

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.A.Nos.354 and 355/2016 and
CMP.Nos.5311 and 5313,19354 and 19355 of 2016

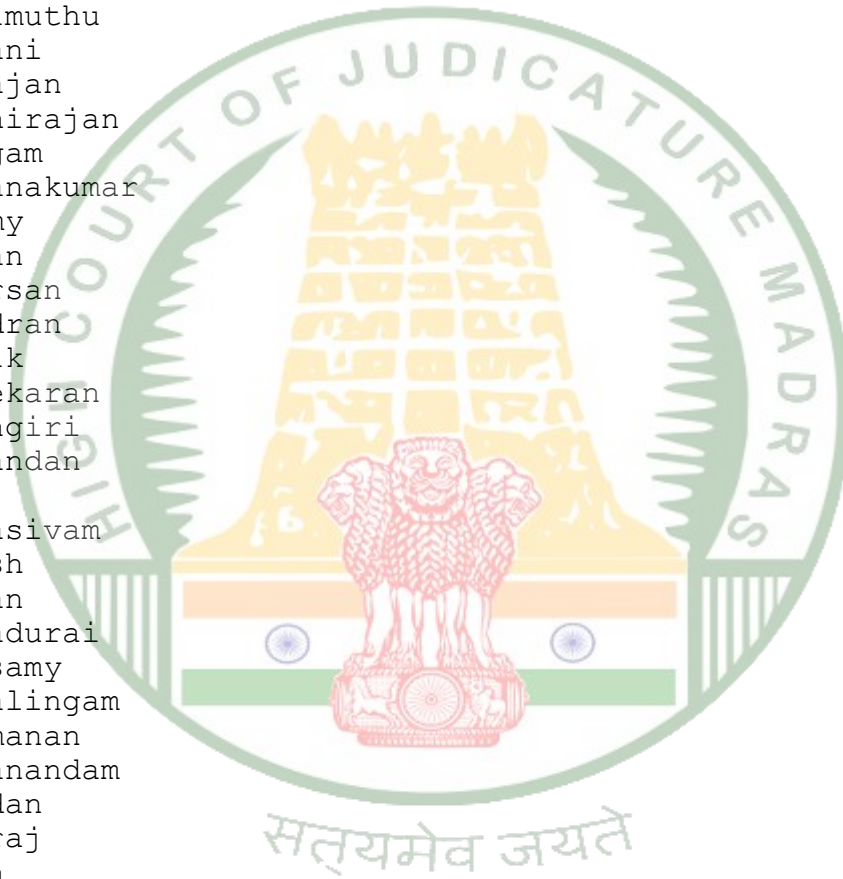
1. The State of Tamil Nadu
rep. by Additional Chief Secretary to Government,
Environment and Forest Department,
Secretariat, Fort St. George,
Chennai-9.
2. The Principal Chief Conservator of Forests
(Head of Forest Force),
Panagal Building,
Saidapet, Chennai-15.
3. The Chief Wild Life Warden,
Panagal Building,
Saidapet, Chennai-15. ... Appellants in both W.As./
Respondents

Vs

1. Kaliyappan
2. Manikandan
3. Jeyakumar
4. Johnson Thangapleshing
5. Aaiyanar
6. Isakkimuthu
7. Anbalagan
8. Ayyappan
9. Vellingiri
10. Manikandan
11. Jeyakkodi
12. Selvaraj
13. Muthukumar
14. Ayyakutyy
15. M.Praveenkumar
16. Velayutham
17. Ashokan
18. Murugan
19. Sivalingam

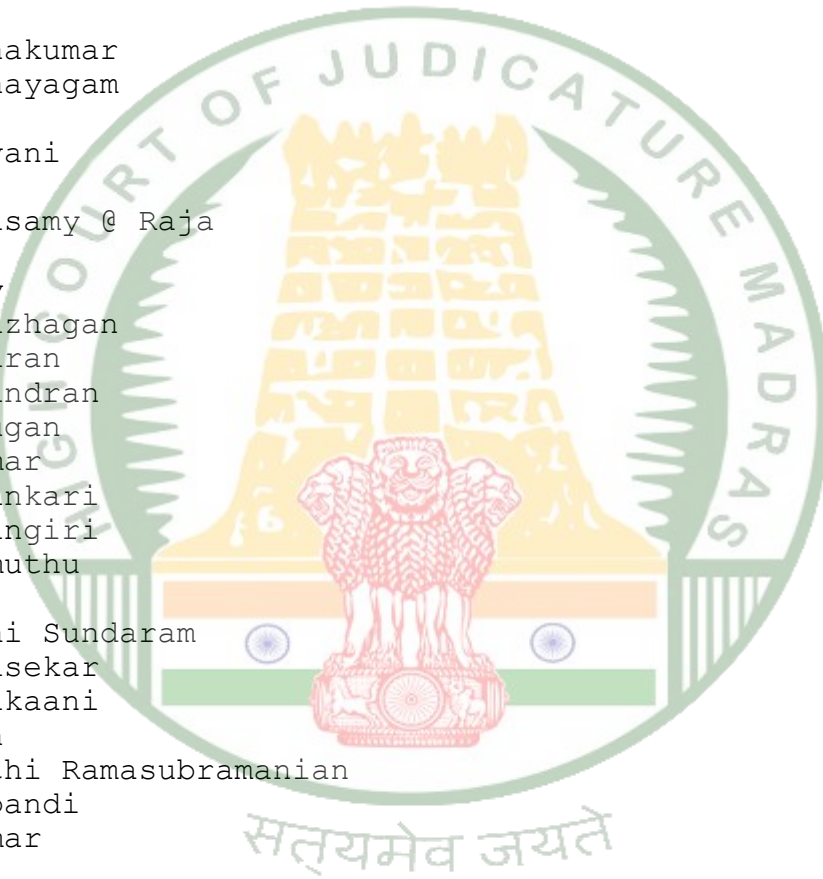
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20. Rajendran
21. Mayandi
22. Raman
23. Karthik
24. Gopalakrishnan
25. Nagaraj
26. Karthik
27. Ashokkumar
28. Jeyakumar
29. P.Karunakaran
30. Vimalraj
31. Manikandan
32. Petchimuthu
33. Marikani
34. Maharajan
35. Gomathirajan
36. Arumugam
37. Saravanakumar
38. Palsamy
39. Murugan
40. Sudharsan
41. Mahendran
42. Karthik
43. Gunasekaran
44. Vellingiri
45. Manikandan
46. Pandi
47. Paramasivam
48. Vignesh
49. Murugan
50. Chelladurai
51. Ponnusamy
52. Chockalingam
53. Lakshmanan
54. Muruganandam
55. Aanandan
56. Selvaraj
57. Ramiah
58. Pasunkili
59. Bazil Amal
60. Narasimmaraj
61. Bose
62. Mani
63. Subburaman
64. Karthik
65. Shanmugasundaram
66. Perinbaraj
67. Velayutham
68. Muthuganesh
69. Velpandi



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70. Murugan
71. Murugan
72. Vanamuthu
73. Selvakumar
74. Mohammed Ismail
75. Mathavan
76. Marimuthu
77. Subramani
78. Ramesh
79. Raj
80. Srinivasan
81. Punachiyyan
82. Nagaraj
83. Saravanakumar
84. Brammanayagam
85. Kumar
86. Dhandavani
87. Kannan
88. Karuppasamy @ Raja
89. Venu
90. Moorthy
91. Mathiyazhagan
92. Sudhakaran
93. Ramachandran
94. Velmurugan
95. Arunkumar
96. Muthusankari
97. Velliyangiri
98. Isakkimuthu
99. Vinoth
100. Meenachi Sundaram
101. Chandrasekar
102. Arumugakaani
103. Murugan
104. Ganapathi Ramasubramanian
105. Thangapandi
106. Sivakumar
107. Madhan
108. Raju
109. Thiruman
110. Sakthimurugan
111. Mariyappan
112. Subramanian
113. Senthilkumar
114. Prakash
115. Muruganandan
116. Maniyakaran
117. Shanmugavel
118. Saravanakumar
119. Manikandan



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120.Subramani
121.Sathish Kumar
122.Karthik
123.Ranjith Kumar

... Respondents in W.A.354/2016/
Petitioners

1. Thangam
2. Ramar
3. Ilayaraja
4. Velmurugan
5. Murugan
6. Dharmaraj
7. Dharmaraj
8. Muthuraj
9. Selvakumar
10.Kalidass
11.Gopal
12.Nagan

... Respondents in W.A.355/2016/
Petitioner

Prayer:-

Writ Appeals filed under Clause 15 of the Letter Patent against the Common Order dated 15.04.2014 made in W.P.Nos.10654 of 2014 and W.P.No.9764/2014 respectively

W.P.No.9764/2014 and 10654/14 Common Prayer:-

Filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondents to regularize the services of the petitioners by appointing them in the post of Anti-Poaching Watchers in the Special Time Scale of Pay by extending the benefit of G.O.Ms.No.76 Environment and Forest (FR-2) Department dated 7.6.2010 in the light of the judgment of Honourable Division Bench in W.A.No.887 of 2010 dated 29.4.2011 and consequently appoint the petitioners as forest watchers in the existing vacancies with all attendant benefits.

For Appellants :: Mr.M.Santhanaraman,
Additional Government Pleader
For Respondents :: Mr.G.Sankaran

COMMON JUDGMENT

(Judgment of the Court was pronounced by HULUVADI G.RAMESH, J.)

The Writ Appeals are directed against a Common Order dated 15.04.2014 made in W.P.No.10654 of 2014 and W.P.No.9764/2014 respectively by a learned Single Judge.

2. The Writ Petitions have been filed by the petitioners therein seeking to issue a Writ of Mandamus, directing the respondents to regularise their services by appointing them in the post of Anti Poaching Watchers in the Special Time Scale of Pay by extending the benefit of G.O.Ms.No.76, Environment and Forest (FR-2) Department, dated 7.6.2010 in the light of a decision of the Division Bench of this Court in W.A.No.887/2010 dated 29.4.2011 and consequently, appoint them as Forest Watchers in the existing vacancies with all attendant benefits.

3. According to the writ petitioners, they are all working as Anti Poaching Watchers for several years in the Forest Department. They played an important role in the implementation of various wildlife and other schemes as well as preserving the forest and wildlife with great difficulty. There are two categories of people, one namely, Plot Watchers, who are employed for the purpose of plantation works and developing nurseries in the forest whereas the other category, namely, Anti Poaching Watchers who are employed for protection of wild life. Neither the post of Anti Poaching Watchers nor the post of Plot Watchers is governed by any service rules. While so, various cadres in the Tamil Nadu Forest Department are governed by the Tamil Nadu Forest Subordinate Service Rules. All such plot watchers and Anti Poaching Watchers were initially appointed on daily wages and subsequently, they sought to regularise their services to bring them into the regular service as Forest Watchers.

4. Further, according to the petitioners, the Government considered the request of the plot watchers and issued G.O.Ms.No.64, Environment and Forest (F.2) Department dated 18.3.1999, thereby directing the respondents to prepare the seniority list of all those Plot Watchers working through out the State and based on the said seniority list, Plot Watchers shall be absorbed as Forest Watchers. It is also canvassed by the State that for that purpose, even certain qualifications like educational qualification was also relaxed by the Government. Based on the same, the Government issued G.O.Ms.No.95, Environment Forest (F.2) Department, dated 07.08.2009, appointing 3058 Plot Watchers by creating supernumerary posts. As per the said Government Order, those who had completed 10 years of service as daily wages were all given the benefit of appointment as Plot Watchers as against the supernumerary posts created.

5. So far as the persons in that category claiming to be the Anti Poaching Watchers are concerned, considering their request for absorption, the Government issued G.O.Ms.No.76 Environment and Forests (FR-2) Department dated 07.06.2010 creating supernumerary posts to appoint those who have completed

10 years of service as Anti Poaching Watchers in the scale of pay of Rs.2500-5000 + grade pay of Rs.500/-. As many as 137 such Anti Poaching Watchers who had completed 10 years of service were all appointed as against such supernumerary posts. But, the petitioners herein were not so appointed as against any supernumerary posts, because, at that time, they had not completed 10 years of service in the post of Anti Poaching Watchers. In those circumstances, the petitioners approached the learned Single Judge seeking a direction to the respondents to extend the benefit of G.O.Ms.No.76, Environment & Forest Department, dated 07.06.2010 and also to absorb them by creating supernumerary posts as Anti Poaching Watchers.

6. According to the respondents therein, the Government has not taken any such policy decision in respect of those persons, who had not got the benefit of G.O.Ms.No.76 dated 07.06.2010 and further, as per the Tamil Nadu Forest Subordinate Service Rules, the petitioners who are all Anti Poaching Watchers cannot be absorbed as Forest Watchers, because, the said Rule has not been amended so as to appoint them as Forest Watchers.

7. However, in reply, it is stated by the petitioners that the Tamil Nadu Forest Subordinate Service Rules has been amended, by issuing G.O.Ms.No.64, dated 08.03.1999 and G.O.Ms.No.95 dated 07.08.2009, by which, the persons working as Social Forestry Workers and Plot Watchers on daily wages basis from 17th October 1978 in the Forest Department are all eligible for appointment as Forest Watchers. But, the Anti Poaching Watchers, who have been working for several years in the Forest Department, are not made eligible by amending the rules. As such, the benefit was given to the Plot Watchers by appointing them in the supernumerary posts and then to absorb into the regular cadre of service. Therefore, contending that there is no justification in denying the same benefits to the petitioners herein and to the similarly placed Anti Poaching Watchers, they sought to extend the same treatment and the protection as the same is given to the Plot Watchers as per G.O.Ms.No.64 dated 08.03.1999 and G.O.Ms.No.95 dated 07.08.2009 by appointing them in suitable posts

8. The learned Single Judge, however, having dealt with the matter has held that it would be appropriate for the Government to create supernumerary posts of Anti Poaching Watchers so as to appoint those Anti Poaching Watchers working in the Department continuously for 10 years or less, as the Government may deem fit, as on today as against the said supernumerary posts and then to make them eligible for recruitment as Forest Watchers by suitably amending the Rule. The learned Single Judge, while disposing of the Writ Petitions,

directed the Government to issue order creating supernumerary posts of Anti Poaching Watchers to appoint those Anti Poaching Watchers working in the Tamil Nadu Forest Department and those who have completed 10 years of service or less as the Government may deem fit, as on today and further directed the Government to issue appropriate Rule governing the post of Plot Watchers and Anti Poaching Watchers or include these two posts in the Tamil Nadu Forest Subordinate Service Rules so as to regulate the appointment of the Plot Watchers and Anti Poaching Watchers in order to avoid back door entry. The learned Single Judge has also directed the Government to take a policy decision to amend the Tamil Nadu Forest Subordinate Service Rules, so as to make the Anti Poaching Watchers working as against the supernumerary posts eligible for recruitment as Forest Watchers under the Tamil Nadu Subordinate Service Rules, as it has been done in favour of the Social Forestry Workers and Plot Watchers. The learned Judge has further directed the Government to take all necessary steps to ensure that there is no back door entry into these posts, namely, Social Forestry Workers, Plot Watchers and Anti Poaching Watchers without following the method of appointment to be prescribed by the Rules and also directed to comply with the said order within a period of six months from the date of receipt of a copy of that order. Aggrieved over the same, the present Writ Appeals have been filed by the Department.

9. The Special Government Pleader appearing for the appellants submitted that already, rules are in existence governing the recruitment of Forest Watchers to the effect that no persons shall be eligible for appointment unless he possesses the minimum general educational qualification, provided, that the persons in the State Level Seniority List of Social Forestry Workers and Plot Watchers and the Scheduled Tribes engaged as Anti Poaching Watchers with ability to read and write in Tamil shall be eligible for appointment as Forest Watcher. Accordingly, the learned Special Government Pleader appearing for the Department contended that already this issue has been dealt with by the Government even before passing the above said orders by the learned Single Judge. Subsequently, the persons, who have already completed 10 years service, were brought under the regular establishment and they were absorbed by creating supernumerary posts during May and June, 2017 and so far as, 451 persons were accommodated by virtue of G.O.No.73, Environment and Forest Department, dated 23.3.2017. It is further stated that the petitioners and others who have already completed 10 years of continuous service in the post of Anti Poaching Watchers, their case will be considered in the course time.

10. The learned Special Government Pleader appearing for the Department further submitted that for considering the case

of the petitioners/respondents herein, they have to furnish their service particulars regarding the date of their appointment, total period of service and the period of break in service etc. to the Department for proper verification and to maintain Muster Roll and other registers and to calculate whether they have completed 10 years of service by excluding the break-in-service amidst in the Forest Department. In this regard, it is clarified that if no work is given to them by the department that period has to be included for the purpose of calculation of total period of service. If voluntarily, a person has not come for duty, that period has to be excluded for the purpose or reckoning the total period of service.

11. Therefore, though the learned Single Judge directed the Government to create supernumerary posts to accommodate such persons on the strength of the petitions filed by the writ petitioners, however, as per the submission of the learned Special Government Pleader for the Department, it is made clear that such persons who have completed total 10 years of service though excluding the break-in-service, their cases will be considered in the course of time by the policy decision of the Government in the course of time in order to provide an equal protection to protect their services with that of the plot watchers and Social Forestry Workers by issuing G.O.Ms.No.64, dated 08.03.1999 and G.O.Ms.No.95 dated 07.08.2009 and already such a decision is taken to accommodate the writ petitioners.

12. Learned Counsel appearing for the respondents submitted that as far as the Anti Pouching Watchers are concerned, since it is submitted that already decision has been taken to accommodate 451 persons and also there is an undertaking by the learned Special Government Pleader that the case of the writ petitioners and also some other persons, who have not come before this Court, but completed either the 10 years of continuous service or if excluding the break-in-service, on completion of 10 years of service, would be considered in the course of time at regular intervals, recording the same, the Writ Appeals may be disposed of.

13. In that view of the matter, instead of keeping the matter pending over the months, we take a decision that as per the undertaking to the effect that in the case of those remaining either already approached or not approached the court, their cases shall be considered uniformly at regular intervals. Further, as and when such persons, who have completed the 10 years of service excluding the break-in-service, as per the direction issued by this Court, shall make a calculation on their own and shall furnish their particulars as to the date of joining of service, break in service to be included or excluded and the actual date of completion of 10 years etc. to the

Department. On furnishing of such particulars, the same shall be verified by the department after getting necessary clarifications from the individual, if required and on subject to satisfaction by the department, their cases shall be considered at regular intervals.

With the above modification, the Writ Appeals stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Environment and Forest Department,
Secretariat, Fort St. George, Chennai-9.
2. The Principal Chief Conservator of Forests
(Head of Forest Force),
Panagal Building, Saidapet, Chennai-15.
3. The Chief Wild Life Warden,
Panagal Building, Saidapet, Chennai-15.

+1cc to Special Government Pleader, in sr.no.25293

+5ccs to Mr.G.Sankaran, Advocate in sr.no.25375 & 25869

W.A.Nos.354 and 355/2016

PVS (CO)

CS/03/05/18

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