



W.A.No.2248 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.A.No.2248 of 2022
and
C.M.P.No.17081 of 2022**

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Environment and Forest Department,
Secretariat, Chennai - 600 009.

2.The Principal Chief Conservator of Forest,
Head of the Forest Department,
Panagal Building,
Saidapet, Chennai - 15.

3.The Chief Conservator of Forest and Field Director,
Anamalai Tiger Reserve,
Pollachi, Coimbatore.

... Appellants

Vs.

M.Kizer Mohammed

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 01.07.2021 passed by the learned Judge in W.P.No.23388 of 2019.

For Appellants : Mr.C.Selvaraj
Additional Government Pleader

For Respondent : Mr.L.Chandrakumar



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JUDGMENT

(Judgment of the Court was made by R. MAHADEVAN, J.)

This Writ Appeal is directed against the order dated 01.07.2021 passed by the learned Judge in W.P.No.23388 of 2019.

2.Facts giving rise to the present writ appeal are as follows:

2.1. The respondent was temporarily appointed as Mazdoor on daily wages in Anamalai Tiger Reserve with effect from 01.04.1983. Considering the long-standing nature of work of plot watchers and plantation watchers, a state-wide seniority list for such employees was prepared by the Principal Chief Conservator of Forests, Chennai, vide G.O.Ms.No.64, E&F (FR-2) dated 08.03.1999, in which, the respondent's name was found place at Sl.No.2623.

2.2. While so, the respondent was not attending the duty from 04.12.2000; and that, he was implicated as accused in W.L.O.R.No.1 of 2001 for the offences punishable under sections 39(1), 39(3), 40(2) and 51(1) of the Wild Life Protection Act, 1972, alleging that one pair of elephant tusks valued at Rs.7500/- was illegally possessed and kept in his quarters, which was recovered by the Forest department officials, during a surprise check on 07.01.2001. The said case culminating in CC No.40 of 2001, ended in acquittal vide judgment dated 30.05.2011 passed by the Judicial Magistrate No.1, Pollachi.



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2.3. Consequent to the order passed by the criminal court, the respondent made a representation dated 23.08.2011 to the authorities, requesting them to reinstate him in service and absorb him as Forest Watcher in regular time scale of pay, on the basis of his seniority in the state wide seniority. *Vide* proceedings dated 20.07.2013, the said request was rejected by the third appellant. Challenging the same, the respondent filed W.P.No.34747 of 2013, which, by order dated 20.12.2013, was disposed of, by directing the appellants to reconsider the claim of the respondent, with consequential service and monetary benefits and pass appropriate orders.

2.4. Pursuant to the order dated 20.12.2013 passed in the writ petition, the Deputy Director, Aanamalai Tiger Archives, Pollachi, passed an order dated 20.04.2015, permitting the respondent to continue as plot watcher. Despite the receipt of the same, the respondent did not report for duty. Thereafter, he was appointed as Forest Watcher, in accordance with the orders issued by the Principal Chief Conservator of Forests (HOD), Chennai in Lr.No.LL1/1313/2014 dated 09.06.2015, Chief Conservator of Forests and Field Director, Pollachi Ref.No.256/2014/E1 dated 04.03.2016 and the Deputy Director, Pollchi Ref.No.6743/2014/E1 dated 21.03.2016. Accordingly, the respondent joined duty as Forest Watcher on 23.03.2016 and he was promoted as Forest Guard on 22.09.2020 based on his service records.



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2.5. However, he made a representation dated 29.07.2016 requesting the authorities to appoint him as Forest Guard on par with his immediate junior by name Chinnadurai in Sl.No.2624 in state wide seniority list, so as to enable him to receive all the benefits. The said representation was rejected by the second appellant vide proceedings no.LL1/35420/2017 dated 19.02.2018 stating that the respondent cannot claim parity with his immediate junior as he had joined as Forest Watcher only on 23.03.2016. Aggrieved by the same, the respondent submitted a further representation dated 23.10.2018 to the first appellant, which was not considered. Therefore, he preferred another WP.No.23388 of 2019, to quash the said proceedings of the second appellant dated 19.02.2018 and for consequential direction.

2.6. By order dated 01.07.2021, the aforesaid writ petition came to be disposed of, in the following terms:

"8. As rightly pointed out by the learned counsel for the petitioner, when this Court had, in specific terms, directed extension of the consequential service and monetary benefits, while reinstating the petitioner, the second respondent herein has no other option, but to comply with the directions of this Court. As such, the reason adopted by the second respondent in rejecting the petitioner's claim, is incorrect.

9. For the foregoing reasons, the impugned order dated 19.02.2018 passed by the second respondent is quashed. Consequently, there shall be a direction to the second respondent to fix the petitioner's seniority immediately above his junior Forest Watcher and pass appropriate orders granting all consequential service and monetary benefits to the petitioner, within a period of 12 weeks from the date of receipt of a copy of this order."

Assailing the order of the learned Judge as referred to above, the appellants have come up with this writ appeal.



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3.The learned Additional Government Pleader appearing for the appellants would contend that the respondent was appointed as Forest Watcher only on 23.03.2016, whereas, his immediate junior by name, Chinnadurai, was rightly promoted as Forest Guard, based on the date of joining as Forest Watcher on 23.05.2008 and therefore, the respondent cannot claim parity with the same. Adding further, the learned counsel submitted that the order issued for appointing the respondent as Forest Watcher itself, is a benevolent gesture on the part of the Department, as he had left the job abruptly on 04.12.2000, without informing his superior, and he joined duty on 23.03.2016, only after issuance of such appointment order and thus, he unauthorisedly absented from duty from 04.12.2000 to 22.03.2016 and did not perform his official duties for the said period, which would disentitle him from claiming seniority on par with his immediate junior, who is regularly working, as per the existing Tamil Nadu Forest Subordinate Service Rules. Without properly appreciating the conduct of the respondent, the learned Judge erred in directing the second appellant to fix the respondent's seniority immediately above his junior and grant all consequential service and monetary benefits, by the order impugned herein, which has to be set aside by allowing this writ appeal.

4.*Per contra*, the learned counsel appearing for the respondent would contend that while the respondent was on the verge of being absorbed as Forest



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Watcher in regular time scale of pay, in accordance with the state wide seniority list at Sl.No.2623, a false case was registered against him under various sections of the Wildlife Protection Act, consequent to which, he was stopped from work. However, he was acquitted from the charges, by judgment dated 30.05.2011 passed by the trial court. Even thereafter, he was not permitted to continue his job. Therefore, he preferred W.P.No.34747 of 2013, which was disposed of, in his favour, by order dated 20.12.2013. The learned counsel further submitted that the authorities did not comply with the said order passed by the learned Judge in the writ petition with immediate effect and the respondent was appointed as Forest Watcher only on 21.03.2016, yet, he was not given promotion on par with his immediate junior Chinnadurai in the state wide seniority list and consequential service and monetary benefits. The representation made by him claiming the said legitimate right, was rejected by the authorities without any consideration. Finding no other option, the respondent again approached this court by filing WP.No.23388 of 2019, which was rightly disposed of by the learned Judge, by directing the authorities to fix his seniority on par with his junior and grant all service and monetary benefits. Thus, according to the learned counsel, the order of the learned Judge does not call for any interference at the hands of this court.

5.Heard the rival submissions and perused the materials available on record.



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6.Concededly, the respondent was working in the services of the appellant department with effect from 01.04.1983 till 04.12.2000 on temporary basis. It is also an admitted fact that in the state wide seniority list prepared by the second appellant in G.O.Ms.No.64 E&F (FR-2) Dated 08.03.1999, the respondent's name was included at Sl.No.2623 and his immediate junior was Chinnadurai whose position was at Sl.No.2624. During the course of his temporary employment, a case in W.L.O.R.No.1 of 2001 was registered against the respondent, however, he was acquitted from the charges, *vide* judgment dated 30.05.2011 passed by the Judicial Magistrate No.1, Pollachi, in CC. No.40/2001.

7.In the writ proceedings, the respondent claimed seniority on par with his immediate junior as per the state wide seniority list dated 08.03.1999 and sought direction to the authorities to grant service and monetary benefits accordingly; and the learned Judge allowed the same as prayed for. Though the appellants have given appointment to the respondent as Forest Watcher, they failed to comply with the orders of the learned Judge in respect of service and monetary benefits by fixing his seniority as per the state wide seniority list, by stating that the respondent was absent from duty with effect from 04.12.2000 and that, he was involved in a case in W.L.O.R.No.1/2001 registered under the Wildlife Protection Act, 1972; and the appointment given to him to the post of Forest



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Watcher, is a benevolent gesture shown by the department and hence, he cannot claim seniority on par with his immediate junior Chinnadurai. With these submissions, the appellants preferred this writ appeal challenging the order passed by the learned Judge in the writ petition.

8.This court finds merit in the submissions so made on the side of the appellants. As already stated earlier, though the respondent was charged for the offences punishable under the provisions of the Wildlife Protection Act, he was subsequently, acquitted from the same, by judgment dated 30.05.2011 passed by the trial court, however, that itself would not confer any right upon him to claim seniority on par with his immediate junior Chinnadurai and it is for the authority to consider his candidature for appointment, upon examining his fitness and suitability to the post. According to the appellants, as directed by the learned Judge in his order dated 20.12.2013 passed in WP.No.34747 of 2013, the case of the respondent was reconsidered and he was permitted to continue as Plot Watcher, but he did not respond to the same, though the order copy was served on him on 08.05.2015; that, the respondent left the job abruptly on 04.12.2000 without any intimation to his superior and he joined duty, on 23.03.2016, only after appointing him as Forest Watcher, which is a benevolent gesture shown by the Government; and therefore, he cannot claim seniority on par with his immediate junior Chinnadurai.



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9.It is evident from the records that the respondent joined duty as Forest Watcher only on 23.03.2016, that too, on extraordinary gesture *dehors* the rules shown by the Government, whereas his junior Chinnadurai was appointed as Forest Watcher on 23.05.2008 itself and therefore, the respondent cannot be granted retrospective promotion on par with his junior, based on the state wide seniority list dated 08.03.1999. Though the learned counsel for the respondent submitted that while he was on the verge of being absorbed as Forest Watcher in regular time scale of pay in accordance with his seniority at Sl.No.2623, he was implicated as accused in a false case in WLOR No.1 of 2001, due to which, he was not permitted to work; and if he had not been included in the criminal case, he would have been appointed as Forest Watcher and later, promoted as Forest Guard on par with his immediate junior, the same cannot be accepted by this court, as the case was registered against the respondent on 08.01.2001, after recovery of a pair of elephant tusks from his quarters on 07.01.2001, but he was absent from duty with effect from 04.12.2000 onwards, which would belie the said submission made on the side of the respondent. Further, there is no plausible explanation forth coming for his unauthorised absence during the period from 04.12.2000 to 22.03.2016. That apart, the orders passed by the learned Judge in the writ petitions filed by the respondent do silent in this aspect. In view of the stated circumstances, this court is of the opinion that the respondent cannot be equated with the person, who has been working continuously without



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any interruption and is having unblemished service record and hence, the appellants have justified in rejecting the claim of the respondent seeking retrospective promotion and consequential service and monetary benefits.

10.At this juncture, it will be proper to quote the observation of the Hon'ble Supreme Court in ***Rama Negi v. Union of India and others*** [MANU/SC/0258/2022 : 2022 (4) SLR 254 (SC)], wherein, it was held that *'despite the difficulty in encapsulating the parameters for 'merit', a significant marker can be found in the unblemished record of the employee. A marred service record, though not an insurmountable bar, must carry some consequences, and it could be a comparative disadvantage in promotion for a selection post. The employer's preference for a person with a clean service record can be well appreciated'*.

11.In the light of the above legal proposition, this court is inclined to set aside the order impugned herein and is accordingly, set aside. Accordingly, the Writ Appeal stands allowed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D,J.] [M.S.Q, J.]
17.04.2023

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Speaking Order / Non-speaking order
Internet : Yes.
Index : Yes/No



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To

- 1.The Principal Secretary,
Government of Tamil Nadu,
Environment and Forest Department,
Secretariat, Chennai - 600 009.
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Head of the Forest Department,
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