

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition No.27188 of 2004 and
W.P.M.P.No.33084 of 2004

S.Jayanayaki

... Petitioner

Vs.

The District Forest Officer,
Nilgris South Division,
Uthagamandalam, Nilgris.

.... Respondent

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent in Proceedings No.ROC.3134/2002/B1 dated 14.09.2004 and quash the same as illegal, incompetent and without jurisdiction and unconstitutional.

For petitioner : Mr.V.Raghavachari
For Respondent : Mr.M.Santhana Raman,
Additional Government Pleader

O R D E R

Challenging the impugned order of the respondent dated 14.09.2004, the petitioner has come forward with this Writ Petition.

2. The case of the petitioner is that she joined the services of the Forest Department as Steno Typist in the year 1977. Subsequently, her services were regularised by the Tamil Nadu Public Service Commission as well as by the Forest Department. After completion of 10 years in the year 1987, the petitioner was awarded Selection Grade. Thereafter, the petitioner was promoted as Assistant and after completion of 10 years in the post of Assistant, the petitioner made a representation to the respondent for awarding selection grade. After receipt of her representation, the respondent passed a recovery order dated 14.09.2004 wherein it is stated that the respondent has wrongly awarded Selection Grade in the year 1987 instead 1991 on the ground that the petitioner's post of steno-

typist was regularised only in the year 1981. Therefore, the petitioner is entitled to selection grade only from 1981. However, the respondent awarded the selection grade by calculating the date of joining of the petitioner i.e. in the year 1977. Hence, the present Writ Petition.

3. Learned Counsel for the petitioner would submit that though the Selection Grade was awarded in the year 1987 for the petitioner, after 10 years, without any notice and without following the due process of law, the recovery order was passed behind her back which is not sustainable. The learned Counsel would further submit that the issue in question is covered by a decision of the Hon'ble Supreme Court in State of Punjab and others, etc. vs. Rafiq Masih (White Washer) etc. reported in 2015 (5) CTC 455. Hence, he prays for allowing the present Writ Petition.

4. Heard the learned Government Advocate appearing for the respondent.

5. I have considered the submissions made on either side and I have also gone through the typed set of papers filed by the petitioner including the decision of the Hon'ble Supreme Court in State of Punjab and others, etc. vs. Rafiq Masih (White Washer) etc. reported in 2015 (5) CTC 455.

6. In similar circumstances, in the case reported in 2015 (5) CTC 455, the Hon'ble Supreme Court of India formulated guidelines and enumerated circumstances under which order of recovery can be interfered and the Supreme Court also summarised few situations, wherein recoveries by the employers, would be impermissible in law, such as, (i) Recovery from employees belonging to Class-III & IV Service (or Group 'C' & 'D' Service), (ii) Recovery from retired Employees, or Employees who are due to retire within one year of the order of recovery and (iii) Recovery from employees, when the excess payment has been made for a period of excess of five years, before the order of recovery is issued, (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though, he should have rightfully been required to work against an inferior post and (v) In any other case, where the Court arrives at the conclusion that recovery, if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover. Applying the above said principles laid down by the Hon'ble Supreme Court of India in the case on hand, this Court is of the view that the order dated 14.09.2004 of the respondent is liable to be set aside.

7. In the result, the Writ Petition is allowed and the order of the respondent dated 14.09.2004 is set aside. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CO)

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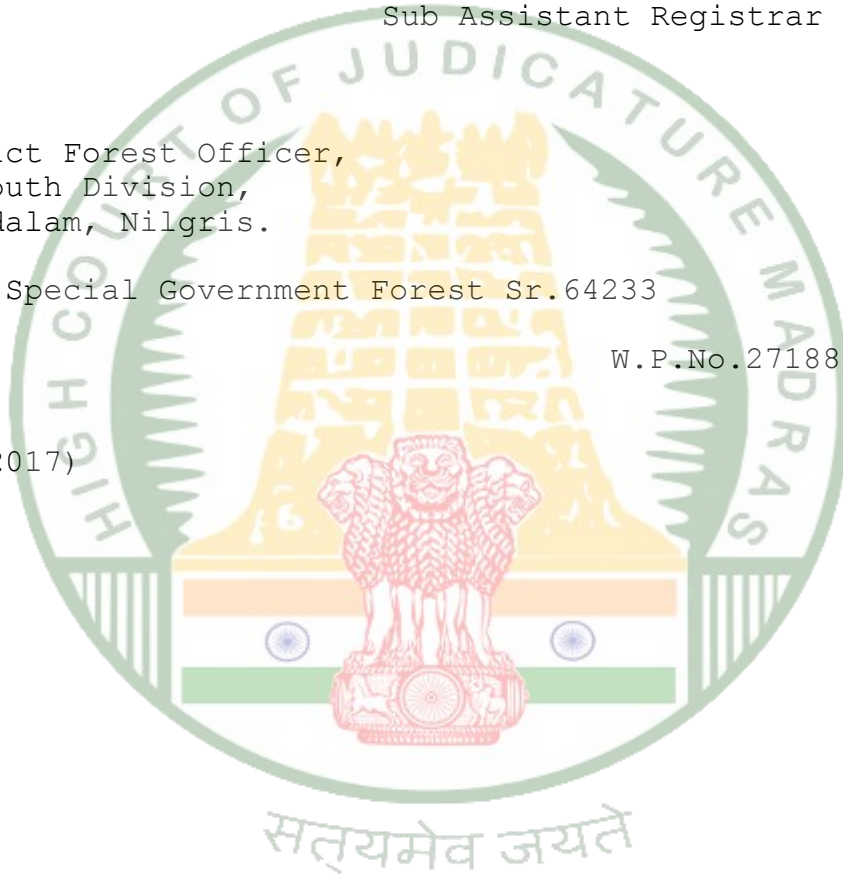
Sub Assistant Registrar

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To
The District Forest Officer,
Nilgris South Division,
Uthagamandalam, Nilgris.

+ 1 cc to Special Government Forest Sr.64233

W.P.No.27188 of 2004

PVS (CO)
EU(13/10/2017)



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