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W.P.No.25192 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.25192 of 2013

P.Govindan

... Petitioner

Vs.

The Principal Chief Conservator of Forest
having office at Panagal Maaligai
Saidapet, Chennai - 600 015.

....Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records relating to the order passed in Na.Ka.No.AAa1/22540/2013 dated 02.07.2013 and quash the same and consequently direct the respondent to include the name of the petitioner in the appropriate place in the panel for promotion to the post of Forester drawn for the year 2011-2012 and further directing the respondents to give promotion to the petitioner to the post of Forester on par with his juniors with all consequential benefits.

For petitioner : Mr.S.Mani

For respondent : Ms.C.Sangamithirai
Special Government Pleader



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ORDER

This writ petition is filed seeking to set aside the proceeding in Na.Ka.No.AAa1/22540/2013 dated 02.07.2013 and consequently, include the name of the petitioner in the appropriate place in the panel for promotion to the post of Forester in the year 2011-2012 and grant other consequential benefits.

2. The facts in brief as per the affidavit enclosed to this writ petition are:

2.1. The petitioner joined as Social Forestry Worker in the respondent department on 16.02.1983. His junior by name P.Thangaraj, and with 17 other persons, were given promotion to the post of Forest Watcher on the basis of G.O.(Ms.) No.332, Environment and Forest Department dated 22.12.1994.

2.2. The petitioner sought promotion on par with his juniors and submitted a representation to that effect. As the petitioner's representation



was not considered, he filed W.P.No.15998 of 2008 and obtained a direction on 30.10.2009 to consider his representation. Considering the orders passed in the writ petition, the petitioner was given promotion as a regular Forest Watcher on par with his juniors with effect from 24.01.1996 and his seniority was fixed at Sl.No.143A and the petitioner was further promoted basing on his seniority to the post of Forest Guard notionally from 02.06.2004.

2.3 The petitioner was eligible and qualified for further promotion to the post of Forester. The panel for promotion for the year 2011-2012 was drawn to the post of Forester on 29.12.2011 from among the Forest Guards. However, the petitioner's name was not found in the said panel, however petitioner's junior, viz., M.Subramaniam and 32 others were included in the panel and they were given promotion as Forester on 22.12.2011.

2.4. The petitioner submitted a representation dated 05.01.2012 to the first respondent requesting to include his name in the panel for promotion for the year 2011-2012 to the post of Forester. However, there was no response.



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2.5. The petitioner filed a W.P.No.31063 of 2012, seeking a direction to the respondents to include the petitioner's name in the panel for promotion for the year 2011-2012 to the post of Forester. The said writ petition was disposed of on 22.03.2013 directing the respondents to grant promotion to the petitioner if there are no other impediments and the respondents were directed to pass appropriate orders within a period of six weeks.

2.6. Pursuant to the said order, the respondent passed an order dated 02.07.2013 in Na.ka.No.AAa1/22540/2013 rejecting the petitioner's claim on the ground that for drawing panel for the year 2012-2013 the crucial date was taken as 15.08.2012, however, the petitioner retired after attaining the age of superannuation on 31.05.2013. Aggrieved by the same, the present writ petition is filed.

3. The respondent has filed a counter affidavit stating that in compliance with the order of this Court dated 30.10.2009 in W.P.No.23374 of 2008 the petitioner was given notional seniority in the cadre of Forest Watcher with effect from 24.01.1995 *vide* PCCF proceeding No.LL1/61824/2008 dated 07.01.2011 and as a Forest Guard



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with effect from 02.08.2004 *vide* PCCF proceeding No.AB2/40362/2010
dated 12.08.2011.

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4. It is further submitted by the learned Special Government Pleader that the qualifications required for consideration of promotion to the post of Forester is completion of training course in Tamil Nadu Forestry College, Vaigai Dam, as per Rule 5 of the Tamil Nadu Forest Subordinate Service Rules. This training will be imparted basing on the seniority.

5. The petitioner has completed the prescribed training on 30.04.2012 whereas the crucial date for panel year 2011-2012 was 15.08.2011. As per the order of this Court in W.P.No.31063 of 2012, the petitioner's name was considered and included in the panel of Forester for the year 2012-2013 and the panel was sent to the Government on 10.06.2013. Subsequently proceedings dated 27.05.2014 were issued by the Principal Chief Conservator of Forests in ref.No.AB1/40000/2012. In the meanwhile, the petitioner retired from service after attaining the age of superannuation on 31.05.2013. Since the petitioner retired from service, he could not be given promotion.



6. Heard both sides and perused the materials on record.

7. Mr.S.Mani, the learned counsel for the petitioner submitted that the petitioner's juniors were given promotion as Forester and promotion was denied the petitioner on the ground that he had not completed the required training. There was no fault on the part of the petitioner in not undergoing the training since it was the respondent who would send the candidates for training program thereby, promotion should not have been denied.

8. The learned counsel for the petitioner has further has further submitted that this Court has given specific directions on 22.03.2013 in W.P.No.31063 of 2012 to consider the claim of the petitioner for promotion at least with respect to the next panel before his retirement on 31.05.2013 and said direction was ignored by the Principal Chief Conservator of Forest the respondent herein.

9. The learned Special Government Pleader for the respondent, on the other hand, submitted that undergoing training as per Rule 5 of



Tamil Nadu Forest Subordinate Service Rules is mandatory for promotion to the post of Forester and that the respondent department itself would identify the employees and sponsor their names for undergoing training basing on the seniority. It is further submitted that after completion of training though the petitioner was considered for the panel year 2012-2013 to the post of Forester, the panel was not published before his retirement and by the time the panel was approved, the petitioner was not in service and hence, the petitioner's request could not be considered.

10. The submissions of the learned Special Government Pleader are not convincing as the juniors of the petitioner were promoted as Foresters and if they have not undergone the mandatory training programme, obviously, they could not have been promoted. Hence, it appears that the juniors were sponsored for training ignoring the petitioner on account of which he could not get the promotion. The petitioner subsequently underwent mandatory training programme on 30.04.2012.

11. According to the respondent, the crucial date for selection of the panel for the year 2011-2012 was 15.08.2011, as on the date of preparation of the said panel for the year 2011-2012 the petitioner was not



qualified as he has not undergone the training programme. The respondent has sought to justify the reason for non inclusion of the petitioner's name in the panel for the year 2011-2012, stating that he has not undergone the mandatory training programme. This Court in order dated 23.03.2003 in W.P.No.31063 of 2012, has directed the respondents to consider the inclusion of the name of the petitioner in the next panel for promotion for the year 2012-2013. By that time since the petitioner has completed training the petitioner's name was considered and included in the panel for the year 2012-2013 and the said panel was sent to the Government for approval on 10.06.2013.

12. The petitioner retired on 31.05.2013 on attaining the age of superannuation. As on the date of including the petitioner's name in the panel, he was very much in service however by the time promotion was sought to be given after approval of the panel on 27.05.14, the petitioner was not in service.

13. originally, the petitioner's name should have been included in the panel for the year 2011-2012 but it was not so, since he had not undergone the pre-requisite training programme. As already observed, not



undergoing of the training that is required for promotion, is not the fault of the petitioner but mismanagement of the respondents. The respondent is expected to sponsor all seniors who are eligible for promotion to the mandatory training programme. The respondent cannot say that the petitioner has not undergone training programme as on the crucial date, by not sending him for training. Not sending the persons who are eligible for promotion and sponsoring the juniors of the petitioner to the training amounts to discrimination. The Department should have avoided sending the juniors to the training who were not due for the promotion or atleast the respondent Department should have been given exception to the petitioner from undergoing mandatory training and should have considered for promotion.

14. Further, as on the date of preparation of the panel for the year 2012-2013, the petitioner having completed the training was eligible and hence his name was included in the panel for promotion for the said year. However, by the time the panel was approved by the Government and published on 27.05.2014, the petitioner retired from service after attaining the age of superannuation on 31.05.2013. On both these occasions, the petitioner was not at fault.



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15. This Court is not inclined to accept the stand of the respondent that though the petitioner was included in the panel for the year 2012-2013, since the Government has not approved the list and that since by the time the Government gave its approval the petitioner retired and could not be considered for promotion.

16. Be that as it may, since the petitioner is not in service, even if the relief as sought for is granted, he will not be in a position to enjoy the same. Thereby, this Court is of the view that the respondent can be directed to give notional promotion to the petitioner with effect from the crucial date of preparation for the panel year 2012-2013 and fix the pay and to grant consequential benefits.

17. Accordingly, this writ petition is allowed directing the respondent to include the name of the petitioner at the appropriate place in the panel for promotion to the post of Forester drawn for the year 2012-2013 and to give notional promotion with effect from the crucial date of preparation of panel with all consequential benefits in the promoted post,



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including the pension. Connected W.M.P. stands closed. Costs made
easy.

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Index: Yes/No

Citation: Yes/No

Internet: Yes/No

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