

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2018

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.Nos.28840 to 28842 of 2012

1.G.Sundaram ... Petitioner in
W.P.No.28840 of 2012

2.H.Habib Rahamathulla Khan ... Petitioner in
W.P.No.28841 of 2012

3.J.Stanley Arokiasamy Fernandez ... Petitioner in
W.P.No.28842 of 2012

Vs

1.The State of Tamil Nadu,
Rep by its Principal Secretary,
Environment & Forest Department,
Fort St.George, Chennai-9.

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

3.The District Forest Officer,
Hosur Division, Hosur Cattle Farm (Post),
Krishnagiri District 635 110.

... Respondents in all W.Ps

PRAYER in all W.Ps: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records relating to the orders of the first respondent made in G.O.(3D).No.63, Environment and Forest (FR.I) Department, dated 03.09.2010 and the charge memo by the 3rd respondent in Na.Ka.No.8763/2010/E1, dated 12.05.2011, quash the same.

In all W.Ps

For Petitioners : Mr.L.Chandrakumar

For Respondents : Mr.K.K.Ramesh,
Government Advocate

C O M M O N O R D E R

Heard Mr.L.Chandrakumar, learned counsel for the petitioners and Mr.K.K.Ramesh, learned Government Advocate appearing for the respondents.

2. All the three writ petitions raised identical issues and grounds and therefore, they are taken up together for final disposal.

3. The petitioners have approached this Court, seeking the following relief:-

"To issue a writ of Certiorari, to call for the records relating to the orders of the first respondent made in G.O.(3D).No.63, Environment and Forest (FR.I) Department, dated 03.09.2010 and the charge memo by the 3rd respondent in Na.Ka.No.8763/2010/E1, dated 12.05.2011, quash the same."

4. The case of the petitioners is as follows:-

The petitioners were all working as Forest Rangers under the control of the respondents. After attaining the age of superannuation, they were all allowed to retire from service on 31.08.2007, 30.11.2007 and 31.01.2007 respectively. After the retirement of the petitioners, the G.O.(3D) No.63, Environment and Forest (FR.I) Department, dated 03.09.2010 was issued under Rule 9 (2) (b) (i) of the Tamil Nadu Pension Rules. Accordingly, sanction was accorded to institute departmental proceedings against these petitioners. In pursuance of the above Government Order dated 03.09.2010, a charge memo was issued on 12.05.2011, alleging certain acts of misconduct against the petitioners in respect of their discharge of their duties which took place in 2004-05.

5. On receipt of the charge memo, the petitioners seem to have represented to the third respondent contending that under the provisions of the Rule 9 (2) (b) (ii), there was a limitation of four years provided and therefore, the charge memo issued against them was without jurisdiction, since the event which gave raise to the charge memo had taken place in 2004-05 and the Government had sanctioned for departmental action only on 03.09.2010. However, notwithstanding the contentions of the petitioners that the charge memo cannot be countenanced in law, as the same was contrary to the rules, a further proceedings was issued to the petitioners to attend the enquiry. In the said circumstances, these petitioners are before this Court, challenging the charge memo issued against them.

6. The learned counsel for the petitioners would straight away draw the attention of this Court to Rule 9 (2) (b) of the Tamil Nadu Pension Rules, which reads as under:-

"9. Right of Government to withhold or withdraw pension :-

(2) (a).....

(b) The Departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment:-

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."

According to the learned counsel for the petitioners, since four years period was prescribed in the rules and admittedly these petitioners were allowed to retire, the alleged act of misconduct had taken place during the year 2004-05, the present charge memo issued pursuant to the sanction by the Government cannot be sustained in law.

7. Upon notice, learned Government Advocate appearing for the respondents entered appearance and filed a counter affidavit. In the counter affidavit, it is stated that the only after obtaining necessary Government sanction, the charge memo was issued and the petitioners were charged with serious acts of misconduct and the petitioners instead of participating in the departmental enquiry initiated against them, had approached this Court at very preliminary stage and challenged the charge memo issued against them. As regards the objection regarding the time limit prescribed in the rules, the counter affidavit stated that the time was calculated from the date of retirement of the petitioner.

8. This Court has considered the rival submissions of the learned counsels and is fully convinced with the arguments advanced on behalf of the petitioners that the charge sheets issued against all the three writ petitioners cannot be sustained in law, in view of the specific bar as envisaged in the aforesaid provisions of the Tamil Nadu Pension Rules. Moreover, this Court does not appreciate as to how the

Department allowed the petitioners to retire from service in 2007 on one hand and the other issued charge memo under Rule 17 (b) of the disciplinary Rules. Once the Government servants were allowed to retire and the disciplinary proceedings not initiated during their career, any further disciplinary action can be taken only under the pension rules. Therefore, there appears to be total non-application and misapplication of mind on the part of the authority concerned and therefore, the charge memo issued has to be interfered on that ground alone.

9. Further, as rightly contended by the learned counsel for the petitioners that once the Government servants were allowed to retire, no charge sheet can be issued against them for any act of misconduct which had taken place before four years from the date of such institution. In this case, the facts would unequivocally disclose that the alleged acts of misconduct had taken place during 2004-05 and therefore, there was a clear bar imposed by the rules to proceed against these petitioners under the pension rules. The contention by the respondents that the period of limitation (4 year) was calculated from the date of retirement of the petitioner has to be rejected outright as without substance, since the relevant pension rules as extracted supra are very clear on this aspect.

10. In the above said circumstances, this Court has no hesitation in allowing the writ petitions. The charge memo in Na.Ka.No.8763/2010/E1, dated 12.05.2011 as well as the Government Order in G.O.(3D).No.63, Environment and Forest (FR.I) Department, dated 03.09.2010, according sanction for disciplinary action under the pension rules in respect of the three petitioners are set aside.

11. Hence, the writ petitions are allowed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsk
To

1.The Principal Secretary,
Environment & Forest Department,
Fort St.George,
Chennai-9.

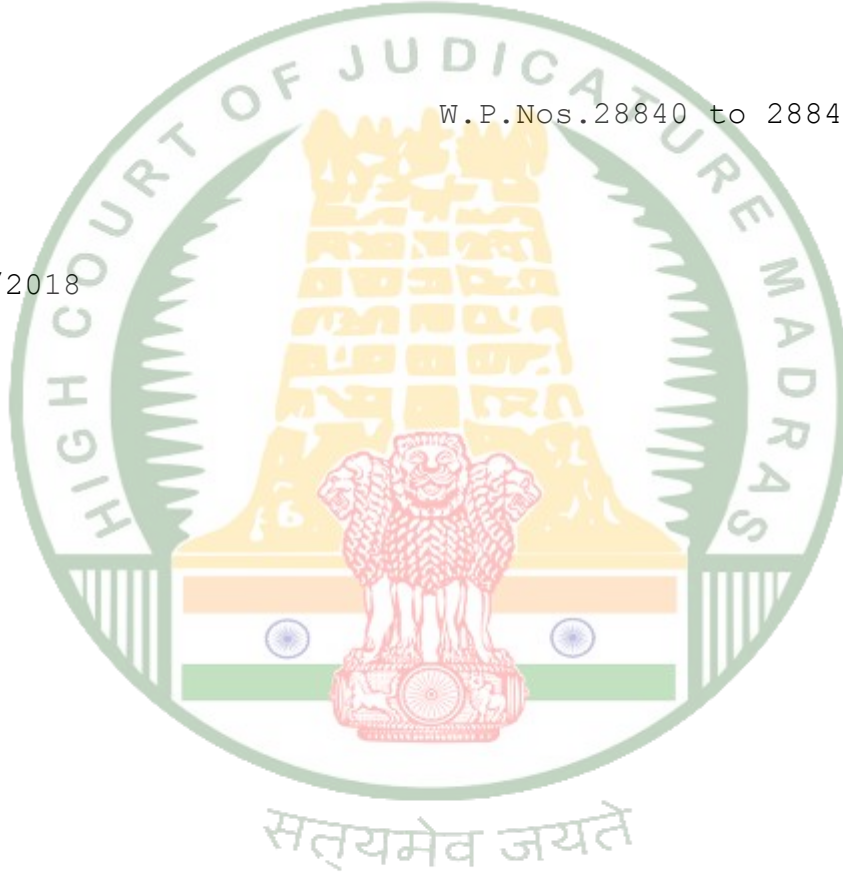
2.The Principal Chief Conservator of Forests,
Saidapet,
Chennai-15.

3.The District Forest Officer,
Hosur Division, Hosur Cattle Farm (Post),
Krishnagiri District 635 110.

+lcc to Mr.L.Chandrakumar, Advocate Sr.29282
+lcc to the Government Pleader Sr.29042

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