

(2011) 08 MAD CK 0422

In the Madras High Court

Case No : Writ Petition No. 13262 of 2010 and M.P. No's. 1 and 2 of 2010

V. Manoharan

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Citation : (2011) 08 MAD CK 0422

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : A. Arulmozhi, for the Appellant; Abdul Saleem, AGP, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner, who was working as a Plot Watcher under the Rural Fuel Wood Range -II, Tiruapattur filed the writ petition, seeking for a direction to regularise his services in the post of Forest Watcher in terms of G.O. Ms. No. 95 Environment and Forest Department, dated 07.08.2009.

2. By the said Government Order, 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, 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.

3. 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.

4. In the mean time, the State Government issued G.O. Ms. No. 22 P & 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.

5. 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.

6. 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 automatically expires. Appropriate budgetary allocation has been made for the creation of such posts and the payment of salary to those regular workers.

7. The Petitioner has come forward to file the writ petition, seeking for grant of the benefit in terms of G.O. Ms. No. 95 Environment and Forest Department dated 07.08.2009. It is stated by the Petitioner that he had joined on 10.04.2000 in Tirupattur II Circle and he had completed 10 years of service and therefore, he should be appointed in a regular post on a supernumerary basis. As of now, he had been paid only Rs. 2126/-as monthly salary. When he did not get any reply, he filed the writ petition.

8. When the matter came up on 25.06.2010, this Court directed the learned Special Government Pleader to take notice. Subsequently, the Petitioner had also impleaded the State Government as party first Respondent. On 02.07.2010, when the matter came up, without admitting the writ petition, this Court directed the Respondents to continue to engage the services of the Petitioner in the same post which he was doing in the past. Aggrieved by the same, the Respondents

have filed a vacate stay application in M.P. No. 2 of 2010 together with supporting counter affidavit dated 14.12.2010.

9. It was stated by the Respondents that the Petitioner's father was serving as a daily rated worker in the same division. He died on 21.12.1999. His services were never regularised. Thereafter, his widow Tmt. Laxmi gave a letter seeking for compassionate appointment for the Petitioner, who is their elder son. The then Divisional Forest Officer informed that there was no scope for any compassionate appointment consequent to the death of a daily Wages watcher. But the said Laxmi forwarded a complaint to the Chief Minister's Grievance Cell. Later the Principal Chief Conservator of Forest by letter dated 07.04.2011 directed the Deputy Conservator of Forest to accommodate the Petitioner temporarily in a vacant post in the Social Forestry division. It was wrong to state that the Petitioner was given any compassionate appointment. He was accommodated by the Forest Ranger at Tirupattur and he has also not completed 10 years of service as on 07.08.2009. It was also stated that the GO referred to by the Petitioner was only to accommodate 3058 candidates who have completed 10 years of service as on the date of GO, viz., 07.08.2009. The Petitioner had not completed 10 years of service. Therefore, his name was not included in the State Wise Seniority List and the Petitioner's representation was also not forwarded to the headquarters.

10. In view of the above, the Petitioner's request for regularising his services in terms of the GO does not arise in the light of the stand taken by the Respondents. Hence, the writ petition stands dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed.