



W.P.(MD).Nos.22284, 22491, 22595 and 22760 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.22284, 22491, 22595 and 22760 of 2019

W.P.(MD).No.22284 of 2019:

K.Murugaiah

... Petitioner

Vs.

- 1.The Principal Secretary to Government,
Environment and Forest Department,
Fort St.George,
Chennai – 600 009.
- 2.The Principal Chief Conservator of Forest,
Panagal Malligai,
Saidapet,
Chennai – 600 015.
- 3.The Chief Conservator of Forest Field Director,
Kalakad Mundathurai Tiger Reserve (Tiger Project),
Tirunelveli – 07.
- 4.The Deputy Director and Wild Life Warden,
Kalad Sanctuary,
Kalad,
Tirunelveli District.

... Respondents



W.P.(MD).Nos.22284, 22491, 22595 and 22760 of 2019

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 1st respondent vide his proceedings in G.O.(2Pa).No.05 dated 09.02.2019 and quash the same as illegal and further directing the respondents to repay a sum of Rs.39,890/- to the petitioner which was recovered from him.

W.P.(MD).No.22491 of 2019:

K.Murugaiah

... Petitioner

Vs.

- 1.The Principal Chief Conservator of Forest,
Panagal Malligai,
Saidapet,
Chennai – 600 015.
- 2.The Chief Conservator of Forest Field Director,
Kalakad Mundathurai Tiger Reserve (Tiger Project),
Tirunelveli – 07.
- 3.The Deputy Director and Wild Life Warden,
Kalad Sanctuary,
Kalad,
Tirunelveli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 1st respondent vide his proceedings in Se.Mu.Order No.AaAa3/12813/2014 dated 28.06.2019, quash



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the same as illegal and further directing the respondents to repay a sum of Rs.71,311/- to the petitioner which was recovered from him.

W.P.(MD).No.22595 of 2019:

K.Murugaiah

... Petitioner

Vs.

1.The Principal Chief Conservator of Forest,
Panagal Malligai,
Saidapet,
Chennai – 600 015.

2.The Chief Conservator of Forest Field Director,
Kalakad Mundathurai Tiger Reserve (Tiger Project),
Tirunelveli – 07.

3.The Deputy Director and Wild Life Warden,
Kalad Sanctuary,
Kalad,
Tirunelveli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 1st respondent vide his proceedings in Se.Mu.Order No.AaAa3/11431/2014 dated 25.07.2019, quash the same as illegal and further directing the respondents to return back a sum of Rs.79,372/- to the petitioner which was recovered from him.



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W.P.(MD).No.22760 of 2019:

K.Murugaiah

... Petitioner

Vs.

- 1.The Principal Secretary to Government,
Environment and Forest Department,
Fort St.George,
Chennai – 600 009.
- 2.The Principal Chief Conservator of Forest,
Panagal Malligai,
Saidapet,
Chennai – 600 015.
- 3.The Chief Conservator of Forest Field Director,
Kalakad Mundathurai Tiger Reserve (Tiger Project),
Tirunelveli – 07.
- 4.The Deputy Director and Wild Life Warden,
Kalad Sanctuary,
Kalad,
Tirunelveli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the 1st respondent vide his proceedings in G.O. (2u).No.12 dated 14.03.2019, quash the same.



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(In all Writ Petitions):

For Petitioner : Mr.A.Jayaramachandran

For Respondents : Mr.S.Shanmugavel,
Additional Government Pleader.

COMMON ORDER

All the writ petitions were filed by the same person and the issues to be decided in all these batch of writ petitions are similar and the relief sought for are also one and the same. Hence, all the writ petitions are taken together for hearing and a common order is passed.

2. The Writ Petition in W.P.(MD)No.22284 of 2019 is filed challenging the order passed in G.O.(2Pa)No.05 dated 09.02.2019 and further directing the respondents to repay a sum of Rs.39,890/- to the petitioner which was recovered from him. The Writ Petition in W.P.(MD)No.22491 of 2019 is filed challenging the order dated 28.06.2019 and further directing the respondents to repay a sum of Rs.71,311/- to the petitioner which was recovered from him. The Writ Petition in W.P.(MD)No.22595 of 2019 is filed challenging the order



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dated 25.07.2019 and further directing the respondents to return back a sum of Rs.79,372/- to the petitioner which was recovered from him. The Writ Petition in W.P.(MD)No.22760 of 2019 is filed to quash the order dated 14.03.2019.

3. The petitioner is W.P.(MD)No.22284 of 2019 was appointed as Forester on 19.08.1993. Thereafter, ousted from service for want of vacancy on 11.10.1983 and again appointed on 17.10.1984. Thereafter, the petitioner was promoted as Forester Range Officer on 09.01.2010 and he was transferred to Tirukurankudi Forest Range within Kalakad Wild Life Sanctuary by the third respondent on 03.09.2011 and continued in the said place until 19.04.2013 and thereafter, transferred to Pavanasam Range. The respondents initiated disciplinary proceedings by issuing show cause notice under Rule 17(a) of Tamil Nadu Civil Services (C.C.A) Rules 1953 vide proceedings dated 17.05.2013 alleging that without completion of maintenance of advertisement Board work and building maintenance work, the petitioner had forwarded the expenditure record for a sum of Rs.39,890/-. After the receipt of the show cause notice, the petitioner submitted explanation on 09.06.2013. After the receipt of the explanation, the respondents have passed recovery order dated 04.07.2013 to recover Rs.39,890/- in 3 installments. Aggrieved over the same,



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the petitioner has filed appeal on 04.09.2013 and the same was rejected vide order dated 23.06.2015. In the meanwhile, on attaining superannuation the petitioner retired on 28.02.2014. Thereafter, the petitioner has preferred a detailed review on 16.01.2016 before the first respondent. Since no action was taken, the petitioner preferred W.P.(MD)No.16070 of 2018 and this Court directed the respondents therein to consider and pass orders within a period of 6 weeks. Thereafter, the first respondent has passed the impugned order vide proceedings in G.O.(2Pa) No.05 dated 09.02.2019 rejecting the petitioner's review application and thereafter other impugned orders were also passed. Aggrieved over the same, the present Writ Petition is filed.

4. The respondents have filed counter stating that while the petitioner was working in Thirukurungudi Range of Kalakad Division from 05.09.2011 to 19.04.2013, he carried out the sanctioned work in DSO No.116/2012-13 dated 28.01.2013 for maintaining the Publicity Board 2012-2013 and DSO No. 145/2012-13 dated 02.03.2013 to maintain the Forest Range Officers Quarters, Thirukurungudi Range 2012-2013 and received Rs.39,890/-. The petitioner has carried out the work and obtained the funds and to that effect necessary entries were made in the Measurement book No.4/2012. The fourth respondent had



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taken up annual office inspection of Thirukurungudi Range Office on 25.04.2013 and he found that no such works were carried out, but for the alleged completed work the funds were released to him. Hence a statement was obtained from the Forester namely Abdul Rahman, whereby he has deposed that the petitioner has not carried out the said works but had received funds. Hence, the disciplinary proceeding was initiated under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner did not submit any explanation to the charges. Finally, the third respondent passed an order dated 04.07.2013 confirming the allegations and recovery was ordered. The petitioner preferred an appeal and review application and both were rejected.

5. Heard Mr.A.Jayaramachandran, learned counsel for the petitioner and Mr.S.Shanmugavel, learned Additional Government Pleader appearing for the respondents and perused the records.

6. The contention of the Learned Counsel appearing for the petitioner is that even for disciplinary proceedings under Rule 17(a), a minimum procedure should be followed. More so, when the petitioner was on the verge of



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retirement and recovery of any amount would have serious impact on his terminal benefits. Hence, the impugned order is violative of principles of natural justice.

7. The learned Additional Government Pleader appearing for the respondents vehemently opposed to such contention and submitted that they received a written statement from the Section Forester namely, Abdul Rahman. Based on his statement, the negligence on part of the petitioner was found out. Because of the negligence in duty with dishonest intention and for misappropriation of Government funds, the present impugned orders for recovery were passed. Since, the petitioner was on the verge of his retirement, proceedings under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 was initiated and hence minor punishment of recovery was imposed. Recovery of amount is a minor punishment under Rule 8(a) and on this count also the elaborate enquiry is not necessary. The Learned Counsel also relied on the Division Bench judgment in W.A.No.442 of 2011 dated 01.04.2013. The relevant portion is extracted hereunder:



“On a perusal of the judgment of the Hon'ble Apex Court cited supra, we find that the facts involved therein and the facts involved in the case on hand are totally different. The Hon'ble Apex Court had an occasion to deal with the position of stoppage of increments, and therefore, it was rightly held that even though the proceedings have been initiated under Rule 17[a], an enquiry under Rule 17[b] will have to be followed mandatorily. Unfortunately, that is not the case herein. In this case, an order of recovery has been passed under Rule 8[5]. Admittedly, the order of recovery is a minor punishment. Therefore, the respondent has rightly followed the procedure contemplated under Rule 17[a]. The other two decisions, relied upon by the learned counsel for the appellant, which were passed by the Single Bench, are not applicable to the facts of the case on hand and they were rendered on different facts. Therefore, we do not find any assistance from those two decisions”.

8. As per the counter, the respondents have obtained the written statement against the petitioner from the said Abdul Rahman. But such statement was not furnished to the petitioner. When such statement was not furnished to the delinquent and directing the delinquent to submit explanation is violative of principles of natural justice to the higher order. As rightly pointed out by the Learned Counsel of the petitioner even for proceedings under Rule 17(a) opportunity ought to be granted.



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9. In the counter, it has been stated that the petitioner has not submitted any explanation. However, the petitioner submitted that in other three Writ Petitions, the petitioner has not submitted any explanation, but has submitted the explanation for the issue challenged in W.P.(MD)No.22284 of 2019. Since the respondents have not even served the statement of the Forester, the petitioner could not submit any explanation to the allegation. In such circumstances, the respondents ought to have granted one more opportunity to the petitioner either to submit a written explanation or ought to have summoned the petitioner to conduct summary enquiry. Of course, after serving the copy of the statement. Even in the case where the petitioner had submitted explanation, the petitioner's explanation was not considered by the respondent.

10. The respondents have passed four recovery orders covering the period from December 2012 to 19.04.2013 to the tune of Rs.2,00,000/- and it will have serious impact on the terminal benefits. The petitioner was on the verge of retirement that is on 28.02.2014. Hence the respondents ought to have granted adequate opportunity. Since there is serious violation of principles of natural justice, this Court is inclined to interfere with the order.



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11. Moreover, as per Section 142 of Tamil Nadu Forest Department Code, 1984, any inspection ought to be carried out within 45 days from the date of work. In the present case, the respondents have carried out the inspection beyond the said period of limitation prescribed under the Code. Moreover, when the inspection was carried out, the petitioner was not present to explain his side of case. The petitioner was transferred from this place on 19.04.2013. The respondents having obtained the statement from the Forester ought to have obtained the statement from the petitioner as well. Hence, this Court is of the considered opinion that the four impugned orders are liable to be quashed and accordingly quashed.

12. The allegation on the petitioner is that after receiving the amount, either the work was not carried out properly or was not carried out at all. Under these circumstances, the case ought to be remitted back to the authorities for enquiry or for modifying the punishment. Since the petitioner has already retired from service as early as on 2014 itself, this Court in the interest of justice, is imposing a punishment by directing the respondents to deduct a sum of Rs.10,000/- (Rupees Ten Thousand only) from the petitioner. The balance



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amount recovered from the petitioner shall be returned to the petitioner. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

13. In view of the above, the Writ Petitions are allowed to the extent as stated supra. There shall be no order as to costs.

28.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr



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To

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S.SRIMATHY, J.

Nsr

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