



W.P.No.2553 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.2553 of 2020

R. Bala Murugan

... Petitioner

Vs.

1. The Principal Secretary to Government
Environment and Forest Department,
Secretariat, Fort St.George,
Chennai 600 009.

2. The Principal Chief Conservator of Forest
Pangal Maligai,
Saidapet, Chennai 600 015.

... Respondents

PRAYER: This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent in his letter No.19835/FR.2(II)/2018-4 dated 09.07.2019 and quash the same as far as the petitioner is concerned as arbitrary and illegal and consequently directing the respondents to include the petitioner's name in the panel for the post of “Forest Guard” pertaining to the year 2016-2017 and grant consequential benefits.



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For Petitioner : M/s.T.Dharani
For Respondents : Mrs.C.Meera Arumugam
Additional Government Pleader

ORDER

This Writ Petition has been filed to call for the records of the first respondent in his letter No.19835/FR.2(II)/2018-4 dated 09.07.2019 and quash the same as far as the petitioner is concerned as arbitrary and illegal and consequently directing the respondents to include the petitioner's name in the panel for the post of "Forest Guard" pertaining to the year 2016-2017 and grant consequential benefits.

2. The learned counsel for the petitioner submitted that the petitioner was appointed as casual labour in the Tamil Nadu Forest Department in the year 1993 and in the year 2006 he was appointed as permanent mazdoor in the Tamil Nadu basic service and his education is Secondary School Leaving Certificate (SSLC) completed. In the year 2014 he was appointed as 'Forest Watcher' by transfer in the Tamil Nadu Forest Subordinate Service and in the year 2017 panel for the post of 'Forest Guard' for year 2016-2017 was issued in the proceedings of the second respondent herein in No.AB2/27389/2017-1



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dated 19.05.2018 and the petitioner's name was shown against Serial No.43 as 'Not Selected'. On enquiry, the petitioner was informed that his name was not selected for the reason that he do not possess minimum general educational qualification namely SSLC pass. In this context, it is relevant to point out that one E.Swaminathan and K.Baskaran were earlier promoted as Forest Guards from the post of Forest Watchers even though they do not possess the minimum general educational qualification.

3. The learned counsel further submitted that the petitioner along with three others made a representation to the 1st respondent by letter dated 28.11.2018 to consider their promotion to the post of Forest Guard on par with that of other Forest Watchers who were similarly placed and the 2nd respondent in his letter No.AB2/41280/2018 dated 23.04.2019 has sent proposal to Government for exemption of the minimum general educational qualification prescribed for the Forest watchers appointed from the category mazdoors on par with that of Forest Watchers appointed from the category of social Forestry workers and plot watchers so that the indiscrimination meted out to one category of Forest Watchers may be annulled. However, the 1st respondent in his letter No.19835/FR2(II)/2018-4 dated 09.07.2019 has rejected the proposals of



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the 2nd respondent since it is against Section 20 (3) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

4. The learned counsel further submitted that the letter of the 1st respondent discloses differential treatment among the holders of the post of “Forest Watchers” which is against the rule of law established under Article 14 of the Constitution of India. When one set of Forest Watchers like E.Swaminathan and K.Baskaran who are similarly placed persons like the petitioner do not possess SSLC qualification and they have been considered for promotion to the post of Forest Guard earlier but the petitioner's name was not included in the panel. The promotion to the post of Forest Guard under the Tamil Nadu Forest Subordinate service rules which was framed under Article 309 proviso to the Constitution of India under which one set of people were given promotion whereas for the petitioner the promotion has been rejected arbitrarily quoting section 20(3) of the Tamil Nadu Government Servant (condition of services) Act 2016.

5. The learned counsel further submitted that the 2nd respondent himself has accepted that there is a discrimination by allowing one set of “Forest



Watchers” who do not possess minimum general educational qualification to have benefit of promotion as “Forest Guards” whereas the same right is being rejected for another set of “Forest Watchers” similarly placed. Therefore, he has come out with a proposal to give an uniform treatment to all persons appointed as “Forest Watchers”. But the 1st respondent without application of mind and without any regard for the rule of law established under Article 14 of the Constitution of India have simply rejected proposal of the 2nd respondent.

6. In support of his above contention, the learned counsel relied upon the following decisions of the Hon'ble Supreme Court of India in the cases of:

i) ***K.C.Balaji Vs. Union of India (2004) 3 SCC 777***

wherein it is held that State cannot arbitrarily pick and choose amongst similarly situated persons to pursue legal proceedings against some and not to do so consciously against others. Such approach would be *ex facie* arbitrary, unjust and violation of Article 14

ii) ***Bachan Singh Vs State of Punjab (AIR 1980 SC***

898) wherein it is held that Rule of Law which permeates the entire fabric of Indian Constitution excludes Arbitrariness. “wherever we find arbitrariness or unreasonableness there is the denial of rule of law” Article 14 acts primarily a guarantee against arbitrariness and inhibits state action whether legislative or



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executive which suffers from the vice of arbitrariness. Every state action must be non-arbitrary and reasonable.

iii) ***Hasia Vs Khalid Mujib Sehravardi (1981) SCC 722*** wherein it is held that any arbitrary or unreasonable action of authority under Article 12 would be violation of Article 14. What Article 14 strikes Arbitrary must necessarily involve negation of equality.

iv) ***H.L.Trehan Vs Union of India (1989) 1 SCC 764*** wherein it is held that observance of rules of Natural justice is a requirement of Article 14 and so must be observed unless expressly excluded.

7. The learned counsel further submitted that Article 309 of the Constitution of India provides that Acts of the appropriate legislative may regulate the recruitment and conditions of service of persons appointed to public service posts in connection with the affairs of the union or any state. Pending provision in this behalf being made by or under an Act, rules regulating the recruitment and other service conditions of persons appointed to such posts can be made. The state legislature has passed the Government Servants (conditions of Services) Act, 2016 under Article 309. This Act do not cover the special rules for Forest Subordinate services.



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8. The learned counsel for the petitioner further drew the attention of this Court to G.O.Ms.No.64 Environment and Forest Department dated 09.03.1999 wherein it is mentioned that for appointment to the post of Forest Guard minimum qualification of SSLC is not required. More over, the learned counsel referred to the proceedings of the Wildlife Warden, Guindy, Chennai dated 14.03.1997 in which one Kanniappan, Contingent Mazdoor has been temporarily appointed as Permanent Mazdoor and also to the proceedings of the Chief Conservator of Forests (Forest Conservation Act), dated 01.04.2003 in which the said Kanniappan was promoted as Forest Guard and also to another proceedings of the 2nd respondent dated 09.09.2010 in which one Swaminathan and Baskaran were promoted as Forest Guard from the post of Forest Watchers.

9. Aggrieved by the order dated 09.07.2019 passed by the 1st respondent, the petitioner has come forward with the present writ petition.

10. Counter affidavit dated 09.11.2021 has been filed by the 2nd respondent and it is relevant to extract the following paragraphs from the counter affidavit:



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II). It is submitted that the petitioner stated that Thiru.E.Swaminathan and Thiru.K.Baskaran who were Senior in the cadre of Forest Watcher and they were not possess Minimum Educational Qualification have been considered for promotion to the post of Forest Guard vide Principal Chief Conservator of Forests, Chennai Ref.No.AB2/46440 /2010.

It is submitted that Thiru.E.Swaminathan and Thiru.K.Baskaran who were promoted as Forest Watcher from the post of Plot Watcher service category and not for the service from Mazdoor category. As per G.O.Ms.No.206, Environment and Forests (FR2) Department, dated 13.08.2012 ordered that the educational qualification prescribed for promotion of Forest Watchers to Forest Guard shall not be applicable to the Malis who are appointed from the among the social Forestry Workers as Plot Watchers and to the Forest Watchers who are appointed from among Village Social Forestry workers, Plot Watchers and Scheduled tribes engaged as Anti Poaching Watchers. As per the above Government order they were promoted as Forest Guard.

vi). It is submitted that as per the request of the petitioner's representation dated 17.09.2018 to send a proposal to the 1st respondent stating that the minimum General educational



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qualification need not be insisted for promotion as Forest Guard. Accordingly a draft amendment proposal to include the category of Mazdoor in rule 5 has been sent to the 1st respondent, by the 2nd respondent herein through Principal Chief Conservator of Forests, Chennai Ref.No.AB2/41280/2018 dated 13.10.2018. In this regard, the 1st respondent herein, through vide letter No.19835/FR.2(II)/2018-4 dated 09.07.2019 has rejected the proposal, since it is against section 20(3) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016. Hence the petitioner's statement in the affidavit that there is a discrimination by allowing one set of "Forest Watchers" who do not possess minimum general education qualification to have benefit of promotion as "Forest Guards" whereas the same right is being rejected for another set of "Forest Watchers" similarly placed is incorrect.

11. The learned Additional Government Pleader reiterated the averments made in the counter affidavit.

12. Heard both sides and perused the materials available on record.

13. The petitioner was initially appointed as Forest Watcher and now, he seeks promotion to the post of Forest Guard in the panel year 2016 – 2017. It is pertinent to point out that one Kanniappan who is similarly placed like the



petitioner, was appointed temporarily as Mazdoor and he was promoted as Forest Guard by the 2nd respondent vide proceedings, but, the same benefit was not extended to the petitioner, which amounts to indiscrimination under Article 14 of the constitution of India. Further, this Court finds substance in the reliance placed by the learned counsel for the petitioner on the judgments of the Hon'ble Supreme Court set out in paragraph No.6 *supra*.

14. In view of the above facts and circumstances of the case and the ratio laid down by the Hon'ble Supreme Court of India in the aforesaid four judgments, the impugned order dated 09.07.2019 passed by the 1st respondent by referring to Section 20 (3) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, according to which, the proposal of the petitioner was rejected, but, the same section was not pressed into service in the case of Swaminathan and Baskaran who have been promoted as Forest Guard, which amounts to clear case of discrimination and the order itself is unsustainable in law. Hence this Court is of the considered view that the impugned order dated 09.07.2019 passed by the 1st respondent is liable to be quashed and the same is accordingly quashed.



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15. In the result, the writ petition stands allowed and the respondents are directed to include the petitioner's name in the panel for the post of Forest Guard pertaining to the year 2016-2017 and grant consequential benefits within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is also closed.

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Index :Yes/No

Speaking Order :Yes/No

To:



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