



W.P.(MD)No.8339 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 21.07.2022

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

**W.P.(MD)No.8339 of 2015
and
M.P.(MD)Nos.1 and 2 of 2015
and
W.M.P.(MD)No.13548 of 2018**

V.Sankaralakshmi

... Petitioner

Vs.

1. The Principal Chief Conservator of Forest,
Jennis Road,
Chennai - 600 015.
2. The District Forest Officer,
Thoothukudi.
3. The Conservator of Forest,
Tirunelveli Region,
Tirunelveli.
4. Shenbagamoorthy,
Conservator of Forest,
Tirunelveli Region,
Tirunelveli.

... Respondents



W.P.(MD)No.8339 of 2015

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records pertaining to the impugned order passed by the second respondent in Se.Mu.Aanai No.Pa1/2154/2014, dated 30.07.2014 and the impugned order passed by the third respondent in Se.Mu.Aa.No.Pa2/11395/2014, dated 18.04.2015, quash the same.

For Petitioner : Mr.M.Veilkani Raju

For Respondents : Mr.R.Suresh Kumar
Addl. Govt. Pleader for R1 to R3

No appearance for R4

ORDER

The impugned orders passed by the second respondent in Se.Mu.Aanai No.Pa1/2154/2014, dated 30.07.2014 and by the third respondent in Se.Mu.Aa.No.Pa2/11395/2014, dated 18.04.2015, are under challenge in the present Writ Petition.

2. The learned counsel for the petitioner submitted that the petitioner was appointed as a Village Social Forestry Worker on 20.11.1982 and then, she was promoted to the post of Forest Watcher on 10.09.2008 and transferred to Kurumalai Pathukappu Kaadu on 12.07.2010. Then, she was promoted as Forest



Guard on 12.07.2014 and posted as Forest Guard in Kurumalai Pathukappu Kaadu.

On 26.04.2014, the forest was inspected by the officials and she accompanied them. During inspection, it was found that there was a borewell dug within the Reserve Forest Area. On verification, it was found that the Panchayat President of Oothupatti had dug the borewell for supplying drinking water to the village people. Unfortunately, the petitioner was placed under suspension by the proceedings of the third respondent, dated 26.04.2014. A charge memo was served on the petitioner on 10.05.2014, for which, she gave reply on 19.05.2014. Without considering her reply, the third respondent conducted an enquiry and passed final order of postponement of increment for a period of two years with cumulative effect. Against that order, she filed an appeal before the second respondent. In the meanwhile, the fourth respondent, namely, Shenbagamoorthy, was promoted as Conservator of Forest. Instead of setting aside the punishment, she was imposed with a major punishment of reversion even without issuing the show cause notice to her.

3. It is further submitted by the learned counsel for the petitioner that the Panchayat President of Oothupatti sent a letter dated 26.04.2014, stating that he



dug the borewell without knowing that the place comes within the reserve forest limits. He also intimated through the letter dated 14.05.2014 that the borewell was permanently closed. The petitioner is not responsible for digging the borewell. In the said circumstances, the charge memo issued against her, oral enquiry conducted, punishment imposed and enhancement of punishment are against law and in violation of principles of natural justice. Therefore, this petition.

4. Mr.R.Suresh Kumar, learned Additional Government Pleader for the respondents 1 to 3 submitted that the petitioner admitted her charges during the course of enquiry and she was suitably punished.

5. The petitioner was slapped with a charge memo dated 10.05.2014 by Shenbagamoorthy, then District Forest Officer. Then, he issued a proceedings in Na.Ka.No.Pa1/2154/2014 dated 06.06.2014, appointing himself as Enquiry Officer. He conducted an enquiry and found that the charges against the petitioner were proved. He also passed an order in Se.Mu.Aanai No.Pa1/2154/2014, dated 30.07.2014 imposing the punishment of withholding of increment for two years with cumulative effect. The petitioner filed appeal before the Conservator of



W.P.(MD)No.8339 of 2015

Forest, Tirunelveli District. Mr.Shenbagamoorthy, who was the then District Forest Officer, was promoted as Conservator of Forest. He heard the appeal and passed orders modifying and enhancing the punishment of withholding of increment for two years with cumulative effect as reversion from the rank of Forest Guard to Forest Watcher.

6. From the submission of the learned counsel for the parties and on perusal of the records, it is evident that from the date of issuance of charge memo till the disposal of the appeal, Mr.Shenbagamoorthy, who was a District Forest Officer, Thoothukudi at the time of issuing the charge memo, later promoted as Conservator of Forest, Tirunelveli, disposed of the appeal by enhancing the original punishment of postponement of increment of two years with cumulative effect. In the appeal, the punishment was enhanced to the punishment of reversion. It is not disputed that Mr.Shenbagamoorthy is one man who issued charge memo and acted as Enquiry Officer, passed final orders and in the appeal and enhanced the punishment. First of all, the Enquiry Officer cannot pass the final orders. The Officer, who passed final orders, cannot be a person disposing the appeal. It is relevant to point out that before enhancing the punishment, no show cause notice



W.P.(MD)No.8339 of 2015

was issued to the petitioner. This act of passing final orders vide proceedings in Se.Mu.Aanai No.Pa1/2154/2014, dated 30.07.2014 and in Se.Mu.Aa.No.Pa2/11395/2014, dated 18.04.2015, are totally without jurisdiction and against the principles of natural justice. In that view of the matter, both the orders are to be quashed.

7. It is relevant to refer to the order passed in W.P.(MD)No.12735 of 2005, wherein the judgment of the Hon'ble Supreme Court of India in the case of **Ashok Kumar Yadav vs. State of Haryana** reported in **1985 (4) SCC 417**, held as follows:

"One of the fundamental principles of our jurisprudence is that no man can be a judge in his own cause. The question is not whether the Judge is actually biased or has in fact decided partially but whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. If there is a reasonable likelihood of bias 'It is in accordance with natural justice and common sense that the Judge likely to be so biased should incapacitated from sitting'. The basic principle underlying this rule is that justice must not only be done but must also appear to be done."



W.P.(MD)No.8339 of 2015

8. This order would squarely apply to the facts of the case. Accordingly, the impugned orders are quashed. The respondents are directed to restore the petitioner to her original position on the date of suspension and give all the necessary attendant services and monetary benefits, within a period of twelve weeks from the date of receipt of a copy of this order.

9. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

21.07.2022

Index : Yes / No
Speaking Order : Yes / No

vji



W.P.(MD)No.8339 of 2015

To
WEB COPY

1. The Principal Chief Conservator of Forest,
Jennis Road,
Chennai - 600 015.
2. The District Forest Officer,
Thoothukudi.
3. The Conservator of Forest,
Tirunelveli Region,
Tirunelveli.
4. Shenbagamoorthy,
Conservator of Forest,
Tirunelveli Region,
Tirunelveli.



WEB COPY



W.P.(MD)No.8339 of 2015

G.CHANDRASEKHARAN, J.

vji

**W.P.(MD)No.8339 of 2015
and
M.P.(MD)Nos.1 and 2 of 2015
and
W.M.P.(MD)No.13548 of 2018**

21.07.2022