



WEB COPY

W.P.(MD)No.17220 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.01.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.17220 of 2014

and

M.P. (MD)No.1 & 2 of 2014

A.Ramamoorthy

... Petitioner

vs

1.The Conservator of Forests,
Race Course Road,
Madurai-625 002.

2.The District Forest Officer,
Race Course Road,
Madurai-625 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to proceeding 6093/2011/Pa.2, dated 11/09/2014 of the second respondent and to quash the same and to issue consequential direction to the respondents to reinstate the petitioner in service with consequential benefits of back pay, continuity of service.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.J.K.Jayaselan

Government Advocate(Civil side)

O R D E R

The petitioner has challenged the proceedings No.6093/2011/Pa.2, dated 11.09.2014.

2. The brief facts of the case are that the petitioner submitted a leave application, dated 30.07.2010, seeking leave from 02.08.2010 to 04.08.2010. The petitioner sought leave in order to admit his son to B.E. Degree Course in Kalasalingam College. However, the petitioner's son got admission on 01.08.2010 itself and the petitioner approached the Range Officer in order to cancel the leave. The petitioner came to the Office of the Range Officer and the Range Officer had informed that he has been placed under suspension on 03.08.2010 and the suspension order was issued to him. However, the suspension was revoked on 05.08.2010. The petitioner was transferred to Vikramangalam Beat and joined duty.

3. While the petitioner was attending wireless duty on 31.07.2010 stating that one elephant died and he was put on the duty



to visit the spot and to take photograph. On 01.08.2010, three Veterinary Surgeons conducted Post-mortem of the elephant and it was buried and all the other formalities were completed. However, the District Forest Officer, vide order, dated 05.08.2010, initiated disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Service (D & A) Rules, levelling charges that the petitioner had left the Head Quarters on 01.08.2010 evening and but had submitted leave application to sanction leave from 02.08.2010 to 04.02.2010, but the said leave application was not sanctioned for administrative reason. After an enquiry, punishment was imposed, vide order, dated 29.09.2011, imposing the punishment of stoppage of increment for one year with cumulative effect. The petitioner has preferred an appeal pointing out the procedural infirmities. Therefore, the punishment order was set aside and the matter was remitted back for a fresh enquiry.

4. Thereafter, an Enquiry Officer submitted the enquiry report, dated 19.04.2014 and the report was furnished to the petitioner on 26.06.2014. The petitioner submitted a representation, dated 10.09.2014, in which the petitioner has requested that he is on the verge of retirement on 28.02.2015 and the final order may be passed at the earliest. The District Forest Officer, vide order, dated 11.09.2014, passed final order imposing the penalty of removal from service. The petitioner submitted an appeal on 19.09.2014 and the same is pending.

5. The respondents have a filed a counter affidavit stating that on 31.07.2010 a message was received that one female elephant aged about three years was found dead in a patta land near Thalaiyathu in Paluthu Beat of Gandamanur Range. Since the post of Forest Ranger was vacant, the Forest Ranger-in charge has instructed the Forester to reach the spot and take necessary action. In the preliminary enquiry it was informed that the death of the elephant is unnatural. The Forest Ranger in his letter, dated 02.08.2010, has reported that the petitioner had left the Head Quarters in the evening on 01.08.2010. The respondents have considered this as insubordination and undisciplined behavior. Therefore, the petitioner was placed under suspension on 02.08.2010 and was revoked suspension on 05.08.2010. The petitioner has approached the Court in W.P.(MD)No.1082 of 2010 to quash his transfer order to Sholavanthan Range and the writ petition was dismissed on 14.09.2010. Aggrieved over the same, the writ petition in W.P.(MD) No.736 of 2010 was filed and the same was dismissed on 09.11.2010. Thereafter, the charge sheet issued to the petitioner on 05.08.2010, then the punishment was imposed with stoppage of increment for one year. The petitioner preferred an appeal and the case was remitted back to continue further action from the place where the procedural lapses had crept in.



6. Thereafter, an Enquiry Officer was appointed to conduct a re-enquiry and ample opportunity was provided to the petitioner. The petitioner had not preferred to cross-examine any of the witness and he had not produced any witness before the Enquiry Officer. After completion of the enquiry, a report was sent to the petitioner. The petitioner has not submitted his explanation and requested to conduct the enquiry again, vide letter, dated 05.07.2014 and has used words in the manner to threat the administration. Since there was no provision to conduct re-enquiry, the petitioner was granted 15 days with a condition further extension of time would not be allowed. The petitioner, vide letter, dated 10.09.2014, requested the administration in the reckless manner stating that the punishment could be inflicted on him and the petitioner would be ready to face any consequences. Considering, his letter, dated 10.09.2014 as the explanation submitted by the petitioner, it was concluded that the petitioner was deserved for dismissal from the Government service. However, it was ordered to remove the petitioner from the Government service by the proceedings of the second respondent, dated 11.09.2014, with the following remarks "Thiru A.Ramamoorthy, Forest Watcher has preferred to go on leave, relinquishing his prime duty when the elephant has died in Forest area, without permission from his superior officers (District Forest Officer/ Forest Range Officer/ Forester/ Forest Guard)". Enquiry Officer has proved the charges and the delinquent's final explanation was received and perused. After perusing, the punishment of removal from service was inflicted to the petitioner and therefore the writ petition is devoid of merits and prayed to dismiss the writ petition. At the time of admission of the writ petition this Court has granted an interim stay and the petitioner was reinstated into service.

7. Heard Mr.M.Ravi, learned Counsel appearing for the petitioner and Mr.J.K.Jayaselan, learned Government Advocate appearing for the respondents.

8. The allegation of the respondents are that the petitioner has absented himself in the evening on 01.08.2010. The contention of the petitioner is that he has already submitted leave application on 30.07.2010, seeking leave from 02.08.2010 to 04.08.2010 in order to admit his son in the college. The respondents have contended that on 31.07.2010, an information was received that a female elephant died, instead of attending the same, the petitioner had left the Head Quarters on 01.08.2010. Thereafter, the respondents have initiated disciplinary proceedings and punishment of stoppage of increment for one year with cumulative effect was imposed. The petitioner has challenged the same for the procedural lapses and the case was remitted back for fresh consideration.



9. While considering the same, the petitioner was granted ample opportunity. The petitioner failed to cross examine any of the respondent witness, but the petitioner again prayed to conduct re-enquiry and that was denied. The petitioner had requested to complete the enquiry before his retirement, since the petitioner was on the verge of retirement and has used some words which has offended the officials. But the petitioner was offended that he could not accompany his son for college admission because the respondents have not sanctioned leave. At one stage the petitioner has replied that the punishment may be inflicted and he would be ready to face any consequences again.

10. The petitioner has submitted the leave application on 30.07.2010 itself but that the respondents are questioning the veracity of the application since the Forest Ranger has not received the application. The respondents admit that the Forester have made an endorsement that the application was taken back by the petitioner but the respondent contention is that the Forester should not have allowed the petitioner to get back his application from the Office of the Forest Ranger Gandamanur. Strangely the respondents in bold letters in their counter has stated as under:

"It is very clear that the Forester is subordinate officer to the Forest Ranger. If it is supposed to agree that the leave application given by the petitioner is in the office of the Forest Ranger Gandamanur, the Forester should not have allowed the petitioner to get back his application from the office of the Forest Ranger Gandamanur. Moreover the petitioner does not have any right to get back his application from the office of the Forest Ranger with the connivance of the Forest Ranger. In addition to it, it is most worthy to place on record that the above said Forester Karuppasamy has also been noted as defence witness by the petitioner in the questionnaire form already filled up by him. It is very clearly implied that the above said leave letter is bogus one and it has been prepared in order to defend himself at the time of enquiry."

The contention of the respondents that the petitioner has taken back the application and one Forester Karuppasamy has made an endorsement to that effect, then the petitioner has shown that said Karuppasamy as his side witness and therefore it is clear that the leave letter is bogus one. This Court is unable to understand the logic behind this averment. The said Forester Karuppasamy has returned and he should be the witness to state that he has returned, where is the question of bogus etc. The respondents are concluding all the issues on mere assumptions and presumptions.



11. This Court is of the considered opinion that this is a classic case of egoistic and vindictive attitude of the respondents. The respondents ought to have shown some sympathy to the petitioner because the petitioner sought leave to admit his son in the college. If the petitioner had accepted the punishment of stoppage of increment for one year with cumulative effect then the entire issue would not have arisen. The fate has played on the petitioner to file an appeal and the case was remitted back and from here the fate has played very violently on the petitioner, wherein the petitioner had ended up with the punishment of removal from service.

12. Therefore, this Court is of the considered opinion that the punishment of removal from service is totally shocking and hitting the conscious and therefore, the impugned order is set aside. The petitioner was caught in an emotion between duty to forest and duty to family. He applied leave on 30.07.2010 from 02.08.2010 to 04.08.2010, but the elephant died on 31.07.2010 and his son got admission on 01.08.2010 and so the petitioner withdrew his leave application. However the petitioner was absent from duty on 01.08.2010 from evening onwards and the petitioner was absent on 02.08.2010 and therefore the punishment of removal from service shall be modified as stoppage of increment for 3 months without cumulative effect. The petitioner has attained superannuation and therefore there is no question of reinstatement. The respondents are directed to regularize the period, grant continuity of service and disburse terminal benefits within a period of six weeks from the date of receipt of the copy of the order.

13. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

jbr

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



To

1.The Conservator of Forests,
Race Course Road,
Madurai-625 002.

2.The District Forest Officer,
Race Course Road,
Madurai-625 002.

+1 CC to M/s.SPL.GP (SR-734[F] dated 07/01/2022)

W.P. (MD) No.17220 of 2014

06.01.2022

MGJ(11.02.2022) 6P 4C