

(2011) 08 MAD CK 0243

In the Madras High Court

Case No : Writ Petition No"s. 22808, 22810, 23222 of 2010 and M.P. No"s. 1, 1, 2, 2, 1 of 2010 and 1,1,1 of 2011

A. Raghunathan and Others

APPELLANT

Vs

The District Forest Officer
P. Mathivanan and Others Vs
The State of Tamil Nadu

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Citation : (2011) 08 MAD CK 0243

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Singaravelan, in W.P. Nos. 22808 and 22810/2010 and M. Packianathan Easter, in W.P. No. 23222/2010, for the Appellant; Abdul Saleem, AGP (Forest), for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—W.P. Nos. 22808 and 22810 of 2010 were filed by the persons who were employed as Plot Watchers/Social Forestry Workers in Thiruvarur Range, Mannarkudi Range, Thanjavur Range, Pattukottai Range and Kumbakonam Range respectively. In the first writ petition (W.P. No. 22808/2010), there were 22 Petitioners and in the second writ petition (W.P. No. 22810/2010), there were 21 Petitioners. In both the writ petitions, they have sought for a direction to the Respondents to set aside G.O.(Ms). No. 75 Environment and Forests Department dated 03.06.2010 and the order of the District Forest Officer dated 30.09.2010 in the first writ petition and 25.09.2010 in the second writ petition and after setting aside the same seeks for a direction to reinstate the Petitioners in service with all monetary benefits.

2. In both the writ petitions, the learned Government Advocate (Forest) was directed to take notice and an interim stay was granted on 05.10.2010 for a limited period. Subsequently, the interim stay was extended on 15.11.2010, 02.12.2010, 04.01.2011, 18.02.2011 and thereafter, there was no further

extension beyond 25.02.2011. Aggrieved by the same, vacate stay application was filed by the State Government in M.P. No. 1 of 2011 in both the writ petitions together with supporting counter affidavit dated 12.01.2011 by the District Forest Officer, Tiruvarur and 13.01.2011 by the District Forest Officer Thanjavur respectively. A regular counter affidavit dated 01.03.2011 was also filed by the Respondents.

3. W.P. No. 22322 of 2010 was filed by 9 Petitioners claiming to work under Sirkali Taluk, challenging an order passed by the Wild Life Warden, the third Respondent dated 30.09.2010. By the impugned order, the Petitioners were sought to be terminated from service since the earlier posting order dated 08.10.2009 was revoked by the Government Order in G.O. Ms. No. 75 Environment and Forest Department, dated 03.06.2010.

4. When that writ petition came up for admission on 18.10.2010, this Court granted an interim stay and directed the matter to be posted along with W.P. Nos. 22808 and 22810 of 2010.

5. The facts leading to the filing of the writ petitions were as follows:

In G.O. Ms. No. 75 Environment and Forest Department, dated 03.06.2010, it was stated that Forest Watchers in the Forest Department were engaged on daily rated basis in Forest Nurseries. There were no Rules framed in respect of such appointments. Majority of the workers were not appointed through Employment Exchange and also did not have the Minimum General Educational Qualification (MGEQ). Mostly the unemployed youth in the neighbouring village were recruited for the said post. From the year 1981 to 1986, on the basis of the funding given by Swedish International Development Agency (SIDA), the Forest Department was developing Social Forestry in an extent of 3,52,342 Hectares by conceiving two projects. The workers who were recruited for this project were recruited as "Social Forestry workers" and were also paid on daily wage basis. All these workers had Minimum General Educational Qualification and some of them had got Post Graduate Degrees. For a long time, these daily rated workers both Plot Watchers and Social Forestry Workers were demanding regular employment.

6. Therefore, the State Government issued G.O. Ms. No. 64 Environment and Forest Department, dated 08.03.1999, wherein, it was stated that State Level Seniority List of daily rated Social Forestry Workers and Plot Watchers should be prepared by the Chief Conservator of Forest. From out of the list, those who are able to read and write Tamil must be appointed as Forester or Malis in respect of the vacancies that may arise in the Department. In those cases, appropriate regularisation can be given in respect of the recruitment rules and age restrictions. Subsequently, the said Government Order came to be modified by G.O. Ms. No. 148 Environment and Forest Department, dated 21.12.2006 stating that those persons from the waiting list can also be appointed as Office Assistant, Night Watchmen, Bungalow Watchman and Drivers and those persons should be appointed only in the Forest Department provided they possess all the necessary

qualification. Only in case of requirement for age and sponsorship from Employment Exchange, relaxation can be granted. Those who were to be appointed as Driver should have necessary license, appropriate eye sight and physical measurements. Pursuant to the said direction, a State Level Seniority List was prepared which contained as many as 5,497 workers and out of the said list, it was found that regular posting were given on the basis of their qualification. But so far as the Forest Department is concerned, since there were only 1328 posts of Foresters and 155 posts of Malis, even if the seniority list has to be operated, then it may take many years for those workers to be brought under regular employment and many of them are in the age group of 40, 50 to 55. It was also found that each year, only 100 to 150 workers were given appointment on regular basis. Most of the workers had worked on daily rated basis from 16 to 30 years and some of them without having the benefit of regular employment had reached the age of superannuation and some of them had already died.

7. In the mean time, the State Government issued G.O. Ms. No. 22 P and AR Department, dated 28.02.2006. In that Government Order, the State Government in principle had agreed to regularise those daily rated workers who had put in 10 years of service. In view of the said GO, a writ petition was filed before this Court in W.P. No. 20863 of 2008 by one Murugan, who is a President of Tamil Nadu Social Forestry and Plot Watchers Welfare Association. He had sought for a direction to implement G.O.ms. No. 22 dated 28.02.2006 as well as on the basis of the proposal sent by the Chief Conservator of Forest dated 30.01.2008. This Court by an order dated 25.08.2008 directed the Respondents to consider the request of the Petitioner in the light of the order of the State Government and in the light of the proposal sent by the Principal Chief Conservator of Forest within a period of three months.

8. In the meanwhile, the Chief Principal Conservator of Forest informed the State Government that out of the list of 5497 persons, 3058 workers are yet to be given regular employment. Out of that, he suggested that 1743 workers who were having the height of 163 cms and above can be appointed as Forester and those who are below 163 cms in height comprising of 1315 workers can be appointed as Malis, Office Assistant and therefore, in respect of those 3058 posts, supernumerary posts can be created and all of them can be made as permanent.

9. Further, in the reply to the debate on the grant relating to Environment and Forest Department on the Floor of the Assembly in the year 2009-2010, the then Minister for Forest had stated that those 3058 workers who have completed 10 years of service will be brought under regular establishment with the scale of pay of Rs. 2500-5000 with special pay of Rs. 500/- and in the post of Plot Watcher they will be regularised. This announcement was made on 17.07.2009 on the Floor of the Tamil Nadu Legislative Assembly. On the basis of these developments, the State Government issued G.O. Ms. No. 95 Environment and

Forest Department dated 07.08.2009 stating that in respect of the existing 3058 workers, whose names are in the waiting list and who had worked for more than 10 years, supernumerary posts can be created as Plot Watcher and they can be fixed in the scale of pay of Rs. 2500-5000 with Special pay of Rs. 500/- from the date on which the GO was issued. The State Government also stated that from the date of the Government Order, the Plot Watcher and Social Forestry Workers can be retained in the same place and given posting and the Principal Chief Conservator of Forest was directed to issue appropriate orders and to give identical orders of appointment by circulating a model appointment form which has to be followed by all the subordinate officers. Further, it was also stated that such of those workers who are in the State Level Seniority List can continue to be promoted in the post of Forester, Mali, Office Assistant, office Watchman, Bungalow Watchman and Driver and the same procedure can be continued until the seniority list is exhausted and no other direct recruitment should be made in respect of those posts and even in the newly created supernumerary posts whenever any person goes on promotion or attained the age of superannuation or any other reason, those posts will get automatically expired. Appropriate budgetary allocation has been made for the creation of such posts and the payment of salary to those regular workers.

10. Subsequent to the issuance of the Government Order, the Chief Principal Conservator of Forest sent a letter dated 26.08.2009. In that letter, he had informed that out of 3058 workers who were working in daily wages basis and who were eligible to come under the GO, only 2013 workers have been given posting order. The status of the balance 1045 workers was not known. Therefore, the Deputy Secretary to Environment and Forest Department, informed the Chief Conservator of Forest that all those workers must have worked from 1979 to 1993 either as Plot Watchers or Social Forestry workers and many of them would have completed 10 years of service. Some of them without any fault on their part, due to administrative reasons such as lack of finance, lack of approval for the project have been denied employment and thereafter, would have been reappointed after the approval for the project as well as grant of finance. Hence, that break in service need not be taken note of and it is not necessary that they should have completed 10 years of service and their service up to 07.08.2009 should be counted without considering the break and all of them should be given appointment orders on or before 30.09.2009 on the basis of the order in G.O. Ms. No. 95 Environment and Forest Department, dated 07.08.2009. In the same letter, it was also stated that in the Thanjavur Range Forest Department up to 1997, several persons working as Plot Watchers on daily wages, they have also been included in the seniority list in the year 1997. As they were not paid the arrears of salary, they conducted demonstration before the District Forest Officer and therefore, they were not allowed to work by keeping their name in the muster roll. Therefore, for the period between 1997 and 2002, they were given work with hand receipts and thereafter through contractors, but yet they have been working in the said Department. Because of the mistake committed by the

District Administration, even though they have found a place in the seniority list and since they have continued to work under the hand receipts and through contractors, it should be taken as a special case and they should also be given appointment orders and he had been directed to give appropriate orders to the Regional Forest Officer at Tiruchirapalli and District Forest Officer at Thanjavur to issue appropriate orders. Therefore, on the basis of these clarifications, all the 1045 workers who have worked for 10 years should be given appointment orders and the report should be sent on or before 05.10.2009.

11. However, the Chief Conservator of Forest sent a letter dated 02.06.2010 asking the Government for some more clarification on the letter dated 16.09.2009 addressed to the Principal Chief Conservator of Forest. Based upon the said letter, the State Government issued G.O. Ms. No. 75 Environment and Forest Department dated 03.06.2010. In that Government Order, the State Government informed the Chief Conservator of Forest that the Government letter dated 16.09.2009 was issued unauthorisedly without getting the approval of the State Government and the said letter was re-called by the State Government as it did not have the approval of the State Government. Since in the light of the clarificatory letter issued by the Government dated 16.09.2009 was withdrawn by a regular Government Order signed by Principal Secretary, Environment and Forest Department vide G.O.Ms. No. 75 dated 03.06.2010, the Tiruvallur District Forest Officer by proceedings dated 30.09.2010 removed the 22 workers from service, covered by W.P. No. 22808/2010 and by an order dated 25.09.2010, the Thanjavur Divisional Forest Officer removed the 21 workers covered by W.P. No. 22810 of 2010. Challenging the same, the writ petitions came to be filed.

12. The contentions raised by the Petitioners was that till 1997, they were all paid wages directly by the Government and between 1997 to 2002, they were paid through Contractors for the Government. The nature of work duties and responsibilities were never altered during those five years. After including their names in the State Wise Seniority list, the third Respondent has no jurisdiction to deny their right to get appointment in terms of Government order in G.O. Ms. No. 95 Environment and Forest Department dated 07.08.2009. The impugned Government order in G.O. Ms. No. 75 Environment and Forest Department dated 03.06.2010 cannot go against the spirit of G.O. Ms. No. 64 E and F Department, dated 08.03.1999.

13. It is the stand of the Petitioners that they had moved the Tribunal with Original Application and the Tribunal disposed of the batch of O As by an order dated 22.11.2002 and upheld G.O. Ms. No. 64 E and F Department, dated 08.03.1999. In paragraphs 15 and 16, the Tribunal had observed as follows:

15. ...Government also saw wisdom in the wholesome advise given by the Principal Chief Conservator of Forests and accordingly passed G.O. Ms. No. 64, Environment and Forests Department, dated 8.3.99 as per which earlier G. Os.297 and 332 passed in November and December 1994 were all scrapped and cancelled. So the unnecessary controversy that has been created but to rest.

Therefore there can be absolutely no impediment for declaring G.O. Ms. No. 64 Environment and Forests Department dated 8.3.99 is valid and correctly passed to achieve the object of earlier G.O and the decision of the Government....

16. ...Government from the beginning have been saying that all the Plot Watchers and Social Forestry Workers who have been working continuously on daily wages prior to 1980 and after 1980 are to be absorbed in permanent vacancies in the lowest category in the Tamil Nadu Forest Subordinate Service viz. In the post of Watchers. Therefore there is no question of Government accommodating few and rejecting others.

14. Challenging the same, the State Government filed a writ petition before this Court in W.P. No. 1662 of 2002 and that writ petition was dismissed and thereafter, they filed a review application, which was in a defective stage was also dismissed on 02.11.2007. Aggrieved by the same, the State preferred SLP (Civil) 2713 of 2008 before the Supreme Court, which was converted into Civil Appeal Nos. 6549 and 6551 of 2009. The Supreme Court passed the following order:

Pursuant to our order dated 13th February, 2009, the State Government has issued orders of regularization in phases in terms of G.O. Ms. No. 95 Environment and Forest (FR-2) Department dated 7th August, 2009 concerning Plot Watchers and Village Social Forestry workers whose names find place in state wise seniority list as per G.O. Ms. No. 64 Environment and Forest (FR2) Department dated 8th March, 1999.

Consequently, these Civil Appeals stand disposed of in terms of G.O. Ms. No. 95 Environment and Forest (FR-2) Department dated 7th August, 2009.

15. Mr. R. Singaravelan, learned Counsel for the Petitioners contended that his clients have inalienable right to get absorbed and that cannot be defeated by the impugned GO. He also stated that several individuals have moved this Court and got various orders seeking for regularization in the light of G.O. Ms. No. 95 E and F dated 07.08.2009 and they were allowed by the learned Judges. The challenge made by the State Government was also rejected in the writ appeal and therefore, the benefit arising out of G.O. Ms. No. 95 cannot be whittled down or repealed by the present GO impugned in the writ petitions.

16. In the counter affidavit filed by the Respondents, it was stated that since the clarification issued was without any basis and the Government rescinded the order, there was no basis in the claim of the Petitioners. But in the light of the interim orders granted, necessary reposting orders were given to the Petitioners. In paragraph 10 of the counter affidavit, it was stated as follows:

10... After thorough consideration, the Government have decided to extend the 10 years policy to the Plot Watchers / Village Social Forestry Workers also and issued orders in G.O. Ms. No. 95 Environment and Forests Department, dated 07.08.2009 to provide appointment to Plot Watchers/ Village Social Forestry

Workers who have completed 10 years of service. The Plot Watchers and Social Forestry Workers, who have been working in the Department and completed 10 years of service are uniformly given appointment as regular Plot Watchers. The Petitioners who are not working even as casuals since 1998, cannot now claim appointment in the post of Plot Watcher on regular basis. The seniority is applicable only when they are appointed to regular posts of Forest Watcher and Mali as per G.O. Ms. No. 64, Environment and Forests Department, dated 08.03.1999. The seniority will be strictly followed while giving appointment to regular post as per the said G.O.

17. The Petitioners in their reply affidavit dated 16.04.2011, merely contended that the Respondents cannot wriggle out of G.O. Ms. No. 64 dated 08.03.1999 and no uniform policy has been followed. But in the present case, it must be noted that there is no challenge made to G.O. Ms. No. 95 dated 07.08.2009 issued by the State Government.

18. Thus it can be seen there is no real conflict between G.O. Ms. No. 64 dated 08.03.1999 and G.O. Ms. No. 95 dated 07.08.2009. The case of the Petitioners that they have not completed 10 years of service as on 07.08.2009 as their services have been terminated on 1998 itself and the fact that they are drawing wages from the Contractors is not an issue that is covered by the said GO.

19. The only question that arises for consideration is that subsequent to the issuance of G.O. Ms. No. 95 dated 07.08.2009 whether the Deputy Secretary on his own can issue any clarification without observing the Rules of procedure and standing instructions given by the Government. Thus on clarification sought for by the Principal Conservator of Forest, the impugned GO came to be issued rescinding the earlier order. There cannot be any illegality in the Government cancelling the unauthorised letter issued by one of its subordinates without following the rules of procedure. The Petitioners had not contended anywhere that the said clarification was legal and valid and was authorised by the State Government. On the other hand, their only contention was that their rights have been crystallised by the earlier G.O. Ms. No. 64 dated 08.03.1999 was suitably replied. Since the Petitioners appointment was based upon the clarification issued by the Deputy Secretary in a form of a letter, which goes by when the State Government had withdrawn such letter. Therefore, the impugned go cannot be challenged. No subordinate officer can travel beyond the original GO and give all kinds of interpretation which goes contrary to parent G.O. In fact the Deputy Secretary to Government had even stated that even the breaks can be condoned when the parent GO talks about 10 years of service as minimum service required for being considered. Surprisingly, the Deputy Secretary gives a ruling on their discontinuance and condones the breaks of more than 5 years which they have worked under contractors, whereas the parent G.O do not talk about employment through contractors but only employment through forest department. It is nowhere stated as to how the Deputy Secretary can speak about the Petitioners" working under hand receipts or by payment through

contractors has also been clarified under the parent GO. When the Petitioners take advantage of an illegal communication, they cannot gain any milieu over the said order and the impugned G.O. Ms. No. 75 dated 03.06.2010 do not suffer from any illegality or irregularity. Therefore, the consequential action issued by the District Forest Officer dated 30.09.2010 and 25.09.2010 covered by the two writ petitions are perfectly valid. The Petitioners cannot get any right over such illegally acquired concession.

20. In the light of the above, all the three writ petitions will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous are closed.