

(2009) 07 MAD CK 0014

In the Madras High Court

Case No : Writ Petition No. 10541 of 2009 and M.P. No's. 1 and 2 of 2009

A. Gopaldhas, Forest Ranger

APPELLANT

Vs

The Principal Chief Conservator of Forests and The District
Forest Officer

RESPONDENT

Date of Decision : 06-07-2009

Acts Referred:

Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, 1953 — Rule 17

Citation : (2009) 07 MAD CK 0014

Hon'ble Judges : K.N. Basha, J

Bench : Single Bench

Advocate : S. Thanka Sivan, for the Appellant; S.N. Kirubanandam, Spl. G.P., for the Respondent

Judgement

K.N. Basha, J.—The petitioner has come forward with this petition seeking for the relief of the issuance of a writ of certiorarified mandamus

to call for the records relating to the impugned order, dated 16.04.2009 in Ref. No. T2/44538/2007, passed by the first respondent, quash the

same and consequently direct the respondents to grant all incremental and promotional benefits to the petitioner as per his existing seniority within

such time to be fixed by this Court.

2. The case of the petitioner is that the petitioner was working as a Forest Ranger of the Boothapandy Forest Range, as he has joined the said post

in the year 1981 and he is having an unblemished record of service. On 18.05.2007, on the basis of a routine inspection conducted by the District

Inspection Cell Officer, Tirunelveli, Thoothukudi, and Kanyakumari Districts, at Tirunelveli, in the Boothapandy Forest Range at Aralvoimozhi, a

proceeding dated 18.05.2007 was prepared and served on the petitioner on the

spot. The petitioner submitted his explanation dated 23.06.2007 narrating all the actual facts, details, etc., in respect of the day-to-day affairs, maintenance of the records and particulars of work. The second respondent has not considered the explanation and rectification report, dated 23.06.2007 and issued a charge memo dated 25.02.2008 under Rule 17(b) of the Tamil Nadu Civil Services (Classification Control and Appeal Rules). The said charge memo was received by the petitioner on 10.03.2008. Ten charges were framed against the petitioner and the said charge memo dated 25.02.2008 was issued by the second respondent.

The petitioner states that the said charges are flimsy, untenable and baseless and contrary to the facts. The rectification report/explanation submitted by the petitioner dated 23.06.2007 was not considered and even referred by the second respondent while issuing the charge sheet.

3. Thereafter the petitioner sent a letter dated 12.03.2008 seeking for the furnishing of copies of all the documents mentioned under Annexure No. 3 and also copies of statements of the alleged witnesses as per the list mentioned in Annexure No. 4 of the said charge memo, but the second respondent supplied only the copy of the Inspection Report dated 18.05.2007 and stated that the material document Nos. 2 to 5 can be perused only after the same are received from the office of the Vigilance and Anti Corruption Department. Therefore, the District Forest Officer, has framed charges without even going through any supportive documents or statement of witnesses.

4. The petitioner also sent a representation by Registered Post on 30.06.2008 stating that the charges are baseless, illegal and arbitrary and no action taken on such representation. Meanwhile, the respondents were proceeding with the finalisation of the promotion list ignoring the seniority of the petitioner and the right of the petitioner to have the promotional benefit. The petitioner filed a writ petition in W.P. No. 18528 of 2008 seeking a direction directing the first respondent to pass orders on the representation dated 21.06.2008 made by the petitioner to the first respondent seeking to call for the records relating to the proceedings dated 25.02.2008 in Reference Memo No. Pa2/8085/2004 of the second respondent and for setting-aside the same within the time to be fixed by this Court and consequently direct the first respondent to grant promotional benefits to

the petitioner as per the seniority list on merits.

5. This Court, considering the submissions of both sides, passed an order dated 05.08.2008 directing the first respondent to pass orders on the

representation of the petitioner dated 21.06.2008 seeking to revoke the charge memo on merits on or before 29.08.2008. The petitioner also

produced the said order before the respondents, but the respondents did not pass any order on the representation in compliance of the orders

passed by this Court dated 05.08.2008 within the stipulated period.

6. Learned Counsel for the petitioner submits that the inaction on the part of the first respondent to pass orders on the representation dated

21.06.2008 within the stipulated period as per the direction of this Court would amount to willful disobedience of the orders passed by this Court.

He submits that the petitioner also preferred a writ petition in W.P. No. 21776 of 2008 seeking to quash the impugned proceedings dated

25.02.2008, Ref Memo No. Pa2/8085/2007 of the second respondent and consequently directing to grant all promotional benefits as per his

existing seniority within the time frame and this Court passed an order dated 11.09.2008 directing the respondents to pass final orders on the

charge memo dated 25.02.2008 on or before 31.12.2008. The said order was passed by consent of both the parties and it is also made clear in

the said order that the petitioner shall be furnished with all copies of the documents enabling the petitioner to participate in the enquiry effectively; it

is also made clear by the order of this Court that if no final order is passed on or before 31.12.2008, the charges shall be treated as dropped.

In spite of the said order passed by this Court, the respondents have not passed any orders within the time stipulated by this Court and only on

16.04.2009 and the first respondent has passed the impugned order awarding punishment of stopping of increment for a period of one year with

cumulative effect.

7. Learned Counsel for the petitioner mainly contended that the first respondent has not complied with the direction given by this Court in the order

passed in W.P. No. 21776 of 2008 dated 11.09.2008 within the time stipulated by this Court to the effect that is on or before 31.12.2008. It is

further contended by the learned Counsel that as this Court has specifically observed in the order dated 11.09.2008 to the effect that in the event

of the first respondent not passing the final order on or before 31.12.2008, the charges levelled against the petitioner shall be treated to be

dropped and as such the impugned order passed by the first respondent dated 16.04.2008 is unsustainable in law in view of the order of this

Court. In support of his aforesaid contentions, he based reliance on an unreported decision of this Court in W.P. Nos. 31317 of 2004, etc.,

batch., dated 12.12.2008.

8. Per contra, the learned Special Government Pleader (Forest) contended that the respondents also filed a petition seeking for the relief of

extension of time for passing the final order on 23.12.2008 but the same was not listed. It is further submitted by the learned Special Government

Pleader that ultimately that petition was listed before the learned Judge in the month of June 2009, but thereafter due to certain discrepancies found

in the numbering of the petition, the matter was referred to the Registry for enquiry. The learned Government Advocate further contended that

there is no deliberate disobedience on the part of the first respondent for not passing the final order within the stipulated time as per the direction of

this Court by order dated 11.09.2008. Therefore, it is contended that there is no illegality in passing the impugned order by the first respondent

herein awarding punishment of stopping increment for a period of one year with cumulative effect on the petitioner on 16.04.2009. Apart from the

aforesaid submissions, learned Special Government Pleader filed a detailed counter before this Court.

9. I have carefully considered the rival contentions put forward by the learned Counsel on either side and also perused the entire materials available

on record, including the order passed by this Court in W.P. No. 21776 of 2008 dated 11.09.2008.

10. The crux of the question involved in this matter is to the effect that whether the first respondent complied with the direction given by this Court

in the order dated 11.09.2008 in W.P. No. 21776 of 2008. A perusal of the order dated 11.09.2008 reveals that this Court, on the basis of the

consent of the respondents, directed the respondents to pass final orders on or before 31.12.2008. It is further made clear by this Court in the said

order that if no final order is passed by the respondents with regard to the impugned charge memo dated 25.02.2008 on or before 31.12.2008,

the charges levelled against the petitioner shall be treated to be dropped. It is better to reproduce the relevant portion of the order dated

11.09.2008 passed in W.P. No. 21776 of 2008 at paragraph 4 which reads here-under:

4. In the light of the said submission and having regard to the fact that the respondents have agreed to complete the enquiry and pass final orders

on or before 31.12.2008, the respondents are directed to adhere to the said time limit and pass final orders on or before 31.12.2008. Since the

longer time sought for by the respondents are now granted by this Court, it is made clear that if no final order is passed by the respondents, with

regard to the impugned charge memo dated 25.02.2008 on or before 31.12.2008, the charges levelled against the petitioner shall be treated to be dropped.

11. On the basis of the above said direction given by this Court in the above said order to the effect that in the event of the respondents not passing

any order on or before 31.12.2008, the charges levelled against the petitioner on the basis of the charge memo dated 25.02.2008 shall be treated

to be dropped.

12. Learned Counsel for the petitioner mainly contended that the impugned order passed on 16.04.2009, long after the date fixed by this Court,

namely, 31.12.2008, is liable to be quashed. In support of such contention, the learned Counsel for the petitioner rightly placed reliance on an

unreported decision of this Court dated 12.12.2008.

13. Now coming to the contentions of the learned Special Government Pleader (Forest) it is seen that the respondents said to have filed a petition

in M.P. No. 4 of 2008 on 23.12.2008, seeking for the relief of extension of time stipulated by this Court in the order dated 11.09.2008, which is

prior to the date of 31.12.2008. The fact remains that till date this Court has not granted any extension of time to comply with the direction of this

Court as per its earlier order dated 11.09.2008 in W.P. No. 21776 of 2008. Though a detailed counter has also been filed before this Court by

the second respondent, there is absolutely no answer or any explanation for not passing the final order before the date fixed by this Court, namely,

31.12.2008, and on the other hand the counter affidavit reads out and out only in respect of the merits of the case.

14. Therefore, this Court has no hesitation to hold that the first respondent has not taken any effective steps to pass the final order on or before

31.12.2008, as directed by this Court in the order dated 11.09.2008. It is pertinent to note that the order passed by this Court on 11.09.2008

was passed as per the consent of the respondents herein agreeing to pass final order on or before 31.12.2008. This Court in an unreported order

dated 12.12.2008 passed in W.P. Nos. 31317 of 2004, etc., batch case, quashed the charge memo in a similar situation on the ground of not

issuing the charge memo within the stipulated time. As per the order of the Tribunal, in the said decision, the learned Judge placed reliance on a

Division Bench order of this Court and the order of the Hon"ble Apex Court, which reads here-under:

5. ...Similar issue was considered by the Division Bench of this Court in W.P. No. 6135 of 2005 and by order dated 18.03.2005 this Court

dismissed the writ petition challenging the order of the Tribunal in allowing similar matter. In S.L.P.No.2103 of 1987, a similar issue was also

considered by the Hon"ble Supreme Court and it is held as follows:

The Central Administrative Tribunal, Allahabad Bench, by its order dated 01.08.1986 directed:

In the result we order that the disciplinary case against the petitioner, charge sheet for which was given to him on 22.09.1983 i.e., more than two

years back should be finalised within a period of six months and depending on the results of the same and pending dues, promotion if any and any

of the reliefs that he has asked and to which he becomes eligible may be given to him with in a month thereafter including reimbursement of

expenditure for attending the enquiry after his retirement. The administration will keep in mind the delays in payments made to him and any interest

charges that may become due on account of delayed payments for which he is not responsible may also be paid to him at the rate of 15% per

annum.

Then direction of the Tribunal in this SLP has not been stayed, and therefore, remained operative. As the steps envisaged in the order of the

Tribunal were not completed and the respondents wanted the benefit under the order of the Tribunal, the Administration was called upon to finalise

the proceedings. It is stated that on 05.05.1988 a out in the pension to the

extent of 30% was recommended and the recommendation has remained with the appropriate authorities for more than a year and three months to be dealt with one way or the other. Several adjournments were granted in this Court to get the finalisation of the proceedings and in spite of repeated adjournments to each adjourned date the Counsel for the Union of India has been stating that the matter would soon be finalised.

When the matter is taken up today, Counsel for the Union of India still indicates that no final orders have been obtained.

We find that the Tribunal has not quantified the claims of the employee. In the circumstances, it is difficult for us to indicate what exactly are the dues to which he has become entitled. The matter shall go back to the Tribunal for computation of the exact dues and the Tribunal is directed to do the same within three months from today, if necessary after hearing the parties.

In view of the fact that mandatory direction of the Tribunal that the disciplinary proceedings which were then pending should be completed within

six months and more than three years and one month have passed by now and the proceedings have not been completed, we quash the

proceedings. An employee after retirement cannot be harassed by continuing a disciplinary action of this nature. The Tribunal while disposing of the

matter had taken note of the fact that the proceedings had been initiated after the retirement and more than two years had passed by then and yet it

had not been finalised. Taking that aspect into consideration, the direction to complete the proceedings within six months had been given. This

should have been sufficient warning to the administration for early disposal of the proceedings. This is why justice demands the quashing the

proceedings. There will be no order as to costs.

15. The decision cited *supra* is squarely applicable to the facts of the instant case, as in this case also, this Court directed the respondents to pass

the final order on or before 31.12.2008 and as such as per the order of this Court, the charges levelled against the petitioner pursuant to the charge

memo dated 25.02.2008 shall be treated to be dropped. Therefore, the impugned order passed on 16.04.2009 awarding punishment of stopping

increment for a period of one year with cumulative effect after the expiry of the period stipulated by this Court is unsustainable in law.

16. In view of the aforesaid reasons and in view of the principle laid down by this

Court and as well as the Hon"ble Apex Court, this Court is constrained to quash the impugned order dated 16.04.2009 in Ref. No. T2/44538/2007 passed by the first respondent. It is made clear that the petitioner is entitled to the grant of all promotional benefits including the increments as per his seniority existing prior to the issue of charge memo dated 25.02.2008. Accordingly, the respondents herein are directed to give all promotional benefits including the increments to the petitioner as per his seniority existing prior to the issue of the charge memo dated 25.02.2008 within a period of eight (8) weeks from the date of receipt of a copy of this order.

17. The writ petition is disposed of on the above terms. No costs. Consequently the connected MPs are closed.