

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2019

C O R A M
THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.713 of 2018
and
W.M.P.No.880 of 2018

M.Rajasekar,
Son of C.mani
Foresh Guard,
No.385/C, Mullai Nagar,
Aranmanai Pudur,
Theni 625 531, Theni.

...Petitioner

Vs.

1.Government of Tamil Nadu,
represented by the
Principal Secretary to Government,
Environment and Forest Department,
Secretariat, Chennai 600 009.

2.The Principal Chief Conservator of Forests,
(Head of the Department),
Saidapet,
Chennai 600 015.

.... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the Second Respondent in Pro.Na.Ka.No.AB1/400025/2016 dated 13.09.2017 to quash the same and to issue consequential direction to the Respondents to notionally appoint the Petitioner as Forester with retrospective effect from the date of compassionate appointment of his batch-mate as Forester or with effect from the date of his appointment to the post of Forester Guard, for all purposes and to notionally grant consequential benefits to the petitioner within a limited time frame.

For Petitioner :Mr.M.Ravi

For Respondents:Mr.Thanga Vadhana Bala Krishnan
Addl.Government Pleader (Forest)

O R D E R

Establishing legal right is a precondition to grant the relief sought for in the present Writ Petition. In the absence of establishing any legal right, even the relief to consider the representation cannot be granted. This being the legal principles reiterated by the Hon'ble Apex Court on several judgments, this Court has no hesitation, coming to the conclusion, claiming appointment to the post of Forester by the Writ Petitioner has not supported with any legal contentions.

2. In nutshell the Writ Petitioner was appointed on compassionate grounds as Forest Guard on 09.10.2014. The Writ Petitioner is now working in the said post of Forest Guard for the past about four years. The grievance of the Writ Petitioner is that he fully qualified and eligible for appointment to the post of Forester in the Forest Department and he should have been appointed as Forester on compassionate grounds.

3. The learned counsel for the Writ Petitioner states that the other persons, who are all similarly placed were appointed as Forester on compassionate grounds. Therefore, the Writ Petitioner shall also be accommodated in the post of Forester on compassionate grounds.

4. The very object of the scheme of compassionate appointment is to mitigate the circumstances arising on account of the sudden death of the working employee. The compassionate appointment is said to be provided subject to the availability of vacancies in the department. The compassionate appointed being a special scheme and a concession, can never be claimed as a matter of right. When the Writ Petitioner has already been given benefit of compassionate appointment and he was appointed in the post of Forest Guard, he has no right to claim any further post on compassionate grounds. Once the person is appointed on compassionate grounds, he cannot claim any higher post on the same ground of compassionate by stating that he is fully qualified and instead of appointing in higher post, he was appointed in lower post. Such a claim is not legally tenable. The Writ Petitioner if at all wants to secure higher post, he has to participate in the selection process and get an appointment to the higher post. In other words, in the event of any recruitment notification, the Writ Petitioner can participate in the selection process and secure higher post and he cannot claim that he must be appointed in higher post on compassionate grounds. This being the legal principles to be followed.

5. The circular referred by the Writ Petitioner, issued by the Department of Forest in proceedings dated 11.01.2013 is an

instruction. That will not have any statutory enforceability. Such an instruction will not prevail any right on the Writ Petitioner to claim higher post in the Forest Department. It is pertinent to note that all appointments to the public post are to be done only under the constitutional schemes and by providing equal opportunity to all the eligible candidates, who are all aspiring to secure public employment by participating in the open competition process. The compassionate ground appointment, being a special scheme must be implemented strictly in accordance with the terms and conditions stipulated in the scheme. In the event of granting compassionate appointment to a larger extent the rights of other eligible candidates to secure public employment would be infringed. Those compassionate appointment per se is in violation of Article 14 and 16 of the Constitution of India. This scope of compassionate appointment can never be enlarged by the State also, a considerable restraint is to be shown by the competitive authority by strictly following the terms and conditions, while appointing candidates on compassionate ground. Thus the Writ Petitioner has not established any legal ground for the purpose of issuing direction even to consider the representation.

Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Secretary to Government,
(Government of Tamil Nadu)
Environment and Forest Department,
Secretariat, Chennai 600 009.

2.The Principal Chief Conservator of Forests,
(Head of the Department),
Saidapet,
Chennai 600 015.

+1cc to Mr.M.Ravi, Advocate, S.R.No.9498

+1cc to the Government Pleader, S.R.No.9435

W.P.No.713 of 2018

RSV(CO)

rrs 07/03/2019