

(2012) 01 MAD CK 0271

In the Madras High Court

Case No : Writ Petition No. 33316 of 2007 and M.P. No. 1 of 2007

M. Ashokan

APPELLANT

Vs

The Principal Chief Conservator of Forests Dharmapuri Circle
Collector Office Compound Dharmapuri and The District
Forest Officer Dharmapuri Division Collector Office Compound
Dharmapuri

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Tamil Nadu Civil Services Rules — Rule 17

Tamil Nadu General Sales Tax Act, 1959 — Section 24(1)

Citation : (2012) 01 MAD CK 0271

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : G. Thilakavathi, for the Appellant; K. Muralidharan, G.A(F), for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner, who was working as an Assistant in the office of the District Forest Officer at Arur, has filed the present Writ Petition seeking to challenge an order passed by the Principal Conservator of Forests, the 1st respondent herein. By the impugned order, the petitioner's appeal was rejected by him. The petitioner preferred the appeal against an order passed by the District Forest Officer dated 9.9.2003. By the said order, the 2nd respondent ordered recovery of sum of Rs. 25,132/- from the petitioner, pursuant to the charge memo issued under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, as he has caused loss to the Department, since the compensation was directed to be paid vide order of the Motor Accidents Claims Tribunal, namely Sub Court, Krishnagiri in M.C.O.P.No. 160 of 1987, which was transferred to Dharmapuri Motor Accidents Claim Tribunal and renumbered as O.P.No. 633 of 1989. The allegation made against the petitioner was that while the Tractor belonging to the Department and plying in Morappur Circle, was carrying the nurseries from Arur

met with an accident on 10.10.1984. In that accident, one person by name Venkatraman died. His legal heirs preferred a claim petition for compensation before the Motor Accident Claims Tribunal. Since after receiving notice from the Tribunal, no steps were taken to file counter before the Tribunal, the Tribunal ordered compensation. During the period from 13.6.1994 to 4.6.1995, he was looking after the seat dealing with such claims and he did not prepare the counter statement and to take steps to file the same. In that view of the matter, the Department suffered a loss of Rs. 2,91,900/- towards the compensation payable. Hence, he was directed to pay the compensation of Rs. 25,132/- payable in 36 installments. As against the imposition of penalty, the petitioner preferred the appeal to the 1st respondent.

2. It is the case of the petitioner that during the relevant period, there was no proof that the petitioner was incharge of the seat, as necessary documents were not produced holding him responsible that he was incharge of the seat. When he was dealing with the seat, the matter was never brought up before him to file counter. There was no proof to show that he was in that section. If at all any person is responsible, the Government Pleader and the Forest Range of Morappur Circle alone were responsible. The Tribunal did not render any judgment during his service period. Action was initiated only in the year 1997. Since he was not in the seat from 4.6.1995. The judgment of the Motor Accident Claims Tribunal came only after 7 years. During the tenure of his service, no such records came before him. Notwithstanding the same, his appeal was rejected by the 1st respondent reiterating the same contention.

3. In the appellate order, it was stated that normally no notice was sent by the Civil Court and the concerned person dealing with the file has to meet the Government Advocate on the hearing dates and also appear before the Court on the relevant dates and thereafter should inform the Head of the Department about the proceedings in the Court. It is also stated that the Superintendent Krishnan was incharge of the file and he had written letters regarding the same, which are also found in the file. Even if that person is incharge, the petitioner, who was the Junior Assistant during that period, did not take any action and this is the charge against him. If the first Clerk did not deal with the file, then the subsequent clerk, who assumes the seat, must take action. If the Forest Ranger who was responsible for the same did not take action, then the petitioner should have brought to the notice of the District Forest Officer about the inaction of the Forest Ranger. Hence, his contention was rejected.

4. The Writ Petition was admitted on 22.10.2007. Pending the Writ Petition, this Court granted an interim injunction and on notice from this Court, a counter affidavit has been filed by the 2nd respondent. In the counter affidavit, it referred to the order of the State Government. The State Government while sanctioning the amount for payment of compensation in G.O.3(d) 67, Employment and Forests Department dated 10.10.2002 instructed to take up disciplinary action against the persons concerned, who failed to take appropriate

action.

5. If the Government has directed action to be initiated against the persons who failed to taken action, then the liability cannot be fixed only on the two individuals, thereby making the other persons not responsible for the same. Especially when the petitioner had accused the Forest Ranger of Morappur and the Government Advocate for not taking appropriate steps catching hold of the petitioner clerk cannot be accepted, especially to recover the amount of compensation from their salary.

6. The respondents' contention that if Morappur Forest Ranger who was responsible had not taken action, the petitioner should have brought the same to the notice of the District Forest Officer, cannot be accepted as a valid ground to fix liability on the petitioner. On the other hand the petitioner has set out that though number of documents in the enquiry, also asserted during the enquiry to show that he was dealing with the seat, no papers relating to the case have been brought to prove the case. Under the circumstances, fixing the responsibility on the petitioner and recovering the amount is solely uncalled for and in the absence of fair and proper enquiry, merely going by the records available with the respondents and not enquiring to the role played by each person, cannot be countenanced by this Court. Hence, the writ petition stands allowed. The impugned order stands set aside. No costs. M.P.No. 1 of 2007 is closed.