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W.P.No.26768 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

W.P.No.26768 of 2018

Baby

... Petitioner

Vs.

1. Government of Tamilnadu,
Rep. By its Principal Secretary to Government,
Environment and Forest Department,
Fort St., George, Chennai – 600 009

2. The Principal Chief Conservator of Forests,
Head of Forest Force,
No.1, Genies Road, Panagal maligai,
Saidapet, Chennai – 15

3. The District Forest Officer / Forest Extension
Officer, Krishnagiri Forest Extension
Division, Krishnagiri District

4. The Accountant General of Tamilnadu,
Office of the Accountant General,
Anna Salai, Teynampet, Chennai – 18

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents 1 to 3 to regularise the service of the petitioner's husband viz., K.Mahalingam, as Forest Watcher, as per his seniority and consequently send the proposal to the 4th respondent for granting family pension with all consequential



W.P.No.26768 of 2018

monetary benefits.

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For Petitioner : Mr.M.R.Jothimanian

For Respondents : Mr.Dr.T.Seenivasan
Special Government Pleader for R1 to R3

Mr.S.Balaji for R4

ORDER

Seeking for an issuance of Writ of Mandamus directing the respondents 1 to 3 to regularise the service of the petitioner's husband viz., K.Mahalingam as Forest Watcher, as per his seniority and consequently to send the proposal to the 4th respondent for granting family pension with all consequential monetary benefits, the petitioner has come up with the present petitions.

2. The brief facts of the case is that the petitioner's husband was appointed as Plot watcher on 01.04.1981 and continued to serve in the same post on daily wage basis in the Rasipuram Social Forestry Range of 3rd respondent division and thereafter, he was appointed as plot watcher based on the order of the 2nd respondent dated 31.07.2007 and also his name was included in the state wide seniority list in Sl.No.1182. In the year 1999, the 1st respondent issued the Government order G.O.Ms.No.64 Environment and Forest (FR.II) Department, dated 08.03.1999 to prepare



W.P.No.26768 of 2018

the state – wise seniority list of plot watchers / village social forest workers.

As per the said G.O., the chief conservator forests and the Conservator of Forest of the respective region are requested to verify the plot watchers from the records available with them. Though the petitioner made several requests for granting family pension, as per the above said G.O, the respondents had not responded, hence this petition.

3. The learned counsel for the petitioner would submit that the similar issue has already been dealt with by this Court in W.P.No.11405 of 2012 on 09.07.2012 with a direction to the respondents to regularise the services of the husband of the petitioner therein from the date of completion of ten years of service counting from 14.02.1992 with time scale of pay and pay arrears of regular salary to her and also sanctioned family pension to her from the death of husband of the petitioner therein. Further, the said order was implemented by the respondents on 17.07.2013, thereby submitted that the said indulgence shall be shown to the present petitioner also.

4. On the other hand, the learned Special Government Pleader appearing for respondents 1 to 3 has filed a detailed counter and submitted that after a lapse of 10 years from the date of death of her husband, the petitioner has chosen to approach this Court, hence the present Petition has



W.P.No.26768 of 2018

to be dismissed on the ground of laches, thereby pleaded to dismiss the present Writ Petition.

5. Heard the learned counsel on either side and perused the documents placed on record.

6. During the course of arguments, it is the contention of the learned counsel for the petitioner that the petitioner's husband had joined in the year 1981 and the similar case as that of the present petitioner was well considered by this Court in W.P.Nos.19406 of 2022 etc., on 07.08.2023, wherein the prayer of the petitioner therein was granted, for which, the learned counsel on the side of the respondents' submitted that the records of the petitioner is not available, since it is in the year 1981. In reply, the learned counsel for the petitioner contended that the petitioner had filed the order of the 3rd respondent dated 31.07.2007, wherein it could be seen that the petitioner's husband name finds place at Sl.No.1182, therefore, pleaded to consider the same.

7. It is worthwhile to recall and recollect the order passed in W.P.Nos.19406 of 2023 etc., dated 07.08.2023 [C.Duraisamy and others Vs. State of Tamilnadu, rep. By its Principal Secretary to Government Environment, Chennai and others], wherein the operative portion of the



W.P.No.26768 of 2018

order reads as follows:-

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“5. The learned Government Advocate placed reliance on the Order of the Division bench of this Court in W.A.No.158 of 2016 and batch cases and submitted that in the above Writ Appeal, the Division Bench of this Court has held that the Government servants who were appointed in non-provincialized service, consolidate pay, honorarium or daily wages basis before 01.04.2003, but were absorbed in regular service after 01.0.2003, will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension. Further, Special Leave Petitions filed by certain petitioners against the said Order has also been dismissed. Hence, opposed the writ petition.

6. Admittedly, the grievance of the writ petitioners are seeking regularization of service of petitioners 1 and 2 and husband of the third petitioner for pensionary benefits. It is the contention of the writ petitioners that similarly situated persons have been given such benefits as per Government Orders of this Court in W.P.No.19023 of 2021 and the same was accepted by the Government and issued Government Order in G.O.Ms.No.91, Forest Department dated 30.06.2022. Hence, the respondents ought to have considered the claim of the petitioners 1 & 2 and the third petitioner-s husband to regularize their service after completion of ten years from the date of initial appointment as a Plot Watcher on daily wage basis for the purpose of getting pension and family pension in the light of the judgment of the Apex Court in C.A.No.6798 of 2019 dated 02.09.2019 and Order in W.P.No.19023 of 2021 dated



W.P.No.26768 of 2018

09.09.2021. As per the above Orders, the relief has been extended to similarly placed persons.

7. In such view of the matter, the respondents are directed to consider the case of the petitioners in the light of the judgment of the Apex Court and Orders of this Court and as per the above Government Order, as the benefit has been extended to similarly placed person. In fact, the plot watchers are frontline soldiers in forest and they are main protectors of the forest. These facts cannot be disputed by any one. Hence, while passing the Orders, the Government shall take into consideration the nature of service rendered by the petitioners and also the fact that when similarly placed persons have already been granted the relief, if the petitioners 1 and 2 and the husband of the third petitioner are not granted such relief, the same is nothing but discrimination and it violates Article 14 of Constitution of India. In such view of the matter, the respondent shall extend the benefits as per above Government Order as it is extended to similarly situated persons.

8. As far as the Writ Petitions in W.P.Nos.9835 & 19135 of 2021 and W.P.No. 19411 of 2023 are concerned, the respondents are directed to extend the benefits to the petitioners and insofar as Writ Petitions in W.P.Nos.30267 of 2022 and 19406 of 2023 are concerned, the respondents are directed to regularize the services of the first petitioner and husband of the petitioners 2 to 4; petitioners 1 & 2 and husband of the third petitioner respectively as Plot Watchers as per the above Government Order as it is extended to similarly situated persons. Such an exercise shall be completed within a period of



W.P.No.26768 of 2018

six months from the date of receipt of a copy of this Order.

9. With the above directions, these writ petitions stands disposed of.”

8. In view of the above, the respondents are directed to consider the case of the petitioner in the light of the Judgment of the Apex Court and orders of this Court and as per the above Government Order, as the benefit has been extended to similarly placed person. In fact, the forest watchers are frontline soldiers in forest and they are main protectors of the forest. These facts cannot be disputed by any one. Hence, while passing orders, the Government shall take into consideration the circular issued by the 3rd respondent wherein the petitioner's husband name is found in Sl.No.1182 and the nature of service rendered by the husband of the petitioner and also the fact that when similarly placed persons have already been granted the relief, if the husband of the petitioner is not granted such relief, the same is nothing but discrimination and it violates Article 14 of Constitution of India. Therefore, the respondents shall extend the benefits as per above government order as it is extended to similarly situated persons. Such an exercise shall be completed within a period of six months from the date of receipt of copy of this order.

9. With the above observations, the Writ Petition is disposed of. No



W.P.No.26768 of 2018

13.10.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

To

1. Government of Tamilnadu,
Rep. By its Principal Secretary to Government,
Environment and Forest Department,
Fort St., George, Chennai – 600 009
2. The Principal Chief Conservator of Forests,
Head of Forest Force,
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W.P.No.26768 of 2018

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W.P.No.26768 of 2018

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W.P.No.26768 of 2018