



W.P.(MD).No.22468 of 2017

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.22468 of 2017

K.Murugiah

... Petitioner

Vs.

1.The Conservator of Forest,
Social Forestry Circle,
Tirunelveli.

2.The Chairperson & Managing Director,
Arasu Rubber Corporation Limited,
Vadasery, Nagercoil,
Kanyakumari District.

3.The Divisional Manager,
Arasu Rubber Corporation Limited,
Mylar Division,
Chithar Post,
Tirunelveli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the third respondent vide his proceeding in Na.Ka.No.8390/87E dated 13.12.1988 as confirmed by the second respondent vide his proceeding in Na.Ka.No.E1/6715/89 dated 21.10.1989 and subsequent rejection order passed by the second respondent dated 31.03.2017, quash the same.



WEB COPY



W.P.(MD).No.22468 of 2017

For Petitioner : Mr.A.Jayaramachandran
For R-1 : Mr.N.Ramesh Arumugam,
Government Advocate.
For R-2 and R-3 : Mr.A.K.Manikkam,
Standing Counsel.

ORDER

This Writ Petition is filed challenging the impugned order dated 13.12.1988 as confirmed by the second respondent in his proceedings dated 21.10.1989 and subsequent rejection order passed by the second respondent dated 31.03.2017.

2. The petitioner was initially appointed under the first respondent as Forester in a temporary post in the publicity range at Palayamkottai on 17.08.1983. Thereafter, ousted from service on 11.10.1983 and appointed as Forester at Kanyakumari West Rubber Circle by the first respondent on 17.10.1984. The third respondent issued a suspension order dated 06.11.1987 and a charge memo dated 13.12.1987 was issued under Rule 17(b) of Tamil Nadu Civil Services. The charge against the petitioner is that on 05.11.1987, the petitioner harbored one Mathiyas and Thangam in the petitioner's house and assisted them to steal PC Rubber belongs to the Corporation. The contention of



W.P.(MD).No.22468 of 2017

the petitioner is that the allegations against the petitioner is a bald allegation without any specific particulars such as quantum of rubber, the possession of rubber. There is no indication that any criminal case is registered against the said two persons. In spite of repeated request, the petitioner was not furnished with any particulars. Thereafter, the third respondent issued a communication dated 19.02.1989 stating that the Forester one Mahalingam and Chockalingam were examined during the Domestic Enquiry. It was also informed that in spite of notice, the said Mathiyas and Thangam failed to turn up for enquiry. The contention of the petitioner is that the charge memo does not contain the names of Mahalingam and Chockalingam as witnesses. However, they were produced before the enquiry officer, further the enquiry report was not furnished to the petitioner and the entire proceeding is flawed and biased. Subsequently, the third respondent issued final order on 08.07.1988. After passing the said order, the third respondent again revised the order and passed another order dated 13.12.1988 whereby, the punishment was revised as “the next increment is slashed for a period of 2 years with cumulative effect, further the above said punishment will affect the employee's Pensionary Benefits”. Aggrieved over the same, the petitioner preferred an Appeal to the second respondent on 02.03.1989 and the second respondent has confirmed the same vide order dated 21.10.1989 without even adducing any proper reason. Since the petitioner was



W.P.(MD).No.22468 of 2017

an ordinary employee in the third respondent office, the petitioner was getting a meager salary in the year 1989 and he could not challenge the above said impugned orders as known to law. On attaining superannuation that is on 28.02.2014, the petitioner felt the impact in his pensionary benefits, wherein the petitioner was receiving meagre pension and there was a huge monetary loss because of the punishment order. Hence, the petitioner preferred a Mercy Petition on 23.07.2016. Subsequently, the petitioner submitted several reminders. Finally, the second respondent passed an order dated 31.03.2017, whereby the petitioner's Mercy Petition was rejected stating that the petition was filed after the lapse of 28 years. Aggrieved over the same, the present Writ Petition is filed.

3. The respondents have filed counter stating that the allegations against the petitioner is that the petitioner has allowed 2 outsiders namely Mathiyas and Thangam to stay in his house on 05.11.1987 and with their help had stolen P.C. rubber from Range No.5 of Mylar Division on 06.11.1987. Therefore, for the said accusation for aiding the said two persons to involve in rubber theft, due to negligence of duty thereby, caused loss to the Corporation. Hence the petitioner was suspended, then charge memo was issued. The questionnaire form with the charge sheet was issued to the petitioner to furnish the details of witnesses and



W.P.(MD).No.22468 of 2017

the list of documents were provided. The petitioner did not request for the documents to defend his case. In the Domestic Enquiry, the petitioner was given a chance to produce the said Mathiyas and Thangam as defense witness vide Divisional Manager proceedings dated 09.02.1988. Further, based on the enquiry of the Divisional Manager dated 08.07.1988, the petitioner's suspension order was revoked and the punishment of postponement of two increments with cumulative effect was imposed. However, the said order was revised, since it was not a speaking order. Thereafter, a speaking order was passed with the same punishment. The petitioner's appeal was rejected. Further the suspension order was regularized as earned leave for 3 days and remaining 242 days as leave without salary which resulted in break in service and financial loss as per the petitioner. The petitioner submitted Mercy Petition after the lapse of 28 years and the same was rejected. The allegation against the petitioner was proved, but lenient punishment imposed on the petitioner. Hence, the respondents prayed to dismiss this Writ Petition.

4. Heard Mr.A.Jayaramachandran, learned counsel for the petitioner, Mr.N.Ramesh Arumugam, learned Government Advocate for the first respondent and Mr.A.K.Manikkam, learned Standing Counsel for the second and third respondents.



W.P.(MD).No.22468 of 2017

5. The first contention that was raised by the petitioner is that the second and third respondents are not competent authorities to initiate disciplinary proceedings. According to the petitioner, the first respondent is the appointing authority and he alone is empowered to initiate disciplinary proceedings including the suspension order. Admittedly, the petitioner was appointed by the first respondent and he has issued the appointment order. However, the Learned Counsel appearing for the respondents relied on the Special Rules and has stated that the petitioner was appointed as Forester and the appointing authority is the District Forest Officer as per Rule (3) of the Tamil Nadu Forest Subordinate Service Rules. The petitioner was originally appointed by the District Forest Officer, subsequently on deputation, he was transferred to the Arasu Rubber Corporation that is the third respondent office. If the plea of the respondents is accepted that the District Forest Officer is the appointing authority, then the second and third respondents are not the competent authority to initiate disciplinary proceedings.

6. Under Rule 14 of Tamil Nadu Civil Services Disciplinary and Appeal Rules 1955, the original authority is the competent authority. The second and third respondents are the borrowing authority. In case, if the borrowing authority wanted to initiate proceedings against the petitioner, the second and



W.P.(MD).No.22468 of 2017

third respondents ought to have directed the first respondent to initiate proceedings or other competent authorities below him will be the authority to initiate proceedings. Therefore, the very initiation of proceedings is against Rule 14 of the Tamil Nadu Civil Services Disciplinary and Appeal Rules 1955. Therefore, the punishment imposed on the petitioner ought to be interfered, since it is passed without jurisdiction.

7. The learned Government Advocate and the Standing Counsel appearing for the respondents submitted that the mercy petition was filed with inordinate delay and the petitioner has approached this Court after lapse of 30 years and there is no explanation for filing the Writ Petition with inordinate delay. The learned counsel for the petitioner submitted that the petitioner was not having sufficient money to challenge the order. Moreover, the petitioner was serving in the respondents office with meager amount and after retirement, the petitioner felt the pecuniary loss due to the punishment. The respondents have regularized the suspension period as loss of pay and they have imposed the punishment which will have effect on the pensionary benefits as well.



W.P.(MD).No.22468 of 2017

8. Therefore, this Court is of the considered opinion that the very initiation of the disciplinary proceedings is without jurisdiction and the punishment is liable to be quashed. Hence, the punishment orders are quashed. The regularization order is also quashed. The respondents are directed to regularize the said period as duty period and confer the consequential monetary benefits and service benefits to the petitioner. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

9. In view of the above, this Writ Petition is allowed. There shall be no order as to costs.

23.02.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr



W.P.(MD).No.22468 of 2017

To
WEB COPY

- 1.The Conservator of Forest,
Social Forestry Circle,
Tirunelveli.
- 2.The Chairperson & Managing Director,
Arasu Rubber Corporation Limited,
Vadasery, Nagercoil,
Kanyakumari District.
- 3.The Divisional Manager,
Arasu Rubber Corporation Limited,
Mylar Division,
Chithar Post,
Tirunelveli District.



WEB COPY



W.P.(MD).No.22468 of 2017

S.SRIMATHY, J.

Nsr

W.P.(MD).No.22468 of 2017

23.02.2023