

(2010) 11 MAD CK 0235

In the Madras High Court

Case No : Writ Petition No. 26521 of 2009 and M.P. No. 1 of 2009

J. Raman

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Right to Information Act, 2005 — Section 18(3), 20(1)(2), 6(3), 7(1)
Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17

Citation : (2010) 11 MAD CK 0235

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : P.V. Ravichandran, for the Appellant; S.N. Kirubanandam, Special Govt. Pleader (Forest) for RR 1 to 3 and Santhana Raman, for R 4, for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J.—The Petitioner was appointed in the year 1985 as Assistant Draughtsman and subsequently he was promoted as Junior Draughting Officer. Presently the Petitioner is working as Junior Draughting Officer in the office of the District Forest Officer, Nilgiris North Division, Udagamandalam. The grievance of the Petitioner is that the fourth Respondent has wantonly failed to honour his requirements including the loan sought for by him. According to the Petitioner, the fourth Respondent had insisted him to fabricate records to make it appear that certain works were completed before March 31st of 2006, while the fact remains that those works have not been completed. When the Petitioner refused to carry out such instruction given to him, he was tortured, given undue pressure in discharge of his work. Therefore, the Petitioner had sent a legal notice dated 02.05.2006 to the fourth Respondent which culminated in an evasive reply dated 09.06.2006 sent by the fourth Respondent. Aggrieved against the said notice, the fourth Respondent instigated the then Conservator of Forest, Coimbatore to transfer him from Coimbatore Circle to Wildlife Division, Udthagamandalam by an order in S.O. No. 82/06 E1 dated 10.05.2006. Based on such order of transfer,

when the Petitioner reported for duty on 01.06.2010, he was informed that the post had already been filled up by the Principal Chief Conservator of Forests, therefore, he sought for alternative posting. When there was a vacancy in Udagamandalam North Division, the Petitioner requested the authorities concerned to fill the said vacancy by posting him by a representation dated 15.06.2006. Accordingly, a revised order was issued on 31.05.2006, but the same was not communicated to him. Ultimately, on 28.06.2006 when the Petitioner went to join duty, he was not permitted to join or he was not allowed to see the revised order, but only directed to produce fitness certificate. Therefore, the Petitioner made a representation dated 03.07.2006 to the authorities again and ultimately, even without a fitness certificate from the medical board, he was permitted to join duty on 24.07.2006.

2. In the meantime, the Petitioner has filed an application on 19.07.2006 seeking certain information regarding his General Provident Fund Account Loan application dated 20.02.2006 by invoking the Right to Information Act 2005. As contemplated under the said Act, the fourth Respondent had sent a reply dated 23.07.2006. In and by the said reply dated 23.07.2006, the fourth Respondent even returned the fees remitted by the Petitioner for furnishing certain information thereby the fourth Respondent arbitrarily rejected the application filed by the Petitioner under the Right to Information Act and therefore it is not in accordance with law. Aggrieved by the same, the Petitioner preferred an appeal to the second Respondent on 12.08.2006 u/s 18(3) of the Right to Information Act, 2005. The second Respondent entertained the appeal, issued notice to the Respondents therein and conducted enquiry. Ultimately, an order dated 26.10.2006 was passed by the second Respondent wherein the denial of the Petitioner's request by the fourth Respondent was commented by the second Respondent stating that he, as a public authority, has breached the provisions of Sections 6(3) and 7(1) of the Act and he is liable for imposition of penalties u/s 20(1)(2) of the Act. Therefore, a direction was issued to the Principal Chief Conservator of Forest to initiate necessary action by giving him reasonable opportunity to put forth his defence and send a report to the Commission within six weeks. Pursuant to the above said order, according to the Petitioner, no order has been passed. Therefore, he made further representation to the second Respondent on 01.12.2006. According to the Petitioner, the explanation offered by the fourth Respondent on 01.11.2006 pursuant to the order of the Commission is not legal and correct. The Petitioner would only contend that in view of the above reason, he has been harassed and victimised for various reasons. Therefore, again, on 23.12.2008, the Petitioner sent a legal notice to the Respondents 1 to 3. The grievance of the Petitioner is that inspite of the adverse remarks made by the second Respondent/Commission against the fourth Respondent, no action has been taken by the Respondents 1 and 3, on the other hand, the fourth Respondent was given promotion from the post of Deputy Conservator of Forest to Conservator of Forest on 17.12.2008. Under those circumstances, the present writ petition has been filed for a Mandamus directing

the Respondents 1 to 3 to abstain from victimising and harassing the Petitioner herein and further take necessary action and implement the order of the second Respondent dated 26.10.2006 in case No. 2818/Enquiry/2006.

3. The Principal Chief Conservator of Forest, the third Respondent herein, has filed a detailed counter affidavit. In the counter affidavit, it was specifically contended that the relief sought for in this writ petition has become infructuous in view of the fact that the third Respondent has already pursued action after the order passed by the Second Respondent/Commission on 26.10.2006 in case No. 2818/Enquiry/2006 by sending a report to the second Respondent vide Lr. No. S1/66711/06 dated 15.12.2006. Therefore, the writ petition is devoid of merits and it is liable to be dismissed. The averment that the Petitioner has been harassed by the Respondents was also denied as false and without basis. The fourth Respondent worked as District Forest Officer, Gudalur between 29.05.2005 to 16.12.2006. Even though the Petitioner alleged so many lapses against the Respondents, it is the petitioner who is facing many charges and disciplinary proceedings have been initiated against him. The charges levelled against the Petitioner was that he has not handed over the files relating to sensitive cases, neglect of duty, violation of Tamil Nadu Government Servant Conduct Rules, disobedience, teasing the pensioners who are coming with certain request etc.,. For the advocate notice dated 02.05.2006, suitable reply was sent by the fourth Respondent on 09.06.2006 stating that the Petitioner only is giving serious administrative problems, creating enmity with his colleagues, acting in violation of the Rules and Regulations of the Department. So far as the complaint against the return of his request for information sought under the Right to Information Act, the appellate authority had taken up the matter and as per the directions of the appellate authority, the fourth Respondent was asked to explain for the violation of the provisions of the Right to Information Act. The fourth Respondent gave a detailed reply for the same quoting various provisions of the Right to Information Act stating that there was no intentional violation of the provisions of the Act. The fourth Respondent therefore regretted for the lapses that might have crept inadvertently and requested the commission to condone the same. The third Respondent forwarded the explanation offered by the fourth Respondent and requested the Commission to accept the same and all further action be dropped vide letter dated 15.12.2006. Therefore, it was contended by the third Respondent that necessary action has been pursued pursuant to the orders of the Tamil Nadu Information Commission and this has also been admitted by the Petitioner. The Petitioner now contends that he is not satisfied with the said information and once again approached the second Respondent by submitting a representation dated 01.12.2006. The Petitioner's request made in his representation dated 26.10.2006 has already been complied with and therefore the relief sought for in this writ petition has become infructuous. In the counter affidavit of the third Respondent, the various charges levelled against the Petitioner were also extracted. It is also stated that the present writ petition has been filed after a lapse of three years from the date of direction given by the

second Respondent. Moreover, the directions issued by the commission has already been complied with, hence, there is nothing survives in this writ petition for adjudication. The supplementary prayer sought for by the Petitioner to direct the Respondents not to harass him is untenable and that the said prayer has been invented only for the purpose of filing this writ petition since there is no harassment caused to the Petitioner, as alleged.

4. The fourth Respondent has filed a counter affidavit contending that the relief sought for in this writ petition has already become redundant and infructuous in view of the enquiry conducted by the third Respondent pursuant to the direction of the second Respondent and the reply sent by the third Respondent to the second Respondent on 15.12.2006. The fourth Respondent denied the allegations made in the affidavit filed in support of the writ petition by stating that there is no harassment meted out to the Petitioner as alleged. Pursuant to the direction of the second Respondent, the fourth Respondent has given his explanation on 04.12.2006. Subsequently, the third Respondent, in his letter dated 15.12.2006 sent a report to the Tamil Nadu Information Commission stating that the reply and the records of the District Forest Officer, Gudalur was examined in detail and it was recommended that the reply sent by the fourth Respondent may be accepted and further action in the matter may be dropped. As necessary action has been taken as per the representation of the Petitioner, the present writ petition is not maintainable. In fact, the present writ petition has been filed belatedly after three years in respect of an action which was already pursued as per the direction of the second Respondent and therefore it can be construed that this writ petition has been filed only to harass the fourth Respondent from getting necessary promotion. In fact, the fourth Respondent was transferred from Gudalur on 14.02.2006 and from 15.02.2006 to 15.12.2008, he was on study leave for pursuing his Ph.D., in Forest Research Institute, University of Dheradun. Thereafter, the fourth Respondent was posted as Conservator of Forest from 16.12.2008 to 30.09.2009 at Chennai. Therefore the Petitioner's apprehension and allegations that he has been harassed by the fourth Respondent is not correct. Subsequently, the fourth Respondent was transferred and posted on 16.03.2010 to Forest Research Institute in Hyderabad as Conservator of Forest and presently working there. In any event, the allegations made by the Petitioner in the affidavit filed in support of the writ petition are false and the writ petition is devoid of meris.

5. The Petitioner has filed reply affidavit for the counter affidavits filed by the third and fourth Respondents. In the reply affidavit, the Petitioner merely reiterated the various dates and events when he was allegedly harassed by the Respondents. In the reply affidavit, the Petitioner has offered his explanation for the various charges levelled against him which has got nothing to do with the present writ petition.

6. Heard the counsel on either side. The present writ petition is filed for issuance of a Mandamus directing the Respondents 1 and 3 to abstain from victimising

and harassing the Petitioner herein and further take necessary action and implement the order of the second Respondent dated 26.10.2006 in case No. 2818/Enquiry/2006. The Respondents 3 and 4 have filed separate and detailed counter affidavit bringing forth the fact the various charges levelled against and the disciplinary proceedings pending against him. The Petitioner also filed reply affidavits in which he would mainly contend that mere forwarding of a reply sent by the fourth Respondent to the Information Commission will neither undo the lapses committed by the fourth Respondent. Therefore, according to the Petitioner, the fourth Respondent should have been punitively given the punishment, but the same was not done.

7. In this background, it has to be considered whether a Mandamus, as prayed for by the Petitioner can be issued or not. The Petitioner's main grievance is that the information sought for by him was not furnished by the fourth Respondent, who was the person required to give such information as per the Right to Information Act, besides the application seeking information was rejected and the fee paid by him was also returned. Aggrieved by the same, the Petitioner preferred an appeal before the second Respondent and the Commission, after elaborate enquiry found that "the public authority has very badly breached the provisions of Section 6(3) and 7(1) of the Act and therefore he becomes liable for penalties prescribed u/s 20(1)(2) of the Act." The relevant portion of the order passed by the Commission is as follows:

The information commission has asked the Principal Chief Conservator of Forests to initiate necessary action against the Public Authority for breaching the provision of Section 6(3) and 7(1) of the Act by giving him reasonable opportunity to put for his defence and send a report for the Commission within six weeks from the date of receipt of this order.

8. Pursuant to this order, from the counter of the Respondents 3 and 4, it is evident that the third Respondent, by his letter dated 24.11.2006. directed the fourth Respondent to submit his explanation. On receipt of the same, the fourth Respondent submitted his explanation on 04.12.2006 by quoting the various provisions of the Right to Information Act, which was forwarded by the third Respondent by his letter dated 15.12.2006 to the second Respondent/Commission, concluding that on examination of the reply and records, it is seen that the fourth Respondent has no intention to deny information in violation of Section 6(3) of the Act. Ultimately, it was recommended that the fourth Respondent has not done any intentional violation of the provisions of the Act. It was also stated that the request of the fourth Respondent to condone any lapses committed inadvertently is found to be just and reasonable and requested the second Respondent that the reply of the fourth Respondent be accepted and further action in the matter may please be dropped. Therefore, according to the third Respondent, necessary action has been pursued as per the orders of the second Respondent/commission. Therefore, the main relief sought for by the Petitioner for a Mandamus to direct the third Respondent to take action as per

the orders of the second Respondent no longer survives for consideration by this Court and that the prayer of the Petitioner has become infructuous.

9. The learned Counsel for the Petitioner would now bring to the notice of this Court the various complaints made by the Petitioner about the irregularities and harassment meted out to him at the instance of the fourth Respondent. The fact remains that the fourth Respondent, against whom the Petitioner complained of ill-treatment or harassment is not the direct superior officer to the Petitioner. Moreover, the third Respondent has taken necessary action and submitted his report to the second Respondent stating that all further action in the matter be dropped. Therefore, it is no more open to the Petitioner to file this writ petition that too after three years from the date of initiation of such action by the third Respondent. The Petitioner has not given any reason for the delay of three years in filing the present writ petition. The Petitioner has now come forward with this writ petition as though he is harassed by the fourth Respondent. In fact, the Petitioner is now harassing the fourth Respondent by filing this frivolous writ petition. Even taking into consideration the alleged harassment, the same was not proved by the Petitioner especially when the fourth Respondent is not the superior officer after 2006.

10. It is seen from the counter of the third Respondent that the Petitioner is facing disciplinary action initiated by the department for certain irregularities committed by him and they are extracted in para-16 of the counter affidavit as follows:

No. and Date of Charges

Charge sheets

Present stage

1) DFO, Gudalur Memo No. 10953/ 06 / Pa1 dated 4.12.2006 under Rule 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules

1) Neglect of duty " created snag in taking appropriate action in sensitive files of Jenmam Estate related Supreme Court, High Court and Sub-Court cases, entered

All the procedures have been followed as per the provisions of Tamil Nadu Civil Services (Discipline and Appeal) Rules and the charge sheet along with connected records

on leave without proper sanction " failure to handover the charges for over five months

2) Violation of Tamil Nadu Government Servants Conduct Rules, 1973

have been sent to the Conservator of Forests, Coimbatore, vide District Forest Officer, Gudalur,

Ref. No. 10953/06/E1 dated 31.03.09. In turn the Conservator of Forests, Coimbatore has sent the charge sheet and the connected records to the Principal

Chief Conservator of Forests in his Lr. No. E2/ 4104/09 dated 17.06.2009. The Principal Chief Conservator of Forests sought further particulars in ref. No. S1/34121/09 dated 16.12.2009

2) District Forest Officer, Gudalur Memo No. 11347/06/Pa1 dated 07.12.2006 framed under Rule 17

(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules

1) Failure to hand over 61 files relating to the court cases and sensitive matters of the years since 1988.

2) Failure to make necessary entries in the appropriate registers and pursued action in number of files in violation of relevant rules

All the procedures have been followed as per the provisions of Tamil Nadu Civil Services (Discipline and Appeal) Rules and the charge sheet along with connected records have been sent to the Conservator of Forests, Coimbatore vide District Forest Officer, Gudalur ref. No. 11347/06/E1 dated 31.03.2009. In turn the Conservator of Forests, Coimbatore has sent the charge sheet and the connected records to the Principal Chief Conservator of Forests in his Lr. No. E2/4099/09 dated 16.06.2009. The Principal Chief Conservator of Forests sought further particulars in ref. No. S1/34120/09 dated 09.11.2009

3. District Forest Officer, Gudalur Memo No. 11273/06/Pa1 dated 07.12.2006 framed under Rule 17

(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules Violation of Tamil Nadu Government Servant Conduct Rules The District Forest Officer, Gudalur in his Lr. No. 11273/06/L dated 25.06.2007 awarded the punishment of "censure" which has become final. 4) District Forest Officer, Nilgiris North Division, No. 9448/08/Pa1 dated 13.10.2008 issued under Rule 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules Availed leave without permission from the District Forest Officer, Nilgiris North Division Charge memo pending

5) District Forest Officer, Nilgiris North Division, Memo issued in No. 8710/ 09/ Pa1 dated 28.07.09 Drawal of excess rate of House Rent Allowance in violation of Government Orders The District Forest Officer, Nilgiris North Division Proc. No. 8710/09 dated 30.11.2009 passed final orders ordering recovery of sum of Rs. 22,523/

11. Though in the reply affidavits filed by the Petitioner, he has stated that some of the charges have been subsequently dropped, it no way connected with the issue involved in the suit or the relief sought for by the Petitioner in this writ petition. Further, the Petitioner has not made out any case at all for the alleged harassment meted out to him at the instance of the Respondents 3 and 4.

12. It is evident from the above details furnished in the counter affidavit of the third Respondent that the Petitioner himself is facing charges levelled against him and therefore the alleged harassment meted out to him at the hands of the

fourth Respondent does not arise. Inasmuch as the order of the second Respondent has been duly complied with by the third Respondent, the Mandamus sought for by the Petitioner cannot be issued.

13. Accordingly the writ petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.