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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2020

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P. 7893 of 2013

1. P.Sekaran
2. K.M.Subramaniam
3. A.Subbiah
4. A.R.Azara
5. S.Subramani

... Petitioners

Vs

1. Government of Tamil Nadu,
rep. by its Secretary to Government,
Forest and Environment Department,
Fort St. George,
Chennai-600 009.
2. The Principal Chief Conservator of
Forest,
Panagal Maaligai,
No.1, Jennis Road, Saidapet,
Chennai-600 015.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Letter No.2374/Vanam-2/2009-26, dated 27.07.2012 on the file of the 1st respondent, quash the same and consequently direct the first respondent to upgrade the post of the petitioners as Junior Assistants with effect from 13.12.1993 with all consequential service and monetary benefits within a time frame that may be fixed by this Hon'ble Court.

For Petitioner : Mr.T.Sellapandian
for Mr.S.Mani

For Respondents : Mr.S.Prabhu
Addl. Govt. Pleader (Forest),
for R1 & R2

O R D E R

This Writ Petition has been filed challenging the order passed by the 1st respondent dated 27.07.2012, rejecting the petitioners request to upgrade the post of Tally Clerk as that of Junior Assistants in the Forest department.



2. The petitioners are working as Tally Clerks in the Forest Department, and they have been in service for more than 10 years. Since there is no promotional avenue available to the petitioners, earlier, they have filed a Writ Petition in W.P.2902 of 2010 seeking to upgrade the post of Tally Clerks as Junior Assistants with all consequential and monetary benefits. The above Writ Petition came to be disposed of by this Court by an order dated 18.10.2011, on the ground that, already a proposals have been sent to the Government for upgradation of the post and the same is pending. Hence, the Government was directed to pass orders on the proposal sent by the 2nd respondent.

3. According to the petitioners, the post of Tally Clerks is a feeder category for the promotion to the post of Junior Assistants. In the year 1998, the 2nd respondent has prepared a panel for promotion to the post of Junior Assistants, in which, the 1st petitioner name was included in Sl. No.18. Whereas, one Selvaraj was placed in Sl. No.25, who was given promotion, whereas the 1st petitioner was not given. Thereafter, after a long wait, in the year 1997, the 1st petitioner was promoted as Junior Assistant. By the time, one Selvaraj was working as Assistant. Hence, the 1st petitioner was deprived of further promotion. Likewise, the petitioners 2 to 4 are also belatedly promoted, and they have lost the chance of their further promotion. According to the petitioners, when the petitioners were eligible for promotion to the post of Junior Assistants in the year 1993, their request was not properly considered by the respondents. In the above circumstances, in the impugned order, the Government has rejected the request for upgradation of Tally Clerks to the post of Junior Assistants with all monetary benefits.

4. The respondents have filed a detailed counter affidavit disputing their contentions, and stated that, as per Rule 3(g) of Tamil Nadu Ministerial Service Rules, the appointment to the posts of Junior Assistant from the lower categories shall not exceed twenty percent of the vacancies in each of the categories, and the sphere of appointment by recruitment by transfer shall be limited to the persons in the lower categories in other services. Hence, the petitioners cannot claim promotional opportunities to that of upgradation of the existing posts, which is not provided in the rules. The grievance of the petitioners have been thoroughly examined by the 2nd respondent, and decided that the Tally Clerk post is very much essential for the administration in timber and sandalwood depots for better administration, and the Government has taken a policy decision to reject the request of the petitioners for upgradation of the said posts. So far as the contention of the petitioners regarding promotion of juniors to the post of Junior Assistants is totally false. The first petitioner did not furnish any details regarding the promotion of his juniors, and the representation was not given by the petitioners seeking promotion and first time, they



raised such plea in the year 2013, and the petitioners have also not challenged the non-selection within the stipulated time. As per Rule 35(f) of Tamil Nadu State and Subordinate Service Rules, if at all, the petitioners seek for revision of seniority, they should make an application within a period of three years from the date of fixing the seniority, and any application received after the period of three years shall be summarily rejected. At this stage, after a long period, the petitioners cannot seek for revision of seniority.

5. Mr.T.Sellapandian, learned counsel appearing for petitioners submitted that, by the order impugned in this Writ Petition, the Government has rejected the proposal for upgradation of the post of Tally Clerks into that of Junior Assistants.

6. I have considered the rival submissions made by learned counsel appearing for petitioner as well as learned Addl. Government Pleader appearing for respondents and perused the records carefully.

7. The Government considering earlier proposal for upgrading the post held that the post of Tally Clerks is promotional avenue, and 20% of vacancies in the post of Junior Assistants were reserved for the post of Tally Clerks. Hence, the petitioners cannot claim that, they do not have any promotional avenue, and ultimately, it is for the Government to decide whether to upgrade the post or not. When the promotional avenue was available to the petitioners, they cannot claim to upgrade their post, which is a promotional post. In the said circumstances, I find no merit in the contentions of the petitioners. So far as revision of seniority is concerned, the relief sought by the petitioners cannot be considered at this stage, admittedly, juniors have been promoted in the year 1993, and after lapse of nearly 10 years, the petitioners cannot seek for any revision of seniority, that too after the retirement of service. Hence, the request of the petitioners cannot be considered. Considering all those circumstances, I find no merit in this Writ Petition, and the Writ Petition deserves to be dismissed. Accordingly, this Writ Petition stands dismissed. No costs.

rpp

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar



To

WEB COPY

1. The Secretary to Government,
Government of Tamil Nadu,
Forest and Environment Department,
Fort St. George,
Chennai-600 009.
 2. The Principal Chief Conservator of
Forest,
Panagal Maaligai,
No.1, Jennis Road, Saidapet,
Chennai-600 015.
- + 1 cc to Mr.S. Mani, Advocate Sr.20339

W.P. 7893 of 2013

VGII(CO)
EU 9.7.2020