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W.P.No.39011 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	01.03.2023
Pronounced on	.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.39011 of 2005

N. Ganesan

... Petitioner

Vs.

1. Secretary to Government,
Forest Department,
Fort.St.George,
Chennai 9

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

3. The Conservator Forest,
Dharmapuri Circle,
Appavu Nagar,
Dharmapuri.

4. The District Forest Officer,
Hosur Division,
Veterinary Farm, Mathigiri,
Hosur, Dharmapuri District.

... Respondents

PRAYER: This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to order bearing



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No.Na.Ka.No.1500/2002 dated 14.08.2002 of the 4th respondent and set aside the same and consequently direct the respondents to reinstate him in service with all consequential and attended benefits including the arrears of pay and allowances from the date of removal from service till the date of reinstatement.

For Petitioner : Mr.R. Ramesh

For Respondents : Mrs.Geetha Thamaraiselvan
Special Government Pleader

ORDER

This writ petition has been filed to call for the records to call for the records pertaining to order bearing No.Na.Ka.No.1500/2002 dated 14.08.2002 of the 4th respondent and set aside the same and consequently direct the respondents to reinstate the petitioner in service with all consequential and attended benefits including the arrears of pay and allowances from the date of removal from service till the date of reinstatement.

2. The petitioner challenged the impugned order of removal from service passed by the 4th respondent on 14.08.2002 before the Tamil Nadu



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Administrative Tribunal, Chennai and the same was numbered as O.A.No.5682 of 2002. Then the petitioner filed W.P.No.33283 of 2005 and the prayer in the writ petition is for writ of certiorarified mandamus to permit the petitioner herein to withdraw the proceedings in O.A.No.5682 of 2002 pending on the file of the Tribunal/5th respondent therein and renumber the same as Writ Petition. This Court by order dated 19.10.2005 directed the 5th respondent/ The Registrar, Tamil Nadu Administrative Tribunal, Chennai to transfer the pending OA in OA.No.5682 of 2002 on the file of the fifth respondent to this Court forthwith and the writ petition was ordered accordingly. Then the OA.No.5682 of 2002 was transferred to this Court and renumbered as W.P.No.39011 of 2005.

2. The facts of the case in a nutshell:-

The petitioner was initially appointed as Forest Guard on 07.04.1977 and subsequently promoted and appointed as Forester on 05.11.1992. The order to that effect was issued by the second respondent. He has put in 24 years of service with unblemished service record. While he was working as Forester in Hosur Division of Urigam Range, Dharmapuri circle under the



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third respondent he was issued with a charge memo bearing Na.Ka.No.1500/2002 dated 19.03.2002 under 17(b) of Tamil Nadu D & A Civil Service Rule and the charges were framed by the third respondent against the petitioner which was received by him on 22.03.2002. Enquiry was conducted and the charges were held proved and on 14.08.2002 the fourth respondent passed the order of removal from service of the petitioner. Aggrieved by the impugned order dated 14.08.2002 the petitioner had approached the Hon'ble Tamil Nadu Administrative Tribunal, Chennai and the same was transferred to this Court and renumbered as W.P.No.39011 of 2005.

3. The learned counsel appearing for the petitioner would submit that the charge memo dated 19.03.2002 under 17(b) of Tamil Nadu D & A Civil Service Rule were framed against the petitioner and the same is extracted as below:-

“That the said N.Ganesan had used abusive language against a woman folk residing No.1/258 at Thakatu Section”.

Thereafter the petitioner submitted a detailed explanation on 04.04.2002 against the charge memo dated 19.03.2002 and had stated that on 11.02.2002



he had attended Thenganikottai Court to attend the Case No.381/95 for the Government and returned only on the next day ie., on 12.02.2002. Therefore the charges that he misbehaved on 11.02.2002 is totally false. Charge as no such incident as alleged in the charge has taken place on 11.02.2002. The enquiry officer submitted the report on 02.08.2002 holding the charges as proved and asked the petitioner to submit the explanation within 7 days from the date of receipt of the enquiry report.

4. The learned counsel further submitted that on 10.08.2002 the petitioner submitted his detailed explanation to the 4th respondent denying the findings of the enquiry officer and requested to drop the alleged charges levelled against him. The learned counsel's main contention is that the order which was passed on 14.08.2002 by the 4th respondent removing the petitioner from service was based on the findings of the enquiry officer is without jurisdiction and he is not the competent authority to pass the order of removal from service, since the appointing authority is the Principal Chief Conservator of Forests, Chennai. The learned counsel further submitted that the impugned order dated 14.08.2002 was passed by the 4th



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respondent/District Forest Officer, Hosur, Dharmapuri district who is not an appointing authority and the appointing authority is the second respondent/Principal Chief Conservator of Forests, Chennai. Therefore any final order ought to have been passed by the appointing authority i.e., the second respondent/Principal Chief Conservator of Forests, Chennai and not by the 4th respondent/District Forest Officer, Hosur, Dharmapuri district. Therefore the impugned order dated 14.08.2002 is liable to be set aside for lack of jurisdiction. He would further submit that on 11.02.2002 the petitioner had attended the Thenganikottai Court to attend the Case No.381/95 for the Government and thereafter returned only on the next date i.e., on 12.02.2002, since there was no transport in the hill area after 5:00 p.m. in the border of the Karnataka State. Therefore the charges as such the petitioner misbehaved on 11.02.2002 is totally baseless and false. The charges were levelled only at the instance of the Ranger who had personal enmity against the petitioner and gave false complaint and report against the petitioner. Therefore it is prayed that the writ petition may be allowed.

5. The learned Special Government Pleader appearing for the



respondents 1 to 4 filed an affidavit of the second respondent and submitted that the recruitment authority may differ in the case of direct recruitment/appointment by transfer/promotion. In this case, the petitioner is a Forest Guard and promoted as a Forester. In all cases the District Forest Officer is the appointing authority for the post of Forester. The learned Special Government Pleader drew the attention of this Court to the relevant paragraph mentioned in the affidavit and the same is extracted as below:-

“(2) The authority which may impose the penalties of-

(i) withholding of promotion;

(ii) reduction to a lower rank in the seniority list or to a lower post or time-scale, whether in the same service or in another service, or to a lower stage in a time-scale;

(iii) compulsory retirement otherwise than under article 465 (2) and under Note I to the article 465-A of the Civil Service Regulations;

(iv) removal from the Civil Service of the State Government;and

(v) dismissal from the Civil service of the State Government, on a member of a Subordinate Service including those in the National Cadet Corps Units, shall be the appointing authority or any higher authority;

Provided that in the case of persons appointed to a service by any authority higher than the appointing authority, the penalties mentioned in this clause shall not be imposed by any authority subordinate to such higher authority:

Provided further that in the case of the members of the services specified in Appendix III to these rules, the authority which may impose any of the penalties mentioned in clauses (1) and (2) or



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suspension referred to in rule 17(e) shall be as specified against each:”

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6. The learned Special Government Pleader further submitted that the appointing authority can impose any punishment including the major punishment. In this case for the post of Forester, the appointing authority is the District Forest Officer and he is competent to pass final orders on the disciplinary proceedings. Therefore it is prayed that the writ petition may be dismissed.

7. Heard both sides and perused the materials available on record.

8. On perusal of the records, it is found that in the appointment order dated 30.07.1990 issued to the petitioner the order was signed by the Conservator of Forests, Salem. The charges levelled against the petitioner is that he had used abusive language against a woman folk residing No.1/258 at Thakattu Section on 11.02.2002. The petitioner also submitted a detailed explanation on 04.04.2002 to the charge memo dated 19.03.2002. In the explanation he has stated that he had attended Thenganikottai Court to attend



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the Case No.381/95 on 11.02.2002 for the Government and returned only on the next day i.e., on 12.02.2002.

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9. The termination order dated 14.08.2002 was issued to the petitioner by the District Forest Officer, Hosur, Dharmapuri district/ 4th respondent herein who is not the appointing authority to the petitioner. The Principal Chief Conservator of Forests, Chennai is the appointing authority, he only has the authority to terminate the service of the employee and not any officer who is below the rank of appointing authority. In the present case, the Principal Chief Conservator of Forests, Salem has issued the appointment order who is the superior authority and the impugned order dated 14.08.2002 was passed by his subordinate officer the District Forest Officer, Hosur.

10. This apart, the punishment of termination imposed on the petitioner is disproportionate to the charge framed against the petitioner and the “doctrine of proportionality” is applicable to this case. The order passed by the 4th respondent is liable to be quashed on the above two



grounds. This Court relies upon the judgments passed by the Hon'ble Apex Court in the case of ***Ram Kishan Vs Union of India (UOI) and others*** reported in AIR 1996 SC 255. The relevant portion is extracted as below:-

“11. It is next to be seen whether imposition of the punishment of dismissal from service is proportionate to the gravity of the imputation. When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of the abusive language. No straight jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated.

12. on the facts and circumstances of the case, we are of the considered view that the imposition of punishment of dismissal from service is harsh and disproportionate to the gravity of charge imputed to the delinquent constable. Accordingly, we set aside the dismissal order. We hold that imposition of stoppage of two increments with cumulative effect would be an appropriate punishment. So, we direct the disciplinary authority to impose that punishment. However, since the appellant himself is responsible for the initiation of the proceedings, we find that he is not entitled to back wages; but, all other consequential benefits would be available to him”.

and also in the case of ***Jai Bhagwan Vs Commissioner of Police and others*** reported in AIR 2013 SC 2908. The relevant portion is extracted as below:-



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“13. Coming to the case at hand we are of the view that the punishment of dismissal from service for the kind of misconduct proved against the Appellant appears to us to be grossly disproportionate. There is no allegation that the Appellant had manhandled the police Inspector who had gone to check the cabin. Delay of 10 minutes in opening the cabin door, which according to the Appellant was open but had got stuck because of humidity leading to expansion of the wooden frame, was not a matter that ought to have led to the Appellant's dismissal after he had served the police force for over 10 years. Even assuming that the version given by the Appellant was not acceptable the same did not constitute a misconduct of a kind that would justify the Appellant's dismissal from service leading to forfeiture of his past service. That the Appellant was not in uniform may also be breach of discipline calling for administrative action against him but not so severe as to throw him out of the police force. The analogy drawn by the Appellant in this case and that of Ram Kishan's case (supra) is not, therefore, wholly misplaced. The delinquent in that case too was charged with misbehaviour with his superior leading to his dismissal from service which was found by this Court to be disproportionate to the nature of misconduct calling for moderation.

15. In the totality of these circumstances, we are of the view that while dismissal from service of the Appellant is a harsh punishment the order for dismissal could be substituted by an order of reduction to the rank of a constable with the direction that while the Appellant shall have the benefit of continuity of service he shall not be entitled to any arrears of pay or other financial benefits for the period between the date of dismissal and the date of his reinstatement against the lower post of constable. We are conscious of the fact that this Court could in the ordinary course remit the matter back to the disciplinary authority for



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passing a fresh order of punishment considered proper but we are deliberately avoiding that course. We are doing so because the order of dismissal of the Appellant was passed in the year 2001. A remand at this distant point of time is likely to lead to further delay and litigation on the subject which is not in the interest of either party. We have, therefore, upon an anxious thought as to the quantum of punishment that is appropriate taken the un-usual but by no means impermissible course of reducing the punishment to the extent indicated above”.

10. In view of the above ratio laid down by the Hon'ble Apex Court, factum of the case and finding, this Court is of the considered view that the order bearing No.Na.Ka.No.1500/2002 dated 14.08.2002 passed by the 4th respondent is without jurisdiction and the same is liable to be quashed and is hereby quashed.

11. In the result, this writ petition is allowed with a direction to the respondents to pay all the consequential and attended benefits including the arrears of pay and allowances to the petitioner from the date of removal from service till the date of his superannuation within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

.04.2023

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Index : Yes/No

Speaking Order : Yes/No



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To:

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Forest Department,
Fort.St.George,
Chennai 9
2. The Principal Chief Conservator of Forest,
Panagal Maligai,
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Chennai 600 015.
3. The Conservator Forest,
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4. The District Forest Officer,
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J. SATHYA NARAYANA PRASAD, J.

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