



W.P.(MD).No.24493 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.24493 of 2016

1.R.Kundumalai (Died)

2.Jeyalakshmi

(Petitioner substituted vide Court order dated 06.04.2023 in WMP(MD)No.7308 of 2023 in WP(MD)No.24493 of 2016)

... Petitioners

Vs.

1.The Principal Chief Conservator of Forests,
Panagal Building,
Saidapet,
Chennai-600 015.

2.The Forest Extension Officer,
Karur Extension Division,
Karur,
Karur District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent herein in his proceeding in Se.Mu.Order No.AA2/12806/2014 dated 14.01.2016, quash the same and direct the respondents to repay the amount of Rs.5,19,678/- recovered from the petitioner.



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For Petitioner : Mr.G.Chandrasekar

For Respondents : Mr.R.Ragavendran
Government Advocate

ORDER

This Writ Petition is filed to quash the order dated 14.01.2016 and direct the respondents to repay the amount of Rs.5,19,678/- recovered from the petitioner.

2. Through the impugned order, the respondents have imposed the punishment of recovery of Rs.5,19,678/-. The petitioner had already paid the amount, since he was on the verge of retirement. After retirement, the present Writ Petition is filed challenging the punishment of recovery.

3. The petitioner was working as Forest Range Officer and has held various posts. The petitioner attained superannuation and retired from service on 31.03.2014, thereby he has rendered past 33 years of service. The nature of petitioner's job was to advertise about the bio-diversity scheme and Social



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Forestry and extension awareness. The Department has provided seeds and fertilizers to the petitioner and the petitioner has to grow them as nursery saplings and the same ought to be disbursed to the targeted beneficiary farmers. The above process was carried out by the petitioner and the saplings were disbursed to the farmers. For the year 2012-2013, in Karur District, the Additional Principle Chief Conservator of Forest has made an inspection on 29.11.2013 to analyze the execution of work in Karur Division. On inspection, the said officer has found that due to the drought condition, inadequate rainfall and inadequate care in selection of tree species suiting to the local need, there was a monetary loss caused to the Forest Department. Hence, he made an observation to recover the same. The second respondent therefore calculated the loss to the tune of Rs.9,69,870/- vide proceedings dated 04.03.2014 and recommendation to recover from the petitioner. Accordingly, the Chief Conservator of Forest vide order dated 14.03.2014 directed the petitioner to pay Rs.5,19,678/-, after deducing Rs.4,50,192/- from the amount calculated by the second respondent and the was made after considering the petitioner's reply. The contention of the petitioner is that the said order of recovery was passed just 12 days before his retirement. The second respondent threatened the petitioner if such order is not complied with, he will not be allowed to retire



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and he will be placed under suspension and his terminal benefits would not be disbursed. Since, the petitioner made arrangements for his daughter's marriage and the expenses for the marriage would be meted out of the petitioner's retirement benefits, he paid the amount. Thereafter, he preferred an appeal before the first respondent on 01.04.2014. Since the same was not considered, he sent a reminder letter dated 26.11.2014.

4. The further contention of the petitioner is that as per G.O.Ms.No.92 dated 09.03.1993, wherein, the Director of Vigilance and Anti-Corruption had made recommendation that in the event of any loss caused to the Forest Department, the same has to be recovered from the responsible persons on the ratio of 25% from the District Forest Officer, 40% from the Forest Ranger and 35% from the Field Officer. The above ratio of recovery has to be applied, on proven negligence and careless attitude on part of the responsible persons, but the above observations are not followed in the proceedings against the petitioner. Moreover, there is no proof for negligence on the part of the petitioner and hence the punishment imposed on the petitioner is illegal. Subsequently, the appeal was also rejected vide impugned order dated 14.01.2016. Aggrieved over the same, the present Writ Petition is filed.



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5. The respondents have filed a counter stating that the petitioner without taking proper care to implement the scheme, has made loss to the Government, since 50% of the saplings were destroyed. Subsequently, some of the plants were distributed among the farmers, but now the farmers also did not take proper care and the petitioner has not assisted the farmers to take care of the plants. The petitioner has not chosen the proper saplings for the proper area, especially the plantation taken up under the TCPL programme in the field of V.Ponnamal, Kulandaivelu and R.Kandasamy are totally failed. The explanation submitted by the petitioner is not acceptable. If it is a dry weather, the petitioner ought to have taken the same into consideration, but without taking adequate protection and adequate direction, the petitioner has caused loss to the Government. The loss was calculated to the tune of Rs.9,69,870/- and after considering the explanation, it was reduced to Rs.5,19,678/-. The petitioner had participated in the enquiry and the petitioner was granting opportunity, hence there is no violation of principles of natural justice. After taking all the necessary particulars into consideration, especially the superannuation date was also considered, the respondents have not imposed any punishment, but simply imposed the punishment of recovery alone. The respondents have taken action against the petitioner under Rule 17(a) of the Tamil Nadu Disciplinary



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Proceedings and Appeal Rules only. Therefore, the punishment is proper and the petitioner has not raised any legally valid ground. Hence, the respondents prayed to dismiss this Writ Petition.

6. Heard Mr.G.Chandrasekar, learned counsel for the petitioner and Mr.R.Ragavendran, learned Government Advocate, for the respondents and perused the records.

7. The contention of the petitioner is that the petitioner has used the seeds properly and has grown the saplings. However, the saplings were distributed to the farmers and some of the saplings died because it was a dry weather, there was no adequate rains, hence the farmers could not save the saplings. When the saplings were distributed and the plantation was carried out for 30 days to 48 days, the saplings were showing proper growth. The petitioner is relying on the inspection that was carried out within 45 days from the date of execution of the work and there were no adverse remarks in the inspection. Subsequent to the aforesaid inspection, the respondents have carried out another inspection after lapse of one year and in that inspection the respondents have found that 50% of the plants have died. The contention of the petitioner if any inspection carried out after one year, the same cannot taken into account for taking



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disciplinary action and has relied on the Regulations 142 of Tamil Nadu Forest Department Code. Under note, it has been categorically stated that the inspection should be carried out from 30 days to 48 days that too before payment. The relevant portion is extracted hereunder:

“Note: The categories of works which require immediate check measurement after completion of the work and before payment be check measured by the concerned officers before effecting payments. In regard to other categories check measurements should be completed within 30-48 days of payment.”

The scope of the said Regulation 142 is already dealt with by Hon’ble Division Bench in W.A.(MD)No.1005 of 2016 in the case of the State of Tamil Nadu V. R. Chellam, vide order dated 22.12.2016 it has been held that the inspection has to be done within 45 days from the date of planting the saplings. In the present case, admittedly, the respondents have carried out inspection within 45 days and thereafter payment was made. It is after the lapse of one year, the respondents again carried out audit inspection and it was found that most of the saplings were died. Therefore, the respondents have calculated the amount to the tune of Rs.9,69,870/-. When the petitioner submitted his explanation, the amount was reduced to Rs.5,19,678/-. The learned counsel appearing for the petitioner relied on the said regulation 142, when the



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subsequent inspection which was carried out after one year cannot taken into account. On reading the note, it is evident that the petitioner cannot be held responsible for the reasons stated supra and hence, it cannot be stated that the petitioner has committed misconduct. During the inspection period within the limitation given under the note, the saplings were healthy and the plants have did not die. In such circumstances, the imposition of recovery is without any proper evidence cannot be sustained. As this proposition is held in the aforesaid writ appeal by the Hon'ble Division Bench, this Court is of the considered opinion that the disciplinary proceeding based on subsequent inspection is against Regulation 142 and also against the judgment of the Hon'ble Division Bench.

8. The next contention of the petitioner is that under G.O.Ms.No.92 even if there is any misconduct then the recovery should be based on the ratio as stated in the said G.O., but the respondents have collected the entire amount from the petitioner alone. The relevant portion of the G.O. is extracted hereunder:

“The Government have examined the question of fixation of definite responsibility at each level carefully and they are strongly of the view that according to section 142(2) of the Tamil Nadu Forest



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Department Code the District Forest Officer and the Conservator of Forests should check measure atleast 25% and 10% respectively of the works done by the Rangers. The Government therefore direct that in cases of irregularities resulting in financial losses to the government recovery of the excess of inadmissible items of expenditure be fixed in the following scales:

Deputy Conservator of Forests ...	25%
Ranger ...	40%
Forester and Forest Guard ...	35%

On perusal of the said G.O. it is seen the liability is to be apportioned in the ratio of 25%, 40% and 35% against the Deputy Conservator of Forests, Ranger and Guard respectively and the petitioner being a Ranger is liable to pay 40% of the loss. The said G.O. is dealt with in W.P.(MD)No.7828 of 2009 vide order 23.12.2009 in the case of R.Neethirajan V. the Secretary to Government and others. It is seen the respondents have fixed the entire liability which is erroneous and against the G.O.Ms.No.92 and this Court is of the considered opinion that the impugned order is liable to be interfered with.

9. The next contention that was raised by the petitioner is that he has submitted the statement given by the concerned farmers where it has been stated that due to inadequate rain and non-availability of water, some of the saplings died, but the respondents have held in the report that no evidence was



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submitted by the petitioner. From these two statements it is evident that the farmers statement submitted by the petitioner was not gone into and was not taken for consideration by the respondents. Moreover, the disciplinary proceeding was initiated under Rule 17(a) of the Tamil Nadu Disciplinary Proceedings and Appeal Rules and the respondents have conducted summary enquiry. When the respondents have conducted summary enquiry then the respondents ought to have taken proper care to scrutinize the evidence that was submitted by the petitioner. As stated supra the respondents have not taken the statements of the farmers and hence the enquiry is conducted by violating the principles of natural justice. Therefore, this Court is of the considered opinion that the recovery imposed on the petitioner is against the evidence.

10. The third submission made by the petitioner is that the petitioner was on the verge of retirement and the imposition of the amount was made just 12 days before his retirement. Any disciplinary proceedings cannot be initiated against the delinquent if he is on the verge of retirement, which is a settled proposition. Moreover, any high value project cannot be handed over to such persons who are on the verge of their retirement, because he will not be able to complete the project. Hence, the said contention is acceptable and it is within



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the guidelines issued by the Government. Therefore, the imposition of recovery is against the evidence and also the guidelines issued by the Government.

11. Pending Writ Petition, the petitioner died and a substitution petition was filed to implead the legal heirs of the petitioner namely, Jeyalakshmi to contest this Writ Petition. Hence, the substitution petition was allowed vide order dated 06.04.2023 in W.M.P.(MD)No.7308 of 2023.

12. Therefore, this Court is inclined to interfere with the punishment. The impugned punishment order is set aside. The respondents are directed to pay the recovered amount within a period of eight (8) weeks from the date of receipt of a copy of this order. At this stage, the learned counsel for the petitioner prayed for granting of interest for the recovered amount. This Court is not inclined to grant any interest. Therefore, the plea seeking interest is rejected.



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13. In view of the above, this Writ Petition is allowed in above terms.

There shall be no order as to costs.

24.04.2023

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

To

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2.The Forest Extension Officer,
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S.SRIMATHY, J.

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