

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

C O R A M

THE HONOURABLE Mr.JUSTICE M.GOVINDARAJ

W.P.No.20955 of 2010
and M.P.Nos.1 and 2 of 2010

N.Moorthy

.. Petitioner

-Vs-

1. Government of Tamil Nadu,
Rep.by Secretary to Government,
Environment & Forest Department,
Fort St.George,
Chennai 600 009.

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

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified mandamus calling for the records relating to the orders in [1] G.Oms.No.121 Environment & Forest [FR.2] Department dated 30.10.2008 (to the limited extent of date of effect of the said order) of the first respondent[2] Pro.No.B1/59698/08 dated 31.10.2008 (to the limited extent of non-selection of the petitioner as Ranger) of the second respondent and quash the same and issue consequential direction to the first respondent and quash the same and issue consequential direction to the first respondent to give effect to the order dated 10.10.2008 from 15.08.2008 and to issue direction to the second respondent to include the name of the petitioner in the panel for promotion as Forest Ranger for the year 2008-2009 and to promote him as such with retrospective effect from the date of promotion of his immediate juniors with all consequential service and monetary benefits.

For petitioner ... Mr.M.Ravi

For respondents ... Mr.J.Sivakumar, AGP

O R D E R

The Writ Petition has been filed seeking to issue a Writ of Certiorarified Mandamus to call for the records relating to the orders in [1] G.O.Ms.No.121, Environment & Forest [FR.2] Department, dated 30.10.2008 (to the limited extent of date of effect of the said order) of the first respondent, and [2] Pro.No.B1/59698/08 dated 31.10.2008 (to the limited extent of non-selection of the petitioner as Ranger) of the second respondent and quash the same and for other consequential reliefs.

2. The petitioner was appointed as Forester in the year 1982 in the respondent-Department and had put in 27 years of service and the next promotional post is Forest Ranger. For inclusion in the panel for promotion, the petitioner should have passed all the departmental tests and should not suffer any currency of punishment. The first respondent has issued a Government Order in G.O.(Ms).No.1120, P & A.R. Department, dated 30.12.1984 and Government Letter No.9140/N/1989-11, dated 20.11.1980 which provides exemption to the employees from passing the said test in relaxation of Rule 5(4)(a) of the Tamil Nadu Forest Subordinate Service Rules. Rule 5(4) (a) reads as under:

“ 5.Other qualifications:

- 4) Must have passed the following Departmental tests namely:-
 - a) Forest law; “

3. The petitioner had made 5 attempts to pass the departmental examinations, but was unsuccessful. He had completed 53 years of age and no disciplinary proceedings were initiated and pending against him and he has not suffered any punishment. Since he satisfied the requirements for the purpose of grant of age relaxation as per G.O.(Ms).No.1120, P & A.R. Department, dated 30.12.1984, the second respondent made a proposal dated 18.07.2008 to the Government to grant relaxation to the petitioner for inclusion of his name in the panel for the year 2008-2009. The first respondent, after considering requisite criterion, issued G.O.(Ms)No.121, Environment and Forest Department, dated 30.10.2008, by which, the relaxation was given from passing the departmental examinations under Rule 5(4)(a) of the Tamil Nadu Forest Subordinate Service Rules with effect from the date of issuance of the said G.O. It is seen from the records that the second respondent published the panel for the persons who were fit for promotion to the post of Forest Ranger in proceedings in Proc.No.B1/59698/08, dated 31.10.2008. The petitioner's name was not found in the list and therefore, he made a representation for inclusion of his name as per the

Government Order issued by the first respondent in G.O(Ms). No.121, Environment & Forest [FR.2] Department, dated 30.10.2008. Since no action was taken, the petitioner has approached this Court by way of filing the present Writ Petition for the above said prayer.

4. The learned counsel for the petitioner would contend that the petitioner made a representation for inclusion of his name in the panel by relaxing the requirement of passing the departmental exams as per Rule 5(4)(a) of the said Service Rules. The Government had also favourably considered and granted relaxation for the purpose of including his name in the panel for the year 2008-2009. In the event of the petitioner not suffering from any punishment, his name should have been included in the panel and consequential promotions should have been given to him. But, it was not done so. The inaction on the part of the respondents is illegal. Hence, the petitioner seeks for a direction for consideration of his case for notional promotion.

5. Per contra, the learned Additional Government Pleader appearing for the respondents would contend placing reliance on the counter affidavit filed by the respondents. According to him, the said Government Order granting relaxation was issued on 30.10.2008, whereas the crucial date for consideration for inclusion of names in the panel is 15th of August every year. On 15th August, the petitioner was not qualified, in view of not passing the departmental tests. Therefore, his name was not included in the panel. In the subsequent year, he suffered a punishment of recovery of a sum of Rs.41,202/- for causing loss to Government and therefore, his name was not included. However, he was included in the panel for the year 2010-2011. Hence, the Writ Petitioner, having failed to pass the departmental tests, is not entitled to be considered for the panel of the year 2008-2009. The relaxation, which was granted on 30.10.2008, will take effect from the date of publication and that cannot be considered for the year 2008-2009, as the crucial date is 15th August. On these grounds, the respondents seek dismissal of the Writ Petition.

6. I have considered the rival submissions made by both the parties and perused the materials available on record.

7. It is not in dispute that the petitioner is entitled to get promotion to the post of Forest Ranger, in view of his qualifications. The short issue is as to which year he is entitled to be included in the panel. The petitioner has made a request for inclusion of his name by relaxing Rule 5(4)(a) of the Tamil Nadu Forest Subordinate Service Rules, in view of G.O.(Ms).No.1120, P & A.R. Department, dated 30.12.1984 and

Government Letter No.9140/N/1989-11, dated 20.11.1980. A reading of the said G.O. and the Government letter shows that a person attempts 5 times and unable to pass the examinations, can be given exemption from passing the examinations, provided he completed 53 years of age and does not have any currency of punishment or any disciplinary proceedings pending against him. The materials produced before this Court go to show that the petitioner has fulfilled the requirements and the Government has also considered the proposal of the second respondent and issued G.O.(Ms)No.121, Environment and Forest Department, dated 30.10.2008 relaxing the condition for passing the test, as per Rule 5(4)(a) of the Service Rules. It is true that as the G.O, the relaxation will take effect only from 30.10.2008. It is true that the Government order granting relaxation specifically states that it will take effect from the date of publication. But it recommends the inclusion of the name of the petitioner to be included in the panel for the year 2008-2009. The crucial date for consideration of names is 15th August of every year. If that is taken into consideration, as contended by the learned counsel for respondents, the petitioner could be considered for inclusion only in the ensuing year. But G.O. grants relaxation for inclusion in the panel for the year 2008-2009 giving rise to a paradox. In such paradoxical circumstances, a harmonious interpretation should be given to the government order. The Government would not have intended to negative the request of the petitioner for inclusion for the year 2008-2009 by setting a condition, which makes it unenforceable. On the hand, the prospective effect should be construed that it does not take away the accrued rights of the persons promoted by retrospective implementation. The purpose of the date of effect of Government Order is to protect the promotion which had taken place already. In that line of interpretation the petitioner would be getting the benefit of inclusion of his name in the panel for the year 2008-2009 without detriment to the accrued interest of persons already promoted. In the instance case panel as well the Government Order granting relaxation were issued on the same date viz., 30.10.2008. In that event, no promotion could have been made. A panel is prepared to identify and shortlist the qualified persons. In the case of the petitioner as per G.O.Ms.No.1120 dated 30.12.1984, he is eligible to be included in the panel. A formal order was required. Therefore, inclusion of the name of the petitioner would not be detrimental to anyone. Hence, non inclusion of the name of the petitioner for the year 2008-09 is bad. The subsequent disciplinary proceedings and punishments cannot stand in the way of inclusion. It can be considered only at the time of promotion. In that view of the matter, a direction is given to the respondents to include the name of the petitioner in the panel for promotion for the post of Forest Ranger of the year 2008-2009 and if he was found eligible, to grant notional promotion

to him from the date on which his immediate juniors were promoted, with all consequential and attendant benefits. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

The Writ Petition is ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Government of Tamil Nadu,
Environment & Forest Department,
Fort St.George,
Chennai 600 009.
2. The Principal Chief Conservator of Forests,
Panagal Buildings,
Chennai 600 015.

+1cc to M/s.M.Ravi, Advocate, Sr.No.11754
+1cc to the Spl. Government Pleader, Sr.No.11912

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