

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.04.2019
Pronounced on : 30.04.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.9892 of 2012

V.Valaguruvan

..Petitioner

Vs

1.The State of Tamil Nadu
Rep.by its Principal Secretary to Government
Environment and Forest Department
Fort St. George
Chennai - 600 009.

2.The Principal Chief Conservator of Forest,
Panagal Building
Saidapet,
Chennai - 600 015

3.The Conservator of Forests
Villupuram Circle,
Villupuram.

... Respondents

PRAYER: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the 2nd respondent in his proceedings Ref.No.B2/76477/2007 dated 15.07.2010 confirming the order passed by the 3rd respondent in his proceedings Roc.No.7310/06/g dated 31.12.2007 and quash the same and consequentially to direct the respondents to refund a sum of Rs.1,10,785/- recovered from the DCRG to the petitioner forthwith.

For Petitioner : Mr.S.Nambi Arooran

For R1 & R3 : Ms.Thanga Vadhana Balakrishnan
Additional Government Pleader,
Forest.

For R2 : Mr.P.S.Sivashanmuga Sundaram.
Special Government Pleader.

ORDER

This writ petition has been filed in the nature of Writ of

Certiorarified Mandamus, calling for the records relating to the order passed by the 2nd respondent in his proceedings Ref.No.B2/76477/2007 dated 15.07.2010 confirming the order passed by the 3rd respondent in his proceedings Roc.No.7310/06/g dated 31.12.2009 and quash the same and consequentially to direct the respondents to refund a sum of Rs.1,10,785/- recovered from the DCRG to the petitioner forthwith.

2. The writ petitioner, V.Valaguruvan, retired as Deputy Conservator of Forest on superannuation on 31.12.2007 as Divisional Forest Officer, Social Forestry at Villupuram. He was initially, appointed as Junior Assistant on 07.07.1971 in Tamil Nadu Forest Department. His services were governed by the Tamil Nadu Ministerial Service. Since he was also eligible for appointment as Ranger, he was appointed as Ranger on 01.11.1974. He underwent Ranger Training Course at Forest Ranger Training College, Coimbatore from 01.11.1974 to 31.10.1976. He joined duty as Forest Ranger on 03.11.1976. His service, as Ranger were regularized with effect from 03.11.1976. The Conservator of Forest, Vellore Circle in proceedings Roc.No.11005/01 dated 20.10.2003, re-fixed his scale of pay taking into account the service rendered by him as Trainee in the cadre of Ranger from 01.11.1974. He was awarded selection grade on completion of 10 years with effect from 01.11.1974 and special grade with effect from 03.11.1986.

3. The third respondent, the Conservator of Forests, Villupuram Circle by proceedings dated 31.12.2007 revised the scale of pay stating that an objection had been made in the audit by the Principal Accountant General by order dated 07.12.2007, stating that the grant of fixation of pay in the cadre of Ranger and selection grade and special grade awarded by the Conservator of Forest, Vellore Circle on 20.10.2003 was not in order. The third respondent ordered recovery of Rs.1,10,785/- being alleged excess of pay made to the petitioner between 03.11.1984 and 19.10.2006. This is the order impugned before this Court.

4. It was stated that the petitioner was not issued with any notice. He was also not heard. The order was passed on the date of retirement on superannuation on 31.12.2007. Since, the entire pensionary benefits would be withheld, the petitioner received the retirement benefits with deduction of a sum of Rs.1,10,785/- under protest. He then filed an appeal before the second respondent, the Principal Chief Conservator of Forest, Chennai, on 17.12.2007. The second respondent rejected the appeal by proceedings dated 15.07.2010. The petitioner has therefore approached this Court by way of this Writ of Certiorarified Mandamus to call for the records relating to the order of second respondent dated 15.07.2010, confirming the order of the third

respondent dated 31.12.2007 and quash the same and direct the respondents to refund a sum of Rs.1,10,785/- recovered through DCRG from the petitioner.

5. The third respondent had filed a counter also on behalf of the first and second respondents. It was stated that the petitioner was initially selected by the Tamil Nadu Public Service Commission and appointed as Junior Assistant in the Tamil Nadu Ministerial Service with effect from 07.07.1971. He joined the Southern Forestry Rangers College, Coimbatore, on 01.11.1974 and joined as Forest Ranger Officer in District Forest Office, Madurai on 03.11.1976 for practical training. He was regularized in the category of Ranger from 03.11.1976. He was awarded selection grade with effect from 03.11.1986 and special grade with effect from 03.11.1996. Subsequently, on the basis of the instructions issued in Government Letter No.3065/FR.2/99-5, Environment & Forests Department dated 05.05.2000 to the effect that the period of Rangers training undergone in the Forest college by the Foresters can also be taken into account for the purpose of probation, increment, selection grade and seniority, the award of selection grade and special grade was revised with effect from 01.11.1984 to 01.11.1994, taking into account the date of joining in the Forest College on 01.11.1974.

6. It was stated that the Accountant General took up an Audit of the Accounts of the year 2007-08 in the office of the Conservator of Forest, Villupuram District and pointed out that the petitioner was drawing pay in the post of Assistant only from the period of training and from 01.11.1974, which cannot be taken into account for computation of service for award of selection and special grades and therefore requested for re-fixing of pay and recovery of excess payment of Rs.91,972 plus allowances. It was stated that a show cause notice was issued to the petitioner on 05.12.2007. The petitioner had given a reply stating that he was to retire on superannuation on 31.12.2007 and granted consent with objections for deduction of the excess amount from his pensionary benefits. Sanction was also granted by the Accountant General after deducting the excess pay allowances.

7. It was stated that the petitioner filed an appeal to the Government through the Conservator of Forests and the Principal Chief Conservator of Forest for regularizing his service from 01.11.1974. The first respondent rejected the proposals of the Principal Chief Conservator of Forest and issued a clarification by letter dated 07.05.2010, that members of the Tamil Nadu Ministerial Service selected as Foresters can be appointed as Rangers only after completion of Rangers Training Course and that the period of preliminary training and Rangers Training

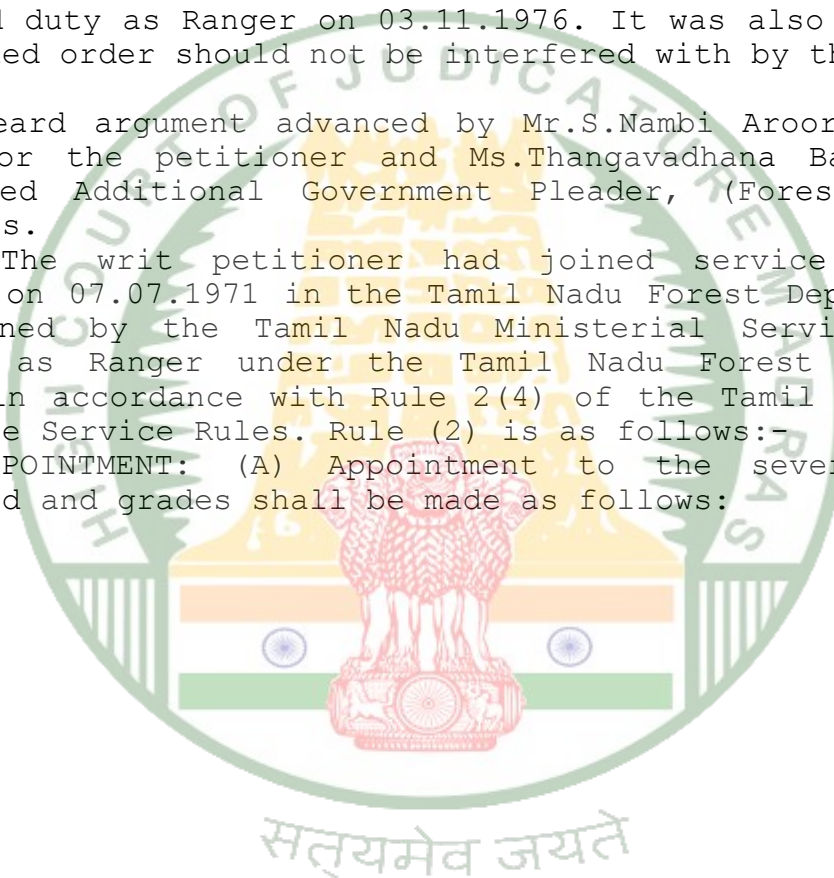
Course before joining as Ranger cannot be taken for the purpose of probation, increment, selection grade, seniority etc. Therefore, the Principal Chief Conservator of Forests also rejected the request of the petitioner.

8. In the counter, it had been further stated that the grant of selection grade and special grade with effect from 01.11.1984 and 01.11.1994 were incorrect. It was stated that the averments of the petitioner that he was not given notice and was not heard cannot be accepted. It was stated that a show cause notice was issued and reply was received. It was stated that the petitioner had completed the Ranger Course of Training only on 31.10.1976 and joined duty as Ranger on 03.11.1976. It was also stated that the impugned order should not be interfered with by this Court.

9. Heard argument advanced by Mr.S.Nambi Arooran, learned counsel for the petitioner and Ms.Thangavadhana Balakrishnan, the learned Additional Government Pleader, (Forest) for the respondents.

10. The writ petitioner had joined service as Junior Assistant on 07.07.1971 in the Tamil Nadu Forest Department. He was governed by the Tamil Nadu Ministerial Service. He was appointed as Ranger under the Tamil Nadu Forest Subordinate Service, in accordance with Rule 2(4) of the Tamil Nadu Forest Subordinate Service Rules. Rule (2) is as follows:-

"2.APPOINTMENT: (A) Appointment to the several classes categorized and grades shall be made as follows:



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Class	Category	Method
I	Ranger	1. Appointment of Forest Apprentices in the manner prescribed in rule 9 (Direct recruitment) (or) 2. Omitted (Trained Foresters 10%) (G.O.Ms.No.145, Environment and Forest, dt.10.05.1995) 3. Promotion from among the category of those who have completed the Foresters course of training in the Tamil Nadu Forestry College (or) 4. Appointment by transfer from among the member of the Tamil Nadu Ministerial Service in the Forest Department in the manner prescribed in rule 10. Provided that 45% of the vacancy arising in the category of Rangers shall be filled by direct recruitment, 54% by promotion among the Foresters who have completed the Foresters Course of training and 1% by transfer from among the members of the Tamil Nadu Ministerial Service in Forest Department. (G.O.Ms.No.145, Environment and Forest, dt.10.05.1995 (B2/40434/90)

The petitioner had been appointed under Sub-Clause(4) extracted above by transfer from the Tamil Nadu Ministerial Service.

11. Rule 10 deals with recruitment by transfer of the members of the Ministerial Service in the Forest department as Rangers. Rule 10(e) & 10(h) are as follows:

“(e) During the period of his preliminary training and; his training at the Forest College, he will draw the pay admissible to him as a member of the Madras Ministerial Service plus a Deputation allowance of 20% his grade pay or Rs.300/- per mensem whichever is more.

(h) (i) If such person has completed his training at the college satisfactorily he shall forthwith be appointed as Ranger.

(ii).....”

(iii).....”

12. The petitioner joined the Southern Forest Rangers

College, Coimbatore, on 01.11.1974. On successful completion of the Rangers Training Course, he joined as Forest Range Officer in the District Forest Office, Madurai, on 03.11.1976 for practical training. He was awarded selection grade with effect from 03.11.1986 and special grade with effect from 03.11.1996. The Environment and Forest Department, had issued Letter No.3065/FR.2/99-5, dated 05.05.2000, with respect to Forest Ranger and counting the period of Rangers Training Course in Forest College for service, seniority and pay in the Ranger Cadre, necessary instructions were issued as follows:

"I am directed to invite attention to the reference cited and to state that as per the list of Authorised Courses of Instruction or Training issued in accordance with instruction I under F.R.9(6)(b) (Vide Appendix I, Annexure I of F.R.9(6)(b)), the period of preliminary training in Forest College, Coimbatore undergone by the subordinates of the Forest Department can be treated as duty and such period can be taken into account for probation etc., In view of the above provision in the Fundamental Rule. I am to inform that, if the Rangers Training Course undergone by the Foresters is covered under the ambit of preliminary Training mentioned in the FR., then the period of the Rangers Training undergone by the Foresters deputed for such training can also be taken into account for the purpose of probation, increment, selection grade and seniority in the Rangers Cadre."

13. It is stated by the respondents that there was an Audit of the Accounts for the year 2007-08 in the Office of the Conservator of Forest, Villupuram Circle by the Accountant General. It was then pointed out that the petitioner was drawing pay in the post of Assistant during the period of training from 01.11.1974, and consequently, that period cannot be taken into account for computation of service for award of selection and special grades. It was further requested to refix the pay of the petitioner and recover the excess payment made. The petitioner was then issued with the show cause notice to remit the excess payment of Rs.1,07,912/- paid towards pay and allowances from 01.11.1984 to 19.10.2006. The petitioner had given a reply on 05.12.2007 stating that since he was due to retire on superannuation on 31.12.2007, with protest, the amount may be deducted from his pensionary benefits. The amount was also deducted from the pensionary benefits.

14. The petitioner then filed an appeal to the Government

through the Conservator of Forests and the Principal Chief Conservator of Forest for regularizing his service from 01.11.1974, the date on which he joined duty in Southern Forest Rangers College, Coimbatore, for undergoing training during the year 1974-1976. However, the appeal of the petitioner was rejected by the first respondent by order dated 07.05.2010. This was communicated to the petitioner by the second respondent, by letter dated 15.07.2010. It was stated that according to Rule 10 (h)(i) a person who has been selected from Tamil Nadu Ministerial Service can be appointed as Ranger only after completion of training at the college satisfactorily. It is to be noted that the petitioner by proceedings dated 13.08.2003, drawing reference to the letter extracted above dated 05.05.2000, of the Environment & Forests Department had granted selection grade to the petitioner with effect from 01.11.1984 and special grade from 01.11.1994. The petitioner had been serving the respondents department continuously. The decision to deduct the alleged excess of pay was communicated to the petitioner only on 05.12.2007, when he was to retire on superannuation on 31.12.2007. The final order was communicated to him on the very day he was to retire. It was under these circumstances that he had accepted for deduction of the amount, however, with protest.

15. In (2015) 4 SCC 334, State of Punjab and Others V. Rafiq Masih (White Washer) and Others, the Honourable Supreme Court was dealing with the right of State as employer to recover amount paid in excess to employees without any fault of the employees. In this connection, the Honourable Supreme Court examined the issue of balancing the suffering of the employees with the right of the employer in the following manner:

"8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

9. The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality can be found in Articles 14 to 18 contained in Part III of the Constitution of India, dealing with "fundamental rights". These articles of the Constitution, besides assuring equality before the law and equal protection of the laws, also disallow discrimination with the object of achieving equality, in matters of employment; abolish untouchability, to upgrade the social status of an ostracised section of the society; and extinguish titles, to scale down the status of a section of the society, with such appellations. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39-A, 43 and 46 contained in Part IV of the Constitution of India, dealing with the "directive principles of State policy". These articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice-social, economic and political, by inter alia minimising monetary inequalities, and by securing the right to adequate means of livelihood, and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections.

10. In view of the aforesaid constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of

the mandate contained in Article 14 of the Constitution of India.”

[Emphasis supplied]

The Honourable Supreme Court thereafter examined various precedents on this matter.

16. In paragraph 12. It was held as follows:

“12. Reference may first of all be made to the decision in Syed Abdul Qadir v. State of Bihar [Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744], wherein this Court recorded the following observation in para 58: (SCC p. 491)

“58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana [Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248] , Shyam Babu Verma v. Union of India [Shyam Babu Verma v. Union of India, (1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121] , Union of India v. M. Bhaskar [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] , V. Gangaram v. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652] , B.J. Akkara v. Govt. of India [B.J. Akkara v. Govt. of India, (2006) 11 SCC 709 : (2007) 1 SCC (L&S) 529] , Purshottam Lal Das v. State of Bihar [(2006) 11 SCC 492 : (2007) 1 SCC (L&S) 508] , Punjab National Bank v. Manjeet Singh [(2006) 8 SCC 647 : (2007) 1 SCC (L&S) 16] and Bihar SEB v. Bijay Bhadur [(2000) 10 SCC 99 : 2000 SCC (L&S) 394] .” [Emphasis supplied]

17. In paragraph 14, it was held as follows:

“14. In this context, reference may also be made to the decision rendered by this Court in Shyam Babu Verma v. Union of India [Shyam Babu Verma v. Union of India, (1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121] , wherein this

Court observed as under: (SCC pp. 525-26, para 11)

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. 1-1-1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from 1-1-1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

It is apparent, that in Shyam Babu Verma case [Shyam Babu Verma v. Union of India, (1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], the higher pay scale commenced to be paid erroneously in 1973. The same was sought to be recovered in 1984 i.e. after a period of 11 years. In the aforesaid circumstances, this Court felt that the recovery after several years of the implementation of the pay scale would not be just and proper. We therefore hereby hold, recovery of excess payments discovered after five years would be iniquitous and arbitrary, and as such, violative of Article 14 of the Constitution of India."

(emphasis supplied)

18. In paragraph 15, it was held as follows:

"15. Examining a similar proposition, this Court in B.J. Akkara v. Govt. of India [B.J. Akkara v. Govt. of India, (2006) 11 SCC 709 : (2007) 1 SCC (L&S) 529] observed as under: (SCC pp. 728-29, para 28)

"28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it,

genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery."

A perusal of the aforesaid observations made by this Court in B.J. Akkara case [B.J. Akkara v. Govt. of India, (2006) 11 SCC 709 : (2007) 1 SCC (L&S) 529] reveals a reiteration of the legal position recorded in the earlier judgments rendered by this Court, inasmuch as, it was again affirmed, that the right to recover would be sustainable so long as the same was not iniquitous or arbitrary. In the observation extracted above, this Court also recorded, that recovery from the employees in lower rung of service, would result in extreme hardship to them. The apparent explanation for the aforesaid conclusion is, that the employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer. We are therefore satisfied in concluding, that such recovery from employees belonging to the lower rungs (i.e. Class III and Class IV-sometimes denoted as Group C and Group D) of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution of India."

(Emphasis supplied)

19. In paragraph 16, it was held as follows:

"16. This Court in Syed Abdul Qadir v. State of Bihar [Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] held as follows: (SCC pp. 491-92, para 59)

"59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. The learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made." Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in Syed Abdul Qadir case [Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] , that recovery of excess payments, made from the employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of

retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year from the date of his retirement on superannuation." [Emphasis supplied]

20. In paragraph 17, it was held as follows:

"17. Last of all, reference may be made to the decision in Sahib Ram v. Union of India [Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248] wherein it was concluded as under: (SCC pp. 19-20, paras 4-5)

"4. Mr Prem Malhotra, learned counsel for the appellant, contended that the previous scale of Rs 220-550 to which the appellant was entitled became Rs 700-1600 since the appellant had been granted that scale of pay in relaxation of the educational qualification. The High Court was, therefore, not right in dismissing the writ petition. We do not find any force in this contention. It is seen that the Government in consultation with the University Grants Commission had revised the pay scale of a Librarian working in the colleges to Rs 700-1600 but they insisted upon the minimum educational qualification of first or second class MA, MSc, MCom plus a first or second class BLib Science or a Diploma in Library Science. The relaxation given was only as regards obtaining first or second class in the prescribed educational qualification but not relaxation in the educational qualification itself.

5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal

work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

It would be pertinent to mention, that Librarians were equated with Lecturers, for the grant of the pay scale of Rs 700-1600. The above pay parity would extend to Librarians, subject to the condition that they possessed the prescribed minimum educational qualification (first or second class MA, MSc, MCom plus a first or second class BLib Science or a diploma in Library Science, the degree of MLib Science being a preferential qualification). For those Librarians appointed prior to 3-12-1972, the educational qualifications were relaxed. In Sahib Ram case [Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248] , a mistake was committed by wrongly extending to the appellants the revised pay scale, by relaxing the prescribed educational qualifications, even though the appellants concerned were ineligible for the same. The appellants concerned were held not eligible for the higher scale, by applying the principle of "equal pay for equal work". This Court, in the above circumstances, did not allow the recovery of the excess payment. This was apparently done because this Court felt that the employees were entitled to wages, for the post against which they had discharged their duties. In the above view of the matter, we are of the opinion, that it would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post."

21. Finally, it was held the following directions were given in paragraph 18:

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in 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.

(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.

It is seen that clause-2 speaks about recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

22. The above judgment had also been followed by another learned Single Judge of this Court in W.P.No.33278 of 2015, C.Gopal Vs. The Additional Treasury Officer, dated 19.09.2017, in which also it had been held that a impugned order recovering pay is liable to be quashed.

23. In the present case, it is seen that the petitioner had not committed any act of fraud or had not invited the order of fixing his pay. The recovery was ordered in the very last month and last date that which he was to retire. The ratio laid down in Judgment of the Honourable Supreme Court would directly apply.

24. In view of the above reasons, I have no hesitation to hold that the impugned orders have to be interfered with. Accordingly, the impugned orders are set aside and the writ petition is allowed. No costs. The respondents are directed to refund a sum of Rs.1,10,785/- recovered from the DCRG to the petitioner on or before 31.08.2019.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to Government
Environment and Forest Department
Fort St. George
Chennai - 600 009.

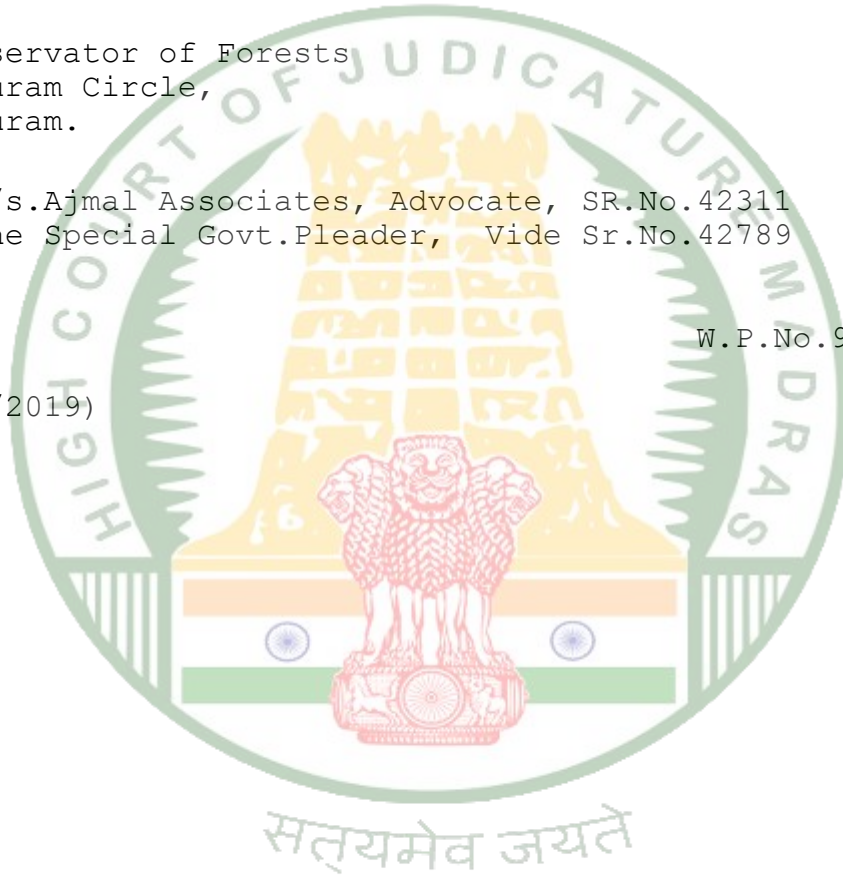
2.The Principal Chief Conservator of Forest,
Panagal Building
Saidapet,
Chennai - 600 015

3.The Conservator of Forests
Villupuram Circle,
Villupuram.

+lcc to M/s.Ajmal Associates, Advocate, SR.No.42311
+lcc to the Special Govt.Pleader, Vide Sr.No.42789

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