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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.7346 of 2022

V.Venkatesan

... Petitioner

vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Environment and Forest Department,
Fort St.George, Chennai.
- 2.The Principal Chief Conservator of Forest,
Head of the Department, Panagal Building,
Saidapet, Chennai - 15.
- 3.The District Forest Officer,
Attur Forest Division,
Salem.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to fix the seniority of the petitioner in the post of Forest Guard and consequently promote the petitioner to the post of Forest Guard with retrospective effect from the date of promotion of his immediate Senior with all consequential benefits.

For Petitioner : Mr.T.Dharani

For Respondents : Mr.M.Bindran
Additional Government Pleader

O R D E R

By consent of both parties, this Writ Petition is taken up for final disposal at the admission stage itself.



2. This writ petition has been filed seeking to issue a Writ of Mandamus, directing the respondents to fix the seniority of the petitioner in the post of Forest Guard and consequently promote him the petitioner to the post of Forest Guard with retrospective effect from the date of promotion of his immediate Senior with all consequential benefits.

3. The brief case of the petitioner:

The petitioner was engaged as Village Social Forestry Worker with effect from 23.01.1985 in the Tamil Nadu Forest Department through Employment Exchange and thereafter, he was brought to the regular time scale of pay as Forest Watcher on 18.01.1995 and then, his probation was declared on 18.01.1996. Thereafter, he was promoted belatedly to the post of Forest Guard on 17.06.2004 and then, he was further promoted as Forester on 27.12.2011.

3.1. According to the petitioner, though he possessed requisite qualification and experience as early as on 19.01.1997, he was promoted to the post of Forest Guard only on 17.06.2004. Hence, the petitioner made representations to the respondents. Though the third respondent recommended the case of the petitioner, the second respondent had not passed any orders. Therefore, the petitioner filed W.P.No.823 of 2017 and this court vide order dated 11.01.2017, has directed the second respondent to act on the proposal of the District Forest Officer, Salem. The second respondent vide order dated 03.7.2017, has rejected the claim of the petitioner, stating that since the petitioner's service in the post of Forest Watcher was not regularised during the time of selection list, he was not considered for promotion to the post of Forest Guard. But, it is for the second respondent, who is competent authority to place the petitioner's inter-se-seniority on par with his juniors. However, the petitioner made representation before the first respondent and it was acknowledged by them vide letter dated 16.07.2020.

3.2. The contention of the petitioner is that his junior M.Saravanan, Forest Guard was promoted as Forester on 19.08.2010 itself, whereas, the petitioner was promoted as Forester only on 27.12.2011. Therefore, as per Section 40(1) and (2) of Tamil Nadu Government Servants (Conditions and Service) Act, promotion ought to have been given to him on par with his juniors. Hence this writ petition.



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4. The learned Additional Government Pleader, appearing for the respondents submitted that, earlier, the second respondent vide order dated 03.07.2017, has rejected the claim of the petitioner, as sought for in this writ petition. But, without challenging the above order, the petitioner has filed the present writ petition seeking to fix his seniority in the post of Forest Guard, which cannot be entertained. He further submitted that, the subsequent representation of the petitioner before the first respondent is still pending and in such circumstances, the petitioner is not entitled for the relief as prayed for by him.

5. Admittedly, the petitioner's claim to confer notional promotion in the cadre of Forester, on par with his junior, was rejected by the second respondent vide order dated 03.07.2017 and it was not challenged by the petitioner. Therefore, without challenging the above order, this writ petition seeking direction to the respondents to fix his seniority in the post of Forest Guard with retrospective effect from the date of promotion of his immediate Senior, is not maintainable.

6. Further, a perusal of the records shows that the petitioner made representations dated 04.05.2020 and 08.06.2020 before the first respondent and the same were under consideration and are still pending. The first respondent vide letter dated 16.07.2020, asked the second respondent to submit the remarks along with report to the Government immediately. Therefore, it is for the first respondent to decide whether the petitioner is entitled to get the relief or not and to pass appropriate orders as early as possible. In view of the above, the present writ petition is liable to be dismissed.

7. Accordingly, this writ petition is dismissed. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

mst
To

1. The Secretary,
Environment and Forest Department,
Fort St. George, Chennai.



2.The Principal Chief Conservator of Forest,
Head of the Department, Panagal Building,
Saidapet, Chennai - 15.

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

+1cc to the Special Government Pleader Sr.21769
+1cc to M/s.T.Dharani, Advocate Sr.22134

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srg 18/04/2022