



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2021

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.9220 of 2014

and

M.P.(MD)No.1 and 2 of 2014

K.Arunachalam

... Petitioner

vs..

1. The State of TamilNadu
represented by the Special Commissioner
and Secretary to the Government,
Department of Agriculture,
Fort St. George,
Chennai - 600 009

2. The Commissioner,
Department of Horticulture,
Ezhilagam,
Chepauk, Chennai - 600 005.

3. The Deputy Director of Horticulture,
Virudhunagar - 626 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned orders passed by the third respondent in his proceedings No.E-4-5963-2011, dated 12.08.2013 and to quash the same and in consequence of which, to order the return of the entire recovered amounts from his salary to the petitioner.

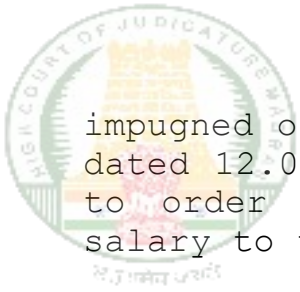
For Petitioner : Mr.A.Jagadeesan
for Mr.J.Raghavendran

For Respondents : M/S.D.Farjana Ghoushia
Special Government Pleader

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the

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impugned orders passed by the third respondent in his proceedings, dated 12.08.2013 and quash the same and in consequence of which, to order the return of the entire recovered amounts from the salary to the petitioner.

2. The petitioner was appointed as Assistant Agriculture Officer on 04.11.1981 and joined duty at Thirupurambiyam, Kumbakonam Taluk in Tanjavur District. Thereafter, the petitioner was transferred to several places. On 04.11.2011, the petitioner was transferred to Thoothukudi as Deputy Horticulture Officer. The erstwhile Officer, namely, Mohammed Ali Jinnah, who was working in Srivilliputhur has not handed over the stocks to the petitioner. The petitioner informed to his higher authorities through letter, dated 21.11.2011. The relevant portion is extracted below:

“நான் அரசு தோட்டக்கலை பண்ணை திருவில்லிபுத்தூரில் 04.11.2011 முதல் துணை தோட்டக்கலை அலுவலராக பணி ஏற்றுக் கொண்டேன். இதுநாள் வரை, முந்தைய பண்ணை மேலாளர் அவர்கள் என்னிடம் பொறுப்புகளை ஒப்படைக்கவில்லை என்பதை பணிவுடன் தெரிவித்துக் கொள்கிறேன்.”

3. Thereafter, the higher Officials inspected the spot on 22.11.2011 and it was found that the erstwhile Officer has not handed over the charge properly. Immediately, a charge memo, dated 23.01.2012, was issued to both the erstwhile Officer, namely, Mohammed Ali Jinnah as well as the present Officer, namely, Arunachalam, the petitioner herein.

4. The petitioner alleges that the second respondent has not conducted any enquiry, but, ordered revocery of the amount to the tune of Rs.1,42,040/- (Rupees One Lakh Forty Two Thousand and Forty only), vide order, dated 21.03.2013, which is being 50% of the shortage of stocks (1,42,040/- + 1,42,040/- = 2,84,080/-) . It is the claim of the petitioner that the erstwhile Officer, was responsible for the stocks and the petitioner was penalized for the erstwhile officer's mistake.

5. The third respondent has filed a counter affidavit and the relevant portion is extracted below:

“During the inspection of the Farm on 22.11.2011 conducted by Assistant Director of Horticulture (Planting Materials), Officer of the Deputy Director of Horticulture, Viruthunagar, it was found that his predecessor has not handed over the stock of the Farm to the petitioner though he had joined duty as Farm Manager on 04.11.2021. The petitioner herein neither reported the above fact to his superiors or had taken over the stock of the farm on or after 04.11.2011.”



6. Heard, Mr.A.Jagadeesan, learned Counsel appearing for the petitioner and Mr.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents.

7. It is seen that the Petitioner took charge on 04.11.2011 and on verifying the stocks, he has reported to the higher authorities that the erstwhile Officer has not handed over the charge, vide letter, 21.11.2011. It is also seen from the records that the erstwhile Officer has given an undertaking letter that he will hand over the missing stocks, otherwise, he will pay the cost for missing stocks.

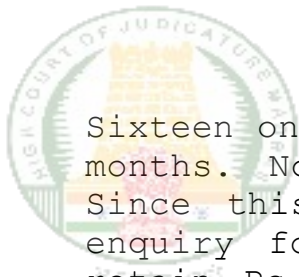
8. When the notice was issued, the petitioner has given a detailed reply on 05.12.2012 and it is the case of the petitioner that he cannot be made liable for the negligent act of the erstwhile Officer. Based on the written explanation, the respondents have passed an order, dated 21.03.2013. Thereafter, the revised order was passed on 12.08.2013, wherein, the additional amount of Rs.60,000/- (Rupees Sixty Thousand only) was included in the petitioner's liability. In the revised order the loss was estimated and increased from Rs.2,84,080/- to Rs. 3,44,180/- and 50% being Rs.1,72,090/- was imposed on the petitioner. It is seen that the petitioner has attained superannuation on 31.03.2017 but, the petitioner was not allowed to retire and was suspended on the day of superannuation.

9. Aggrieved over this revised order, dated 12.08.2013, the petitioner has preferred an appeal before the Special Commissioner and Secretary to the Government on 17.02.2014 and the same is pending.

10. This Court is of the view that the loss fixed on the petitioner to the tune of Rs.1,72,090/- (Rupees One lakh Seventy Two Thousand and Ninety only) is without any basis and erstwhile employee's negligence cannot be fastened on the petitioner and therefore, this Court set aside the impugned order, as far as Rs.1,72,090/- (Rupees One lakh Seventy Two Thousand and Ninety only) is concerned.

11. However, the petitioner has not given any evidence regarding Rs.60,000/- (Rupees Sixty Thousand only), but it is only stated that the stocks would have been lost due to mountain pigs. As far the Rs.60,000/- is concerned, it is submitted that the petitioner has preferred an appeal to the 1st respondent. This Court is of the view that it is suffice that if the 1st respondent is directed to dispose of the petitioner's appeal.

12. It is submitted that the petitioner is under suspension and he has not received any terminal benefits. It is also submitted that based on the impugned order, the respondents were deducting Rs.8,216/- (Rupees Eight Thousand Two Hundred and



Sixteen only) per month and the respondents have deducted up to 10 months. Now, the petitioner is claiming to refund the amount. Since this court has directed the respondents to complete the enquiry for the alleging of Rs.60,000/-, the respondents shall retain Rs.60,000/- (Rupees Sixty Thousand only) and the balance shall be refunded. The amount of Rs.60,000/- (Rupees Sixty Thousand only) will be decided after deciding the appeal, dated 17.02.2014.

13. To meet the ends of justice, this Court is passing the following order:

- i. The impugned order, dated 12.08.2013, is set aside as far as the amount of Rs.1,72,090/- (Rupees One lakh Seventy Two Thousand and Ninety only) is concerned.
- ii. As far as the amount of Rs.60,000/- (Rupees Sixty Thousand only) is concerned, the Government is directed to consider the petitioner's appeal, dated 17.02.2014, and pass orders within two months from the date of receipt of a copy of this order.
- iii. The respondents are directed to revoke the suspension of the petitioner forthwith and disburse the terminal benefits at the earliest and continue the appeal proceedings for Rs.60,000/- under Pension Act.

14. With the above directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

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Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



To

1. The Special Commissioner
and Secretary to the Government,
State of TamilNadu,
Department of Agriculture,
Fort St. George,
Chennai - 600 009

2. The Commissioner,
Department of Horticulture,
Ezhilagam,
Chepauk, Chennai - 600 005.

3. The Deputy Director of Horticulture,
Virudhunagar - 626 002.

+1 CC to M/s.SPL GP (SR-35458[F] dated 23/11/2021)

+5 CC to M/s.V. SASIKUMAR, Advocate (SR-35612[F] dated
24/11/2021)

W.P. (MD)No.9220 of 2014
22.11.2021

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