



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.16463 of 2014

and

M.P (MD) .No.23018 of 2018

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S.P.Thiyagarajan

... Petitioner

vs.

- 1.The State of Tamil Nadu
Represented by its Principal Secretary to Government
Horticulture Department
Secretariat, Chennai
 - 2.The Managing Director
TANHODA
Director of Horticulture and Plantation Crops
Chepauk, Chennai
 - 3.The Deputy Director of Horticulture
Office of the Deputy Director of Horticulture
Collectorate Complex
Canteen Building Upstairs
Sivagangai
 - 4.The Deputy Director of Horticulture
Office of the Deputy Director of Horticulture
Kattupudukulam Road
Joint Director of Agriculture Complex
Pudukottai 620 001
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorari, to call for the records relating to the impugned order passed by the third respondent in his proceedings in MP1/4328/2013 dated 31.10.2013 (served to the petitioner on 30.07.2014) and quash the same as illegal.



For Petitioner : Mr.S.C.Herold Singh
For M/s.Ajmal Associates

For Respondents : Mr.S.Dhayalan
Government Advocate

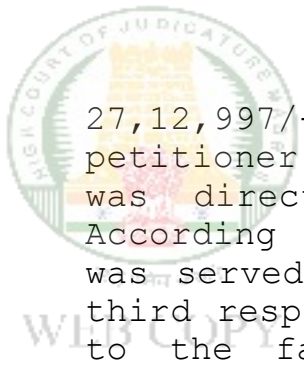
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O R D E R

The Writ petition has been filed to call for the records relating to the impugned order passed by the third respondent in his proceedings in ~~MD~~1/4328/2013 dated 31.10.2013 (served to the petitioner on 30.07.2014) and quash the same as illegal.

2. The learned counsel for the petitioner would submit that the petitioner was appointed as Horticulture Officer on 06.10.1986 . While he was working as Horticulture Officer under the control of third respondent, an inspection was conducted for the purpose of Annual Physical Verification, in which, some discrepancies were found. In pursuance thereof, the third respondent vide his proceedings in No.~~MD~~1/5933/202 dated 10.12.2012 ordered recovery of Rs.18,01,802/-. The learned counsel would further submit that prior to passing of the above order, the petitioner was neither issued with any notice nor he was given any opportunity of being heard. While the matter stands thus, the third respondent issued a show cause notice dated 12.08.2013 under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules 1955 alleging that the petitioner caused a loss to the tune of Rs.27,12,997/- by reason of deficiencies in fruit plants and grafted plants and he was directed to submit an explanation within 15 days. Accordingly, the petitioner submitted his explanation dated 21.10.2012 and he had narrated the facts in detail leading to the deficiencies alleged in the show cause notice.

3.The learned counsel for the petitioner further submitted that as per first count of allegation is concerned, due to poor germination in seeds and also on account of belated periodical inspection which leads to destroying seeds and plants and it was the duty of the Deputy Director of Horticulture and Assistant Director of Horticulture being the Farm Planting Material Officer to conduct periodical inspection which was never conducted. In so far as the second charge is concerned, the petitioner was on medical leave on account of his health condition from 24.08.2012 to 30.07.2013 and transfer order was passed on 24.07.2013. While the petitioner was on leave and therefore, he was not in a position to hand over the charge and he was not issued with any instruction in this regard. The petitioner had also duly submitted the application for Medical Leave. While that being the position, the third respondent vide his proceedings in ~~MD~~1/4328/2013 dated 31.10.2013 has imposed the punishment of recovery to the tune of



27,12,997/- and the same was directed to be recovered from the petitioner's salary in 100 installments and the remaining amount was directed to be recovered from his retirement benefits. According to the petitioner, the impugned order dated 31.10.2013, was served to him only on 30.07.2014 would create suspicion. The third respondent ought to have conducted an enquiry having regard to the facts and circumstances of the case. Further, third respondent neither considered any documents nor examined any witnesses to sustain the allegation levelled against the petitioner. Aggrieved over the same, the petitioner is before this Court.

4.The learned Government Advocate appearing for the respondents would submit that the petitioner was issued with show cause notice, till today, the petitioner has not given his reply and also he was on medical leave from 24.08.2012 to 30.07.2013. Since he had not replied, the order of recovery came to be passed. He further submitted that the petitioner was directed to appear before the Medical Board, but he has not appeared before the Medical Board and therefore, the respondents found that he had evaded the enquiry and the impugned order of recovery has been passed.

5.Heard the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondents.

6.Perusal of record shows that though the petitioner has not given his reply or evading to give his reply to the show cause notice, the respondents ought to have conducted an enquiry to look into the allegation in the manner known to law. But, the respondents straight away passed the impugned order. The learned counsel for the petitioner would also brought to the notice of this Court that the petitioner had given reply to the show cause notice where he has specifically refuting the allegation levelled against him for which, the respondents have not considered the same but had simply issued the order of recovery taking advantage of the medical leave. In view of the above, this Court is inclined to interfere with the order passed by the third respondent. Accordingly, the order of the third respondent vide No.gepl1/4328/2013, dated 31.10.2013 is set aside and the matter is remitted back to the respondents for fresh consideration. The respondents shall issue fresh show cause notice to the petitioner after giving sufficient opportunity to the petitioner and thereafter, proceed with the enquiry in the manner known to law and pass fresh orders, within a period of three months from the date of receipt of a copy of this order.



7. With the above directions, this Writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar(CS)

msa

To

1. The Principal Secretary to Government
State of Tamil Nadu
Horticulture Department
Secretariat, Chennai

2. The Managing Director
TANHODA
Director of Horticulture and Plantation Crops
Chepauk, Chennai

3. The Deputy Director of Horticulture
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+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-8093[F] dated 25/02/2020)

+1 CC to M/s.SPL.GP (SR-8372[F] dated 26/02/2020)

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and M.P (MD) .No.23018 of 2018
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MR (CO)

TR (26.05.2020) 4P 7C