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W.P.No.4390 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.4390 of 2024

T.Amsagiriappa

... Petitioner

Vs.

- 1.The State of Tamilnadu,
Rep. By its Additional Chief Secretary to Government,
Environmental, Climate Change and Forest Department,
St.George Fort,
Secretariat, Chennai 600 009
- 2.The Chief Principal Conservator of Forests,
Head of Forest Force,
Guindy-Velacherry Main Road,
Guindy,
Chennai 600 032
- 3.The Wildlife Warden/District Forest Officer,
Hosur Forest Division,
Hosur,
Krishnagiri District
- 4.The Divisional Forest Officer,
Social Forestry and Extension Division,
Krishnagiri,
Krishnagiri District
- 5.The Accountant General of Tamilnadu,
Office of the Accountant General,
Anna Salai,
Teynampet,
Chennai-18

... Respondents



W.P.No.4390 of 2024

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of mandamus directing respondents 1 to 4 to regularise the petitioner's services from the date on which completing ten years of service as Plot Watchers on daily wage basis for the purpose of getting pension in the light of the Hon'ble Supreme Court Judgment reported in (2019) 10 SCC 516 and confer all consequential pensionary benefits from the date of the petitioner's retirement by sending the proposal to the fifth respondent for granting pension with all consequential monetary benefits.

For Petitioner : Mr.M.R.Jothimanian

For Respondents

For R1 to 4 : Dr.T.Seenivasan,
Special Government Pleader

ORDER

This writ petition is disposed at the time of admission considering the fact, that an identical issue which came to be disposed of by this Court in W.P.No.19023 of 2021 vide order dated 09.09.2021. The relevant portion of the said order reads as under:-

2. The petitioners were engaged as Plot Watchers between 1979 and 1986 in the Forest Department under the Tamil Nadu Forest Subordinate Service Rules. Thereafter their services were regularized on 07.08.2009



W.P.No.4390 of 2024

in the supernumerary post. They have also retired from service between 2017 and 2021 as detailed below:-

<i>S No</i>	<i>Name of the petitioner</i>	<i>Date of Joining as Plot Watcher</i>	<i>Seniority Number in the Seniority List of 1999</i>	<i>Date of Regularisation as Plot Watcher (Supernumerary)</i>	<i>Date of Retirement</i>
1	M.Sellappa	01.04.1986	4681	07.08.2009	31.01.2021
2	K.Deivasigamani	16.11.1984	3809	07.08.2009	31.05.2019
3	M.Settu	08.01.1979	473	07.08.2009	31.10.2018
4	V.Dhanapal	01.04.1984	3421	07.08.2009	28.09.2017

3. At the time of appointment of the petitioners, there were no discriminations for the persons like the petitioners to be promoted as Forest Watchers. It was sufficient that if they have able to read and write in the vernacular language. However, this was altered by a Government Order in G.O.Ms.No.332, Environment and Forest Department dated 22.12.1994. The aforesaid Government Order was superseded by G.O.Ms.No.64, Environment and Forest Department dated 08.03.1999 and the position which stood prior to issue G.O.Ms.No.332, Environment and Forest Department dated 22.12.1994 was reverted. It is in this background, the petitioners services were regularized as Plot Watchers in the year 2009 with the issuance of Government Order



W.P.No.4390 of 2024

in G.O.Ms.No.95, Environment and Forest Department dated 07.08.2009.

4. In this writ petition, the petitioners are seeking for a Mandamus, to direct the respondents to regularize their services from the date of initial appointment as Plot Watchers on the basis of daily wages for the purpose of getting pension in the light of the decision of the Hon'ble Supreme Court in Prem Singh Vs State of Uttar Pradesh and others, passed in C.A.No.6798 of 2019 dated 02.09.2019.

5. The learned counsel for the petitioners has drawn attention to Paragraphs 35 and 36 of the aforesaid decision, which reads as under:- “35. There are some of the employees who have not been regularized in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularized under the Government instructions and even as per the decision of this Court in Secretary, State of Karnataka & Ors. v. Uma Devi 2006 (4) SCC 1. This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one time



WEB COPY



W.P.No.4390 of 2024

measure, the services be regularized of such employees. In the facts of the case, those employees who have worked for ten years or more should have been regularized. It would not be proper to regulate them for consideration of regularisation as others have been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension.

36. In view of reading down Rule 3(8) of the U.P. Retirement Benefits Rules, 1961, we hold that services rendered in the work-charged establishment shall be treated as qualifying service under the aforesaid rule for grant of pension. The arrears of pension shall be confined to three years only before the date of the order. Let the admissible benefits be paid accordingly within three months. Resultantly, the appeals filed by the employees are allowed and filed by the State are dismissed.”



W.P.No.4390 of 2024

6. *The Hon'ble Supreme Court there was concerned Rule 3(8) of the Uttar Pradesh Retirement Benefit Rules, 1961, which reads as under:-*

“Rule 3. In these rules, unless is anything repugnant in the subject or context- (1)

(2)

(8) “Qualifying service” means service which qualifies for pension in accordance with the provisions of Article 368 of the Civil Service Regulations.

Provided that continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruption by confirmation in the same or any other post except-

(i) periods of temporary or officiating service in a nonpensionable establishment.

(ii) periods of service in a work-charged establishment and

(iii) periods of service in a post paid from contingencies shall also count as qualifying service.

Note:- If service rendered in a nonpensionable establishment work-charged establishment or in a post paid from contingencies falls between two periods of temporary service in a pensionable establishment or between a period of temporary service and permanent



W.P.No.4390 of 2024

service in a pensionable establishment, it will not constitute an interruption of service.”

7. The learned counsel for the petitioners submits that a similar provision in G.O.Ms.No.131, Personnel and Administrative Reforms (F) Department dated 28.11.2020 has been issued. In this connection, the learned counsel for the petitioners has referred to Paragraphs 4 to 6 of the aforesaid Government Order which reads as under:-

“4. In the above said “Umadevi case”, among other things, the Constitution Bench of the Supreme Court of India, emphasized that if rules have been made under Article-309 of the Constitution, then the Government can make appointments only in accordance with the rules. If sanctioned posts are vacant, the State will take immediate steps for filling those posts, by a regular process of selection. The State Government and their instrumentalities should take steps to regularize, as a onetime measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts, but not under cover of orders of the courts or of Tribunals, and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that required to be filled up, in cases, where temporary employees or daily wages are being now



WEB COPY



W.P.No.4390 of 2024

employed. If sanctioned posts are vacant, the State will take immediate steps for filling those posts, by a regular process of selection. There should be no further bypassing of the Constitutional requirement, regularizing or making permanent, those not duly appointed as per the Constitutional scheme.

5. In view of the above, it is hereby reiterated that in case of posts governed by Rules, in all the Services, including Tamil Nadu Basic Service, appointment shall be made only with reference to the existing rules. While selecting candidates for appointment, the claim of the contesting candidates shall be weighed with reference to the rules, in force, as emphasized in the “Umadevi Case” [State of Karnataka Vs. Umadevi (2006)4 SCC 1].

6. All the appointing authorities should adhere to the above instructions scrupulously, failing which, it will be viewed seriously and necessary disciplinary action will be initiated as per rules, against the persons responsible for the said lapses. All Heads of Departments are directed to ensure that the above said instructions are followed, without fail.”

8. If the above view of the Hon'ble Supreme Court in State of Karnataka Vs. Umadevi (2006)4 SCC 1 has been followed by the Government of Tamil Nadu in



W.P.No.4390 of 2024

G.O.Ms.No.131, Personnel and Administrative Reforms (F) Department dated 28.11.2020, the petitioners services was to be regularized at the expiry of ten years on the date of which they were originally appointed.

9. Considering the fact that they were appointed ten years earlier, they are also entitled to pension and the other attendant benefits. Further, Government Order in G.O.Ms.No.131, Personnel and Administrative Reforms (F) Department dated 28.11.2020 is binding on the respondents. Merely because the petitioners have attained the age of superannuation prior to the aforesaid date would not mean that the petitioners should not be given the benefit for the services rendered by them with the respondents Forest Department. Under these circumstances, this Writ Petition deserves to be allowed and is accordingly allowed. Miscellaneous Petition is closed.

2.Since the issue is squarely covered in the above order of this Court, this writ petition is disposed with consequential relief to the petitioner. No costs.

22.02.2024

Internet: Yes
Index: Yes/No



W.P.No.4390 of 2024

Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

1. Additional Chief Secretary to Government,
The State of Tamilnadu,
Environmental, Climate Change and Forest Department,
St. George Fort,
Secretariat, Chennai 600 009
2. The Chief Principal Conservator of Forests,
Head of Forest Force,
Guindy-Velacherry Main Road,
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W.P.No.4390 of 2024



WEB COPY



W.P.No.4390 of 2024

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