



Writ Appeal No.950 & 951 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.08.2023

Delivered on : 12.12.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

Writ Appeal Nos.950 & 951 of 2018

M.Krishnan ... Appellant in both the appeals

Vs

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Forest Department,
Fort St.George, Madras – 600 009.
- 2.The Conservator of Forest,
Vellore Region, Vellore,
North Arcot District.
- 3.The Conservator of Forest,
Vellore Region, Vellore,
North Arcot District. ... Respondents in both the appeals

COMMON PRAYER:- Writ Appeals filed under Clause 15 of Letter Patent against the order common order dated 22.12,.2016 made in W.P.Nos.12073 & 20404 of 2014.



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In both Appeals:-

For Appellant : Ms.D.Nagasaila

For Respondents : Mr.S.Silambanan
Additional Advocate General
assisted by Mr.Vadivelu Deenadayalan
Additional Government Pleader
and Mr.Babu Barveez
Government Advocate

COMMON JUDGMENT

(Judgment delivered by K.KUMARESH BABU.,J.)

These intra-court appeals have been filed as being aggrieved against the common order passed by the learned Single Judge dismissing the Writ Petitions. The brief facts leading to these appeals are that, the appellant was appointed as Forest Guard in 1989 and that when he was on duty as a Watcher at the Sandalwood godown at Denkanikottai, he was charged with attempting to remove sandalwood illegally and was sought to be proceeded with by initiating disciplinary proceedings. Originally an order of dismissal was passed, which was set aside by this Court on the principles of violation of natural justice and remitted back to the authority. On remittance after the enquiry, the appellant had been inflicted with the punishment of dismissal which was subject matter of the challenge in one of the



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Writ Petition. The appellant had also sought for a direction seeking subsistence allowance from the date of dismissal till the continuance of the disciplinary proceedings. The learned Single Judge on the reasonings and findings given in the impugned judgment had dismissed the Writ Petitions. Since, the issue involved in the above intra Court appeals arise from the same set of facts, with the consent of the learned counsels appearing on either side the appeals were heard together.

2. Heard Ms.D.Nagasaila, learned counsel appearing for the appellant and Mr.S.Silambanan, learned Additional Advocate General appearing for the respondents.

3. Ms.D.Nagasaila, learned counsel appearing on behalf of the appellant would submit that the entire disciplinary proceedings would be vitiated on three grounds:-

(a) Failure on the part of the respondents to pay subsistence allowance despite repeated request from the appellant



(b) Failure to produce the original of the alleged hand written confession of the appellant

(c) That the findings are perverse as there is no evidence to prove the charges. She would further submit that there was malice on the side of the respondent, as originally the appellant was inflicted with the order of punishment on the aforesaid charges that had been framed against him which was set aside by this Court as there was a violation of principles of natural justice. She would further submit that the present proceedings are also vitiated by principles of natural justice in as much as the enquiry had proceeded without payment of subsistence allowance and non-production of relevant documents which was sought to be put against appellant. She would submit that apart from merits, the non-payment of subsistence allowance is itself had been held to be violation of principles of natural justice by the Apex Court in very many judgments. She relied upon the judgments of the Apex Court reported in **1973(1) SCC 656, AIR 1986 SC 1168, 1999 (3) SCC 679** and the judgments of this Court reported in **2002 (3) LLN 327** and **2006 (4) LW 687** to drive home the contention that non-payment of subsistence allowance itself is a ground to quash the



disciplinary proceedings.

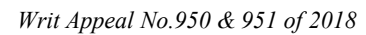
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4. She would further submit that the appellant having been appointed as a Watcher was posted along with one Jayaraman as night patrol at the Sandalwood depot at Denkanikottai. In the early morning, at about 5.30 a.m., the appellant had heard a sound and went towards the source of the sound. The said Jayaraman had also come and questioned the appellant since there were sandal wood blocks scattered on the ground. It is the case of the Department that the appellant had accepted the delinquency and had written a confession statement. She would submit that the appellant from the beginning had denied the confession statement allegedly executed by him. Therefore, the appellant had wanted the respondent to furnish the alleged confession statement, as only a typed copy of such confession statement was given to him along with the charge memo. The original confession statement was never produced nor marked during the enquiry, even during the first enquiry. Since, those documents were not produced and an order of termination was inflicted upon the appellant, the appellant had approached the then State Administrative Tribunal in O.A.No.2853 of



1991 which was transferred to the file of this Court and renumbered as W.P.No.3676 of 2012. She would submit that on the facts of the case, this Court has found that there was violation of principles of natural justice as complained by the appellant and therefore, had set aside the order of termination and remanded the matter back to the respondents. However, even during the second enquiry, apart from non-payment of the subsistence allowance, the respondents had also not produced the confession statement which had been repeatedly asked for by the appellant. She would submit that the respondents have not produced the said confession statement as the appellant had never confessed as claimed by the respondents.

5. She would further submit that since, the appellant had been earnest in his efforts to appear before the enquiry officer, but, however, during certain days due to the financial crunch and due to non-payment of subsistence allowance, the appellant was not able to attend the enquiry. His absence was taken as an advantage by the respondents and they had conducted an *ex-parte* enquiry and an adverse report was filed by the



6. She would further submit that the failure to mark the confession statement during the enquiry proceedings would itself render the disciplinary proceedings vitiated. In support of the aforesaid contentions she had relied upon a judgement of the Division Bench of this court in W.A.(MD).No.1293 of 2016 dated 17.12.2017. In such circumstances, if the confession statement allegedly relied upon by the respondents is eschewed, there are no other material evidence as against the appellant to prove the allegations made in the charge memo and therefore, the appellant will have to be exonerated. Therefore, she would submit that the disciplinary proceedings have to be set aside and the order of Single Judge had failed to appreciate all the aforesaid contentions.



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and therefore, the judgment of the learned Single Judge is also liable to be interfered with.

7. Countering her arguments, Mr.S.Silambanan, learned Additional Advocate General for the respondents would submit that the appellant was temporarily appointed as Forest Watcher on compassionate grounds and he had joined the service on 20.10.1989. He was assigned a special duty along with one Jayaraman to safeguard the sandalwood in the sandalwood godown at Denkanikottai Range. However, he was caught red-handed, on 24.12.1989, at about 5.30.a.m. by the co-watcher Jayaraman. Wherein, the appellant had tried to illegally remove twelve sandalwood billets from the sandalwood depot. Immediately, the said Jayaraman informed the said incident to the Forest Range Officer, Denkanikottai, who on enquiry *prima facie* found that the appellant had attempted to steal the sandalwood billets and placed him under suspension vide office proceedings dated 30.12.1989. He would submit, considering the gravity of the offences, a charge memo was lodged against the appellant under Rule 17(b) under Tamil Nadu Civil Service (Discipline



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and Appeal) Rules, vide proceedings dated 04.01.1990. Originally, on issuance of the said charge memo, the appellant had submitted an explanation on 30.01.1990 and thereafter, due enquiry was conducted and on examination of various witnesses an order of termination was passed. The said order of termination had been challenged by the appellant before the State Administrative Tribunal which was transferred by this Court and renumbered as W.P.No.3676 of 2012 and this Court on considering that there are certain violation of principles of natural justice, had set aside the order and remitted the matter back to the authority by its order dated 26.12.2012. He would submit that immediately on receipt of the order of remand, a fresh notice of enquiry was given to the appellant and a re-enquiry was conducted afresh and a final enquiry report has been submitted by the enquiry officer. Based upon the enquiry officers report, the Disciplinary Authority, after following the formalities had passed an order on 02.08.2014 dismissing the appellant from service. He would submit that during the long run proceedings, the Denkanikottai forest range was transferred from Vellore circle to Dharmapuri circle and the files were all transferred and in the transit, the original records have been



lost/misplaced.

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8. He would also submit that the main witnesses who were examined during the first enquiry had also died when the matter was taken up for a fresh enquiry due to remand. He would further submit that the appellant do not deny the incident but, claimed that he was not involved in the incident. He also admits that he heard a sound and only wanted to look where the sound came from. He had not stated that there were no other third persons in the vicinity except for the appellant and the deceased Jayaraman. He had also not made allegation that it was Jayaraman who was involved in the incident. He had also by a confession statement admitted the delinquency. It was not his case during the enquiry proceedings that he had not given the confession statement but his claim during the enquiry proceedings was that the said confession statement was not recorded on the date of the incident but such confession statement had been recorded under coercion on a subsequent date. Therefore, non-production of the original confession statement according to him would not vitiate the enquiry. The appellant had a chance of cross-examining,



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even during the first enquiry as to the recording of confession of the necessary witnesses. Even then the appellant was able to elucidate any evidence as to the non-recording of confession statement. His suggestion to the witnesses was that the confession statement recorded from the appellant was not on the date of the incident but at a belated date. Therefore, he would submit that the appellant cannot be allowed to succeed on immaterial infirmities and should be punished for the delinquency that he had committed.

9. Further, to the challenge to the disciplinary proceedings qua the non-payment of subsistence allowance, he would submit that the payment of subsistence allowance is governed by the Rule 53 of the Fundamental Rules. He would submit that Rule 53(1) provides for payment of subsistence allowance during the pendency of disciplinary proceedings. He would further submit that Sub Rule (2) of Rule 53 mandates that no payments shall be made under Sub Rule (1) if the Government servant fails to furnish a certificate that he was not engaged in any other employment. He would also draw attention of this Court to proviso to



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Sub Rule (2) and contend that the same would be applicable in the facts of the present case as the appellant was originally terminated by an order of the year 1990 which had come to be set aside in the year 2012. It is not his case that he had not been engaged elsewhere. When the order of termination was set aside by this Court and remanded the matter back to the authority, the Government servant is deemed to be under suspension as provided under proviso to Sub Rule (2) and therefore, he will have to necessarily provide such certificate of non-employment during the said period i.e., from 1990 to 2012 and even thereafter, to claim the subsistence allowance. He would submit that the contentions of the learned counsel for the appellant with regard to non-payment of subsistence allowance would only apply to the case of initial suspension pending an enquiry as during the period of initial suspension, the Government servant during the pendency of the enquiry is obliged not to leave the place mentioned in the order of suspension and also not engage himself elsewhere. The judgments relied upon by the learned counsel for the appellant according to him are all cases which relates to the initial suspension and not deemed suspension and therefore, he would pray this Court not to look into those judgements



in deciding this case. He would also make a submission that there was no perversity in the findings of the enquiry officer in coming to the conclusion that the appellant had committed an offence of attempting to smuggle the valuable sandalwood billets and therefore, he would submit that there is no infirmity in the order passed by the Disciplinary Authority and as well as the learned Single Judge and seek this Court's indulgence to dismiss the intra Court appeals.

10. We have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record.

11. A charge memo have been issued to the first appellant by the proceedings dated 04.01.1990. The appellant had also submitted his explanation on 30.01.1990. Thereafter, an enquiry was conducted by the enquiry officer in which the appellant had participated and had cross-examined the witnesses. Pursuant to the enquiry conducted, an enquiry report had been filed implicating the appellant for the charges upon which after the formalities, the Disciplinary Authority had



terminated the appellant. The appellant being aggrieved against the same had challenged the order of termination which came to be set aside by the learned Single Judge of this Court on grounds of principles of natural justice and remitted the matter back to the Authority. By the time the matter was remitted back to the Authority concerned, some of the main witnesses had died. Some of the documents had also gone missing due to the bifurcation of Vellore range. These are all admitted facts.

12. The main contentions of the appellant to attack the order of termination passed by the Disciplinary Authority is that there was a violation of principles of natural justice on two counts.

(a) Non-payment of subsistence allowance

(b) Non-production of the original confession statement.

13. Further, ground of attack was perversity in the findings of enquiry officer, as the enquiry officer had given a report in spite of no evidences that the appellant had committed the delinquency alleged in the charge memo.



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14. We shall now deal with the question of violation of the principles of natural justice as pointed out by the learned counsel for the appellant. The first and foremost ground on which she contended is that the non-payment of the subsistence allowance vitiates the enquiry. The payment of subsistence allowance pending an enquiry in to disciplinary proceedings is provided under Rule 53 of Fundamental Rights of the Tamil Nadu Government. For better appreciation, we deem fit to extract the same as hereunder:-

53(1) A Government servant who is placed or deemed to have been placed or continues to be under suspension shall be entitled to the following payments, namely:-

(a) Subsistence allowance at an amount equal to half of the pay last drawn by the Government servant and in addition the dearness allowance, if admissible on the basis of half of the pay last drawn:

Provided that where the period of suspension exceeds six months, the authority which made or is deemed to have made, the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first six months as follows:-



(i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding fifty percent subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing not directly attributable to the Government servant;

(ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding fifty per cent of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension. has been prolonged for reasons to be recorded in writing, directly attributable to the Government servant;

(iii) the amount of dearness allowance shall be based on the increase or the decrease in the amount of subsistence allowance, as the case may be, admissible under clause (i) or (ii) above:

Provided further that if a Government servant under suspension continues to be under suspension after the date of retirement, the amount of subsistence allowance shall be reduced to the amount of pension which will be provisionally admissible to him, whether or not the Government servant will be exonerated of the charges for which he was placed under suspension and the provisions of the preceding proviso shall not apply to such cases.

(b) The authority which made or which is deemed to have made the order of suspension may, if it is satisfied that the



Government servant continues to incur the expenditure for which the compensatory allowances are granted, direct that the Government servant shall be granted in addition, such compensatory allowances as are admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension as the Government may sanction by general or special order.

(c) Government servants under suspension shall be paid house rent allowance in full at the rates admissible at the place where they are ordered to stay during suspension with reference to the pay last drawn before suspension. Where the headquarters of a Government servant under suspension is changed on his request, he shall be eligible for the house rent allowance at the rates admissible at the earlier headquarters or at the new headquarters whichever is less.

(2) No payment under sub-rule (1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business vocation:

Provided that in the case of a Government servant dismissed, removed or compulsorily retired from service, who is deemed to have been placed, or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement under clauses (3) and (4) of rule 17(e) of



the Tamil Nadu Civil Services (Discipline and Appeal) Rules, and who fails to furnish such a certificate for any period or periods during which he is deemed to have been placed or to continue to be under suspension, he shall be entitled to subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods, as the case may be falls short of the amount of subsistence allowance and other allowances, that would otherwise be admissible to him but when the subsistence and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him.”

15. From the reading of the aforesaid provision, it could be seen that the said Fundamental Rule envisages the payment of subsistence allowance in proportion with the salary received by the Government servant. However, two of the conditions have been prescribed which have to be adhered to by the Government servants to receive such subsistence allowance. First is that he should produce a certificate that he had not been gainfully employed elsewhere. The second is that he should continue to reside in the place fixed from time to time.



16. Proviso to Sub Rule (2) deals with the case of deemed suspension and the entitlement to such subsistence allowance of such Government servant deemed to be suspended. The said conditions does not in anyway dilute the requirement of a certificate to be produced by the Government servant. In the present case, the appellant was originally terminated from service in the year 1990 which was over turned in the year 2012. Thereafter, the enquiry was completed within a period of two years and final orders were passed in the year 2014. But, admittedly the appellant's service was terminated in the year 1990 and he was not a Government servant up to 2012. When this Court had over-turned the decision of termination and thereafter, he would be deemed to be in suspension from the date of original termination till the disposal of the enquiry proceedings. The judgments relied upon by the learned counsel for the appellant, as rightly pointed out by the learned Additional Advocate General, are all cases which relates to payment of subsistence allowance during the period of initial suspension and not the deemed suspension. In this case, as pointed out earlier, the appellant was terminated from service in the year 1990. He had no explanation as to how



he had been sustaining himself and his family between the period from 1990 to 2012. Further, when the Rule mandates a certificate to be produced, the same had to be complied with. It is true that it would be difficult to produce a negative certificate from an authority. But, however, in the present case, the status of the appellant between 1990 and 2012 was that he was not a Government servant. Only after this Court had overturned the decision of termination he gets back the status, but, however, is continued to be kept under suspension. Therefore, he has to be necessarily provide such a certificate as mandated under Sub Rule (2) of 53 to establish that he had not been employed beneficially elsewhere to claim the subsistence allowance for the aforesaid period and continued payment after the order of this Court or otherwise it would be an unjust enrichment except for making claim based on the Fundamental Rule, the appellant had not produced any document to substantiate that he was in a penurious circumstances disabling him to participate in the enquiry. Therefore, we do not find any merits in the submission that non-payment of subsistence allowance would vitiate the enquiry in the given facts and circumstances of this case.



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17. The next contention raised by the learned counsel for the appellant is that the non-production of the confession statement. According to her there is no such confession statement recorded by the respondents or made by the appellant. Therefore, the non-production of the original confession statement would vitiate the enquiry. From the records, it could be seen that on issuance of the charge memo in January 1990, the appellant had also submitted an explanation on 30.01.1990. We have perused the said explanation given by the appellant herein. In his explanation he had not disputed the confession statement. But, however, had contended that the said confession statement is a false statement taken under coercion without the signature of Jayaraman who was a Watcher along with him on that day. In one of the paragraphs in his reply, he had also narrated what was the substances of the confession statement that had been taken from the appellant. For better appreciation relevant paragraphs in the said reply is extracted hereunder:-

“(ஆ) 24.12.89-ந் தேதி என்னிடம் இருந்து
எழுதி வாங்கப்பட்ட பொய்யான வாக்குமூலத்தில்
குற்றத்தை கண்டுபிடித்ததாக கூறப்படும்



திரு.ஏ.ஜெயராமன் வனக்காப்பாளரின் கையொப்பம்
இல்லை.

(இ) என்னிடமிருந்து பெறப்பட்ட வாக்குமூலத்தில் திடங்கின் தென் கிழக்கு மூலையில் வேலிக்கு வெளியே வைத்துக் கொண்டு இருந்த போது என்ற குறிப்பிடப்பட்டுள்ளது. ஆனால் திரு.ஏ.ஜெயராமன் தமது அறிக்கையில் அந்த கட்டைகளை வேலிக்கு அருகில் இருந்ததாக ஒப்புக் கொள்கிறார். அவருடைய அறிக்கையின் படி காலை 5 மணி முதல் சுமார் 5.30 மணி அளவுக்குள் குற்றம் நடந்ததாக சொல்லியிருக்கிறார். 12 துண்டுகளை தூக்கிபோகும் வரை எந்த சம்மதமும் கேட்காத போது 5.30 மணிக்கு திடர் என்ற தடால் என்று சப்தம் கேட்டதாக கூறவது கட்டுக்கதையே தவிர வேறில்லை.”

18. In the further paragraph, the appellant had indicated that the statement annexed to the charge memo is a false statement. He had not at any place in his reply made any statement as to the claim made by the learned counsel for the appellant that no such confession statement had been given by him. Further the proceedings during the first enquiry were also placed as a part of the record before us. A perusal of the



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cross-examination of Jayaraman who was the co-watcher along with the appellant also do not indicate any such statement ie., non-recording of confession statement. In fact, to a particular question, the said Jayaraman had indicated that the statement was recorded by him at 6.00 a.m. on 24.12.1989 and a next question has been put by the appellant to the said Jayaraman as to where the said book was, to which the Jayaraman has answered that the book was with him. Thereafter, the appellant for the reasons best known to him did not proceed to cross-examine the said Jayaraman who was the only witnesses on that day, as to by any suggestion that there was no such confession statement recorded on 24.12.1989. A further cross-examination of one Forest Officer by name Thangaraj was also produced before us. A perusal of the said evidence would show that the appellant had suggested that the confession had been taken on compulsion which was refuted, and that such a statement was recorded only on 28.12.1989 for which the concerned Officer had answered that the statement was recorded only on 24.12.1989 and not as suggested by the appellant on 28.12.1989. This said witnesses was also not further cross-examined by the appellant.



19. From the aforesaid extracted statement of the appellant in reply to the charge memo and also the evidences of the Department witnesses, we are satisfied that the appellant had given a confession statement on 24.12.1989. Further, the stand of the appellant in his reply is that the said confession statement is false, in his reply statement. But, however, even during the first enquiry he had developed a theory that the said confession statement was not recorded on 24.12.1989 but was recorded on 28.12.1989. Even though he had developed such a theory, he was not been able to dislodge the Department witnesses with regard to the confession statement being recorded on 24.12.1989. He had further developed a theory that no such confession statement was recorded after having found out that the records are missing. We do not appreciate such stand of the appellant. He ought to have disputed such confession statement either by proving that such confession statement had been obtained by fraud or coercion. In the present case, even though the witness Jayaraman who was alive during the first enquiry had categorically deposed that the appellant had given a confession statement on 24.12.1989 which was not disrupted by the appellant in his cross-examination. Therefore, when factually we



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have arrived at a conclusion that the appellant had given a confession statement and there is no evidence as to such a confession statement had been obtained by fraud or coercion, we are of the view that non-production of the said confession statement to drive home the submission that no such confession statement had been given by the appellant is without any merit and is therefore, liable to be rejected.

20. The next anchor of contention was the ground of perversity. The said ground had been made by the learned counsel for the appellant on the prime contention that when no confession statement had been recorded and had been produced which is alleged to have been recorded then the entire case of the respondents would have to fall. We have recorded our satisfaction as to the recording of confession statement supra. Therefore, we do not find any perversity as alleged by the learned counsel for the appellant.

21. In fine, for the reasons recorded above and for the reasons recorded by the learned Single Judge in the Writ Petitions, which we also find not erroneous, these Writ Appeals fail and are accordingly, dismissed.



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However, there shall be no order as to costs.

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(R.S.K.,J.) (K. B., J.)
12.12.2023

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
gba

To

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Forest Department,
Fort St.George, Madras – 600 009.
- 2.The Conservator of Forest,
Vellore Region, Vellore,
North Arcot District.
- 3.The Conservator of Forest,
Vellore Region, Vellore,
North Arcot District.



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R.SURESH KUMAR., J.
and
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A pre-delivery order made in

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