
(2014) 08 MAD CK 0171

In the Madras High Court

Case No : Writ Appeal No. 88 of 2014 and M.P. No. 1 of 2014

The Principal Chief Conservator of Forests

APPELLANT

Vs

C. Sanmugam

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Citation : (2014) 08 MAD CK 0171

Hon'ble Judges : Satish K. Agnihotri, J; M.M. Sundresh, J

Bench : Division Bench

Judgement

1. The respondent herein was appointed as a plot watcher on 1.4.1980 and he was paid wages on monthly basis. A State-wise seniority was prepared as per the Government Order in G.O. (Ms.) No. 64 Environment and Forest (F.2) Department dated 8.3.1999 in order to appoint those who are working as plot watcher/village social forest worker, in the regular post of Forest Watcher/Mali on seniority basis, provided they have the capacity to read and write with required physical qualification. The respondent herein along with others was considered as per the said G.O. However, during the test conducted by the District Forest Officer, Dindigul on 21.3.2013 the respondent has failed to prove his ability to read and write Tamil. Accordingly, he was not selected and the result was informed to him. As the respondent reached the age of 60 years on 30.4.2008, he was stopped from attending his work. The respondent earlier filed a writ petition in W.P. No. 28631 of 2008 seeking a writ of mandamus directing the respondents therein to regularise his services with effect from the date of his completion of ten years of service as per the Government Order passed in G.O.Ms. No. 22 P & AR (F) Department dated 28.2.2006. This Court in and by order dated 3.12.2008 permitted the respondent to make a detailed representation and consequently a direction was given to consider the same and pass appropriate orders. The request made by the respondent was rejected by the Order dated 16.2.2009. Challenging the same, the respondent once again filed the present writ petition in W.P. No. 9673 of 2010. The learned single Judge was pleased to allow the writ petition by directing the appellants to count 50% of

the respondent's service rendered in the post of Plot Watcher as pensionable service and to extend pensionary benefit to the respondent. Challenging the same, the present appeal has been filed.

2. Learned Government Pleader appearing for the appellants submitted that the Government Orders passed in G.O. (Ms.) No. 64 Environment and Forest (F.2) Department dated 8.3.1999 and G.O.Ms. No. 95 Environment and Forest Department dated 7.8.2009 are not applicable to the case of the respondent. Similarly, the Government Order passed in G.O.Ms. No. 22 P & AR Department dated 28.2.2006 is also not applicable to the respondent. The respondent did not have any required minimum qualification of acquiring the ability to read and write. As per rule 11 of the Tamil Nadu Pension Rules, half of the service of a person employed in daily wages can be counted provided the daily rated employees brought under regular time scale prior 1.4.2003. Therefore, the writ appeal will have to be allowed.

3. Learned counsel appearing for the respondent submitted that considering the fact that the respondent has put in considerable number of years of service and the persons, who are appointed along with the respondent and juniors to him have been given the benefit, the order passed by the learned single judge requires no interference. Hence, the writ appeal will have to be dismissed.

4. Admittedly, the respondent was not qualified to get the benefit given under the Government Order passed in G.O. (Ms.) No. 64 Environment and Forest (F.2) Department dated 8.3.1999, since he has failed in the test. Therefore, the respondent cannot be compared with the others though appointed along with them and thereafter. As per Rule 11 of the Tamil Nadu Pension Rules, half of the service of a person employed in daily wages can be counted only when he is brought under the Regular scheme prior to 1.4.2003. The respondent has reached the age of 60 on 30.4.2008 in the category of daily wage rated employee. Therefore, when his services was ended on 30.4.2008 in his capacity as daily wage employee, he is not entitled for pension. The Government Order passed in G.O.Ms. No. 95 Environment and Forest Department dated 7.8.2009 is prospective in nature. The said Government Order was passed much after the respondent reached the age of 60. Therefore, no reliance can be placed upon the same by the respondent. The decision of this Court dated 11.01.2012 made in W.A. Nos. 2 and 3 of 2012 relied upon by the learned single Judge has no application to the case on hand. In the said case, the services of the employee were regularised, which is not the case before us. Therefore, we are of the view that the writ appeal will have to be allowed.

5. Accordingly, the writ appeal is allowed and consequently the writ petition is dismissed. No costs. The connected miscellaneous petition is closed.