

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 28.09.2016
Delivered On : 07.10.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.12084 of 2009
and
M.P.No.1 of 2009

Thomas Stanislaus De Rose ... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by the Secretary to Government,
Environment and Forests Department,
Secretariat, Chennai-9.
2. The Principal Chief Conservator of Forest,
Panagal Building, Chennai-15. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the first respondent in G.O.(D).No.124, Environment & Forest (FR9B) Department dated 06.04.2009 and quash the same.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.N.Inbanathan,
Government Advocate (Forest)

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Certiorari to quash the order of the first respondent in G.O.(D).No.124, Environment & Forest (FR-9B) Department dated 06.04.2009.

2. The petitioner would state that he was directly recruited as Forester Apprentice and posted as Forest Ranger during the year 1983 and had been elevated to selection grade Forest Ranger and he is on the verge of getting promotion as Assistant Conservator of Forest and he had rendered sincere and unblemished service for the past 26 years in the Forest Department. While the petitioner was working as a Ranger in Alagiyar, Pandipuram Range, Kanyakumari District in the year

1999, a charge sheet was issued by the Tribunal for Disciplinary Proceedings, Nagercoil in TDP Case No.2/99 dated 13.10.1999, framing two charges.

3. The first charge was that the petitioner had committed grave misconduct by threatening one R.Chandran @ Ponnappan that he will book a case against him as a huge teak pole was recovered from the backyard of his house in his absence and demanded illegal gratification of Rs.2,000/- for allowing him to go free without booking a case against him and that in pursuant to the said demand, the petitioner has received illegal gratification of Rs.2,000/- from the said Thiru.R.Chandran @ Ponnappan on 28.09.1991 at about 2.00 p.m. at the Range Officer's Quarters, Alagiya Pandipuram. The second charge was that while he was working as Forest Ranger at Alagiya Pandipuram, Kanyakumari Division on 18.01.1992 at about 7.30 p.m., the petitioner have brought one Thiru.Kurusu to the Forest Range Officer for enquiry and detained him unofficially and on the next day, he had demanded an illegal gratification of Rs.3,000/- for leaving him without booking a case and had received an illegal gratification of Rs.2,450/- from one Thiru.Russel and allowed Thiru.Kurusu free.

4. A charge memo was served on the petitioner on 06.01.2000 and the Tribunal for Disciplinary Proceedings has conducted enquiry and submitted its report dated 28.01.2001 to the second respondent herein, holding that the second charge alone was proved against the petitioner. The petitioner submitted a reply/representation dated 16.09.2002 to the show cause notice and the second respondent concluded that with multifarious work at the level of a territorial ranger, specially of a sensitive range, which can at best be termed as omission and considered that imposing a minor penalty will meet the ends of justice and awarded a punishment of "Censure", vide proceedings in No.T2/27419/99-18 dated 30.11.2002. Thus the proceedings which was initiated for the disciplinary proceedings has culminated into minor penalty of Censure after a lapse of 10 years during the year 2002. The petitioner was under the bonafide impression that he will be promoted as Assistant Conservator of Forest and while so, the panel of eligible Forest Rangers for promotion to the post of Assistant Conservator of Forest for the year 2007-2008 was issued in G.O.Ms.No.84, Environment & Forest (PR-I) Department dated 21.08.2008, in which the petitioner's name was omitted to be included on account of disciplinary proceedings initiated against him under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the said disciplinary proceedings had also been dropped, vide proceedings of the first respondent dated 12.05.2009. Though the petitioner was fully qualified and eligible for being promoted as Assistant Conservator of Forest, over and above,

his immediate junior name has been included in the panel for the year 2007-2008.

5. While so, to his shock and surprise, a show cause letter was issued dated 04.03.2008, in and by which the first respondent has initiated Suo Motu revision against him so as to revise the order of Censure imposed by the second respondent dated 30.11.2002, after a lapse of 5 years 3 months from the date of order of punishment and 16 years from the date of alleged occurrence. The petitioner submitted a detailed representation dated 09.05.2008 to the first respondent. However, the first respondent, vide G.O.(D). No.124, E& F(FR-9B) Department dated 06.04.2009, imposed punishment of stoppage of increment for a period of 3 years with cumulative effect and the petitioner's name was omitted to be included in the approval panel of eligible Forest Rangers for promotion to the post of Assistant Conservator of Forest for the year 2007-2008 issued during the year 2008. Challenging the same, the petitioner has filed this writ petition.

6. When the matter is taken up for consideration, the learned counsel for the petitioner relied upon the decision in N.Bose v. State of Tamil Nadu rep by its Secretary, Education Department, Chennai and Another [(2009) 1 MLJ 1049] and would submit that Suo Motu revision can be initiated only within a reasonable time and in the instant case, the order of Censure was awarded on the petitioner on 30.11.2002 and thereafter, Suo Motu revision was initiated on 04.03.2008 with a delay of 5 years 3 months, causing grave prejudice to the petitioner and therefore, prays for quashing the impugned order. The learned counsel appearing for the petitioner also relied upon the order dated 24.08.2009 made in W.P.No.14791 of 2008 [A.Sengodan v. State of Tamilnadu And another] in support of his submissions.

7. Per contra, Mr.N.Inbanathan, learned Government Advocate (Forest) has drawn the attention of this Court to the counter affidavit of the second respondent and would submit that the first respondent has examined the case carefully and independently along with records and decided to revise the punishment of Censure awarded to the petitioner by the second respondent on 30.11.2002, under the powers vested in Rule 36 (1) of TNCS (D&A) Rules and since the punishment awarded by the second respondent does not commensurate with the gravity of the charge, first respondent have proposed to impose a punishment of stoppage of increment for a period of 3 years with cumulative effect. The said decision was conveyed to the petitioner only on 04.03.2008, for which the petitioner submitted further representation dated 09.05.2008 and the petitioner has not furnished any fresh grounds/reasons to

reconsider the proposed punishment and hence, prays for dismissal of the writ petition.

8. This Court has considered the rival submissions and also perused the materials placed before it.

9. As rightly contended by the learned counsel for the petitioner Suo Motu revision can be initiated only within a reasonable time and in the instant case, the order of Censure was awarded on the petitioner on 30.11.2002 and Suo Motu revision was initiated only on 04.03.2008, with a delay of 5 years 3 months. It is relevant to refer to the decision of this Court in N.Bose v. State of Tamil Nadu rep by its Secretary, Education Department, Chennai and Another [(2009) 1 MLJ 1049] wherein it has been observed as under:

"14. From the above referred judgment, it is evident that suo moto power can be exercised within a reasonable period. What is a reasonable period, depends upon each and every case and as stated supra, in this case, the second respondent passed the order in the year 2000 and based on the seniority, the petitioner is eligible to be included in the panel for the promotion to the post of District Educational Officer and therefore, great prejudice is caused to the petitioner due to the delay in initiation of suo motu power by the first respondent. Hence, the impugned exercising suo motu power under Rule 36 of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, after a lapse of about seven years is found unreasonable and consequently, the impugned order of punishment enhancing the punishment from one of warning to that of withholding increment for one year without cumulative effect is set aside. It is the specific case of the petitioner as well as the respondents that only due to the currency of the said punishment, the petitioner was not given the promoted post of District Educational Officer, as he is otherwise eligible to the post as per his seniority. The same is also made clear in the Letter No.8353/A1/2007-17, dated 31.08.2007 of the first respondent. Hence, admittedly, the petitioner's junior V.Natarajan was given promotion, by order, dated 30.7.2007, hence the petitioner is eligible to be promoted as District Educational Officer and the respondents are bound pass revised orders regarding the petitioner's promotion as District Educational Officer."

I find that absolutely there cannot be any dispute with regard to power of the first respondent in initiating Suo Motu Revision under Rule 36(1) of the TNCS(D&A) Rules. At the same

time, there is an inordinate delay in initiating Suo Motu Revision and in the instant case, there is a delay of 5 years 3 months in initiating Suo Motu Revision and the delay, at any cost, cannot be stated to be reasonable. Hence, on the sole ground, the impugned order warrants interference in view of the dictum laid down in the above cited decision. .

10. In the result, this Writ Petition is allowed and the impugned order of the first respondent in G.O.(D).No.124, Environment & Forest (FR9B) Department dated 06.04.2009 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jvm

To

1. The Secretary to Government,
Government of Tamil Nadu,
Environment and Forests Department,
Secretariat, Chennai-9.
2. The Principal Chief Conservator of Forest,
Panagal Building, Chennai-15.

+lcc to Mr.M.Ravi, Advocate, S.R.No.58056

+lcc to the Special Government Pleader(Forest), S.R.No.58094

सत्यमेव जयते W.P.No.12084 of 2009

PPA(CO)
CA(26/10/2016)

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