

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.04.2021

PRONOUNCED ON : 27.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.1347 OF 2015

AND

M.P.NO.2 OF 2015

P.Deiveegan

... Petitioner

Vs.

1. The Principal Chief Conservator of Forests,
Panagal Building, Saidapet,
Chennai-600 015.

2. The District Forest Officer,
Attur Forest Division,
Salem District.

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records which culminated in issuing the proceedings No.Se.Mu.Aa.No.P2/8351/2013 dated 10.12.2014 on the file of the second respondent, quash the same and consequently, direct the respondents to permit the petitioner to continue in the time scale of pay as Forest Watcher as fixed by the Government and the first respondent.

For Petitioner : Mr.S.Mani

For Respondents: Mr.S.Prabhu, SGP (F)

O R D E R

The present Writ Petition is heard through Video Conferencing on 19.04.2021.

2. The services of the petitioner as Plot Watcher, was regularised in the year 2010 on par with his juniors, pursuant to the orders passed by the Hon'ble Division Bench of this Court in W.A.No.690 of 2008 dated 13.10.2009. Subsequently, the learned Single Judge of this Court in W.P.No.417 of 2012 dated 04.06.2012, had directed the respondents to grant consequential monetary benefits to the petitioner on par with his immediate juniors. The orders of this Court were implemented on 24.01.2014. While that being so, the second respondent herein, through the impugned order dated 10.12.2014, had cancelled his earlier order dated 24.01.2014 on the ground that the petitioner was engaged as a Plot Watcher from 1983-1987 alone. The second respondent herein had placed reliance on G.O.Ms.Nos.64 and 65, Environment and Forest Department, dated 08.03.1999. Challenging the said order, the present Writ Petition has been filed.

3. Heard Mr.S.Mani, learned counsel appearing for the petitioner and Mr.S.Prabhu, learned Special Government Pleader appearing on behalf of the respondents.

4. Some of the relevant facts pertaining to the present case is that the petitioner was appointed as Plot Watcher on 01.11.1983, on daily wage basis and his name was included in the State Wide Seniority List drawn in the year 1994. On 23.01.1995, the petitioner was appointed in the cadre post of Forest Watcher by the first respondent herein. However, due to an order of interim stay granted by the Tamil Nadu Administrative Tribunal in O.A. No.197 of 1997 etc. batch, he could not join the regular post. When similarly placed persons had filed Writ Petitions before this Court, seeking relaxation of 10 years of continuous service period as a pre-qualification for regularization to the post of Plot Watchers, the Division Bench of this Court, had granted the relief of regularising the services of all Plot Watchers, without insisting for the 10 years of continuous service period. In accordance with the orders of the Hon'ble Division Bench, the learned Single Judge had allowed the Writ Petition filed by the petitioner in W.P.No.417 of 2012, dated 04.06.2012 and thereby, directed the respondents to release the consequential monetary benefits to the petitioner. In accordance to the orders of this Court, the petitioner's initial appointment was regularised and the monetary benefits for the post of Forest Watcher, was also notionally fixed on par with his immediate juniors, with effect from 24.01.2014, the date on which the petitioner had joined the post.

5. The Principal Chief Conservator of Forests in his proceedings dated 16.11.2014, had directed all the District Forest Officers to implement the orders of this Court, including the case of the petitioner herein (in W.P.417 of 2012) and fixed their pay to the post of Forest Watcher on par with his

immediate juniors. Since the petitioner herein, had joined the post on 12.08.2010 (AN), his pay was accordingly revised and fixed with effect from 13.08.2010, by the second respondent herein through his proceedings dated 24.01.2014. However, through the present impugned order dated 10.12.2014, the second respondent herein had cancelled his earlier order dated 24.01.2014, on the ground that the petitioner herein had not completed 10 years of service as a Plot Watcher.

6. The reasoning adopted by the second respondent in the impugned order is not justifiable. When the aggrieved Plot Watchers had earlier approached this Court, through the Association of Employees, a Division Bench of this Court in W.A.No.887 of 2010 & W.P.9750 of 010, had considered this aspect with regard to the pre-requirement of 10 years of continuous service in the post of Plot Watchers and directed the respondents to regularise the services as per the State Wide Seniority List, without insisting for the pre-requirement of 10 years service period. The relevant portion of the order reads as follows:-

"32. The amendments made to the Tamil Nadu Forest Subordinate Service Rules on the basis of the Government Order in G.O.Ms.No.64 & 65 were not brought to the notice of the learned Judge and as such, the learned Judge directed the individual employees to place the details of their services with the Forest Department, including the break in service, so that cumulatively, if they satisfy the requirement of ten years of continuous service as per G.O.Ms.No.95 dated 7 August 2009, they could be considered for absorption. The question of prescribing further condition of ten years of continuous service does not arise, in view of the currency of the Government Order in G.O.Ms.No.64 and 65, and the amendment made to the Tamil Nadu Forest Subordinate Service Rules.

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.

34. The Government Order in G.O.Ms.No.65 dated 8 March 1999 was issued on account of the failure on the part of the Rural Development Department to accommodate the transferred Social Forest Workers and Plot Watchers. The Government found that only a portion of the employees were given job in the Rural Development Department and the rest of those persons were constantly applying to the Forest Department to give them job opportunities. Therefore, it was only to accommodate such workers, Government Order in G.O.Ms.No.65 dated 8 March 1999 was issued. While issuing the said order, the Government was fully convinced that Plot Watchers were not working as on that date on account of the failure on the part of the Rural Development Department to accommodate them. It was only under the said circumstances, the Government directed inclusion of the Social Forest Workers and Plot Watchers, who were transferred to the Rural Development Department, in the Statewide Seniority List. Therefore, the only requirement is, inclusion of name in the Statewide Seniority List. Admittedly, the Statewide Seniority List was prepared in accordance with the Government Orders in G.O.Ms.Nos.64 & 65 dated 6 March 1999 and 8 March 1999 respectively. Such of those employees whose names were included in the Statewide Seniority List got a right to claim appointment. None of the Government Orders regarding preparation of Statewide seniority list and the amended service regulations contain the requirement of ten years of continuous service. The very source of appointment is from the Statewide Seniority list. The Tamil Nadu Forest Subordinate Service Rules is very specific that only after appointing Social Forest Workers and Plot Watchers in its entirety, fresh appointment would be made. Therefore, the employees in the waiting list were justified in making a demand for appointment without insisting on ten years of continuous service. This aspect was not considered by the learned Single Judge. Therefore, we are of the view that the order dated 23 March 2010 in W.P.No.26529 of 2009 is liable to be set aside.

35. The name of the petitioner in the writ petition in W.P.No.9750 of 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 inspite of the factum of their name being included and shown in the Statewide 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 & 65 dated 6 March 1999 and 8 March 1999 respectively and Rule 2-B and 2-C of Tamil Nadu Forest Subordinate Service Rules.

DISPOSITION:-

36. The respondents are directed to implement the order in G.O.Ms.No.95 dated 7 August 2009 on the basis of the Statewide Seniority list without insisting ten years of continuous service. Such exercise shall be completed within a period of three months from the date of receipt or production of a copy of this judgment."

7. When the petitioner herein, along with similarly placed Plot Watchers, had claimed the monetary benefits on par with their juniors in W.P.No.302 of 2012 & etc. batch, this Court, had placed reliance on the earlier orders of the Division Bench in W.A.No.690 of 2008 dated 13.10.2009 and granted the relief. The order of the learned Single Judge reads as follows:-

"3.Learned Government Advocate agrees that the issues raised in these writ petitions are covered by the decision rendered in W.P.No.15561 of 2006 dated 10.03.2008, which got confirmed by the Division Bench in W.A.No.690 of 2008 dated 13.10.2009. There was also yet another judgment in W.P.No.23374 of 2008 dated 30.10.2009, which got confirmed on appeal in W.A.No.607 of 2010

dated 29.03.2010. The orders in the second batch were also implemented by the proceedings dated 15.11.2010 passed by the Secretary to Government, Department of Environment and Forests.

4. In view of the fact that the issue raised in these Writ Petitions are already covered by the orders passed by two Single Judges, which also got confirmed by two Division Benches, the writ petitions are allowed. The respondents are directed to pass orders, granting consequential benefits to the petitioners within a period of twelve weeks from the date of receipt of a copy of this order."

8. Thus, the issue with regard to the pre-requirement of 10 years of continuous service in the post of Plot Watchers was already considered, by this Court and in accordance with the orders of this Court, the petitioner was granted the relief. While that being so, the present action on the part of the respondents in not addressing the reasoning adopted by this Court, either by the Hon'ble Division Bench in the order passed in W.A.No.690 of 2008 or the order of the learned Single Judge in W.P.No.417 of 2012 and cancelling the revision of the pay scale and the consequential grant of monetary benefits, amounts to violation of the earlier orders of this Court. If at all, the respondents are of the view that the petitioner was improperly regularized in the services and that he was not entitled for revision of his scale of pay on par with his juniors, the only option that was open to them was to challenge the earlier orders of this Court. However, no such appeals were filed against the orders of this Court and the same has become final. While that being so, it is illegal for the respondents to overlook the earlier orders of this Court by cancelling the benefits extended to the petitioner, which was pursuant to the implementation of the Court orders.

9. It is pertinent to mention here that the orders of the second respondent dated 24.01.2014, was pursuant to the orders of the first respondent dated 16.11.2013, whereby the second respondent was directed to implement the orders of the High Court. The second respondent, however through the impugned order, had cancelled not only his earlier order dated 24.01.2014, but also the order of the first respondent dated 16.11.2013, who is a superior authority, which action is also impermissible in law. As such, the impugned order itself cannot be sustained.

10. In the result, the impugned order passed by the second respondent in proceedings No.Se.Mu.Aa.No.P2/8351/2013 dated 10.12.2014, is hereby quashed. The Writ Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Principal Chief Conservator of Forests,
Panagal Building, Saidapet,
Chennai-600 015.
2. The District Forest Officer,
Attur Forest Division,
Salem District.

+1cc to Mr.S.Mani, Advocate, S.R.No.23765

+1cc to the Government Pleader, S.R.No.26386

W.P.No.1347 of 2015
and M.P.No.2 of 2015

SSI (CO)
CS/08/07/2021

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