

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2020

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.37577 of 2005

N.Mahalingam

...Petitioner

-vs-

The Principal Chief Conservator of Forest,
Chennai - 600 015.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondent to promote the petitioner as Forester with effect from 18.07.2005 by implementing the order of the Hon'ble Tamil Nadu Administrative Tribunal in O.A.No.1019 of 2004 dated 10.03.2004 with all consequential benefits.

For Petitioner : No Appearance
For Respondent : Mr.S.Prabhu
Addl. Govt. Pleader (F)

O R D E R

The Writ Petition has been filed for a direction to the respondent to promote the petitioner as Forester with effect from 18.07.2005 by implementing the order of the Tamil Nadu Administrative Tribunal in O.A.No.1019 of 2004 dated 10.03.2004 with all consequential benefits.

2. The sum and substance of the issue on hand is that the petitioner was appointed as Forest Watcher in the Forest Department on 06.11.1976 and subsequently, promoted as Forest Guard in the year 1989. While the petitioner was working in Vellore Division, he was charged that he demanded and accepted illegal gratification and fabricated official records along with other Officers. Based on the Vigilance Enquiry, the matter was referred to the Tribunal for disciplinary proceedings and after a detailed enquiry, the petitioner was dismissed from service on 19.07.2002. Aggrieved by the order of the Government, the petitioner approached the Tamil Nadu Administrative Tribunal by filing O.A.No.5015 of 2002, in which the punishment of removal from service was modified into the one of stoppage of increment for three years with cumulative effect. It is averred in the

petition that pursuant to the order of the Tribunal dated 22.05.2003, he was reinstated in service on 08.08.2003 and if the currency of punishment is taken into account from 19.07.2002, it would be over by 18.07.2005. It is further averred that the petitioner filed O.A.No.1019 of 2004 before the Tamil Nadu Administrative Tribunal against his non-inclusion, in which it was held that the petitioner is entitled to be considered for promotion after the currency of punishment. Referring to the judgment of Apex Court reported in AIR 1996 SC 2197, it is stated in the petition that his name has not been included even in the panel for the year 2004 - 2005 and therefore, the petitioner is before this Court, seeking for a suitable direction in this regard.

3. The respondent has filed a counter affidavit, in which, it was stated that the petitioner was reinstated in service as per the orders of the Government in G.O.3(D) No.26 Environment and Forest Department dated 22.05.2003 and he again joined duty on 08.08.2003 and that the stoppage of increment ordered by the Government will take effect from 08.08.2003. It was further stated that the averment made by the petitioner that the punishment should be given effect from 19.07.2002 is not correct, as he was not actually on duty on the said date and therefore, his name was considered to be included in the panel of Forest Guards for promotion to the post of Forester in the panel year 2006 - 2007 and the petitioner was promoted and he has been working as Forester with effect from 02.08.2007 in Vellore Circle.

4. There is no representation for the petitioner. Heard the learned Additional Government Pleader (Forest) appearing for the respondent.

5. It is seen that the order of removal from service was set aside and modified by the Tamil Nadu Administrative Tribunal in O.A.No.5015 of 2002 on 23.09.2002 and the petitioner re-joined the service on 08.08.2003, consequent to the order dated 22.05.2003, passed by the Government. The contention of the respondent that the modified punishment will take effect on and from the date of reinstatement, does not hold good and once the punishment is modified, it will certainly take effect from the date of original punishment that was imposed on 19.07.2002 and the punishment of three years would come to an end after the period of three years from the date of original order of removal from service. Though the respondent is justified in not including the name of the petitioner in the panel for promotion of the year 2003 - 2004 and 2004-2005, taking note of the original order of removal from service dated 19.07.2002, once the period of three years is over, depriving promotion and other benefits to the petitioner is illegal. Therefore, in the considered opinion of this Court, the relief sought for by the

petitioner to implement the order of the Tribunal dated 10.03.2004 passed in O.A.No.1019 of 2004 dated 10.03.2004, holding that the petitioner is entitled to promotion and other benefits with effect from 18.07.2005 is perfectly justified, as the purpose of the order passed by the Tribunal is not to cause prejudice to the progress of the petitioner.

6. In the result, the Writ Petition is disposed of with a direction to the respondent to promote the petitioner as Forester and extend the benefits, by calculating the period of three years' punishment from the date of original order of removal from service, viz., 19.07.2002 in the light of the order of the Tribunal dated 10.03.2004 passed in O.A.No.1019 of 2004.

7. The petitioner was 53 years old at the time of filing of this petition and by this time, he would have definitely attained the age of superannuation, as more than 15 years have gone-by. The respondent shall complete the whole exercise in respect of grant of benefits, within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:

The Principal Chief Conservator of Forest,
Chennai - 600 015.

+1cc to Special Government Pleader, S.R.No.29168

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W.P.No.37577 of 2005

SAI (CO)
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