



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.2786 of 2018

and

W.M.P. (MD) No.2953 of 2018

N.V.Nagaiah

... Petitioner

Vs.

- 1.The Principal Secretary to Government,
Environment and Forest Department,
Fort St.George,
Chennai- 600 009.
- 2.The Principal Chief Conservator of Forests,
(Head of Department),
Panagal Building,
Saidapet,
Chennai-600 015.
- 3.The Conservator of Forests,
Madurai Circle,
Race Course Road,
Madurai-625 002.
- 4.The District Collector,
Theni,
Theni District.

... Respondents

PRAYER : This Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of censure passed by the second respondent in his proceedings Se.Mu.Order. No.AaAa1/24138/2017 dated 06.11.2017 and quash the same as illegal and arbitrary and consequently directing the respondents 1 and 2 to include the name of the petitioner in the panel in G.O.(2D).No.02 Environment and Forest (FR1) Department dated 12.01.2018 for promotion to the post of Deputy Conservator of Forests in the order of seniority.

For petitioner

: Mr.B.Saravanan

For Respondents

: Mr.M.Jeyakumar

Additional Government Pleader



ORDER

The petitioner is presently working as Assistant Conservator of Forest. When he was working in the said capacity in the Meghamalai Wild Life Division, he was directed by the Wild Life Warden by proceeding dated 17.03.2015, to conduct survey of the patta land comprised in S.No.251/1D, 251/1M in Meghamalai Village, Aandipatti Taluk. Complying with the said direction, the petitioner submitted a communication dated 28.03.2015, informing his superior that the survey was conducted and recommending felling of 3,000 Silver oak trees, in lieu of the planting of identical number of tree samplings. In fact, even prior to such communication, there were proceedings issued by the District level tree cutting committee dated 20.02.2014.

2. Thereafter, the said Wild Life Warden, Meghamalai Wild Life Division, Theni, sent a communication bearing Na.Ka.No.5530/2013/L dated 31.03.2015 addressed to the District Collector, Theni, recommending, cutting of 3,000 trees in three stages. This Court went through the text of the said recommendation dated 31.03.2015, submitted by the said Wild Life Warden. There are three references in the said recommendation letter. Two pertain to the District Collector, Theni District, one pertains to the application dated 03.03.2015, submitted by the concerned pattathar. Based on the recommendation of the Wild Life Warden, the tree cutting committee passed its order dated 09.04.2015.

3. Thereafter, the said proceedings were put on hold, this was on account of the earlier proceeding of the Principal Chief Conservator of Forest issued as early as on 31.12.2013 based on Public Interest Litigation filed by one M.J.Jeyapal in W.P.(MD) No.20610 of 2013. A directive has been issued by the Principal Chief Conservator of Forest to stop the felling of trees in the Meghamalai Wild Life Sanctuary in Theni District. A further instruction was given to Wild Life Warden, Meghamalai, Theni, not to recommend any felling of trees on any application till further orders. The said proceeding dated 31.12.2013 has not been recalled or modified till date.

4. Since the recommendation made by the Wild Life Warden as well as the present petitioner herein are contrary to the aforesaid instructions, disciplinary action was initiated against both. Initially, the charge memo was issued under Rule 17-b of Tamil Nadu Civil Services (Discipline and Appeal) Rules. The same was subsequently converted into one under Rule 17-A. The petitioner herein by the order impugned in this writ petition was visited with the punishment of censure on 06.11.2017. Aggrieved by the same, the petitioner filed appeal before the Government. Since the punishment of censure passed against the writ petitioner is coming in the way of promotion, the present writ petition has been filed notwithstanding the pendency of the appeal pending before the Government.



5. Heard the learned counsel for the petitioner as well as the Additional Government Pleader appearing on behalf of the respondents.

6. It is not in dispute that the writ petitioner did not act on his own. He actually carried out the directives issued by his superior officer, namely Wild Life Warden, Meghamalai Wild Life Sanctuary, Theni. It was the said Wild Life Warden, who made recommendation for felling of the trees in question. The tree cutting committee passed orders for falling of trees based only on the recommendation of the Wild Life Warden. In fact, tree cutting committee has earlier passed order in this regard, even prior to the assumption of office by the writ petitioner in the Meghamalai Wild Life Division. The Government initiated disciplinary action against both. While the Wild Life Warden, Mr. Sornappan was allowed to retired with a warning, the petitioner herein has been visited with the punishment of censure.

7. In fact, the role played by the petitioner herein is clearly far lesser in terms of degree. The Government was therefore not justified in adopting a different yardstick in the case of the petitioner alone. The impugned order suffers from the vice of selective discrimination. This Court is of the view that the punishment that was imposed on Sornappan namely warning, ought to have been issued in the case of the petitioner also.

8. The learned Additional Government pleader was able to secure only written instruction. This Court went though the written instructions. There is absolutely no justification set out therein, for adopting a harsher standard in the case of the petitioner. Taking into account the facts and circumstances, this Court is of the view that the order impugned in this writ petition deserves to be modified. The punishment imposed in the petitioner is substituted by "warning" instead of censure.

9. Accordingly, this writ petition is partly allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

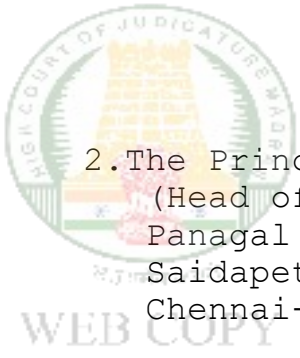
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Environment and Forest Department,
Fort St. George,
Chennai- 600 009.



2.The Principal Chief Conservator of Forests,
(Head of Department),
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Chennai-600 015.

3.The Conservator of Forests,
Madurai Circle,
Race Course Road,
Madurai-625 002.

4.The District Collector,
Theni, Theni District.

+1CC to Mr.B.Saravanan, Advocate, SR.No. 56604
+1CC to the Special Government Pleader SR.No.56696

ORDER MADE IN
W.P. (MD) No.2786 of 2018
20.03.2018

pnn
AM/JC/SAR 1/17.04.2018/4P/7C