



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P (MD) Nos.9028 and 9059 of 2018

V.Balakrishnan ... Petitioner in W.P (MD) No.9028/2018
L.Sundararajan ... Petitioner in W.P (MD) No.9059/2018

Vs.

1. The Principal Secretary,
Environment & Forests Department,
Govt. of Tamil Nadu,
Chennai - 600 009.

2. The Principal Conservator of Forests,
No.1, Jennis Park,
Panagal Maaligai, Saidapet,
Chennai - 600 015.

... Respondents in
both petitions

Common Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents 1 and 2 to give notional promotion to the petitioners for the post of Deputy Conservator of Forest for the panel year 2017-2018 and grant all monetary benefits and sanction the pension payment for the post of Deputy Conservator of Forest from the date of retirement i.e. on 31.12.2017 onwards by considering the petitioners' representations dated 10.02.2018 and 12.02.2018 respectively.

For Petitioners : Mr.S.Wilson
For Respondents : Mrs.S.Srimathy, Spl. G.P.
(in WP (MD) No.9059/2018)
For Respondents : Mr.M.Murugan
(in WP (MD) No.9028/2018)

COMMON ORDER

The prayer sought for herein is for a Writ of Mandamus, to direct the respondents 1 and 2 to give notional promotion to the petitioners for the post of Deputy Conservator of Forests for the panel year 2017-2018 and grant all monetary benefits and sanction the pension payment for the post of Deputy Conservator of Forests from the date of retirement i.e. on 31.12.2017 onwards by



considering the petitioners' representations dated 10.02.2018 and 12.02.2018 respectively.

2. Heard Mr.S.Wilson learned counsel appearing for the petitioners and Mrs.S.Srimathy, learned Special Government Pleader appearing for the respondents.

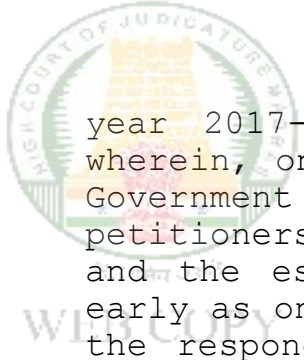
3. Since both these writ petitions are for a similar relief, with the consent of both sides, these two writ petitions are disposed of by this common order at the admission stage itself.

4. The short facts, which are required to be noticed for disposal of these writ petitions, can be culled out from the affidavit filed by the petitioner in W.P.(MD) No.9028 of 2018.

5. The petitioner in W.P.(MD) No.9028 of 2018 joined in the second respondent department as Junior Assistant on 03.07.1981 and thereafter, promoted as Assistant on 09.11.1987 and subsequently promoted as Forester on 07.10.1992 and as Forest Range Officer on 01.02.2010 and thereafter, promoted as Assistant Conservator of Forests on 14.01.2015. Throughout his service, the petitioner has unblemished service records and no disciplinary action had been initiated against him. While so, since the petitioner had qualified service and also seniority to be considered for the post of Deputy Conservator of Forests, the second respondent had prepared a panel fit for promotion to the post of Deputy Conservator of Forests by his proceedings in reference No.AA1/9372/2017 dated 30.11.2017, where in annexure-I, a list of 33 Assistant Conservators of Forests names have been included based on their seniority and eligible to be promoted as Deputy Conservator of Forests.

6. In the said annexure, the name of the petitioner in W.P.(MD) No.9028 of 2018 is found at Sl.No.25, like that the name of the petitioner in W.P.(MD) No.9058 of 2018 is found at Sl.No.15. Though 33 Assistant Conservator of Forests including these petitioners had been included in the panel for promotion of Deputy Conservator of Forests, there had been only 29 vacancies at that time. Therefore, 29 eligible persons could have been promoted as Deputy Conservator of Forests for the year 2017-18. However, the first respondent had not immediately passed order giving promotion to all eligible candidates who had already been included in the list of the second respondent dated 30.11.2017. In the meanwhile, both these petitioners retired from service on 31.12.2017 and 29.12.2017 respectively on attaining the age of superannuation.

7. However, just immediately after the retirement of these petitioners, the Government issued G.O.(2D) No.02, Environment and Forests (FR.1) Department, dated 12.01.2018, giving promotion to 24 persons to the post of Deputy Conservator of Forests. The said Government order also disclosed the facts that, the Government had approved an estimate of vacancies for the post of Deputy Conservator of Forests in the Tamil Nadu Forest Services by promotion for the



year 2017-18 as 29, by the Government Letter dated 19.05.2017, wherein, only 24 persons have been given promotion through the said Government Order dated 12.01.2018. The fact remains that the petitioners though had been included in the panel in November 2017 and the estimate of vacancies were found in the year 2017-18 as early as on 19.05.2017, because of the belated action on the part of the respondents, especially at the first respondent, though these petitioners became eligible to the post of Deputy Conservator of Forests and their names also had been included in the said proceedings dated 30.11.2017 for promotion, they were not promoted before the date they reached superannuation and retired. Therefore, these petitioners have filed these writ petitions after giving representations to the respondents to consider their promotion notionally from the eligible date along with their colleagues/juniors and accordingly, they sought for service benefits. Since the said request has not been considered by the respondents, these writ petitions are filed with aforesaid prayer.

8.I have heard Mr.S.Wilson, learned counsel for the petitioners and Mrs.S.Srimathy, learned Special Government Pleader appearing for the respondents.

9.The learned counsel appearing for the petitioners would submit that, since the estimate of vacancy was approved for the year 2017-2018 on 19.05.2017 and these petitioners had been eligible to be promoted within the crucial date for the said year and also panel was prepared and the names of the petitioners were included in the proceedings of the second respondent dated 30.11.2017, merely because of the delayed action on the part of the first respondent, the petitioners' service benefits on getting promotion to Deputy Conservator of Forests should not have been denied to them and therefore, such request made by the petitioners should be considered by the respondents and notional promotion be given to them.

10.Mrs.S.Srimathy, learned Special Government Pleader appearing for the respondents would submit that no doubt the petitioners had been eligible to be considered for promotion to the post of Deputy Conservator of Forests and the estimate of vacancy also was fixed on 19.05.2017 by Government letter and the names of the petitioners had also been found included in the proceedings of the second respondent dated 30.11.2017 and hence, the petitioners case could be considered on merits and in accordance with law.

11.I have considered the said submissions made by both sides and perused the materials placed before this Court.

12.As has been rightly pointed out by the learned counsel for the petitioners, the petitioners name had been included in the proceedings of the second respondent dated 30.11.2017 at Sl.Nos.25 and 15 respectively. It is an admitted fact on the side of the respondents that, there had been 29 vacancies for the year 2017-18 and the same has been approved by the Government by their



proceedings dated 19.05.2017 and this factor has been mentioned in the said Government order dated 12.01.2018 and the relevant portion is extracted herein:

"ABSTRACT

Forests-Tamil Nadu Forest Service-Appointment of Assistant Conservator of Forests as Deputy Conservator of Forests by promotion-Regular panel of Assistant Conservator of Forests fit for promotion as Deputy Conservator of Forests for the year 2017-18-Approved-Orders issued.

ENVIRONMENT AND FORESTS (FR.1) DEPARTMENT

G.O. (2D) NO.02

Dated:12.01.2018

தே.நா.வி.எம்.பி, மார்கழி-28

திருவள்ளூர் ஆண்டு-2048

Read:

- 1.G.O.(2D) No.13, Environment and Forests (F.R.1) Department, dated 24.02.2017
- 2.Government letter No.5825/FR.1/2017-2, dated 19.05.2017
- 3.From the Principal Chief Conservator of Forests, letter No.AA1/9372/2017, dated 23.11.2017 and 16.12.2017

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ORDER :

In the Government letter second read above, the Government have approved the estimate of vacancies for the post of Deputy Conservator of Forests in Tamil Nadu Forest Service by promotion for the year 2017-18 as 29 (Twenty nine)."

13.When that being the position, if the promotion to the post of Deputy Conservator of Forests were given based on the proceedings of the second respondent dated 30.11.2017 and on the basis of the approval of estimated vacancy for the year 2017-18 by passing Government orders by the first respondent immediately, certainly, these petitioners, before they attaining superannuation, could have been given promotion as Deputy Conservator of Forests and would have been working for some shorter period and retired as Deputy Conservator of Forests. Because of the delayed order passed in G.O. (2D) No.02, dated 12.01.2018, the names of the petitioners have been left out and therefore, their chance of getting promotion as Deputy Conservator of Forests was defeated for no fault of them and only because of delay caused in passing the Government order by the first respondent. Therefore, this Court is of the view that there is every justification on the part of the petitioners to make such a claim to consider them for the purpose of atleast notional promotion from the date, they became eligible to be promoted along with their juniors/colleagues and accordingly, service benefits including the retirement and pensionary benefits shall be calculated and to be paid to them.

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14.In the result, these writ petitions are disposed of with the



following direction:

"The first respondent shall consider the representations made by both the petitioners separately on 10.02.2018 and 12.02.2018, on merits and in accordance with law and thereby taking into account the estimated vacancy for the year 2017-18 and approved by the Government, as per the Government letter No.5825/FR.1/2017-2 dated 19.05.2017, and also the panel fit for promotion issued by the second respondent in reference No.AA1/9372/2017 dated 30.11.2017 and also considering the estimated vacancy, which was found approved as 29 for the year 2017-18 and also taking into account the names of the petitioners, which were included in the proceedings of the second respondent dated 30.11.2017 as Sl.Nos.25 and 15 respectively and pass orders granting such notional promotion to the petitioners from the eligible date and also grant service benefits including the difference of retiral and pension benefits. The aforesaid order shall be passed by the first respondent within a period of four weeks from the date of receipt of a copy of this order."

15.With this direction, these writ petitions are disposed of.
No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary,
Environment & Forests Department,
Govt. of Tamil Nadu,
Chennai - 600 009.
2. The Principal Conservator of Forests,
No.1, Jennis Park,
Panagal Maaligai, Saidapet,
Chennai - 600 015.

+ 1 CC TO Mr.S.WILSON, ADVOCATE IN SR No. 63002
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 63324

ARUL

TE/SB/SAR-3 : 28/06/2018 : 5P/5C

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W.P (MD) Nos.9028 and 9059 of 2018
24.04.2018