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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2017

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THE HONOURABLE MR.JUSTICE **R.SUBBIAH**

Writ Petition(MD).No.15987 of 2014 and

M.P.(MD).Nos.1 and 2 of 2014

A.Vellaichamy ... Petitioner

Vs

1.The Government of Tamilnadu,
Rep by its Principal Secretary,
Environment and Forest (F.R.9A) Department,
Fort St. George, Secretariat,
Chennai-600 009.

2.The Principal Chief Conservator of Forest,
No.1, Jennis Road,
Panagal Maaligai,
Chennai-600 015.

3.The Managing Director,
Arasu Rubber Corporation,
Nagercoil,
Kanyakumari District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned charge memo issued by the 1st respondent in Letter No.166/FR 9A/2005-06, dated 26.09.2005 and the impugned order passed by the 1st respondent in Letter No.166/FR.1/2005-38, dated 24.09.2013, quash the same and consequently, direct the respondents to allow the petitioner to retire from service and pay the terminal benefits with 18% interest on delayed payment.

For petitioner : Mr.M.Siddarthan
For Respondents : Mr.T.R.Janarthanan
Additional Government Pleader

O R D E R

The present Writ Petition is directed against the impugned charge-memo issued by the first respondent in Letter No.166/FR 9A/2005-06, dated 26.09.2005 and the impugned order passed by the first respondent in Letter No.166/FR.1/2005-38, dated 24.09.2013, to quash the same with consequential direction to the respondents to allow the petitioner to retire from service and pay the terminal benefits with 18% interest on delayed payment.

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2.Heard Mr.M.Siddharthan, learned counsel appearing for the petitioner and Mr.T.R.Janarthanan, learned Additional Government Pleader appearing for the respondents.

3.The petitioner was appointed as Forest Ranger in the Forest Department on 01.11.1973 and after working in various places in the year 1993, he was promoted as Assistant Conservator of Forest, Dindigul Range and thereafter, he was transferred to Keeriparai Rubber Estate as a Divisional Manager, where he served from 01.04.1999 to 02.06.2000 and then, he was promoted as Deputy Conservator of Forest, till the date of reaching the age of superannuation.

4.The learned counsel for the petitioner submitted that the petitioner served in the said Department with unblemished service for a period of 31 years, but unfortunately, one day before the date of his retirement, the Government had placed him under suspension on 29.06.2004 and also passed a retention order retaining him in service on 30.06.2004 and the said suspension order was passed pending enquiry into grave charges. He further submitted that though the petitioner was retained in service, initially no Subsistence Allowance was paid, only after a period of 10 months, he was paid with the Subsistence Allowance. Whileso, a draft charge memo was issued against the petitioner by the first respondent on 26.09.2005 stating that while the petitioner was working as a Divisional Manager in Arasu Rubber Corporation at Keeriparai Rubber Factory, the petitioner along with one Thangamariyan, Forest Ranger, who retired from service and Moni, Formerly Forester committed irregularities in the sale of rubber scraps and misappropriated 76056 Kg of rubber scrap kept at Arasu Rubber Corporation Limited, Keeriparai, prior to May 1999 and thereby caused loss to the tune of Rs.12,52,642/- to the Government. But such a verification is said to have been done only after a period of one month from the date of the petitioner joining the service, during which period, the petitioner could not have exercise any direct control over the Factory. Hence, the petitioner has given his detailed reply on 01.12.2005 and an Enquiry Officer was appointed by the first respondent on 01.03.2007. The Enquiry Officer has not proceeded with the matter for reason that the papers regarding the enquiry was handed over to the Conservator of Forest Research, Chennai. Therefore, a second Enquiry Officer was appointed by the first respondent in G.O.No.89, Environment and Forest (F1) Department, dated 27.07.2010 against the petitioner and one Moni, who was the Forester and Mr.Thangamariyan, who was the Forest Ranger, was allowed to retire from service. Though the charges were framed against the said Thangamariyan, the Government had dropped the charges against him in G.O.(D)No.232, Environment and Forest Department, dated 04.07.2005. So far as the petitioner is concerned, the Enquiry Officer gave his report on 15.02.2012 after a period of 13 years from the date of delinquency and 8 years after he reached the age of superannuation, stating that the charges were not proved against the petitioner. But, unfortunately further explanation was called for by the first

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respondent stating that the first respondent is differing from the charges by letter dated 24.09.2013 that too after a period of 1 ½ years. Hence, challenging the said order dated 24.09.2013, the present Writ Petition has been filed.

5.The learned counsel for the petitioner has relied upon the following judgments, to support his contention.

(i)In the case of ***V.ARULKUMAR V. HOUSING AND URBAN DEVELOPMENT CORPORATION LIMITED (HUDCO), AND OTHERS*** reported in ***2009(3) CTC 388.***

(ii)In the case of ***P.V.MAHADEVAN V. MD.T.N.HOUSING BOARD*** reported in ***(2005) 6 Supreme Court Cases 636.***

6.When the matter was taken up for consideration, the learned counsel for the petitioner submitted that the petitioner joined the Arasu Rubber Corporation Limited, Keeriparai only on 01.04.1999, but, the irregularities committed in the sale of rubber scraps and misappropriation of 76059 Kg of rubber scrap kept at Arasu Rubber Corporation Limited, Keeriparai, had taken place prior to May 1999. Considering all these aspects, the Enquiry Officer submitted his report dated 15.02.2012 that the charges against the petitioner were not proved. Though the Enquiry Officer filed the report that the charges were not proved, the first respondent called for further explanation by letter dated 24.09.2013 stating that the charges are partly proved, without any reasons.

7.In this regard, the learned counsel for the petitioner by inviting the attention of this Court to the report of the Enquiry Officer submitted that in the said report, it has been clearly stated that the charges against the petitioner are not proved. When the Enquiry Officer has held that the charges levelled against the petitioner have not been proved, the respondent as a Disciplinary Authority is duty bound either to accept or to differ with the finding of the Enquiry Officer. In the event of the disagreement with the findings of the Enquiry Officer, the Disciplinary Authority ought to have recorded the disagreement note with the finding of the Enquiry Officer. But in the instant case, without recording such disagreement note, punishment was imposed on the petitioner. The disciplinary authority/first respondent sent a letter dated 24.09.2013 calling for further explanation stating that as if the charges are partly proved. But, actually the Enquiry Report does not say so. But a perusal of the Enquiry Report shows that the charges are not proved, but, it has been stated that the charges are partly proved. Therefore, I am of the opinion that the impugned order dated 24.09.2013, is liable to be quashed.

8.Accordingly, the order of the first respondent in Letter No.166/Fr.1/2005-38, dated 24.09.2013 is quashed and the matter is remitted back to the first respondent and the Disciplinary Authority is directed to issue fresh notice to the petitioner indicating his disagreement with the findings of the Enquiry Officer and calling for an explanation from the petitioner and pass a fresh order. The

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entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

9.With the above direction, the present writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The Government of Tamilnadu,
Rep by its Principal Secretary,
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NS
JS/JC/SAR.3/04.01.2018/4P-4C

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