



W.P.No.15129 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.15129 of 2024

and

W.M.P.Nos.16440 & 16443 of 2024

- 1.Vigneshwaran,
Assistant,
O/o. Chief Conservator of Forests,
Tiruchirappalli Circle.
 - 2.Dhinesh,
Assistant,
O/o. Chief Conservator of Forests,
Tiruchirappalli Circle.
 - 3.Mirun Gandhi,
Assistant,
O/o. Chief Conservator of Forests & Field Director,
Anamalai Tiger Reserve,
Coimbatore.
- .. Petitioners

Vs.

- 1.The Government of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Environment and Forest Department,
Secretariat, Chennai – 600 009.
- 2.The Principal Chief Conservator of Forests,
Head of Forest Force (HoFF),
Forest Head Quarters,



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Guindy – Velacherry Main Road,
Chennai – 600 032.

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3.M.Sivakumar,
Forester,
District Forest Office,
Thiruvallur Forest Division,
Thiruvallur.

4.S.Ragupathi,
Forester,
Deputy Director Office,
Mudhumalai Tiger Reserve,
Udhagamandalam.

5.G.Ramachandran,
Forester,
District Forest Office,
Ariyalur Forest Division,
Ariyalur.

6.L.Subash,
Forester,
District Forest Office,
Kodaikanal Forest Division,
Kodaikanal.

7.P.Mathi,
Forester,
District Forest Office,
Ariyalur Forest Division,
Ariyalur.

8.M.Thangapandi,
Forester,
District Forest Office,
Madurai Forest Division,
Madurai.



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9.S.Srikanth,
Forester,
District Forest Office,
Namakkal Forest Division,
Namakkal.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Selection / Appointment List prepared for selection / appointment of respondents 3 to 9 to the post of Forester by Recruitment By Transfer issued by the 2nd respondent through his proceedings in Proc.No.AB1/34382/2023-1 dated 12.02.2024 and to quash the same and consequently direct the 2nd respondent to prepare and issue a fresh Selection / Appointment List for the post of Forester in accordance with law and rules by including the names of the petitioners for appointment to the post of Forester.

For petitioners : Mr.J.Jayamalan

For RR 1 & 2 : Mr.C.Selvaraj
Special Government Pleader

For RR 3 to 9 : No appearance

ORDER

This writ petition has been filed challenging the impugned selection / appointment list prepared by the 2nd respondent for selection /



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appointment to the post of Forester by recruitment by transfer through proceedings dated 12.02.2024 and for a consequential direction to the 2nd respondent to prepare and issue a fresh selection / appointment list for the post of Forester by considering the name of the petitioners.

2.The case of the petitioners is that they were appointed to the post of Assistant through a selection conducted by TNPSC and the petitioners wrote Group-II examination in the year 2017. The first petitioner joined the post of Assistant on 13.12.2018 and the petitioners 2 & 3 joined on 26.11.2018 and 28.11.2018 respectively. The respondents 3 to 9 were appointed either as Junior Assistant or Typist during the years 2016 – 2017. Thereafter, they were appointed to the post of Assistant during the years 2021 – 2023. The further case of the petitioners is that even as per the seniority list, the petitioners are ranked in seniority Nos.159, 160 & 163 and whereas, the private respondents are far down in the seniority list.

3.The 2nd respondent took steps to fill up the post of Forester in the Forest Department from among the members of Tamil Nadu Ministerial



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Service in the Forest Department. Accordingly, a list was drawn and it was published. The names of the petitioners were not even included in the list and whereas the names of 11 others were considered and out of the same, 9 persons were selected.

4.The petitioners aggrieved by the fact that their names were not considered for promotion to the post of Forester, have filed the present writ petition questioning the impugned proceedings of the 2nd respondent dated 12.02.2024.

5.The 2nd respondent has filed counter affidavit. The 2nd respondent has taken a stand that the mandate for fixation of the seniority provided under Section 40(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (hereinafter referred to as the '2016 Act') was strictly followed. It is stated that the seniority for consideration to the post of Forester involved more than one feeder category among the members of the Ministerial service and therefore, the 2nd respondent had taken into consideration the date of joining into service in the Ministerial service. While undertaking that exercise, it was found that the 11 persons



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whose names were included in the list had joined the Ministerial service much before the petitioners. Therefore, the names of the petitioners were not included in the list. Accordingly, the 2nd respondent has justified the impugned proceedings dated 12.02.2024 and has sought for dismissal of the writ petition.

6.Heard the learned counsel for the petitioners and the learned Special Government Pleader for respondents 1 & 2. The respondents 3 to 9 have been served and their names have also been printed in the cause list and there is no representation either in person or through counsel.

7.The Tamil Nadu Forest Subordinate Service Rules governs the appointment and promotion of various classes and categories of officers in the Forest Department. In so far as the members of the Tamil Nadu Ministerial service in the Forest Department are concerned, it has four categories. The senior most in that category is the Superintendent, the second in line are the Assistant, the third category below them are the Junior Assistant and the last in that category are the Typists. Therefore, as among the members of the Tamil Nadu Ministerial service in the



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Forest Department, there are different categories as explained herein above.

8.Under the Tamil Nadu Forest Subordinate Service Rules, the post of Forester has to be filled up by way of promotion. One such mode of promotion is by way of recruitment by transfer from the members of the Tamil Nadu Ministerial service in the Forest Department.

9.The 2nd respondent has taken into consideration Section 40(2) of the Act 2016 and has come to the conclusion that there are four feeder categories among the members of the Tamil Nadu Ministerial service who can be considered for the promotion to the post of Forester and therefore, the 2nd respondent proceeded to consider the date of joining in the Ministerial service as the criteria for preparing the list and for finalizing the promotion to the post of Forester. In view of the same, since the respondents 3 to 9 had joined in the Ministerial service during the years 2016 – 2017 and the petitioners had joined the service only in the year 2018, the names of the petitioners were not added in the list and the private respondents who had joined earlier were considered and



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promoted to the post of Forester through recruitment by transfer.

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10. There is a fundamental flaw in the procedure that was followed by the 2nd respondent. Section 41 of the 2016 Act specifically deals with promotion. It will be relevant to extract the second proviso to Sub Section (1) to Section 41 of the 2016 Act hereunder:

“41.Promotion

(1)

Provided further that if the scale of pay or pay band of posts in the feeder categories are different, the persons holding post carrying a higher scale of pay or pay band in the feeder category shall be considered first and that, if no qualified and suitable persons holding post in that feeder category are available, the persons holding post carrying the next higher scale of pay or pay band in descending order in other feeder categories shall be considered.”

11. It is quite clear from the above proviso that if the posts in the feeder categories are different and for different levels of pay in the pay matrix, the persons holding the post carrying a higher scale of pay or pay



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band in the feeder category should be considered first and if there is no one available, suitable persons holding the post in the next category must be considered and this process must go on in the descending order.

12.As stated above, there is no dispute that the selection was to the post of Forester. It is by way of promotion and such promotion happens through recruitment by transfer from the members of the Tamil Nadu Ministerial service. This Court has already taken note of the fact that there are different feeder categories which have different levels of pay in the pay matrix. Therefore, as per the second proviso to Sub Section (1) of Section 41, the 2nd respondent must first consider those eligible candidates in the post of Superintendent. If no one is available, the 2nd respondent should consider the eligible candidates in the post of Assistant. If even there, sufficient candidates are not available, the 2nd respondent must thereafter go to the post of Junior Assistant and finally consider the post of Typist. As per the above proviso, this has to be done in the descending order by considering the higher scale of pay or pay band of the various posts.



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13.As among those persons falling under the same category of Superintendents, Assistants, etc., interse seniority will be determined based on the date of joining in the Ministerial service.

14.The 2nd respondent has proceeded to consider the candidates falling under the post of Junior Assistant, Typist and has completely disregarded the persons who were holding a higher position. The petitioners were holding the position of Assistants and they are much higher in the seniority list. Admittedly, they are drawing a higher scale of pay. The 2nd respondent had only taken note of the date of joining / joining in the Ministerial service and has prepared the list for promotion to the post of Forester. The same is unsustainable and it is in violation of the above proviso warranting the interference of this Court.

15.In the light of the above discussions, the proceedings of the 2nd respondent in Proc.No.AB1/34382/2023-1 dated 12.02.2024 is hereby quashed. There shall be a direction to the 2nd respondent to prepare and issue a fresh selection / appointment list for the post of Forester in accordance with the 2016 Act and Rules thereunder by considering the



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names of the petitioners for appointment to the post of Forester. This process shall be completed by the 2nd respondent within a period of three (3) months from the date of receipt of a copy of this order.

16.In the result, this Writ Petition is allowed with the above directions. Consequently, the connected Miscellaneous Petitions are closed. No costs.

06.08.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The Secretary,
The Government of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Environment and Forest Department,
Secretariat, Chennai – 600 009.

2.The Principal Chief Conservator of Forests,
Head of Forest Force (HoFF),
Forest Head Quarters,
Guindy – Velacherry Main Road,
Chennai – 600 032.



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N.ANAND VENKATESH, J.

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