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W.P. No.18220 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2022

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.18220 of 2020

K.Karthik

... 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,
Panagal Building,
Saidapet, Chennai – 15.

3.The Wild Life Warden,
Gulf of Mannar Marine National Park,
Ramanatham.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents to include the petitioner's name in the statewide seniority list as on 01.01.2019 and to appoint him as Anti Poaching Watcher in Supernumerary post as per the common order passed by this Court in W.P.No.10654 & 9764 of 2014 dated 15.04.2014 and W.A.No.354 & 355 of 2016 and grant all service benefits on par with similarly placed persons with all consequential benefits.

For Petitioner : M/s.K.Jenitha

For Respondents : Mr.M.Rajendran
Special Government Pleader



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ORDER

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2. The petitioner and similarly placed persons had been engaged as Anti Poaching Watcher several years back at the respondent Department. Insofar as the petitioner case is concerned, he was engaged as such at the Forest Range of Mandapam at Ramanathapuram Forest District with effect from 01.06.2006 and had been working for several years.

3. Though they have completed 10 years of temporary service as Anti Poaching Watcher, their service since were not regularised, the petitioner and similarly placed persons joined together totally 123 people and filed a writ petition in W.P.Nos.10654 & 9764 of 2014, those writ petitions were decided by a learned Judge of this Court by order dated



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15.04.2014 where the following directions have been given:

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“15.In view of all the above, both the writ petitions are disposed of with the following directions:-

(i)The Government shall issue order creating supernumerary posts of Anti Poaching Watchers to appoint those Anti Poaching Watchers working in the Tamil Nadu Forest Department and those who have completed 10 years of service or less as the Government may deem fit, as on today;

(ii)The Government shall issue appropriate Rule governing the post of Plot Watchers and Anti Poaching Watchers or include these two posts in the Tamil Nadu Forest Subordinate Service Rules so as to regulate the appointment of the Plot Watchers and Anti Poaching Watchers in order to avoid back door entry;

(iii)The Government shall consider to take a policy decision to amend the Tamil Nadu Forest Subordinate Service Rules, so as to make the Anti Poaching Watchers working as against the supernumerary posts eligible for recruitment as Forest Watchers under the Tamil Nadu Subordinate Service Rules, as it has been done in favour of the Social Forest Workers and Plot Watchers;

(iv)It is further directed that the Government shall take all necessary steps to ensure that there is no back door entry into these posts namely Social Forest Workers, Plot Watchers and Anti Poaching Watchers without following the



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method of appointment to be prescribed by the Rules and

(v) In any event, the Government shall comply with this order within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.”

4. Pursuant to the said directions, instead of complying with the same, the respondents since had chosen to file intra Court appeal through appeals in W.A.Nos.354 & 355 of 2016 and those writ appeals were also disposed of by a Division Bench of this Court by order dated 05.04.2018, where, the Division Bench slightly modifying the order passed by the Writ Court has passed the following order:

“13. In that view of the matter, instead of keeping the matter pending over the months, we take a decision that as per the undertaking to the effect that in the case of those remaining either already approached or not approached the court, their cases shall be considered uniformly at regular intervals. Further, as and when such persons, who have completed the 10 years of service excluding the break-in-service, as per the direction issued by this Court, shall make a calculation on their own and shall furnish their particulars as to the date of joining of service, break in service to be included or excluded and the actual date of completion of 10 years etc. to the Department. On



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furnishing of such particulars, the same shall be verified by the department after getting necessary clarifications from the individual, if required and on subject to satisfaction by the department, their cases shall be considered at regular intervals.

With the above modification, the Writ Appeals stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.”

5. Though this order by the Division Bench was passed in 2018 even thereafter there was no orders regularising the services of the petitioner as he has already completed 10 years of service long back and in order to get such regularisation and for further service benefits, the petitioner, having given a representation to the respondents on 14.10.2019 and the same since has not evoked any positive response from the respondents, has approached this Court by filing the present writ petition with the aforestated prayer.

6. Heard Ms.K.Jenitha, learned counsel appearing for the petitioner who would submit that because of the pendency of the writ appeals till 2018 even the persuasive action by filing contempt petition against the non-compliance of the orders of the learned Single Judge in



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the Writ Court to approve were not filed and subsequently after 2018 the Division Bench order since the petitioner was waiting that the orders would be complied with and since there was no compliance the petitioner had given representation as stated supra on 14.10.2019, even thereafter nothing was forthcoming from the respondents, therefore the petitioner has approached this Court by filing the present writ petition.

7. Heard Mr.M.Rajendran, learned Special Government Pleader appearing for the respondents who relied upon the following averments made in the counter affidavit.

“4.It is respectfully submitted that, the averments made in the para 2 are denied. The petitioner name was already included in the state seniority list prepared and released for 1,119 numbers of Anti-poaching watchers vide Principle Chief Conservator of Forest, Chennai No.LL2-16977-2019 dated 09.10.2019. The petitioner name was included in the state seniority list in S.No.244. There arises no question of including the petitioner in the state seniority list as the petitioner name is already included in the state seniority list. It is also submitted that as per the Announcement made in the legislative Assembly on 05.07.2019 by the Hon'ble Chief Minister under Rule 110 – the petitioner consolidated monthly wages has got enhanced from Rs.10,000/- to Rs.12,500/- month as per the sanctioned orders vide G.O.(Ms)No.89 Environment and Forest (FR.2-II) Department dated 04.09.2019. As the petitioner has been engaged purely in temporary basis and as there is no such sanctioned post exists in this division and no such provision is available. Moreover, there is a total ban on creation of



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new posts in all departments as per the G.O.No.248 Finance (CMPC) Department Dt. 20.05.2020, which refers that “Considering the prevailing situation of COVID 19 in the state and the compelling need to regulate expenditure on emoluments, Government direct that there shall be a total ban on creation of new posts in all departments.”

8. By relying upon this averment, the learned Special Government Pleader would contend that due to Covid-19 situation for the whole year of 2020 and 2021, nothing could be made. Only to maintain the austerity measure to reduce the expenditure to be incurred by the Government no new posts were created, that is why the direction given by the Writ Court to get supernumerary posts for regularising these persons as Anti Poaching Watchers could not be complied with only for the aforestated reason of Covid-19 situation which made the coffer empty because of the heavy sliding on the revenue side for the Government exchequer.

9. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

10. Even though the reason of Covid-19 situation is cited now by



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the respondents for not complying the orders of this Court, the earlier order passed by the Writ Court was in the year 2014 which was confirmed with slight modification by the Division Bench in the year 2018, however the Covid-19 situation started only in the year 2020, hence the said reason cited by the respondents though may not be acceptable however that Covid-19 situation since has upset the normalcy for nearly two years that defence can be taken into consideration. In view of the normalcy being restored now, this Court feels that now there can be no further impediment for the respondents to implement the orders passed by this Court as referred to above by creating supernumerary posts for the purpose of regularising the petitioner.

11. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

That there shall be a direction to the respondents to implement the order passed by this Court made in W.P.Nos.10654 & 9764 of 2014 dated 15.04.2014 as well as the order passed by the Division Bench of this Court made in W.A.Nos.354 & 355 of 2016 dated 05.04.2018 by creating supernumerary posts for the purpose of regularising the



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service of the petitioner as Anti Poaching Watcher wherein he has been working all along and such consideration shall be made and regularisation order be passed by the respondents within a period of twelve weeks from the date of receipt of a copy of this order.

12. With this direction, this Writ Petition is disposed of. No costs.

12.09.2022

Index : Yes / No

Speaking Order : Yes / No

Sgl

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Environment and Forest Department,
Fort St. George, Chennai.
- 2.The Principal Chief Conservator of Forest,
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R.SURESH KUMAR, J.

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