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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2021

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 20026 of 2010

1.M.Sundaram
2.S.Arumugam
3.P.Subbaiah
4.M.Ayyapan
5.T.Perumal
6.M.Subramanian
7.S.Mani
8.A.Muthappa
9.R.Palavesam
10.P.Premasundari Bai
11.R.Ganesan

..Petitioners

Vs

1.The State of Tamilnadu
Rep.by the Principal Secretary to Govt.,
Environment and Forest Department,
Secretariat, Chennai -9.

2.Principal Chief Conservator of Forests
Panagal Maaligai, Saidapet,
Chennai-15

3.The Conservator of Forests,
Palayankottai, Tirunelveli Circle,
Tirunelveli - 7

..Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India for writ of Mandamus, directing the 2nd respondent to pay the special time scale with effect from 07/08/2009 on par with other temporary employees or any other appropriate relief.

For Petitioner : Mr.R.Karthikeyan

For Respondents : Mr.T.Arunkumar, AGP



O R D E R

The writ petition has been filed in the nature of mandamus, seeking direction to the 2nd respondent to pay the special time scale with effect from 07/08/2009 on par with other temporary employees or any other appropriate relief.

2. The writ petitioner was appointed to the post of Social Forestry Worker through employment exchange on consolidated pay of Rs.250/- per month w.e.f 15.06.1983, 04.12.1984 and 10.04.1985. Based on the date of joining, the seniority list was prepared by the respondent. Subsequently, the 1st respondent had passed an order om G.O.Ms. No. 592 /1989, dated 16.08.1989 stating that the aforesaid social forestry worker post was dismantled from the Forest department and their services will be utilised by the Panchayat unions . Further it is stated by the petitioner that due to the said order, 500 plot watchers and 600 village social forestry workers would be dismantled in 1989-90 and their services to be utilised by panchayat unions. Based on the said Government order, the respondent had relieved the petitioner from the social forestry division, Tirunelveli and allotted to rural development department instead of Panchayat unions w.e.f 08.09.1989.

3. Aggrieved by the said transfer order, the association has filed an original application in O.A.No. 4557 of 2001 before the Tamil Nadu Administrative Tribunal and same was dismissed. Against which, the association had preferred a writ petition in W.P.No. 19929 of 2003 before this Court and this Court by order dated 16.08.2007 modified the order passed by the Administrative Tribunal and directed to prepare a statewide seniority list and appoint them on temporary basis. Pursuant to the said order of this Court, the Government had passed an order in G.O.Ms.No. 53, dated. 12.06.2008 and directed the Principal Chief Conservator of forests to appoint 85 persons who are members of association. The petitioner was appointed as plot watcher on temporary basis. Subsequently, vide G.O.Ms. No. 95, Environment and Forests (FR-2) Department, dated 07.08.2009, the Government had granted special time scale of pay of Rs. (2500-5000) and grade pay of Rs.500/- for all the temporary employees who have completed 10 years of service in the Panchayat union or Forest Department. But the petitioner was not granted the said benefit of special time scale of pay till date despite the directions issued by the 3rd respondent to the 2nd respondent to pass appropriate orders. Hence the present writ petition for mandamus.

4. According to the learned counsel for the writ petitioners, the similarly placed persons have filed a writ petition before this Court challenging the G.O. Ms. No. 95, Environment and Forests (FR-2) Department, dated 07.08.2009 for



fixing the eligibility criteria for a period of 10 years of service. The Hon'ble Division Bench of this Court in W.A.No. 887/2010 in W.P. No 9750/2010 by order dated 29.04.2011 had passed an order, directing the respondents to implement the Government in G.O.Ms.No. 95, Environment and Forests (FR-2) Department, dated 07.08.2009 on the basis of the state wide seniority list without insisting ten years of continuous service. According to the learned counsel for the petitioners, the said judgment of the Hon'ble Division Bench is final, therefore, the reasons stated in the counter affidavit that the petitioners had not completed the service for considering supernumerary post as sanctioned in G.O. 95, Environment and Forests (FR-2) Department, dated 07.08.2009 is wrong and the petitioners are entitled for the relief as prayed for in the writ petition.

5. On the other hand, the learned Additional Government Pleader appearing for the respondents submitted that the Government Order in G.O.No.95, Environment and Forests (FR-2) Department, dated 07.08.2009 clearly states that the temporary employees who worked under the Panchayat, Forest or any other departments has to satisfy the condition that they have to complete ten years of service in their department. Whereas, the petitioners had not completed 10 years of service as they were placed in the department only in the year 2008, therefore their names were not included in the list. Hence, seeks for the dismissal of the writ petition.

6. Heard the rival submissions made by the both learned counsels appearing for the parties concerned and perused the materials available on record.

7. The Entire issue revolving in the writ petition is whether the Government Order in G.O.Ms. No. 95, Environment and Forests (FR-2) Department, dated 07.08.2009 imposing ten years of service is a bar for the petitioners to consider them to grant regular time scale of pay sanctioning supernumerary post as per the aforesaid Government Order.

8. The learned Counsel for the petitioners has strongly relied upon the judgment of the Hon'ble Division Bench of this Court passed in W.A.No. 887 of 2010 in W.P.No.9705 of 2010 wherein the writ petitioners has challenged the aforesaid G.O.Ms. No. 95, Environment and Forests (FR-2) Department, dated 07.08.2009 imposing 10 years of service. The Hon'ble Division Bench of this Court has considered the said issue and held that the said condition stipulated in the said Government Order is unsustainable and further directed the respondent to consider the case of the petitioners without insisting upon ten years of service rendered in the department. The relevant portion of the



judgment is extracted below;

"22. The Government found that altogether there were 3058 candidates left in the state wide seniority list for appointment. In fact, there were litigations involving the Department and Plot Watchers who were appointed through employment exchange. The Government with a view to resolve the dispute, issue orders in G.O.Ms.No. 95, dated 7 August 2009. however, while agreeing to appoint the erstwhile plot watchers, a new condition was incorporated that they should have completed ten years of continuous service. The said condition was not there in the earlier Government Order in G.O.Ms.No. 64 and 65 dated 6 March 1999 and 8 March 1999 respectively.

23. The Department has no case that the order in G.O.Ms.No. 95 was issued in supercession of the earlier order in G.O.Ms.Nos.64 and 65. Even according to the Department, G.O.Ms.No.64 , 65 and 95 are operating in the filed and they should be harmoniously construed. The challenge to the condition regarding ten years of continuous service should be considered in the light of G.O.Ms. No.64 and 65 and the service regulations. In view of Rule2-B and the proviso regarding relaxation of educational qualification, the erstwhile plot watchers like the members of the appellant association and the petitioner in W.P.No. 9750 /2010 would automatically get a right to claim appointment. The Government cannot prescribe a further condition of ten years of continuous service which would go against the service regulations as well as the earlier order in G.O.Ms.Nos. 64 and 65."

9. The aforesaid decision of the Hon'ble Division Bench of this Court cannot be disputed by the respondent, therefore considering the facts and circumstances of the case and the decisions rendered by the Hon'ble Division Bench, this writ petition is disposed of with the following directions;

- i. The petitioners are directed to make application before the first respondent within a period of two weeks from the date of receipt of a copy of this order.
- ii. On receipt of such applications, the respondents are directed consider the same and pass orders taking note of the directions issued by the Hon'ble Division Bench of this Court in W.A. No. 887 of 2010 in W.P.No. 9750 of 2010,



dated 29.04.2011 as expeditiously as possible, preferably within a period of twelve (12) weeks from the date of receipt of such applications.

iii.No costs.

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Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary to Govt.,
Environment and Forest Department,
Secretariat, Chennai -9.
- 2.The Principal Chief Conservator of Forests
Panagal Maaligai, Saidapet,
Chennai-15
- 3.The Conservator of Forests,
Palayankottai, Tirunelveli Circle,
Tirunelveli - 7.

+1cc to Government Pleader SR. No.61083
+2ccs to Mr.R.Karthikeyan, Advocate SR. No.61054

W.P.No. 20026 of 2010

PVS (CO)
PR (03/01/2022)