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WP.Nos.26472 & 26474 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

WP.Nos.26472 & 26474 of 2023

N.Gunasekaran

.. Petitioner in W.P.No.26472 of 2023

V.Rajendran

.. Petitioner in W.P.No.26474 of 2023

Versus

1.State of Tamil Nadu

Rep by its Principal Secretary to Government

Environment, Forest and Climate Change Department

Government of Tamil Nadu

Secretariat

Chennai – 600 009

2.The Principal Chief Conservator of Forests

Head of Forest Force

Guindy-Velacherry Main Road

Guindy, Chennai – 600 032

3.The Conservator of Forests

Dharmapuri Forest Circle

Dharmapuri – 5

Dharmapuri District

4. The District Forest Officer

Hosur Forest Division

Hosur, Krishnagiri District

.. Respondents in both cases

Prayer in W.P.No.26472 of 2023: Writ Petitions are filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of impugned order passed by 3rd Respondent dated



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28.11.2013 in Che.Mu. Aanai No. Po2/3868/13 in Confirming the order of the 4th Respondent dated 24.04.2012 in Che.Mu.Aa. No. 8763/2010.Pa1 and quash the same consequently direct the Respondents to refund recovered amounts from the salary of the petitioner to him along with all service benefits.

Prayer in W.P.No.26474 of 2023: Writ Petitions are filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of impugned order passed by the 4th Respondent dated 24.04.2012 in Che.Mu.Aa.No.8763/2010.Pa1 and quash the same, consequently direct the Respondents to refund recovered amounts from the salary of the petitioner to him along with all service benefits.

In both cases

For Petitioners : Mr.M.R.Jothimanian

For Respondents : Mr.S.Arumugham
Government Advocate

COMMON ORDER

These writ petitions have been filed challenging the order passed by 3rd Respondent dated 28.11.2013 in Che.Mu. Aanai No. Po2/3868/13 in Confirming the order of the 4th Respondent dated 24.04.2012 in Che.Mu.Aa. No. 8763/2010.Pa1, quash them and consequently direct the Respondents to refund recovered amounts from the salary of the petitioners to them along with all service benefits.

2. Since, the facts and circumstances of these cases are identical in nature, these cases are disposed of by way of this Common Order.



3. The facts of these case are covered by the Order of this Court dated

03.08.2023 in W.P.No.662 of 2022, wherein, it has held as follows:

“8.On a perusal of the materials, it is seen that the entire allegations against the writ petitioner and the Forest Range Officer is that, in a particular Forest Range, there were some irregularities by showing excess bills for works done beyond the approved works, resulting in a huge loss to the Government. The irregularities are said to have been unearthed by the FEMAS Monitoring Committee under the instructions of the Conservator of Forests. From the charges framed against the petitioner, it is seen that the petitioner has allegedly shown excess work than the approved works and got excess amount sanctioned by the Government. From the entire records, it is clear that, submitting the bills and sanctioning the amount is under the control of the Forest Range Officer, which is not in dispute. As per Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, when more than one Government servant are involved in a case or when their cases are interconnected, the Disciplinary Authority shall conduct disciplinary proceedings against all of them together, particularly, when the charges are under Rule 17(b). Admittedly, the charges framed against the petitioner and the Forest Range Officer are interconnected in respect of certain works carried out by them. However, in the given case, different Enquiry Officers were appointed to enquire into the charges framed against the petitioner and the Forest Range Officer. Admittedly, the Enquiry Officer, who had enquired into the charge framed against the Forest Range Officer for causing loss to the Government to the tune of Rs.65,18,386/~, has found that the charges against the Forest Range Officer are not proved, based on which, he was totally exonerated. Whereas, the other Enquiry Officer, who was appointed to enquire into the charges framed against the petitioner, though found that the petitioner was forced to sign the bills by the Forest Range Officer and a finding to that effect having been recorded, found that the charges against the petitioner are proved. Therefore, this Court is of the view that the enquiry itself is conducted contrary to Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, and hence, the entire Enquiry Report is vitiated and any finding based on the Enquiry Report cannot be sustained in the eye of law. When the Government has exonerated the superior officer, namely, the Forest Range Officer, from the charge of causing a huge loss to the Government Exchequer, a



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punishment of recovery has been imposed on the subordinate officer, despite a finding of the Enquiry Officer himself that the petitioner was forced to sign the bills at the instance of the said superior officer. In such view of the matter, the very enquiry itself is against the Rules and hence, the same cannot be sustained. As a sequel, the imposition of punishment of recovery against the petitioner, based on the vitiated Enquiry Report, and the subsequent orders passed by the Appellate Authority and Revision Authority confirming the said order of recovery, are also liable to be quashed.

9. Accordingly, the impugned orders are quashed and this writ petition is allowed. If any recovery has already been effected from the petitioner, the same shall be refunded to him. No costs.”

4. In view of the above, these writ petitions are allowed and consequently, the impugned orders are set aside. If any recovery has already been effected from the petitioners, the same shall be refunded to them. No costs.

11.09.2023

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Index: Yes/No

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