

(2013) 11 MAD CK 0127

In the Madras High Court

Case No : Writ Appeal No. 396 of 2012 and M.P. No. 1 of 2012

The State of Tamil Nadu

APPELLANT

Vs

M. Mahendran

RESPONDENT

Date of Decision : 06-11-2013

Acts Referred:

Citation : (2014) LabIC 228

Hon'ble Judges : R. Subbiah, J;R. Banumathi, J

Bench : Division Bench

Advocate : Hidayathulla Khan, Govt. Advocate Forest, for the Appellant; V. Selvaraj, for the Respondent

Final Decision : Allowed

Judgement

R. Subbiah, J.—The present appeal has been filed as against the order of the learned Single Judge of this Court dated 23.9.2011 made in W.P. No. 12537 of 2011, allowing the writ petition filed by the respondent herein by quashing the impugned order passed by the third appellant in Na.Ka. No. 8763/2010 P1 dated 13.5.2011. The brief facts which are necessary to decide the issue involved in this appeal, are as follows:-

(a) The respondent herein joined service as Forest Range Officer, Krishnagiri, during the year 2004. Subsequently, he was transferred from Krishnagiri during the year 2006. While so, the third appellant passed the impugned order viz., the charge memo dated 13.5.2011 as against the respondent herein stating that the respondent while working as Forest Range Officer, Krishnagiri Range during 2004-05 to 2006-07 had committed certain irregularities in the execution of generation and construction works sanctioned under various schemes like food for work scheme and National Afforestation Project. The irregularities came to light when the "Femas Wing" headed by Assistant Conservator of Forest attached to the office of the Principal Chief Conservator of Forest, Chennai inspected the fields and verified the works in the field with reference to records, measurement book witnesses, etc. The field verification revealed the fact that the respondent

had deliberately and falsely filed the accounts and cheated the Government to the tune of Rs. 66,00,000/-. The case was entrusted to the Vigilance and Anti Corruption Department for making out a prima facie case and accordingly, the Vigilance and Anti Corruption Department conducted discrete enquiries and made out a case as against the respondent and recommended to Government/ Departmental action. The Government in G.O. Ms. No. 62 Environment and Forest Department dated 3.9.2010, directed the department officers to initiate departmental action against the respondent along with other such delinquent officers as per Tamil Nadu Civil Services (Discipline and Appeal) Rules and pension rules (in respect of the retired persons). Hence, the third appellant, who is the District Forest Officer, issued the impugned charge memo dated 13.5.2011 as against the respondent. Challenging the said charge memo, the respondent has filed the writ petition stating that the third respondent is not the disciplinary authority and the legal authority to issue the impugned charge memo.

(b) After hearing both sides, the learned Single Judge of this Court has quashed the impugned charge memo issued by the third appellant by observing that the District Forest Officer, who is below the rank of Assistant Conservator of Forest, cannot issue the impugned charge memo and allowed the writ petition. Challenging the said order, the present writ appeal has been filed.

2. We have heard the submissions of either side and perused the materials available on record.

3. It is the contention of the learned Government Advocate (Forest) that it is not necessary that the charges should be framed only by the authority competent to award proportionate penalty or that the enquiry should be conducted by such authority. With regard to this, learned Government Advocate relied on Rules 9A and 9(2) of Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter referred to as the Rules).

4. On the other hand, it is the submission of the learned counsel appearing for the respondent that the District Forest Officer, the third appellant herein is not the competent authority to issue the impugned charge memo. The respondent is a Forest Range Officer and the competent authority to issue the charge memo is only the Conservator of Forest. With regard to this submission, learned counsel appearing for the respondent has invited the attention of this Court to Appendix III of the said Rules. He has also drawn the attention of this Court to Rule 9A of the said Rules and submitted that in any case where more than one Government Servant of the said Department are jointly involved, the authority competent to institute disciplinary proceedings shall be the immediate higher authority in that department in respect of the Government Servant who holds the highest post among such Government servants and the District Forest Officer is not the authority, who is not holding the highest post in the department. Thus, he has submitted that there is no infirmity in the order passed by the learned Single Judge.

5. It is the further contention of the learned counsel appearing for the respondent that as per Appendix III of the Rule 14(a) of the said Rules, only the Conservator of Forests is the competent authority to impose penalties on Rangers and as per Rule 2, only the authority competent to impose penalties is the competent authority to initiate disciplinary proceedings. The learned counsel has submitted that as per G.O. (3D) No. 62, Environment and Forests (FR-I) Department dated 3.9.2010, only the Principal Chief Conservator of Forests, Chennai was directed to institute disciplinary proceedings against the respondent and other officers.

6. The above contention does not merit acceptance. As per Rule 9A of the said Rules, in any case where more than one Government Servant of the same Department are jointly involved or whose cases are interconnected, the authority competent to institute disciplinary proceedings shall be the immediate higher authority. The immediate higher authority in the District is the District Forest Officer. Even though the Government issued G.O. (3D) No. 62, Environment and Forests (FR-I) Department dated 3.9.2010 directing the Principal Chief Conservator of Forests, Chennai, the said Government Order would not in any way take away the competency of the immediate higher authority viz., the District Forest Officer to institute the disciplinary proceedings. The authority indicated in Appendix III of Rule 14(a) of the said Rules is only the authority to impose penalties as indicated thereon.

7. On a close reading of Rule 9(2) of the said Rules, we find that the authority competent under the said Rules to impose any of the penalties specified in items (i) to (iii) and (v) of Rule 8 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in items (iv) and (vi) to (viii) of Rule 8 notwithstanding the fact that such authority is not competent under these rules to impose any of the latter mentioned penalties. Clauses (i) to (v) of Rule 8 of the said Rules deal about the manner of penalties, which are as follows:-

(i) Censure;

(ii) Fine (in the case of persons for whom such penalty is permissible under the rules);

(iii) Withholding of increments or promotion;

(iv) Reduction to a lower rank in the seniority list or to a lower post not being lower than that to which he was directly recruited, whether in the same service or another service, State or Subordinate, or to a lower time-scale, not being lower than that to which he was directly recruited, or to a lower stage in a time-scale;

(v) Recovery from pay of the whole or part of any pecuniary loss caused to the State Government or the Central Government or to any Government Company or Organisation or Local Authority or to a Local Body, while on deputation, by

negligence or breach of orders.

Therefore, a close reading of Rule 9(2) of the said Rules would show that the authority competent to impose the above said penalty is authorised to initiate the disciplinary proceedings notwithstanding the fact that he is not competent under the rules to impose major penalties mentioned in Rule 8 (vi) to (viii) of the said Rules. In this regard, a reference could be placed in G.O. (Ms) No. 19, Personnel and Administrative Reforms (N) Department dated 11.2.2008, wherein, it has been stated that as per rule 12(2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the Heads of departments may impose certain minor penalties and also frame charges under rule 17(b) of the said Rules on all members of State Services other than such members who are immediately below such Heads of Departments and they shall remit the case to Government for final orders. The District Forest Officer, the third appellant herein, who is the head of department in the District, is the competent person to impose penalties as specified in item Nos. (i), (ii), (iii) and (v) of Rule 8 of the said Rules. Therefore, under Rule 9(2), the third appellant is the competent person to initiate the disciplinary proceedings notwithstanding the fact that he is not competent to impose major penalties as mentioned in Rule 8 (vi) to (viii) of the said Rules. In this regard, learned Government Advocate (Forest) has also placed reliance upon G.O. (3D) No. 62, Environment and Forests Department dated 3.9.2010 and clause 3(v) of the said G.O., which is relevant, is as follows:

(v) If the initiating authority is not competent to pass final orders under the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, he should remit the connected papers to the competent authority at the appropriate stage i.e., immediately on receipt of the Inquiry Officers report.

8. Therefore, the third appellant, after initiating the disciplinary proceedings, should remit the connected papers to the competent authority at the appropriate stage i.e., immediately on receipt of the Inquiry Officers report. When that being the position, we do not find any infirmity in the disciplinary proceedings initiated by the District Forest Officer.

9. With regard to this, learned Government Advocate relied on the decision reported in Inspector General of Police and another Vs. Thavasiappan, , wherein it has been held that it is not necessary that the charges should be framed by the authority competent to impose major penalty or that the enquiry should be conducted by such authority. Therefore, we are of the opinion that Rule 9(2) of the said Rules is very clear that the authority who is competent to issue minor punishment as defined under Rule 8 (i) to (iii) and (v) of the said Rules is competent to initiate the disciplinary proceedings. Hence, we do not find any infirmity in the charge memo issued by the third appellant. For the reasons stated above, the order of the learned Single Judge of this Court dated 13.5.2011 made in W.P. No. 12537 of 2011 is liable to be set aside and accordingly, set aside and the writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.