

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.15559 of 2014
and
M.P.No.1 of 2014

M.Govindan

... Petitioner

Vs

1.The Government of Tamil Nadu
rep.by its Secretary to Government
Environment & Forest (FR 5) Department,
Fort St.George, Chennai-600 009.

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

3.The Conservator of Forest,
Vellore District, Vellore.

4.The District Forest Officer,
Thiruvannamalai Forest Range,
Thiruvannamalai District.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India praying for an issuance of a Writ of Certiorarified Mandamus calling for the records of the Respondents more particularly the 1st Respondent relating to his proceedings made in Letter No. 340B/FR.5/2013-4 dated 28.03.2014 and quash the same as null and void illegal and invalid and consequently directing the 1st Respondent to call for proposals for regularization from the 2nd 3rd & 4th Respondents and accordingly issue suitable orders regularizing the service of the Petitioner either as Animal Keeper or as Forest Watcher or in any other cadre in the available vacancies with effect from 1980 with all monetary and service benefits and also applying the old Pension Scheme making him eligible for Pensionary benefits, the prevalence of Old Pension Scheme when he was appointed as "Wildlife Watcher" and also considering the multi nature of works discharged by him for more than 30 years in different Forest areas, viz at the inception as Wildlife Watcher at Sathanur Dam from the year 1980, thereafter at

Pinchur Plot for 10 years from the year 1981 to 1991 as Forest Watcher at Jamna Maruthur Forest Range Office for about 6 years from the year 1992 to 1998 as Forest Guard at Check Post, Sandal Wood Depot etc, and again at Sathanur Dam from the year 1998 as Animal Keeper in the Crocodile Farm in the light of G.O.Ms.No.43, Environment and Forest (FR.6) Department dated 14.05.2009 issued regularizing the services of juniors to the petitioner relaxing the Rule pertaining to age, educational qualification, method of appointment and the Rule of reservation etc.,

For Petitioner : Mr.A.Amal Raj

For Respondents : Mrs.S.Anitha
Special Government Pleader.

O R D E R

The writ petition is filed questioning the validity of the order dated 28.03.2014 issued by the first respondent rejecting the claim of the writ petitioner to regularise his service. The petitioner was appointed as Forest Watcher in the year 1980 on daily wage basis.

2.The learned counsel for the petitioner made a submission that the petitioner was continuously working for more than about 30 years. Even as per the proceedings of the District Forest Officer, in letter dated 09.04.2012, the petitioner was serving up to 08.12.2011 and therefore, he has worked about 21 years. Despite the fact that the petitioner has served for more than 10 years, he is entitled to be regularised in the sanctioned post with all monetary benefits. However, no action had been taken during the relevant point of time to regularise the service of the writ petitioner and he was making representations. The learned counsel for the petitioner states that the case of the similarly placed person were considered by the respondents and they were regularised. Therefore, the benefit of regularisation is to be extended to the writ petitioner.

3.The learned Special Government Pleader appearing on behalf of the respondents, relying on the counter statement, made a submission that the petitioner has never worked as a Forest Watcher and he has worked only as a Plot Watcher/Crocodile Farm Watcher and Sandal Depot Watcher in the Forest Department on daily wages. The nature of work of Plot Watcher is protecting the plantation and the nature of work of Crocodile Farm Watcher is maintaining the Crocodile Farm. Therefore, the Plot Watchers are posted as Forest Watcher based on the State vide Seniority list. The petitioner, while working as Plot Watcher, his nature of work was to protect the plantations. The Plot Watchers are appointed by the Forest Ranger on the basis of daily wages. He

has not worked under the control of District Forest Officer but under the control of the Forest Ranger on daily wages.

4.The respondents state that the petitioner had worked as a Plot Watcher at Pinjur from 01.06.1992 to 31.10.1992. There is no provision to appoint any Plot Watcher to the plantations permanently and therefore, daily wage employees were engaged for want of vacancies. The petitioner was worked as Sandal Depot Watcher/Check Post Watcher at Jamunamarathur Range on rotation basis. The payment was made, for which, proper accounts were maintained by the Forest Ranger.

5.The respondents state that the petitioner at no point of time had served as Forest Watcher. Based on the records, the petitioner has not worked as Plot Watcher/Crocodile Farm Watcher after 07.12.2011. Therefore, he has not worked in the department from 08.12.2011 onwards. The details regarding the service of the writ petitioner ha been stated as follows:

Category	Name of the Range	From	To
Wild life Watcher	Wildlife Range Sathanur Dam	01.03.80	15.06.80
Wild life Watcher	Wildlife Range, Sathanur Dam	01.01.82	31.05.82
Plot Watcher	Wildlife Range, Sathanur Dam	01.06.92	31.10.92
Sandal depot watcher	Jamunamathur	21.11.92	30.11.92
Sandal depot watcher	Jamunamathur	01.01.93	28.02.93
Sandal depot watcher	Jamunamathur	01.04.93	31.12.93
Sandal depot watcher	Jamunamathur	01.02.94	28.02.94
Wild life Watcher	Wildlife Range, Sathanur Dam	01.12.2008	07.12.2011

6.It is contended that the name of the petitioner was not included in the State vide Seniority List since the petitioner had not completed 10 years during the relevant point of time continuously in any one of the categories. The petitioner submitted a representation to regularise his service in the post of Forest Watcher. The said representation was considered and it was rejected on the ground that the petitioner is not eligible for the benefit of regularisation in accordance with the rules in force and further, he has not complied with the requisite conditions for grant of regularisation.

7.Regularisations or permanent absorption cannot be granted in violation of the rules in force. Irregular or illegal appointment cannot be regularised and the benefit of regularisation is to be granted only by following condition as stipulated in the rules. Equal opportunity in public employment is a constitutional mandate. All eligible persons who are all aspiring to secure public employment should be provided with an opportunity to participate in the open competitive process. Thus, the persons appointed irregularly through back door method are not entitled to seek regularisation, which would infringe the rights of all other candidates, who are longing to secure public employment on merits and by participating in the process of selection. In the event of any such regularisation, the same would infringe the rights of other eligible candidates and further, resulting in an unconstitutionality. This is exactly the reason why the constitution bench in the case of State of Karnataka Vs.Umadevi reported in 2006 (4) SCC 1 held that the principles for regularisation and permanent absorption are to be followed scrupulously by the authorities competent. Irregular and illegal appointment cannot be regularised in violation of the service rules in force. The principles laid down by the Constitution Bench cannot be denuded based on certain facts and circumstances which cannot be followed as precedent for the purpose of grant of regularisation and permanent absorption, as otherwise it would run counter to the ratio laid down by the Constitution Bench.

8.As far as the irregular appointments are concerned, it was considered even in the case of State of Rajasthan & Ors. v. Daya Lal & Ors., reported in 2011 2 SCC 429, wherein, the Hon'ble Supreme Court held that "The High Courts, in exercising power under Article 226 of the Constitution will not issue direction for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of the regular recruitment in accordance with the rules in an open competitive process, against sanctioned vacant posts. The equality clause contained under Article 14 & 16 should be scrupulously followed and the Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection, which does not go to the root of process, can be regularised, back door entries, appointment contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

9.In the present case, the petitioner was engaged as daily wage employee and as per the service records, the respondent found that he is not eligible for the benefit of regularisation as per the rules in force. As per the respondents, the petitioner was not working as daily wages from the year 2011

onwards. He filed the writ petition in the year 2014. Even at the time of filing of the writ petition, the petitioner was aged 52 years and now he would be 60 years. This being the factum, the benefit of regularisation cannot be granted in violation of the rules and the judgment of the Hon'ble Supreme Court in the subject. In view of the facts and circumstances, this Court do not find any infirmity or perversity in respect of the reasons stated in the order impugned and accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy// Sub Assistant Registrar

sms/sli

To

- 1.The Government of Tamil Nadu
rep.by its Secretary to Government
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- 2.The Chief Conservator of Forests,
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- 3.The Conservator of Forest,
Vellore District, Vellore.
- 4.The District Forest Officer,
Thiruvannamalai Forest Range,
Thiruvannamalai District.

+1 cc to Mr.A.Amal Raj, Advocate Sr.NO. 36480

+1 cc to Government Pleader Sr.NO. 37610,36915

W.P.No.15559 of 2014

and

M.P.No.1 of 2014

rgn(CO)

A.SK(11/07/2022)