



WEB COPY



W.P.No.39187 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.39187 of 2016

Jayaraj

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by
The Secretary to Government,
Environment and Forest Department,
Fort. St. George,
Chennai - 600 009.

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

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondents made in S.O.No.11585/08/1 dated 12.05.2009 and S.O.No.1/11585/2008 dated 27.11.2009 which is confirmed in an appeal by the first respondent made in G.O.(D)No.352, Environment and Forest (Vanam-12) Department dated 15.12.2014 which is further confirmed in revision by the first respondent made in G.O.(D)No.135, Environment and Forest (Vanam-12)



W.P.No.39187 of 2016

Department dated 21.07.2016 and quash all the above and consequently direct the respondents to disburse the full retirement and pensionary benefits.

For Petitioner : Ms.Selvi George
For Respondents : Mr.M.Shahjahan
Special Government Pleader

ORDER

The petitioner seeks for issuance of a Writ of Certiorarified Mandamus, to call for the records in S.O.No.11585/08/1 dated 12.05.2009 and S.O.No.1/11585/2008 dated 27.11.2009, confirmed in appeal in G.O.(D)No.352, Environment and Forest (Vanam-12) Department dated 15.12.2014 on the file of the first respondent and further confirmed in revision in G.O.(D)No.135, Environment and Forest (Vanam-12) Department dated 21.07.2016 on the file of the first respondent and quash all the above orders/proceedings and consequently direct the respondents to disburse the full retirement and pensionary benefits to the petitioner.

2. The brief case put forth by the petitioner is that he joined in Forest Department as a Junior Assistant and considering his unblemished and sincere service, he was given a promotion. At the time of his retirement, he was serving as Superintendent in the Office of the District Forest Officer,



W.P.No.39187 of 2016

Sathyamangalam Division. He was due to retire on 31.03.2008 but to his shock and dismay, he was issued with a Charge Sheet by the District Forest Officer in proceedings No.1638 of 2008 dated 17.03.2008, just few days before his retirement.

3. The petitioner was called upon to offer his explanation about the expiry of Bank Guarantees submitted by some of the auction purchasers of Sandalwood and the petitioner gave his detailed explanation stating/claiming that there was absolutely no lapse on his part and as a Superintendent, he has taken all the steps for the Bank Guarantees to be renewed from time to time. He also stated that the expiry of many of the Bank Guarantees did not occur during his time. However, the Enquiry Officer proceeded to suspend him from service and he was not permitted to retire.

4. The petitioner has challenged the said order in W.P.No.8537 of 2008 and this Court directed the respondents to permit the petitioner to retire and insofar as the disciplinary proceedings, this Court directed that the same could be proceeded in accordance with law.

5. The respondents have challenged the said order in W.A.No.1084 of



W.P.No.39187 of 2016

2008 and the Hon'ble Division Bench of this Court set aside the order of the learned Single Judge of this Court in W.P.No.8537 of 2008 and directed the respondents to pass final orders within a period of one month from the date of receipt of the copy of the order in the Writ Appeal.

6. The further case of the petitioner is that the Enquiry Officer submitted a report stating that charges were not proved. However, the respondents, differing with the findings of the Enquiry Officer and insofar as the charge no.1, the Enquiry Officer issued a notice calling upon the petitioner to give further explanation.

7. The petitioner, on receipt of the same, furnished a detailed explanation. However, the second respondent without appreciating any of the contentions raised by the petitioner, passed orders of compulsory retirement and allowed only two-third of Gratuity and Pension vide S.O.No.11585/08/1 dated 12.05.2009 and S.O.No.1/11585/2008 dated 27.11.2009. Against the said orders, the petitioner has filed an appeal and revision before the Government, which also came to be rejected.



W.P.No.39187 of 2016

8. The petitioner's further case is that he never committed any mistake and there was no dereliction on his part. Further, he has also stated that no loss has been caused to the Government, as a result of the expiry of Bank Guarantees.

9. The petitioner was working only as a General Superintendent in the Office of the District Forest Office at Salem and the concerned subject of the Bank Guarantees was dealt with "S" seat, which was under the direct control of the Accounts Superintendent and therefore, the petitioner had nothing to do with the revalidation of the Bank Guarantees.

10. The specific case of the petitioner is that the concerned Superintendent, who was in-charge of renewal of Bank Guarantees was allowed to retire on attaining the age of Superannuation and no proceedings were initiated against the concerned person.

11. Therefore, the petitioner has approached this Court challenging the impugned order as well as the confirmation of the same in appeal and revision. Insofar no loss being caused to the Government, the petitioner would rely upon



W.P.No.39187 of 2016

the order passed in W.P.No.17292 of 1993, which came to be partly allowed by the learned Single Judge of this Court on 15.06.2001, holding that the petitioner's firm was not at all liable to pay any demurrage charges and the Government was not entitled to encash the Bank Guarantees. This finding was confirmed by the Hon'ble Supreme Court and therefore, the question of liability of the concerned authority to pay demurrage charges for Sandalwood never arose in the first place and therefore, consequently, no loss was occasioned at all.

12. The respondents had filed a detailed counter affidavit admitting the factual averments set out in the affidavit filed in support of the writ petition. However, it is the specific case of the respondents that merely because the Enquiry Officer held that the charges were not proved, it is not incumbent for the superior authorities to accept the same.

13. The disciplinary authority was entitled to disagree with the report of the Enquiry Officer and the exercise cannot be termed as arbitrary and unreasonable. Further more, insofar as dereliction of duty, the respondents had submitted that if the petitioner was proactive, the Bank Guarantees would have



W.P.No.39187 of 2016

been renewed in time and the loss caused to the Government would have been avoided.

14. There was a clear delay on the part of the petitioner to inform the Bank about the letter regarding the expiry of the Bank Guarantees and the necessity to renew the same. The respondents therefore pray that the writ petition be dismissed.

15. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents. This Court has also perused the records.

16. Admittedly, since the substantial case on which, the petitioner was slapped with punishment was for not being proactive in taking steps to have the Bank Guarantees renewed/revalidated. The petitioner has offered his explanation that he was working only as a General Superintendent and there was a concerned Officer, who was specifically in-charge of the issue of the Bank Guarantees and it is also seen that such Officer was allowed to retire and no action was taken against him. The other ground on which, the petitioner



W.P.No.39187 of 2016

mainly canvass his writ petition is that there has been no loss occasioned to the Government and therefore, when citing loss caused to the Government, the petitioner's case has been rejected and his appeal and consequently revision were also dismissed, this writ petition should be allowed.

17. It is submitted that the writ petition filed by the auction purchaser, who was initially called upon to furnish the Bank Guarantees was allowed and the very liability itself was set aside. In such circumstances, when the liability itself was not saddled on the auction purchasers, the question of Bank Guarantees being given for the alleged liability, that too, by way of a caution to safe guard any future loss in the event of the auction purchasers being found to be liable ultimately.

18. When the matter has attained finality up to the Hon'ble Supreme Court, it is clear that the Government has not suffered any loss in the matter. Consequently, to state that the petitioner has caused wrongful loss to the Government and therefore, he is liable to be punished, cannot be tenable or sustainable. However, at the same time, the fact that the petitioner was negligent also cannot be lightly brushed aside, even though the petitioner had



W.P.No.39187 of 2016

offered his explanation for not being proactive and he has tried to shift his blame on the other officers in-charge.

19. It is seen from the counter affidavit of the respondents that if the petitioner had been vigilant, then the issue itself would not have arisen in the first place and consequently, the petitioner would have been saved the embarrassment of going through the ordeal of disciplinary proceedings, the appeal, the revision and finally a writ petition before this Court.

20. This Court has also gone through the report of the Enquiry Officer and also the reasons of the disciplinary authority to differ from the findings of the said Enquiry Officer.

21. Considering the fact that the Hon'ble Supreme Court has confirmed the findings rendered by this Court holding that the demurrage charges were not payable at the first instance, the question of loss caused to the Government cannot and does not arise.



W.P.No.39187 of 2016

22. On this ground alone, the petitioner is entitled to succeed in this writ petition, because, the only reason for the disciplinary authorities and also the higher officers by way of appeal and in revision, confirming the disciplinary proceedings against the petitioner, was that the negligence on the part of the petitioner had caused wrongful loss to the Government.

23. When admittedly, no loss has been caused to the Government, punishing the petitioner on that score would not be just and proper.

24. For all these reasons, the impugned orders are set aside and consequently, this Writ Petition is allowed as prayed for. No costs.

15.06.2023

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes / No

arb



W.P.No.39187 of 2016

WEB COPY

- To
- 1.The Secretary,
Government of Tamil Nadu,
Environment and Forest Department,
Fort. St. George,
Chennai - 600 009.
 - 2.The Principal Chief Conservator of Forests,
15, Panagal Buildings,
Saidapet, Chennai - 15.

P.B.BALAJI, J.



WEB COPY



W.P.No.39187 of 2016

arb

W.P.No.39187 of 2016

15.06.2023