the petitioners were made on the temporary basis. Since they were working in the said Zoo for a long time, based on their representations, their case was considered and they were appointed as Biologists, considering the long term service, as per the G.O.Ms.No.344, Environment and Forests Department (F.R.5) dated 23.11.1998. Later based on their representations, their services were regularised from the date of the said Government Order i.e., on 23.11.1998 only.

7. Since, the petitioners were working as only daily wages employees, the Government has decided to create three posts of Biologists and the services of the petitioners were regularised from 23.11.1998, since there was no such post was existed prior

to 23.11.1998 ie., the date of G.O.Ms.No.344. But the claim of the petitioners is that their services should be regularised from the date of their initial appointment as daily wages employees. When there was no such post existed, the petitioners cannot claim that their services should be regularised from the date of the initial appointment as daily wages.

8. Coming to the Government Orders filed by the petitioners, the Government has taken a policy decision and as per the policy, similar Rules were framed and accordingly, the State Government after examining the case of the petitioners, have found that the petitioners were entitled to regularization of their services from the date of their appointment as Biologists and also fixed the separate ratio for getting promotion as Forest Rangers. Hence, the claim of the petitioners deserves no merits and their request could not be complied with by the Government. For the promotion to the post of Forest Rangers, the person should possess the educational qualification specified in the schedule to the General Rules and also the person should be served as Forester for a period of not less than eight years in the case of Forester, who have not successfully completed a course of training for Rangers College. In the case of Tamilnadu Ministerial Service, the person must be a full member or approved probation in the Tamil Nadu Ministerial Services and also there are so many conditions prescribed therein. It is also submitted that though the Biologists are class I staffs, there is no provision under the Tamilnadu Forest Subordinate Services Rules for promoting/appointing them as Forest Ranger. Hence, the Government Orders cited by the petitioners are not applicable to the case of the petitioners. Therefore, the prayer sought for by the petitioners to regularize their services in the post of Biologists from the date of their initial appointment as daily wages and to grant consequential service and monetary benefits including fixation of ratio in the Special Rules for their promotion as Forest Ranger cannot be granted as per the existing Rules, and the petitioners are not entitled for the relief sought for.

9. In view of the above, the writ petition is dismissed.
No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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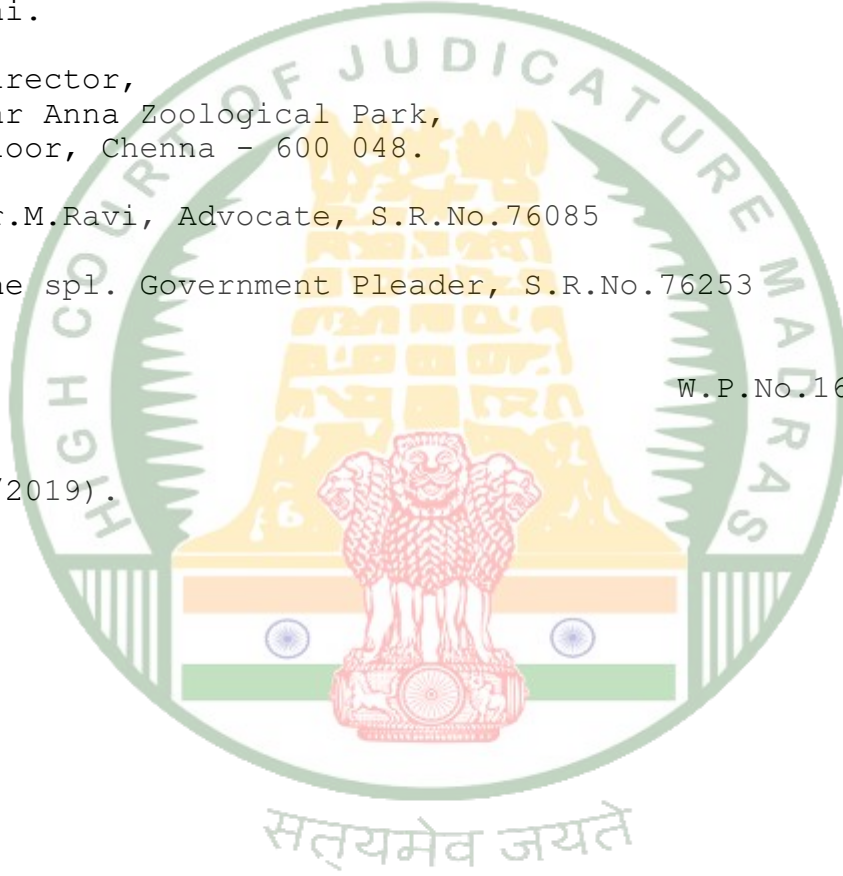
1. The Secretary to Government,
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Chennai.
3. The Director,
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Vandaloor, Chennai - 600 048.

+1cc to Mr.M.Ravi, Advocate, S.R.No.76085

+1cc to the spl. Government Pleader, S.R.No.76253

W.P.No.16397 of 2008

KS (CO)
SSM(27/03/2019).



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