

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2020

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.12576 of 2014

And

M.P.No.1 of 2014

S.Swaminathan

... Petitioner

Vs.

1.The Secretary to Government
Environment & Forest F2 Department,
Fort St.George, Chennai - 9.

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

... Respondents

Prayer:Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the respondents in connection with the impugned orders passed by the 1st respondent in G.O.(2D) No.80, Environment and Forest (FR.IX) Department dated 13.09.1995 and letter No.17565/FR2/2013/7 dated 18.03.2014 and confirmed by the second respondent in Na.Ka.No.A1/26157/2013/1 dated 26.03.2014 and quash the same and further direct the respondents to treat the period of suspension and as well as period of out of employment from 25.03.1984 to 10.09.1987 as duty for all purposes including service benefits and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkatramani
Senior Counsel
for M/s.M.Muthappan

For Respondents: Mr.M.Elumalai
Additional Government Pleader

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the records of the respondents in connection with the impugned orders passed by the first respondent in G.O.(2D) No.80, Environment and Forest

(FR.IX) Department dated 13.09.1995 and letter No.17565/FR2/2013/7 dated 18.03.2014 and confirmed by the second respondent in Na.Ka.No.A1/26157/2013/1 dated 26.03.2014 and to quash the same and to further direct the respondents to treat the period of suspension and as well as period of out of employment from 25.03.1984 to 10.09.1987 as duty for all purposes including service benefits and to grant him all consequential service and monetary benefits.

2.The case of the petitioner is that the petitioner entered the service as a directly recruited Forester through a selection conducted by the Forest Department and appointed to service on 01.01.1980 and was promoted as Ranger during the year 2000 and was further promoted as Assistant Conservator of Forests during September, 2011.

3.It is the further case of the petitioner that when the petitioner was posted on special duty Forester in Servalar Hydro-electric Project, Papanasam, charge memo containing five charges were issued to him and after preliminary investigation, the petitioner was placed under suspension vide order of the Assistant Conservator of Forests on 25.03.1984. The departmental enquiry was instituted against the petitioner under Section 17(b) of TNCS (D&A) Rules by the Wild Life Warden, Mundanthurai Tiger Sanctuary, Tirunelveli District.

4.It is the further case of the petitioner that the petitioner submitted his detailed explanation, however, the Mundanthurai Wild Life Warden, vide proceedings dated 22.09.1985 held that all the charges against the petitioner have been proved and imposed the punishment of removal from service. Aggrieved by the same, the petitioner preferred appeal to the Conservator of Forests, Tirunelveli Circle. The Conservator of Forests, Tirunelveli Circle, vide order dated 04.09.1987, partially allowed the appeal and modified the punishment to that of reduction to the bottom of the time scale of pay for a period of five years with cumulative effect.

5.It is the further case of the petitioner that the petitioner reported for duty on 10.09.1987 on reinstatement. The petitioner challenged the modified punishment before the Chief Conservator of Forests, Chennai, however, the Chief Conservator of Forests, Chennai, refused to consider the petitioner's review and vide order dated 07.07.1992, confirmed the order passed by the Conservator of Forests, Tirunelveli Circle. Challenging the said order, the petitioner filed O.A.No.550 of 1993 before the TAT, Chennai. The Tribunal vide order dated 29.08.2001 modified the punishment into one of stoppage of increment for a period of two years without cumulative effect.

6.It is the further case of the petitioner that the petitioner was under suspension from 25.03.1984 to 22.09.1985 and out of employment from 23.09.1985 to 10.09.1987. Hence, the petitioner made representation to the respondents seeking to treat the said period as duty, however, his request was rejected by the respondents. Hence, this writ petition.

7.The learned Senior Counsel appearing for the petitioner would submit that though the petitioner was imposed with the punishment of removal from service, on appeal the said punishment was modified to that of reduction to the bottom of the time scale of pay for a period of five years with cumulative effect. Thereafter, the punishment was again modified by the Tribunal in O.A.No.550 of 1993 vide order dated 29.08.2001 into one of stoppage of increment for a period of two years without cumulative effect. Hence, this Court may permit the petitioner to make a detailed representation to the first respondent and issue direction to the first respondent to consider the said representation in terms of Rule 54 (1) of the Fundamental Rules and to pass appropriate orders.

8.The learned Additional Government Pleader would submit that the writ petitioner in his representation dated 30.05.2013 has requested the first respondent to regularize the period from 25.03.1984 to 10.09.1987 as duty. He would further submit that the petitioner has neither been exonerated of charges nor been acquitted by the Court for the purpose of treating the said period as duty. However, the learned Additional Government Pleader raise no serious objection for considering the limited request now made by the learned Senior Counsel appearing for the petitioner.

9.Heard the arguments advanced on either side and perused the materials available on record.

10.Admittedly, the petitioner was under suspension from 25.03.1984 to 22.09.1985 and out of employment from 23.09.1985 to 10.09.1987. Initially, the petitioner was imposed with the punishment of removal from service. Subsequently, the said punishment was modified to that of reduction to the bottom of the time scale of pay for a period of five years with cumulative effect. Subsequently, the punishment was modified by the Tribunal in O.A.No.550 of 1993 vide order dated 29.08.2001 into one of stoppage of increment for a period of two years without cumulative effect.

11.In the impugned order dated 18.03.2014, it is stated that the orders issued in G.O.(2D) No.80, Environment and Forests Department, dated 13.09.1995 regulating the period of suspension

as 'leave to which the individual is eligible other than un-earned leave on medical certificate' is found to be in order. However, in view of the modification in punishment, the petitioner's claim to regularize the period from 25.03.1984 to 10.09.1987 (i.e., the period under suspension from 25.03.1984 to 22.09.1985 and out of employment from 23.09.1985 to 10.09.1987) as duty has to be reconsidered in terms of Rule 54 of the Fundamental Rules.

12.Hence, the impugned orders passed by the first respondent in G.O.(2D) No.80, Environment and Forest (FR.IX) Department dated 13.09.1995 and letter No.17565/FR2/2013/7 dated 18.03.2014 and confirmed by the second respondent in Na.Ka.No.A1/26157/2013/1 dated 26.03.2014 are set aside. The matter is remanded back to the Authorities for fresh consideration and for passing appropriate orders, keeping in mind that the punishment imposed on the petitioner was lastly modified by the Tribunal in O.A.No.550 of 1993 vide order dated 29.08.2001 into one of stoppage of increment for a period of two years without cumulative effect.

13.The writ petition is allowed on the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Secretary to Government
Environment & Forest F2 Department,
Fort St.George, Chennai - 9.

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

+1 CC to The Special Government Pleader sr 39422.

W.P.No.12576 of 2014
And
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EV(CO)
SP(06/01/2021)