

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.A.No.24 of 2010
and M.P.No.1 of 2010

1. The Principal Chief Conservator of Forests,
Chennai - 600 015.

2. The Conservator of Forests,
Dharmapuri Circle, Dharmapuri.

3. The District Forest Officer,
Dharmapuri.

4. Government of Tamilnadu,
Rep. by the Secretary to Government,
Environment and Forests Department,
Fort St. George, Chennai - 600 009.

.. Appellants

versus

1. K.Nagarajan (Deceased)

2. Tmt.Padma

3. Tmt.Anandhi

4. Tmt.Jothi

5. Tmt.Sumathi

6. Tmt.Gomathi

7. Tmt.Valarmathi

8. Thiru.Chennappan

.. Respondents

[RR2 to 8 brought on record as LR's of deceased sole respondent vide order of Court dated 20.11.2013 in M.P.Nos.1 to 3 of 2013.]

Writ Appeal filed against the order dated 15.10.2009 in W.P.No.8695 of 2006 (T) (O.A.No.5732 of 2002).

For Appellants : Mr.N.Inbanathan
Government Advocate (Forest)

For Respondents : Mr.M.Ravi

JUDGMENT

(Order of the Court was made by **S.MANIKUMAR, J.**)

Pending writ appeal, Mr.K.Nagarajan, sole respondent died. Vide order dated 20.11.2013 in M.P.Nos.1 to 3 of 2013, respondents 2 to 8 have been brought on record as legal representatives of sole respondent.

2. Challenge in this writ appeal is to an order made in W.P.No.8695 of 2006 (T) (O.A.No.5732 of 2002) dated 15.10.2009, by which, the writ Court, while setting aside the proceedings dated 30.09.2002 of the District Forest Officer, Dharmapuri and the order dated 20.02.2003 passed by the Secretary to Government for Environment and Forest Department Chennai, appellants 3 and 4 respectively, has directed the appellants/respondents to regularise the services of Mr.K.Nagarajan (since deceased) as Forest Guard, from 01.08.1977 to 16.04.1995 and to grant him notional benefits for the said period and also to promote him notionally to higher posts from the date on which his immediate juniors were promoted and to grant him notional benefits thereon.

3. Short facts leading to the writ appeal are that the sole respondent (since deceased) was appointed as a Forest Guard on 18.04.1974 and a

charge memo dated 23.05.1978, was issued by the District Forest Officer, Dharmapuri, the 3rd appellant herein, alleging that while he was working as Forest Guard in Nayakanur Beat, Morappur Range from 01.07.1996 to 04.04.1997, he committed the following irregularities,.

- "1. Neglect of duty through failure to prevent 37+21 Nos. of Tamaring fellings of 16 C.Ms. to 146 C.Ms. and one day to two days of age, in Nayakkanur Beat of Morappur Range and failed to take action against the subordinates*
- 2. The felling list for the above fellings was listed out by the Forest Guard himself on 01.04.1977 and 02.04.1977 and stated in the list that the illicit fellings might have been committed by the Tamaring lessee Contractor (1976-77). But, the Forest Guard has failed to obtain the signature of the lessee in the felling list.*
- 3. During the course of enquiry by the District Forest Officer on 05.03.1978 and 17.05.1978, it was revealed that the lessee was not responsible for the illicit fellings and that the Forest Guard made a false report the lessee.*
- 4. In the felling list the forest Guard did not obtain the signature of the concerned Forest Watcher.*
- 5. The Forest Guard has submitted the felling list directly to the Forest Ranger instead of routing through his section Forester."*

4. Following enquiry, vide order dated 30.04.1980 of the District Forest Officer, Dharmapuri, sole respondent was removed from service.

5. Being aggrieved, he preferred an appeal to the Conservator of Forest, Dharmapuri Circle, Dharmapuri. He partly allowed the appeal on 30.06.1992 and remanded the matter for de nova trial, following which, vide order dated 03.01.1984, the District Forest Officer, Dharmapuri, once again removed him from service. The respondent preferred a Memorial Petition dated 08.02.1989, before the Chief Conservator of Forests. After considering the material on record vide order dated 22.02.1995, the Chief Conservator of Forest (Territorial), Chennai, has set aside the order of removal dated 03.01.1984, passed by the District Forest Officer, Dharmapuri, as hereunder

"(iv) The charge sheet was issued on 23.05.1978. As per rules, the Show-cause Notice should accompany the report of the Enquiry Officer. In this case, the enquiry was conducted on 20.08.1983, 05.09.1983 and 23.09.1983 after issue a show-cause notice but the Enquiry Officer's report was not prepared and communicated to the Accused Officer at any stage and this is a major procedural flaw.

(v) Care was taken to ascertain whether this was connived or not and no efforts were taken to examine the statement of the Forest Guard that the fellings were taken due to Contractor.

Therefore, it is observed that the punishment given to the Forest Guard removing him from service is not fully justified. There is no evidence that the District Forest Officer has initiated any disciplinary action against the Forester and the Watcher in this case.

I therefore pass the following orders on the memorial.

ORDER

The order No.E2/21084/80, dated 03.01.1984, issued by the District Forest Officer, removing the Forest Guard from service is fully set aside the further action on the forest Guard is dropped."

6. Based on the order of the Chief Conservator of Forests, Chennai, the respondent had been reinstated in service. However, the period of out of employment from 1980 till his reinstatement, was not regularised and he was not given promotion. Therefore, he filed O.A.No.5732 of 2002, praying for regularisation of the services from 30.04.1980 to 16.04.1995, as duty period, for all purposes and consequently, to grant service and monetary benefits, including promotion with retrospective effect, from the date of promotion of his immediate junior. The said OA has been transmitted to this Court and renumbered as W.P.No.8695 of 2006.

7. When the matter is pending, the District Forest Officer, Dharmapuri, has passed an order dated 30.09.2002 refusing to regularise the period of service as duty. The Secretary to the Government, Environment and Forest Chennai, the 4th appellant has also passed an order dated 20.02.2003 on the same lines. Therefore, respondent has filed a petition to amend the prayer, to quash the abovesaid orders. Amendment petition has been ordered.

8. Before the writ Court, contention has been made by the respondent that no sooner the disciplinary proceedings were dropped by the Chief Conservator of Forests, the appellants ought to have regularised the period of out of employment. However, it appears that before the writ Court submission has been made by the learned counsel, that the writ petitioner would be satisfied, if the period of duty is notionally taken. Submission has also been made that the respondent would be entitled to notional promotion / benefits from the date on which his immediate juniors were promoted and order made in W.A.No.120 of 2009 dated 30.07.1999, has been relied on.

9. On behalf of the appellants, contention has been made that vide order dated 20.02.2003, the period between 01.08.1977 to 16.04.1994, has been treated as leave to which the sole respondent is eligible. Reference has also been made to Fundamental Rules FR 54, relating to payment of wages for the period of non employment and regularisation of services.

10. Rejecting the contentions of the appellants that the case on hand does not attract FR 54, where termination is set aside for non compliance of the requirements of Clause 2 of Article 311 of the Constitution of India, and that, it was not a case of exoneration, but the entire disciplinary proceedings have been dropped by the Chief Conservator of Forests

(Territorial), the writ Court, vide order dated 05.10.2009 in W.P.No.8695 of 2006 (T), set aside the proceedings dated 30.09.2002 of the District Forest Officer, Dharmapuri and the order dated 20.02.2003 passed by the Secretary to the Government for Environment and Forest Department Chennai, appellants 3 and 4 respectively and consequentially, directed to regularise the services of the respondent (since deceased) from 01.08.1977 to 16.04.1995 and to grant him notional benefits for the said period and also to promote him notionally to higher posts, from the date on which his immediate juniors were promoted and to give him notional benefits thereon.

11. Though, Mr.N.Inbanathan, learned Government Advocate (Forest), contended that the writ Court erred in not considering that as per Fundamental Rule 54, the Government is entitled to treat the period of absence, either as leave or as duty, and that the writ Court failed to consider that period of out of employment was from 30.04.1980 to 16.04.1995, which is more than 15 years, this Court is not inclined to accept the said contentions for the reason that as rightly held by the Writ Court, it is not a case of exoneration on merits, but is a case of dropping the entire disciplinary action against respondent. At the risk of repetition, while the Chief Conservator of Forests (Territorial), Chennai set aside the order of removal dated 03.01.1984, he has ordered as hereunder.

"Order No.E2/21084/80 dated 03.01.1984, issued by the District Forest Officer, removing the Forest Guard from services is fully set aside. Further action on the forest Guard is dropped."

12. When the order of removal of service was fully set aside and further action on the Forest Guard is dropped, directions issued by the writ Court, to grant only notional benefits, do not require interference.

13. In the light of the above discussion, Writ Appeal is dismissed. No Costs. Consequent to the dismissal of the writ appeal, appellants are directed to compute the retiral benefits and disburse the same within two months from the date of receipt of a copy of this order. Directions of the writ Court, be complied, within the said period. Failure to comply with the directions, within the said time limit would entail interest as per the provisions of the Tamilnadu Pension Act, 1978. Connected Miscellaneous Petition is closed.

[S.M.K., J.] [M.G.R., J.]
05.12.2016

Index: Yes/No.
Internet: Yes

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S. MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

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