

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No.6623 of 2013

N.Sugumar

.. Petitioner

- Vs -

1. The Principal Chief Conservator of Forests,
Panagal Building, Saidapet,
Chennai 600 015.
 2. The Divisional Forest Officer,
Office of the Divisional Forest Officer,
Social forestry Division,
Shopping complex 2nd floor
Salai Road, Uraiyur,
Tiruchirapalli District.
- .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, calling for the entire records pertaining to the order in Na.Ka.No.L.L.2/49450/2010 dated 24.03.2011 of the first respondent, quash the same and consequently direct the respondents to appoint the petitioner as Plot Watcher in the Forest Department on the basis of the Seniority No.2323 assigned to him in the State wide Seniority List drawn by the respondents with all consequential service and monetary benefits.

For Petitioner : Mr.Chellapadian, Senior Counsel for
Mr.S.Mani

For Respondents: Mr.M.Elumalai, A.G.P.

ORDER

The present Writ Petition has been filed by the petitioner, to call for the entire records pertaining to the order in Na.Ka.No.L.L.2/49450/2010 dated 24.03.2011 of the first respondent, quash the same and consequently direct the

respondents to appoint the petitioner as Plot Watcher in the Forest Department on the basis of the Seniority No.2323 assigned to him in the State wide Seniority List drawn by the respondents with all consequential service and monetary benefits.

2. It is the case of the petitioner that he was employed as Plot Watcher on contract basis in the Forest department, in the year 1983. The Petitioner claims that from 1983 to 2000, he was continuously engaged by the respondents on daily wage basis. While he was in working, the Government issued G.O.Ms.No.332, Environment and Forest Department, for regularising of services of Forest Watcher, however he was not extended the said benefit. In the meanwhile, the Government issued orders to rehabilitate those who were working for long number of years on contract basis in the Forest Department and a State wide seniority list was drawn in which his name was also included in serial No.2323.

2.1.The grievance of the petitioner is that instead of regularisation of his service on the basis of the State wide seniority, he was ousted from service during the year 2000 for want of funds. However, the persons whose names found place in the State wide seniority list below him were regularised in service. Thereafter the petitioner requested the respondents to reinstate him into service and requested to confer him all consequential benefits, however there was no order or reply forthcoming, hence he addressed a representation on 05.08.2009 to the Chief Minister's Grievance Cell and also marked copies of the said representation to the respondents. On receipt of the same, the 3rd respondent, by his communication dated 13.01.2010 has informed to the Chief Minister's Grievance Cell that though his name found place in the State wide seniority list, since he was not in service as on date of the Government Order, the question of regularisation of his service will not arise.

2.2.It is the further case of the petitioner that though he was ousted from service in the year 2000, for want of funds, the same cannot be put against the petitioner to deprive his legitimate claim for employment. Therefore, the petitioner was constrained to file WP.No.20350 of 2010 before this Court and this Court by its order dated 15.12.2010 issued direction to the 2nd respondent to consider the petitioner's representation dated 05.11.2009 on merits and in accordance with law, after taking note of the order passed in G.O.Ms.No.95, Environment and Forest Department dated 07.08.2009, and pass orders within a period of twelve weeks. Pursuant to such direction, the first respondent passed the impugned order dated 24.03.2011, rejecting his claim. It is the further averment of the petitioner that when he about to file a writ petition to assail the order dated 24.03.2011 of the first respondent, during March 2012, he received a

communication from the Hon'ble Chief Minister's Grievance Cell indicating that his claim for reinstatement with regularisation was accepted and, therefore, he did not challenge the order dated 24.03.2011 of the first respondent immediately. However, even after a lapse of more than ten months from the date on which he received the communication from the Chief Minister's Grievance Cell, he was neither reinstated in service nor issued any order to that effect and, therefore, left with no other alternative, the petitioner filed this petition with the above said prayer.

3.Learned counsel appearing for the petitioner submitted that though the petitioner was holding the post of Plot watcher on temporary basis, he was stopped from such engagement from 2000 for want of funds and at the time of issuance of Government Order on 8.3.1999, the petitioner was very much holding the post of Plot Watcher on daily wages, which is evident from the certificate issued in his favour. Further, G.O.Ms.NO.64, E&F, department dated 8.3.1999 and G.O.Ms.No.95, E&F department dated 7.8.2009 do not impose any pre condition and it only states that those who were engaged on casual/daily wage basis in the forest department and Social Forestry Department are to be included in the state wide seniority list to be prepared by the second respondent and, therefore, the petitioner is entitled to have his employment status regularised as per the above mentioned Government Order dated 8.3.1999. Therefore the impugned order passed by the 1st respondent is contrary to the said Government order and it is liable to be quashed. Learned counsel appearing for the petitioner drew the attention of this Court to the decision of this Court in V.Subramani - Vs - Government of Tamil Nadu (WA. No.549 of 2010, dated 28.04.2010), wherein, in identical circumstances, this Court held that if an employee is ousted from service due to administrative reasons, the period of his non-employment should not be put against him for denying regularisation or other consequential benefits. Therefore in the light of the order passed by the Division Bench of this Court, he prays this Court to issue a direction to the respondents to consider the case of the petitioner, therein and pass favourable orders.

4.Learned Additional Government Pleader appearing for the respondents did not dispute the facts as stated in the affidavit. However referring the counter affidavit filed on behalf of the respondents, only reiterated that the petitioner is entitled for regular appointment as per G.O.Ms.NO.64, E &F department dated 8.3.1999 as per the policy decision of the Government, and the petitioner is not entitled for the post of supernumerary plot watcher as per G.O.Ms.No.95, E &F department dated 7.8.2009. He submitted that the petitioner, who was not working even on casual basis since 2000, cannot now claim

appointment to the post of Plot watcher on regular basis, the seniority is applicable only when they are appointed to regular posts of forest watcher and Mali. It is further submitted that as the petitioner has no qualification/merits and has not continued in daily wage basis, cannot now claim as a matter of right to have his services regularised in the said post. Accordingly he prays for dismissal of the petition.

5. This Court heard the submissions of the learned counsel appearing on either side and perused the decision on which reliance has been placed by the learned counsel for the petitioner.

6. The facts in the present case are not in dispute. In fact, orders have been issued by the Government from time to time in order to remove the difficulties and keeping in view of the long pending demands of the persons, who were suffering without getting any benefit of regular permanent job even after working for several years on daily wage basis. Therefore, it was ordered for preparation of State wide seniority list, and further those who had rendered a service of more than 10 years be appointed as Plot Watchers in the Supernumerary post created with a special scale of pay of Rs.2500-5000 with grade pay of Rs.500 and their service be regularized from the date of issuance of the order. Though such is the position, however, contra to the same is contended by the learned, which contention does not merit acceptance for the simple reason that such contention was negatived by the Division Bench of this Court in W.A.No.549 of 2010 dated 28.04.2010, wherein it was held that the employee was entitled to be regularised, despite artificial breaks which could not be attributable to the employee. In the instant case, it is an admitted fact that the respondents themselves had ousted the petitioner from service during the year 2000 for want of funds, which cannot not be put on the shoulder of the petitioner. Moreover, the petitioner has served for more than 17 years and the services of the petitioner was not regularized inspite of the issuance of the government orders, but instead of regularising his service, the petitioner, for no fault of his, was ousted from service, which act of the respondents is wholly arbitrary and unsustainable to defeat the legitimate claim of the petitioner.

7. On the above factual position, this Court does not find any justification on the part of the respondents in not regularising the service of the petitioner. The issue in the present case stands squarely covered by the decision of the Division Bench in Subramani's case (supra). Accordingly, the writ petition is allowed and the impugned order of the first respondent in Na.Ka.No.L.L.2/49450/2010 dated 24.03.2011 is hereby set aside and the respondents are directed to consider

the case of the writ petitioner in accordance with the state wide seniority and his position in the said seniority list and issue appropriate orders for regularisation of his service within a period of 12 weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Chief Conservator of Forests,
Panagal Building, Saidapet,
Chennai 600 015.
2. The Divisional Forest Officer,
Office of the Divisional Forest Officer,
Social forestry Division,
Shopping complex 2nd floor
Salai Road, Uraiyur,
Tiruchirapalli District.

+1cc to the Government Pleader, S.R.No.35554

W.P. No.6623 of 2013

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