

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.385 of 2016

and

C.M.P.No.5635 of 2016

The Principal Chief Conservator of Forests,
Panagal Buildings,
Saidapet, Chennai - 15.

... Appellant

versus

M.Natarajan

.... Respondent

PRAYER:

Appeal filed against the order passed by this Court dated 27.01.2014 made in W.P.No.31192 of 2005.

W.P.No.31192 of 2005:-

Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus to quash the order passed by the respondent in proceedings No.AB1/61200/2004 dated 9.5.2005 and consequential order in Ref.No.AB1/44512/2005 dated 30.8.2005, by calling for the records connected thereto and consequently to direct the respondent to promote the petitioner as forester from the date of his immediate junior (Mr.J. Subramaniam) was promoted and confer all consequential benefits.

For Appellants : Mr.Balaramesh,
Special Government Pleader

For Respondents : Mr.S.Mani

J U D G M E N T
(Order of the Court made by R.SUBRAMANIAN,J.)

The challenge in this intra-Court appeal is to the order of the learned Single Judge dated 27.01.2014 made in W.P.No.31192 of 2005, in and by which, the Writ Petition filed by the respondent was allowed quashing the impugned proceedings of the appellant dated 09.05.2005 and the consequential order dated

30.08.2005 and directing the respondent to promote the petitioner as a Forester from the date on which his immediate Junior J.Subramaniam was promoted with all consequential benefits.

2. The respondent who was working as a Forest Guard was charge sheeted for certain delinquencies said to have been committed by him in the year 1998 and after the departmental enquiry, a punishment of stoppage of increment for a period of three months without cumulative effect was imposed on him vide order dated 25.03.1999. However, the respondent's name was not included in the panel drawn on 15.08.2004 for promotion as Forester. This was due to the fact that the Government by G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993 had introduced check period of five years and any punishment other than censure imposed upon the officer within a period of five years prior to the crucial date should be held against the officer while drawing the panel for promotion.

3. Taking note of the fact that this Court had in Deputy Inspector General of Police, Thanjavur Range, Thanjavur and another Vs. V.Rani reported in 2011 (3) CTC 129 struck down the introduction of the check period of five years made under G.O.Ms.No.368 Personnel and Administrative Reforms Department, dated 18.10.1993. The learned Single Judge allowed the Writ Petition with a direction to promote the respondent as a Forester from the date on which his immediate junior J.Subramaniam was promoted with all consequential benefits. Aggrieved, the appellant had come forward with the above intra-Court appeal.

4. We have heard Mr.Balaramesh, learned Special Government Pleader for the appellant and Mr.S.Mani, learned counsel for the respondent.

5. The facts are not in dispute. The punishment of withholding of increment for a period of three months without cumulative effect was imposed by an order dated 25.03.1999. The crucial date for preparation of panel for 2004-05 was 15.08.2004, as on that date viz., 15.08.2004, the period of five years had expired from the date of imposition of punishment. The appellants however had taken the crucial date as 15.08.2003, which according to the respondent is incorrect. The claim of the respondent has been rejected on the ground that the punishment imposed on him is within the period of five years from the crucial date viz., 15.08.2003. The respondent would contend that the crucial date for preparation of panel for the year 2004-05 is only 15.08.2004 and not 15.08.2005.

6. Pursuant to the order of the learned Single Judge, made in the above Writ Petition in W.P.No.31192 of 2005, the appellant herein had issued proceedings dated 24.04.2015, in and by which, the benefit of promotion has been granted to the respondent and the respondent has also retired on attaining the age of superannuation.

7. In the light of the fact that the order impugned in this Writ Appeal had already been complied with and the respondent has been promoted as a Forester from the date on which his Junior J.Subramaniam was promoted as a Forester by the proceedings of the appellant dated 24.04.2015, we do not deem it necessary to go into the question as to what is the crucial date for determination of the panel for the year 2004-05. However, we make it clear that the promotion granted will be only notional promotion for the purposes of calculating the retirement and pensionary benefits of the respondent. The respondent will not be entitled to salary or other monetary benefits as a Forester from the date of promotion of his junior till the date of his actual promotion as a Forester on 28.07.2007. The period between 06.06.2005 i.e., the date on which the junior of the respondent J.Subramaniam was promoted as a Forester and 28.07.2007 i.e., the date on which the respondent was promoted as Forester will be taken into account only for the purposes of calculation of his pension and other retirement benefits.

8. The Writ Appeal is disposed of with the above directions. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dsa

To

The Principal Chief Conservator of Forests,
Panagal Buildings,
Saidapet, Chennai - 15.

+1cc to Mr.S.Mani, Advocate, S.R.No.43659
+1cc to the Special Government Pleader, S.R.No.43068

W.A.No.385 of 2016

SVN(Co)
CS/25/07/18