

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2018

CORAM :

The Hon'ble Mr.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE S.S.SUNDAR

W.A.No.198 of 2015
and M.P.No.1 of 2015

- 1.The Secretary to Government,
Environment and Forests Department,
Fort St. George,
Chennai - 9.
- 2.The Principal Chief Conservator of Forests,
Chennai - 15.
- 3.The Divisional Forest Officer,
Coimbatore Social Forestry,
Coimbatore. ... Appellants

-vs-

D.Natarajan (deceased)

- 1.N.Lakshmi
- 2.N.Mohanasivam
- 3.N.Durai
- 4.N.Sivaranjani
- 5.Vedanayaki

... Respondents

Appeal filed under Clause 15 of Letters Patent against the order dated 19.3.2014 made in W.P.No.26073 of 2005 on the file of this Court.

Prayer in WP.26073/05:

Writ petition, having been transferred from the file of the Tamil Nadu Administrative Tribunal, Chennai in OA.No.1841 of 2002, is filed the call for the records relating to the order of the 1st respondent in G.O.Ms. No. 28 Encroachment & Forests (FR-1) Dept.dated 06.02.2002 and quash the same with all the attendant benefits both service and monetary including continuity of services backwages promotion etc.

For Appellants .. Mr.M.Santhanaraman
Spl. Government Pleader (Forest)

For Respondents.. No Appearance

JUDGMENT

(Judgment of the Court was made by Hluvadi G.Ramesh,
Acting Chief Justice)

This appeal is directed against the order of the learned Single Judge dated 19.3.2014 in W.P.No.26073 of 2005.

2. Heard the learned Special Government Pleader (Forest) appearing for the appellants. No representation on behalf of the respondents.

3. The original petitioner D.Natarajan (since deceased) filed the writ petition being W.P.No.26073 of 2005 seeking a writ of certiorarified mandamus to quash G.O.(Ms) No.28, Environment and Forests (FR-1), Department, dated 6.2.2002 and to consequently, direct the appellants herein to pay all attendant benefits both service and monetary, including continuity of services, back wages, promotion etc. Pending writ petition, the original writ petitioner died and his legal heirs were brought on record.

4. By an order dated 19.3.2014, the learned Single Judge, allowed the writ petition thereby quashing the impugned Government Order, dated 6.2.2002 and ordered continuity of service, back wages, promotion etc.

5. Aggrieved by the order of the learned Single Judge, the appellants have filed this appeal.

6. The learned Special Government Pleader appearing for the appellants submitted that the learned Single Judge quashed the Government Order dated 6.2.2002 with continuity of service, back wages, promotion etc. He would submit that the delinquent is no more even at the time of passing the order by the learned Single Judge and, therefore, the question of ordering promotion does not arise. The learned Special Government Pleader submitted that the learned Single Judge erred in passing the impugned order and the same has to be set aside, in as much as the learned Single Judge has taken the role of the appellate authority to re-appraise the evidence to allow the writ petition. He added that when a statutory authority has discharged the functions of fact finding authority by properly letting in witnesses and examination of documents in corruption

case, the High Court cannot sit in appeal to discuss the merits of the charges.

7. The charge against the original petitioner was specifically proved through P.Ws.5, 6 and 8 and it is a clear case of demand and acceptance of illegal gratification. It has also not been proved that the appellants have not followed fair procedure while considering the case of the original petitioner on examination of above witnesses.

8. In such view of the matter and to give a quietus to the issue, more particularly, taking note of the fact that setting aside the order of the learned Single Judge would be a burden on the family of the deceased who has prosecuting the case since 2005, and the family would be stated to be further turmoil if the matter is remitted to the respondent authorities, this Court is of the view that the order passed by the learned Single Judge needs modification.

9. Accordingly, the order of the learned Single Judge is modified to the effect that the deceased employee is entitled to continuity of service for the purpose of pensionary benefits without back wages on withholding of one increment with cumulative effect.

10. The writ appeal, accordingly, stands disposed of, leaving the parties to bear their own costs. Consequently, M.P.No.1 of 2015 is closed.

Sd/-

Assistant Registrar (CO)

// True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Environment and Forests Department,
Fort St. George, Chennai - 9.
- 2.The Principal Chief Conservator of Forests,
Chennai - 15.
- 3.The Divisional Forest Officer,
Coimbatore Social Forestry, Coimbatore.

+1cc to Mr.M.Ravi, Advocate SR.No.54831

+1cc to Government Pleader SR.No.54659

W.A.No.198 of 2015

SPD(CO)

SMI/30.08.2018