

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.33520 of 2014

R.Periyasami

... Petitioner

Vs

1.Government of Tamil Nadu,
Rep. by its Secretary,
Environment and Forest Department,
Fort St.George,
Chennai - 600 009.

2.The Principal Chief Conservator of Forest,
Office at Panagal Maaligai,
Saidapet, Chennai - 600 015.

3.S.Kandasamy,
Forester,
Virudhunagar Forest Circle & Division.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to promote the petitioner to the post of Forest Guard with effect from 15.06.2004 and Forester with effect from 22.12.2011 on par with his junior with all consequential benefits without insisting for completion of Vaigai Dam Training for the purpose of promoting him to the post of Forester in terms of the order dated 16.08.2013 passed by this Hon'ble Court in W.P.No.27547 of 2011.

For Petitioner : Mr.S.Mani

For R1 & R2 : Mr.M.Elumalai
Additional Government Pleader

ORDER

This writ petition has been filed for a direction to the respondents to promote the petitioner to the post of Forest Guard with effect from 15.06.2004 and Forester with effect from 22.12.2011 on par with his junior with all consequential

benefits without insisting certificate for completion of Vaigai Dam Training, in terms of the order dated 16.08.2013 passed by this Court in W.P.No.27547 of 2011.

2. According to the petitioner, he was appointed as Plot Watcher on 30.12.1980 on daily wage basis and was brought into regular post of Forest Watcher on 19.05.2003. He was promoted as Forest Guard on 19.09.2010. Subsequently, as per the order of this Court dated 04.06.2012, in WP.No.1208 of 2012, the service of the petitioner was regularised in the cadre of Forest Watcher with effect from 20.01.1995 on par with his junior, by proceedings dated 23.01.2014. He completed the Vaigai Dam Training on 30.04.2013. However, he was not given notional promotion, due to non-completion of Vaigai Dam Training, at the appropriate time. The representation dated 10.10.2013 made by him, was also not considered by the respondents. Hence, this writ petition.

3. The learned counsel for the Petitioner submitted that the issue involved herein has already been considered and decided by this Court in favour of the petitioner therein, vide order dated 16.08.2013, passed in WP.No.27547 of 2011, the relevant passage of which, are usefully extracted hereunder:

"5. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents. This Court in W.P.No.13517 of 2009, by order dated 9.4.2010 considered the very same issue and in paragraph-19, it is held as follows:-

" 19. Going through the issue, this Court pointed out that on no fault of the petitioners but on account of administrative reasons, the petitioners could not complete their service qualification to serve in the category of Rural Welfare Officer Grade I. It was pointed out that even though the petitioners had been in service as Junior Assistant with effect from 1991 and in the post of Rural Welfare Officer Grade I, the petitioners were not considered for further promotion on account of the non-completion of the service requirements. This Court held that when the petitioners had successfully completed the departmental examinations, the petitioner cannot be denied inclusion in the panel on the ground that they did not possess the service qualification - an area which was purely in the hands of the respondents. Referring to the order of this Court dated 9.10.2006 in W.P.No.18501 of 2006 (C.Periasamy and another Vs. The District

Collector, Dharmapuri) holding that service qualification cannot be equated to a pass in the departmental test, this Court held: "While the pass in a departmental test may be in the hands of the individual, the posting of the individual to a particular post is not within the hands of the individual." In the circumstances, this Court held that the respondents should have formulated and implemented a policy providing equal opportunity to all persons to acquire the service qualifications. This Court pointed out that but for the belated regularisation in 1996, the petitioner would have undergone the foundation training in Bhavani Sagar Training Institute, the petitioners were not at fault, they should not have been omitted to be included in the panel. "

6. It is also pointed out in the said judgment in paragraph-21 that deputing the petitioner therein for one year training at Bhavani Sagar Institute cannot be attributed to the petitioner and he had not qualified himself though inclusion in the promotion panel for seniority cannot be allowed, as it would prejudice the petitioner as he was prevented by the department to undergo the training. Ultimately in paragraphs 28 to 31, it is held thus:-

"28. It is no doubt true that in the case of a person who sleeps over his right consciously, the question of showing any indulgence to disturb a well settled seniority will not arise. As already pointed out, on the appeal preferred by respondents-3 to 5 dismissed, the seniority of the petitioner remained undisturbed at least upto 2001. There was no occasion for the petitioner to entertain any doubt as to the seniority panel to voice his grievance. He came to know of this fact only when the petitioner's name was not included in the panel prepared for the year 2004 onwards. In the background of this fact, when as per the law declared by this Court, the petitioner's name should have been considered in the seniority list, he having successfully completed the examination well ahead of respondents 3 to 5, the delay in challenging the seniority list, by itself, cannot be held against the petitioner, for the simple reason that the delay on the part of

the District Collector had caused serious prejudice to the petitioner by his not having deputed the petitioner to undergo the one year stint in the post of Rural Welfare Officer Grade II and for the foundation training in the Bhavani Sagar Training Institute as required under the Service Rules.

29. In the light of the above facts and in fairness to the claim of the petitioner, taking note of the decisions of this Court as referred to above, the petitioner merits to have his seniority fixed. I do not find any justification in the plea of the respondents on the issue of laches. In so doing, I am conscious of the decision of the Apex Court holding that a settled list of seniority and promotion should not be disturbed at a long distance of time vide the decision reported in (1976) 1 SCC 599 (Malcom Lawrence Cecil D'Souza Vs. Union of India) and (2008) 2 SCC 750 (Union of India Vs. Narendra Singh).

30. Going by the fact that the petitioner had passed all the departmental examinations and the delay in satisfying the service requirement was not attributable to the petitioner, without disturbing the seniority of respondents-3 to 5, I feel that respondents-1 and 2 should place the petitioner in his original place in the order of seniority that at least in future, if and when the time comes, in the matter of granting promotion, the petitioner's name should be considered at the first place.

31. With the above observation, I allow this writ petition thereby set aside the order of the first respondent herein. By so setting aside the impugned order, it is hereby made clear that this Court does not intend to disturb the seniority of respondents-3 to 5, as they had been in service for quite a long number of years. As already pointed out, respondents-1 and 2 should consider the petitioner at the right place of seniority for considering him for further promotion from the post of Assistant to the post of Extension Officer and pass orders within a period of six weeks from the date of receipt of a copy of this order. "

7. Applying the said judgment, particularly, the principles stating that the petitioner cannot be blamed for not undergoing the training in Bhavani Sagar, the non-inclusion of the petitioner's name in the panel for promotion to the post of Assistant for the year 2003-2004 and denying promotion to the petitioner as Assistant on the date when his juniors were given promotion cannot be justified. However, taking note of the subsequent promotion given to the petitioner, the petitioner shall be notionally promoted for the post of Assistant from the date of promotion given to the petitioner's junior from 28.03.2004. The petitioner is not entitled to get any arrears of salary for the promoted post and the seniority alone is to be given by respondents. The said notional promotion shall be calculated for all purpose except backwages.

The writ petition is disposed with above observations. No costs." Therefore, the learned counsel prayed for similar order in this writ petition as well.

4. The learned Additional Government Pleader appearing for the respondents 1 & 2 fairly submitted that the respondents would consider the claim of the petitioner, in the light of the aforesaid order passed by this Court.

5. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side and also following the aforesaid order dated 16.08.2013 in WP.No.27547 of 2011, this Court directs the respondents to consider the representation of the petitioner dated 01.02.2014 and pass appropriate orders, within a period of eight (8) weeks from the date of receipt of a copy of this order.

6. Accordingly, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Secretary, Government of Tamil Nadu,
Environment and Forest Department,
Fort St.George,
Chennai - 600 009.

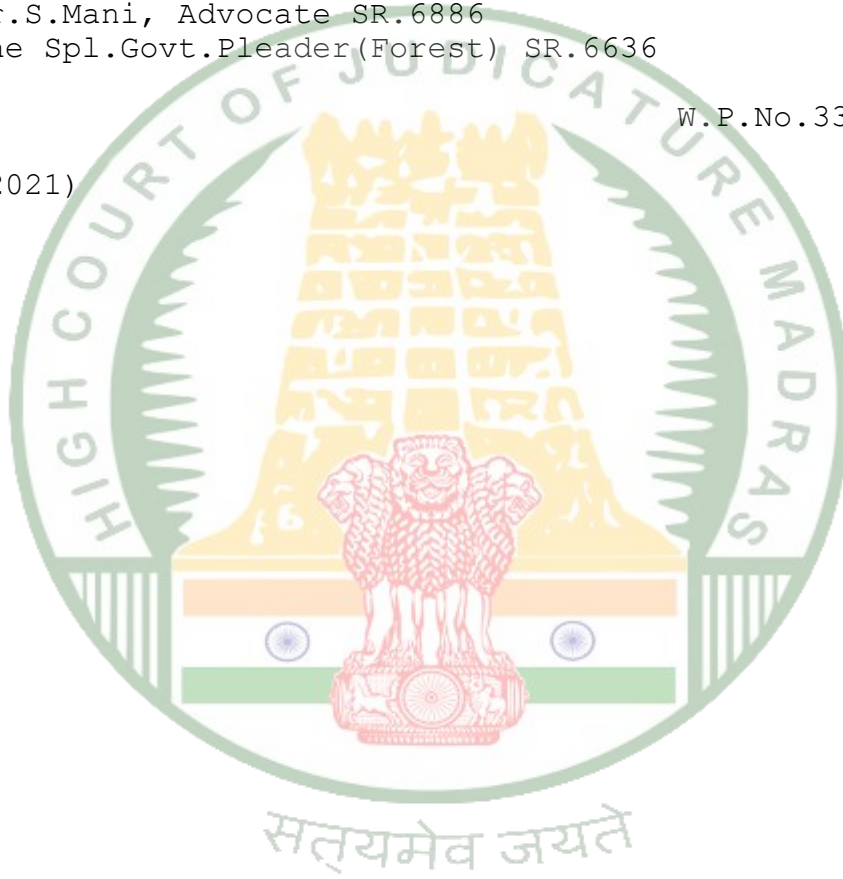
2.The Principal Chief Conservator of Forest,
Office at Panagal Maaligai,
Saidapet, Chennai - 600 015.

+1cc to Mr.S.Mani, Advocate SR.6886

+1cc to the Spl.Govt.Pleader(Forest) SR.6636

W.P.No.33520 of 2014

KK(CO)
CB(25/02/2021)



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