



W.P.No.23298 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 23.01.2025

CORAM

**THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER
KUMAR**

W.P.No.23298 of 2011

A.Kandasamy

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep., by its Secretary to Government,
Forest Department,
Fort St. George,
Chennai 600 009.

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

... Respondents



W.P.No.23298 of 2011

WEB COPY

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, directing to call for the records of the second respondent herein in Na.Ka.No.A Aa 1/23858/2010 dated 18.07.2011 and quash the same and direct the respondents to include the name of the petitioner in the appropriate place in the State Wide Seniority list of Forest Guard published on 05.01.1998 in the proceedings of the second respondent No.AB1/42760/97 along with all monetary benefits including back wages and to pass any such further or orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner	: Mr.G.Rajkumar
For Respondent	: Mr.M.S.Premkumar
	Government Advocate

ORDER

The petitioner herein was initially appointed as Field Man Grade I Cinchona Department dated 02.06.1980 and came to be absorbed in the Forest Department by virtue of the orders issued by the Government in G.O.Ms.No.221 Environment & Forest (CIN) Department dated 03.04.1990 whereby the Cinchona Department was abolished. It was thereafter, the petitioner was sent on deputation to Tamil Nadu Tea Plantation Corporation



W.P.No.23298 of 2011

and continued therein along with several others. Under those circumstances, the Association of the Tamil Nadu Cinchona Department staff filed O.A.No.4487 of 1993 before the then Tamil Nadu Administrative Tribunal seeking repatriation of the said staff to the Forest Department. The said OA was allowed by the learned Tribunal by an order dated 18.09.1995. Accordingly, the petitioner herein, along with others, was repatriated to the Forest Department in the year 1996 and by virtue of the post held by the petitioner in Cinchona Department, the petitioner is entitled to be absorbed in the post of Forest Guard in the Forest Department. When the seniority list of the Forest Guards eligible for promotion to the post of Forester and appointed as Forest Guard prior to 31.12.1984 was prepared by the Forest Department, the name of the petitioner was not included in the said list.

2. Under those circumstances, the petitioner, along with others, filed O.A.No.8271 of 1998 before Tamil Nadu Administrative Tribunal. The said O.A was allowed by the learned Tribunal by an order dated 29.11.2001. The operative portion of the said order reads as under :

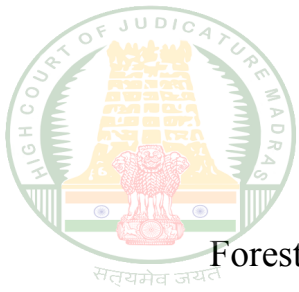


W.P.No.23298 of 2011

WEB COPY

"It is represented that without fixing the inter-se-seniority properly, the Forest Guards have been given promotion ignoring the claims of the petitioners. Now the respondents have to fix the inter-se-seniority of the petitioners by including the names of the petitioners in the seniority list mentioned above. Notional promotion should also be given to the petitioners, after re-fixation of seniority list, if juniors have been given promotion. The notional promotion should be given from the date on which their immediate juniors given promotion. But, however, monetary benefits shall be given from the date when the petitioners assume charge in the promoted post. However, seniority in the promoted cadre shall be reckoned from the date on which notional promotion to be given to the petitioners. Both the petitions are allowed and ordered as above."

In terms of the above order, the petitioner is entitled to be placed in an appropriate place in the inter-se-seniority list of the Forest Guards working in the Forest Department and also for consideration for promotion to the post of



W.P.No.23298 of 2011

Forester on par with his Junior

WEB COPY

3. The grievance of the petitioner in the present writ petition is that the said benefit of promotion was not extended to the petitioner on par with his junior, though, the petitioner was placed at the appropriate place in the seniority list by issuing a proceedings No.AB1/34731/2000 dated 14.01.2003 and the name of the petitioner was included in the panel for the year 2000-2001 for promotion to the post of Forester and accordingly, through proceedings No.AB1/15450/2002 dated 05.05.2006, the petitioner was issued posting orders in the post of Forester with effect from the panel year 2000-2001. Thus, the grievance of the petitioner is that inspite of the specific orders issued by the Tribunal directing for inclusion of his name in the seniority list at the appropriate place and also for award of promotion on par with his Junior, the respondents have not considered his case for promotion on par with his Junior. Under those circumstances, petitioner has submitted a representation dated 12.02.2010 before the 2nd respondent requesting for notional promotion on par with his junior in terms of the order passed by the



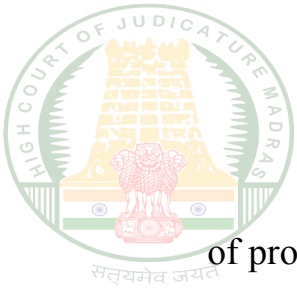
W.P.No.23298 of 2011

learned Administrative Tribunal in O.A.No.8271 of 1998 dated 29.11.2001.

WEB COPY

The said request of the petitioner is negated by the 2nd respondent by passing the order dated 18.07.2011. It is aggrieved by the said order, the petitioner approached this Court by filing the present writ petition.

4.The only reason assigned in the impugned order is that the petitioner cannot be given promotion even before undergoing Forester training and his request stands rejected by the 2nd respondent by issuing impugned proceeding. It is settled law that the qualification of acquiring training while in service is not in the hands of the employee but the same depends upon the employer and the higher officials. Unless and until an employee was deputed for training which is pre-requisite for further promotion, an employee cannot attend such training. When the employer deposes the junior of the petitioner for acquiring such training ahead of the petitioner, the petitioner is deprived of such training, the claim of the petitioner for promotion to the higher post cannot be declined only on the ground that the petitioner has not undergone such training. On that ground, the petitioner cannot be deprived of the benefit



W.P.No.23298 of 2011

of promotion on par with his junior.

WEB COPY

5. In the instant case, it is the same thing that happened. The name of the petitioner was omitted from the seniority list of Forest Guard eligible for promotion and appointment directly on 02.06.1980 and later, in terms of the order passed by the Administrative Tribunal, his name was included. He was deprived of promotion on par with his junior on the ground that the petitioner has not completed the training in the post of Forest Guard. The same issue was considered both by the Hon'ble Apex Court as well as this Court, and it was held that no employee can be deprived of legitimate promotion on the ground of not acquiring requisite qualification of training. One such decision is reported in *(2011)8 MLJ 3 17* wherein a Coordinate Bench of this Court, having reviewed various decisions of Hon'ble Apex Court as well as this Court held as under:

8. Applying the said judgment, particularly, the principles stating that the petitioner cannot be blamed for not undergoing the training in Bhavani Sagar, the non-inclusion



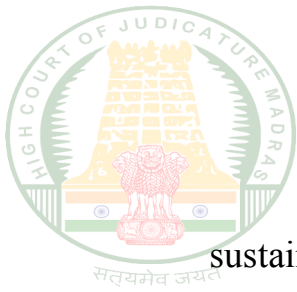
WEB COPY



W.P.No.23298 of 2011

of the petitioner's name in the panel for promotion to the post of Assistant for the year 2005-2006 and denying promotion to the petitioner as Assistant on the date when his juniors were given promotion cannot be justified. However, taking note of the subsequent promotion given to the petitioner, the petitioner shall be notionally promoted for the post of Assistant from the date of promotion given to the petitioner's juniors from 15.12.2005. The petitioner is not entitled to get any arrears of salary for the promoted post and seniority alone is to be given by respondents 1 and 2. The said notional promotion shall be calculated for all purpose except backwages.

6.In the light of the settled legal position, the only reason assigned in the impugned order stating that the petitioner is deprived of promotion on par with his junior for want of undergoing training cannot be sustained. As already noted above, the rights of the petitioner was crystallised in terms of the order passed by the Administrative Tribunal in O.A.No.8271 of 1998 dated 29.11.2001 which is already extracted above and therefore, it is not open for the respondents to deny such promotion to the petitioner to the post of Forester on par with his junior. Hence, the impugned order cannot be



W.P.No.23298 of 2011

sustained and the same is liable to be quashed.

WEB COPY

7. Accordingly, The impugned order is quashed and the writ petition is allowed. As it is now brought to the notice of this Court, that the petitioner has already retired from service, on attaining the age of superannuation, the respondents are directed to extend the benefit of notional promotion to the petitioner to the post of Forester on par with his junior in terms of the seniority list finalised and fix the pay and pass all consequential orders as expeditiously as possible at any rate within a period of eight weeks from the date of receipt of a copy of this order. The pension of the petitioner shall also be revised. The miscellaneous applications, if any, shall stand closed. No costs.

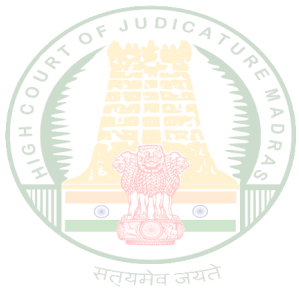
23.01.2025

vsn

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



WEB COPY



W.P.No.23298 of 2011

To

1.The Secretary to Government,
Forest Department,
Fort St. George,
Chennai 600 009.

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



WEB COPY



W.P.No.23298 of 2011

MUMMINENI SUDHEER KUMAR, J.

vsn

W.P.No.23298 of 2011

23.01.2025