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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.15504 & 14823 of 2008

and

W.P.No.12344 of 2006

and

MP.No.2 of 2008

WP.No.15504 of 2008

K.Syed Peer Mohamed

... Petitioner

Vs

1. The Principal Chief Conservator of Forests,
Panagal Buildings, Chennai-15.
2. The District Forest Officer,
Kanniyakumari District, Nagercoil.
3. The Conservator of Forests,
Tirunelveli Circle, Tirunelveli.
4. The District Forest Officer,
Thoothukudi Division and Thoothukudi.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records relating to the orders in [1] Charge Memo Na.Ka.No.12903/92/Tha.1 dt. 29.7.1992 of the 2nd respondent [2] Show cause notice in Na.Ka.No.T2/778791/94 dated 29.4.2003 of the 1st respondent along with enclosures and [3] proceedings of 2nd respondent in Pro.Se.Mu.NO.2755/1993/Pa.2 dt. 13.06.2008 to quash the same and to regularise the period of suspensin suffered by the Petitioner from 2.1.1999 to 24.10.2000 as duty for all purposes with all consequential service and monetary benefits.

WP.No.12344 of 2006

K.Syed Peer Mohamed

... Petitioner

Vs



1. The Principal Chief Conservator of Forests,
Panagal Building, Chennai-600 015.

2. The District Forest Officer,
Nagercoil.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the first respondent to include the name of the petitioner in the panel for promotion as Forest Ranger for the year 1992-1993 approved in pro. no.B/58930/92-5 dated 22.3. 1993 of the first respondent herein in the appropriate place therein without reference to the pendency of charge Memo in Pro.Na.Ka.No.2755/93/E2 dated 24.10.2000 of the 2nd respondent and the punishment imposed in Pro.No.T2/583/97 dt. 30.3.2005 of the first respondent and to promote the petitioner as Forest Ranger with retrospective effect from date of promotion of his immediate junior with consequential benefits.

WP.No.14823 of 2008

K.Syed Peer Mohamed

Vs

... Petitioner

1. The Government of Tamilnadu,
Rep. by Secretary to Government, Environment
and Forests Department,
Fort St. George, Chennai-9.

2. The Principal Chief Conservator of Forests,
Panagal Buildings, Chennai-15.

3. The District Forest Officer,
Kanniyakumari Division, Nagercoil.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records relating to the orders in (1) G.O.(3D). No.34 Environment and Forests (Frqa) Department dated 3.7.2007 of the first Respondent; (2) Pro.No.T2/583/97 dated 30.3.2005 of the second Respondent quash the same and issue consequential directions to refund the amount recovered from the Petitioner with interest.

For Petitioner : Mr.M.Ravi
(In all WPs)



For Respondents : Mr.S.John J.Raja Singh
(In all WPs) Government Advocate

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COMMON ORDER

Common order is passed in these three Writ Petitions, since the petitioner is one and the same and the facts involved form one continuous narration which is best addressed by way of a single order. The prayers in these Writ Petitions challenge various proceedings that had transpired in the course of the service of the petitioner and hence even for this reason, a common order would be appropriate.

2.The petitioner had joined service as a Junior Assistant in the Tamil Nadu Ministerial Service within the Forest Department on 24.06.1976 and was thereafter appointed as a Forester in the Tamil Nadu Forest Subordinate Service on 11.10.1979.

3.On 31.01.1992, a charge memo (hereinafter referred to as CM 1) had been issued to the petitioner by R2 i.e. the District Forest Officer, which was not pursued and came to be dropped. On 29.07.1992 a second charge memo was issued to the petitioner (hereinafter referred to as CM 2) alleging that in the course of the petitioner's service, during the period 10.09.1990 to 01.11.1991, a total of 916 logs being 131 harpoon logs 685 teak logs and 100 miscellaneous logs had been found missing. The quantum of loss was estimated at a sum of Rs.10,10,540/-, and as a consequence of the aforesaid charge, the petitioner was suspended from service on 22.12.1994.

4.On 02.07.1997, yet another charge memo (hereinafter referred to as CM 3) had been issued, which is the subject matter of challenge in W.P.No.14823 of 2008.

5.While this is so, the petitioner had challenged the suspension imposed before the Tamil Nadu Administrative Tribunal (Tribunal) in O.A.No.1765 of 1995 and by order dated 21.07.1997, the Tribunal revoked the order of suspension and directed reinstatement. Notwithstanding that the order of the Tribunal was passed as early as in July, 1997, reinstatement was effected only in 2000.

6.In the meanwhile, on 31.03.1999, the Chief Wildlife Warden had set aside the order of punishment dated 30.08.1997. Proceedings of the Chief Wildlife Warden bearing No.WL9/12058



dated 31.03.1999 reflect that the petitioner had submitted a petition to him to the effect that his predecessor, one P.Ramachandran had not handed over the stock of timber in a proper fashion. Most of the stock on hand had deteriorated badly.

7. The petitioner had availed medical leave duly substantiated by a medical certificate. Moreover, the authority was also of the view that the charges as against the petitioner in regard to the missing 916 logs had not been proved. As a result, the punishment of postponement of increment of the petitioner that had been imposed on 30.08.1997 was set aside as the charges laid upon the petitioner under CM 2 had been found untenable.

8. On 24.10.2000, yet another charge memo (hereinafter referred to as CM 4) was issued by R2 and on 29.04.2003 a show cause notice issued by the Principal Chief Conservator of Forests/R1 with annexures, to which a response was filed by the petitioner on 09.07.2003 .

9. In the meanwhile, the petitioner had filed an application before the Tribunal in O.A.No.307 of 2004 challenging CM 2 and CM 4. On 06.02.2004, the Tribunal passed an order wherein, after narrating the facts as noticed by me in the preceding paragraphs, the Tribunal lamented the position that the applicant had been denied promotion for many years.

10. Since he would have been entitled to the promotion in the event that he was exonerated of the charges, the respondents were directed to pass final orders in both the disciplinary proceedings within a period of three months, failing which, the applicant/petitioner in the Writ Petition shall be considered for promotion under Rule 39 of the Tamil Nadu State and Subordinate Services Rules (in short 'TNSSS Rules') subject to review and result of the disciplinary proceedings.

11. The relevant portion of the order of the Tribunal is extracted below:

.....

This application is filed by Thiru.K.Syed Peer Mohammad working as a Forester in Social Forestry Range in Kovilpatty in Tuticorin District, praying for quashing the Charge Memo dated 24.10.2000 and another Charge Memo dated 2.7.1997.



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2 So far as these two Charge Memos are concerned, an enquiry has proceeded and findings have been given. It seems in both the Charge Memos, findings have been given to the effect that charges have been proved. Charges are grave in nature and in the second Charge Memo, it is alleged that the complaint has made false entries in the book as a result of which he has allowed a contractor to unlawfully enrich himself to the extent of Rupees more than one lakh. The first Charge Memo relates to certain lapses and irregularities alleged to have been committed by the Applicant while he was incharge of the Forest Depot at Nagercoil. Both charges have been required into and findings have been rendered and it seems copies of the enquiry reports also have been given to the Applicant who has also made his final submissions. Both enquiries are said to be over even by 2001-2003. Final orders have not been passed so far. Therefore, it is urged on behalf of the Applicant that he may be directed to be promoted notwithstanding the Disciplinary Proceedings.

3. It is unfortunate that the Applicant has been denied promotion right from 1992. I am now told that in the year 1992-1993 in the penal, the name of the Applicant was not included because he has suffered a punishment only just before that the panel was notified. Against the said punishment, the Applicant claims to have preferred an appeal and the appeal was allowed and the punishment was set aside. I am not told as to when this appeal was allowed. However, the Applicant again got into trouble in 1994, when he was placed under suspension and he was reinstated only in 2001. In the mean time, two Charge Memos have been served on him, one in the year 1997 and another in 2000. Now that enquiries are over and the Applicant also have made his final submissions, it only remains for the Respondents to pass final orders and bring to close the Disciplinary Proceedings. In view of the fact that the Applicant is denied promotion for so many years and in view of the fact that he will be entitled to promotion in case he is exonerated of the charges, a direction is given to the Respondents to pass final orders in the both the Disciplinary Proceedings within a period of three months failing which the Respondents shall consider the Applicant for promotion under Rule 39 of the Tamil Nadu State and Subordinate Service Rules subject to review of the result of the Disciplinary Proceedings.



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12. It was on 05.12.2005 that R1 thereafter passed an order treating the period of suspension of a co-delinquent, one P.Arunachalam in the following manner: i) that the period 02.01.1995 to 20.12.2000 shall be treated as on duty, (ii) 21.12.2000 to 22.12.2000 shall be treated as compulsory wait and (iii) 23.12.2000 to 24.12.2000 shall be taken as joining time.

13. In the petitioner's case, not only is there no such order passed, but effect was also not given to the order of the Tribunal despite the elapse of four years. The petitioner, in the meantime, was constrained to issue legal notice dated 04.06.2008 drawing attention to the order passed by the Tribunal and the time frame imposed thereunder. It was only upon receipt thereof that order dated 13.06.2008 has come to be passed by the District Forest Officer/R2 imposing a punishment of reversion to the post of Junior Assistant, upon which the petitioner was to draw the same pay that he had drawn prior to his reversion.

14. The arguments advanced by the learned counsel for the petitioner are as follows:

(i) That the impugned proceedings are inordinately delayed insofar as for the period 10.09.1990 to 01.11.1991, in respect of which 3 CMs have been issued, a punishment has finally come to be imposed only on 13.06.2008, after a period of 18 years.

(ii) That the charge memos were not accompanied by the enclosures as statutorily required.

(iii) That though the order of the Tribunal dated 06.02.2004 stipulates a time frame of 3 months for completion of the proceedings, the impugned order dated 13.06.2008 had come to be passed after four years. The order of the Tribunal has attained finality and the time granted was not extended and thus the respondents were bound by the time frame imposed by the Tribunal.

(iv) That though show cause notice dated 29.04.2003 was issued by R1, the impugned order dated 13.06.2008 had come to be passed by R2 to whom there has been no delegation, apparently at least. Thus, since the impugned proceedings were initiated by the superior authority, it was incumbent upon him to have passed final orders as well.

(v) The punishment imposed is itself untenable, insofar as while the petitioner might have been demoted to a post within the same Department, being the Forest service, he has been reverted to the Tamil Nadu Ministerial Service, his parent organisation. This tantamounts to direct recruitment from one



service to another and is inappropriate in the facts and circumstances of the matter.

(vi) While the co-delinquent has been acquitted, the petitioner has been punished, amounting to discrimination.

15. Per contra, Mr.S.John J.Raja Singh, learned Government Advocate would assail the maintainability of the Writ Petition pointing out that W.P.No.15504 of 2008 contains multiple prayers spanning the period 1992 to 2008. In this connection, he would rely upon a decision of the Division Bench of this Court in the case of M.Rajendran V. The Government of India and others (W.A.No.3161 of 2019 judgment dated 04.10.2019), wherein the Bench rejects the maintainability of the Writ Petition, stating that a Writ Petition must be supported by relevant facts and a pointed prayer focussed towards a specific impugned order.

16. In that case, as in this, according to the learned Government Advocate, multiple prayers were raised, all involving different sets of facts and the Bench had opined that appreciation of different sets of facts in regard to different prayers must not be considered in a single Writ Petition.

17. The above decision is distinguishable. The narration as seen above indicates a common thread running through the entire factual matrix. The single unifying point is the fact that all the charge memos relate to the same period, i.e., 10.09.1990 to 01.11.1991 and have ultimately culminated in an order of suspension dated 13.06.2008. In fact, it would suffice for the purpose of effective relief, if order dated 13.06.2008 be set aside, since all previous charge memos have culminated in the impugned order dated 13.06.2008.

18. That apart, W.P.No.14823 of 2008 challenges an order of imposition of punishment dated 30.03.2005 confirmed in order dated 03.07.2007. The punishment imposed under order dated 30.03.2005 is stoppage of increment for a period of six months without cumulative effect and directing recovery of a sum of Rs.53,048/- allegedly pertaining to lapses for the same period, i.e., 10.09.1990 to 01.11.1991.

19. In that case, the co-delinquent is stated to be one Sivasankaran who has been let off the hook. The State however would deny that Sivasankaran had been involved in the same charges and avers that he had been charged with a different set of crimes altogether. That apart, the argument in relation to the violation of the time frame imposed by the Tribunal would hold good in regard to the challenge in W.P.No.14823 of 2008 as well. The argument on maintainability is thus rejected.



20. Mr.Singh would also point out that Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (in short 'TNCS(D&A) Rules') does not statutorily mandate that enclosures accompany the show cause notice and that it would suffice for the authorities to supply all materials relied upon by them to the noticee prior to completion of the proceedings.

21. The relevant portion of Rule 17(b)(i) states that:

.....

in every case where it is proposed to impose on a member of a service or on a person holding a Civil Post under the State any of the penalties specified in items (iv), (vi), (vii) and (viii) in rule 8, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged, together with a statement of the allegation, on which each charge is based and of any other circumstances which are proposed to be taken into consideration in passing orders on the case. The noticee is required to submit a written statement of his defence in response to the memo of charges and to indicate therein whether he desires to be heard in person. Pursuant thereto, an oral inquiry shall be held if opted for, otherwise such inquiry shall be held by the authority as may be appropriate, witnesses may be heard, if so necessary and the proceedings finalised.

22. A reading of the aforesaid procedure makes it clear that the charge memo issued, in addition to setting out the charges levelled against the noticee must contain and be accompanied by all materials in possession of the authority, to enable an effective response from the noticee.

23. However, whether the present charge memos were accompanied by annexures may not be relevant for the reason that I am persuaded to accept the submission of the petitioner on the aspects of delay as well as violation of the timelines imposed by the Tribunal.

24. On delay, the period of occurrence of the events spans 10.09.1990 to 01.11.1991 and it does not stand to reason that the petitioner should have been visited with 3 charge memos in regard to the same period, first dated 31.01.1992, second dated 29.07.1992 and the third dated 02.07.1997, when the allegations are substantially the same. That apart, charge memo dated 29.07.1992 has been set aside by the Chief Wildlife Warden who,



upon perusal of the file and relevant details has come to the conclusion that the charges were not proved.

25. Thus for R2 to revive the same charges again on 24.10.2000 does not stand to reason at all. Moreover, a comparison of CM 2 dated 29.07.1992 and CM 3 dated 02.07.1997 would reveal almost perfect identity between the charges laid insofar as the number of logs stated to be missing in both the charge memos is 916. The only difference is in regard to a sum of Rs.200/- as regards the loss caused to the Treasury.

26. An additional point that has been raised in regard to W.P.No.13220 of 2008, which challenges the memos as well as show cause notice dated 29.04.2003 issued by R1 is that the Writ Petition had been listed for admission in 2008. According to the learned counsel for the petitioner, notice had been issued to the respondents, who had sought time to obtain instructions. A request had been made that the proceedings be kept pending till such time the Court had occasion to consider the averments raised in that Writ Petition. However, without doing so, the authorities have proceeded to finalise the disciplinary proceedings thus leading to order dated 13.06.2008 impugned in W.P.No.15504 of 2008.

27. Insofar as no interim protection has been obtained by the petitioner in the aforesaid Writ Petition, I see nothing untoward in the State having continued and concluded the proceedings.

28. Impugned orders dated 30.03.2005 as confirmed by order dated 03.07.2007 (W.P.No.14823 of 2008) and 29.04.2003 read with order dated 13.06.2008 (W.P.No.15504 of 2008) are set aside. The petitioner having superannuated in 2012 is entitled for notional promotion from the period 1992 onwards and all interim and consequential benefits thereof. Let the same be computed and paid over to the petitioner within a period of eight (8) weeks from today.

29. These Writ Petitions are allowed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Chief Conservator of Forests,
Panagal Buildings, Chennai-15.
2. The District Forest Officer,
Kanniyakumari District, Nagercoil.
3. The Conservator of Forests,
Tirunelveli Circle, Tirunelveli.
4. The District Forest Officer,
Thoothukudi Division and Thoothukudi.
5. The Secretary to Government,
Environment and Forests Department,
Fort St. George, Chennai-9.
6. The District Forest Officer,
Nagercoil.

+1cc to the Government Pleader, S.R.No.50852

+1cc to the Special Government Pleader (Forest), S.R.No. 50631
(02/12/2021)

W.P.Nos.15504 & 14823 of 2008 and
W.P.No.12344 of 2006 and
MP.No.2 of 2008

PMK(CO)
SU(15/11/2021)