
(2011) 12 MAD CK 0150

In the Madras High Court

Case No : Writ Petition No. 1234 of 2007

M. Sakthivel

APPELLANT

Vs

The Conservator of Forests Govai Circle, Coimbatore and The
Wildlife Warden Indra Gandhi Wildlife Sanctuary Pollachi,
Coimbatore District

RESPONDENT

Date of Decision : 23-12-2011

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17

Citation : (2011) 12 MAD CK 0150

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : R. Muthukannu, for the Appellant; N. Inbanathan, Government Advocate(P), for the Respondent

Final Decision : Allowed

Judgement

Mr.Justice D. Hariparanthaman

1. The petitioner was employed as a Forester in Sethumadi East Section of Coimbatore District. He was issued a charge memo dated 29.10.1999 under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. The charge sheet is solely based on the report of the Assistant Conservator of Forests (Training). Annexure-III to the charge-memo refers three documents that are to be relied on to prove the charges. The first document is the Letter No. 235/9 dated 9.9.99 of the Assistant Conservator of Forests (Training). The second document is the Letter Na.Ka. No. 435/99 dated 9.9.99, 29.9.99 and 5.10.99 of the Assistant Conservator of Forests (Training) and the third document is the Certificate issued by the Assistant Veterinary Doctor, Malaiyandipattinam. The enquiry was conducted and five witnesses were examined. Based on the findings of the enquiry officer, the second respondent passed the order dated 28.2.2001 imposing the punishment of stoppage of increment for one year without cumulative effect. The petitioner preferred an appeal and the same was dismissed

by the first respondent by order dated 03.7.2011.

2. The petitioner filed O.A. No. 5705/2011 to quash the aforesaid orders dated 28.2.2001 of the second respondent and 03.7.2011 of the first respondent. The 2nd respondent filed a reply affidavit refuting the allegations.

3. On abolition of the Tribunal, O.A.No.5705/2001 got transferred to this Court and renumbered as W.P.No.1234/2007.

4. Heard both sides.

5. The learned counsel for the petitioner submits that the entire charge-sheet is based on the report of the Assistant Conservator of Forests (Training) and the letters written by him were the documents relied on to prove the charges. The Assistant Conservator of Forests was not shown as a witness in Annexure-IV to the charge memo wherein the list of witnesses is cited. According to him, reliance placed on the Assistant Conservator of Forests (Training) without subjecting him to cross-examination would vitiate the punishment order. The learned counsel relies on the decision of the Apex Court in L.I.C. of India and Another Vs. Ram Pal Singh Bisen,

6. On the other hand, the learned Government Advocate for Forests seeks to sustain the impugned order based on the reply affidavit.

7. I have considered the submissions made on either side.

8. The petitioner has categorically stated in ground (c), (d) and (e) that the Assistant Conservator of Forests (Training) should have been examined and he should have been given liberty to cross-examine him. Without examining the Assistant Conservator of Forests (Training), the reliance placed by the department on his letters is illegal. The reply affidavit does not deal with the allegations para wise. The learned Government Advocate (Forests) relies on para 9 of the reply affidavit as the reply to the allegations made in ground (c) to (e) in the Original Application. Para 9 of the reply affidavit is extracted hereunder:

9. The evidence found in the documents made available to the Enquiry Officer has been proved based on detailed enquiry conducted by him. Hence, this ground is unsustainable. In this para the applicant has discussed about this procedural flaw in the conducting of enquiry into the disciplinary case against him by pointing out that he was not allowed to cross examine the witnesses. This is totally untenable on the ground that only the witnesses mentioned in the Annexure 5 of the charge sheet were examined by the Enquiry Officer and the request of the applicant to examine the Assistant Conservator of Forests in charge of Pollachi Range and Veterinary Assistant Surgeon, Malaiyandipattinam was not granted as it was not considered relevant.

In my view there is no answer for the specific issue that was raised by the petitioner. It is well settled that without subjecting the author of the document for cross examination, the document shall not be relied on to prove the

allegations. As the judgment in L.I.C. of India and Another Vs. Ram Pal Singh Bisen,) relied on by the learned counsel for the petitioner squarely applies to the facts of this case, paragraphs 25, 26 and 27 are extracted hereunder:

25. We are of the firm opinion that mere admission of a document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law.

26. As has been mentioned herein above, despite perusal of the record, we have not been able to come to know as to under what circumstances the respondent-plaintiff had admitted those documents. Even otherwise, his admission of those documents cannot carry the case of the appellants any further and much to the prejudice of the respondent.

27. It was the duty of the appellants to have proved the documents, Exts. A-1 to A-10 in accordance with law. Filing of the enquiry report or the evidence adduced during the domestic enquiry would not partake the character of admissible evidence in a court of law. That documentary evidence was also required to be proved by the appellants in accordance with the provisions of the Evidence Act, which they have failed to do."

In view of the categorical pronouncement of the Apex Court, the impugned orders are liable to be quashed and accordingly, quashed.

9. Consequently, the writ petition is allowed. No costs.