



WEB COPY



W.P. No.31913 of 2012

IN THE MADRAS HIGH COURT OF JUDICATURE

DATED: 13.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

W.P. No.31913 of 2012

K. Kuppan
Forester,
Urban Forestry Division

.... Petitioner

vs.

1. The Principal Chief Conservator of Forest
and Head of Forest Department,
Panagal Buildings, Saidapet,
Chennai-600 015.

2. The District Forest Officer,
Urban Forestry Division,
DMS Complex, Teynampet, Chennai-600 006.

.... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India seeking to issue Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent herein in Proceedings No.B2/29036/2012 dated 19.10.2012 and quash the same, insofar as the declaration of the petitioner as 'not selected' for inclusion of his name in the panel issued therein for promotion to the post of Forest Range Officers for the year 2012-2013 and to consequently direct the respondents herein to include the name of the petitioner in the appropriate place in the above mentioned



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panel and consequently promote the petitioner as Forest Ranger Officer with retrospective effect from the date of promotion of his immediate junior with all consequential benefits.

For Petitioner : Ms. Apoorva for Mr. M. Ravi

For Respondents : Mr. P. Kumaresan,
Additional Advocate General
assisted by Mr. S. Rajesh,
Government Advocate.

ORDER

This Writ Petition is filed challenging the order passed by the 1st respondent vide Proceedings No.B2/29036/2012 dated 19.10.2012 and to direct the respondents herein to include the name of the petitioner in the appropriate place in the panel of Foresters fit for promotion as Forest Range Officers for the year 2012-2013 and consequently promote the petitioner as Forest Ranger Officer with retrospective effect from the date of promotion of his immediate junior with all consequential benefits..

2. The case of the petitioner is that he has been declared as 'not selected' for inclusion in the panel of Foresters fit for promotion as Forest Range Officers for the year 2012-2013 (with the crucial date being 15.08.2012) vide Proceedings of the 1st respondent in No.B2/29036/2012 dated 19.10.2012 without even assigning any



reason. The petitioner was orally informed that the non-selection is in view of an order of punishment of reduction of pay to the bottom of scale of the Selection Grade Forester for 10 years without cumulative effect imposed by the District Forest Officer, Tiruvannamalai in and by his proceedings No.5432/96/P2 dated 11.06.1998 and the said order was communicated to the petitioner on 13.07.1998. The learned counsel for the petitioner submitted that for the purpose of promotion, the order takes effect from the date of communication of the said order until the expiry of the period of punishment as per instructions / guidelines in Govt. Letter No.18824/S/2005, P & AR Department, dated 07.10.2005. Hence for the purpose of empanelment and promotion, the order of punishment will be an impediment for his empanelment and promotion only until 12.07.2008 and as such, he is eligible for promotion as Forest Ranger of the year 2008-2009 itself, as after the expiry of the currency of punishment, the petitioner is entitled to be considered for empanelment and promotion in view of the ratio laid down by the Full Bench of this Court in the case of *Deputy Inspector General of Police, Thanjavur vs. V. Rani and* other batch of Writ petitions.

3. The learned counsel would further submit that the petitioner was entitled to be included in the panel for the year 2008-2009 and once again was omitted to be included in 2011-2012 panel on the same ground of the above mentioned order of



punishment and he was constrained to prefer W.P. No.12407 of 2012 before this Court seeking to quash the non-selection in the panel for promotion to the post of Forest Ranger for the year 2011-2012 as issued by the 1st respondent in his proceedings No.B2/40375/2011 dated 09.02.2012 and this Court by order dated 24.07.2012 set aside the order dated 09.02.2012 in so far as deferring his name and directed the 1st respondent to verify as to whether any punishment was in currency or any charge was pending against the petitioner as on 15.08.2011 and to consider his claim and to pass within a period of 8 weeks from the date of receipt of a copy of the said order. The said order was issued on 02.08.2012 and even after the lapse of more than 3 years, the 1st respondent has not chosen to pass any orders in compliance of of the above orders of this Court. The petitioner has also preferred a Writ appeal challenging the order of this Court dismissing the Writ petition filed against the above mentioned order of punishment for a period of 10 years without cumulative effect and in the event of his success in the said Writ appeal, the petitioner is entitled to be considered for empanelment for promotion as Forest Ranger even in the panel of the year 2008-2009. However, even after the expiry of the said period of 10 years, the petitioner was consistently being overlooked and in the meanwhile, the 1st respondent has issued the panel for promotion to the post of Forest Rangers for the year 2012-2013 in and by his proceedings dated 19.10.2012. In this regard, the 2nd respondent herein, in and by his proceedings Ref. No.E/755/12 dated 31.08.2012, in



pursuance of his representation dated 16.08.2012 submitted on the basis of the above mentioned order dated 24.07.2012 in W.P. No.12407 of 2012 has stated that though the orders of punishment would have normally ended on 30.06.2010, but due to various leaves availed by the petitioner, the period of punishment ended till 14.11.2011 and the petitioner is free from punishments and charge sheets with effect from 15.11.2011. The 2nd respondent has also stated that the petitioner had already completed Ranger training in the Forest Academy, Coimbatore from 24.11.2008 to 06.05.2009 as per directions of the Court. Further the various merit certificates, awarded to the petitioner, at various instances, have also been pointed out by the 2nd respondent herein, who had requested to consider his promotion as Forest Range Officer in the light of the facts adduced by the petitioner.

4. The learned counsel would further submit that the 1st respondent has chosen to declare him has 'not selected' even in the panel for the year 2012-2013 and the order of punishment was imposed as early as on 11.06.1998 and merely because there was pendency of litigations, the punishment was not given effect to until the year 2012, the respondent cannot take a stand that the punishment has been inflicted during the year 2012 and hence for the next period of 10 years, his name could be deferred for more than two reasons.

(i) If the stand of the department is that punishment was given effect to only



from the year 2012, there was no punishment against the petitioner in the year 2008-2009 and hence his name has to be included in the said panel for promotion to the post of Forest Ranger for the year 2008-2009 and he is entitled for consequential promotion with all benefits.

(ii) As per proceedings of the 2nd respondent herein dated 25.08.2012, the punishment has been given effect till 14.09.2011, taking into account the various leaves availed by the petitioner. Thus, by virtue of the said proceedings, the punishment has ended on 14.09.2011 and the petitioner is free from punishment as on 15.08.2012, being the crucial date for panel for promotion to the post of Forest Ranger of the year 2012-2013. Though the punishment has ended on 14.09.2011, by virtue of the order dated 25.08.2012 giving effect to all the three punishments imposed against the petitioner i.e., the order of punishment of reduction of his pay to bottom scale of SG Forester post for 10 years without cumulative effect, issued by the District Forest Officer, Tiruvannamalai dated 11.06.1998 (given effect from 01.07.1998 to 07.07.2009) the order of punishment of postponement of next increment for one year without cumulative effect, issued by the District Forest Officer, Tiruvannamalai in Proceedings dated 23.02.2001 (given effect to from 08.07.2009 to 12.09.2010) and the order of punishment of postponement of next increment for a period of one year without cumulative effect imposed by the 2nd respondent herein in his Proceedings dated 18.07.2009 (given effect to 13.09.2010 to



14.09.2011) have all ended on 14.09.2011. Though the punishments were given effect to from 1998 till 2011 against the petitioner, as the pay was actually disbursed to the petitioner during all these years, the Department has chosen to recover the excess amount, which ought not to have been disbursed to him in view of the above said order of punishment. The excess amount of Rs.4,99,937/- has been ordered to be recovered from his salaries and gratuity, as he was retiring on attaining the age of superannuation on 31.05.2013. This order of recovery of excess amount is obviously not by way of any punishment and hence that cannot be made as an impediment against his empanelment and promotion.

5. The learned counsel for the petitioner would further submit that for all purposes, the petitioner is free from any punishment or charge sheet as on 15.08.2012 and also on the date of panel i.e., 19.10.2012 and even till date of filing of Writ petition, he was fully qualified and eligible for being included in the panel for promotion to the post of Forest Ranger for the year 2012-2013 in the appropriate place and to be promoted with retrospective effect from the date of promotion of his immediate junior with all consequential benefits. Hence he has approached this Court by way of present Writ petition.

6. A counter affidavit was filed by the 1st respondent on 18.02.2013 and the



relevant part is extracted hereunder for better understanding:

The panel for Foresters fit for promotion as Forest Range Officers for the year 2012-2013 was drawn up in the 1st respondent's Proceedings No.B2/29036/2012 dated 19.10.2012. While considering the Bio-data and record sheet of the petitioner, it was found that the following three punishments were imposed on the petitioner as follows:-

(i) Reduction of his pay to bottom scale of the S.G. Forester post for 10 years without cumulative effect (District Forest Officer, Tiruvannamalai Proceedings No.5432/96 P2 dated 11.06.1998).

(ii) Next increment postponed for 1 year without cumulative effect (District Forest Officer, Tiruvannamalai Proceedings No.5786/97 E2 dated 23.02.2001).

(iii) Next increment postponed for 1 year without cumulative effect (District Forest Officer, Urban Forestry Division Chennai Proceedings No.B/931/09 dated 18.07.2009).

The first punishment order was issued during 1998. This order was stayed by an order of this Court in O.A. No.6374/98 dated 16.09.1998. Since the stay was in operation subsequent increments were also not imposed on the individual. Upon dismissal of the above case by this Court in its orders dated 30.09.2009 in W.P. No.34568 of 2006, the Forester had given his consent during 2012 for recovery of excess pay due to imposition of the punishments, from his salary and pensionary



benefits including his gratuity. Accordingly, the 2nd respondent in his Proceedings No.E/820/2012 dated 25.08.2012 issued orders implementing the punishment by recovering the excess payment of Rs.4,99,937/- @ Rs.10,000/- from September 2012 to April 2013 and Rs.9,937/- in May 2013 total Rs.89,937/- from his Salary and the balance Rs.4,10,000/- to be recovered in his retirement benefits.

7. The learned counsel appearing for the respondents would further submit that the crucial date for the panel of Foresters fit for promotion as Forest Range Officers for the year 2012-2013 was 15.08.2012. Since the above punishment was in currency on the crucial date of the panel i.e., 15.08.2012, it is a bar for promotion as per the consolidated panel guidelines issued in Government Letter No.18824/S/2005, P & AR Department dated 07.10.2005. Hence the petitioner was not selected in the 2012-2013 Ranger Panel.

8. Heard both sides and perused materials available on record.

9. The petitioner was awarded punishment vide Proceedings No.5432/96 P2 of the District Forest Officer, Tiruvannamalai dated 11.06.1998 by reducing the pay. The petitioner namely K. Kuppan Selection Grade Forester is reduced to bottom



scale of 10 years from Selection Grade without cumulative effect and it is decided that this order will not affect the pension and the said order was communicated to the petitioner on 13.07.1998. In regard to promotion, the order takes effect from the date of communication of the said order until the expiry of the period of punishment as per instructions / guidelines in Govt Letter No.18824/S/2005, P & AR Department dated 07.10.2005 and the order of punishment was awarded on 12.07.2008 and the impediment for empanelment through next increment postponed for one year without cumulative effect (District Forest Officer, Urban Forestry Division Chennai) vide Proceedings No.B/931/09 dated 18.07.2009 and promotion only upto this date. The petitioner was eligible for promotion as Forest Ranger for the year 2008-2009 itself as expiry of the currency of punishment. The petitioner also filed a Writ Petition No.12407 of 2012 to set aside the order dated 09.02.2012 in so far as deferring his name and this Court by an order dated 24.07.2012 set aside the order dated 09.02.2012 and directed the 1st respondent to verify as to whether any punishment was in currency or any charge was pending against the petitioner as on 15.08.2011 and to consider the same within a period of 8 weeks and the 1st respondent has not chosen to pass any order in compliance of the order passed by this Court. The 1st respondent issued panel for promotion to the post of Forest Ranger for the year 2012-2013 by its proceedings dated 19.10.2012 in which also, the petitioner was not selected on the same ground and in this regard, the 2nd respondent vide Proceedings



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Ref No.E/755/12 dated 31.08.2012, pursuant to the representation of the petitioner dated 16.08.2012, which was submitted based on the above order of this Court dated 24.07.2012 in which, he has stated that the petitioner is free from punishments and charge sheets with effect from 15.11.2011 and the proceedings is extracted hereunder:-

TamilNadu Forest Department

From	To
S. Soundararajan	The Principal Chief Conservator of Forests
District Forest Officer,	Chennai.
Urban Forestry Division,	
Chennai.	(thro' proper channel)

Ref. No.:E/755/12 dated:31.08.2012

Sir,

Sub: Establishment – Tamilnadu Forest Subordinate Service
- Thiru. K. Kuppan, S.G. Forester –requisition for
consideration of his name for promotion as Ranger –
Submitted – Regarding.

Ref: Thiru. K. Kuppan, S.G. Forester's requisition dated
16.08.2012.

I submit herewith the requisition of Thiru. K. Kuppan, S.G. Forester cited. In this connection, I submit that the Forester was not selected in past two consecutive panels for promotion as Ranger due to pendency of punishment ordered in the District Forest Officer, Tiruvannamalai, Proc. No.5432/96 P2 dated 11.06.1998, and a charge sheet under Rule 17(b) issued in the District Forest Officer Tiruvannamalai Division



ref No.10336/94, Dated 06.05.1996. The said charge sheet under Rule 17(b) had since been dropped in District Forest Officer, Tiruvannamalai, Proc. No.10336/94 E2 dated 07-10-10. The above punishment of reduction of his pay to Bottom scale of the S.G. Forester post for 10 years without cumulative effect was not imposed due to stay orders issued by the TamilNadu Administrative Tribunal, Chennai in O.A. No.6374/98, dated 16-09-98 and annual increments ever since 1997 were sanctioned.

2) In this context, the Forester, in his requisition dated 25-08-2012 had furnished a copy of the judgment of the Hon'ble High Court, Chennai in W.P. No.34568/2006 in OA No.6374/98 dated 30-09-2009, wherein the case was dismissed by the Hon'ble High Court and requested to impose the punishment so as to clear the hurdle for his promotion as Forest Range Officer. Therein the Forester had given his consent for recovery of excess pay due imposition of the punishments, from his salary and pensionary benefits including his gratuity.

3) As much as the case had been dismissed by the Court and in view of the Forester's retirement from service on superannuation on 31-5-2013, the punishment bid along with subsequent punishments ordered in (a) Divisional Forest Officer, Tiruvannamalai, Proc. No.5786/97E2 dated 23-2-01 and (b) District Forest Officer, Urban Forestry Division, Chennai, Proc. No.B/931/09 dated 18-7-2009 were imposed in this office Proc No.E/820/2012 dated 25-8-2012. As per the orders dated 25-8-2012, the punishments were given effect to till 14-9-2011. Normally the punishments would have been ended on 30-06-2010, but due to various leaves availed by the forests the period of punishment extended till 14-09-2011. Thus the Forester is free from punishments and charge sheets with effect from 15-09-2011.

4) Further, I submit that due to implementation of the punishments, after dismissal of the case by the Court, the excess pay amounting to Rs.499937 was ordered to be recovered from his salary and Gratuity (Rs.89937 from his pay from Sep 2012 to May 2013 and the balance Rs.410000 from his Gratuity). Copy of this Office Proc. No.E/820/2012 dated 25-8-2012 is submitted herewith for favour of kind perusal.

5) In this context, I submit that the Forester had already completed Ranger training in the Forest Forest Academy, Coimbatore from 24.11.2008 to 06.05.2009 as per directions of the Court. Further he had been awarded the following merit certificates.

(i) District Forest Officer, Vellore dated 04.05.1992. Certificate for valuable and meritorious service rendered to combat Sandalwood smuggling.

(ii) The Collector, North Arcot District, Vellore dated 15.08.1992. Certificate of merit in recognition of Good work during 1991-92.

(iii) Lions Club, Kancheepuram dated 13.09.1992. Certificate of merit in recognition of exemplary services during 1991-92 in the course of protection of Sandal wealth of the State.

(iv) Principal Chief Conservator of Forests, Chennai dated 11.11.1992. Certificate of merit in recognition of good work during 1991-92 in the cause of Forestry in the State.



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6) Hence, in the light of the facts adduced above, I submit that the reguision of the Forester may kindly be considered for promotion as Forest Range Officer.

Encl. as above.

Yours faithfully,
sd/-
District Forest Officer.

Copy submitted to the Conservator of Forests, Chennai Circle, Chennai for favour of kind action.

Advance copy submitted the Principal Chief Conservator Forest, Chennai for favour of kind action.

10. In the above proceedings, the 2nd respondent has also stated that the petitioner had already completed Ranger training in the Forest Academy, Coimbatore from 24.11.2008 to 06.05.2009 as per directions of the Court. The order of punishment was imposed as early as on 11.06.1998 and due to pendency of punishment of litigations, the punishment was not given effect to until the year 2012. The 2nd respondent in his Proceedings No.E/820/2012 dated 25.08.2012 issued orders implementing the punishment by recovering the excess payment of Rs.4,99,937/- @ Rs.10,000/- from September 2012 to April 2013 and Rs.9,937/- in May 2013 total Rs.89,937/- from his Salary and the balance Rs.4,10,000/- to be recovered in his retirement benefits. Subsequent to the above proceedings only, the 2nd respondent has issued letter dated 31.08.2012 stating that the punishments were given effect till 14.09.2011 and the punishment would have been ended on 30.06.2010, but due to various leaves availed by the petitioner, the period of punishment ended till 14.11.2011. Thus, the Forester (petitioner) is free from



punishments and charge sheets with effect from 15.09.2011. In view of the above proceedings of the 2nd respondent, it is crystal clear evident that as on the crucial date for panel for promotion to the post of Forest Ranger of the year 2012-2013, there is no punishment and charge whatsoever pending against the petitioner.

11. The contention of the petitioner is that then there was no punishment against the petitioner in the year 2008-2009 and hence his name should have been included in the said panel for promotion to the post of Forest Ranger for the year 2008-2009 and entitled for consequential promotion with all benefits. The punishment was given effect from 1998 to 2011 against the petitioner and the salary was disbursed to him all these years and the Department has chosen to recover the excess amount from the salary and gratuity of the petitioner. The petitioner has attained his age of superannuation on 31.05.2013 and the recovery of excess amount is not a punishment and hence it cannot be an impediment for empanelment and promotion. In the proceedings of the 2nd respondent dated 31.08.2012, it is clearly stated that the petitioner is free from all punishments and charges with effect from 15.09.2011 and the crucial date for empanelment for promotion of Forest Ranger in the panel for the year 2012-2013 is 15.08.2012 and as per the above letter, there is no punishment or charge sheet pending against the petitioner.



12. The contention of the respondent that the Writ Petition No.34568 of 2006 filed by the petitioner was dismissed only on 30.09.2009 and the petitioner has given his consent only during the year 2012 for recovery of excess pay due to imposition of punishment and salary and consequential benefits including his gratuity is unsustainable one. For the reason, there is no need for the respondents to wait for the consent from the petitioner since this is only a recovery of excess amount of pay paid by the petitioner inadvertently / mistakenly and negligently by the respondents. As on the crucial date i.e., 15.08.2012 and also as per the date of panel for the year 2012-2013 i.e., 19.10.2012, the petitioner is entitled for promotion on par of his immediate junior.

13. In view of above factual matrix of the case, this Court is of the considered view that the proceedings of the 1st respondent vide No.B2/29036/2012 dated 19.10.2012 insofar as the declaration of the petitioner as 'not selected' for inclusion of his name in the panel issued therein for promotion to the post of Forest Range Officers for the year 2012-2013 is liable to be quashed and the same is hereby quashed.

14. In the result, the Writ Petition stands allowed and the respondents are hereby directed to include the name of the petitioner in the appropriate place in the



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above mentioned panel and consequently promote the petitioner as Forest Ranger Officer with retrospective effect from the date of promotion of his immediate junior with all consequential benefits within a period of **8 weeks** from the date of receipt of a copy of this order. No costs.

13.03.2024

mjs

J. SATHYA NARAYANA PRASAD.J.,

mjs

To

1. The Principal Chief Conservator of Forest and Head of Forest Department, Panagal Buildings, Saidapet, Chennai-600 015.
2. The District Forest Officer, Urban Forestry Division, DMS Complex, Teynampet, Chennai-600 006.
3. The Public Prosecutor, High Court, Madras.

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