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W.P.No.27172 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.27172 of 2018

S.Annamalai

.... Petitioner

-Vs-

- 1.The State of Tamil Nadu
Rep.by the Secretary to Government
Forest and Environment Department
Secretariat, Fort St.George
Chennai 600 009.
- 2.The Principal Chief Conservator of Forests
(Head of Forest Force)
Panagal Building, Saidapet
Chennai 600 015.
- 3.District Forest Officer
Hosur Division, Hosur
Krishnagiri District.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent vide Ref.No. LL1/ 35259/ 2016 dated 03.11.2017 to quash the impugned order and consequently directing the 2nd respondent to include petitioners name in the State wide Seniority list as per G.O.Ms.No.202 dated 18.12.2013 so as to enable him to get his service regularized in a regular time scale of appointment as Forest Watcher in the light of Division Bench Order of this Court in W.P.No.2390 of 2013 dated 21.03.2018 within a stipulated time by this Hon'ble Court.



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For Petitioner : Mr.P.Rajesh

For Respondents : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent vide Ref.No. LL1/ 35259/ 2016 dated 03.11.2017 to quash the impugned order and consequently directing the 2nd respondent to include petitioners name in the State wide Seniority list as per G.O.Ms.No.202 dated 18.12.2013 so as to enable him to get his service regularized in a regular time scale of appointment as Forest Watcher in the light of Division Bench Order of this Court in W.P.No.2390 of 2013 dated 21.03.2018 within a stipulated time by this Court.

2. The petitioner had joined in the Forest Department as Plot Watcher in Kelamangalam Range (M.S.C.S.) in the year 1980. He was allowed to work as a Full Time daily wage worker. He worked in M.S.C.S from 01.01.1983 upto 2008 under District Forest Officer in Dharmapuri and Krishnigiri District. While so, the Principal Conservator of Forests vide his proceedings dated 26.06.2009 invited applications for regularisation and bringing them under special time scale of pay for a list of persons who completed 10 years service as on 01.01.2006. They may be a Social Forester or Plot Watcher.



3. In this context, the name of the petitioner should also have been included by forwarding the same by the District Forest Officer concerned. Hence, the petitioner has given an application. However, his name has not been forwarded by the District Forest Officer. In this regard, the Government passed under two Government Orders ie., G.O.Ms.No.64, Environment and Forest Department dated 08.03.1999 and subsequently G.O.Ms.No.1995, Environment and Forest Department dated 07.08.2009. Under these two Government Orders, throughout the State, based on the seniority of the temporary or daily wage employees / Plot Watchers who have been working for long years it had been consolidated and a list consisting of 3058 people were prepared.

4. Even though list was prepared as per the G.Os., the Department could not absorb them in the regular post of Forest Guard or Maali because the sanctioned posts for Forest Guard was 1308 and for Maali was 155. Therefore, all these 3058 candidates could not be accommodated and therefore, in order to bail out these people as they have been working for nearly about 10 to 30 years and most of them were at the verge of retirement, in order to bring them under the special time scale of pay, a policy decision was taken by the Government which was announced by the Minister concerned in the Assembly in 2009-10. Pursuant to which only G.O.Ms.No.95 dated 07.08.2009 was issued under which those 3058 people, after having been absorbed in the regular post would be posted in a notionally created Plot Watcher as one time measure by bringing them under time scale of pay of Rs.2500-5000. Based



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on the said announcement given on 17.07.2009, G.O.Ms.No.95 was issued on 07.08.2009. Accordingly all those 3058 people had been absorbed as Plot Watchers of course on notional basis, as the post was created on a notional basis.

5. In the said list, the petitioner's name had not been included and hence the petitioner had already approached this Court and a direction had already been issued by this Court to give a fresh representation and if the representation is given, that was directed to be considered by the respondents. Pursuant to which, a representation had been given by the petitioner. Having considered the same, the second respondent ie., Principal Conservator of Forests has rejected the same by order dated 03.11.2017. Challenging the same the present writ petition has been filed.

6. Heard Mr.P.Rajesh, learned counsel for the petitioner, who would submit that, the petitioner in fact initially was engaged as Forest Watcher in the year 1980. However, the Muster Roll system was introduced in 1983. Between 1980 to 1983 there was no record to show that the petitioner has been in the Muster Roll. However, after the moment Muster Roll was introduced, the name of the petitioner was found in the Muster Roll and thereafter the petitioner has been working continuously for several years. Even the admitted case of the respondents in respect of the petitioner's continuous work is between 04.06.1983 and 11.09.1992 ie., 9 years and few months and therefore if at all the 10 years rule has been prescribed under the Government



Orders referred to above, the 10 years also since the petitioner had completed taking into account his service from the year 1980 and thereafter even according to the respondents, though the petitioner has been continuously working, the records available with them, is only from 1998 to 2014 ie., about 6 years. Hence, even though the petitioner has been continuously working from 1980 till 2014 and thereafter also, according to the available records it is an admitted fact on the part of the respondents that the petitioner initially worked continuously from 1983 to 1992 and subsequently from 1998 to 2014 continuously, altogether more than 15½ years. Therefore, the petitioner very well satisfies the condition of 10 years service and his name ought to have been included in the list of 3058 people, but unfortunately that was not done. But anyhow, those who have been left out in the aforesaid list as per G.O.Ms.No.95 referred to above have been considered and in fact included in the subsequent list in G.O.Ms.No.202 dated 18.12.2013.

7. Even in the said list, the petitioner's name has not been included, whereas those who have been appointed first time either in 1999 or 2000 and even thereafter also have been taken into account for the purpose of inclusion of their name in the list for the purpose of bringing them under the time scale of pay.

8. Making these submissions, the learned counsel for the petitioner would contend that, on the basis of the available records and the admitted facts on the part



of the respondents since the petitioner has fulfilled 10 years qualifying service for the purpose of regularization and bringing him under the regular time scale of pay, the petitioner ought to have been included in the list. Therefore, in this regard the impugned order has to be interfered with. In support of his contention, the learned counsel relied upon the Division Bench judgment of this Court dated 21.03.2018 made in W.A.No.2390 of 2013 in the matter of **V.Manoharan -Vs- The State of Tamil Nadu and Others.**

9. Per contra, Mr.R.U.Dinesh Rajkumar, learned Government Counsel appearing for the respondents would submit that, though these two government orders viz., G.O.No.64 dated 08.03.1999 and G.O.No.95 dated 07.08.2009 were issued, insofar as the regularisation of the service of the petitioner it was dealt with only on the basis of G.O.No.76 issued in this regard. G.O.No.76, Environment and Forests Department dated 07.06.2010 makes it clear that these Government Orders extend the benefit for those who have completed 10 years service before the cut off date.

10. The cut off date is 01.01.2006 and hence before 01.01.2006 since the petitioner has not completed 10 years of continuous service and he has completed only 9½ years he was not qualified to be included in the list prepared in this regard throughout the State and therefore in the initial move taken pursuant to G.O.No.64 which was confirmed in G.O.No.95, the name of the petitioner was not included and even subsequently also based on G.O.No.202 dated 18.12.2013, the name of the



petitioner could not be included because at the time of issuance of G.O.No.202 the petitioner had not fulfilled the required service and therefore in the second G.O., also his name was not considered. In view of the non-inclusion in both the G.Os., because of the less period of service rendered by the petitioner on temporary basis, his name could not be considered. Therefore, based on these factors only the plea raised by the petitioner as directed by this Court in the first round of litigation has been considered and rejected. Therefore, the impugned order dated 03.11.2017 needs no interference and the learned Government Counsel seeks to reject the prayer and to dismiss the writ petition.

11. I have considered the rival submissions made by the learned counsel for both parties and have perused the materials placed on record.

12. Insofar as the admitted facts pertaining to the service of the petitioner is concerned, from 04.06.1983 to 11.09.1992, the petitioner had been continuously working, that means for 9 years and 3 months period. Subsequently the petitioner, according to the respondents, had been continuously working from March 2008 to February 2014. If these two continuous services are put together, the petitioner would have rendered more than 15 years of continuous service in two spells.

13. In this context, even though this stand of the petitioner that he had been continuously working on daily wage basis or temporary basis from 1980, in between



period the records were not available with the respondents and for the period from 1980 to 1983 the system of NMR was not followed, therefore, that record was also not available with the respondents. However, these reasons cannot be attributable on the part of the petitioner as if the petitioner had not rendered any service on temporary basis.

14. Moreover, if we look at the Division Bench judgment dated 21.03.2018, the Division Bench has taken pain to go through the entire list attached with G.O.No.202 dated 18.12.2013 and has found the following factual findings.

6. The Government issued an order in G.O.(Ms) No. 95 dated 07 August 2009 directing regularisation of services of those employees who have completed 10 years of service. Subsequently, the Government issued an order in G.O.Ms.202 dated 18 December 2013, regularising the services of the employees who have qualified for regularisation. The said order indicates that several employees who have not completed 10 years of continuous service were given the benefits of regularisation. For example Thiru.A.Perumal whose name is found in Sl.No.50 of the Government Order was appointed only on 01 January.2000. Even though, he has not put in 10 years of service, his services were regularised. Similar is the case of Thiru. R.Palanisamy, who was appointed on 26 July 1999, Thiru.G.Kumar who was appointed on 19 September 1999, Thiru.L.Narayanasamy, appointed on 04.09.1999 and Thiru. K.Arumugam appointed on 01 September 1999. It is therefore clear that the Government have



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regularised the services of those employees, who have not even put in 10 years of service. Even if it is contended that the appointment of those employees would not give a right to the appellant to claim similar treatment, in case he is given the benefit of regularisation taking into account the earlier services from 01 April 1999 to 31 March 2000, he is eligible for regularisation. The certificate issued by the Forest ranger, Rural Fire Wood Tree Range-II, Tirupathur dated 1 April 1999, clearly indicates that pursuant to the order dated 07 April 2000, the appellant worked continuously for the period from 1 April 1999 to 31 March 2000. In case the said services is taken into account, the appellant would qualify for regularisation.

15. It is to be noted that in either of Government Orders ie., G.O.No.64 or G.O.No.95 referred to above, there was no cut off date as has been stated by the respondents and moreover in the impugned order, yet another cut off date 08.03.1999 was given as the crucial date, on what basis such crucial date has been put against the petitioner, is not known.

16. Even the people who were appointed in 1999 and somebody who got appointed in 2000 have been included in the list of 200 and odd people pursuant to G.O.No.202 and they had been given the benefit of regularization and they were brought under special time scale of pay, whereas the service rendered by the petitioner is far far better comparing with these people, as admittedly the petitioner had rendered service for more than 15 years in two spells.



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17. Though the petitioner had claimed that from 1980 continuously he has rendered service, and based on available records 15½ years service has been rendered by the petitioner since has been accepted by the respondents, his name ought to have been included either in the first list or second list, but it was omitted to be included in both the lists. This act on the part of the respondents against the petitioner is not a mere omission, but the District Forest Officer, for reasons best known to him, has not forwarded the name of the petitioner to the State Level Authority. Therefore, such kind of inaction on the part of the District level officer in not including the name of the petitioner though he was qualified to be included in the list cannot be put against the petitioner. Therefore, the reasons cited in the impugned order passed by the respondents ie., the Principal Conservator of Forests dated 03.11.2017, in the considered opinion of this Court, is untenable and also it goes against the order passed by the Division Bench judgment referred to above in

V.Manoharan -Vs- The State of Tamil Nadu and Others.

18. For all the aforesaid reasons, this Court is inclined to dispose of this writ petition with the following order.

- That the impugned order in Ref.No.LL1/35259/2016 dated 03.11.2017 is set aside and the matter is remitted



back to the second respondent for reconsideration.

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- While reconsidering the same, the second respondent shall take into account the admitted fact at Para 7 of the impugned order, where it is mentioned that the petitioner admittedly had rendered continuous service in the first spell for 9 years and 3 months and in the second spell 6 years, totally 15 years and odd. It is only based on the available records and as claimed by the petitioner that from 1980 the petitioner had been engaged, whereas the NMR scheme ie., Muster Roll system was brought only in the year 1983. Therefore, there was no scope for having any record to maintain between 1980 and 1983 and this also shall be borne in mind by the second respondent while deciding the issue.
- The second respondent also shall bear in mind the fact that pursuant to the G.O.No.,202 dated 18.12.2013 so many people who have been appointed in 1999 or 2000 also had been included in the list and they have been extended the benefit and this was factually found by the Division Bench in Para 6 of the order dated 21.03.2018. Therefore, based on these factual matrix there could be no impediment for the second respondent to extend the benefit to the petitioner also. Hence, suitable order to that effect shall be passed by the second respondent as indicated above within a



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period of eight weeks from the date of receipt of a copy of this order.

19. With the above directions, this writ petition is disposed of. No costs. s

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Index : Yes/No
Internet : Yes/No
KST
To

- 1.The Secretary to Government
Forest and Environment Department
Secretariat, Fort St.George
Chennai 600 009.
- 2.The Principal Chief Conservator of Forests
(Head of Forest Force)
Panagal Building, Saidapet
Chennai 600 015.
- 3.District Forest Officer
Hosur Division, Hosur
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R. SURESH KUMAR, J.

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