

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2019

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.18172 of 2019

T.Sivakumar

Deputy Conservator of Forest

/Divisional Forest Officer,

(Under Suspension Not permitted to Retire)

Social Forestry Division, Kallakurichi,

Villupuram District.

...Petitioner

vs.

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Environment and Forest Department,
Secretariat, Chennai - 600 009.

2.The Principal Chief Conservator of Forests,
(Head of Forest Force),
Panagal Buildings,
Chennai - 600 015.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, seeking for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent relating to (1) G.O.(3D) No.13 Environment and Forests (FR1) Department dated 29.04.2019 and (2) G.O.(3D) No.14 Environment and Forests (FR1) Department dated 30.04.2019 quash the same and issue consequential direction to the 1st respondent to permit the petitioner to retire from service on 30.04.2019 AN on superannuation and to get the pensionary benefits in the light of the order passed by the 1st respondent in G.O.Ms.No.91 Environment and Forest (FR.Spl.A) Department dated 30.07.2016 passed in the case of Co-delinquent Officer Thiru.N.Thangaraju, IFS., former District Forest Officer Salem, and continue the enquiry under Rule 9 of the Tamil Nadu Pension Rules 1978.

For Petitioner : Mr.T.Dharani

For Respondents : Mr.M.Elumalai

Government Advocate

ORDER

The case of the petitioner is that the petitioner joined the service as Junior Assistant in the year 1982 in the Forest Department and thereafter he got promoted as Assistant in the year 1988 and transferred as Forester in the year 1989 and promoted as Forest Range Officer in the year 2009 and promoted as Assistant Conservator of Forest in the year 2014 and further promoted as Deputy Conservator of Forest in the year 2018 and the petitioner was due to retire on 30.04.2019 afternoon on attaining the age of Superannuation after rendering 37 years of service, the respondent passed the impugned order and placed the petitioner under suspension and not permitting the petitioner to retire on 30.04.2019 in view of the pendency of investigation on a criminal case in Cr.No.4/2015/AC/SL, registered by the Vigilance and Anti-Corruption Unit, Salem under Sections 120-B, 409, 467, 468, 471, 477-A IPC and Section 13(2) r/w 13(1)(c) and (d) of Prevention of Corruption Act, 1988.

2.The learned counsel appearing for the petitioner would submit that though the petitioner after rendering 37 years of service from the post of Junior Assistant till the post of Deputy Conservator, he did not commit any offence. However, citing the pendency of the criminal case and placed the petitioner under suspension by detaining the service which is impermissible one. Hence, he prayed for appropriate orders.

3.The learned Government Advocate appearing for the respondents would submit that the petitioner involved in the criminal case under the Prevention of Corruption Act when the criminal case is pending against the petitioner, it is the duty of the Authority to invoke Rule 56(1)(c) of the fundamental rules for retaining the service for continuing the disciplinary proceedings. Accordingly, the said order was passed by invoking Rule 56(1)(c) of the fundamental rules.

4.This Court is unable to go into the merits of the allegations made by the petitioner. So long as the power of suspension is available with the respondent and it has been exercised by the Competent Authority, the Court cannot go behind the order of suspension.

5.The Supreme Court in its decision reported in 1990 (3) SCC 60 (Director General and Inspector General of Police, Andhra Pradesh, Hyderabad and others Vs. K.Ratnagiri) has held in paragraph 7 as follows:

"7....The Rule 13(1) empowers the authority to keep the respondent under suspension pending investigation or

enquiry into the criminal charges where such suspension is necessary in the public interest. When the first information report is issued, the investigation commences and indeed it has commenced when the respondent was kept under suspension. The order of suspension cannot, therefore, be said to be beyond the scope of Rule 13(1) merely because it has used the word 'prosecution' instead of investigation into the charges against the respondent. A wrong wording in the order does not take away the power if it is otherwise available. The Tribunal seems to have ignored this well accepted principle."

Further, it was observed in paragraph 3 as follows:

"3....The government may review the case and make further or other order but the order of suspension will continue to operate till it is rescinded by an appropriate authority."

6.Once again, the Supreme Court vide its decision reported in 1994 (2) SCC 617 (State of Haryana Vs. Hari Ram Yadav and others) held in paragraph 10 as follows:

"10....The law is well settled that in cases where the exercise of statutory power is subject to the fulfilment of a condition then the recital about the said condition having been fulfilled in the order raises a presumption about the fulfilment of the said condition, and the burden is on the person who challenges the validity of the order to show that the said condition was not fulfilled. In a case, where the order does not contain a recital about the condition being fulfilled, the burden to prove that the condition was fulfilled would be on the authority passing the order if the validity of the order is challenged on the ground that the condition is not fulfilled...."

Further, in paragraph 11 of the judgment, it was observed as follows:

"11....There is no averment in the said petition challenging the validity of the impugned order of suspension on the ground that the Governor of Haryana was not satisfied that it was either necessary or desirable to place Respondent 1 under suspension. In the absence of any such averment it must be held that the impugned order was passed after fulfilling the requirement of Rule 3(1) of the Rules in view of the presumption as to the regularity of official acts which would be applicable and the absence of a recital in the order about the Governor being satisfied that it was either necessary or desirable to

place respondent 1 under suspension is of no consequence...."

7.Considering the facts and circumstances of the case, the Competent Authority has rightly placed the petitioner under suspension and retained the service by invoking Rule 56(1)(c) of the fundamental rules. Considering the above legal aspects, I am not inclined to interfere with the impugned order passed by the first respondent.

8.In the light of the above, the writ petition filed by the petitioner is misconceived and deserves to be dismissed. Accordingly, the writ petition shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

9.However, it is open to the petitioner to seek an early disposal of the disciplinary proceedings by making a representation before the competent authorities and if such a representation is made, it is needless to state that the authorities will consider the said representation and pass orders on the same in accordance with law.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

pam
To

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

2.The Principal Chief Conservator of Forests,
(Head of Forest Force),
Panagal Buildings,
Chennai - 600 015.

+1 CC to Mr.T.Dharani, Advocate sr 84903.
+1 CC to The Spl. Govt. Pleader (F) st 84740.

W.P.No.18172 of 2019

PPA(CO)
SP(26/11/2019)