



WEB COPY



WA No.673 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.673 of 2024
and
C.M.P.No.4656 of 2024

M.S. Parthiban

.. Appellant

Versus

1. The Principal Secretary to Government
Rep.by its Secretary to Government
Environment and forest Department
Fort St.George, Chennai - 600 009
2. The Principal Chief Conservator of Forests
Head of the Forest Force
No.1 Genies Road, Panagal Maligai
Saidapet, Chennai - 600 015

.. Respondents

Appeal filed under Clause 15 of the Letters Patent praying to set aside the order dated 29.09.2023 passed by the learned Judge in W.P. No.2048 of 2020.

For Appellant : Mr. S. N. Kirubanandam

For Respondents : Mr. R.Neelakandan,
Additional Advocate General
assisted by Mr. Srinivasan,
Special Government Pleader



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JUDGMENT

WEB COPY (Judgment of the Court was delivered by R. MAHADEVAN, J.)

Challenging the order of dismissal passed by the learned Judge in W.P.No.2048 of 2020 on 29.09.2023, the writ petitioner has preferred this writ appeal.

2. The aforesaid Writ Petition was filed by the appellant to issue a Writ of Certiorari calling for the records on the file of the first respondent in G.O. (D). No.112 Environment and Forests (FR.1) Department, dated 06.05.2019 & G.O.(D).No.395 Environment and Forests (FR.1) Department, dated 23.12.2009 and quash the same as illegal, arbitrary and unconstitutional.

3. According to the appellant, he was appointed as Forester in the Department of Environment and Forests and was posted in Sengottai Section, Kuttralam Forest Range, Tirunelveli. When the appellant was working as such, a charge memo dated 09.07.2001 was issued to him and three other officials, alleging that on 05.03.1994, at about 9.00 pm, when one Bhuvanendran and Lawrence, along with their neighbour S. Natarajan, G. Ashokan and Harsan, were proceeding towards Kerala in a taxi, on a false accusation that they had come for theft of precious stone from the reserve forest, with the assistance of



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V.K. Subramanian (A.O.1), the appellant (A.O.2) demanded a bribe of Rs.50,000/- from the detainees for releasing them without any case; however, Bhuvanendran and others expressed their inability to pay the demanded bribe amount. Later, they were released without any case on the instruction of higher officials and thereby A.O.1, A.O.2 and A.O.3 have failed to maintain absolute integrity and devotion to duty.

4. For the purpose of conducting enquiry, the entire file was forwarded to the Tribunal for Disciplinary Proceedings, Tirunelveli and it was taken on file as Case No.3 of 2000. Before the Tribunal, the charges framed against all the four delinquent officials were dealt with. On behalf of the Department, before the Tribunal, 24 witnesses were examined and 34 documents were marked. The Tribunal, after appreciating the oral and documentary evidence, filed its report dated 27.09.2002 holding that the charge against the appellant was not proved.

5. The report of the Tribunal was sent to the appellant through a letter dated 16.05.2003 and his explanation was sought. The appellant submitted his explanation on 17.07.2003 and requested to accept the report of the Tribunal and to exonerate him from all further proceedings. However, the



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second respondent, in his proceedings dated 20.09.2008, disagreed with the report of the Tribunal and imposed the punishment of postponement of next increment of the appellant for one year with cumulative effect, including the period spent on leave, and also held that such punishment will affect his pensionary benefits.

6. Aggrieved by the order dated 20.09.2008 of the second respondent, the appellant preferred a statutory appeal to the first respondent. The first respondent, by G.O. (D) No.395, Environment and Forest Department dated 23.12.2009, rejected the appeal. Feeling aggrieved, the appellant has filed the aforesaid writ petition.

7. By order dated 29.09.2023, the learned Judge, on consideration of the rival submissions, concluded that even though the Tribunal submitted its report holding that the charge against the appellant was not proved, the disciplinary authority has imposed the punishment on him. On appeal, the appellate authority sought the concurrence of the Tamil Nadu Public Service Commission. The Commission opined that *prima facie* evidence is available against the appellant and therefore, no leniency can be shown in the matter of reduction of punishment. On the basis of such opinion, the first respondent



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rejected the appeal filed by the appellant. In the light of such appreciation of factual aspects by the first respondent, the learned Judge refused to interfere with the punishment imposed on the appellant and thereby, dismissed the writ petition.

8. Challenging the order dated 29.09.2023 passed by the learned Judge in W.P. No.2048 of 2020, the appellant is before this Court with the present writ appeal.

9. The learned counsel for the appellant would contend that the Tribunal has analysed the oral and documentary evidence in detail and come to the conclusion that the delinquency alleged against the appellant was not proved. On receipt of the report, the second respondent, without issuing any notice of disagreement or affording any opportunity to the appellant, imposed the punishment of postponement of next increment of the appellant for one year with cumulative effect, including the period spent on leave. It was also held that such punishment will affect his pensionary benefits. The disciplinary authority can disagree with the views of the Tribunal, however, before doing so, notice of disagreement has to be issued to the appellant. Whereas, in this case, without issuing any such notice of disagreement, the second respondent



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imposed such punishment on the appellant, which is legally impermissible.

On appeal, the appellate authority, by solely relying on the opinion of the Tamil Nadu Public Service Commission, rejected the same. The learned counsel further submitted that the Tribunal for Disciplinary Proceedings is a fact finding authority and the conclusion reached by it, is on the basis of analysis of the deposition of 24 witnesses and 34 documents marked. But, the second respondent deviated the conclusion reached by the Tribunal without following the procedures as laid down under law. According to the learned counsel, the respondents did not take note of the fact that as per the Forest Range Officers Manual, the officials of the Forest Department are empowered to detain any person suspected to be in connection with the commission of any offence under the Tamil Nadu Forest Act, so as to prevent any offence from being committed under Section 18 (1) (a) of the Tamil Nadu Public Service Commission Regulations. In any event, the punishment slapped on the appellant, is onerous, harsh and disproportionate to the charge framed against him. It is also submitted that the punishment imposed on the co-accused V.K.Subramanian, was modified by this court *vide* order dated 26.03.2014 in WP No. 4333 of 2007. However, without properly considering all these aspects, the learned Judge erred in dismissing the writ petition, by the order impugned herein, which will have to be set aside.



10. Per contra, the learned Additional Advocate General appearing for the respondents would contend that the Tribunal has specifically rendered a finding that the appellant was present at the time of occurrence along with AO1, AO3 and AO4. In respect of the second charge, the Tribunal has specifically held that the charge was proved against AO3 and it was not proved against AO1 and AO2. When the appellant was also present along with AO1, AO3 and AO4, the conclusion of the Tribunal that the charge against one official was proved and the same charge was not proved against the other officials, cannot be sustained. Therefore, the second respondent, upon perusal of the report of the Tribunal, has differed from the conclusion reached by it and awarded various punishment to the delinquent officials. In the order dated 20.09.2008 passed by the second respondent, the appellant was imposed with the lesser punishment of postponement of increment for one year with cumulative effect including the period spent on leave. On the other hand, as against V.K. Subramanian, one of the delinquent officers, the second respondent passed an order dated 12.07.2004 imposing the punishment of "reduction of pay to the bottom of the time scale in the post of Forester (Rs.5000-150-8000) for a period of three years with cumulative effect, inclusive of the period spent on leave. This order will operate to postpone his future increments for three years with cumulative effect. This punishment will



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affect his pensionary benefits as well. This order will take effect from 01.08.2004." Though the order of punishment was challenged by the said V.K. Subramanian by filing WP No. 4333 of 2007, the writ Court, by order dated 26.03.2014, only modified the punishment into one of "reduction of pay to the bottom of the time scale of pay in the post of Forester for a period of three years without cumulative effect and without postponement of future increments and without affecting pension." Thus, already leniency was shown to the appellant in the matter of imposition of punishment and he was awarded lesser punishment, when compared to the other delinquent officers. The learned Additional Advocate General appearing for the respondents further submitted that the second respondent imposed the punishment on 20.09.2008. The appeal filed thereagainst was rejected by the first appellant on 23.12.2009. As against the said orders, the appellant has filed the present writ petition only in the year 2020, i.e., after a period of 12 years. Taking note of the above factors, the learned Judge is wholly justified in dismissing the writ petition filed by the appellant and hence, the same does not require any interference at the hands of this court.

11. We have heard the learned counsel for the appellant and the learned Additional Advocate General for the respondents and also perused the materials placed on record.



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WEB COPY12. The facts remain that the appellant and three others were subjected to disciplinary proceedings in connection with the incident that had taken place on 05.03.1994, whereby they had allegedly detained the complainant and others and demanded illegal gratification as a condition precedent to release them without registration of a case. The Tribunal for disciplinary proceedings dealt with the charges framed against the accused, and the appellant was involved in the charge No.2. The Tribunal, taking note of the statement of witnesses and the documents produced before it, concluded that the charge No.2 was not proved against the appellant, but it was partly proved against the Accused Officer No.3 in relation to demand of bribe, and accordingly, filed its report. However, taking note of the presence of the appellant at the time of occurrence, the second respondent / disciplinary authority inflicted the punishment of postponement of next increment of the appellant for one year with cumulative effect including the period spent on leave and also held that such punishment will affect his pensionary benefits. Assailing the order of punishment slapped on the appellant, he preferred appeal before the first respondent, who, after obtaining the opinion of the Tamil Nadu Public Service Commission, rejected the appeal. The challenge made to the orders so passed by the respondents, ended in dismissal, by the



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order of the learned Judge passed in the writ petition. Therefore, this writ appeal by the writ petitioner.

13. It is not in dispute that the appellant was also present, along with the other Accused Officers, at the time of the occurrence. Therefore, the appellant cannot be given a clean chit. No doubt, the disciplinary authority, before differing with the conclusion reached by the Tribunal, ought to have issued a show cause notice indicating the disagreement, but it was not done. This is a procedural flaw committed by the disciplinary authority. However, on that ground alone, the order of punishment inflicted on the appellant, cannot be set aside, especially when there is *prima facie* evidence made available to prove the presence of the appellant in the place of occurrence. Based on the same, the second respondent imposed the punishment, which was affirmed by the appellate authority. At the same time, the punishment so imposed is onerous and too harsh. It is an admitted fact that the Tribunal for disciplinary proceedings, which is the fact finding authority, considered the deposition of as many as 24 witnesses and 34 documents marked and concluded that the charge framed against the appellant was not proved; and the first respondent affirmed the order of punishment passed by the second respondent, only based on the opinion of the Tamil Nadu Public Service Commission. It is also to be



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noted, at this juncture, that the punishment imposed on the co-delinquent, by name, V.K.Subramanian for the proven charges, was modified, by a learned Judge *vide* order dated 26.03.2014 passed in WP. No. 4333 of 2007, which was not appealed by the respondent authorities. Therefore, we modify the punishment awarded on the appellant into one of postponement of next increment for one year without cumulative effect and without affecting his pensionary benefits.

14. Accordingly, the order of the learned Judge is modified and this writ appeal stands disposed of. No costs. In view of the modification of the punishment, the arrears, if any, payable to the appellant, shall be paid by the respondent authorities, within a period of six weeks from the date of receipt of a copy of this judgment. Consequently, connected miscellaneous petition is closed.

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

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Index : Yes / No
Internet : Yes / No
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To

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1. The Secretary to Government,
The Principal Secretary to Government,
Environment and Forest Department,
Fort St.George, Chennai - 600 009.

2. The Principal Chief Conservator of Forests,
Head of the forest force,
No.1 Genies Road, Panagal Maligai,
Saidapet, Chennai - 600 015.



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R. MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

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