

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.A.No.1239 of 2016  
and CMP.No.15955 of 2016

The Principal Chief Conservator of Forests,  
Panagal Building, Saidapet,  
Chennai-600 015. .... Appellant/Respondent

Vs.

S.Govindasami .... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent  
against the order dated 03.02.2015 made in W.P.No.1577 of 2014.

Prayer in W.P.No.1577 of 2014:

Writ Petition filed under Article 226 of the constitution  
of India praying for issuance of Writ of Certiorarified Mandamus  
Calling for the entire records pertaining to the order bearing  
Ref. No.LL2/ 37918/2013 dated 19.9.2013 on the file of the  
respondent quash the same and consequently direct the  
respondents to appoint the petitioner as Forest Watcher in the  
Forest Department on the basis of the Seniority No.2302 assigned  
to him in the State Wide Seniority List drawn by the respondent  
with all consequential service and monetary benefits.

For Appellant : Mr.M.Santhanaraman,  
Additional Govt. Pleader (Forest)

For Respondent : Mr.T.Sellapandian

JUDGMENT

(Judgement of the Court was made by M.SATHYANARAYANAN, J.)

Appellant is the sole official respondent in W.P.No.1577 of  
2014 filed by the respondent/writ petitioner.

2. The respondent/writ petitioner prayed for his appointment as Forest Watcher in the services of the Forest Department on the basis of Seniority Sl.No.2302 assigned to him in the Statewise seniority list drawn by the respondent with all consequential service and monetary benefits in terms of G.O.Ms.No.64, Environment and Forest (F2) Department dated 06.03.1999 and since his request was not considered, he filed W.P.No.6652 of 2013, praying for appropriate relief and it was disposed of on 20.03.2013 directing the appellant/respondent to take into consideration the positive proposal made by the second respondent therein and pass appropriate orders within a stipulated time. The appellant, in compliance of the said order, has considered the claim of the writ petitioner and vide, impugned order dated 19.09.2013, has rejected the said request on the ground that on the date of issuance of G.O.Ms.No.95, Environment and Forest (FR-2) Department dated 07.08.2009, the writ petitioner was not in service and therefore, he cannot be regularized as Plot Watcher.

3. The respondent/writ petitioner, challenging the legality of the said order, has filed W.P.No.1577 of 2014 and it was entertained and during the course of arguments, it was brought to the knowledge of the learned Judge that the issue to be adjudicated in the writ petition was squarely covered by a Division Bench judgement of this Court dated 29.04.2011 made in W.A.No.887 of 2010. The learned Judge, on going through the said judgement, found that the said judgement is having full application to the case on hand and by replying upon the same, has allowed the writ petition directing the respondent/appellant to consider the case of the writ petitioner for appointment as Forest Watcher, in the light of G.O.Ms.No.95, Environment and Forest Department dated 07.08.2009 as well as the judgement in W.A.No.887 of 2010 dated 29.04.2011 and further indicated that the said exercise shall be completed within a period of four months. Challenging the legality of the same, the official respondent in the writ petition has filed this Writ Appeal.

4. Mr.M.Santhanaraman, learned Additional Government Pleader (Forest) appearing for the appellant has drawn the attention of this Court to G.O.Ms.Nos.64 and 95, Environment and Forest (F2) Department dated 08.03.1999 and 07.08.2009 respectively and would submit that the petitioner was placed at Sl.No.2302 and on his own volition, he left the service on 18.08.2004 and in terms of G.O.Ms.No.95, Environment and Forest (FR-2) Department dated 07.08.2009, he should be in employment on that date and admittedly, the petitioner, on his own volition, has quit the job and therefore, he is not entitled to the benevolence/benefits of the said Government Order. It is the further submission of the learned Additional Government Pleader

appearing for the appellant that the writ petition is also hit by delay and laches and the writ petitioner is not entitled to the benefits of G.O.Ms.No.64, Environment and Forest Department dated 08.03.1999, as the writ petitioner has belatedly approached this Court in the earlier writ petition only in the year 2013 and on that ground also, the writ petitioner is not entitled to any relief and therefore, prays for allowing of this Writ Appeal.

5. Mr.T.Sellapandian, learned counsel appearing for the respondent/writ petitioner would submit that admittedly, the respondent was employed as Social Forestry Worker on 01.07.1982 and he continued to work on Daily Wage Basis till 18.08.2004 and often he was not offered with employment and therefore, it cannot be considered that he voluntarily quit the job. It is the further submission of the learned counsel appearing for the respondent that admittedly, in terms of G.O.Ms.No.64, Environment and Forest Department dated 08.03.1999, the petitioner was also identified and was eligible for regularization and he was placed at Sl.No.2302 and would further add that the interpretation given by the learned Additional Government Pleader appearing for the appellant with regard to G.O.Ms.No.95 dated 07.08.2009 is per se unsustainable for the reason that the said Government order merely stipulates that Social Forestry Workers shall be accommodated in the same place in which they were working and there is no clear cut specification that they should be in service on the date of issuance of the said Government Order. In sum and substance, it is the submission of the learned counsel appearing for the respondent/writ petitioner that the judgement dated 29.04.2011 made in W.A.No.887 of 2010 has full application to the case on hand and the learned Judge has taken note of the same rightly and allowed the writ petition and therefore, prays for dismissal of this Writ Appeal.

6. This Court has considered the rival submissions and also perused the entire materials placed before it.

7. The point arises for consideration in this Writ Appeal is whether the respondent/writ petitioner is entitled to the benefits of G.O.Ms.No.64 and G.O.Ms.No.95, Environment and Forest (FR-2) Department dated 08.03.1999 and 07.08.2009 respectively? Heavy reliance has been placed upon Division Bench judgement dated 29.04.2011 made in W.A.No.887 of 2010 and it is also placed before this Court in the form of additional typed set of documents and this Court has also gone through the judgement. Challenge was made to a portion of the order in G.O.Ms.No.95, Environment and Forest (FR-2) Department dated 07.08.2009 which stipulates completion of 10 years of service

and the Division Bench has taken note of the amendment in the Tamil Nadu Forest Subordinate Service Rules and recorded a finding that in the light of the said statutory provision, the said Government Order has stipulated further addition and therefore, quashed the said portion of the Government Order. The Division Bench, in the above cited judgement, has also elaborately dealt with the above cited two Government Orders and in paragraphs 32 and 33 of the judgement, has taken note of the submission that there was break in service in respect of persons who are claiming the benefits and in fact, the break in service was caused only on account of indifferent attitude of the Rural Development Department in refusing to accept the transfer of service made by the Government and therefore, individual employees were not responsible for the so called break in service and the purport of the Government Order is to regularize the services of the concerned workers, who had put in long years of service.

8. The primordial submission made by the learned Additional Government Pleader appearing for the appellant is that on the date of issuance of the Government Order in G.O.Ms.No.95, Environment and Forest (FR2) Department dated 07.08.2009, admittedly the petitioner was not in service and on his own volition, he quit the job on 18.08.2004 and as such, he is not entitled to the benefit of the said Government Order and that the above cited judgement dated 29.04.2011 made in W.A.No.887 of 2010 has no application to the case on hand. In the considered opinion of the Court, the said submission is liable to be rejected for the reason that admittedly the petitioner was identified as one of the persons eligible for regularization and may be on account of the fact that it was temporary in nature, he would not have reported for duty and would not have quit the job on 18.08.2004.

9. No doubt, in paragraph 33 of the judgement of the Division Bench (cited supra), the Division Bench has taken into consideration that the break in service shall not be attributable to the concerned worker. It is the submission of the learned Additional Government Pleader appearing for the appellant that the respondent/writ petitioner has voluntarily quit the job and in the event of he being accommodated, it may be cited as precedent in future in respect of persons who are similarly placed.

10. It is also brought to the knowledge of this Court that for the alleged non-compliance of the order dated 03.02.2015 made in W.P.No.1577 of 2014, Contempt Petition No.574 of 2016 was filed by the respondent/writ petitioner and based on the undertaking given by the appellant that the respondent/writ petitioner will be accommodated, subject to the result of this

Writ Appeal, the contempt petition was closed on 30.11.2017 and accordingly, the respondent/writ petitioner was reinstated in service on 30.11.2017 and he retired from service on 24.07.2018 as Forest Watcher.

11. This Court, taking into consideration the subsequent development, especially the fact that the respondent/writ petitioner has already retired from service on 24.07.2018 and in the light of earlier findings that the petitioner is entitled to the benefit of the above cited Government Orders, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the learned Judge in allowing the writ petition and accordingly, this Writ Appeal deserves to be dismissed. However, taking into consideration of the fact that apprehending adverse orders in the contempt petition, he was reinstated into service on 30.11.2017, subject to the result of this writ appeal and pendency of this writ appeal, he retired from service on 24.07.2018 as Forest Watcher and as such, this case cannot be cited as a precedent in respect of persons, who quit the job on their own volition.

12. It is brought to the knowledge of this Court by the learned Additional Government Pleader appearing for the appellant that 50% of temporary service rendered by the respondent/writ petitioner is to be taken into consideration for conferring retiral/terminal benefits and since he has not worked from 18.08.2004 to 30.11.2017, he is not entitled to backwages for the said period and this Court also accepts the said stand taken by the learned Additional Government Pleader appearing for the appellant. The appellant is directed to settle the eligible retiral/terminal benefits to the respondent/writ petitioner within a period of twelve weeks from the date of receipt of a copy of this order.

13. In the result, this Writ Appeal is dismissed, subject to the above observations, confirming the order dated 03.02.2015 made in W.P.No.1577 of 2014. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jvm

To

1.The Principal Chief Conservator of forests,  
Panagal Building,  
Saidapet, Chennai-15.

2.Additional Government Pleader,  
High Court, Madras.

+1cc to the Special Government Pleader Sr.61481  
+1cc to Mr.S.Mani, Advocate Sr.61634

W.A.No.1239 of 2016

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srg 27/09/2018



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