

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NOS.5848, 11690 AND 16583 OF 2007

In W.P.No.5848 of 2007

1. E.Thasiyan (Deceased)
2. T.Orlanda
3. T.Lesslie Subin
4. T.Lesslie Bibin

[P2 to P4 - substituted as legal representatives in the place of the deceased petitioner as per order dated 11.11.2014 by DHPJ in MP.No.1 of 2014 in WP.No.5848 of 2007]

... Petitioners

Vs.

1. The Secretary to the Government of TamilNadu, Environment and Forests Department, Fort St.George, Chennai - 600 009.
2. The Principal Chief Conservator of Forests, No.1, Jennis Road, Panagal Building, Saidapet, Chennai 600 015.
3. The District Forest Officer, Social Forestry Range, Perumalpuram, Tirunelveli - 7.

... Respondents

Prayer in W.P.No.5848 of 2007:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified Mandamus to direct the respondents herein to take actions in consequence of the orders of stay and the several petitions the applicant has submitted as narrated earlier and to pay the salaries for the period of wait (covered under the orders of stay made in M.A.No.3650 of 1999 in O.A.Diary No.9367 of 1999 and in O.A.o.6502 of 2000 dated 08.07.1999 and 05.09.2000 respectively of this Tribunal, staying the orders of the first and second respondents from 11.05.1999 to 28.03.2001 and secondly to pay duty salaries for the period from 01.01.1992 to 06.08.1992 and

thirdly to pay medical leave salaries from 07.08.1992 to 21.01.1993 and fourthly to refund the illegal deductions effected for 22 months from 01.08.1995 to 31.05.1997 of total Rs.18150/- and to order interests as to all the above delayed payments.

In W.P.No.11690 of 2007

1.E.Thasiyan (Deceased)

2.T.Orlanda

3.T.Lesslie Subin

4.T.Lesslie Bibin

[P2 to P4 - substituted as legal representatives in the place of the deceased petitioner as per order dated 11.11.2014 by DHPJ in MP.No.1 of 2014 in WP.No.11690 of 2007]

... Petitioners

Vs.

1. The Chief Conservator of Forests,
Pangal Building,
Saidapet, Chennai - 600 015.

2. The Conservator of Forests,
Thirunelveli Circle,
Thirunelveli - 7.

3. The Divisional Forest Officer,
Social Forestry Division,
Thirunelveli.

4. The District Forest of Force,
Kanniyakumari Division,
Nagercoil.

[R4 - suomotu impleaded as per order dated 17.12.2014 by DHPJ in W.P.Nos.16583 and 11690 of 2007]

... Respondents

Prayer in W.P.No.11690 of 2007:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified Mandamus to call for the records of the respondents especially the second

respondent relating to the impugned recovery order made in Proc.No.E2/3420/2002/3 dated 02.07.2002 and quash the same as null and void, illegal and invalid and consequently direct the second and third respondents to refund to the applicant the amount recovered from his salary with other benefits entitled to by him.

In W.P.No.16583 of 2007

1.E.Thasiyan (Deceased)

2.T.Orlanda

3.T.Lesslie Subin

4.T.Lesslie Bibin

[P2 to P4 - substituted as legal representatives in the place of the deceased petitioner as per order dated 12.11.2014 by DHPJ in MP.No.1 of 2011 in WP.No.16583 of 2007]

... Petitioners

Vs.

1. The Principal Chief Conservator of Forests,
No.1, Jennis Road, Panagal Building,
Saidapet, Chennai 600 015.

2. The Conservator of Forests,
Tirunelveli.

3. The District Forest Officer,
Social Forestry Range,
Perumalpuram, Tirunelveli - 7.

[R3 - suomotu impleaded as per order dated 17.12.2014 by DHPJ in W.P.Nos.16583 of 2007]

... Respondents

Prayer in W.P.No.16583 of 2007:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus to call for the records in proceedings no.Che.Mu.Ka.No.T-2/43032/95 dated 20.04.2003 passed by the first respondent and to quash the same.

For Petitioners
In all petitions : Mr.A.Amal Raj

For Respondents
In all petitions : Mr.S.Prabhu
Additional Government Pleader
[Forest]

COMMON ORDER

The petitioner was appointed as Forest Ranger in the respondent Department. While he was employed under Arasu Rubber Corporation, Kodayar Division, Kanyakumari District, he filed an Original Application in OA.No.6300 of 2002 before the Tamil Nadu State Administrative Tribunal, Chennai, for payment of salary for the period he was put under compulsory wait. He also filed another Original Application in O.A.No.585 of 2002 to quash the impugned recovery order passed by the second respondent for the expenditure incurred by him in raising the seedlings and planting them at several instances to the tune of Rs.1,13,938/- vide proceedings No.E2/3420/2002/3 dated 02.07.2002. In O.A.No.3309 of 2003, the petitioner has challenged the impugned order of withholding of increment by one year and to recover a sum of Rs.31,200/- in 31 instalments towards the loss caused by the petitioner in cutting and removing the trees illegally.

2. On abolition of Tribunal, all the Original Applications have been transferred from the file of Tamil Nadu Administrative Tribunal and re-numbered as W.P.Nos.5848, 11690 and 16583 of 2007 respectively.

3. It is submitted by the learned counsel for the petitioner that the petitioner has attained the age of superannuation and he was permitted to retire from service. He received a part of terminal benefits and died on 15.11.2019. The petitioner's wife filed W.P.No.11690 of 2007 for settlement of pensionary benefits. Thereafter, the legal heirs of the petitioner are impleaded as parties.

4. This Court by an order dated 17.12.2014 directed the respondents to settle pensionary benefits within a period of six weeks. The learned Special Government Pleader has produced a letter dated 09.01.2020 of the District Forest Officer & Wildlife Warden, Kanniyakumari Division, Nagercoil, wherein, the respondents have settled the amount, in compliance with the direction of this Court, as follows:

Sl .N o.	Details	Amount	Amount settlement date
1.	Arrears pay	Rs.163572/-	28.09.2005
2.	Gratuity to be paid as per Accountant General Lr.No.P/32/2/132119/57/PPO No.D3211957 dated 02.03.2015	Rs.283424/-	
	As per District Forest Officer Proc.No.2501/2004/E1 dated 13.04.2015, amount of recoveries related to charge sheets to be made	Rs.145138/-	
	Balance amount paid to the legal heir Tmt.Orlando by means of cheque	Rs.138286/-	02.05.2015
3.	Encashment of leave	Rs.218480/-	08.06.2015

5. From the letter of the District Forest Officer and Wildlife Warden, Kanyakumari Division, Nagercoil, dated 09.01.2020, it is seen that the respondents have taken a decision to write off the amount of Rs.76,054/- since the amount could not be recovered as all pensionary benefits had already been settled.

6. Now that all the three writ petitions are taken up together for final disposal.

7. Insofar as W.P.No.5848 of 2007 (O.A.No.6300 of 2002) is concerned, the petitioner seeks salary for the compulsory wait period between 1995 and 1997. In fact, the petitioner was permitted to retire from service on attaining the age of superannuation and these amount could have been settled. Since the petitioner is no more, at this distance of time, the calculation cannot be made and this issue cannot be decided in the absence of the petitioner. Accordingly, W.P.No.5848 of 2007 is disposed of with the above observation.

8. Insofar as W.P.No.11690 of 2007 (O.A.No.5851 of 2002) is concerned, a charge memo was issued for the excess expenditure incurred by the petitioner in planting and raising seedlings than the amount which was sanctioned by the Government

and when the accounts were sought for, it was found that the remaining quantity of 44,454 numbers of seedlings were not found in the records. It is relevant to state that the charge memo was issued under rule 17(a) of the Tamil Nadu Civil Services (D&A) Rules. The petitioner was permitted to peruse all the records and submit his explanation. From the perusal of the explanation, it is seen that the petitioner has questioned the irregularities being committed by co-employees, and the procedure adopted in issuing the charge memo. It is not stated that he had not indulged in such misconduct. Even though, it is stated that charge memo was mala fide, I do not find any material in the explanation that the contention of the petitioner is correct. After considering all the aspects, the disciplinary authority has ordered recovery for a sum of Rs. 1,13,938/-. Therefore, I do not find any irregularity or illegality in the order passed by the respondent - Conservator of Forests, Tirunelveli Circle, Tirunelveli and accordingly, the same is confirmed.

9. Insofar as W.P.No.16583 of 2007 (OA.No.3309 of 2003) is concerned, there are three charges framed against the petitioner. The first two charges are pertaining to taking bribe from the third party. The Enquiry Officer himself has held that the charges were not proved. The third charge is that the petitioner is conspired with the neighboring estate owner and cut down the trees to pave a passage through forest land to his estate. The Enquiry Officer has held the charge as proved on the basis of the letter issued by the Conservator of Forests. The charge memo was issued on 27.10.1997 for an incident taken place in the year 1999. At the outset, the delay in issuing the charge memo after seven years by itself vitiates the entire proceedings. Secondly, the enquiry officer has held the charge as proved based on the letter issued by the Conservator of Forests. Surprisingly, the author of the document had not deposed as a witness. The allegation that trees were cut down and removed for widening the passage is also not proved by letting evidence through witnesses. There is no answer as to what happened to the trees that were fell down. There is also no evidence or direct witness to speak about cutting of the trees. In the absence of any material evidence to prove that there was actually cutting of trees and passage was created only after 1990, the finding of the enquiry officer is perverse. In the considered opinion of this Court, the punishment imposed on the basis of the recommendation of the enquiry officer is not sustainable and accordingly, the impugned order in Proceedings No.Che.Mu.Ka.No.T-2/43032/95 dated 20.04.2003 passed by the first respondent is set aside.

10. Be that as it may, as per the direction of this Court in W.P.No.11690 of 2007 dated 17.12.2014, pensionary benefits were settled to the petitioner and his wife, while they were

alive. The petitioner has not come out with a clear statement as to what is the amount still due. As per the letter dated 09.01.2020 of the District Forest Officer & Wildlife Warden, the balance amount of Rs.76,054/- is yet to be recovered from the deceased / petitioner. In view of the order above passed by this Court W.P.No.11690 of 2007 (O.A.No.5851 of 2002) the recovery, if at all made from the petitioner's terminal benefits, they need not be paid to the petitioner or his legal heirs. Be that as it may, now that the respondents have taken a conscious decision to write off the amount of Rs.76,054/-, since the amount could not be recovered as all pensionary benefits had already been settled. Further, in view of the letter dated 09.01.2020, there cannot be any recovery from the petitioner or from his legal heirs.

In fine, all the writ petitions are disposed of with the above observation and direction. No costs.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

bri

To

1. The Secretary to the Government of TamilNadu, Environment and Forests Department, Fort St.George, Chennai - 600 009.
2. The Principal Chief Conservator of Forests, No.1, Jennis Road, Panagal Building, Saidapet, Chennai 600 015.
3. The District Forest Officer, Social Forestry Range, Perumalpuram, Tirunelveli - 7.
4. The Chief Conservator of Forests, Pangal Building, Saidapet, Chennai - 600 015.
5. The Conservator of Forests, Thirunelveli Circle, Thirunelveli - 7.

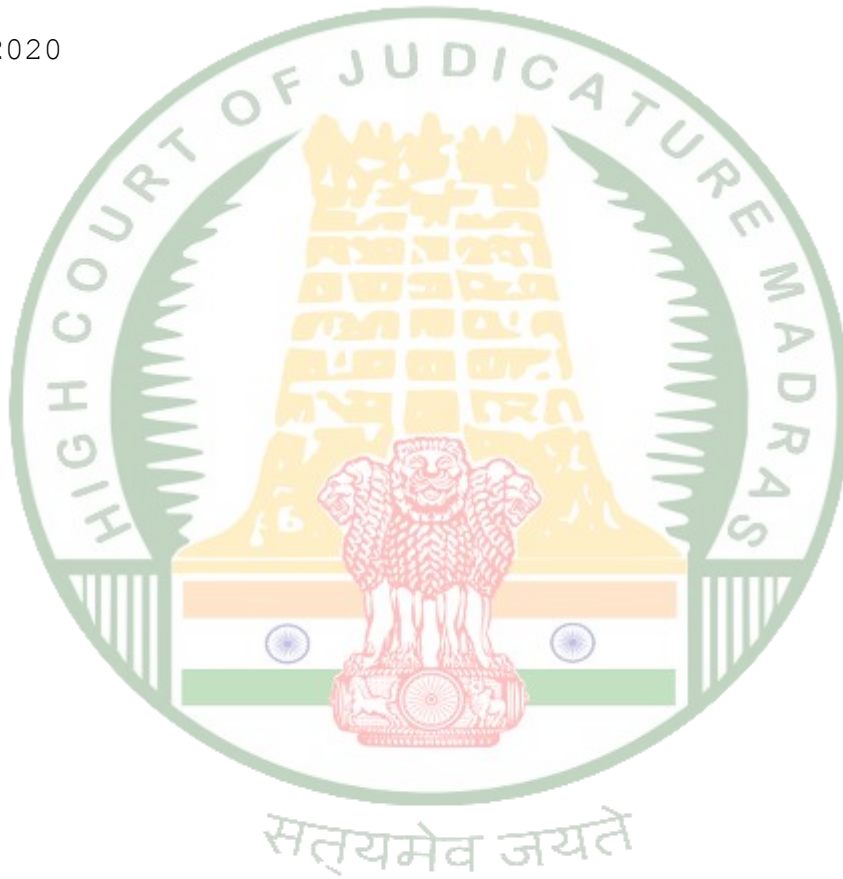
6. The District Forest of Force,
Kanniyakumari Division,
Nagercoil.

7. The Divisional Forest Officer,
Social Forestry Division,
Thirunelveli.

+1cc to Mr.A.Amal Raj, Advocate, S.R.No.4090

W.P.Nos.5848, 11690 and 16583 of 2007

NR(CO)
CS/20/07/2020



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