



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.07.2018
DELIVERED ON : 03.08.2018

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CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

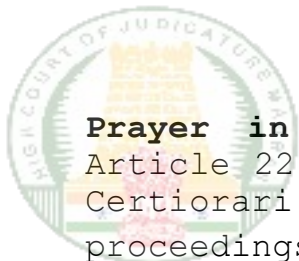
W.P (MD) Nos.11325, 11327, 11352 and 11698 of 2016
and
W.M.P (MD) Nos.8683, 8709 and 8978 of 2016

K.Sekar ... Petitioner in all Wps

Vs.

- 1.The Chief Secretary to Government,
Fort St. George,
Chennai - 600 009.
 - 2.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Forest Department,
Fort St. George,
Chennai - 600 009.
 - 3.The Principal Chief Conservation of Forests,
Panagal Buildings,
Saidapet,
Chennai - 600 015.
 - 4.The Directorate of Vigilance and Anti-Corruption,
Chennai - 600 028.
 - 5.The Inspector of Police,
Vigilance and Anti-Corruption,
Tirunelveli.
 - 6.The Commissioner for Disciplinary Proceedings,
4/929, Rahmath Nagar, Maharaja Nagar Post,
Tirunelveli.
- ... Respondents in all W.Ps

Prayer in W.P (MD) No.11325 of 2016: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Declaration declaring Rule 4 and 5 of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules 1955 as null and void.



Prayer in W.P(MD)No.11327 of 2016: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records relating to the impugned proceedings of the 6th respondent in ROC No.A2/208/2014 TDP No.5/2014 dated 18.11.2014 and quash the same.

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Prayer in W.P(MD)No.11352 of 2016: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records relating to the impugned order in G.O.(Ms) No.10 Personnel and Administrative Reforms (N) Department issued by the 1st respondent dated 02.02.2016 and quash the same.

Prayer in W.P(MD)No.11698 of 2016: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus directing the respondents 1 and 2 to include petitioner's name in the panel of Assistant Conservator of Forests fit for promotion as Deputy Conservator of Forests for the panel year 2015-2016 and promote the petitioner as Deputy Conservator of Forests/District Forest Officer recognizing petitioner's seniority in cadre of Assistant Conservator of Forests.

(In all W.Ps)

For Petitioner :Mr.V.Selvaraj for

Mr.N.Dilipkumar

For Respondents :Mr.A.K.Baskarapandian,
Special Government Pleader

COMMON ORDER

DR.ANITA SUMANTH, J.

Four writ petitions have been filed by the petitioner with the following prayers:

W.P(MD)No.11325 of 2016, seeks the issuance of a Writ of Declaration declaring Rule 4 and 5 of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules 1955 null and void.

W.P(MD)No.11327 of 2016 seeks the issuance of a Writ of Certiorari calling for the records relating to the impugned proceedings of the 6th respondent in ROC No.A2/208/2014 TDP No.5/2014 dated 18.11.2014 and quash of the same.

W.P(MD)No.11352 of 2016 seeks the issuance of a Writ of Certiorari calling for the records relating to the impugned order in G.O.(Ms) No.10 Personnel and Administrative Reforms (N) Department issued by the 1st respondent dated 02.02.2016 and quash of the same.

W.P(MD)No.11698 of 2016 seeks the issuance of a Writ of Mandamus directing the respondents 1 and 2 to include petitioner's name in the panel of Assistant Conservator of Forests fit for promotion as Deputy Conservator of Forests for the panel year 2015-2016 and promote the petitioner as Deputy Conservator of



Forests/District Forest Officer recognizing petitioner's seniority in cadre of Assistant Conservator of Forests.

2. Facts common to all Writ Petitions:

On 27.01.1997, the petitioner joined service in the Tamil Nadu Government as Junior Assistant. He was appointed as Forest Range Officer by recruitment by transfer and joined duty on 10.11.2000. He was promoted as Assistant Conservator of Forests on 26.09.2011 and at the time of filing of writ petitions was working as Forestry Extension Officer Namakkal since 27.12.2013. According to learned counsel appearing for the petitioner the petitioner is qualified for promotion to the post of Deputy Conservator of Forests/District Forest Officer, taking into account his service as Assistant Conservator of Forests for a period of four years. While this is so, the seniority list of Officers working in the Tamil Nadu Forest Department was published by the Principal Chief Conservator of Forests, the third respondent in the writ petitions as on 01.01.2015. The petitioner figures therein at Serial No.50. In respect of the panel for the year 2014-2015, according to the petitioner, the posts upto serial No.40 had been drawn.

3. The grievance expressed by the petitioner is to the effect that the estimated number of vacancies for the year 2015-2016 was in excess of 10 and according to him, he stood at the 7th place of seniority. However, disciplinary proceedings were initiated against him by the Commissioner for Disciplinary Proceedings, the sixth respondent herein, on 18.11.2014 as a result of which he was not recommended for promotion to the post of Deputy Conservator of Forests/District Forest Officer. According to him, the charges framed were a violation of Rule 20(1) of the Tamil Nadu Government Servant Conduct Rules 1973.

4. The charges emanated from certain gully plugging works that had been undertaken in the Kalakad and Thirukurungudi forest ranges financed by Western Ghats Development Fund allotted for 2011 - 2012. The respective Range Officers executed the work by engaging local contractors and the work was to be completed on or before 31.03.2012. The work of the contractors who had been engaged had to be supervised by the concerned Forester under the control of a Range Officer, who would keep a check on the measures. Advances were made in respect of the works allotted and the petitioner was supervising the works.

5. While check measuring the works, it was found that locally available stones had been used by the Range Officer as against the claim that the stones had been purchased from adjacent quarries.

6. Charges were framed as against the petitioner by the sixth respondent on 18.11.2014 arraying the petitioner as accused officer 1 and the Range Officer as accused officer 2 in terms of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules 1955 (referred to henceforth as the Rules).



7. The challenge in W.P(MD)No.11325 of 2016, is to Rules 4 and 5 of the aforesaid Rules, that read as follows:

4.(1) The Government shall, subject to the provisions of Rule 5, refer the following cases to the Tribunal, namely:-

(a) Cases relating to Officers of the State Services in respect of matters involving corruption on the part of such Officers; and

(b) All appeals or petitions to the Government against orders passed on charges of corruption and all disciplinary cases in which the Government propose to revise original orders passed on such charges:

Provided that it shall not be necessary to consult the Tribunal-

(i) in any case in which the Tribunal has, at any previous stage given advice in regard to the order to be passed and no fresh question has thereafter arisen for determination ; or

(ii) where the Government propose to pass orders rejecting such appeal or petition.

(2) The Government may, subject to the provisions of Rule 5, also refer to the Tribunal any other case or class of cases which they consider should be dealt with by the Tribunal and the Government, in exercising the powers conferred by this sub-rule, shall have regard to the nature and gravity of the charge, the grade or rank of the officer charged and the organisational strength of the department concerned in handling cases involving interpretation of Rules regulating conditions of service of Government servants.

(3) Notwithstanding anything contained in sub-rule (1) or sub-rule (2), cases arising in the judicial Department shall not be referred to the Tribunal.

(4) The Executive authority or a local authority may, with the sanction of the Government and shall, if so required by the Government, refer to the Tribunal cases of servants of the local authority when they are involved in charges of corruption jointly with Government servants whose cases are referred to the Tribunal under this Rule. The cases so referred shall be enquired into by the Tribunal in accordance with the Rules relating to appointment and punishment of officers and servants of the local authority.

(5) The Tamil Nadu Public Service Commission may, without reference to the Government, directly refer to the Tribunal cases relating to the Secretary (except when he is a member of the Indian Administrative Service) or a Joint Secretary or a Deputy Secretary or an Under Secretary to that Commission or a member of the staff of that Commission in respect of matters involving corruption or corruption combined with other



charges on the part of the officers aforesaid and members of the staff of the Commission and the Tribunal shall conduct the inquiry in accordance with Rule 7 of Annexure - II or, as the case may be, Rule 4-A of Annexure - V to the Tamil Nadu Public Service Commission Regulations, 1954.

5.(a) In every case referred to in clause (a) of sub-rule (1) and sub-rule(2) of Rule 4, on completion of investigation, the Directorate of Vigilance and Anti-Corruption or any other Branch of the Police or other departmental authority concerned, shall forward to the Government all the records of the case:

Provided that the Directorate of Vigilance and Anti-Corruption shall forward its records to the Government through the Vigilance Commissioner, Chennai.

Explanation: - For the purpose of this clause investigation includes investigation made under the General Law or any special enactment.

(b)(i) Notwithstanding anything contained in Rule 4, the Government shall after consulting the Head of the Department concerned, if necessary, decide whether the case shall be tried in a Court of law or by the Tribunal or by the departmental authority concerned.

(ii) In exercising the powers conferred by clause (i), the Government shall have regard to-

(a) the nature and gravity of the charge;

(b) the grade or rank of the officer charges ; and

(c) any other circumstances relevant to the case.

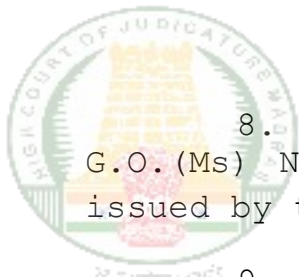
(c) If the Government decide that the case shall be tried by the Tribunal, they shall send the records to the Tribunal.

(d) In any case where the Head of the Department is not consulted, he shall be informed of the action that is being taken.

(e) When the Tribunal is seized of the case, the staff of the Directorate of Vigilance and Anti-Corruption and of the Police and concerned departments shall help the Tribunal in securing the necessary documents, in the production of witnesses and in such other ways as the Tribunal may desire.

(f) The Prosecutor for Disciplinary Proceedings or such other person as the Government may appoint in respect of any particular case shall conduct enquiries on behalf of Government in disciplinary cases before the Tribunal and the accused officer concerned shall be allowed to be represented by counsel.

(g) Notwithstanding anything contained in sub-rule (f), it shall be in the discretion of the Tribunal concerned to allow the accused officer concerned to be represented by counsel."



8. In W.P.(MD)No.11352 of 2016, the petitioner challenges G.O.(Ms) No.10 Personnel and Administrative Reforms (N) Department issued by the 1st respondent dated 02.02.2016.

9. W.P(MD)No.11327 of 2016, seeks quashing of the enquiry initiated against him pursuant to the proceedings dated 18.11.2014 and W.P(MD)No.11698 of 2016 seeks issuance of a Mandamus directing the respondents to promote him.

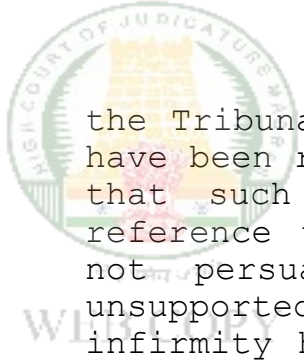
10. We have heard Mr.Selvaraj for Mr.Dilipkumar, learned counsel for the writ petitioner in all the writ petitions and Mr.Baskarapandian, learned Special Government Pleader for the respondents. Counter affidavits have been filed by respondents 1 to 3 in W.P(MD)No.11327 of 2016, the State, the Forest Department and the Principal Chief Conservator of Forests, respectively respondents 1, 2 and 5 the last being the Inspector of Police in W.P(MD)No.11352 of 2016, respondents 1 to 3 and 5 in W.P(MD)No.11325 of 2016. Written Submissions have been filed by both the learned counsel. Since the writ petitions deals with a common intertwined set of facts and common submissions have been in respect of the same, we propose to dispose all writ petitions by way of a common order.

11. We first take up W.P(MD)No.11325 of 2016 challenging Rules 4 and 5 of the Rules. Curiously, the writ petitions do not raise any grounds whatsoever to address the prayers sought, a declaration that the Rules are null and void. The only submission made is in regard to the procedure followed in the investigation that, according to the petitioner is woefully inadequate, ineffective and improper.

12. According to the respondents, Rules 4 and 5 of the Rules provides for the procedure to be followed in the investigation carried on by the Director of Vigilance and Anti-Corruption (in short 'DVAC'), R-4 before us. The Rules have been in force since 1955, for a period in excess of 60 years.

13. Reliance is placed by the petitioner on the judgments of the Supreme Court in the case of *Dr.Subramanian Swamy v. Director, Central Bureau of Investigation and another* [AIR 2014 SC 2140] and *Vineet Narain & Others vs Union Of India & Another* [1998 (1) SCC 226]. Per contra, the respondents place reliance on the judgment of the Full Bench of the Supreme Court in the case of *Lalita Kumari v. Government of Uttar Pradesh and Others* [(2014) 2 SCC 1].

14. The purport of Rules 4 and 5 of the Rules empowers the State Government to refer cases to the Tribunal subject to the nature and gravity as well as the grade and rank of the officer charged. Upon completion of the investigation, the DVAC or the concerned authority is to forward to the Government all records of the case through the Vigilance Commissioner. The Government shall, upon consultation with the Head of the concerned Department, decide whether the matter shall be decided before the Court of law or by



the Tribunal or by the Departmental Authority. No specific grounds have been raised in regard to the declaration sought except to state that such investigation should be carried on by DVAC without reference to or approval sought from the State Government. We are not persuaded by the argument, seeing as the challenge is unsupported by way of any grounds whatsoever. No irregularity or infirmity has been pointed out in the aforesaid procedure. In this light of the matter, challenge to Rules 4 and 5 of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules 1955, is rejected. Accordingly, W.P(MD)No.11325 of 2016, is dismissed.

15.W.P(MD)No.11352 of 2016 challenges G.O.(Ms) No.10 dated 02.02.2016. A Division Bench of this Court presided over by the Chief Justice considered a challenge to G.O.Ms.No.10, particularly paragraph 4 thereof and vide order in W.P.No.10624 of 2015 in the case of *P.Pugalenthi v. State of Tamil Nadu* dated 01.07.2016, has quashed paragraph 4 as unsustainable in law. In any event, G.O.Ms.No.10 is prospective with effect from 02.02.2016 and would not be relevant or applicable to the case of the petitioner since enquiry in this case was commenced and concluded in 2014 itself. W.P (MD)No.11352 of 2016 is dismissed.

16. Coming to W.P(MD)No.11327 of 2016, where the petitioner challenges the charge memo, again, no case has been made for interference with the same. We have rejected the prayers challenging Rules 4 and 5 of the Rules as well the challenge to G.O.(Ms) No.10 Personnel and Administrative Reforms (N) Department dated 02.02.2016. No infirmity or irregularity has been made out in regard to the procedure set out pursuant to issue of charge memo, and detailed enquiry initiated on 09.02.2013 is stated to be ongoing. W.P.(MD)No.11327 of 2016 is dismissed. The respondents are directed to continue with the investigation and complete the same, if not already done, as expeditiously as possible, in any event within a month from the date of receipt of this order.

17. In W.P(MD)No.11698 of 2016, the petitioner seeks a Mandamus directing the respondents to promote him. The claim of the petitioner cannot be accepted as the question of promotion or otherwise would be consequent to the order to be passed in the present pending proceedings against him as well as all other applicable parameters in this regard. We are thus, not inclined to consider such prayer and W.P(MD)No.11698 of 2016, is dismissed.

18. In summary, all writ petitions are dismissed. No Costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar (RTI)



To

1. The Chief Secretary to Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

WEB COPY

2. The Secretary to Government of Tamil Nadu,
State of Tamil Nadu,
Forest Department, Fort St. George,
Chennai - 600 009.

3. The Principal Chief Conservation of Forests,
Panagal Buildings, Saidapet,
Chennai - 600 015.

4. The Directorate of Vigilance and Anti-Corruption,
Chennai - 600 028.

5. The Inspector of Police,
Vigilance and Anti-Corruption,
Tirunelveli.

6. The Commissioner for Disciplinary Proceedings,
4/429, Rahmath Nagar, Maharaja Nagar Post,
Tirunelveli.

+ 4 CC TO Mr.N.DILIPKUMAR, ADVOCATE IN SR Nos. 77180, 77181, 77183 &
77185

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 77292

PM

TE/SV/SAR-2 : 10/09/2018 : 8P/12C

W.P (MD) Nos.11325, 11327, 11352 and 11698 of 2016 and
W.M.P (MD) Nos.8683, 8709 and 8978 of 2016
03.08.2018