

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.741 of 2016
and CMP No.9603 of 2016

1. The 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. Appellants

versus

1. G.Maharajan
Forest Guard
2. E.Renganathan
Forest Guard
3. P.Krishnasamy
Forest Guard
4. S.Murugaiah
Forest Watcher

(R1 to R4 is not necessary party given up)

5. S.Natarajan
Plot Watcher (Supernumerary Post)

6. S.Sudalai Muthu
Forest Guard

7. S.Mahalingam
Forest Guard Respondents

(R6 to R7 is not necessary party given up)

Appeal filed against the order passed by this Court dated
28.02.2014 passed in W.P.No. 6437 of 2014.

WP.NO.6437 of 2014:Writ petition filed under Article 226 of the constitution of India praying for issuance of a writ of mandamus directing the respondents to appoint the petitioners as regular time scale Forest Watchers taking into account of their eniority and qualification on par with their juniors in the light of the orders passed in WP No.15561 of 2006 dated 10.3.2008 WA No.690 of 2008 dated 13.10.2009 WP No.23374 of 2008 dated 30.10.2009 WA No.607 of 2010 dated 20.3.2010 and proceedings of the 2nd respondent dated 7.1.2011 and confer all consequential benefits

For Appellants : Mr.R.Bala Ramesh
Special Govt. Pleader (F)

For 5th Respondent : Mr.J.Vincent Kumar
RR 1 to 4, 6 & 7 are given up

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The appellants challenge the order of the learned Single Judge made in WP No.6437 of 2014 dated 28.02.2014, in and by which, the Writ Petition filed by the 5th respondent along with others was allowed issuing a Writ of Mandamus directing the appellants to appoint the respondents as Forest Watchers in regular time scale of pay taking into account their seniority and qualification, on par with their juniors. This Appeal is confined only to the 5th petitioner in the Writ Petition Mr.S.Natarajan, who figures as 5th respondent in this Appeal, in respect of others the appellants had complied with the orders of the learned Single Judge.

2. The case of the 5th respondent before the Writ Court was that he was appointed on a daily wage basis as a Plot Watcher on 01.06.1981. Considering the fact that several persons who were engaged on daily wage basis as Plot Watchers by the Forest Department in the Social Forestry Scheme were languishing for several years as daily wage employees, the Government formulated a scheme for bringing them into regular service.

3. Accordingly, a State wide seniority list was drawn and the Plot Watchers who were working on a daily wage basis were regularised in the posts of Forest Watchers depending on their seniority. The Seniority of the 5th respondent, as per the State wide seniority list was 1304. The scheme evolved by the Government enables regularisation of these Plot Watchers as Forest Watchers, Malis or Night Watchman. The services of

several persons who had been employed as daily wage Plot Watchers came to be regularised as Forest Watchers, on the basis of the seniority by giving relaxation to other required qualifications including height prior to the year 2000. The services of the 5th respondent were however, not regularised as a Forest Watcher, but his services were regularised as Supernumerary Plot Watcher with effect from 07.08.2009. Claiming that the services should have been regularised as a Forest Watcher, from the date on which the juniors were regularised, the 5th respondent along with the other respondents have come forward with the above Writ Petition.

4. The learned Single Judge who heard the Writ Petition allowed the same even at the time of admission stating that the issue in this Writ Petition is covered by the decision of this Court in Writ Appeal No.607 of 2010 dated 29.03.2010. It is this order that is challenged by the Department in this intra Court Appeal.

5. We have heard Mr.R.Bala Ramesh, learned Special Government Pleader (Forest) appearing for the appellants and Mr.J.Vincent Kumar, learned counsel appearing for the 5th respondent.

6. In view of the fact that no counter affidavit was filed before the Writ Court, we had required the appellant to file an affidavit setting out the present status. Pursuant to our direction, the 2nd appellant, viz. The Principal Chief Conservator of Forests had filed an additional affidavit setting out the reasons for appointing the 5th respondent herein, as a Supernumerary Plot Watcher instead of regularising his services as a Forest Watcher. In the said affidavit, it is stated that the 5th respondent could not be regularised in service as a Forest Watcher because he was only 158 Cms tall, whereas the relevant service Rules required a minimum height of 163 Cms for a person to be appointed as a Forest Watcher. The said affidavit also discloses that the 5th respondent could have been regularised as a Mali, as and when his turn came, but that could not be done, since the 5th respondent retired on attaining Superannuation on 31.01.2012. One Mr.R.Kuppan, who senior to 5th respondent was appointed as a Mali only on 10.01.2014.

7. Relying upon the aforesaid affidavit, Mr.R.Bala Ramesh, learned Special Government Pleader (Forest) would contend that the post of Forest Watcher being a cadre post in a uniformed service the requirement of height 163 Cms has to be strictly followed. He would also invite our attention to our judgment in *The Principal Chief Conservator of Forests v. Easwaran and others* in Writ Appeal No.1578 of 2014 etc. batch dated

16.07.2018, wherein, we have held that the Department cannot be forced to relax the height requirement for the post of Forest Watcher, which is a cadre post in the uniformed service. Taking into consideration the fact that the services of the 5th respondent could not be regularised as a Forest Watcher, because he did not possess the required height, the appellants had regularised his services as a Supernumerary Plot Forest Watcher, as per G.O.Ms.No.95, Environment and Forest Department dated 07.08.2008. Therefore the 5th respondent cannot claim a vested right for regularisation by Relaxation of Rules, that too with retrospective effect.

8. Per contra, Mr. J.Vincent Kumar, learned counsel appearing for the 5th respondent would submit that many of the juniors of the 5th respondent were regularised as Forest Watcher. He would also rely upon G.O.Ms.No.332 Environment and Forest Department dated 22.12.1994, which in fact provided for a scheme, for regularisation of the services of the Plot Watchers.

The said G.O. only enables regularisation of services of the Plot Watchers wherever they qualified as Forest Watcher or Mali or Office Assistant or Watchman. The 5th respondent could not be regularised as Forest Watcher due to lack of height. Therefore, the department had regularised him as a Supernumerary Plot Watcher under G.O.Ms.No.95, Environment and Forest Department dated 07.08.2009.

9. In view of the above, it is clear that the 5th respondent could not claim a vested right to be regularised as a Forest Watcher, despite not having the required height. While dealing with the question of relaxation, we have in our judgment dated 16.07.2018 made in WA Nos.1578 of 2014 etc. batch, referred to supra, held as follows:

"15. There is no vested right in an individual to seek appointment by regularization against the Rules. We find that the efforts taken by the Government to regularize the services of these Plot Watchers taking into account the long number of years of service rendered by them in the Department are satisfactory and a Mandamus cannot be issued compelling the Government to relax the qualifications required for a particular post. Such a Mandamus will be against the Service Rules."

10. In view of the foregoing reasons, we do not think that the learned Single Judge was right in directing regularisation of the services of the 5th respondent in the post of Forest

Watcher with retrospective effect, from the date on which the services of his juniors were regularised. We are, therefore, constrained to interfere with the order of the learned Single Judge and accordingly this intra Court Appeal will stand allowed. The order of the learned Single Judge in WP No.6437 of 2014 will stand set aside, insofar as the 5th respondent in the Appeal is concerned and the Writ Petition will stand dismissed in respect of the 5th respondent herein. However in the circumstances, there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VI)

// True Copy //

Sub Assistant Registrar

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.

+1cc to Special Government Pleader Sr.No.48221
+1cc to Mr.J.Vincent Kumar, Advocate Sr.No.47848

PA(CO)
sm:6.8.2018

सत्यमेव जयते

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