

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.02.2018

Delivered on : 04.06.2018

CORAM

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.30538 of 2014 and MP.No.1 of 2014

T.Sivasankaran

.. Petitioner

Vs

1. The District Forest Officer,
Villupuram Forest Division,
Villupuram.
 2. The Conservator of Forests,
Villupuram Circle, Villupuram.
 3. The Principal Chief Conservator of Forests,
and Head of Forest Force,
Panagal Building, Saidapet,
Chennai 600 015
- .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the charge memo issued by the 1st respondent passed in his proceedings Lr.No.6343/2014/V1(1) dated 24.10.2014 quash the said charge memo dated 24.10.2014 and consequently direct the respondents to settle the retirement benefits to the petitioner forthwith.

For Petitioner : Mr.P. Anbarasan
For Respondents : Mr.S.V. Vijay Bashanth
AGP(F)
Government Advocate
for R1 to R3

ORDER

This writ petition is filed under Article 226 of Constitution of India, by the petitioner, with a prayer to issue a writ of certiorarified mandamus to quash the charge memo dated 24.10.2014 issued to the petitioner in proceedings

Lr.No.6343/2014/V1(1) dated 24.10.2014 and consequently, direct the respondent to settle the retirement benefit of the petitioner forthwith and pass such further or other orders to render justice.

2. As it appears from the averments made in this writ petition that the petitioner while working as a Forest Range Officer, Villupuram Division was to superannuate from service on 31.10.2014 on reaching the age of superannuation.

But before his superannuation, he was issued with a charge memo on 27.10.2014 vide proceedings in Lr.No.16343/2014/V1(1) dated 24.10.2015 by the District Forest Officer/ first respondent alleging certain misconduct and an order of suspension was passed against him on 28.10.2014 vide S.O.No.51/2014/E1 dated 27.10.2015 by the Conservator of Forest, Villupuram Circle/2nd respondent in this case.

3. The charge memo indicates that during the 100% inspection of the plantation made during the tenure of the petitioner as Forest Range Officer in Tindivanam Forest Range during the year 2013-14 under the scheme of "Road side plantation", so also the plantation of teak wood under the areas affected by Thane Cyclone under the scheme of Massive Tree Planting and under the scheme of Biodiversity Conservation and Greening Project. However, later on it was found that 43%, 13%, 48% and 17.6% saplings planted respectively in the aforesaid scheme have died which was beyond the permissible limit. The same have as such resulted in financial loss of Rs.13,98,613/-, Rs.65,982/-, Rs.3,75,672/- and also Rs.2,83,456/- and for that the petitioner's responsibility is Rs.7,91,801/-, Rs.39,393/-, Rs.2,36,843/- and Rs.2,26,601/- respectively. The aforesaid amounts to misconduct of the petitioner. The issuance of such charge memo alleging the misconduct, has been challenged by the petitioner in this writ petition on the ground that the same is baseless and without any justifiable reasons as the death of the saplings is not solely attributable to the petitioner, so also no negligence in duty is attributable to him for such death of saplings, more so when the petitioner is not solely responsible for management of such plantation after the plantation is made. The charge memo has also been challenged to be illegal and arbitrary on the ground that the respondent no.1 is incompetent to issue the same as he is not the Disciplinary Authority of the present petitioner and so also the authority issuing the charge memo being 25% responsible for success of the plantation is not incompetent to issue the same. Otherwise also, the same is illegal and arbitrary being contrary to Rule-9(A) of Tamil Nadu Civil Service (Disciplinary and Appeal) Rules (for short "the Rules")

which speaks as thus when more than one Government servant of the same Department are jointly involved or whose cases are interconnected, the Authority competent to institute disciplinary proceedings shall be the immediate higher Authority in that Department in respect of the Government Servants who holds the higher post" and in this case, though the District Forest Officer was involved besides the petitioner, who is above the rank of the petitioner, combined charge memo and disciplinary proceedings was not issued against the delinquent officers and not by the authority competent to proceed against the first respondent but the first respondent himself issued the same, the same is illegal and contrary to the above rules as such liable to be quashed. Therefore, the charge memo having not been issued by the appropriate authority and no misconduct being there against the petitioner, the same is liable to be quashed in exercise of the writ jurisdiction, is the averment of the petitioner in this writ petition.

4. Counter Affidavit has been filed controverting the aforesaid averment in the writ petition indicating that the petitioner is not solely responsible for success of the plantation and, as such, he is not guilty of any misconduct for such death of saplings, as alleged in the charge memo. According to the respondents, the petitioner being responsible for successful implementation of the scheme of plantation and to produce the success by following the strict instruction as provided in the scheme and as the death of sappling has resulted for non-adherence to the instructions in the scheme, he is responsible for such negligence in duty which amounts to misconduct inviting the Disciplinary proceeding. Hence, the charge memo issued for initiation of a disciplinary proceeding under Section 17(b) of the Rules cannot be found fault with. So far as the initiation of the disciplinary proceeding by the respondent no.1 on the ground that he being not the disciplinary authority of the present petitioner and also responsible for 25% of implementation of the scheme, hence he could not have issued the charge memo is concerned, the same has been controverted by the respondents in the counter affidavit on the ground that he being the immediate superior can initiate such a disciplinary proceeding as Rule-9(A) of the Rules has no application to the present facts, inasmuch as the Department had not attributed any negligence to him to proceed against him as a delinquent along with the present petitioner and also the charge memo has been approved by the Principal, Chief Conservator of Forests. Hence, challenge to the issuance of charge memo on the aforesaid ground in this writ petition is devoid of merit and liable to be dismissed, is the averment of the respondents in the counter affidavit.

5. I have heard the learned counsel appearing for the parties.

6. It is submitted by the learned counsel appearing for the petitioner that since in this case though the respondent no.1 is also responsible in successful implementation of the scheme to the extent of 25% and the writ petitioner is not solely responsible for any death of saplings which has caused loss to the State exchequer, he could not have been made responsible much less solely responsible and proceeded with the disciplinary proceeding, more so by the person who is also jointly responsible with him in implementing the scheme. The Respondent no.1 also being not the disciplinary authority is incompetent to issue the charge memo, hence the issuance of the charge memo in this case is illegal and arbitrary. Otherwise also, the charge memo issued not by the authority competent to initiate the disciplinary proceeding against the respondent no.1 as contemplated under Rule-9(A) of the Rules, the charge memo is incompetent and, as such, liable to be quashed. Reliance in this regard has been placed in a decision of this Court in the case of R. Neethirajan vrs. The Secretary to Government, in WP(MD) No.7828 of 2009. Learned counsel for the petitioner has drawn the attention of this Court to the law laid down in the aforesaid case, wherein a charge memo was quashed, as there was no compliance of Rule 9(A) of the Rules.

7. In response, controverting the aforesaid contention raised, it is submitted that since the petitioner is responsible for successful implementation of the scheme and for his non-adherence to the strict instruction in the scheme for success of the plantation, there were death of the saplings as alleged, as such, he is guilty of the negligence in discharge of his official duty which amounts to a misconduct, hence the charge memo issued in this regard cannot be questioned on the ground that besides him others being responsible and they having not been proceeded with, the charge memo issued in this regard is vitiated. Since no material is there indicating the negligence of any other person including the respondent no.1 and the material being placed before the higher authority, i.e., the Principal, Chief Conservator of Forests, it was decided to proceed against the petitioner and the respondent no.1 being his immediate official superior competent to initiate a proceeding against him under Rule-17(a) of the Rules, issuance of the charge memo for initiation of disciplinary proceeding under Section 17(b) of the Rules, therefore, cannot be questioned though he is not entitled to impose punishment under Section 17(b) of the Rules to the petitioner. The aforesaid is also the view of this Court in the case of State of Tamil Nadu vrs. M. Mahendran, decided in Writ Appeal No.396 of 2012, so also of the

Apex Court in the case of Commissioner of Police vrs. Jayasurian and another, reported in 1997 (6) SCC 75. In the aforesaid case, it has been held that when the show-cause notice issued to the delinquent with the approval of the competent authority by subordinate of the competent authority, who is the superior to the delinquent officer, the same cannot be questioned on the ground that the delinquent is incompetent to issue the notice. Placing reliance on the same, it is submitted that the writ petition filed challenging the issuance of the charge memo is devoid of merit. The same is more so in view of the amendment of the Rules indicating the fact that the immediate authority who is competent to impose punishment under Rule-17(a) of the Rules is also competent to issue show-cause notice for initiation of the disciplinary proceeding under Rule-17(b) of the Rules though not competent to impose punishment on the same and there is no reproach that the District Forest Officer is the immediate authority of the writ petitioner, even though he is not competent to impose the punishment on the writ petitioner, hence, the charge memo issued against him by the respondent no.1 is valid, more particularly in view of the amendment to the Rules, so also the decision rendered in the case of Mahendran (supra). So far as the challenge to the initiation of the disciplinary proceeding in view of Rule-9(A) of the Rules is concerned, indicating the fact that the respondent no.1 being jointly responsible to the extent of 25% in such loss and, as such, he could not have issued the charge memo and it is only immediate authority who can proceed against the respondent no.1, is competent to issue such charge memo is concerned, it is submitted that the authority having gone through the material finding nothing in the record to proceed against the respondent no.1 and, as such, there being no joint proceeding, the same cannot be questioned on the ground of violation of Rule-9(A) of the Rules.

8. Before addressing the contentions of the learned counsel appearing for the parties, it would be apposite to mention here that the Rules prescribed that a person competent to proceed against his subordinate under Rule-17(a) of the Rules though incompetent to impose punishment in a disciplinary proceeding under Section 17(b) of the Rules being not the Disciplinary authority can proceed with the issuance of a charge memo for initiation of a disciplinary proceeding under Section 17(b) of the Rules is not in dispute. It is also not in dispute that the respondent No.1 is the immediate authority of the writ petitioner and competent to proceed against him under Section 17 (a) of the Rules. Therefore, the contention advanced by the learned counsel appearing for the petitioner since the respondent no.1 is not the disciplinary authority of the petitioner, the issuance of charge memo by the respondent no.1 against the petitioner is impermissible and, as such, the same

is liable to be quashed, appears to be without any substance. The same is more so in view of the law laid down by a Division of this Court in the case of M.Mahendran supra wherein, in paragraph 10, it has been held as follows:

“10. With regard to this, learned Government Advocate relied on the decision reported in (1996) 2 SCC 145, in the case of Inspector General of Police and another S. Thavasiappan, wherein, it has been held that it is not necessary that the charges should be framed by the authority competent to impose major penalty or that the enquiry should be conducted by such authority. Therefore, we are of the opinion that Rule 9(2) of the said Rules is very clear that the authority who is competent to issue minor punishment as defined under Rule 8(i) to (iii) and (v) of the said Rules is competent to initiate the disciplinary proceedings. Hence, we do not find any infirmity in the charge memo issued by the third appellant”.

The Apex Court also in the case Jayasurian (supra) placing reliance in the decision of Thavasiappan supra, in paragraph-7 have held as follows :-

“7. As regards the first ground given by the Tribunal, we find that the matter is covered by the decision of this Court in Inspector General of Police v. Thavasiappan, wherein, construing the rules applicable in this case, it has been held that any superior authority who can be held to be the controlling authority can initiate a departmental proceeding and issue the charge memo and that initiation of a departmental proceeding and conducting an enquiry can be by authority other than the authority competent to impose the proposed penalty.”

सत्यमेव जयते

9. Now coming to the issuance of charge memo on the ground of so far infraction of Rule-9(A) of the Rules is concerned, reliance in this regard has been placed by the petitioner in a decision of this Court in the case of R. Neethirajan (supra). As it appears, in the case of R. Neethirajan (supra), a departmental proceeding is also contemplated against another officer who was jointly responsible along with the delinquent in that case, but instead of proceeding jointly against both of them, the delinquent officer in the said case was proceeded with by an officer under the aforesaid Rules departmentally who is incompetent to proceed

against the higher officer who was jointly responsible with the delinquent therein, the Court quashed the charge memo on the ground of infraction of Rule-9(A) of the Rules. So also, for not proceeding against the another delinquent who was involved in the same incident of misconduct alleged, assigning the reasons that the department to either proceed against all or should not proceed against anyone inasmuch as the department has no discretion to proceed against some of the employees leaving the other. It appears that in the aforesaid case of R. Neethirajan (supra), this Court had placed reliance in the case of Sengara Singh vrs. State of Punjab, reported in 1983 (4) SCC 225 wherein the Apex Court have held that

"we are of the view that there is no iota to evidence which would differentiate the case of the present appellant from that of the other employee Meenakshisundaram. This discrimination is writ large on the record and the court cannot overlook the same. Therefore, we see no justification in treating the appellant differently without pointing out how he was guilty of more serious misconduct or the degree of indiscipline in this case was higher than compared to that of Meenakshisundaram. Learned counsel for the management failed to explain to us the distinguishing features and therefore, we are satisfied in putting both of them in the same bracket. Therefore, we have no hesitation to come to the conclusion that the treatment meted to the present appellant suffers from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14 of the Constitution of India. The Court must accordingly interpose and quash the discriminatory action."

10. But, coming to the case in hand, as it appears, nothing is brought to this Court that the respondent no.1 though under the scheme is responsible for 25% in implementation of the scheme, responsible along with the present petitioner in success of the plantation ad in death of the saplings he had any contribution, rather it is the case that the petitioner under the scheme is responsible for success of the plantation. When no misconduct appears to have been prima-facie found by the authority while dealing with the question of alleged misconduct against the first respondent and the said authority is superior to the disciplinary authority of the present petitioner, having approved the file to proceed against the petitioner only, the decision cited by the present petitioner challenging the issuance of charge memo for infraction of Rule-9(A) of the Rules and also on the ground of discrimination as such is violative of Article 14 of the

Constitution of India, appears to be without any substance. So far as the challenge to the initiation of the charge memo that he is no way responsible for successful implementation of the scheme is concerned, prima-facie on perusal of the scheme, it cannot be accepted and, as such, the charge memo issued against him cannot be said to be baseless and without any materials on record. In such premises, issuance of charge memo against the petitioner by the respondent no.1 cannot be found fault with on any of the grounds, as stated in the writ petition and also on the ground of the submissions as aforesaid. Hence, the writ petition filed by the petitioner is devoid of merit and, accordingly, stands dismissed. However, in the circumstances, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

11. But, while parting with this case, it is observed that since the petitioner is already superannuated, the same be concluded as expeditiously as possible preferably within a period of six months from the date of receipt / production of the copy of this order and such disciplinary proceeding is required to be disposed of expeditiously is the mandate of law laid down by the Apex Court in the case of [State of Andhra Pradesh Vs. N.Radhakishan reported in 1998 [4] SCC 154.

s/d-
Assistant Registrar(CS-III)

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Sub-Assistant Registrar

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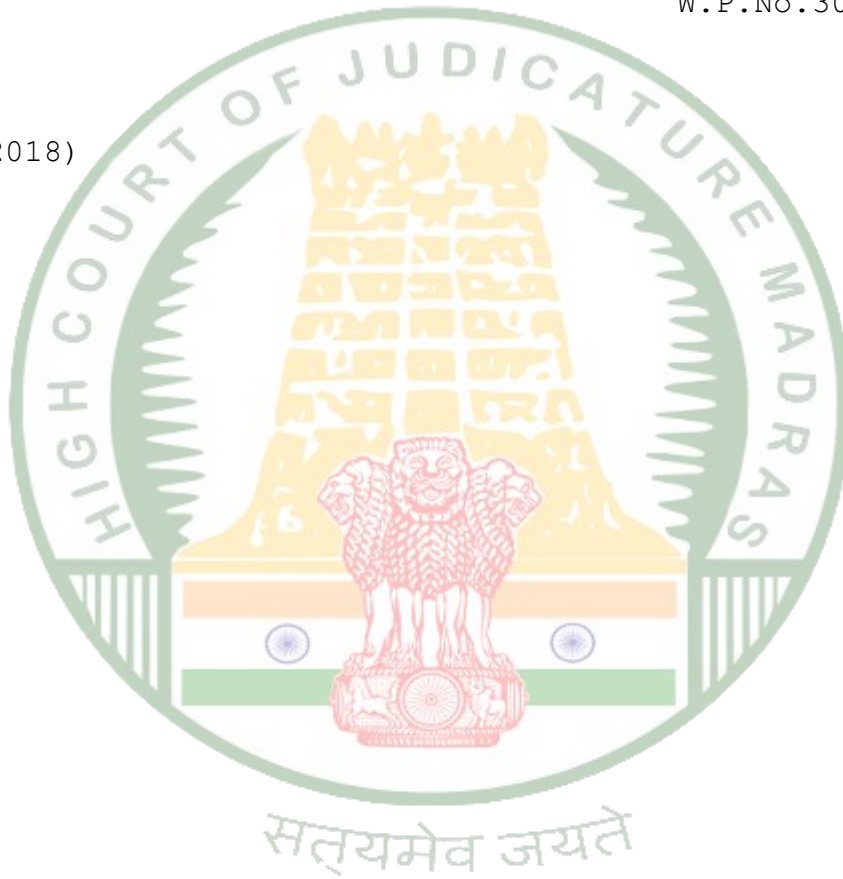
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W.P.No.30538 of 2014

SP(11/06/2018)



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