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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 19.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S. RAMESH

W.P.No.12882 of 2016

S.Arokiyasamy

...Petitioner

Vs

1. Government of Tamil Nadu,
Rep by its Secretary,
Environment and Forest Department,
Fort St.George,
Chennai 600 009.

2. The Principal Chief Conservator of Forest,
Panagal Maaligai,
Saidapet, Chennai-600 015.

3. The Additional Principal Chief
Conservator of Forest,
Panagal Maaligai,
Saidapet, Chennai-600 015.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the first respondent in G.O.(D).No.169, Environment and Forest (F-12) Department dated 02.06.2014 confirming the order passed by the third respondent in his proceedings Se.Mu.Aanai No.A.Aa.1/5576/05 dated 18.11.2005 and quash both the orders in so far as they relates to the operation of the modified punishments of stoppage of increment prospectively from 01.12.2005 instead of 03.03.2003 and consequently direct the second respondent to include the name of the petitioner in the appropriate place in the panel for promotion to the post of Forester drawn on 26.06.2009 for the panel year 2008-2009 and consequently direct the second respondent to confer promotion of the post of Forester to the petitioner on par with his juniors i.e., from 26.06.2009 with all service and monetary benefits.

For Petitioner : Mr.S.Mani

For Respondents: Mr.K.V.Sajeev Kumar,
Government Counsel



ORDER

By consent of both the parties, this writ petition is taken up for final disposal.

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2. The petitioner herein was subjected to a set of charges through a charge memo dated 03.03.200 and pursuant to an enquiry conducted, the District Forest Officer had passed an order dated 03.03.2000, removing the petitioner from his services. As against the order of removal, the petitioner had preferred an appeal before the third respondent and by an order dated 18.11.2005, the petitioner's original punishment was modified into reduction of the scale of pay to the bottom level, for a period of five years without cumulative effect. The petitioner herein is aggrieved against the order of modification, which gives effect to the modified punishment with effect from 03.03.2000 onwards.

3. It is a settled proposition of law that whenever the appellate authority modifies the original order of punishment into a lesser punishment, such modified punishment will take into effect from the date when the original punishment was imposed. Such a proposition is not only legal but also logical. In other words, what is modified by the appellate authority is the original order of punishment and barring the modification, all other findings in the original punishment will remain intact and therefore, such modification has to necessarily be given effect from the date of the original punishment only.

4. This proposition has been reiterated in many decisions, including the decision of the Hon'ble Division Bench of this Court in the case of Arokiadoss Vs. The Commissioner of Police in a judgment dated 30.04.2009 passed in W.A.No.673 of 2003. The relevant portion of the order reads thus:

"13. In the present case, the claim of the appellant, as submitted by the learned Senior Counsel, is that he should be given promotion notionally as Grade I Police constable from the year 1992 instead of giving it from the year 1993. This vital aspect, that the modified punishment will be given effect to from the original date of punishment, has not been considered by the learned Single Judge. The learned single Judge has proceeded on the pretext that from the date of dismissal on 09.02.1988 till the appellant was reinstated 25.07.1994, he was out of employment and therefore, the reduction of time scale of pay by two stages for a period of two years cannot be notionally fixed, which, in ut view, is not the



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correct legal position. The law is well settled that when once in the disciplinary proceedings the ultimate authority passes an order modifying the original punishment, certainly the modified punishment goes back to the original date of punishment."

5. In view of the same, the impugned order of the third respondent herein dated 18.11.2005, insofar as it relates to giving effect to the portion of the modified punishment from 01.12.2005, is set aside. Consequently, the order passed in the appeal by the third respondent on 18.11.2005 shall stand modified to the effect that the punishment of reduction of scale of pay to the bottom level for a period of five years, shall operate with effect from 03.03.2003 i.e., from the date of the order of the original punishment.

6. Consequent to the above findings and directions, the petitioner would be entitled to all other monetary and service benefits, including inclusion of the petitioner's name in any promotion panel that he may be entitled to, by taking into consideration the order of punishment with effect from 03.03.2003. The petitioner is at liberty to approach the concerned respondent seeking for service benefits including promotion and on receipt of such a representation, the concerned respondent shall consider the same, in the light of the above observations and take further course of action, within a period of 8 weeks from the date of receipt of a copy of this representation.

7. Accordingly, the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sbn

To

1. The Secretary,
The Government of Tamil Nadu,
Environment and Forest Department,
Fort St.George,
Chennai 600 009.



2. The Principal Chief Conservator of Forest,
Panagal Maaligai,
Saidapet, Chennai-600 015.

3. The Additional Principal Chief Conservator of
Forest,
Panagal Maaligai,
Saidapet, Chennai-600 015.

+lcc to Mr.S.Mani, Advocate, S.R.No.35051

+lcc to the Government Pleader, S.R.No.34940

W.P.No.12882 of 2016

UM(CO)

RGA(23/08/2021)