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W.P.(MD)No.25170 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.25170 of 2019

N.Mavuthan

... Petitioner

vs.

The District Forest Officer,
Dindigul Forest Division,
Dindigul District, Dindigul.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceeding of the respondent in Se.Mu.Ku.No. 780/05/Pa3, dated 22.02.2005 and other following proceeding, dated 24.02.2020, in Na.Ka.No.5468/2017/Pa3 and to quash the same as illegal, arbitrary and unenforceable, consequently, to direct the respondent to allow the petitioner to retired from service and give retirement order to avail the pensionary benefits from the date of the petitioner's superannuation by quashing the termination order in the light



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of the similar covered matter order passed in W.P.Nos.3521 and 3563 to 3567 of 2005 order, dated 11.01.2008, with all other consequential benefits within time frame stipulated by this Court.

(Prayer amended, vide Court order, dated 20.04.2023, in W.M.P. (MD)No.8184 of 2023, in W.P.(MD)No.25170 of 2019)

For Petitioner : M/s.K.Jenitha
For Respondent : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned proceeding dated 22.02.2005 and further proceeding dated 24.02.2020 as illegal, arbitrary and unenforceable and consequently, to direct the respondent to allow the petitioner to retired from service and give retirement order to avail the pensionary benefits from the date of the petitioner's superannuation by quashing the termination order in the light of the similar covered matter order passed in W.P.Nos.3521 and 3563 to 3567 of 2005 order, dated 11.01.2008, with



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all other consequential benefits within time frame stipulated by this Court.

2. The petitioner joined the service as temporary Plot Watcher on 01.04.1978 and was paid from contingencies. The Government has issued G.O.Ms.No.64 Environment and Forest Department, dated 08.03.1999, for preparation of State Wide Seniority List of Social Forestry Workers/ Plot Watchers to regularize their services as and when the vacancy arises. As per G.O.Ms.No.64, the petitioner's name was included in the State Wide Seniority List in Serial No.350. Subsequently, he was absorbed as Forest Watcher on 26.04.2003.

3. The contention of the petitioner is that as per Rule 11(2) of the Tamil Nadu Pension Rules, 1978, half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service. The State Government issued



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G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006, to regularize the service of daily wages employees/ consolidated pay employees/ honorarium employees on completion of 10 years of their services. Based on the said G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006, the employees in various Departments of the Tamilnadu Government were regularized on completion of 10 years of service and they were given monetary benefits also. But, in the Forest Department, in view of G.O.Ms.No.64, dated 08.03.1999, the said G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006, was not implemented. If the petitioner was regularized on completion of ten years of service, he would be brought under the regular time scale of pay on 01.04.1988 itself and he would be eligible to get full pension in the old pension scheme.

4. The further contention of the petitioner is that in view of the Government Letter, by Circular No.8/2012, dated __.10.2012,



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Government has issued instruction to all District / Divisional Forest Officer for sanction of Pension to the Plot Watchers. As per the circular stated above, the petitioner has submitted a representation to the respondent for pension by counting 50% of temporary service as Plot Watcher along with regular service. The petitioner's representation is still pending and the same was not considered by the respondent. In the meanwhile, various writ petitions have been filed before this Court by the retired Plot Watchers/ Forest Watchers / Forest Guards / legal heir of deceased Forest Officials with a prayer to count half of the service rendered on daily wages along with the regular service for calculation of pension. All the writ petitions were allowed by this Court.

5. The petitioner filed writ petition in W.P.No.23232 of 2017 to consider the service as Plot Watcher from 01.04.1978 to 25.04.2003 on temporary basis along with the regular service from 26.04.2003 to till the



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date of retirement on 31.01.2005 as qualifying service for the purpose of granting pension and the same was ordered on 22.09.2017 by this Court. But the order was not implemented by the respondent by referring to Na. Ka.No.780/05/pa3 dated 22.02.2005 wherein it is stated that the petitioner was terminated from service. But the contention of the petitioner is that the same was not communicated to the petitioner in time. Therefore, the said order is against the principles of natural justice. When this Court directed to consider the petitioner representation, vide order, dated 22.09.2017, in order to consider the petitioner's case, the respondent directed to produce the copy of the retirement order. Thereafter, the respondent directed the petitioner to appear in person on 29.07.2019. On the same day, the petitioner appeared and explained that retirement order was not issued. But his Superior namely the Forest Range Officer, Azhagar Kovil Range submitted a Letter No. Nil, dated 23.02.2005 wherein it is stated that the petitioner was relieved from the



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service and asked the petitioner to hand over the charges, hence, there is no retirement order as such. But the petitioner also explained that similar persons like E. Shanmugam and 5 others who were terminated from service like the petitioner, approached this Court in W.P.Nos.3521, 3563 to 3567 of 2005 and they were reinstated into service and they were allowed to continue as Forest Watcher with all consequential service and monetary benefits. In this connection, some of the persons had also committed the same mistake and they suffered punishment of censure, but the above petitioners were allowed to continue in service without backwages. Therefore, the petitioner claim that he is also eligible for the same, since he is a similarly placed person. Therefore, the petitioner prayed to quash the termination order and allow him to retire from service on superannuation.

6. The respondent has filed counter affidavit stating that from



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01.11.1980 to 10.04.2003 the petitioner was appointed as Plot Watcher on daily wages basis in Aranthangi Range, Pudukottai Division and was appointed as regular Forest Watcher on 26.04.2003 at Arukkampatty Beat. The petitioner has a break service from 11.04.2003 to 25.04.2003. The petitioner was terminated from service on 23.02.2005. He had produced false school certificate for the selection of Forest Watcher as on 26.04.2003. The said School Certificates, showed that the petitioner has studied up to 6th standard. On verification of genuinity it was stated it is false school certificate. The enquiry report was accepted by the DFO and charge sheet dated 22.02.2005 was framed under the Rules. Thereafter, the petitioner was terminated from service on 23.02.2005, but the petitioner was due to attain superannuation on 28.02.2005. The above said letter was produced through the Range Officer on 23.02.2005. At that time, the petitioner's regular service was 1 year, 7 months and 26 days. In short period, genuineness certificate was asked from the District



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Education Officer, Pudukottai, vide proceedings, dated 14.09.2004, wherein the District Education Officer, Pudukottai, had replied, vide proceedings, dated 17.01.2005, that the said School certificate was found to be false. At that time, the petitioner has not given any representation (or) explanation within the grace time of 60 days. But the petitioner is challenging termination order in this writ petition after a lapse of 15 years.

7. The counter affidavit further states that the petitioner was appointed as Plot Watcher from 01.11.1980 to 10.04.2003 on Daily Wage basis and subsequently brought under regular time scale of pay and appointed as Forest Watcher and Service Register was maintained to the effect from 02.06.2003. The petitioner appointed as Forest Watcher from 26.04.2003. As per G.O.Ms.No.259, dated.06.08.2003, persons recruited on or after 01.04.2003 are governed by new Contribution Pension



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Scheme and are not eligible to get pension under the old Pension Scheme. The petitioner is having 1 year, 7 months and 26 days of pensionable service, hence, he is not entitled to get pension under Old Scheme. The Rule 11(2) of the Tamil Nadu Pension Rules, 1978, clearly states that for calculating qualifying service half of service paid from contingencies shall be allowed to be counted along with regular service satisfying with the conditions prescribed thereunder. The G.O.(3D) No. 22, Environment and Forests (FR2) Department, dated 28.02.2016, is not applicable to the Plot Watcher and Social Forestry Worker, since they are not covered under any service rules and they are not appointed in time scale of pay in accordance with the service condition prescribed for the post concerned. The said G.O.(3D)No.22 states that the daily wages employees who have rendered 10 years of service as on 01.01.2006 are eligible for the benefits of the G.O., but in the present case the petitioner had attained superannuation on 28.02.2005, hence the said G.O. is not



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applicable. Moreover, the persons covered under G.O.Ms.No.64, wherein they are in seniority list are not covered under G.O.Ms.No.22.

8. The counter affidavit also states that in W.P.No.23232 of 2017, after verifying the service records, since the petitioner was terminated before the date of superannuation, he was communicated to be relived from the post on 23.02.2005. Moreover, the petitioner was absorbed in permanent employment after 01.04.2003, hence, following G.O.Ms.No. 408 Finance [Pension] Department, dated 25.08.2009, the petitioner is not entitled to under old pension scheme. As per G.O.Ms.No.64, Environment and Forest [F2] Department, dated 08.03.1999, a State wide seniority list of Plot Watcher and Social Forestry Workers who were absorbed prior to 01.04.2003 are eligible to count 50% of their services rendered under daily wages for pensionary benefits, whereas those appointed after 01.04.2003 are not eligible for pensionary benefits. The



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pathetic situation of the said Forest Watchers was considered and the period of service had been taken into account and necessary pensionary benefits had been extended to them also irrespective of the cut of date of 01.04.2003. The Government has also instructed to examine the representations and send necessary detailed proposals on the above lines for consideration by the Government.

9. The Circular No.8 of 2012 issued by Principal Chief Conservator Forest Ref No. 42380/2012, dated 11.11.2012, directing all the District/ Divisional Forest Officers to make necessary entries in the service register with regard to Plot Watcher/ Social Forestry Worker's date of joining in Forest Department and entered into Supernumerary Post service and the petitioner's service records shows there is a break in service. Moreover, the petitioner was terminated from service on 23.02.2005 and hence he was not allowed to retire on 28.02.2005. Hence,



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the petitioner is not entitled to be regularized and prayed to dismiss the writ petition.

10. Heard M/s.K.Jenitha, learned Counsel appearing for the petitioner and Mr.S.Shanmugavel, learned Additional Government Pleader appearing for the respondent and perused the records.

11. On perusing the records, it is seen that the petitioner was admittedly serving the respondent department from 01.11.1980 to 10.04.2003 as Plot Watcher on daily wages basis. When the Plot Watchers sought absorption into regular service, the respondent issued G.O.Ms.No.64, Environment and Forest [F2] Department, dated 08.03.1999 agreeing to regularize as and when the regular vacancy arises and maintained seniority list. However, the petitioner was appointed in regular post from 26.04.2003 and there is a break in service from



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11.04.2003 to 25.04.2003, i.e., for 14 days. Since there is a break in service, the respondent is denying to take 50% of temporary service and grant pensionary benefits. When the respondent has formulated a scheme to regularize the daily wages as and when the vacancy arises, there cannot be any break in service at all. Moreover, subsequently, the petitioner was absorbed in regular service on 26.04.2003. When there was an absorption, any break in service ought to be automatically regularized. Moreover when the petitioner's seniority is fixed at Serial No. 350 in G.O.Ms.No.64, Environment and Forest [F2] Department, dated 08.03.1999. Therefore, this Court is of the considered opinion that the break in service ought to be regularized and the petitioner is entitled to be regularized. Hence the plea of the respondent that there is break in service is rejected.

12. The next contention that was raised by the respondent is that



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the petitioner was terminated from service on 23.02.2005 and his superannuation was on 28.02.2005. Since the petitioner has not retired from service but terminated, then the petitioner is not entitled to count the service for pensionary benefits. It is seen from the records that the termination was five days prior to superannuation. The respondent has sought genuineness certificate from the District Education Officer, Pudukottai, vide proceedings, dated 14.09.2004. In turn the District Education Officer, Pudukottai had replied on 17.01.2005 stating the certificate as false. The respondent has framed charge sheet on 22.02.2005 and dismissed the petitioner the very next day i.e. on 23.02.2005. From this it is evident that the petitioner was not granted any opportunity before terminating from service, which is clear violation of principles of Natural Justice and the termination is bad in law.

13. The respondents have granted regularization to the similarly



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placed persons. Whenever there is any false certificate, this Court has directed the employer / department to initiate disciplinary proceedings and impose any punishment other than termination or dismissal from service or removal from service. In the case of similarly placed persons, those persons have approached this Court in W.P.Nos.3521, 3563 to 3567 of 2005 and this Court, vide order, dated 11.01.2008, directed the employer to impose a lesser punishment. Based on the order, the respondent department, imposed censure as punishment. The only discrepancy between those persons and the petitioner is that the petitioner did not approach the respondent by filing any petition to consider the punishment of dismissal within time. The contention of the respondent is that the petitioner has approached this Court belatedly that too after a lapse of 15 years of service. This Court is not accepting the plea of the respondent, since this Court has directed the respondent to impose a lesser punishment, for all similarly placed person, the



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respondent ought to have taken a policy decision to implement the said order uniformly to all the persons.

14. The respondent has specifically filed a counter affidavit stating the petitioner has not filed any application within 60 days to consider the same. If the petitioner had submitted an application, the respondent would have considered and refused. For not approaching the respondent within 60 days, it cannot be stated that the petitioner is not entitled to relief at all. Dismissal from service after putting more than 30 years of service cannot be entertained.

15. Therefore, this Court is of the considered opinion that the petitioner is entitled to be considered for reduction of punishment which was granted to the similarly placed persons. Therefore, the respondent is directed to reduce the punishment as censure to the petitioner and



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thereafter, allow the petitioner to retire on the date of superannuation. Having said so, consequently, the petitioner is entitled to be absorbed in service prior to 01.04.2003. Even though the petitioner was absorbed on 26.04.2003, i.e., after the cutoff date 01.04.2003 stated in the Pension Rules, the petitioner is entitled to pensionary benefits by fixing the date prior to 01.04.2003, since the respondent has considered the case of the Plot Watchers for other similarly placed persons and granted regularization prior to 01.04.2003, which is evident from the counter and the relevant portion is extracted hereunder:

“Based on the above Government order those who were absorbed as Forest Watcher and Mali prior to 01.04.2003 are eligible to count 50% of their services rendered under daily wages for Pensionary benefits, whereas as those appointed after 01.04.2003 are not eligible for Pensionary benefits. Their pathetic situation has been considered and the period of service have to be taken into account and necessary Pensionary benefits have to be extended to them also irrespective of the cut of date of 01.04.2003 mentioned in the G.O.Ms.No.408 Finance [Pension]



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Department dated 25.08.2009. Further instructed to examine the representations and send necessary detailed proposals on the
~~When the Government has taken a specific stand and granted relief to~~
~~above lines for consideration by the Government.~~
some of them by taking the pathetic condition of the Plot Watchers, the petitioner is also entitled to the same relief, since the petitioner is also in the same pathetic situation.

16. Therefore, the petitioner is entitled to take 50% of his temporary service rendered from 01.11.1980 to 10.04.2003 along with the regular service from 11.04.2003 to 28.02.2005. Hence, for the reasons stated above, this Court is passing the following orders:

- i) The punishment of termination from service imposed on the petitioner is reduced to Censure.



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ii) The respondent is directed to condone the break in service from 11.04.2003 to 25.04.2003.

iii) The respondent is directed to take 50% of service from 01.11.1980 to 25.04.2003 and add to his regular service from 26.04.2003 to 28.02.2005 and consequently, grant pensionary benefits to the petitioner along with the arrears. However, the petitioner is not entitled to any interest.

iv) The above said directions shall be complied within a period of twelve weeks from the date of receipt of a copy of this order.



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17. With the above said observation and directions, the writ petition
is allowed. No costs.

Index : Yes / No
Internet : Yes
NCC : Yes / No

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To

The District Forest Officer,
Dindigul Forest Division,
Dindigul District, Dindigul.



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S.SRIMATHY, J

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