

(2009) 10 MAD CK 0279
In the Madras High Court
Case No : Writ Petition No. 8358 of 2007

V. Mahalingam

APPELLANT

Vs

The District Forest Officer, Harur Division, The Conservator of
Forests and The Principal Chief Conservator of Forests

RESPONDENT

Date of Decision : 15-10-2009

Acts Referred:

Citation : (2009) 10 MAD CK 0279

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; K. Jenitha, for Special Government
Pleader (Forests), for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The Original Application in O.A. No. 1794 of 2002 before the Tamil Nadu Administrative Tribunal (hereinafter referred to as "the Tribunal") is now Writ Petition in W.P. No. 8358 of 2007 before this Court.

2. The petitioner was initially appointed as Office Assistant with effect from 23.06.1998 in I.F.F. Division, Dharmapuri. Thereafter he was appointed as Forest Guard by transfer by an order dated 04.07.2001. However, the first respondent passed the impugned order dated 28.03.2002 reverting the petitioner from the post of Forest Guard.

3. The petitioner filed O.A. No. 1794 of 2002 (W.P. No. 8358 of 2007) to quash the impugned order dated 28.03.2002 of the first respondent and for direction to continue the service of petitioner as Forest Guard.

4. Heard Mr. M. Ravi, learned Counsel for the petitioner and Ms. K. Jenitha, learned Counsel appearing on behalf of Special Government Pleader (Forests) for the respondents.

5. The learned Counsel for petitioner submits that the impugned order of

reversion was passed without notice and without hearing the petitioner. It is submitted that the impugned order was passed in flagrant violation of principles of natural justice.

6. It is further submitted that the order of reversion was passed on the ground that the petitioner did not possess the requisite qualification as per G.O.Ms. No. 41, Environment and Forests dated 12.03.2001, when the order dated 04.07.2001 was passed posting him as Forest Guard. The learned Counsel contends that since the selection process commenced much before the issuance of G.O.Ms. No. 41, Environment and Forests dated 12.03.2001, the position that prevailed at that time before G.O.Ms. No. 41, Environment and Forests dated 12.03.2001, should be the criteria, as per the decision of the Apex Court in Rangaiah's case reported in AIR 1983 SC 852(1). Applying the ratio of the judgment of the Apex Court, it is submitted that the appointment of petitioner to the post of Forest Guard was in order.

7. On the other hand, the learned Government Advocate representing the learned Special Government Pleader for Forests seeks to sustain the impugned order.

8. I have considered the submissions made by the learned Counsel on either side.

9. The impugned order was passed without hearing the petitioner. It is well settled that no adverse order resulting in civil consequences could be passed without hearing the person concerned, as held by the Hon''ble Apex Court in the case of Bhagwan Shukla Vs. Union of India and others, .

10. The impugned order states that the first respondent reverted the petitioner from the post of Forest Guard to the earlier post of Office Assistant based on G.O.Ms. No. 41, Environment and Forests dated 12.03.2001 and on the basis of the consequential instructions issued by the Principal Chief Conservator of Forests, dated 19.02.2002, the third respondent herein. Admittedly, none of the proceedings were furnished to the petitioner and his views were not sought thereon. It is stated that the petitioner does not have the required educational qualifications for the post of Forest Guard. Since the impugned order was passed in flagrant violation of principles of natural justice, without hearing the petitioner, the impugned order is liable to be quashed.

11. In the normal course, the matter would be remanded back to the concerned authority to pass fresh order. But, as rightly contended by the learned Counsel for the petitioner, it can not be said that the petitioner did not have requisite qualification, when the selection process commenced and when he was asked to appear for interview by the call letter dated 27.10.2000. Hence, based on the prescription of qualification subsequently by G.O.Ms. No. 41, Environment and Forests dated 12.03.2001, the respondent was not correct in reverting the petitioner on the ground that he did not possess requisite qualification. The decision of the Hon''ble Apex Court in Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, (1) squarely covers the issue. Relevant passage from paragraph

9 of the judgment is extracted here-under:

9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that even the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their rights of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the Statewide basis and therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.

12. Hence, the writ petition is allowed. No costs.