

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.02.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ
W.P.No.4294 OF 2012

N.Mohan

... Petitioner

Vs.

1.State of Tamilnadu rep by its Secretary
Forests Department
Fort St.George
Chennai

2.The Principle Chief Conservator of Forests
Panagal Building
Saidapet, Chennai

3.The Ranger
Social Forests, Vandavasi
Thiruvannamalai District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the Letter No.21555/Fr-2/2011-2 dated 09.01.2012 passed by the 1st respondent herein and quash the same and further direct the respondents to include the name of the petitioner in the Statewide seniority list and to pass any other orders.

For Petitioner : Mr.S.Mani

For Respondents: Mr.S.Prabhu, AGP (Forest)

O R D E R

Petitioner was engaged as Plot Watcher under the 3rd respondent on 01.08.1985 and served till 20.03.1995. Thereafter for want of work he was transferred to Rural Development department on 20.03.1995. Since the Rural Development department did not give any employment, the petitioner was made to wait under compulsory wait for posting. In the meanwhile the Government in G.O.Ms.No.64 Environment and Forests (FR-II) Department dated 06.03.1999 directed preparation of a integrated Statewide seniority list and to appoint them in all the

vacancies that arise. Without insisting on the age and educational qualifications and if required by relaxing the rules. Thereafter, another G.O.Ms.No.65, Environment and Forest Department dated 08.03.1999 was issued to appoint all these people as per the integrated Statewide seniority list and also to include the Plot Watchers also who were transferred from Forest Department to Rural Development department in the said list. The petitioner's name was not included in the seniority list. Hence, aggrieved by the same, the petitioner has approached this Court to include his name in the said seniority list and for consequential orders.

2. After filing of the above writ petition, Government passed G.O.Ms.No.95 Environment and Forest (FR-2) department dated 07.08.2009, wherein with reference to another Government order vide G.O.Ms.No.22 P&AR department dated 28.02.2006 directed regularisation of the service of all those Plot Watchers who have completed 10 years of service in the time scale of pay Rs.2500-5000 as Forest watchman. But still the petitioner was not included in the seniority list.

3. Per contra, the learned Additional Government Pleader (Forest) would vehemently contend that as per G.O.Ms.No.95 persons those who have completed 10 years of service are only eligible for getting included in the Statewide seniority list and for getting regularisation. Admittedly, the petitioner had served from 01.08.1985 to 20.03.1995, as such he has not completed 10 years of service and therefore he is not eligible to the benefit given under G.O.Ms.95 dated 07.08.2009. The order passed by this Court in several writ petitions also gives the benefit only to those people who have completed service for more than 22 years and therefore, the petitioner who has not completed 10 years of service cannot claim the benefit. According to him, the writ petition deserves dismissal.

4. I have considered the rival submissions.

5. Admittedly, the petitioner had joined the 3rd respondent as Plot Watcher on 01.08.1985 and served till 20.03.1995. Thereafter, he was transferred to Rural Development department where he was put under compulsory wait or in other words he was not given any employment at all. Considering the plight of all these daily wagers who were appointed for the noble object of enlarging the green canopy in the lakes, ponds, riverbeds, mountains, barren lands and to increase the Forest and natural resources, and that many have joined as daily wagers, retired attaining the age of superannuation as daily wagers and many died without getting any benefits. Government has decided in G.O.Ms.No.95 dated 07.08.2009 to appoint those who were 163 cm in height as Forest watchers and Forest watchman. Those who were

below 163 cms as Malis, Officer Assistants and other posts. The Government had taken the above decision considering the plight of daily wagers who had put in so many years of service and also that they were not given any work in the Rural Development department.

6. In similar circumstances, those persons who were affected by non inclusion in the panel and regularisation of service in view of G.O.Ms.No.95 dated 07.08.2009 had approached this Court in W.P.No.21067 of 2009. This Court directed the respondents to include the persons who have not completed 10 years of service also in the Statewide seniority list. Against the order passed by the learned Single Judge, the Government preferred an appeal vide W.A.No.549 of 2010, wherein the Hon'ble Division Bench by its judgment dated 28.04.2010 had categorically found that the Plot Watchers who were stopped for an interim period due to administrative reasons or for want of funds or for want of plan schemes approval and for other reasons, cannot be stated that they refused to work. Fault cannot be attributed to the individual and break in service shall be attributed to the Government and therefore refusal to include in the Statewide seniority list was set aside. The petitioner therein was directed to be included in the Statewide seniority list. The SLP filed against the judgment also was dismissed confirming the order passed by the learned Single Judge.

7. In another judgment in W.A.No.887 of 2010 dated 29.04.2011, the Hon'ble Division Bench has declared that the condition incorporated in G.O.Ms.No.95 dated 07.08.2009 is invalid and inoperative. In view of the prevailing Government order in G.O.Ms.No.64 and 65 dated 06.03.1999 and 08.03.1999.

8. This Court issued appropriate directions. The relevant portion of the said order is extracted:

" 33.In fact, the break in service was caused only on account of the indifferent attitude of the Rural Development Department in refusing to accept the transfer of service made by the Government as per order in G.O.Ms.No.592 dated 16 August 1989. Therefore, the individual employees were not responsible for the so called break in service. They were put on compulsory wait and ultimately, the Government issued orders in G.O.Ms.No.64 and 65 to prepare the seniority list so as to accommodate all these Plot Watchers in the regular service.

....
35.The name of the petitioner in the writ petition in W.P.No.9750/2010 was included in the

list as per Serial No.5275. The case of individual employees like the writ petitioner cannot be rejected merely on the ground that they have not completed ten years of service in spite of the factum of their name being included and shown in the State wide seniority list. Therefore, we are of the considered view that the Government was not justified in imposing a fresh condition of ten years of continuous service. Accordingly, we quash the stipulation regarding ten years of continuous service as a condition precedent for appointment as Plot Watchers as incorporated in G.O.Ms.No.95 dated 7 August 2009 as invalid and inoperative, in view of the prevailing Government Orders in G.O.Ms.Nos.64 and 65 dated 6 March 1999 and 8 March 1999 respectively and Rule 2-B and 2-C of Tamil Nadu Forest Subordinate Service Rules."

Ultimately a direction was issued to the respondent to include the Plot watchers in the Statewide seniority list without insisting 10 years of continuous service.

9. In view of the above judgments, it is very clear that the petitioner had continued in service for almost 10 years before his transfer to Rural Development department. He was not given any work, even though he was willing to work. Hence non completion of 10 years of service cannot be attributed to him, but it was due to the fault on the part of the Rural Development department. Secondly, 10 years period incorporated in G.O.Ms.No.95 dated 07.08.2009 was also declared invalid and inoperative and therefore, the respondents are bound by the judgment of this Court and to include the petitioner name should be included in the Statewide seniority list. Following the above mentioned judgments, this Court in W.P.No.20854 of 2012 by order dated 10.07.2017 has given a positive direction to include one of the Plot Watchers in the seniority list and to regularize his services by appointing him as Forest Watcher by creating supernumerary post, in case of non availability of vacancies, in terms of G.O.Ms.No.95 dated 07.08.2009 and to provide all other attendant and consequential benefits as it was granted to all other similarly placed persons. I am also inclined to follow the said order in W.P.No.20854 of 2012 dated 10.07.2017.

10. In view of the above, the writ petition is ordered accordingly. No costs. The respondents are directed to include the name of the petitioner in the Statewide seniority list and regularize his services by appointing him as a Forest watcher by creating a supernumerary post in case of non availability of vacancies in terms of G.O.Ms.No.95, Environment and Forest

Department dated 07.08.2009 with all other attendant and consequential benefits as it was granted to similarly placed persons within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary
State of Tamilnadu, Forests Department
Fort St.George,Chennai

2.The Principle Chief Conservator of Forests
Panagal Building,Saidapet, Chennai

3.The Ranger
Social Forests, Vandavasi
Thiruvannamalai District

+lcc to Mr.S.Mani , Advocate SR.No. 8733

W.P.No.4294 OF 2012

A.SK(25/02/2020)