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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.03.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

Writ Appeal No.904 of 2021

1.M.Eswaran

2.B.D.Yesaiah

... Appellants

Vs

1.Government of Tamil Nadu,
Represented by its Additional Principal
Forest and Environment Department,
Fort St.George,
Chennai – 600 009.

2.The Principal chief Conservator of Forests,
Panagal Building, Saidapet,
Chennai – 600 015.

... Respondents

PRAYER: Writ Appeal has been filed under Clause 15 of Letter Patent against the order dated 27.11.2020 made in W.P.No.21293 of 2014.

For Appellants : Mr.S.Mani

For Respondents : Mr.R.Ramanlaal
Additional Advocate General



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Assisted by Dr.T.Seenivasan
Special Government Pleader
JUDGMENT

(Judgement of the Court was made by Mr.R.SURESH KUMAR.,J.)

This Intra Court appeal has been preferred by the appellants/Writ Petitioners against the order of dismissal of the Writ Petition, with a direction to the appellants herein to make a detailed representation to the first respondent herein in respect of their grievance and on such receipt of the said representation, the first respondent was directed to consider the same and pass appropriate orders of merits and in accordance with law.

2. Heard Mr.S.Mani, learned counsel appearing for the appellants and Mr.R.Ramanlal, learned Additional Advocate General assisted by Dr.T.Seenivasan, learned Special Government Pleader appearing for the respondents.

3.Mr.S.Mani, learned counsel appearing for the appellants would submit that the appellants were originally appointed on a daily wage basis through the employment exchange in the year 1977 in Cinchona Department. On completion of 10 years of service, they were brought into



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regular time scale of pay in the cadre of Field Man Grade-II in the year

1988. The State of Tamil Nadu took a policy decision to abolish the

Cinchona Department and the activities of the said Department were to be

taken over by the Forest Department including the pension liability of the

Cinchona Department if any. The said proceedings came to be challenged

in respect of their absorption in the Tamil Nadu Tea Plantation Corporation

before the Tamil Nadu Administrative Tribunal in O.A.No.4487 of 1993.

The Tribunal accepting the claim of the workers ordered that the staff

working in the erstwhile Cinchona Department to be repatriated to the

parent Department namely the Forest Department. Thereafter by

G.O.Ms.No.275, Environment and Forest Department, dated 06.11.1996,

staff of the erstwhile Cinchona Department were absorbed in the Forest

Department. Pursuant to the said Government Order, the appellants were

absorbed as Forest Watcher Grade-II and their seniority in the cadre of

Forest Watcher Grade-II was to be reckoned with the initial date of

appointment in the post of Field Man Grade-II, in the erstwhile Cinchona

Department. However, in the case of the appellants, they were not placed in

the seniority by taking into consideration their appointment as Field Man



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Grade-II in the year 1988. Hence, they had made a representation to the authorities to refix their seniority based on their date of appointment as Field Man Grade-II.

4.He would further submit that the Principal Conservator of Forest namely, the second respondent herein by his proceedings dated 31.10.2011 had positively recommended the case of the appellants to fix their seniority on the basis of the initial appointment in the Cinchona Department and to consider their case to be absorbed as Forest Guard/ Selection Grade Forest Guard. However, the first respondent herein by wrongly construing that the appellants have been appointed during the year 1998-99 in the Forest Department had rejected the claim of the appellants *inter alia* holding that the Rules published under G.O.Ms.No.43, dated 12.03.2014, which came into effect from 05.10.1998, the appellants' claim could not be considered. He would submit that such an order on a wrong factual connotation was challenged by them before this Court in the Writ Petition in which the impugned order had been passed.

5.He would further submit that the learned Single Judge without con-



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sidering the case on the proper prospective as stated supra without any reasoned order had come to a conclusion that there is no merits in the Writ Petition by holding that the fixation has been made correctly by taking into account the date of joining of the appellants, as Forest Watcher Grade II. But however, had directed the appellants to submit a representation to that effect for consideration. He would submit that the learned Single Judge had wholly failed to consider that only after such representation was made, the first respondent had rejected the claim and no purpose would be served in issuing such a direction. Therefore, he would submit that due to total misconception of the date of joining of the appellants in the Forest Department cannot be taken into account, since the appellants were absorbed from the post of Field Man Grade-II, into the Forest Department and the Government itself has directed reckoning of seniority based upon their initial appointment as Field Man Grade-II and therefore, he would seek interference of the order passed by the learned Single Judge.

6.Countering his arguments, Mr.R.Ramanlaal, learned Additional Advocate General would submit that as per the Rules only the date of



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joining in the Forest Department as Forest Watcher Grade-II, alone would be taken into consideration for fixing the seniority. When that being so, he would submit that just because, the second respondent had recommended the case of the appellants, it would not confer any right on them for refixation of their seniority and the consequential absorption as Forest Guard/ Selection Grade Forest Guard. He would submit that after analysing all the aforesaid factors only the learned Single Judge held that there is no merit in the Writ Petition, but however had granted liberty to the appellants to approach the first respondent through appropriate representation. If such representation is being made, the same could be considered and pass orders on merits and in accordance with law. Without approaching the first respondent, the appellants have filed this present Writ Appeal, which according to the learned Additional Advocate General would not be maintainable, as they have been given liberty to approach the first respondent for appropriate relief.

7. We have considered the rival submissions made by the learned counsel appearing on either side and perused the materials placed on



record.

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8.The appellants claim that they have been originally appointed in the Cinchona Department and were regularised in the post of Field Man Grade-II in the erstwhile Cinchona Department in the year 1988. It is their further claim that the Cinchona Department was sought to be dissolved and pursuant to such dissolution, by orders of the Tribunal, they were directed to be absorbed in the Forest Department and they have also been absorbed in the Forest Department as Forest Watcher Grade-II. These facts cannot be disputed by the respondents. In fact, by proceedings in Na.Ka.No.686/2010/B4, dated 25.02.2011, the Conservator of Forest, Coimbatore Forest Division had addressed a letter to the Principal Chief Conservator of Forest. A perusal of the said letter would indicate that the appellants herein have been shown to be joined in the Cinchona Department as Field Man Grade-II during July 1988 and that they have joined as the Forest Guard in the Forest Department on 02.08.2002 and 08.08.2002 respectively.



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9. Further, the recommendations of the Principal Chief Conservator of Forest to the first respondent dated 31.10.2011, elucidate the way in which the appellants have been appointed as the Forest Watcher Grade-II and their entitlement for absorption as Forest Guard/Selection Grade Forest Guard on which basis, the recommendations were made. A reading of the order impugned in the Writ Petition would show that the first respondent has wholly misconstrued the entire issue by concluding that the absorption of Field Man Grade-II as Forest Watcher Grade-II was pursuant to the Government Order, dated 05.10.1998.

10. It is to be noted that the Government had issued G.O.Ms.No.290, Environment and Forest Department, dated 05.10.1998, creating 23 posts of Forest Watcher Grade-II for absorption of 23 Field Man Grade-II. Pursuant thereto, the seniority of such absorbed Forest Watcher Grade-II, was to be made on the basis of their initial appointment as Field Man Grade-II in the erstwhile Cinchona Department and not on the basis of their appointment as Forest Watcher Grade-II in the Forest Department. This is explicit from the recommendation of the second respondent dated 31.10.2011



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and a further communication of the second respondent to the first respondent dated 31.01.2012 in reference No.AB2/26101/2010. When that being so, it is not correct for the first respondent to hold that only the appointment of the appellants as Forest Watcher Grade-II, Forest Department alone would be considered for fixing the seniority. As rightly pointed out by the learned counsel appearing for the appellants that the learned Single Judge herein had granted liberty to approach the first respondent by way of a representation and directed the first respondent to consider the same and pass orders on merits and in accordance with law, but however without considering the fact that the first respondent had already taken a decision in the issue.

11.It is also to be noted that one of us (R.SURESH KUMAR.,J) in W.P.No.17568 of 2010, while dealing with a Writ Petition of persons, who were working as Kanakkapillai in the erstwhile Cinchona Department had directed the regularisation of their services on completion of 10 years in the said post as Forest Watcher Grade-II. The said order had also been implemented by the Department. In the present case, the appellants have



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been appointed as Kanakkapillai in the year 1977-78 and were appointed as Field Man Grade-II in the year 1988 and absorbed into the Department in the year 1998. The appellants cannot be placed in much worst position than the persons who were appointed as Kanakkapillai subsequent to their appointment. When the Government had implemented the order passed in the Writ Petition, there can be no embargo on their part to fix the seniority of the present appellants in the post based upon their initial appointment in the post of Field Man Grade-II.

12. For the foregoing reasons, we are of the view that the order impugned before us would have to be set aside and similarly the order passed by the first respondent impugned in the Writ Petition would have to be interfered with and the same is also set aside.

13. It has been brought to our notice that both the appellants had superannuated during the pendency of the proceedings. Considering the fact that they have already been superannuated, since we are of the considered view that the order passed by the first respondent is to be set



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aside and having held that they would be entitled for refixation of their seniority based on their initial appointment in the post of Field Man Grade-II in the Cinchona Department, we direct the respondents to notionally fix the seniority and grant all service benefits including the monetary benefits notionally and refix the last drawn pay based on such notional fixation and based upon such notionally fixed last drawn pay, the pensionary benefits of the appellants shall be worked out and revised pension order shall be issued in favour of the appellants together with arrears of pension as may be applicable in the respective cases.

14. With the aforesaid directions, this Writ Appeals is allowed and the order passed by the learned Single Judge is set aside and consequently the Writ Petition is allowed and the order dated 24.03.2014 is set aside. However, there shall be no order as to costs.

(R.S.K.,J.) (K.B., J.)
26.03.2024

Index: Yes/No
Speaking Order/Non Speaking Order



Neutral Citation: Yes/No

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To

1. Additional Principal

Forest and Environment Department,
for The Government of Tamil Nadu,
Fort St. George,
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2. The Principal chief Conservator of Forests,
Panagal Building, Saidapet,
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and
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