



W.P.(MD).No.15363 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.15363 of 2021

and

W.M.P(MD)No.12260 of 2021

C.Dinesh Kumar

... Petitioner

Vs.

1.The Additional Director,
Directorate of Ex-Service Men's Welfare,
22, Raja Muthaiah Salai,
Chennai – 600 003.

2.The Assistant Director,
Ex-Service Men's Welfare Office,
Tirunelveli,
Tirunelveli District.

3.The Principal Chief Conservator of Forest,
(Head of Department),
Jeenis Road,
Panagal Maligai,
Saidapet,
Chennai – 15.

4.The District Forest Officer,
Madurai Forest Division,
Madurai.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.8503/2020/Nir1, dated 02.08.2021, on the file of the first respondent and quash the same as illegal and consequently to direct the respondents 1 and 2 to relieve the petitioner from the post of Junior Assistant, Ex-Service Men's Welfare Office, Tirunelveli District for the sake of absorption in the post of Forest Watcher, office of the fourth respondent within the time stipulated by this Court.

For Petitioner : Mr.S.Louis
For Respondents : Mr.N.Muthuvijayan
Special Government Pleader

ORDER

The present Writ Petition has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order, dated 02.08.2021, on the file of the first respondent and consequently to direct the respondents 1 and 2 to relieve the petitioner from the post of Junior Assistant, Ex-Service Men's Welfare Office, Tirunelveli District for the sake of absorption in the post of Forest Watcher, office of the fourth respondent within the time stipulated by this Court.



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2.Heard Mr.S.Louis, learned counsel appearing for the petitioner and Mr.N.Muthuvijayan, learned Special Government Pleader appearing for the respondents and perused the materials available on record.

3.The petitioner was selected by the Tamil Nadu Forest Uniformed Services, recruitment committee as a Forest Guard and was allotted to Madurai Division vide proceedings, dated 02.03.2019. Thereafter, he served as Forest Guard in Sholavanthan Range, Mannadimangalam Section, Sirumalai South Beat from 19.03.2019 onwards. While in service in the post of Forest Guard, Forest Department, the petitioner participated in the competitive exams conducted by TNPSC. He was selected for the appointment as Junior Assistant in Ex-Service Men's Welfare Department. In pursuance to the posting order dated 25.07.2020 on the file of the first respondent, he joined as Junior Assistant in the second respondent's office on 04.11.2020, for which he was properly relieved from the post of Forest Guard on 31.10.2020. He was relieved exclusively for the purpose of joining duty in the post of Junior Assistant in Ex-Service Men's Welfare Department. Due to change in family circumstances, he wanted to go back to the parent Department in the original position. Hence, he gave



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a representation dated 14.07.2021 through proper channel to the first respondent seeking to permit him to be relieved from the post of Junior Assistant in the second respondent's office for the sake of joining back to the post of Forest Guard in the Tamil Nadu Forest Department. Rejecting his representation, the impugned order dated 02.08.2021 came to be passed. Challenging the same, this Writ Petition came to be filed.

4.The matter in issue before me is no more *res integra* and this Court has dealt with a similar matter in the case in **W.P.No. 17529 on 2015 dated 11.04.2019 [S.Sivakumar Vs. The Secretary, Department of Co-operative Societies and others]**, in which this Court has passed a favourable order to the petitioner thereat and the relevant portion of which is extracted as follows:-

"5. There is no dispute to the fact that the petitioner was originally appointed as Village Administrative Officer on 22.02.2013 and while in service, he wrote the Combined Subordinate Services Examination-II conducted by the TNPSC and got selected to the post of Junior Inspector of Co-operative Societies. It is an admitted fact that the petitioner was relieved on 30.09.2013 and joined the duty as Junior Inspector on 01.10.2013. It is also an admitted fact



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that the petitioner made an application under Rule 9B of the said Rules on 22.01.2014, expressing his willingness to revert back to his parent department to work as Village Administrative Officer.

6. Rule 9B of the Tamil Nadu State and Subordinate Services Rules 6 reads as follows:-

9-B. A member of a service, whenever selected by direct recruitment for appointment in any other service of this Government or in other State Governments, Central Government, Universities, or any other quasi-Government organizations, shall hold the service right in the former service for a period of not exceeding one year only from the date of relief from the former service: Provided that persons appointed to the services of other State Governments, Central Government, Public Sector Undertakings, or Local Bodies, Corporations, Universities or any other quasiGovernmental Organizations, shall hold such service right in their former services only if the pay, leave salary and pension contributions for the said period of one year are paid by such other State Governments, Central Government, Public Sector Undertakings, Local Bodies, Corporations, Universities or any other quasi-Governmental organizations or by the individual concerned.



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11. In view of the above, I find that the reasons stated by the second respondent for rejecting the request of the petitioner made under Rule 9B of the said Rules cannot be sustained. Consequently, this writ petition is allowed and the impugned order is set aside. The respondents are directed to consider the request of the petitioner to get back to his parent department as Village Administrative Officer and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. No costs.

5.The respondents have filed a counter-affidavit and the learned Special Government Pleader submitted that a 'No Objection Certificate' obtained from the fourth respondent before applying to TNPSC does not confer the authority to the second respondent to relieve the petitioner to be absorbed in his former service. That apart, the relieving order issued by the fourth respondent to join the post of Junior Assistant in District Ex-servicemen's Welfare Office, Tirunelveli is in order and the same also does not permit absorption of the petitioner back to his former service and hence, it does not confer any authority on the respondents 1 and 2 to relieve the petitioner to rejoin the Forest Department and on that basis, he pressed for dismissal of the Writ Petition.



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6. However, this Court is inclined to extract Section 14 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which deals with the service matter in former service and the same is extracted as follows:-

"14. A member of a service, whenever selected by direct recruitment for appointment in any other service of the Government or in other State Governments, Central Government, Universities, or any other quasi-government organisations, shall hold the service right in the former service for a period not exceeding one year only from the date of relief from the former service:

Provided that the persons appointed to the services of other State Governments, Central Government, Public Sector Undertakings, or Local Bodies, Corporations, Universities or any other quasi-government organisations, shall hold such service right in their former services only if the pay, leave salary and pensionary contributions for the said period of one year are paid by such other State Governments, Central Government, Public Sector Undertakings, Local Bodies, Corporations, Universities or any other quasi-government organisations or by the individual concerned."



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7.In terms of the mandates provided by Section 14 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, a member of a service whenever selected by direct recruitment for appointment in any other service of the Government, shall hold the service right in the former service for a period of not exceeding one year from the date of relieve from the former service.

8.No doubt, the petitioner was relieved from the service of the Forest Guard on 31.10.2020 and in accordance with Section 14 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, and a such there is a lien period of one year for the petitioner to seek before the competent authority to be absorbed in the service of the former service. By the strength of such service right since the petitioner has made an application seeking to get absorbed in his former service within a lien period of one year ie., on 14.07.2021, the respondents obviously ought to have considered the representation of the petitioner dated 14.07.2021 in the line of the mandates of Section 14 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. Hence, I am inclined to observe that the impugned order is per se illegal.



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9.In view of the same, the impugned order, dated 02.08.2021 passed by the first respondent is hereby quashed and the case is remanded back to the respondents 1 and 2. The respondents 1 and 2 are directed to consider the representation of the petitioner dated 14.07.2021 in accordance with Section 14 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and permit him to be absorbed in the post of Forest Guard in the parent department within a period of twelve weeks from the date of receipt of a copy of this order.

10.Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
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- 3.The Principal Chief Conservator of Forest,
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L.VICTORIA GOWRI, J.

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