



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.(MD)No.1312 of 2015

R.Sivanesan

... Petitioner

Vs.

1. The Secretary to Government of Tamil Nadu,
Environment and Forest Department,
Secretariat, Chennai - 600 009.
2. The Principal Chief Conservator of Forests
Panagal Buildings, Saidapet, Chennai - 600 015.
3. The Conservator of Forests,
Maudrai Circle, Madurai.
4. The Wild Life Warden,
Megamalai Wild Life Division,
Theni - 625 531, Theni District.

... Respondents

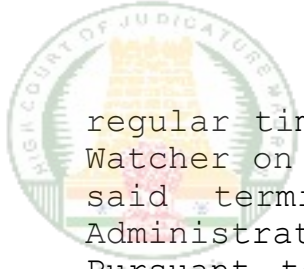
PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records connected with the impugned order passed by the second respondent in his Letter No.LL2/1566/2014, dated 19.11.2014 and quash the same and consequently, to direct the respondents to count the half of the service rendered by the petitioner as Plot Watcher from 1977 to 05.11.1993 by taking 50% of the service for the purpose of pension benefits and from 06.11.1993 to 23.11.2005 as duty by notionally fixing his pay without Back Wages for the purpose of computing the above period for the purpose of calculation of Pension and other retirement benefits along with Regular Service as Forest Watcher from 24.11.2005.

For Petitioner	: Mr.S.Rengaramanujam
For Respondents	: Mr.V.Anand
	Government Advocate

ORDER

This writ petition has been filed to quash the order passed by the second respondent, dated 19.11.2014 and consequently, direct the respondents to count 50% of the services rendered by the petitioner as Plot Watcher from 1977 to 05.11.1993, along with Regular Service as Forest Watcher from 24.11.2005 for the purpose of grant of pensionary benefits.

2.It is the case of the petitioner that he was initially appointed in the Forest Department in the year 1977 on daily wage basis. On 03.05.1991, he was appointed as Forest Watcher in the



regular time scale of pay and was reverted back to the post of Plot Watcher on 07.04.1992, as he was not having the required height. The said termination order was challenged before the Tamil Nadu Administrative Tribunal, which stayed the said termination order. Pursuant to the same, he joined duty on 27.05.1992. Subsequently, the said Original Application was dismissed for default, due to which, the petitioner was terminated from service on 06.11.1993. Thereafter, the Tribunal by order dated 15.09.2003, disposed of the said application, directing the respondents to allow the petitioner to continue in service as Forest Watcher and also address to the Government for the relaxation of Physical Measurement. Pursuant to the same, the petitioner joined duty on 24.11.2005.

3.It is the further case of the petitioner that in the meantime, the Government has issued G.O.Ms.No.56, E & Forest (F2) Department, dated 06.09.2006, relaxing Physical Qualification, as per which, the petitioner was fully qualified for the post of Forest Watcher. To regularise the suspension period, the petitioner made representation to the third respondent. However, the third respondent rejected the claim of the petitioner, against which, the petitioner preferred an appeal before the second respondent, who, in turn, rejected the same, vide order dated 19.11.2014. Aggrieved over the same, the petitioner has come up with the present writ petition for the above stated relief.

4.Upon notice, the fourth respondent filed a detailed counter affidavit, wherein, at paragraph no.6, it has been averred as follows:

"6.It is submitted that the request of the petitioner is devoid of any merits or legal basis. Admittedly, the petitioner was engaged only on daily wages during 1982-1992 and he is not in possession of the physical qualification and he cannot be regularized in the post of Forest Watcher, which is violation of the provisions of Rule 5 of Tamil Nadu Forest Subordinate Service Rules. The petitioner did not work during the period from 01.11.1993 to 23.11.2005, he did not come for even on daily wages and kept quiet without turning for the work for which he is entitled. He was appointed from 24.11.2005 only as per the orders of the Tamil Nadu Administrative Tribunal dated 15.09.2003 in O.A.No.2248/1992 and he did not file any appeal. Thus, the matter is settled by the said order and become final. The petitioner was appointed only by relaxation of Tamil Nadu Forest Subordinate Service Rules. The appointment of the post of Mali was done only as per the seniority and vacancy and not all daily wage persons are appointed in the post of Mali, as represented by the petitioner. No person is entitled for the appointment without fulfillment of requisite qualification. The petitioner was considered and appointed as Forest Watcher as per



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the orders of Tamil Nadu Administrative Tribunal as a special case. There are about thousands of persons similarly who were not appointed in the regular post of Forest Watcher for want of physical qualification as per Tamil Nadu Forest Subordinate Service Rules. The petitioner did not work during this period and he willingly kept out of the work."

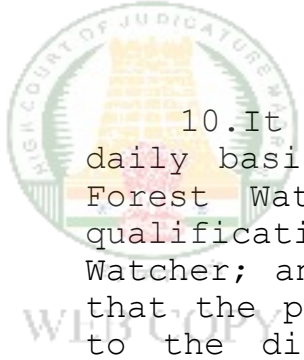
5.The learned Counsel appearing for the petitioner submitted that in terms of Rule 11(2) of the Tamil Nadu Pension Rules, 1978, half of the service rendered from contingencies shall be allowed to be counted, while calculating qualifying service, for the purpose of pensionary benefits and that, a similar issue was favourably considered by this Court in W.A(MD)No.51 of 2018 and etc. batch of cases. According to the learned counsel, the petitioner was initially appointed as Contingent worker in 1977 and as Plot Watcher from 1982 to 1991 and as Forest Watcher from 1991 to 1993 and from 2005; and he was removed from service and continued to be unemployed till 2005 for no fault on his part and hence, the order rejecting the claim of the petitioner seeking regularisation for the period from 1992 to 2005 only for the purpose of pensionary benefits, is liable to be set aside, as it is arbitrary, illegal and contrary to law.

6.Reiterating the averments made in the counter affidavit, the learned Government Advocate appearing for the respondents made his submissions.

7.Heard both sides and perused the materials available on record.

8.Admittedly, the petitioner was engaged as Plot Watcher on daily wages from 1982 to 1991 and he was appointed as Forest Watcher on 03.05.1991, however, he was reverted back to the Post of Plot Watcher for want of physical qualification and was terminated from service on 07.04.1992. In the mean while, he preferred O.A.No.2248/1992, which was disposed of, vide order dated 15.09.2003 passed by the Tamil Nadu Administrative Tribunal. Pursuant to the order of the Tribunal, the petitioner was permitted to join duty on 24.11.2005. Thereafter, the Government vide G.O.Ms.No.56 Environment and Forest (FR2) Department, dated 06.09.2006, relaxed the physical qualification to the post of Forest Watcher, as per which the petitioner is fully qualified for the said post.

9.Now, the claim of the petitioner is seeking regularisation for the period from 07.04.1992 to 26.05.1992 and from 06.11.1993 to 23.11.2005, during which, he was reverted to the post of Plot Watcher from the post of Forest Watcher, for want of physical qualification. The said claim was made only for the purpose of pensionary benefits. However, the same was rejected by the second respondent, by the order impugned herein.



10. It is seen that the petitioner served as Plot Watcher on daily basis from 1982 to 1991; subsequently, he was appointed as Forest Watcher on 03.05.1991; however, for want of physical qualification, he was only reverted back to the post of Plot Watcher; and as such, there is no break-in service. It is also seen that the petitioner was terminated from service on 06.11.1993, due to the dismissal of the original application filed by him for default; subsequently, the said original application was taken on file and was disposed of by the Tamil Nadu Administrative Tribunal in favour of the petitioner; pursuant to the same, the petitioner was permitted to join duty on 24.11.2005 and the Government also relaxed the physical qualification for the post of Forest Watcher; and hence, there is no fault on the part of the petitioner for not working during the period from 07.04.1992 to 26.05.1992 and 06.11.1993 to 23.11.2005. It is further to be noted that the petitioner sought regularisation for the period in question only for the pensionary benefits.

11. In view of the foregoing reasons and also following the judgment of the Division Bench of this Court in WA(MD) No.51 of 2018 etc. batch of cases, wherein, the appellants therein were directed to verify the service particulars of all the writ petitioners therein and count 50% of the services rendered by them on temporary basis and consequently refix their pension, this Court is inclined to set aside the order dated 19.11.2014 passed by the second respondent.

12. Accordingly, this writ petition is allowed by setting aside the order dated 19.11.2014 passed by the second respondent. The respondents are directed to count 50% of the services of the petitioner rendered as Plot Watcher on temporary basis including the period from 07.04.1992 to 26.05.1992 and from 06.11.1993 to 23.11.2005 along with regular service and calculate the pension and pay the same within a period of 12 weeks from the date of receipt of a copy of this order. No costs.

sd/
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

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

2. The Principal Chief Conservator of Forests
Panagal Buildings,
Saidapet, Chennai - 600 015.



3. The Conservator of Forests,
Madurai Circle, Madurai.

4. The Wild Life Warden, Megamalai Wild Life Division,
Theni - 625 531,
Theni District.

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+1 CC to Mr.R.RENGARAMANUJAM, Advocate (SR-53829[F] dated
14/03/2019)
+1 CC to SPL GP (SR-54354[F] dated 15/03/2019)

ORDER MADE IN
W.P. (MD) No.1312 of 2015
13.03.2019

CMR/RK

MK (12.06.2019) 5P 7C