

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.24686 of 2019
and
WMP No.24349 of 2019

D.Mariappan

... Petitioner

.Vs.

The Additional Principal Chief Conservator of
Forest Cum Chief Conservator of Forest,
Salem Region,
Salem.

... Respondent

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to proceedings of the respondent made in order dated 17.06.2019 made in Na.Ka.No.2881/2019/B1 quash the same.

For Petitioner : Mr.M.Devaraj

For Respondent : Mr.M.Elumalai
Government Advocate

O R D E R

This Writ Petition has been filed challenging the impugned proceedings of the respondent dated 17.06.2019.

2.The case of the petitioner is that he joined in the Forest department as Forester and he subsequently got promoted as a Forest Ranger. A criminal case came to be registered against the petitioner and others and they were convicted and sentenced by the trial Court. As against the same, a Criminal Appeal is pending before this Court.

3.The respondent issued a Show Cause notice to the petitioner by calling upon the petitioner to show cause as to why the petitioner should not be dismissed from service in view of the conviction before the criminal Court. The respondent invoked rule 17 C(i)(1) of the Tamil Nadu Civil Services (Discipline and Appeal) rules. The petitioner gave his explanation for the said Show Cause Notice. The respondent by his order dated 9.10.2013, imposed a punishment of removal from service.

4.The petitioner challenged the order of removal passed by the respondent by filing W.P.No.1845 of 2014. This Writ Petition was pending from the year 2014. In the meantime, the petitioner and others filed a Mercy Petition before the Government and the Principal Secretary to the Government by virtue of G.O.Ms.No.25, dated 19.03.2018, was pleased to dispose of the Mercy Petition as follows:

"13.The Government, after a detailed deliberation, has decided to dispose the mercy petitions preferred by the five official mentioned in para 12(a) above by invoking rule 36(1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, in which Government is empowered to take revision and keeping in mind the mercy petitions preferred by the individuals, hereby-

(i) cancel the order in which the punishment of removal from services imposed in the proceedings fourth, fifth sixth, seventh and ninth read above on Tvl.R.Devarajan, N.Thangavelu, R.Krishnamurthy, S.Ramasamy and D.Mariappan all then FROs and these five individuals shall be deemed to have been placed under suspension on and from the date of order of removal from service and the disciplinary proceedings shall be proceeded under rule 17(c) (i) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

(ii) Considering the special circumstances of the case, subsistence allowance to the five individuals referred at para 12(a) above, shall be paid from the date of issue of this order, since the cancellation of the original order of removal from service itself is a benevolent gesture to the individuals. The Principle Chief Conservator of Forests in hereby directed to workout the quantum of subsistence allowance eligible to the above said five individuals.

14.This order is issued as special case, in order to set right the differential treatment meted out to the official involved in this issue and therefore this order should not be taken as a precedent either for any of the present pending cases of any of the cases that may emerge in future".

5.The Writ Petition filed by the petitioner challenging the order of removal came up for final hearing on 19.11.2018. Unfortunately, no one brought to the notice of

this Court the orders passed in the Mercy Petition. This Court merely dealt with the removal order passed by the 1st respondent and did not find any merits and therefore, the Writ Petition was dismissed.

6. Pursuant to the dismissal of the Writ Petition, the respondent stopped paying the subsistence allowance to the petitioner. The petitioner therefore made a representation and the same was rejected by the impugned order dated 17.06.2019, on the ground that this Court had already confirmed the order of removal and therefore, there is no reason to continue to pay the subsistence allowance.

7. Mr. M. Devaraj, learned counsel for the petitioner submitted that if the order passed in the Mercy Petition had been brought to the notice of this Court, this Court would have taken the same into consideration and the Writ Petition itself would have been closed. The learned counsel submitted that unfortunately both the sides did not bring to the notice of this Court about the orders passed by the Government in the Mercy Petition. The learned counsel submitted that this Court had not set aside the order passed by the Government in the Mercy Petition and therefore, the mere dismissal of the Writ Petition, cannot efface the order passed by the Government in the Mercy Petition.

8. The respondent has filed a counter affidavit and has justified the passing of the impugned order on the ground that this Court has confirmed the order of removal and therefore, the petitioner is not entitled for any subsistence allowance. It is further stated that by virtue of the order passed by this Court in the Writ Petition, the order passed by the Government cannot be implemented. That apart, the Criminal Appeal is pending before this Court and therefore, there are absolutely no merits in this Writ Petition.

9. Mr. M. Elumalai, learned Government Advocate appearing on behalf of the respondent apart from reiterating the contentions put forth in the counter affidavit, submitted that the petitioner cannot re-open the issue which has already become final by virtue of this Court confirming the order of removal passed by the respondent. The learned counsel submitted that there is no question of paying subsistence allowance after the petitioner has been removed from service.

10. This Court has carefully considered the submissions made on either side and the materials available on record.

11. There are no serious disputes on the facts of this Writ Petition. It is true that the order of removal passed by the respondent has been confirmed by this Court in the Writ Petition filed by the petitioner. The only issue

that requires consideration is as to what will be the effect of the order passed by the Government in the Mercy Petition filed by the petitioner and others. On going through the records, it is seen that the attention of this Court was not drawn to the order passed by the Government in the Mercy Petition. If this Court's attention had been drawn, there was no requirement for this Court to go into the merits of this case and this Court would have closed the Writ Petition by recording the orders passed by the Government in the Mercy Petition. This Court is not in agreement with the stand taken by the respondent to the effect that by virtue of the orders passed by this Court by dismissing the Writ Petition, the order passed by the Government gets automatically effaced. The Government has exercised its jurisdiction to consider the Mercy Petition and has passed an order and that order, in the considered view of this Court, is very much in force and the respondent cannot take a stand that they will not comply with the directions given by the Government while disposing of the Mercy Petition. This confusion has arisen only due to the fact that the Mercy Petition filed before the Government and the orders that were passed in the Mercy petition was not brought to the notice of this Court. In the considered view of this Court, the order passed by this Court in the Writ Petition cannot take away the relief that has been granted to the petitioner by the Government.

12. In view of the above discussion, the impugned order passed by the respondent, dated 17.06.2019, is hereby quashed. It is made clear that the petitioner is entitled for the relief that was granted by the Government in the Mercy Petition by an order dated 19.03.2018.

Accordingly, this Writ Petition is allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

KP

To

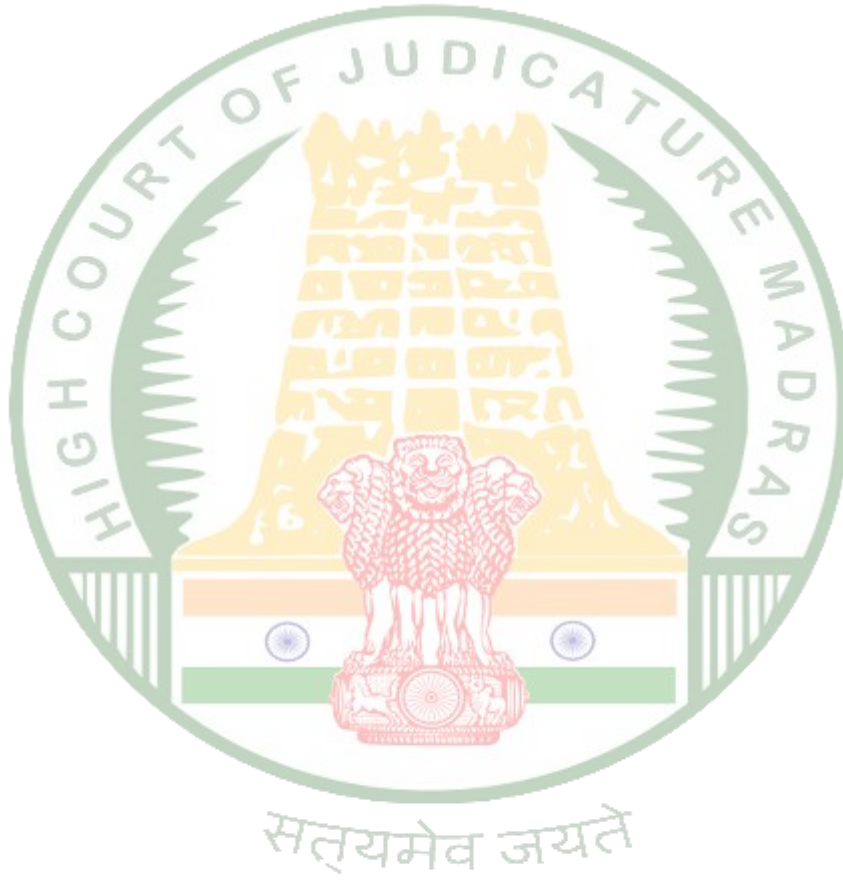
The Additional Principal Chief Conservator of
Forest Cum Chief Conservator of Forest,
Salem Region,
Salem.

+1cc to Mr.M.Devaraj, Advocate SR.No.4908

+1cc to Government Pleader SR.No.5401

W.P.No.24686 of 2019

VBA (CO)
GMY (10/02/2020)



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