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W.P.No.33252 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.33252 of 2012

T. Sivakumar

Assistant Conservator of Forests / Regional Manager
Tamil Nadu Forest Plantation Corporation,
Villupuram Region, Villupuram.

... Petitioner

vs.

1. The State of Tamil Nadu represented by
The Secretary to Government,
Environment and Forest Department,
Secretariat, Chennai-600 009.

2. The Principal Chief Conservator of Forests,
Panagal Buildings, Saidapet, Chennai-600 015.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent herein in (i) G.O. Ms. No.131, Environment and Forest (FRI) Department dated 30.09.2009, (ii) Letter No.5063/FR1/2012-2, Environment & Forest Department dated 17.04.2012 and (iii) Government Lr. No.23953/FR.1/2011-2 dated 22.12.2011 and quash the order dated 30.09.2009 to the limited extent of



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non inclusion of the petitioner's name in the panel for 2008-09 and the rejection orders dated 22.12.2011 and 17.04.2012 in so far as it relates to the petitioner and to consequently direct the respondents herein to include the name of the petitioner in the appropriate place in the approved panel for promotion by recruitment by transfer to the post of Assistant Conservator of Forests for the year 2008-09 and to regularise his promotion with effect from 21.10.2009 and to grant him all consequential service and monetary benefits.

For Petitioner : Mr. I. Kabilan

For Respondents : Mr. C. Selvaraj
Additional Government Pleader.

ORDER

This petition has been filed seeking to issue Writ in the nature of Certiorarified Mandamus calling for the records on the file of the 1st respondent herein in (i) G.O. Ms. No.131, Environment and Forest (FRI) Department dated 30.09.2009, (ii) Letter No.5063/FR1/2012-2, Environment & Forest Department dated 17.04.2012 and (iii) Government Lr. No.23953/FR.1/2011-2 dated 22.12.2011 and quash the order dated 30.09.2009 and the rejection orders dated 22.12.2011 and 17.04.2012 in so far as it relates to the petitioner and to consequently direct the respondents



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herein to include the name of the petitioner in the appropriate place in the approved panel for promotion by recruitment by transfer to the post of Assistant Conservator of Forests for the year 2008-09 and to regularise his promotion with effect from 21.10.2009 and to grant him all consequential service and monetary benefits.

2. According to the petitioner, he was initially appointed as a Forest Officer on 01.07.1981 and later promoted as Forest Range Officer during the year 1989. The Department Promotion Committee in the meeting held on 21.09.2008 submitted a list of 44 candidates fit for promotion as Assistant Conservator of Forests, wherein the name of the petitioner as well as the names of R. Jayaraj and S. Basheer Ahamed, Rangers were omitted on the ground that they have passed the Department Test of Forest Revenue after crucial date for inclusion of names in the panel for the year 2008-09 i.e., after 15.08.2007. In G.O. Ms. No.131 Environment and Forest Department dated 30.09.2009 wherein orders were issued approving the regular panel of Rangers fit for promotion as Assistant Conservator of Forests for the year 2008-09 included only 43 persons as per the recommendations of the Department Promotion Committee (DPC).



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However, the approved vacancy for the post of Assistant Conservator of Forests was fixed as 50 for the year 2008-09. As there were still 7 vacancies left over to be filled up after approval of the regular panel, the Principal Chief Conservator of Forests has submitted recommendations to the Government to consider the names of the petitioner and other two Rangers as they have qualified by passing the prescribed Department Test, though after crucial date, for inclusion in the panel i.e., on 15.08.2007, but prior to the issuance of the panel, recommended for relaxing the Rule 4(3) of the special rules of the Tamil Nadu Forest Service in favour of the petitioner and to relax the appropriate rules in the case of other two Rangers. The Government in consideration of the said proposals, decided to re-examine the case of the petitioner and other two Rangers, who have passed the Department Test and were qualified well prior to the date of issue of the approved panel. The Government by G.O.(2D) No.50 Environment and Forest (FR-1) Department dated 14.10.2009, temporarily promoted the petitioner, R. Jayaraj and S. Basheer Ahamed, Rangers be temporarily promoted as Assistant Conservator of Forests under Rule 39(a)(i) of General Rules for Tamil Nadu State and Subordinate Services. In pursuance of the above said order and the consequential proceedings of



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the 2nd respondent herein in Lr. No.AA/250/09 dated 15.10.2009, orders were issued by the Government in G.O.(D) No.314, Environment and Forests (FR-1) Department dated 19.10.2009 promoting the petitioner and 2 other Rangers temporarily as Assistant Conservator of Forests under Rule 39(a)(i) of General Rules for Tamil Nadu State and Subordinate Services. The petitioner was promoted as Assistant Conservator of Forests and deputed to Tamil Nadu Watershed Development Agency as Planting Technologist in District Watershed Development Agency at Dharmapuri in the existing vacancy.

3. The learned counsel appearing for the petitioner would submit that the petitioner was under the bonafide impression and belief that his promotion as such will be regularised in the post of Assistant Conservator of Forests with effect from the date of promotion itself i.e., 19.10.2009 and the required minimum prescribed period in the post of Assistant Conservator of Forests so as to enable an officer to be qualified for appointment to the Indian Forest Service i.e, 8 years of service will be considered with effect from the date of his promotion and thereby he become eligible for consideration for appointment in Indian Forest Service



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(IFS). There was an approved vacancy in the post of Assistant Conservator of Forests and the Government thought it fit to accept the recommendations of the Principal Chief Conservator of Forests and also to appoint him in the post of Assistant Conservator of Forests, such appointment ought to have been regularised. On the other hand, the Government later chooses to include the petitioner in the panel for promotion to the post of Assistant Conservator of Forests for the year 2011-2012 at Sl. No.6 vide G.O. Ms. No.104, Environment and Forests (FR-1) Department dated 07.09.2011.

4. The learned counsel would further submit that the earlier panel for recruitment by transfer for the post of Assistant Conservator of Forests for the year 2008-09, as well as in the panel for recruitment by transfer to the post of Assistant Conservator of Forests for the year 2011-12, the Government invoked Rule 48 of the Tamil Nadu State and Subordinate Services, to relax the Special Rules in so far as several candidates so as to empanel them in the respective panel. While the Government have chosen to relax the rule in so far as several candidates are concerned, so as to enable them to be empanelled for recruitment by transfer to the post of



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Assistant Conservator of Forests, in the case of the petitioner herein, even while the Head of the Department himself has recommended for such relaxation of rule and the Government had committed that in pursuance of such recommendations, had also chosen to issue orders of promotion to the petitioner with effect from 2009 itself and also while the Government chose to relax the special rule in so far as Basheer Ahamed is concerned, the Government cannot take a hyper technical stand only in so far as the petitioner herein is concerned and state that though he has been promoted with effect from 2009, he could be empaneled only in the panel for the year 2011-12 and his actual services rendered in the post of Assistant Conservator of Forests after becoming fully qualified prior to such promotion for the entire period with effect from 2009 till the issuance of the regular panel, cannot be taken into consideration at all and would be wiped away cannot stand the scrutiny of law and unsustainable in law.

5. The learned counsel would further submit that the petitioner made representation to the Government to regularise his services in the post of Assistant Conservator of Forests with effect from 2009 itself and issue appropriate orders including his name in the 2008-09 panel and the said



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representation was rejected by the Government in and by Government Letter No.5063/FR.1/2012-2, Environment & Forest (FR1) Department, dated 17.04.2012 on the sole ground that as on the crucial date for the panel of Assistant Conservator of Forests for the year 2008-09, that is on 15.08.2007, the petitioner has not passed the Department Test as prescribed in Rule 4(2) of the Tamil Nadu Forest Service to the post of Assistant Conservator of Forests and hence his claim is not feasible of compliance. Aggrieved by the said order, the petitioner has come forward with the present Writ petition.

6. The learned counsel would further submit that the petitioner has passed the test prior to the date of issuance of the panel and well prior to the date of his promotion as such and there was absolutely no disqualification on the part of the petitioner herein as on the date of his promotion, the Government who decided to extract the services of the petitioner in the post of Assistant Conservator of Forests right from the year 2009, has decided to wipe away his entire services in the post of Assistant Conservator of Forests, which would result in depriving his right to be considered for promotion to Indian Forest Service for want of



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putting a minimum required service for such consideration by resorting to hyper technical stand.

7. The learned counsel would further submit that the Government also ought to have taken into consideration that in accordance with Rule 39(f)(i) the person shall commence his probation right from the date of his temporary promotion or from such subsequent date as the appointing authority may determine, provided that on the date so determined, the person possesses all the qualifications prescribed for promotion to the service or class or category as the case may be. As the petitioner was fully qualified on the date of his temporary promotion itself, he ought to have been placed under probation with effect from the date of his temporary promotion itself and in such a case, he ought to have been declared as having completed the period of probation in September 2011 itself and even under such circumstances, his services should have been regularised with effect from the date of his temporary promotion i.e., on 21.10.2009.

8. A counter affidavit was also filed by the respondents stating that vide G.O.(2D) No.50, Environment and Forests (FR.1) Department dated



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14.10.2009, the petitioner was temporarily appointed as Assistant Conservator of Forests under Rule 39 (a)(i) of General Rules for the Tamil Nadu State and Subordinate Services. The Departmental Promotion Committee had selected 43 Forest Range Officer for promotion as Assistant Conservator of Forests by recruitment by transfer for the year 2008-09. At that time, the petitioner was not qualified. Later, the overlooked Forest Range Officers have made representation for including their names in the panel for the year 2008-09. Their representations have been examined by the 1st respondent in consultation with line department and promoted them temporarily as Assistant Conservator of Forests under Rule 39(a)(i) of General Rules for Tamil Nadu State and Subordinate Services. All the vacancies approved for 2008-09 were fully utilized. However, his name was included in the subsequent regular panel and promoted as Assistant Conservator of Forests on regular basis.

9. The learned counsel for the respondents would further submit that the post of Assistant Conservator of Forests has been governed by special rules. According to Rule 19(a) of Part II – General Rule for Tamil Nadu State and Subordinate Services, no person shall be eligible for appointment



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to any service, class, category or grade or any post borne on the cadre thereof unless he possesses such special qualifications and has passed such special tests as may be prescribed in that behalf in the Special Rules. According to Rule 4(2) of Special Rules for the Tamil Nadu Forest Service, no person shall be eligible for appointment by recruitment by transfer as Assistant Conservator of Forests unless he has passed the Account Test for Executive Officers and Departmental Test in Forest Revenue and has completed 8 years of service as Ranger. In this case, the petitioner had not passed the departmental tests i.e., Forest Revenue on the crucial date of the panel. Therefore, he was not qualified for the post of Assistant Conservator of Forests on the crucial date i.e., on 15.08.2007 in the panel for the year 2008-09. However, his name has been included in the next regular panel consequent on passing the departmental test in September 2008 and he was promoted as Assistant Conservator of Forests and joined in that post on 26.11.2011. Hence the petitioner is not qualified for inclusion in the panel for the year 2008-09 and the Writ petition has no merit and is liable to be dismissed.

10. Heard both sides' and perused all the materials available on record.



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11. In the case on hand, the petitioner was omitted in the list of 44 candidates fit for promotion as Assistant Conservator of Forests since on the crucial date i.e., 15.08.2007, the petitioner has not passed the Department Test and has passed the test only after the crucial date. In G.O. Ms. No.131 Environment and Forest Department dated 30.09.2009 wherein orders were issued approving the regular panel of Rangers fit for promotion as Assistant Conservator of Forests for the year 2008-09 included only 43 persons as per the recommendations of the Department Promotion Committee. However, the approved vacancy for the post of Assistant Conservator of Forests was fixed as 50 for the year 2008-09 and there were 7 vacancies. The Principal Chief Conservator of Forests, the 2nd respondent herein, has submitted recommendations to the Government to consider the names of the petitioner and other two Rangers, as they qualified by passing the prescribed Department Test, though after crucial date for inclusion in the panel, but prior to the issuance of the panel, recommended for relaxing the rule 4(3) of special rules of the Tamil Nadu Forest Service and accordingly the Government by G.O.(2D) No.50 Environment and Forest (FR-1) Department, datd 14.10.2009, temporarily promoted the petitioner and two other similarly placed persons namely



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R. Jayaraj and S. Basheer Ahamed as Assistant Conservator of Forests under Rule 39(a)(i) of General Rules for Tamil Nadu State and Subordinate Services.

12. In pursuant to the above said order, the petitioner was promoted as Assistant Conservator of Forests, but he was deputed to Tamil Nadu Watershed Development Agency as Planting Technologist in District Watershed Development Agency at Dharmapuri in the existing vacancy. However, the petitioner's name was included in the panel in the year 2011-12 vide G.O.Ms. No.104, Environment and Forests (FR1) Department, dated 07.09.2011.

13. The Government has invoked Rule 48 of the Tamil Nadu State and Subordinate Services to relax the Special rules in so far as several candidates so as to empanel them in the respective panel for recruitment by transfer to the post of Assistant Conservator of Forests and in the case of the petitioner herein, even while the Head of the department has recommended for such relaxation of the rule and the Government had chosen to issue orders of promotion to the petitioner with effect from 2009 itself.



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14. It is pertinent to note that the petitioner has passed the Department Test for Forests Revenue after the crucial date i.e., 15.08.2007 but the prior to the date of issuance of panel for promotion to the post of Assistant Conservator of Forests. The petitioner was promoted temporarily as Assistant Conservator of Forests under Rule 39(a)(i) of General Rules for the Tamil Nadu State and Subordinate Services vide G.O.(2D) No.50 Environment and Forest (FR-1) Department dated 14.10.2009.

15. The contention of the respondents is that according to Rule 4(2) of Special Rules for the Tamil Nadu Forest service, no person shall be eligible for appointment by recruitment by transfer as Assistant Conservator of Forests unless he has passed the Accounts Test for Executive Officers and Departmental Test in Forest Revenue and has completed 8 years of service as Ranger and the petitioner has not passed the Department Test on Forest Revenue on the crucial date of panel. Therefore, he was not qualified for the post of Assistant Conservator of Forests on the crucial date i.e., 15.08.2007 in the panel for the year 2007-08 and another contention is that according to Rule 19(a) of Part II –



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General Rule for Tamil Nadu State and Subordinate Service Rules, no person shall be eligible for appointment to any service, class, category or grade or any post borne on the cadre thereof unless he possesses such special qualifications and has passed such special tests as may be prescribed in that behalf in the Special Rules and as per rule 4(2) of the Special Rules for the Tamil Nadu Forest Service, a person eligible for appointment by recruitment by transfer as Assistant Conservator of Forests should have passed an Account Test for Executive Officers and Department Test in Forest Revenue and in this case, the petitioner did not pass the said test on the crucial date of panel i.e., 15.08.2007. Therefore, his name was not included in the panel for the year 2008-09.

16. The petitioner, though, has not passed the Department Test for appointment of Assistant Conservator of Forests on the crucial date i.e., on 15.08.2007, he has passed the same prior to the issuance of the regular panel and the Principal Chief Conservator of Forests, the 2nd respondent herein, has also recommended to the Government to relax the rules and accordingly, the petitioner and two other similarly placed persons were temporarily promoted as Assistant Conservator



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of Forests vide G.O.(D) No.314, Environment and Forests (FR-1) Department dated 19.10.2009 under Rule 39(a)(i) of General Rules for Tamil Nadu State and Subordinate Services. Since the Government relaxed the rules and appointed the petitioner temporarily as Assistant Conservator of Forests, now, it cannot be taken as stand that the petitioner has qualified the Department Test only after the crucial date i.e., on 15.08.2007 and hence he cannot be included in the panel as Assistant Conservator of Forests for the year 2008-09 and the same is unsustainable.

17. It is also pertinent to note that the petitioner has qualified the said Department Test prior to the issuance of the regular panel. Hence there is no impediment for the Government to include the petitioner's name in the panel for the year 2008-09.

18. In view of the above factual matrix of the case, this Court is of the considered view that the order passed by the Government vide G.O. Ms. No.131, Environment and Forest (FRI) Department dated 30.09.2009 is liable to be quashed and is hereby quashed to the limited



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extent of non inclusion of the petitioner's name in the panel for 2008-09 and the rejection orders dated 22.12.2011 and 17.04.2012 in so far as it relates to the petitioner herein.

19. IN THE RESULT, this Writ petition is allowed and the respondents are hereby directed to include the name of the petitioner in the appropriate place in the approved panel for promotion by recruitment by transfer to the post of Assistant Conservator of Forests in the year 2008-09 and to regularise his promotion with effect from 21.10.2009 and to grant all consequential service and monetary benefits within a period of 8 (eight) weeks from the date of receipt of copy of this order. There shall be no order as to costs.

29.02.2024

mjs

Internet : Yes

Index:Yes/No

Neutral Citation:Yes/No

To

1. The State of Tamil Nadu represented by
The Secretary to Government,
Environment and Forest Department,
Secretariat, Chennai-600 009.

2. The Principal Chief Conservator of Forests,
Panagal Buildings, Saidapet, Chennai-600 015.



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MR. J. SATHYA NARAYANA PRASAD, J.,

(mjs)

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