



W.P.No.32682 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.32682 of 2018

1.Murugan
2.Natarajan

...Petitioners

Vs.

1.The Principal Chief Conservator of Forests,
Panagal Maligai,
Chennai.

2.The District Forest Officer,
Aathur Forest Division,
7/362, Kattukottai Puthur Road,
Vada Chennimalai Post,
Aathur Taluk – 636 121.

3.Manikandan

Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the respondents 1 and 2 to pass appropriate orders in accordance with law pursuant to the representation/legal notice issued by the petitioner dated 1.9.2018 for taking action against the 3rd respondent.



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For Petitioners : Mr.M.Gnanamoorthy

For Respondents : Mr.S.Silambannan
Additional Advocate General
assisted by
Mr.T.M.Rajangam
Government Advocate for R1 & R2

Mr.T.Sellapandian for
Mr.R.Gokulakrishnan for R3

ORDER

The relief sought for in the present writ petition is to direct the respondents 1 and 2 to pass appropriate orders on the representation submitted by the writ petitioners on 01.09.2018.

2.The petitioners states that the 3rd respondent was appointed as a Forest Guard on 20.05.2017 by the 1st respondent. Pertinently, the writ petitioners are the relatives of the 3rd respondent and the 3rd respondent secured appointment on compassionate ground due to the death of the father of the 3rd respondent. A civil dispute exists between the petitioners and the



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3rd respondent and in this regard, a suit in O.S.No.178 of 2018 is pending.

Under these circumstances, the petitioners submitted a complaint to the respondents 1 and 2 stating that the 3rd respondent has got criminal antecedents and a criminal case was registered against him in FIR in Crime No.155 of 2015, which is pending and suppressing the said facts, he secured appointment in the Forest Department.

3.The learned counsel for the petitioners contended that the criminal case registered against the 3rd respondent is pending even today. More so, the 1st petitioner is the defacto complainant in the criminal case. Since the respondents 1 and 2 have failed to initiate action against the 3rd respondent, the petitioners have chosen to file the present writ petition. Now the criminal case is pending on the file of the learned Judicial Magistrate, Thirukoilur in C.C.Nos.27 & 28 of 2016.

4.The learned counsel for the 3rd respondent raised an objection by stating that the 3rd respondent was appointed on compassionate grounds due



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to the death of his father. He submitted an application which was considered by the competent authorities and accordingly, he was appointed and serving for the past about five years in the Department. The petitioners have filed this writ petition with a personal motive, since a civil dispute is pending between the parties. In order to settle the score, the petitioners have given complaint against the 3rd respondent. Thus, the writ petition is to be rejected.

5.The learned Additional Advocate General appearing on behalf of the respondents 1 and 2 contended that in the present case, the 3rd respondent was appointed inadvertently before verifying the antecedents and character. Even, the department received information from the police that a criminal case is pending against the 3rd respondent. However, the information were secured only after the appointment of the 3rd respondent as a Forest Guard. In this context, the competent authorities issued a memo to the 3rd respondent and he had submitted his reply and no further action has been initiated, since the writ petition was pending.



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6.A statement was made in the original counter affidavit filed by the District Forest Officer, Salem Division dated 26.02.2019 that “there is no hard and fast rule which bars and prohibits the appointment of a person with criminal background as alleged in respect of Group 'C' and 'D' employees. Moreover antecedent for such appointment is not called for and no rule emphasizes this requirement. The alleged and undue charges are very vague and cannot be sustained based on law, enactment and other codified rulings”. Regarding the above submission made by the District Forest Officer, who is now holding the post of Conservator of Forest, an additional counter affidavit was filed stating that the statement in Paragraph 8 of the counter affidavit which appears to have been made due to inadvertence and the same may be ousted in the interest of justice.

7.Considering the arguments as advanced between the parties to the lis on hand, a person having criminal antecedents becomes ineligible for public appointments. Forest Department is a uniformed service and therefore, verification of character and antecedents are of paramount



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importance. The Forest Guards are dealing with arms and ammunitions and therefore, verification of character and antecedents are of paramount importance. A person having criminal background at no circumstances is to be appointed in public services. No doubt, assessment of eligibility and suitability is the prerogative of the Selection Committee/Competent authorities. In the present case, it is brought to the notice of this Court that the 3rd respondent had suppressed the fact regarding the pendency of the criminal case, since he was appointed on compassionate grounds and there was no much verification done while appointing the person on compassionate ground.

8. The learned counsel for the 3rd respondent states that the authorities competent have not sought for any such particulars and therefore, the 3rd respondent had not furnished the details.

9. This exactly is the reason, why the constitutional Courts are repeatedly holding that compassionate appointments is a concession and not



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a right and more so, the scheme itself is violative of Article 14 and 16 of the Constitution of India. Compassionate appointments are made without any verification and without any merit assessment and without following the rule of reservation. The very purpose of the object is to mitigate the circumstances arising on account of the sudden death of an employee. Thus, the Courts have repeatedly held in the event of large scale compassionate appointment, the efficiency in the public administration is diluted and in the present case, more specifically, even the verification of antecedent and character has not been done. It is an unfortunate situation, where a person having a criminal case against him has been appointed on compassionate ground without any verification. In this regard, the Government has to take appropriate steps to ensure that proper verification of character and antecedents are undertaken before appointing persons on compassionate grounds.

10. No doubt, there may be some personal motive between the petitioners and the 3rd respondent. This Court is not concerned with such



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civil dispute which is pending between the parties. However, when the public servants are appointed to perform public duties and a complaint had been received in this regard, the authorities competent are bound to conduct verification and initiate all appropriate actions by following the procedures as contemplated. In the present case, the petitioners sent a complaint in the year 2018, though a memo had been issued, no further action has been taken in accordance with law. In such circumstances, when complaints are received in the matter of illegal or irregular appointments then, the authorities competent are bound to initiate action without causing any undue delay. After a lapse of time, such candidates claim that they are serving for many years and therefore, further actions are to be dropped. These illegalities prevailing in the appointments and misplaced sympathy in illegality will lead to denial of equal opportunity to all other eligible candidates, who all are aspiring to secure public employment.

11. In the present case, though a memo had been issued to the 3rd respondent, pursuant to the complaint given by the petitioners, no further



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action has been taken and the 3rd respondent is allowed to continue in service. The criminal case is pending and now posted for trial. The authorities competent are expected to be sensitive in such matters where the appointments are made in an illegal manner or without proper verification of antecedents and character of a person. This being the facts and circumstances, the respondents 1 and 2 are directed to initiate all further actions pursuant to the complaint given by the writ petitioners in accordance with the rules in force and by following the procedures as contemplated.

12. Accordingly, this writ petition stands disposed of. No Costs.

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Index : Yes
Internet : Yes
Speaking order : Yes / No
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S.M.SUBRAMANIAM, J.

SSR

To

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