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W.P.(MD)Nos.22120 of 2017 and 18556 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.22120 of 2017 and 18556 of 2020

and

**W.M.P.(MD)Nos.18419 of 2017,
15518 to 15520 of 2020**

W.P.(MD)No.22120 of 2017:

T.Sundar

... Petitioner

vs.

1.The State of Tamilnadu,
represented by its Additional Chief
Secretary to Government,
Forest and Environment Department,
Fort St.George, Chennai-9.

2.The Principal Chief Conservator
of Forest,
Head of Forest Force,
Jennis Road, Palagal Building,
Saidapet, Chennai-15.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 1st respondent in his letter no.14545/FR.2/2013-13, dated 14.10.2016 and the 2nd respondent passed the consequential order by his proceedings Ref.No.AB2/1960/2013, dated 14.11.2016 and to quash the same as illegal and consequently, to direct the respondents herein to consider the case of the petitioner for promotion to the post of Forester by relaxing the rules in Tamilnadu Forest Subordinate Service Rules.

For Petitioner : M/s.S.Ragaventhre

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

W.P.(MD)No.18556 of 2020:

- 1.S.Joseph
- 2.N.Rajalingakumar
- 3.G.Velayutham
- 4.P.Swaminathan
- 5.N .Kaliswaran
- 6.C.Ravichandran
- 7.S.Murugan



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8.R.Pandian

9.S.Sankar

10.P.Venkatesan

11.A.Georgemani

12.R.Srinivasan

13.M.Ganesan

... Petitioners

vs.

1.The State of Tamilnadu,
represented by its Principal
Secretary to Government,
Environment and Forests Department,
Secretariat, Chennai-600 009.

2.Principal Chief Conservator of Forests,
No.1, Jeenis Road,
Palagal Building,
Saidapet, Chennai-600 015.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in connection with the impugned letter of rejection passed by him in Lr No.14545/FR.2/2013-13, dated 14.10.2016 and the consequential impugned order of rejection passed by the 2nd respondent in his proceedings in Ref.No.AB2/1960/2013, dated 14.11.2016 and to quash both as arbitrary and unconstitutional and thereby, to direct the respondents to consider the case of the Drivers like



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the petitioners for promotion to the post of Forester by relaxing the rules as one time measure within the time limit that may be stipulated by this Court.

For Petitioners : Mr.G.Thalaimutharasu

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

COMMON ORDER

These writ petitions are filed to quash the impugned order, dated 14.10.2016, and consequently, to direct the respondents to consider the case of the petitioners in both the writ petitions and promote them to the post of Forester by relaxing the rules in Tamil Nadu Forest Subordinate Service Rules.

2. The brief facts of W.P.(MD)No.22120 of 2017 are that the petitioner is the President of the Forest Driver Association and has put in 17 years of service as Driver. Originally, he was appointed as Lorry



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Cleaner under the 2nd respondent through District Employment Exchange. The post of Driver comes under Clause (v) of Tamilnadu Forest Subordinate Services Rules.

3. The contention of the petitioner is that all the subordinate service persons are eligible for promotion as per various orders of the government in this regard. Even the persons who were appointed as a Forest Watcher and Mali comes under Subordinate Services have been promoted as Forest Guards on the basis of their respective experience. Further contention of the petitioner is that the persons who joined as a Watcher, Mali, Plot Watcher and like others have been appointed to similar category, have been promoted depending on their respective experience even though they have qualification of 2nd standard pass. The persons who finished 4th or 5th standard are working in the post of Forest Rangers by getting promotion. The petitioner had passed 10th standard and promoted from the post of Cleaner and working as Driver. The



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petitioner is now subjected to work as a Driver under the Forest Rangers who have completed only 4th and 5th standard of education.

4.The petitioner relied on G.O.Ms.No.162, dated 21.04.1992, wherein it states that the appointment to the post of Foresters as made in para 2 (ii):

"the post of Driver need not be made a feeder category for appointment to the post of Foresters under recruitment by transfer"

The above said G.O passed by the 2nd respondent ought to be amended so as to promote the Drivers to the next higher grade.

5. The petitioner in W.P.(MD)No.22120 of 2017 had already filed W.P.(MD)No.2026 of 2009 and the same was disposed on 16.07.2010 with a direction to reconsider the representation and to pass orders within a period of four weeks. The petitioner filed another writ petition in W.P. (MD)No.15350 of 2014 and this Court directed the first respondent to



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consider the proposal within a period of 12 weeks and pass suitable orders. But the 1st respondent herein without considering the merits of the said proposal rejected the claim, vide letter, dated 14.10.2016 and the 2nd respondent passed the consequential order, dated 14.11.2016, wherein it is stated that the said proposal was already considered and there is not possibility to amend the Forest Rules. Aggrieved over the same the present writ petitions are filed.

6. The contention of the petitioners are that the Drivers are stagnating in the same work and are frustrated because there is no opportunity of promotion. The Hon'ble Supreme Court has held that any person working in any department is entitled to promotion atleast once in their service, but the Drivers of the Forest Department are working without any promotion.



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7. The learned Counsels appearing for the petitioners submitted that the impugned order stating that there is no promotional opportunity in other departments and the same is not correct. In Municipal Departments, the Drivers are entitled to promotion. In fact, the Tamil Nadu Basic Service Rules also states to consider by recruitment / by transfer from the post of Driver to Office Assistant or Helper, in the case of medically unfit persons. When the Government is having empathy for medically unfit persons and for all other posts, the respondents declining the same to the petitioners totally discriminatory. Moreover, in the said proposal, it has been stated that only 1% of the Drivers are eligible to be promoted. At least if 1% is granted, the petitioner and the similarly placed Drivers would get an opportunity as and when the vacancy arises. Therefore, the petitioners are praying to allow the writ petitions.



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8. The learned Additional Government Pleader appearing for the respondents submitted that since no other department has granted promotion to the post of Driver, if the petitioners are allowed, it will be opening a flood gate and it will also have cascading effect which will lead to confusion among various Government departments. Moreover, the proposal for amending is also proposing to promote to the post of Forester cannot be entertained. Under the Tamilnadu Forest Subordinate Service Rules, Forester is the promotive post for other categories. Therefore, the same cannot be considered. Hence, the learned Additional Government Pleader for the respondents prayed to dismiss the writ petitions.

9. Heard M/s.S.Ragaventhree, learned Counsel appearing for the petitioner in W.P.(MD)No.22120 of 2017 and Mr.G.Thalaimutharasu, learned Counsel appearing for the petitioners in W.P.(MD)No.18556 of



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2020 and Mr.R.Suresh Kumar, learned Additional Government Pleader appearing for the respondents in both cases and perused the records.

10. The Tamilnadu Forest Subordinate Service Rules states as under:

“Class I category: Rangers, Foresters, Forest Guards, Forest Watchers, Forest Apprentice and Mali.

Class III category: Senior Draughting Officer, Draughting Officer, Junior Draughting Officer and Assistant Draughtsman.

Class IV category: PG Assistants and other Teachers

Class V category: Drivers of Jeeps, Vans, Estate Car, Wagons and Lorries, Cleaners of Lorries”

The respondents submitted that the petitioners are coming under the Class V, but straight away seeking promotion to Class I and hence the petitioners' plea cannot be considered.



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11. This Court is not able to accept the contention of the respondents for more than one reason. When the respondents have categorically considered from the post of Cleaner to a promotive post of Driver, there should be avenue for the Drivers to climb up. Atleast the respondents shall consider the petitioners in the post of Mali or Forest Apprentice. Of course, the petitioners claiming to the post of Forester which comes under Class I which will be steep jump. Therefore, this Court is of the considered opinion that the claim of the petitioners ought to be considered.

12. The learned Additional Government Pleader appearing for the respondents vehemently opposed for such consideration and relied on judgment made in *State of Himachal Pradesh and others Vs. Satpal Saini* reported in (2017) 11 SCC 42, wherein the Hon'ble Supreme Court has held that the directions of the High Court for amending the provisions of Himachal Pradesh Tenancy and Land Reforms Act, 1972



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and the Rules made thereunder cannot be sustained. The learned Additional Government Pleader also relied on another judgment made in ***Union of India Vs. Pushpa Rani and others*** reported in (2008) 9 SCC 242 wherein the Hon'ble Supreme Court has stated as under:

“37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the court to make comparative evaluation of the merit of the candidates. The court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration”.



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The judgment of the Hon'ble Supreme Court in *State of Himachal Pradesh and others Vs. Satpal Saini* reported in (2017) 11 SCC 42, is followed by the Hon'ble Division Bench of this Court in the case of *Abimani @ R.Chandrasekaran Vs. The Government of India and others* in W.P.(MD)No.1290 of 2018, vide order, dated 25.01.2018. The learned Additional Government Pleader further relied on the judgment rendered in W.P.No.11735 of 2014 by the Hon'ble Division Bench of this Court, dated 10.02.2017, wherein it is stated as under:

“10. The Supreme Court in P.U.Joshi and ors. vs. Accountant General, Ahmedabad and ors., (2003(2) SCC 632), indicated the extent of judicial review in matters relating to conditions of service. The Supreme Court said :-

“10 ... Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation / abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State



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to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service”.

11. The petitioners have no statutory or constitutional right to seek direction to the State to amend the recruitment rules to suit their convenience. We are therefore of the view that the Tribunal was perfectly correct in dismissing the original application. We do not find any error or illegality in the said order, warranting interference, by exercising judicial review. However, we make it clear that this order would not stand in the way of the Government initiating action to revise the recruitment rules, in accordance with law.”



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This Court is absolutely agreeing with the judgments stated supra that Mandamus will not lie directing the Government to amend the Rules. But, in the present case, it is not a straight way amendment which is being sought. The higher authority of the said Department had already submitted a proposal for granting 1% reservation for the Drivers to be promoted. In such circumstances the judgment relied on by the respondents is not applicable to the present case.

13. The learned Additional Government Pleader submitted that Drivers are eligible for selection grade and special grade, if they are not getting any promotion. Therefore, there is no question of stagnation of Drivers in the same post. The Learned Counsel for the petitioners submitted that if the plea of the respondents is accepted then the Government will not be at loss in terms of finance, when the respondents are paying selection grade and special grade in the post of driver, then only the designation alone would change and there will not be any



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difference in the salary. Moreover, it is submitted that the government would not be at loss because the salary drawn by the Driver as well as the promoted post is one and the same and, on this count, also the petitioner stands to gain.

14. The contention of the respondents is that if a Driver is promoted in Forest Department, then the Drivers in other Departments would also seek the same. The respondents are having ample power to restrict the same to the Forest Department alone. Therefore, the contention of the respondents that other Departments will claim the same cannot be a ground to reject the claim of the petitioners.

15. Therefore, the reasons stated by the respondents are not sustainable. The impugned orders in both the writ petitions are quashed. The respondents shall consider the proposal, dated 04.06.2013, positively within a period of eight weeks from the date of receipt of a copy of this



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order.

16. With the above said observation, the writ petitions are allowed.

No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No

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Internet : Yes

NCC : Yes / No

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