

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.664 of 2017
and
C.M.P.No.9369 of 2017

- 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,
Thiruvallur District, Thiruvallur.
 - 4.The Forest Ranger,
Gummidipoondi Forest Range,
Madherpakkam,
Thiruvallur District.
- ... Appellants
- VS-
- K.Dilli .. Respondent

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.37810 of 2016 dated 01.11.2016.

WP.No.37810 of 2016:Writ Petition under Article 226 of Constitution of India praying to issue a Writ of Mandamus Directing the respondents to regularize the service of the petitioner for the post of plot watcher and to fix the time scale of pay taking into account of the seniority and qualification on par wit the juniors with effect from 01.04.1993 based on the proposal of the 4th respondent to the 3rd respondent dated 14.02.2015 and to confer all consequential benefits

For Appellants :: Mr.S.V.Vijay Prasanth,
Addl.Govt.Pleader (forests)

For Respondent :: Mr.C.Prabakaran

JUDGMENT

(Delivered by RMT.TEEKAA RAMAN, J.)

The respondent herein / writ petitioner filed a writ petition in W.P.No.37810 of 2016 praying to direct the appellants herein to regularise the service of the respondent for the post of plot watcher and to fix the time scale of pay taking into account the seniority and qualifications, on par with the juniors with effect from 01.04.1993 based on the proposal of the fourth appellant to the third appellant herein dated 14.02.2015 and to confer all consequential benefits. The said writ petition was disposed of on 01.11.2016 directing the authorities to carry out the exercise as prayed for by the respondent herein, within a period of six weeks. Challenging the said order, the present appeal has been filed by the Department.

2.The learned Additional Government Pleader appearing for the appellants has submitted that there is break in service in respect of the respondent / writ petitioner for a period of about 12 years, and hence he is not entitled to the relief as prayed for by him, but without taking into consideration of the same, the learned single Judge has passed the impugned order and hence the impugned order has to be set aside.

3.The learned counsel for the respondent has disputed the said submission of the learned Additional Government Pleader and argued in support of the order passed by the learned single Judge. A counter affidavit has also been filed on behalf of the respondent in that regard.

4.Thereafter, a rejoinder has been filed on behalf of the appellants in respect of the break in the service of the respondent, from which it is seen that in 1993, there was a break in service for about 6 months; in 1994, there was a break in service for 11 months; from 1995 to 2000, ie., for the total 72 months, the respondent had not worked. It is also stated that in the year 2001, there was a break in service for 5 months and in the year 2002, there was a break in service for 1 month, from 2005 to 2007, there was a break in service for 46 months; in the years 2008 and 2009, there were breaks in service for 3 months and 2 months respectively; in the year 2015, there was a break in service for 9 months. Thus, totally the break-in- service period runs to 12 years and 1 month. Except the years 2003, 2004

and 2010 to 2014, there were breaks in the service of the respondent.

5.The indisputable factual position is that the respondent / writ petitioner has many breaks in his service running to 12 years and 1 month. In these circumstances, the prayer made by the respondent in the writ petition to regularise his service for the post of Plot Watcher and to fix the time scale of pay on par with his juniors and to confer all consequential benefits, cannot be granted. Further, except filing counter, the learned counsel for the respondent has not produced any other material to support his contention there were no breaks in the service of the respondent. It is seen that the respondent has worked in the Department at his whims and fancies. Hence, we are constrained to interfere with the impugned order passed by the learned single Judge.

6.In the result, the writ appeal is allowed and the impugned order passed by the learned single Judge is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

7.At this juncture, the learned counsel for the respondent has submitted that during the pendency of the writ proceedings, ie., for the period of 3 years, the respondent has worked and therefore he comes under the benefit of G.O.Ms.No.95, Environment and Forest (Forest-2) Department, dated 07.08.2009 and hence, liberty may be granted to the respondent to make a representation to the authorities and the same may be directed to be considered by the authorities.

8.Liberty is granted to the respondent to submit a representation to the appellants seeking the benefit of G.O.Ms.No.95, Environment and Forest (Forest-2) Department, dated 07.08.2009 within a period of four weeks from the date of receipt of a copy of this Judgment. On such representation being made, the appellants shall consider the same on merits and in accordance with law, within a period of three months from the date of its receipt.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KM

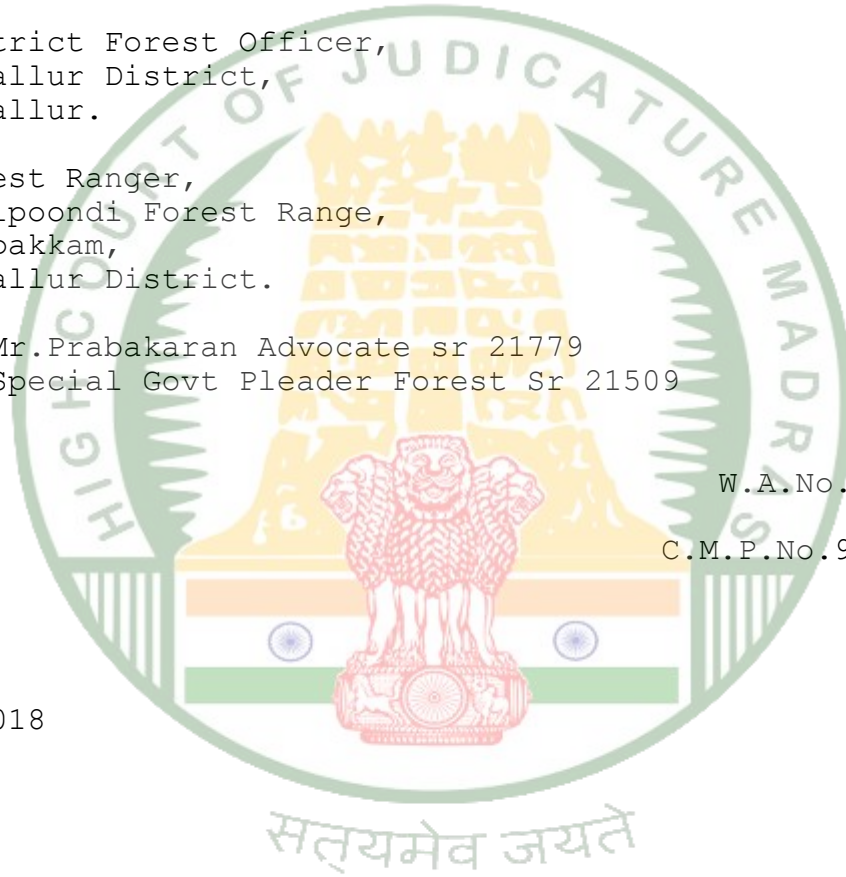
To

- 1.The Secretary to Government,
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,
Thiruvallur District,
Thiruvallur.
- 4.The Forest Ranger,
Gummidipoondi Forest Range,
Madherpakkam,
Thiruvallur District.

+1 cc to Mr.Prabakaran Advocate sr 21779
+1 cc to Special Govt Pleader Forest Sr 21509

W.A.No.664 of 2017
and
C.M.P.No.9369 of 2017

mg(co)
aa12/04/2018



WEB COPY