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W.P.No.26005 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.26005 of 2022

R.Muthu

.. **Petitioner**

Vs.

1.The State of Tamil Nadu
Rep.by its Secretary to Government
Environment and Forest Department
Fort St.George
Chennai.

2.The Principal Chief Conservator of Forest
Panagal Building
Saidapet, Chennai – 15.

.. **Respondents**

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in Ref.No.LL2/30057/2019 dated 08.07.2021 and quash the same with consequential direction to the respondents to fix the petitioner's seniority on par with his junior with effect from 24.01.1995 and also to fix the pay with all consequential benefits within time frame.



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For the Petitioner : Ms.K.Jenitha
For the Respondents : Dr.T.Sreenivasan
Special Government Pleader

ORDER

This Writ Petition is filed challenging the impugned order dated 08.07.2021 and consequently fix the seniority of the petitioner on par with his junior, with effect from 24.01.1995 and also fix the pay with all consequential benefits within a time frame.

2. The facts which are relevant to the disposal of the present Writ Petition is that the petitioner was engaged as a Plot Watcher on daily wage basis with effect from 01.11.1981. Finally, the petitioner was absorbed in the post of Forest Watcher with effect from 21.08.2017 and accordingly, the petitioner was fit into the regular scale of pay only with effect from the said date and his services were treated as regular only from that date.

3. The grievance of the petitioner is that in respect of the similarly



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situated persons, they have been fit into the regular scale of pay with effect from their initial date of appointment. However, when the petitioner prayed for the same, the same was not considered. Therefore, the petitioner approached this Court by way of W.P.No.16484 of 2019 and this Court by an order dated 30.09.2019 directed the respondents therein to consider the limited relief by taking into account the earlier orders passed by this Court and pass orders thereon within a period of twelve weeks from the date of receipt of that order. Pursuant thereto, the impugned order was passed, rejecting the claim of the petitioner and hence the present Writ Petition.

4. The Writ Petition was resisted by filing a detailed counter affidavit by the respondents. The case of the respondents is that the petitioner cannot seek seniority or scale of pay on par with other juniors, because he did not possess the minimum general educational qualification required to be appointed in the Government Services. Therefore, the petitioner cannot claim parity with other juniors, that is those who are appointed on 24.01.1995.



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5. Heard, *Ms.K.Jenitha*, the learned counsel appearing on behalf of the petitioner; *Dr.T.Sreenivasan*, the learned Special Government Pleader appearing on behalf of the respondents.

6. The learned counsel appearing on behalf of the petitioner would draw attention of this Court to the impugned order to point out that the only ground which is mentioned in the impugned order is that the petitioner did not possess the 10th standard, which is the minimum general educational qualification. However, she would submit that similarly placed daily wage employees who were subsequently fit into the scale of pay / appointed were given the benefit from their initial date of appointment. In that many of them also did not possess the minimum general educational qualification of 10th standard.

7. She would further draw the attention of this Court to the order dated 14.05.2018, in which total number of 40 persons were regularised in service from the date of appointment of their juniors. In several cases, who were granted the benefit of Forest Watcher with effect from 24.01.1995, in



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spite of the fact that they possess the educational qualification such as 5th or 6th standard etc. Similarly, she would point out another order dated 27.09.2018 in which also, the said benefit was extended in respect of about 166 persons, the majority of whom did not have the minimum general educational qualification of 10th standard.

8. The learned counsel for the petitioner further placed her arguments by pointing out the G.O.(Ms) No.1, Environment and Forests (FR.2-II) Department, dated 01.01.2021, whereunder the Government had considered the issue once again in detail. In the said G.O., the Government finally noted that by virtue of G.O. (Ms). No.64, Environment and Forests (FR.2) Department, dated 08.03.1999, relaxation of possession of minimum general educational qualification was granted with effect from 08.03.1999 and therefore ordered regularisation from the said date. However, the petitioner in the instant case were not granted the said benefit also.

9. Per contra, *Dr T.Sreenivasan*, learned Special Government Pleader would submit that as far as the earlier orders which are pointed out is



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concerned, there were positive directions from this Court to grant them regularisation with reference to the particular date and accordingly, the orders were complied. In the case of the petitioner, his case was directed to be considered in accordance with law. Therefore, when the case of the petitioner was being considered as per law, the present Writ Petition is filed.

10. I have considered the rival submissions made on either side and perused the material records of the case. Paragraph Nos.5, 6 and 7 of the impugned order is extracted hereunder:-

“5) In the instance case, the individual who possess educational qualification as 9th fail could not be regularized by G.O.(Ms) No.332, Environment and Forests (FR-VI) Department, Dated 22.12.1994 has no ground for claiming seniority as owing to his non-possession of SSLC he was regularized later vide G.O(Ms) No.64, Environment and Forests (FR.2) Department, Dated 08.03.1999 only.

6) The Plot Watchers / Village social Forestry Workers were regularized in these years as Policy decision of the Government. The individual having regularized by virtue of subsequent Government Order relaxing Educational qualification is now claiming seniority over those who were already regularized by virtue of possessing Minimum General Educational Qualification and were regularized long back by virtue of possession of SSLC.

7) This claim having sought seniority on par with those were appointed during 1995 is not sustainable and is liable to be rejected. The individual has been appointed as Forest Watcher only on 21.08.2017 claiming seniority is



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liable to be rejected as those persons were regularized on Government order on that time where educational qualification was prescribed as SSLC. Hence, claiming seniority and regularization benefits on par with those who were regularized prior to them and without any express Government orders. The request of the petitioners cannot be considered and therefore rejected.”

11. On a perusal of the earlier orders, as rightly pointed out by the learned Special Government Pleader, in respect of first two instances, it can be seen that there are positive orders in favour of the said petitioner to regularise his services from the date of initial appointment and therefore, the said order was implemented. As far as the petitioner's case is concerned, this Court directed the respondents to consider the cases in the light of the earlier orders passed. Even considering from the said angle, it can be seen that the post in which the petitioner was appointed is Forest Watcher. He has to go inside the forest and do his duty. Considering the said nature of work and duties to be performed by him, the Government had issued G.O. (Ms). No.64, dated 08.03.1999, relaxing the minimum general educational qualification. By considering the said Government Order, when the matter was considered earlier in respect of the similarly situated persons in G.O.(Ms) No.1 dated 01.01.2021, the candidates were divided into two. The



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persons who had the minimum educational qualification were directed to be regularised from their initial date of appointment. Whereas, in respect of 71 persons, who did not possess the minimum general educational qualification, directions were given to fix their pay notionally from the date of issuance of Government Order, ie., with effect from 08.03.1999. Therefore, there is no reason for the respondents to take a departure from the said Government Order. In the said G.O., 71, persons were given the benefit. Thus, keeping the petitioner alone at bay and not passing any orders granting the said benefit as mentioned in G.O.(MS) No.1 dated 01.01.2021 is discriminatory.

12. Therefore, the petitioner is entitled to succeed and the Writ Petition is disposed of on the following terms:-

(i) The petitioner shall also be extended the same benefit as in G.O.(Ms)No.1 dated 01.01.2021, i.e., regularise the services of the petitioner, who did not possess the minimum educational qualification as Forest Watcher and fix his pay from the date of issuance of the G.O. (Ms). No.64, Environment and Forests (FR.2) Department, dated 08.03.1999, i.e., with effect from 08.03.1999. The consequential benefits, viz., fixation of



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pay, seniority, etc., shall be done in accordance with law. However, the petitioner will be entitled for the arrears only from the date of this Order;

(ii) The said exercise shall be carried on within a period of four weeks from the date of receipt of a copy of this order;

(iii) No costs.

26.06.2024

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Neutral Citation : Yes/No

D.BHARATHA CHAKRAVARTHY, J.

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To

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