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W.P.No.31425 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2023

CORAM:

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

W.P.No.31425 of 2018

M.Veeraiya

... Petitioner

Vs.

1.The Government of Tamil Nadu
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 Conservator of Forests
Dharmapuri Region
Dharmapuri

4.The Divisional Forest Officer
Social Forestry and Extension Division
Dharmapuri-5
Dharmapuri District.

... Respondents



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Writ of Certiorarified Mandamus calling for the records of impugned order made in Ref.No.AB2/12113/2011 dated 12.07.2018 passed by the 2nd respondent and quash the same, consequently direct the respondents to promote the petitioner as Forest Guard on par with his juniors and grant all consequential service and monetary benefits forthwith.

For Petitioner : Mr.M.R.Jothimanian

For Respondents : Dr.T.Seenivasan, Spl.G.P

ORDER

This Writ petition has been filed for issuance of Writ of Certiorarified Mandamus calling for the records of impugned order made in Ref.No.AB2/12113/2011 dated 12.07.2018 passed by the 2nd respondent and quash the same, consequently direct the respondents to promote the petitioner as Forest Guard on par with his juniors and grant all consequential service and monetary benefits forthwith.

2. The case of the petitioner is that he was appointed as Office Assistant on 17.03.1975 by the 4th respondent through employment exchange and posted at Palacode Range office of the 4th respondent division. From the date of joining to till the retirement he worked as Office Assistant and Forest Guard in the Forest Department more than 43 years without any blemish records. The Government in

G.O.Ms.No.259, Environment and Forest Department dated 08.05.1998 provides



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promotion to the persons from the basic service to Forest Guard and other posts based on their seniority and qualifications. There is an exemption for the eligibility criteria including physical fitness and educational qualification in the said Government Order and therefore the petitioner was eligible to be promoted as Forest Guard from the basic service and hence promoted as Forest Guard on 08.01.1982 and worked as Forest Guard till 07.04.1983. The petitioner worked as Forest Guard for the period of 2 years and reverted from Forest Guard to Office Assistant on 07.04.1983 and subsequently promoted as Forest Guard on 04.06.1983 and thereafter again reverted as Office Assistant on 03.09.1984. However, he was eligible to be appointed as Forest Guard based on the G.O.Ms.No.259 dated 08.05.1998 of the 1st respondent. The petitioner originally not completed 8th standard and a Burma refugee and therefore was appointed as Office Assistant. However, the petitioner completed 8th standard on 25.04.1986 and therefore he was fully eligible to be appointed as Forest Guard based on seniority. In the year 2000, there was panel for the promotion to the post of Forest Guard and his name was included by the respondents, but was not appointed as petitioner age was more than 45 years and therefore he was not promoted as per Rule 4 (vii) of Tamil Nadu Forest Subordinate Service Rules. Thereafter, no promotion was given to the petitioner till his retirement but similarly placed persons were given promotion as Forest Guard. The petitioner further submits that he completed 8th standard in the year 1986 and the same was entered in the Service Register, despite that his promotion was denied from the year



1986 and thereafter he made several request to the respondents to consider his promotion on par with similarly placed persons but the same was not considered.

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The petitioner made several representations to the respondents on various dates viz., 25.07.2010, 07.09.2010 but there was no order for his promotion from the respondents. He would also further submit that he worked as Forest Guard more than 3 years. As per Rule 2 A of Tamil Nadu Forest Subordinates Rules envisage with regard to appointment of Forest Guard as the members of Tamil Nadu basic service in the Forest Department for the purpose of recruitment transfer as Forest Guard, should possess the physical and educational qualification prescribed for promotion categories. The qualifications prescribed for Forest Guard as 8th standard and the same was possessed by the petitioner in the year 1986 itself.

Learned counsel for the petitioner would further submit that he filed W.P.No.4980 of 2011 seeking a direction to the respondents to consider his representation dated 04.10.2010 and pass orders by treating him along with his juniors who were recruited from Tamil Nadu Basic Service and grant all consequential service and monetary benefits. By order dated 10.11.2017, this Court directed the respondents to consider the claim of further promotion as Forest Guard based on the representations dated 25.10.2007 and 04.10.2010. In pursuant to the said order dated 10.07.2017, the 4th respondent has recommended to grant promotion on par with his juniors vide proceedings dated 02.04.2018 vide in

Na.KA.No.2796/2011/Pa.2. Thereafter, the 3rd respondent also has considered the



letter of 4th respondent dated 02.04.2018 and recommended to grant promotion as per my seniority on 10.04.2018. In the meantime, the petitioner retired from service on 31.05.2018. Despite the recommendations of the respondents 3 and 4 his promotion was rejected by the 2nd respondent vide impugned order dated 12.07.2018 made in Ref.No.AB2/12113/2011 by stating that he is not having minimum educational qualification and age for the post of Forest Guard and his promotion was not considered and rejected. The petitioner further submits that as per the G.O dated 08.05.1998 the promotion was not considered and prays that impugned order passed by the 2nd respondent dated 12.07.2018 in Ref.No.AB2/12113/2011 is liable to be quashed.

3. Learned Special Government Pleader appearing for the respondents 1 to 4 submitted that the petitioner was a Burma Refugee repatriate and was selected and appointed as basic servant in the office of the Forest Range Office, Palacode through the Employment Exchange, Krishnagiri and joined service on 17.03.1975 and was confirmed in the basic service on 07.04.1977. The petitioner was appointed as Forest Guard vide S.O.No.17/1982, C.No.688/1982 E1 dated 08.01.1982 of the District Forest Officer, Dharmapuri and joined duty on 24.01.1982. While working as Forest Guard he was reverted as Office Assistant (basic service) for want of vacancy and joined duty on 07.04.1983 in the post of Office Assistant. He was reappointed as Forest Guard on 04.06.1983 and continued to be Forest Guard till 02.09.1984. The



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petitioner was again reverted as Office Assistant on 03.09.1984 since he did not possess the prerequisite educational qualification of pass in 8th standard and he joined duty as Office Assistant on 03.09.1984. The petitioner subsequently passed ESLC vide certificate dated 24.05.1986 issued by Director of Government Examination, Chennai and were not passed minimum General Education vide certificate No.A2117387 October 1986, Register No.441569, TMR code No.A100535 dated 07.01.1987. The above documents were submitted by the petitioner very later on 20.08.2010 and entered in the service Register of the petitioner on 20.08.2010. While considering the name of the petitioner for appointment of Forest Guard his name was included and the result of the panel was declared as not selected on account of the fact that he had crossed the maximum age limit of 35 years and also not having requisite qualification according to Tamil Nadu Forest Subordinate Service Rules. The petitioner had submitted representation dated 25.10.2007 and 04.10.2010 for considering his name to the post of Forest Guard by recruitment by transfer from Tamil Nadu Basic Service. Since the petitioner had not possessed requisite educational and age qualifications his name was not considered to the post of Forest Guard by recruitment by transfer from Tamil Nadu Basic Service on 25.10.2007 and 04.10.2010. The respondents after obeying the order of this Court considered the petitioner's representation dated 10.11.2017 and based on the records and relevant rules in force for considering his request to the post of Forest Guard from Tamil Nadu

Basic Service and petitioner's request was rejected by the 2nd respondent vide



impugned order dated 12.07.2018 made in Ref.No.AB2/12113/2011 since the petitioner has no merit and it is not feasible for compliance as the petitioner did not possess the requisite educational and age qualification to consider his name to the post of Forest Guard by recruitment by transfer from Tamil Nadu Basic Service on 25.10.2007 and 04.10.2010. The petitioner did not produce the educational qualification during the period from 04.09.1984 to 193.08.2010 and has only submitted subsequently on 20.08.2010. Hence, while preparing panel of Forest Guard, he has not been recommended for the period 1984 to 2010 for inclusion in Forest Guard. Now around 30 years have lapsed and petitioner have requested to promote him as Forest Guard with retrospective effect with all consequential benefit is against rules and therefore the petitioner;s request cannot be entertained and prayed for dismissal of the Writ Petition.

4. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

5. Considering the rival submissions made by either side, this Court is of the view that the petitioner has possessed the requisite educational qualification and when he has been denied the post of Forest Guard and accordingly prays to refix his pensionary benefits after his retirement on par with his juniors. As per the counter of respondents in the Writ Petition of the year 2011, they have admitted that the



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petitioner has passed ESLC on 24.05.1986 and only because of that he is entitled to be promoted as Forest Guard. The same has been denied to the petitioner he challenges his non consideration and accordingly promotion can be given to the petitioner notionally and no benefits can be given to the said post and only while revising the pension, the same can be considered and appropriately the respondents are directed to refix the pension to the petitioner in the post of Forest Guard and pass orders within a period of 16 weeks from the date of receipt of a copy of this order. No costs.

With the above directions, the Writ Petition is disposed of. No costs.

06.12.2023

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