

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.18888 of 2019
and
W.M.P.No.18254 of 2019

M.Venkatesan

... Petitioner

Vs.

1. The Principal Chief Conservator of Forest,
Head of the Department of Forest,
Chennai- 600 015.
2. The Conservator of Forest,
Villupuram Circle,
Villupuram.
3. The District Forest Officer,
Cuddalore Division,
Cuddalore.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the second respondent in Pro.No.M2/3160/2019 dated 17.06.2019 and quash the same consequently direct the respondents to reinstate the petitioner in service.

For Petitioner : Ms.T.Dharani
For Respondents: Mr.M.Elumalai
Government Advocate

ORDER

This writ petition has been filed to call for the records on the file of the second respondent in Pro.No.M2/3160/2019 dated 17.06.2019 and quash the same consequently direct the respondents to reinstate the petitioner in service.

2.The case of the petitioner is that the petitioner joined service in the Forest Department as Forest Guard on 28.04.1997 and now working as a Forest Ranger Officer at Pichavaram Range,

Cuddalore Division with effect from 20.07.2017. As per the proceedings in pro.No.M2/3160/2019 dated 17.06.2019, issued by the second respondent, the petitioner was placed under suspension, stating that the petitioner had misused the official position by awarding the contract to his relatives.

3.It is the contention of the petitioner that the Forest Contractor one R.Arul was awarded contract for the Board Walk work under CSS Scheme on 27.02.2018 and due to some reasons he was unable to execute the said work and since the contract work had to be completed before the end of the financial year, the District Forest Officer, Cuddalore, by his letter Na.Ka.No.3563/2017/Va dated 09.03.2018 instructed the petitioner to name some other contractor. As per the letter, M.Aravalli, Forest contractor came forward to execute the said work within the financial Year. Therefore, the petitioner recommended the name of M.Aravalli, Forest Contractor, as a Forest Ranger Officer and the second respondent vide his proceedings in Pro.Na.Ka.No.____/2018/Va dated 13.03.2018, appointed M.Aravalli as the Forest Contractor and awarded the said contract work to be done within the financial work with conditions.

4.The learned counsel for the petitioner further submitted that after the lapse of 15 months, this suspension order was issued alleging irregularities in the contract work and as if the petitioner had misused the official position by awarding the contract to his relative. The petitioner recommended the Forest Contractor to the Conservator of Forest and he is the person who is authorized person to sanction the contract. Aggrieved over the suspension order, this writ petition came to be filed.

5.The learned Government Advocate appearing for the respondents filed his counter affidavit and reiterated the contentions raised therein. Paragraph No.6 of the counter affidavit reads as follows:

"6.It is respectfully submitted that under the powers delegated in Section 131 of Tamilnadu Forest Department Code, the Forest Range Officer may undertake a specified work at the specified rates after executing a petty contract not exceeding Rs.50,000/- in a single bill. Rule 17(3) of the Tamilnadu Government Servants Conduct Rules, 1973, clearly emphasis that no Government Servant shall in the discharge of his official duties deal with any matter or give contract to any member of his family or close relation. If any member of his family or closer relation is interested in such matter or contract shall refer every such matter to his officials superior and disposed according to the instructions of the authority. As such, in gross violation of the above rules, the petitioner has

entered into contract with his brother and sister without the knowledge of the District forest Officer and executed works to the tune of Rs.34,25,750/- (Rupees Thirty Four Lakhs Twenty Five Thousand Seven Hundred and Fifty only) under Centrally sponsored Scheme Programme and other activities during 2017-18 and 2018-19 as detailed below and further investigation by a special team is in progress to assess the financial mismanagement by the petitioner in Pitchavaram Range."

6.By considering the facts and circumstances of this case and the submissions made on either side, this Court is not inclined to interfere with the suspension order issued by the second respondent in Pro.No.M2/3160/2019 dated 17.06.2019. 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.

7.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."

8. 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...."

9. 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.

10. However, it is open to the petitioner to seek a review of the order of suspension 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. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

pnn

To

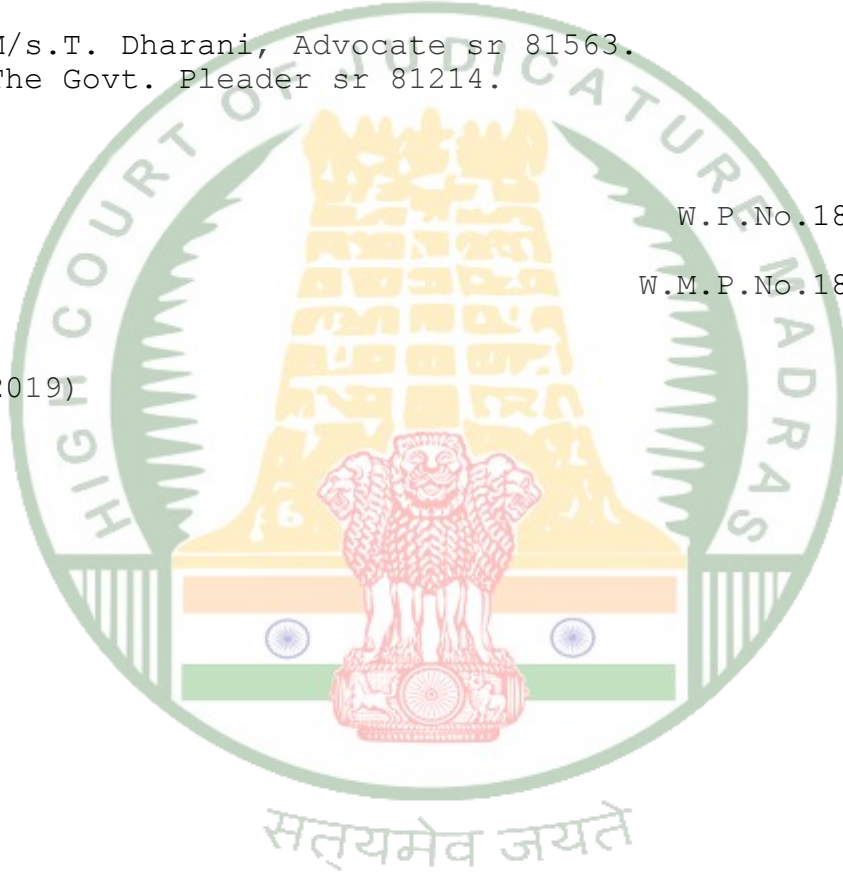
1. The Principal Chief Conservator of Forest,
Head of the Department of Forest,
Chennai- 600 015.
2. The Conservator of Forest,
Villupuram Circle,
Villupuram.
3. The District Forest Officer,
Cuddalore Division,
Cuddalore.

+1 CC to M/s.T. Dharani, Advocate sr 81563.

+1 CC to The Govt. Pleader sr 81214.

W.P.No.18888 of 2019
and
W.M.P.No.18254 of 2019

GP(CO)
SP(06/11/2019)



WEB COPY