



W.A.(MD).No.998 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 10.01.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN**

W.A.(MD).No.998 of 2016
and
C.M.P.(MD).No.6008 of 2016

1.The Secretary to Government,
Environment and Forests (FR.I) Department,
Fort St.George,
Chennai – 600 009.

2.The Principal Chief Conservator of Forests,
Panagal Building,
Saidapet,
Chennai – 600 015.

3.The District Forest Officer,
Dindigul Division,
Collectorate Campus,
Collectorate,
Dindigul.

.. Appellants/Respondents

Vs.

P.Kanagasabapathy

.. Respondent/Petitioner



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 16.09.2009 made in W.P.(MD).No.3624 of 2005 and thereby allow the Writ Appeal.

For Appellants : Mr.P.T.Thiraviam
Government Advocate

For Respondent : Mr.K.Rajkumar

JUDGMENT

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

This intra-court appeal is filed by the State being aggrieved by the order passed by the learned Single Judge in W.P.(MD).No.3624 of 2005 dated 16.09.2009.

2. The facts revolving around the appeal runs as below. P.Kanagasabapathy, the respondent/writ petitioner, who was employed in the Forest Department, was due for promotion to the post of Assistant Conservator of Forests, when a panel was drawn for the year 1998-1999. The panel of eligible candidates was finalised only on 19.02.2001.



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However, his name was not included in the panel citing currency of punishment. Therefore, being aggrieved, the respondent/writ petitioner has approached this Court seeking a Writ of Mandamus to direct the appellants/respondents to consider his name for promotion to the post of Assistant Conservator of Forests on par with his junior with all consequential service, monetary and attendant benefits. The appellants/respondents did not file any counter, though represented by a counsel. The learned Government Advocate made his representation on behalf of the Department.

4. The learned Single Judge relied upon the earlier order passed in an identical case in W.P.No.2012 of 2001 dated 08.10.2001 and also took note of the fact that for the year 1998-1999, panel was drawn on 19.02.2001 and that the name of the respondent/writ petitioner was not included in the said panel citing pendency of departmental proceedings. The said departmental proceedings was later on dropped holding that the charges were not proved. Having absolved from the charges, the name of the respondent/writ petitioner ought to have been considered at least on 11.05.2001, when the



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enquiry report was submitted. However, the Department being not satisfied with the enquiry report, had proceeded further and imposed punishment only on 09.09.2009. The learned Single Judge pointed out that for more than seven years, the Government has not chosen to pass any order and by citing the pendency of departmental proceedings, the career prospect of the writ petitioner cannot be deprived. Thus, on the date of drawing of the panel, the enquiry, which was pending, cannot be visited against the petitioner. Therefore, the learned Single Judge had allowed the Writ Petition by taking note of the fact that the crucial date for preparation of the panel was 15.08.1999 and admittedly, on that date, no charge or enquiry was pending against the respondent/writ petitioner, but the panel was prepared only in the year 2001. Unfortunately, the name of the writ petitioner was not considered at that time citing pendency of the charge sheet under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. Therefore, while allowing the Writ Petition, the learned Single Judge had directed the appellants/respondents to grant notional promotion and the consequential retirement benefits to the respondent/writ petitioner. The arrears payable was also restricted to 50%. Being aggrieved, the present



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Writ Appeal is filed, wherein, the appellants have provided statement containing the date of charges faced by the respondent/writ petitioner.

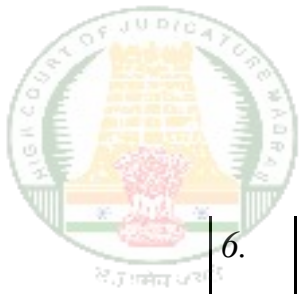
5. The learned Government Advocate appearing for the appellants submitted that the respondent/writ petitioner was facing multiple charges since 1994 and punishments were imposed, which was in currency till 1998. At the time of drawing the panel, there was a charge memo pending against him, which ended in order of recovery in 36 installments of Rs.300/- per month from the pension besides recovery of a sum of Rs.7176/- from the DCRG benefits. The extract of the punishment faced by the respondent/writ petitioner is shown below for easy understanding:

<i>Sl. No.</i>	<i>Nature of Charge sheet</i>	<i>Punishment awarded/ Authority & Date of Communication</i>	<i>Effect of Punishment</i>
<i>1.</i>	<i>Charge sheet issued under rule 17(a) of Tamil Nadu Civil Service (Discipline and Appeal) by the District Forest Officer, Theni vide.No 10746/1994 dated: 27.07.1994.</i>	<i>Censure awarded in District Forest Officer, Theni vide.No 10746/1994 dated: 30.09.1994.</i>	<i>30.09.1994 to 29.09.1995</i>



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2.	<i>Charge sheet issued under rule 17(a) of Tamil Nadu Civil Service (Discipline and Appeal) by the District Forest Officer, Theni vide No.L/2069/1995 dated: 11.02.1995.</i>	<i>Increment postponed for six months without cumulative effect in Conservator of Forests, Madurai vide.No. E2/ 9713/1995 dated: 12.05.1995.</i>	<i>01.10.1995 to 31.03.1996</i>
3.	<i>Charge sheet issued under rule 17(a) of Tamil Nadu Civil Service (Discipline and Appeal) by the District Forest Officer, Theni vide No.T/4746/1995 dated: 23.03.1995.</i>	<i>Increment postponed for one year without cumulative effect in Conservator of Forests, Madurai vide. No. No.E2/11362/1995 dated: 26.05.1995.</i>	<i>01.04.1996 to 31.03.1997</i>
4.	<i>Charge sheet issued under rule 17(a) of Tamil Nadu Civil Service (Discipline and Appeal) by the District Forest Officer, Theni vide No.E2/4892/1995 dated: 26.05.1995.</i>	<i>Increment postponed for one year without cumulative effect in Conservator of Forests, Madurai vide. No.E2/ 17042/1995 dated: 07.08.1995.</i>	<i>01.04.1997 to 31.03.1998</i>
5.	<i>Charge sheet issued under rule 17(a) of Tamil Nadu Civil Service (Discipline and Appeal) by the District Forest Officer, Theni vide No 18083/1994.</i>	<i>Censure awarded in District Forest Officer, Theni vide. No 18083/1994 dated: 29.04.1996.</i>	<i>29.04.1996 to 28.04.1997</i>



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6.	<i>Charge sheet issued under rule 17(a) of Tamil Nadu Civil Service (Discipline and Appeal) by the District Forest Officer, Theni vide No. A2/17757/1994 dated: 30.06.1995.</i>	<i>Increment postponed for six months without cumulative effect in Conservator of Forests, Madurai vide No.A2/25399/1996 dated: 30.11.1996</i>	<i>01.04.1998 to 31.09.1998</i>
7.	<i>Charge sheet issued under rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) by the District Forest Officer, Dindigul vide No. E2/8739/1996 dated: 21.06.2000.</i>	<i>District Forest Officer, Dindigul vide No. E2/8739/1996 dated: 21.06.2000.</i>	<i>Recovery of Govt. loss from DCRG for Rs.7176/- and Rs.300/- per month 36 installment from individual pension vide G.O.(D) No.265, E&F (FR.9) Dept. dated: 09.09.2009</i>

6. The appellants have further stated that the respondent/writ petitioner was not considered for inclusion in the panel for the year 1999-2000, since there was a currency of punishment on the crucial date as on 15.08.1998 and the pendency of a charge sheet under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. However, when the respondent was questioning the drawing of panel for the year



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1998-1999, the present response by the appellants is for the non-inclusion of his name in the panel for the year 1999-2000.

7. When the Writ Petition filed in the year 2005 was taken up for final disposal on 16.09.2009 after four years, the appellants/respondents have thought fit to remain silent without assisting the Court with materials and only after suffering an order, imposed the punishment in the proceedings initiated nine years ago and thereafter, had preferred this Writ Appeal in 2010 and got it numbered in 2016 after a lapse of six years. The conduct of the appellants clearly indicates that the issuance of charge memos, but not disposing it of finally, is a calculated act of malafide that has been exercised by the appellants to prevent the respondent from getting his promotion. The respondent has been deprived of his career prospects and now had attained superannuation.

8. The learned Single Judge after considering the aforesaid facts had rightly allowed the Writ Petition with a direction to give notional promotion to the respondent/writ petitioner with monetary benefits. At the same time,



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the learned Single Judge had restricted the arrears to 50%. This Court finds no error in the order passed by the learned Single Judge either on law or on facts. Hence, the Writ Appeal is dismissed upholding the order passed by the learned Single Judge. The appellants/respondents are directed to pay full notional benefits to the respondent/writ petitioner from the date of the order passed by the learned Single Judge in W.P.(MD).No.3624 of 2005 till the date of the present judgment within a period of three (3) months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(G.J.,J.) (C.K.,J.)
10.01.2024

NCC : Yes / No
Index : Yes / No
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