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W.A.No.2398 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2023

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A.No.2398 of 2022

and

C.M.P.No.18422 of 2022

- 1.The Secretary to Government,
Environment & Forest Department,
Fort St. George,
Chennai - 600 009.
- 2.The Principal Chief Conservator of Forests &
Head of Force-I,
Panagal Buildings,
1-Zenith Road, Saidapet,
Chennai - 15.
- 3.The District Forest Officer,
Nellikuppam Road, Cuddalore.
- 4.The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 600 003.

... Appellants

Vs.

A.Babu

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the order passed by the learned Judge dated 13.04.2022 in W.P.No.9062 of 2021.

For Appellant

: Mr.Haja Nazirudeen



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Additional Advocate General
assisted by Mr.T.Arunkumar
Additional Government Pleader

For respondents : Mr.Vijay Narayan
Senior Advocate
for Mr.V.Chokkalingam

JUDGMENT

(Judgment of the Court was made by R. MAHADEVAN, J.)

This writ appeal has been filed by the appellants/State praying to set aside the order passed by the learned Judge in W.P.No.9062 of 2021 on 13.04.2022.

2. The facts which are necessary for disposal of this appeal are as under:

2.1. The respondent herein / writ petitioner joined the service as Agricultural Assistant in Cinchona Department on 04.09.1985. The said Department was wound up with effect from 01.04.1990 by virtue of G.O.Ms.No.221, Environment and Forest Department dated 03.04.1990, due to which, the respondent was transferred and absorbed as Forester with effect from 01.04.1990. Admittedly, all the staff of Cinchona Department were absorbed in the Forest Department by virtue of G.O.Ms.No.275, Environment and Forest (FR-VIII) Department dated 06.11.1996, after passing of Tribunal's order dated 13.03.1997 and the proceedings of the second appellant dated 22.05.1997. According to the respondent, his seniority was denied for a long time from 1997.



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Upon filing W.P.No.15089 of 2009, by order dated 01.10.2013, the learned Judge directed the State to fix the seniority of the respondent herein in the cadre of Forest Ranger from the date of his initial appointment and also ordered to give promotion as Forest Range Officer with all consequential benefits recognizing the respondent's seniority above his immediate junior as per the list of seniority of Foresters fit for promotion as Rangers in the year 2009-10, qualified as on 15.08.2009. Since the said order was not complied with, the respondent filed Contempt Application in Cont.A.No.2975 of 2014, which was closed based on the statement made by the counsel for the second appellant. Thereafter, the respondent herein filed Sub.A.135 of 2015 to reopen the contempt petition and vide order dated 10.06.2015, the learned Judge directed the respondents therein to promote the respondent herein as Assistant Conservator of Forests from the date on which his immediate junior was promoted. When the said Sub Application was listed for hearing on 02.07.2015, the second appellant submitted that an enquiry is pending against the respondent herein for the charge framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules and on that ground, the respondent was not given promotion.

2.2. The charge against the respondent is that in the five cases relating to catching of cranes, he compounded the offence by imposing fine on the offenders, collected and deposited the fine amounts in the treasury, without prior permission from the District Forest Officer, Cuddalore. However, the Enquiry



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Officer / District Forest Officer, Kallakurichi, considering the oral and documentary evidence, came to the conclusion that there is no evidence to prove the charge against the respondent herein that he had voluntarily taken decision to collect the fine amount by compounding the offences under the Wild Life (Protection) Act, 1972, by relying upon the statement of one P.Mani, Forest Range Officer dated 14.11.2014. But the Disciplinary Authority / second appellant disagreed with the views of the Enquiry Officer and imposed a punishment of stoppage of increment for one year with cumulative effect by order dated 19.08.2015. Challenging the order passed by the second appellant, the respondent herein preferred an appeal before the first appellant on 01.09.2015, besides filing a writ petition in W.P.No.28541 of 2015 before the writ court. The first appellant has rejected the appeal of the respondent herein vide G.O.Ms.(2D)No.6 dated 21.01.2020 relying upon the opinion of the fourth appellant / TNPSC dated 23.12.2019.

2.3. Aggrieved by the order of the second appellant dated 19.08.2015, opinion of the fourth appellant / TNPSC dated 23.12.2019 and the consequential rejection of appeal by the first appellant dated 21.01.2020, the respondent filed WP.No.9062 of 2021. Both these writ petitions and Sub.A.No.135 of 2015 in Cont.P.No.2975 of 2014 were jointly heard and a common order dated 13.04.2022 was passed by the learned Judge, thereby setting aside the order passed by the second appellant dated 19.08.2015, opinion of the fourth appellant dated 23.12.2019 and the order of the first appellant dated 21.01.2020 and



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consequently, directing the appellants 1 and 2 to comply with the order dated 01.10.2013 passe in W.P.No.15089 of 2009 and to give promotion to the respondent herein as Assistant Conservator of Forests on par with his junior B.Kalaivanan (Sl.No.58) and confer him with all consequential service and monetary benefits, within a period of 12 weeks.

2.4. Challenging the order so passed by the learned Judge in W.P.No.9062 of 2021, the present writ appeal has been filed by the State.

3.The learned Additional Advocate General appearing for the appellants / State submitted that the learned Judge failed to note that the delinquent violated Section 54 of the Wild Life (Protection) Act, 1972 which envisages that an officer not below the rank of Assistant Director of Wild Life Preservation and in the case of a State Government in the similar manner, empowers the Chief Wild Life Warden or any officer of a rank not below the rank of a Deputy Conservator of Forests to compound the offence. When the statute prescribed certain things to be done in a particular fashion, it ought to be done in such fashion only. However, the learned Judge misconstrued the procedures followed by the disciplinary authority and sat over the findings of the appellate authority, which is not permissible. Thus, according to the learned counsel, the writ Court should not go into the facts of disciplinary cases and re-appreciate the evidence, which is against the law. It is also submitted by the learned Additional Advocate General



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that fair opportunity of hearing has been granted to the delinquent and when that being the case, it is not correct on his part now to say that he was not granted fair opportunity and hence, the same cannot be accepted as it is only an after-thought. It is further submitted that since as on the crucial date, ie., 15.08.2016, the delinquent was under the currency of punishment, his name was rightly deferred for promotion. However, the learned Judge has wrongly allowed the claim of the respondent by applying the principles laid down in various judgments of this court as well as the Hon'ble Supreme Court. Stating so, the learned Additional Advocate General prayed this Court to allow this writ appeal by setting aside the order of the learned Judge.

4.At the outset, Mr.Vijay Narayan, learned senior counsel appearing for the respondent herein, submitted that the learned Judge has considered the matter in proper perspective and passed the order impugned herein. In reply to the points raised on the side of the appellants, the learned senior counsel submitted that even after the merger of Cinchona Department with TANTEA, Cinchona staff were denied their 'fitment in equal cadre' and 'due seniority' and 'promotion' in the Forest Department as mandated under Rules 35(aa) and 35(b) of the Tamil Nadu Subordinate Service Rules. The correct seniority of the respondent has been rightly fixed as 50-A in the list of Foresters fit for promotion as Forest Range Officer, only after the orders passed by the learned Judge in the Contempt



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Petition. It is further submitted that even though the Enquiry Report filed by the Enquiry Officer (DFO, Kallakurichi) for the periods between 14.11.2014 and 08.01.2015 stating that the charges against the respondent herein, have not been proved, the first appellant/appellate authority and the fourth appellant / TNPSC have failed to advert to the fact that the second appellant had chosen to differ with the findings of the Domestic Enquiry Officer that the respondent herein was not found guilty of the charges made against him. With regard to Schedule IX & 7(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, it is submitted by the learned senior counsel that the same will not apply to the case of the respondent herein, since the said amendments came into force only with effect from 20.07.2017, but the currency of punishment imposed on the respondent ended on 30.06.2017 (i.e.) well before the amendment.

5.It is also submitted by the learned senior counsel appearing for the respondent that the respondent has not violated any of the provisions of the Wild Life (Protection) Act, 1972 and in fact, he got approval of DFO, Cuddalore over his mobile phone to compound the offences as detailed in his representation dated 24.02.2014 submitted to the Principal Chief Conservator of Forests, and remitted the fine amount collected into Treasury and there is no dispute over it. Hence, the question of misusing the powers of District Forest Officer by the respondent, does not arise. Continuing further, the learned senior counsel submitted that if



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the respondent has committed the alleged offence, the DFO, Cuddalore should have framed charges immediately, but he has kept quiet for nearly two years i.e., till 28.10.2013, which would go to show that it is clearly an after-thought. Thus, according to the learned senior counsel, the order of the learned Judge is perfectly right and the same need not be interfered with by this court.

6.Heard the learned counsel on either side and perused the materials available on record, carefully and meticulously.

7.The facts are not disputed. The appellants questioned the order of the learned Judge mainly on the ground that the respondent herein has violated the provisions of the Wild Life (Protection) Act, 1972. Though the Enquiry Officer was of the opinion that the charge framed against the respondent was not proved, the disciplinary authority imposed the punishment of stoppage of increment for one year with cumulative effect and the same was also confirmed by the appellate authority, based on the opinion of the TNPSC. However, the learned Judge erred in setting aside these orders passed against the respondent, by the order impugned in this appeal and directing the appellants to give promotion as Assistant Conservator of Forests on par with his junior and confer him with all consequential service and monetary benefits.

8.Upon careful reading of the order impugned herein, it is seen that the



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learned Judge has analysed the matter in detail and has found that it was the stand of the respondent before the Enquiry Officer that since carrying cranes numbering 9 alive to DFO's office at Cuddalore, which is 40 Kms away from Chidambaram, was felt life hazard to the birds, he obtained oral permission to compound the offences, collected the fine and deposited the same in the treasury and also made relevant entries in the records and forwarded the same to DFO on the same day; even the Enquiry Officer / DFO, Kallakurichi, considering the oral and documentary evidence, came to the conclusion that there is no evidence to prove the charge against the respondent that he took decision voluntarily to collect the fine amount by compounding the offences; but the Disciplinary Authority / second appellant has disagreed with the views of the Enquiry Officer on the ground that one P.Mani-Forest Range Officer has made entries in his diary that on 15.11.2011, he accompanied DFO for field inspection relating to Chief Minister Massive Tree Planting Programme. It is an admitted fact that in the domestic enquiry, neither any witness was examined nor any evidence was marked. Taking note of the same, the learned Judge has observed that the documents in Forms 'A' and 'C' sent to DFO, Cuddalore for the periods between 15.11.2011 and 03.12.2011 clearly establish that the DFO has not disputed the said collection of fine amount by compounding the offences by the respondent herein and hence, the findings given by the Disciplinary Authority in the disagreement notice based on the diary of P.Mani-Forester, are not acceptable.



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Further, the learned Judge has followed the settled legal position that if the Disciplinary Authority deviates from the finding of the Enquiry Officer, he has to assign reasons for taking dissenting view on the report of the Enquiry Officer and held that the disciplinary authority in this case, has not assigned any reason for differing with the view taken by the Enquiry Officer. That apart, considering the fact that the charge memo was issued belatedly, ie., after conducting the audit, the learned Judge has categorically stated that only in order to scuttle the respondent's promotion as Assistant Conservator of Forest and to overcome the order passed in Sub.A.No.135 of 2015 in Cont.P.No.2975 of 2014, the impugned order of punishment has been passed by the second appellant. It was further observed by the learned Judge that the first appellant / appellate authority, without independent application of mind, has dismissed the appeal filed by the respondent herein by simply relying upon the views of the fourth appellant/ TNPSC dated 23.12.2019 and hence, the same is in violation of statutory procedures contemplated under the Rules as well as Articles 14 and 16 of the Constitution of India. Therefore, this court is of the opinion that the learned Judge has gone in-depth into the issue and has rightly set aside the orders passed by the appellant authorities, by the order impugned herein, which does not call for any interference.

9.In such view of the matter, the writ appeal deserves to be dismissed as



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devoid of merits and is accordingly, dismissed. Consequently, the appellants are directed to comply with the order of the learned Judge, within a period of twelve weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
05.06.2023

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Speaking Order / Non-speaking order
Internet : Yes
Index : Yes / No

To

- 1.The Secretary to Government,
Environment & Forest Department,
Fort St. George,
Chennai - 600 009.
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Head of Force-I,
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R. MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.



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