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W.P.No.2447 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

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THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.2447 of 2012

N.Dharmalingam

... Petitioner

Vs.

1.State of Tamil Nadu
Rep.by its Secretary to Government
Environment and Forest Department
Fort St.George
Chennai – 600 009.

2.The Principal Chief Conservator of Forest
Panagal Building
Saidapet, Chennai.

3.The Conservator of Forest
Vellore Circle
Vellore District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the entire records relating to the order passed by the third respondent in his proceedings in Se.Mu.Aanai.Pa2/6765/06 dated 30.03.2011 quash the same and consequently



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direct the respondents to confer all consequential service and monetary benefits within a time.

For Petitioner : Mr.S.Mani

For Respondents : Mr.G.Krishnaraj
AGP

ORDER

This Writ Petition is filed challenging the order passed by the 3rd respondent dated 30.03.2011 in and by which, the petitioner was imposed with the punishment of reducing the pay by five stages in the bottom of timescale for a period of 5 years with cumulative effect.

2. The case of the petitioner is that the petitioner was originally appointed as Forest Guard in the year 1981 and was promoted to Forester with effect from 08.07.1999. While so, when he was working in Polur Forest Range, he was placed under suspension on 07.10.2003. He was issued with the charge memo on 18.11.2003 containing two charges. The charges are that in *Parvathamalai* Forest Range, he failed to prohibit the laying of a mud road between *Pachaiamman* temple to *Veerabadirasamy* temple to a distance of



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about 1900 meters with a width of 7 to 10 meters. The second charge is that in the *Parvathamalai* Reserved Forest, he failed to prevent the illegal quarrying of stones to an extent of about 1 acre.

3. It is the case of the petitioner that the self same two charges were leveled against the petitioner being the Forester as well as the Forest Ranger, Forest Watcher and Forest Guard, also. All of them were proceeded by way of common departmental enquiry and the Enquiry Officer found that the charges were proved. However, while in respect of the others, the increment cut for a period of one year without cumulative effect and in the case of the Forest Ranger, increment cut for a period of two years without cumulative effect was imposed. In the case of the petitioner alone, the aforesaid punishment was imposed. Therefore, the petitioner approached this Court by way of W.P.No.28225 of 2007. After considering the case of the parties, this Court by order dated 27.01.2011 allowed the Writ Petition. It is essential to extract the paragraph Nos.13 and 14 of the order, which reads as follows:-

“13. However, by considering the different treatment meted out to the petitioner when compared to the other officials who have involved in the common charges framed by the disciplinary authority, and imposing of a more



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severe punishment, which has got an impact on the pensionary benefits of the petitioner, I am of the considered view that there is certainly an element of arbitrariness in imposing more serious punishment on the petitioner. If only the second respondent has applied the reasonableness in imposing punishment, the same would have been at least withholding of increment for five years without cumulative effect and in such event, it would have met the ends of justice in proper manner. However, the same has not been considered.

14. In such view of the matter, only on the ground that there has been some disproportionality in the punishment and also arbitrariness in imposing punishment on the petitioner when compared to co-delinquents, I set aside the order of punishment imposed by both the respondents and remand the matter to the second respondent to decide about the quantum of punishment to be imposed on the petitioner, by taking note of the fact that the other co-delinquents have been inflicted lesser punishment. Such order shall be passed by the second respondent within a period of eight weeks from the date of receipt of a copy of this order.”

4. Thereafter, once again by the order impugned in the present Writ Petition, the respondents re-considered the issue, however imposed the same punishment. Even though the petitioner filed an appeal dated 24.06.2011, there was no positive response, hence the present Writ Petition.

5. Heard the learned counsel appearing on either side and perused the material records of the case.



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6. It can be seen from the above that the rights of the parties were already determined by the earlier Writ Petition. While all the other grounds of the petitioner being rejected, only on the grounds of discrimination and parity in respect to quantum of punishment as against the co-delinquents, this Court has passed the orders. This Court has rendered the finding that when the respondents have imposed the punishment of increment cut without cumulative effect in respect of others, the petitioner should also be inflicted with the same punishment. In any event, even the increment cut without cumulative effect for a period of 5 years can also be imposed.

7. If the respondents are aggrieved by the said order, they ought to have approached the higher fora. However, after re-considering the issue they have imposed the very same punishment. As such the same is illegal and cannot be permitted. Therefore the impugned order has to be quashed and the matter has to be remitted back to the respondents for passing the order on merits. However, the petitioner is presently aged 71 years and in spite of the earlier order of remand, the respondents had committed the above error and



passed the orders erroneously.

8. In the said facts and circumstances of the case, this Writ Petition is disposed of on the following terms,

(i) The order dated 30.03.2011 bearing Reference No.Se.Mu.Aanai.Pa2/6765/06 passed by the 3rd respondent is set aside.

(ii) The respondents shall pass an order imposing the punishment of one increment cut without cumulative effect for the period of five years as observed by this Court in the order dated 27.01.2011 in W.P.No.28225 of 2007.

(iii) Salary and other arrears including the retiral benefits due to the petitioner shall accordingly be worked out and be paid to the petitioner.

(iv) The respondents shall comply with the above directions, calculate the arrears due to the petitioner and pay the same within a period of three months from the date of receipt of a copy of this order.

(v) If the respondents do not pay the entire arrears within a period of three months, then they will be liable to pay the same with further interest at the rate of 6 % per annum from the date of the present order.



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(vi) No costs.

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Index: Yes

Speaking Order: Yes

Neutral Citation: No

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D.BHARATHA CHAKRAVARTHY, J.,

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