

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.No.901 of 2018
and C.M.P.No.7877 of 2018

- 1.The District Forest Officer,
Chengalpattu Division,
Kancheepuram.
 - 2.The Conservator of Forest,
Chennai Circle, DMS Complex,
III Floor, Teynampet,
Chennai-600 006.
 - 3.The Additional Principal Chief Conservator of Forests
(Forest Administration),
Office of the Principal Chief Conservator of Forests,
Saidapet, Chennai-600 015.
 - 4.The State of Tamil Nadu
rep.by its Secretary to Government,
Forest Department, Fort St.George,
Chennai-600 009.
- ... Appellants/Respondents
- vs-
- K.Iqbal Mohammed ... Respondent/Petitioner

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.30732 of 2006 dated 08.11.2016.

Prayer in WP.No.30732/2006:Petition filed under Art 226 of the constitution of India praying for issuance of a writ of certiorarified mandamus by calling for the records relating to the proceedings of the proceedings of the 3rd respondent dated 17.06.2005 made in Se.Mu.Anai No.AA1/3796/2004 quash the same and direct the respondents 3rd and 4th to return to the petitioner a sum of Rs.48,605/- which was ordered to be recovered from his pay by the 3rd respondent.

For Appellants :: Mr.Arvind Pandian,
Addl.Advocate General
assisted by
Mr.R.Bala Ramesh,
Spl.GP(Forests)

For Respondent :: Mr.K.Rajasekaran

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The respondent was appointed as Forester under the Appellants / Department on 16.02.1973. Thereafter, he was promoted as Forest Ranger in 2002 and retired from service on 13.11.2005 as Forest Ranger. When he was working as Forester in Tambaram Section of Tambaram Range, a charge memo was issued by the first appellant on 27.08.1998, wherein it was alleged that the respondent has committed neglect of duty by not handing over certain stores and stock taken charge from his predecessor one G.Jeevanantam to his successor one V.Sundararaj and thereby causing pecuniary loss to the Government to the tune of Rs. 23,004/-. The charge memo was served on 22.04.1997, based on which enquiry was conducted and the punishment of stoppage of increment for one year without cumulative effect was imposed upon the respondent. Further, another charge memo for the same mistake alleged to have committed by the respondent, was issued on 27.08.1998. Based on the said charge memo, an order of recovery, dated 02.12.1998 was passed by the first appellant, whereby the first appellant directed the respondent to pay a sum of Rs. 63,004/-. As against the said order, the respondent had filed an appeal before the second appellant on 14.01.1999 and the second appellant, by proceedings dated 03.08.1999 dismissed the said appeal. Thereafter, the respondent had filed an original application in OA.No.697 of 2000 for redressal of his grievances. Finally, the matter culminated in passing of an order by the third appellant, to recover a sum of Rs. 48,605/- instead of Rs.63,004/- from the respondent, which has been challenged by the respondent before this Court in W.P.No.30732 of 2006.

2.Considering the facts and circumstances, this Court held that, on a perusal of the documents, it is found that the stock of sandal wood and red wood which is mentioned in the order impugned in the writ petition, was actually not handed over to the respondent, as the same is evident from the several complaints made by the respondent ie., 04.08.1993, 17.09.1993 and 27.10.1993. Further, it has been held that absolutely there is no discussion or evidence to that effect by the appellants and that aspect has not been taken into account by them. It has also been observed that there is no evidence to state that those stocks were handed over originally to the respondent at the time of the respondent taking charge at Tambaram Office. Holding so, the learned single Judge set aside the order impugned therein and also ordered for refund of a sum of Rs.48,605/-, which was erroneously recovered from the respondent, by order dated 08.11.2016.

3.Challenging the order passed in the writ petition, the present appeal has been filed.

4.Heard the learned counsel on either side and perused the materials available on record.

5.In respect of the charge framed against the respondent with regard to the alleged loss to the Department, the learned single Judge has held that the appellants have failed to appreciate the fact that the respondent could not maintain the stock because of non-handing over of the woods. In respect of recovery of Rs.48,605/-, the learned single Judge has held that the said amount has been erroneously recovered from the respondent. These findings has been rendered on facts and hence we are not inclined to interfere with the same. As per the law laid down by the Hon'ble Supreme Court in the case of State of Punjab and others v. Rafiq Masih (White Washer) etc. in C.A.No.11527 of 2014 dated 18.12.2014, when the employer has made payments mistakenly to the employees belonging to Class-III and Class-IV service, or Group-C or Group-D service, such payments cannot be recovered from the employees as the same is impermissible in law.

6.In view of the reasons stated supra, the writ appeal fails and accordingly the same is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

KM

To

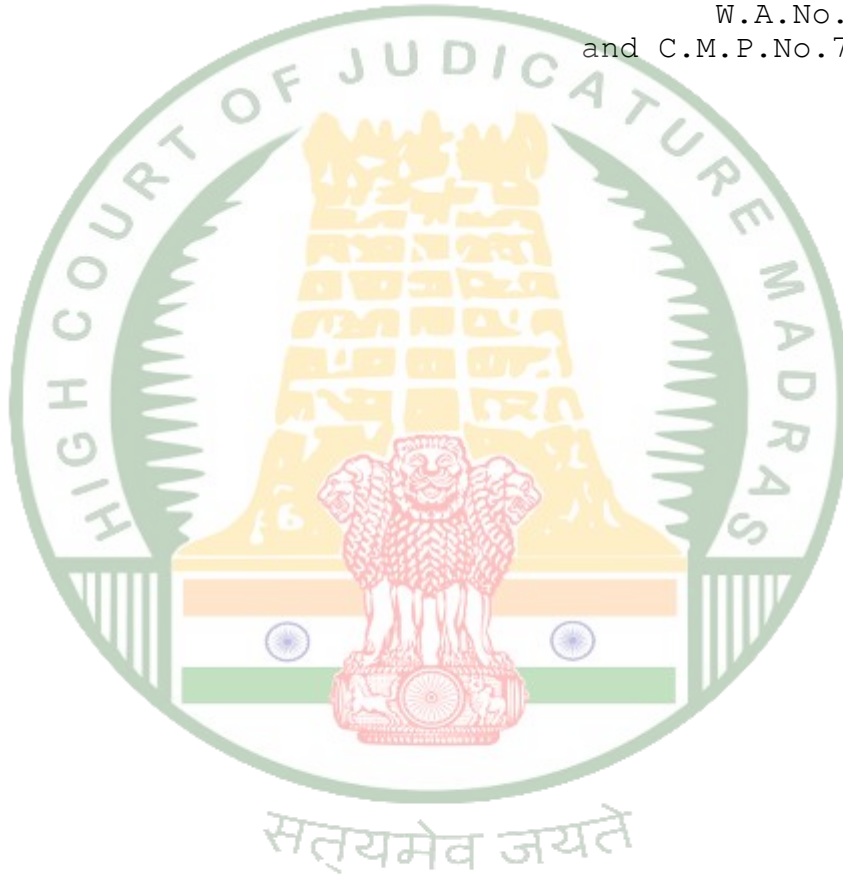
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Chennai-600 009.

+1cc to M/s.K.Rajasekaran, Advocate SR.NO.56504
+1cc to Special Government Pleader SR.NO.55779

SJ(CO)
sm:12.9.2018

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