

(2014) 04 MAD CK 0236

In the Madras High Court

Case No : W.P. No. 10654 of 2014 and M.P. No. 1 of 2014 in W.P. Nos. 10654 and 9764 of 2014

Kaliyappan and Others

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 15-04-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 04 MAD CK 0236

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

S. Nagamuthu, J.—The petitioners are working as Anti Poaching Watchers for several years in the Forest Department. They are considered to be the eyes and ears of the Department in the very remote wildlife sanctuaries and reserves and many of them are forced to work for below reasonable minimum wage (vide G.O. Ms. No. 28 Environment and Forests (FR-2) Department dated 01.02.2012). Like the petitioners, there are several Anti Poaching Watchers working in the Department in various places for several years. Anti Poaching Watchers played an important role in the implementation of various wildlife and other schemes as well as in day-to-day protection of forest and wildlife. Similarly, there are several other Plot Watchers working in the forest department who are employed for the purpose of plantation works and developing nurseries in the forest. They are known as plot watchers whereas, the petitioners and others who are working in the protection of wild life are known as Anti Poaching Watchers. Neither the post of Anti Poaching Watchers nor the post of Plot Watchers is governed by any service Rules. Various cadres in the Tamil Nadu Forest Department are governed by the Tamil Nadu Forest Subordinate Service Rules. All such Plot Watchers and Anti Poaching Watchers were all initially appointed on daily wages basis. There were representations from these groups of employees to bring them into the regular service as Forest Watchers.

2. The Government considered the request of the Plot Watchers and issued G.O. Ms. No. 64 Environment and Forest (F. 2) Department dated 18.03.1999, thereby directing the respondents for preparation of seniority list of all those Plot Watchers working through out the State. It was further directed that based on the said seniority list, Plot Watchers shall be absorbed as Forest Watchers. For that purpose, even certain qualifications like educational qualification was relaxed by the Government. Accordingly, the seniority list of Plot Watchers was prepared. Thereafter, the Government issued G.O. Ms. No. 95 Environment Forest (F. 2) Department dated 07.08.2009, appointing 3058 Plot Watchers by creating supernumerary posts. As per the said Government Order, those who had completed 10 years of service as daily wages were all given the benefit of appointment as Plot Watchers as against the supernumerary posts created.

3. As far as the Anti Poaching Watchers are concerned, considering their request for absorption, the Government issued G.O. Ms. No. 76 Environment and Forests (FR-2) Department dated 07.06.2010 creating supernumerary posts to appoint those who have completed 10 years of service as Anti Poaching Watchers in the scale of pay of Rs. 2500-5000 + grade pay of Rs. 500/-. As many as 137 such Anti Poaching Watchers who had completed 10 years of service were all appointed as against such supernumerary posts. But, the petitioners herein were not so appointed as against any supernumerary posts because, at that time, they had not completed 10 years of service in the post of Anti Poaching Watchers. In those circumstances, the petitioners have come up with these writ petitions seeking a direction to the respondents to extend the benefit of G.O. Ms. No. 76 Environment & Forest Department dated 07.06.2010 and to absorb them also by creating supernumerary posts as Anti Poaching Watchers.

4. I have heard Mr. G. Sankaran, learned counsel for the petitioners and Mr. Hidayathullah Khan, learned Government Advocate appearing for the respondents and I have also perused the records carefully.

5. In the counter filed by the Principal Chief Conservator of Forests, Chennai, it is stated that the Government took a policy decision while issuing G.O. Ms. No. 76 Environment & Forest (F. 2) Department dated 07.06.2010, only to create supernumerary posts to appoint those Anti Poaching Watchers who have completed 10 years of service as daily wages. Further, as of now, the Government has not taken any such policy decision in respect of those people who had not got the benefit of G.O. Ms. No. 76 dated 07.06.2010. It is further stated that as per the Tamil Nadu Forest Subordinate Service Rules, the petitioners who are all Anti Poaching Watchers cannot be absorbed as Forest Watchers because, the said Rule has not been amended so, so as to enable the Anti Poaching Watchers also to be appointed as Forest Watchers.

6. The learned counsel for the petitioners would submit that there is a clear discrimination in so far as the petitioners herein and similarly placed persons are concerned. As has been pointed out earlier, as per G.O. Ms. No. 64 dated 08.03.1999 and G.O. Ms. No. 95 dated 07.08.2009, the Tamil Nadu Forest

Subordinate Service Rules has been amended, by which, the persons working as Social Forest Workers and Plot Watchers on daily wages basis from 17th October 1978 in the Forest Department are all eligible for appointment as Forest Watchers. But, the Anti Poaching Watchers who have been working for several years in the Forest Department are not made eligible by amending the rules. He would further submit that when the Plot Watchers have been given the benefit of enjoying the appointment of supernumerary posts and then for absorption into the regular cadre of service, there is no justification in denying the same benefits to the petitioners herein and the similarly placed Anti Poaching Watchers. Applying the equality clause as well as equal protection enshrined under Article 14 of the Constitution of India, according to the learned counsel, the petitioners herein also be given the same treatment and the protection as the same is given to the Plot Watchers as per G.O. Ms. No. 64 dated 08.03.1999 and G.O. Ms. No. 95 dated 07.08.2009.

7. I have considered the above submissions.

8. The Anti Poaching Watchers are employed for protecting the wildlife sanctuaries and reserves whereas, the Plot Watchers are appointed for protecting plantations in the Forest area. Though, basically there is a slight difference in the nature of the work that they do both are very essential for the Forest Department. In G.O. Ms. No. 28 dated 01.02.2012, the Government has stated that Anti Poaching Watchers are the eyes and ears of the Department in every remote wild life sanctuaries and reserves and many of them are forced to work for below reasonable minimum wages. It is not as though the Plot Watchers and Anti Poaching Watchers are required only for a temporary period. The past experience shows that these people are very essential for preserving plantations as well as the wildlife sanctuaries and reserves. It is also not the case of the Government that the services of these people will not be required after a particular time. Thus, it is well known and well accepted fact that the Plot Watchers and the Anti Poaching Watchers are required for the Department for ever. When that be so, it is quite surprising that the Government has been appointing these Plot Watchers and Anti Poaching Watchers without having any Service Rule regulating their qualifications, method of appointment, salary, etc. Certainly, this would have only encouraged the back door entries into the Government service.

9. Admittedly, these plot watchers and Anti Poaching Watchers have not been appointed by following any procedure of selection. They were not even sponsored by the local employment exchange and at the whims and fancies of the officers, they have been appointed. Certainly one cannot deny the fact that there is every likelihood of many people getting into this service by means of back door entry. As per the law laid down by the Hon'ble Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , those people who have got entry into the Department without undergoing the regular selection process, cannot get any benefit of regularisation in service. But, at the same time, this

Court cannot allow discrimination to occur.

10. When the Government is in need of these Anti Poaching Watchers, and Plot Watchers for ever, it is not understandable as to why the Government has not taken any policy decision, so far, either to include these posts in the Tamil Nadu Forest Subordinate Rules or to issue a Special Rules governing these two services thereby prescribing the qualification, method of appointment, etc.

11. In my considered opinion, it is the high time for the Government to consider and to take a policy decision either to include these two posts of Anti Poaching Watchers and Plot Watchers in the Tamil Nadu Forest Subordinate Service Rules or to issue a Special Rules governing these two posts. If this is not done, I am sure that the back door entry into these services cannot be prevented. Those people who have got back door entry are likely to get into the regular services in due course of time which will be arbitrary in terms of Article 14 of the Constitution of India. Therefore, I am hopeful that the Government will look into the matter and frame appropriate Rules in respect of these two services.

12. Now, turning to the argument of the learned counsel for the petitioners on the basis of discrimination, I find every justification. As per G.O. Ms. No. 64 dated 08.03.1999 and G.O. Ms. No. 95 dated 07.08.2009, the Government took a policy decision to create supernumerary posts in respect of Plot Watchers. In the said Government Orders, the Tamil Nadu Forest Subordinate Service Rule was amended thereby making these Plot Watchers to be absorbed in the supernumerary posts so as to make them eligible for recruitment as Forest Watchers. When that is so, it is highly discriminatory on the part of the Government to keep the Anti Poaching Watchers alone outside the purview of the Tamil Nadu Forest Subordinate Service Rules.

13. As it has been done in the case of the Plot Watchers, the Government ought to have made these Anti Poaching Watchers also eligible for recruitment as Forest Watchers by suitably amending the Rules so as to avoid discrimination. So far as the Anti Poaching Watchers are concerned, the Government has issued G.O. Ms. No. 76 dated 07.06.2010 thereby creating supernumerary posts, in respect of those who had completed 10 years of experience as on 07.06.2010 and accordingly, 137 persons are now working as Anti Poaching Watchers as against supernumerary posts. But, because the Tamil Nadu Forest Subordinate Service Rule has not been suitably amended, as it was amended in favour of the Plot Watchers, those who are working as against supernumerary posts of Anti Poaching Watchers are not eligible for recruitment as Forest Watchers. This is the reason why I have to state that it is for the Government to maintain parity. The said Rule should be amended so as to make these Anti Poaching Watchers working in the Department also eligible for recruitment as Forest Watchers.

14. Nextly, coming to the specific grievance of the petitioners, some of the petitioners claim that though they satisfy G.O. Ms. No. 76 dated 07.06.2010, they have not been appointed as against the supernumerary posts. In my

considered opinion, that question need not be gone into in this writ petition at this length of time since, I am holding that there should not be any discrimination. It would be appropriate for the Government to create supernumerary posts of Anti Poaching Watchers so as to appoint those Anti Poaching Watchers working in the Department continuously for 10 years or less as the Government may deem fit, as on today as against the said supernumerary posts and then, as I have already stated, to make them eligible for recruitment as Forest Watchers by suitably amending the Rule. This will only be in tune with justice to be done to all by avoiding any discrimination.

15. In view of all the above, both the writ petitions are disposed of with the following directions:-

(i) The Government shall issue order creating supernumerary posts of Anti Poaching Watchers to appoint those Anti Poaching Watchers working in the Tamil Nadu Forest Department and those who have completed 10 years of service or less as the Government may deem fit, as on today;

(ii) The Government shall issue appropriate Rule governing the post of Plot Watchers and Anti Poaching Watchers or include these two posts in the Tamil Nadu Forest Subordinate Service Rules so as to regulate the appointment of the Plot Watchers and Anti Poaching Watchers in order to avoid back door entry;

(iii) The Government shall consider to take a policy decision to amend the Tamil Nadu Forest Subordinate Service Rules, so as to make the Anti Poaching Watchers working as against the supernumerary posts eligible for recruitment as Forest Watchers under the Tamil Nadu Subordinate Service Rules, as it has been done in favour of the Social Forest Workers and Plot Watchers;

(iv) It is further directed that the Government shall take all necessary steps to ensure that there is no back door entry into these posts namely Social Forest Workers, Plot Watchers and Anti Poaching Watchers without following the method of appointment to be prescribed by the Rules and

(v) In any event, the Government shall comply with this order within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.