



WP.(MD).Nos.21110 and 21230 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 25.09.2023

PRONOUNCED ON : 06.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.21110 & 21230 of 2022

and

W.M.P.(MD)Nos.15394 & 15422 of 2022 and 17202 of 2023

A.Manimaran

... Petitioner in both W.Ps.

Vs.

1.The State of Tamil Nadu,
Rep. By its Secretary,
Department of Environment and Forest,
St.George Fort, Chennai – 600 009.

2.The Principal Conservator of Forest,
Panagal Maligai, Saidapet,
Chennai – 600 015.

3.The District Forest Officer and Wild Life Warden,
Kanyakumari District,
Kanyakumari. ... Respondents in W.P.(MD)No.21110 of 2022

1.The State of Tamil Nadu,
Rep. By its Additional Chief Secretary,
Department of Environment and Forest,
St. George Fort, Chennai – 600 009.



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2.The Principal Chief Conservator of Forest,
Panagal Maligai, Saidapet,
Chennai – 600 015. ... Respondents in W.P.(MD)No.21110 of 2022

PRAYER in W.P.(MD)No.21110 of 2023 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent made in G.O.(D)No.155, Environment, Climate Change and Forests (FR. 1) Department, dated 06.07.2022 and to quash the same and consequently direct the respondents to promote the petitioner to the post of Asst. Conservator of Forest for the year 2017-2018 as per the orders of this Court in W.P.No.15530 of 2018 dated 08.12.2021 without reference to the proceedings made in G.O.Ms.No.4(D) Environment and Forest (FR.1) Department dated 04.01.2021.

PRAYER in W.P.(MD)No.21230 of 2022 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of proceeding of the first respondent made in G.O.(D)No.4, Environment and Forest (FR.1) Department, dated 04.01.2021 and quash the same.

For Petitioner (in all W.Ps.)	: Mr.M.C.Swamy
For Respondents (in all W.Ps.)	: Mr.N.Muthu Vijayan Special Government Pleader



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COMMON ORDER

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The prayer in both the writ petitions reads as follows:-

“(i)W.P.(MD)No.21110 of 2022 have been filed for issuance of a Writ of Certiorarified Mandamus, to quash the first respondent made in G.O.(D)No.155, Environment, Climate Change and Forests (FR.1) Department, dated 06.07.2022 and to direct the respondents to promote the petitioner to the post of Assistant Conservator of Forest for the year 2017-2018 as per the orders of this Court in W.P.No.15530 of 2018 dated 08.12.2021 without reference to the proceedings made in G.O.Ms.No.4(D) Environment and Forest (FR.1) Department dated 04.01.2021.

(ii)W.P.(MD)No.21230 of 2022 have been filed for issuance of a Writ of Certiorari, to quash the proceeding of the first respondent made in G.O.(D)No.4, Environment and Forest (FR.1) Department, dated 04.01.2021

2.Heard Mr.M.C.Swamy, learned counsel appearing for the petitioner, Mr.N.Muthuvijayan, learned Special Government Pleader



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appearing for the respondents and perused the entire materials available on record.

The case of the petitioner in nutshell is as follows:-

3.The petitioner joined in service as Junior Assistant in the Forest Department on 19.09.1988 and was promoted as Assistant in 1997. On successful completion of examination for the post of Forester, he was appointed as Forester in the year 1999 and promoted as Ranger in the year 2010. While so, he was posted to Kalakkad Forest Range with effect from 20.01.2012 and he worked there till 29.06.2013. After joining the said range, he has completed several projects initiated by the Conservator of Project in the Western Ghats Development Scheme. One such activity include gully plugging namely, a process where stones are mounted in such a way to ensure retention of soil in the forest and also to allow percolations of water through the gaps in the stones.

4.Initially, a tender was issued by the Deputy Director/Wildlife Warden for completing 30 gully plugging works. However, since no tender were received from the contractors, it was decided to complete the



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said work through the Forest Department itself by awarding the works to small contractors in the area. For 30 gully plugging works in the said forest range, three contractors were engaged and the work was periodically inspected by the Deputy Director as well as by the Conservator of Forest /Field Director. The work was successfully completed and payments were made after checking measurements, etc. It was only thereafter the completion reports were recorded for all 30 gully plugging works. There was no complaint whatsoever from any quarters with regard to the work completed by the said contractors. While so, the petitioner was visited with a charge memo under Rule 17(a) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. The charge levelled against the petitioner was that he was responsible for spending an amount of Rs.1,81,897/- over and above the estimated value for 30 gully plugging. The petitioner submitted his explanation denying the charges and informed that work was completed only under the complete supervision of the Deputy Director who visited the site periodically. Not being satisfied with the explanation submitted by the petitioner, the second respondent imposed a punishment directing the excess expenditure of Rs.1,81,897/- to be recovered from the petitioner's salary



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in 36 monthly instalments.

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5. Aggrieved over the said punishment, the petitioner preferred an appeal to the second respondent and the same was dismissed by the second respondent vide proceeding dated 20.06.2019. While so, the petitioner was visited with a second charge memo issued by the Commissioner/Tribunal for Disciplinary Proceedings, vide proceeding dated 18.11.2014. Assailing the same, the writ petitioner filed Writ Petition in W.P.(MD)No.3975 of 2015 before this Court and this Court was pleased to quash the second charge memo dated 18.11.2014 on 25.04.2019. In view of the pendency of the charge memo dated 08.08.2013, which was issued as against the petitioner at the first instance, he lost his promotion chance though he completed 6 years of service as Forest Ranger and otherwise eligible to be promoted. His juniors were promoted in the year 2017 but the petitioner is still serving as Forest Ranger since 2010. The petitioner has completed six years of service as Forest Ranger in the year 2016. As per original punishment order on 14.03.2014, monthly recovery of Rs.5,000/- for a period of 36 months commenced from 01.04.2014 and the entire recovery proceeding



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recovering Rs.1,81,897/- was completed by 14.03.2016.

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6.In terms of the amendment Act, the petitioner was eligible to be considered for promotion as Assistant Conservator of Forest from 02.06.2016, since 16 months recovery was over as early as on 14.03.2016. Though the petitioner was eligible to be considered for promotion during the year 2017 – 2018, the said was denied due to the second charge memo dated 18.11.2014. Since the said charge memo was fully set aside by the order passed by this Court in W.P.(MD)No.3975 of 2015 dated 25.04.2019, the petitioner is fully eligible for promotion on and from 25.04.2019. Further there was no promotion for the post of Assistant Conservator of Forest till 2019. Hence, the petitioner made a representation dated 07.05.2019 to the second respondent as well as Principal Secretary to Government enclosing the copy of the order in W.P.(MD)No.3975 of 2015 dated 25.04.2019 seeking to include him in the promotional panel for the post of Assistant Conservator of Forest for the year 2017 – 2018. However, the same was not considered and hence, the petitioner made another representation for the same in similar lines. Pursuant to the same, the petitioner was served with the copy of



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communication letter dated 04.01.2021 stating that G.O.(D)No.4 Environment and Forest (F.R.1) Department dated 04.01.2021 has been issued as against him, by which the Government has directed to conduct enquiry following the procedure under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules in respect of charges framed by the Deputy Director/Wildlife Warden, Kalakkad vide letter dated 08.08.2013. The said G.O. has been completely issued on a closed issue. The proceeding made in the first charge issued by the Deputy Director/Wildlife Warden, Kalakkad vide letter dated 08.08.2013 culminated with the final order dated 14.03.2014 of the second respondent. Thereafter, the petitioner was visited with a second charge memo dated 18.11.2014 for the same set of charges and the same was closed by this Court in W.P.(MD)No.3975 of 2015 on 25.04.2019. The appeal preferred as against original order dated 14.03.2014 for the second charge memo before the second respondent was also dismissed on 26.06.2019.

7.Thus, the issues pertaining to Kalakkad Range execution of construction of gully plugs reached finality and the same was closed on



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the dismissal of the appeal by the second respondent on 26.06.2019. The petitioner has also duly complied with the punishment order dated 14.03.2014 and the entire amount of Rs.1,89,897/- has already been recovered from the petitioner in 36 instalments from 14.03.2016, thereby, recovering the entire amount, hence, the issuance of G.O.(D)No.4 dated 04.01.2021 on the same matter pertaining to the charges framed by the Deputy Director/Wildlife Warden, dated 08.08.2013 once again for the three time would amount to multiple jeopardy and the Government is fully misconceived in directing to conduct enquiry under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules. While so, without considering the petitioner's name for approval list of promotional panel to the post of Assistant Conservator of Forest for the year 2017 – 2018, the departmental proceedings is arriving at promotional panel. Without considering the fact that on the crucial date on 15.08.2018 for the preparation of promotional panel for the year 2019 – 2020, no punishment prevailed and no charges were pending as against the petitioner. The draft panel list for the year 2019 – 2020 was prepared June/July 2019 and consequently the panel was approved by the second respondent vide G.O.(D)No.155 Environment, Climate Change and



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Forest (FR.1) Department dated 06.07.2022 and was communicated to the petitioner vide proceeding dated 22.07.2022. In the said proceedings, though the petitioner's name had been shown in the number 3 in the seniority list, the respondents had denied promotion on the ground of pendency of the charge. Hence, W.P.(MD)No.21110 of 2022 came to be filed by the petitioner challenging the first respondent's G.O.(D)No.155 of 2022 Environment, Climate Change and Forest (FR.1) Department dated 06.07.2022 and W.P.(MD)No.21230 of 2022 came to be filed by the petitioner challenging G.O.(D)No.4 Environment and Forest (FR.1) Department dated 04.01.2021, by which an enquiry is proposed to be conducted against the petitioner.

Defence:-

8.The third respondent has filed separate counters in both the writ petitions and the learned Special Government Pleader for the respondents vehemently submitted that though this Court was pleased to allow W.P. (MD)No.3975 of 2015 setting aside the second charge memo dated 18.11.2014 and only on the basis of legal opinion of the Special Government Pleader, the writ appeal was not preferred as against the said

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order. The Principal Chief Conservator of Forest was called on to sent panel for the post of Assistant Conservator of Forest from the post of Forest Range Officer enclosing the list of Forest Range Officers. Even though the petitioner's name found place in the 10th rank, the panel should have been sent by the District Forest Officer, Kodaikanal where the petitioner was working at the time of sending panel to the Assistant Conservator of Forest.

9.The main prayer of the petitioner is to promote him as Assistant Conservator of Forest in the year 2017 – 2018. The panel biodata for Assistant Conservator of Forest panel 2017 – 2018 called for from circles vide proceedings of the Principal Conservator of Forest dated 27.02.2018. The name of the petitioner was found in serial no.10 even though the District Forest Officer, Kodaikanal Division proposed his name, since charges were framed under Tribunal for disciplinary proceedings, his name was not considered thereafter. Even though the charges were set aside by this Court, the Government in letter dated 12.10.2020 proposed to take up suo moto revision on the proceedings of the Chief Conservator of Forest and Field Director, Kalakkad,

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Mundanthurai Tiger Reserve under Rule 36 of Tamil Civil Services (Discipline and Appeal) Rules and appointed T.K.Ashok Kumar, IFS., District Forest Officer, Kanniyakumari for conducting enquiry into charges framed by the Deputy Director and Wildlife Warden, letter dated 08.08.2013. The exercise of taking up suo moto revision on the proceedings of the second respondent dated 14.03.2014 under Rule 36 of Tamil Civil Services (Discipline and Appeal) Rules would not amount to multiple jeopardy and the Government has authority to order enquiry at any stage. The supporting documents related to this case involved in another case against one K.Sekar, Deputy Conservator of Forests in a connected disciplinary proceeding. Hence the document which was placed before the Government for final order in the case of Sekar required to reopen the case of the petitioner as well. In view of the suo moto revision proceedings initiated as against the petitioner, despite this Court setting aside second charge memo dated 18.11.2014, the question of including the petitioner's name in the promotional panel for the panel year 2017 – 2018 would not arise and on that basis, he pressed for dismissal of both the writ petitions.



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Analysis:-

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10. It is a typical case in which the petitioner has been slapped with two charge memos, the first charge memo dated 08.08.2013 under Rule 17(a) of Tamil Nadu Tamil Nadu Civil Services Discipline and Appeal Rules, 1955 and the second charge memo dated 18.11.2014 for the very same set of charges. This Court in W.P.(MD)No.3975 of 2015 after elaborate discussion concluded that issuance of second charge memo dated 18.11.2014 as against the petitioner for the same set of charges would amount to double jeopardy. On that basis, this Court was pleased to set aside the second charge memo dated 18.11.2014 and the relevant portion of which is extracted as follows:-

“11. Initially, the petitioner joined in the Forest Department as Junior Assistant and after periodical promotions, lastly, he was promoted as Ranger. While so, he was issued with a charge memo under Rule 17(a) alleging that he has incurred expenditure to the tune of Rs.1,81,897/- over and above the estimated value for completion of 30 gully plugging works i.e., building check dams for preventing soil erosion, for which, an explanation was offered by the petitioner. The first respondent in his capacity as the Disciplinary Authority, not being satisfied with the explanation, imposed a penalty of recovery of Rs.1,81,897/- in



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36 installments. Aggrieved over the same, he preferred an appeal before the appellate authority, viz., the Principal Chief Conservator of Forests and the same is pending. Pending appeal, the present charge memo, for the very same incident, came to be issued. 12. It is better to extract the earlier charge as well as the present charge hereunder:

“Earlier charge: “திரு-மணிமாறன், வனச்சரக அலுவலர், களக்காடு சரணாலயம். களக்காடு சரகத்தில் 20/01/2012 முதல் வனச்சரக அலுவலராக பணிபுரிந்துள்ளார். அவரது பணிக்காலத்தில் மேற்கு தொடர்ச்சி மலை அபிவிருத்தி திட்டத்தின் கீழ் நடைபெற்ற 30 பள்ள அடைப்பு (Gully Plugging) வேலை செய்ய 392 க.மீ கற்களை வெளியிடங்களிலிருந்து பணிசெய்யும் இடத்திற்கு கொண்டுவர க.மீ.க்கு ரூ 1068.85 வீதம் ரூ 4,19,417/- ஒப்பளிக்கப்பட்டது. ஆனால் பணியினைச் செய்ய வனத்திற்குள் இருந்து கற்கள் எடுக்கப்பட்டுள்ளது. வனத்திற்குள்ளிருந்து கற்கள் சேகரித்து பணி செய்ய க.மீ.ருக்கு ரூ. 605.30 வீதம் ரூ.2,37,520/- மட்டுமே செலவிட்டிருக்க வேண்டும். ஆனால் ரூ.4,19,417/- செலவு செய்யதுள்ளதால் அதிக செலவினமான ரூ.1,81,897/- ஐ அரசு கணக்கில் செலுத்த பார்வை 2 ல் கண்ட இவ்வலுவலக கடிதத்தில் அறிவுறுத்தப்பட்டது. ஆனால் இந்நாள் வரை அதிக செலவினத் தொகையினை அரசு கணக்கில் செலுத்தவில்லை.”

Present charge: “During 2011-12 you (Accused Officer-2) Thiru.A.Manimaran, had recorded false check measurement in measurement books in respect of 30 check dams as it those check dams were constructed using rough stones when actually rough stones were not used. You (Accused Officer-1) Thiru.K.Sekar also recorded false check measurements

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confirming the measurement recorded by Accused Officer-2 Thiru.A.Manimaran. Based on the false measurements thus recorded by you (Accused Officer-1) Thiru.K.Sekar and you (Accused Officer-2) Thiru.A.Manimaran. You (Accused Officer-2) Thiru.A.Manimaran paid excess payment to the contractors namely Thiru.Moses Thanasigh, Thiru.D.Gnanaraj and Thiru A.S.A.Asokan to the tune of Rs. 2,47,622/- and thereby caused pecuniary loss to the Government to that extent." <http://www.judis.nic.in> 12 13. The petitioner has given a reply to the earlier charge memo and not satisfied with the same, the first respondent passed final order on 14.03.2014 imposing penalty of recovery of Rs. 1,81,897/- in 36 installments. Despite imposing punishment, the second charge memo was issued at the instance of the second respondent for the same set of allegations. According to the petitioner, the said action taken by the second respondent by issuing the second charge memo for the very same allegations is hit by the principles of double jeopardy.

17. Admittedly, the first respondent also inspected the work carried out by the petitioner and being not satisfied with the explanation offered by the petitioner, ordered for recovery of excess expenditure. It is true that the petitioner preferred an appeal before the Principal Chief Conservator of Forests, Chennai, on 24.03.2014 and final orders on the appeal are awaited.



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18. Thus, applying the said judgments to the facts of the present case, the second charge memo issued by the second respondent which is impugned herein, pending appeal, is vitiated as it is hit by the principles of double jeopardy and the same cannot stand in the eye of law. Accordingly, the impugned charge memo dated 18.11.2014 issued by the second respondent is set aside. While setting aside the same, the Principal Chief Conservator of Forests, Chennai, is directed to dispose of the appeal preferred by the petitioner on 24.03.2014, within a period of twelve weeks from the date of receipt of a copy of this order. Subject to the outcome of the appeal, the respondents can proceed with the matter in accordance with law.

11. When this Court has already categorically held that the issuance of second charge memo dated 18.11.2014 for the same set of charges with reference to charges framed by the Director/Wildlife Warden, Kalakad dated 08.08.2013, cannot stand in the eye of law, to shell shock of the petitioner, the Government has issued an impugned G.O.(D)No.4 dated 04.01.2021 proposing to conduct an enquiry against the petitioner with reference to the charges framed by Director/Wildlife Warden dated 08.08.2013 by the appointment of one T.K.Ashok Kumar, I.F.S., District



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Forest Officer and Wildlife Warden, Kanniyakumari as Enquiry Officer to enquire into the charges framed against the petitioner. Whether the said exercise would amount to multiple jeopardy has to be decided in this instant case.

12.In view of the first charge memo dated 08.08.2013, after appropriate departmental enquiry, a punishment directing the excess expenditure of Rs.1,81,897/- incurred in the execution of the completion of 30 gully plugging work to be recovered from the petitioner's salary in 36 monthly instalments was imposed. Though the petitioner preferred an appeal before the appellate authority namely the Principal Chief Conservator of Forest, on 24.03.2014, since the same was kept pending endlessly, the petitioner duly complied with the order of punishment and the same was implemented by recovering the entire amount in 36 instalments from 01.04.2014 to 14.03.2016. W.P.(MD)No.3975 of 2015 remained pending on those period and was allowed by setting aside the impugned charge memo dated 18.11.2014 and further directing the Principal Chief Conservator of Forest, Chennai, to dispose of the appeal preferred by the petitioner on 24.03.2014 within a period of 12 months



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from the date of receipt of copy of the order in the said writ petition.

Pursuant to the same, on 26.06.2019, the Principal Chief Conservator of Forest, Chennai rejected the petitioner's appeal dated 14.03.2014.

13.The critical perusal of the rejection order would reveal that the same has been passed without recording the implementation of the punishment imposed vide order dated 14.03.2014. The entire disciplinary proceedings which was initiated as against the petitioner, by issuance of charge memo dated 08.08.2013 attained finality by the rejection order by the second respondent dated 26.06.2019. Even before the rejection order came to be passed, the petitioner duly complied with the punishment imposed by facilitating the recovery of amount of Rs.1,81,897/- in 36 equal instalments from 01.04.2014 to 14.03.2016. It is needless to say that the second charge memo dated 18.04.2014 was set aside by this Court in W.P.(MD)No.3975 of 2015 as double jeopardy.

14.The learned Special Government Pleader vehemently contended that the Government has authority to take up suo moto revision on the proceedings of the Chief Conservator of Forest and Field Director,



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Kalakad dated 08.08.2013 under Rule 36 of Tamil Nadu Civil Services Discipline and Appeal Rules, 1955, and only on that basis, T.K.Ashok Kumar, I.F.S., District Forest Officer and Wildlife Warden, Kannyakumari has been appointed as an Enquiry Officer for conducting enquiry vide impugned order in G.O.(D)No.4 dated 04.01.2021.

15.However having implemented the punishment imposed by the Chief Conservator of Forest and Field Director, Kalakad dated 14.03.2014, the Government ought not to have reopened the case which was closed once for all. The reopening of the case, which was closed on implementation of punishment imposed on delinquent after a span of five years from the date of completion of implementation of punishment would certainly amount to multiple jeopardy and on that count, this Court hereby quash G.O.(D)No.4 Environment and Forest (FR.1) Department dated 04.01.2021 and deferring of the petitioner's promotion for the panel year 2019 – 2020 in G.O.(D) No.155 Environment, Climate Change and Forest (FR.1) Department dated 06.07.2022 and consequently direct the respondents to include the petitioner's name in the panel year 2019 – 2020 and promote him to the post of Assistant Conservator of Forest for

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the year 2017 – 2018 as per order of this Court in W.P.(MD)No.15530 of 2018 dated 08.12.2021.

16. Accordingly, both the Writ Petitions stand allowed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

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NCC : Yes / No

Index : Yes / No

Internet : Yes

Mrn

Note: Issue order copy on **10.11.2023**.



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To

1. The Secretary,
State of Tamil Nadu,
Department of Environment and Forest,
St. George Fort, Chennai – 600 009.
2. The Principal Conservator of Forest,
Panagal Maligai, Saidapet,
Chennai – 600 015.
3. The District Forest Officer and Wild Life Warden,
Kanyakumari District,
Kanyakumari.
4. The Additional Chief Secretary,
State of Tamil Nadu,
Department of Environment and Forest,
St. George Fort, Chennai – 600 009.
5. The Principal Chief Conservator of Forest,
Panagal Maligai, Saidapet,
Chennai – 600 015.



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L.VICTORIA GOWRI, J.

Mrn

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