

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-12-2016

(Orders reserved on 07.11.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.Nos.20404 and 12073 of 2014,
M.P.Nos.1 to 3 of 2014 in W.P.No.20404 of 2014
and M.P.No.1 of 2014 in W.P.No.12073 of 2014

M.Krishnan

Petitioner in both the Writ Petitions

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Forest Department,
Fort St.George, Madras-600 009.
2. The Conservator of Forest,
Vellore Region, Vellore,
North Arcot District.
3. The District Forest Officer,
Hosur, Dharmapuri District ..Respondents in W.P.No.20404
of 2014

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Environment and Forests Department,
Secretariat, Chennai-600 009.
2. The Conservator of Forests,
Vellore Region, Vellore,
Vellore District.
3. The District Forest Officer,
Mathagiri Cattle Farm,
Hosur, Krishnagiri District. ..Respondents in
W.P.No.12073 of 2014

Writ Petition No.20404 of 2014 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records and quash the enquiry report Ref.No.7573/2012 Pa 2, dated 09.07.2014 given by

the third respondent and consequently direct the respondents to reinstate the petitioner, and thereafter complete the enquiry after furnishing all the originals of the documents as requested by the petitioner and after providing due opportunity to the petitioner.

Writ Petition No.12073 of 2014 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to pay the subsistence allowance to the petitioner from the date of dismissal, i.e. 26.03.1990 and continue to pay till the disposal of the disciplinary proceedings and confer all the consequential benefits.

For Petitioner : Mrs.D.Nagasaila in W.P.No.20404 of 2014
Mr.K.Selvarangan for M/s.C.S.Associates in
W.P.No.12073 of 2014

For Respondents : Mr.N.Inbanathan, Govt. Advocate in both
W.Ps.

ORDER

The prayer in W.P.No.20404 of 2014 is for issuance of a Writ of Certiorarified Mandamus to call for the records and quash the enquiry report Ref.No.7573/2012 Pa 2, dated 09.07.2014 given by the third respondent and consequently direct the respondents to reinstate the petitioner, and thereafter complete the enquiry after furnishing all the originals of the documents as requested by the petitioner and after providing due opportunity to the petitioner.

2. The prayer in W.P.No.12073 of 2014 is for issuance of a Writ of Mandamus to direct the respondents to pay the subsistence allowance to the petitioner from the date of dismissal, i.e. 26.03.1990 and continue to pay till the disposal of the disciplinary proceedings and confer all the consequential benefits.

3. The facts which are necessary to decide the issue involved in both these petitions are as follows:

(a) The petitioner was appointed on 05.10.1989 as a Forest Watcher / Guard on compassionate grounds and posted as Guard at Ayur, Denkanikkottai Road, as his father J.Munuswamy, who was working as Forest Guard in the Forest Department Mathigiri Cattle Farm, Hosur, Krishnagiri District, died on 26.10.1983 while in service. From the date of appointment as Watcher, the petitioner was posted as Forest Reserve Watcher at Ayur Beat, which is a thick forest area. He was working as such all the 24

hours of the day and night and once in a week for one day, he was posted on special duty to sandal-wood go-down located at Denkanikottai Range Office. The nature of the duty is to work as a Watcher from 6 p.m. to the next day 6 a.m. He would be asked to do special duty only on Saturdays. During duty at Denkanikottai, along with the petitioner, the Range Officer, another Watcher and a Forester were also on duty during the whole night duty hours. Denkanikottai Range Office is situated in nearly two acres of land where the sandal-wood is stored in go-down and two sandal-wood go-downs are located in the North-Eastern side of the office, and one is provided with lock and key facility and the other is in open area covered by iron net on all sides, with an opening on the Northern side, where the seized sandal-wood pieces could be stored in heaps. One Mr.Thangaraj, Depot Forester is in-charge of both the go-downs.

(b) The main gate at the Northern side and on the Eastern side is abetted by staff quarters for the Forest Department employees and the office is provided with fence made of barbed wires and on the Western side office, there is a 7 Ft. wall. The staff quarters are meant for the employees of the Forest Department and the occupants of the quarters are freely allowed to come into the Range Office for washing clothes and for fetching drinking water and children also freely come to play inside the premises of the office where the sandal-wood go-downs are located.

(c) When the petitioner was on special duty as a Watcher in the go-down at 6 p.m. on 23.12.1989, he was as usual assigned the work to watch on the Northern side of the office in the main gate by the Guard Jayaraman, who would watch on the Eastern side, where the go-downs and the quarters are located. The Forester-Ramnathsekar, who is the head, was also on duty on 23.12.1989 as per records, but he did not stay in the night at the go-down, but came only in the morning to close the duty. On 23.12.1989, as usual, the petitioner was guarding on the Northern side of the office and Mr.Jayaraman, Guard was guarding on the Eastern side. At about 5 a.m. on 24.12.1989, the Guard Jayaraman came to the petitioner and asked him to go to the Eastern side of the office, which is usually referred and mentioned as quarters' side, and when asked by the petitioner about the said act, the said Jayaraman grew wild and shouted at the petitioner that he was not obeying him, though he is a Guard and his superior and being new entrant to the service, the petitioner obeyed his orders. When he started to go there, the Guard Jayaraman followed him closely at a distance of 15 feet and when the petitioner was nearly 100 feet away from the fence at the quarters' side, he saw a person going out through the way made in the fence. When told about the same to the said Jayaraman, he did not listen, but started asking about the sandal-wood pieces strewn near the fence and accused the

petitioner that he brought those sandal-wood pieces with an intention to steal it. When the petitioner asked him as to where the sandal-wood pieces were, as it was still dark and nobody could see anything, the Guard Jayaraman switched on his own torch light and showed him the sandal-wood pieces, which were strewn near the fence. The said Jayaraman started accusing the petitioner of stealing the sandal-wood pieces and dragged and pushed him inside a room and locked.

(d) In the night duty time, the Forester Mr. Ramnathsekar came and opened the room and enquired about the incident and the petitioner told him about the whole incident, which is a conspiracy of the Guard Jayaraman to foist a false accusation on the petitioner. After enquiry by the night duty Forester Ramnathsingh, the said Jayaraman again locked the petitioner in the same room and went out and the petitioner was kept in custody without water and food and only on the third day, Mr. Namasivayam, who is beat Forester in Ayur Forest area, gave food to the petitioner. On 29.12.1989, the Range Officer Rajendiran enquired the petitioner for nearly two hours and himself, Forester Ramnathsekar, the go-down in-charge Forester Thangaraj and the Guard Jayaraman, jointly threatened the petitioner by saying that he will be handed over to Police if he did not sign in the blank paper and if signed, he would be pardoned and let off and due to pressure, the petitioner signed in the blank paper.

(e) After the enquiry made by the Ranger Rajendiran, the petitioner was let out and asked to report for duty to his original working spot at Ayur Beat. On 30.12.1989, the petitioner was suspended, followed by a charge-sheet in No.1/90/Na.Ka.No.15085/89 E2, dated 04.01.1990 issued to the petitioner with questions to be answered and submitted to the authority. The charge is that the petitioner attempted to steal sandal-wood from the Denkanikottai cleaning go-down. In the said charge-sheet, the following documents were mentioned:

- (i) Telegram dated 26.12.1989 given by one Ramesh.
- (ii) The report of the Ranger (Rajendran) Denkanikottai 438/89, dated 29.12.1989.
- (iii) The deposition of Krishnan, dated 24.01.1989.
- (iv) The deposition of Jayaraman, the Guard.
- (v) The deposition of the Forester Ramnathsekar and
- (vi) Magazar, dated 24.12.1989.

(f) The very first document relied on is a Telegram said to have been given by one Mr. Ramesh, who is a complete stranger to the Forest Department and whose identity is not known. He is said to have given the Telegram to D.F.O., stating that sandal-wood was stolen by Krishnan-Reserve Watcher from Denkanikottai Forest Sandal-wood Go-down. The originals or even photocopies of

the documents were not given to the petitioner and on the petitioner's confession, only the typed copies were given. The petitioner gave detailed reply denying the charge. Enquiry officer was appointed to conduct an enquiry into the charge of attempted theft. After completion of enquiry, enquiry report was submitted, copy of which was not given to the petitioner. On the basis of the enquiry report, the disciplinary authority passed an order of dismissal, dated 26.03.1990 and the appellate authority confirmed the same by order dated 05.10.1990.

(g) The petitioner challenged the order dated 05.10.1990 of the appellate authority, in O.A.No.2853 of 1991 before the Tamil Nadu Administrative Tribunal and subsequently the same was transferred to this Court and re-numbered as W.P.No.3676 of 2012, which was allowed by order dated 26.03.2012 and the punishment orders dated 26.03.1990 and 05.10.1990 were quashed and the matter was remanded back to the Department for fresh enquiry. It is the grievance of the petitioner that on quashing of the order of dismissal, he ought to have been reinstated in service, which has not been done, nor was he placed under suspension. He was neither paid salary nor subsistence allowance. Hence, the petitioner filed Contempt Petition No.2828 of 2013, which is pending. He also filed W.P.No.12073 of 2014 for payment of subsistence allowance.

(h) In the meantime, the petitioner was asked to participate in the de-novo enquiry. The petitioner appeared for the enquiry on 25.04.2014, 07.05.2014 and 14.05.2014. Again he was not furnished with the required documents. On 10.06.2014, the petitioner received notice for hearing on 12.06.2014. The petitioner sent letter dated 11.06.2014 stating that notice was too short for him to attend and also to arrange for his defence representative. Thereafter, the petitioner received enquiry report, dated 09.07.2014 stating that he was set ex-parte and the enquiry was concluded and the enquiry report was given to the petitioner holding that the charge(s) had been proved. Challenging the same, the petitioner has filed W.P.No.20404 of 2014 seeking for the relief stated supra and he is seeking for a direction to pay the subsistence allowance in W.P.No.12073 of 2014 as stated supra.

4. When the Writ Petitions were taken up for hearing, both the learned counsels for the petitioner submitted that the impugned order, dated 09.07.2014 is liable to be quashed, as the same is issued in violation of the principles of natural justice. They further submitted that this Court, by order dated 01.08.2014 in W.P.No.20404 of 2014, granted an order of interim injunction restraining the respondents 1 and 2 from passing any further orders pursuant to the impugned order, dated 09.07.2014 issued by the third respondent. However, on 02.08.2014, once again, dismissal order was passed against the petitioner. On

05.09.2014, the dismissal order was ordered to be kept in abeyance in the light of the interim order of this Court. Learned counsels further contended that the basis for issuance of charge-memo is a Telegram said to have been sent by one Ramesh. Further, the original/photocopy of the said Telegram has not been issued to the petitioner and the original/photocopy of the confession statement alleged to have been given by the petitioner, has also not been furnished to him. Learned counsels further submitted that this Court, while allowing W.P.No.3676 of 2012 (O.A.No.2853 of 1999) on 26.03.2012, quashed the order of dismissal, dated 26.03.1990 and also the order of the appellate authority, dated 05.10.1990 and remitted the matter back to the Enquiry Officer to hold enquiry fresh in accordance with the procedures laid down under Rule 17(b) of the statutory rules and submit enquiry report on the charges, to the competent authority, who shall thereafter proceed as per the Rules and pass appropriate orders. Learned counsels further submitted that again, without furnishing the copies of the relevant documents relied upon by the respondents, the impugned order dated 09.07.2014 was passed and hence, they prayed for quashing the same. Learned counsels also submitted that out of the six witnesses cited in the enquiry proceedings, four witnesses died and summons were sent only for two witnesses, who retired from service. Therefore, for all these reasons, they prayed for allowing both the Writ Petitions.

5. Learned Government Advocate appearing for the respondents, by filing detailed counter affidavits in both the Writ Petitions, submitted that pursuant to the order of this Court remanding the matter, enquiry notice was issued to six witnesses, namely Jayaraman, Forest Guard (died), T.Thangaraj, Forester (died), A.Namasivayam, Forester (died), Ramesh, Forest Guard (died), R.Ramnathsekar, Forester (retired) and R.Rajendran, Forest Range Officer (retired). He further submitted that out of these six witnesses, four witnesses died and two others retired from service. With great difficulty, the retired witnesses were found and re-enquiry was conducted and completed on 12.06.2014. Though the petitioner was permitted to engage a person to assist him, he has not desired to cross-examine any of the prosecution witnesses. Learned Government Advocate further submitted that the petitioner was furnished with 65 pages of records and another 9 items of records required by him. In spite of several chances given to him, he was giving various excuses for not attending the enquiry and final chance was given to the petitioner, directing him to appear for the enquiry, dated 12.06.2014, failing which, he was informed that ex-parte enquiry will be conducted and further action will be taken. Learned Government Advocate further contended that the petitioner has not heeded to the last chance also, despite the fact that required records were furnished to him and permission was also granted to engage a counsel, viz., retired Personal

Assistant to the Conservator of Forests. Hence, final orders were passed based on evidence and enquiry records, as the charge was that within 65 days of his entry into service, he attempted theft of 12 sandal-wood billets from the go-down, which was proved. Hence, for these reasons, learned Government Advocate prayed for dismissal of the Writ Petitions.

6. Keeping in mind the above submissions, I have carefully considered the same and perused the materials available on record.

7. The main grievance of the petitioner is that the copies/original documents, i.e. main two documents, namely the Telegram and his alleged confession statement, were not furnished to him. Furthermore, earlier, the enquiry was conducted in violation of the principles of natural justice, and that is the reason as to why the petitioner earlier filed Original Application in O.A.No.2853 of 1991, which on transfer to this Court, re-numbered as W.P.No.3676 of 2012, was allowed by this Court on 26.03.2012, remanding the matter back to the enquiry officer by quashing the order of dismissal, dated 26.03.1990 and also the order of the appellate authority, dated 05.10.1990. The relevant portion of the order of this Court, dated 26.03.2012, reads as follows:

"8. The petitioner submits that the order of removal, being a non-speaking order, cannot be sustained in law.

9. The order of removal is also challenged on the ground that enquiry conducted against petitioner was not proper, and further that the appellate authority also confirmed the order without discussing the law and evidence.

10. It is also the submission of petitioner, that the statement alleged to have been given by petitioner before the Forest Range Officer, Denkanikottai, was not furnished to petitioner, even though he had asked for supply of the copy to defend himself before the enquiry officer.

11. It is also the submission of petitioner that the enquiry officer did not examine any witness to prove charges, but relied upon a telegram sent by one Ramesh and alleged confessional statement of petitioner. The telegram was fictitious, therefore, could not be relied upon to hold petitioner guilty.

12. The case of petitioner further is that the confessional statement was not voluntary.

13. In sum and substance, contention is that enquiry was conducted in violation of principles of natural justice, and also against statutory rules.

14. Learned counsel for the petitioner vehemently contends that the enquiry was not conducted as per the statutory rules, as witnesses were examined by the enquiry officer, without giving opportunity to the petitioner to cross examine the witnesses.

15. Not only this, the enquiry officer, after recording the statement of witnesses and defence statement, did not submit the enquiry report, but only sent the statement of witnesses to the competent authority.

16. The reading of the proceedings of the enquiry officer clearly show that the enquiry has not been conducted as per the rules. Furthermore, enquiry officer also did not submit any enquiry report. In absence of enquiry report, it was not possible for the competent authority to pass an impugned order.

17. The impugned order cannot be sustained in law, being based on enquiry conducted in violation of principles of natural justice, as also against the statutory rules. The petitioner was not even supplied the copy of report on which reliance was placed by competent authority. The order of the competent authority as also appellate authority deserves to be set aside, being arbitrary and against statutory rules, as in absence of enquiry report, it was not possible to pass order of punishment.

18. Consequently, this writ petition is allowed. The impugned orders are set aside, and the case is remitted back to the enquiry officer, to hold enquiry fresh in accordance with the procedure laid down under Rule 17(b) and submit enquiry report on the charges, to the competent authority. The competent authority shall thereafter proceed as per rules, and pass appropriate orders.

19. No costs."

8. From the above order of this Court, it could be seen that the order of dismissal was set aside, since the enquiry was conducted in violation of the principles of natural justice and the copies of the documents to which reliance was placed, was

not given to the petitioner. But, according to the learned counsels for the petitioner, even thereafter, only the typed copy of the documents, especially the Telegram and the confession statement of the petitioner, were given to him and that the originals/photocopies of the documents, have not been given to the petitioner.

9. On a perusal of the records, I find that after remand of the matter by this Court, the respondents have taken much efforts in the enquiry proceedings. Out of six witnesses, four died and two retired from service. The whereabouts of some of the retired officials could not be found out due to change of their addresses and with great difficulty, they were found out and enquiry was again conducted and completed on 12.06.2014, after conducting enquiry proceedings on various dates, i.e. 05.11.2012, 06.03.2013, 30.04.2013, etc. The petitioner did not cross-examine any of the prosecution witnesses, though he was permitted to engage a person to assist him. Another enquiry was fixed on 07.05.2014, but the petitioner did not attend the enquiry, though two witnesses appeared, but the enquiry could not be conducted for want of the petitioner's presence. Therefore, the enquiries were fixed on 25.04.2014, 07.05.2014, 14.05.2014, 26.05.2014 and 12.06.2014, for which also, the petitioner had not chosen to appear for most of the hearing dates on the ground that the documents were not provided to him, though the witnesses again and again appeared for the enquiry. But from the records, it is seen that the petitioner was furnished with 65 pages of records and another 9 items of records required by him. It is further to be noted that the petitioner was giving various excuses for not attending the enquiry. Therefore, the petitioner was given final chance to appear for enquiry on 12.06.2014, failing which, he was informed that ex-parte enquiry would be conducted and further action will be taken. Even then, he did not appear for the enquiry, despite the required records were furnished to him and permission was granted to engage a counsel. Hence, final order of dismissal was passed based on the evidence and enquiry records.

10. On a perusal of the materials available on record, it is further seen that inspite of several opportunities afforded to the petitioner and also furnishing of 65 pages of records and 9 items of records required by him, the petitioner has not chosen to appear for the enquiry for most of the hearing dates. Without appearing for the enquiry despite several opportunities having been given to him, the petitioner cannot be heard to say that the documents were not given to him and hence, he could not appear.

11. Thus, it is clear that the respondents have given ample opportunities to the petitioner to participate in the enquiry, and hence, it cannot be said that there is violation of

principles of natural justice. Absolutely, I do not find any infirmity in the impugned order, and hence, I am not inclined to accept the submissions made by the learned counsels for the petitioner.

12. Further, with regard to the prayer seeking for payment of subsistence allowance, it is seen from the counter affidavit filed in W.P.No.12073 of 2014, that, initially, he was paid subsistence allowance till the order of dismissal, dated 26.03.1990. Subsequent to the remand of the matter by this Court in W.P.No.3676 of 2012, by order dated 26.03.2012, he is deemed to be in suspension. There is no provision either in the Fundamental Rules or in the Tamil Nadu Civil Services (Discipline and Appeal) Rules for payment of subsistence allowance in respect of the deemed suspension and that the sanction of the Government is necessary for payment of subsistence allowance in respect of deemed suspension or payment of the same beyond the period of one year of suspension. For these reasons, the prayer seeking payment of subsistence allowance could not be considered.

13. In view of the foregoing discussion and reasons stated thereunder, both the Writ Petitions are dismissed. No costs. The Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS-VI)

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Sub-Assistant Registrar

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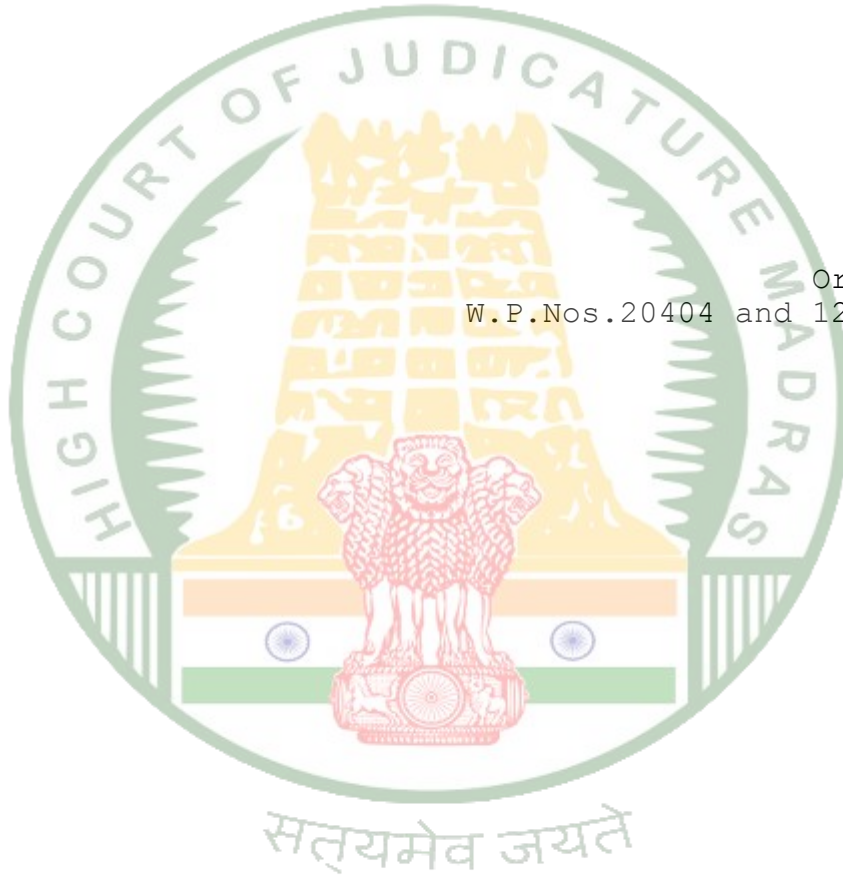
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+1 CC to M/s. D. Nagasaila, Advocate SR 76150

+1 CC to Govt. Pleader, High Court, Madras-104. SR 74826

RSK
sp/20/1



Order in
W.P.Nos.20404 and 12073 of 2014

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