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W.P.No.1884 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.01.2024

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.1809, 1815 & 1829 of 2024

and

W.M.P.Nos.1873, 1874, 1882, 1883, 1896 & 1897 of 2024

M.Rajendran	... Petitioner in W.P.No.1809 of 2024
K.Rajaputhiran	... Petitioner in W.P.No.1815 of 2024
G.Perumal	... Petitioner in W.P.No.1829 of 2024
-Vs-	

1. The Principal Chief Conservator of Forests
& Head of Forest Post
Panagal Building, Chennai -15.

2. The District Forest Officer,
Salem Forest Division,
Salem -7. ... Respondent in W.P.No.1809 of 2024

1. The Principal Chief Conservator of Forests,
& Head of Forest Force
Panagal Building, Chennai 15.

2. The District Forest Officer,
Dharmapuri Forest Division,
Dharmapuri 5
.... Respondents in W.P.Nos.1815 & 1829 of 2024



W.P.No.1884 of 2024

Prayer in W.P.No.1809 of 2024:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, calling for the records of the 2nd respondent in connection with the impugned letter in letter/memo No.9244/2011/E1-1 dated 28.12.2023 and quash the same.

Prayer in W.P.No.1815 of 2024 : Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, calling for the records of the 2nd respondent in connection with the impugned letter in letter/memo No.7957/2018/E2 dated 29.12.2023 and quash the same.

Prayer in W.P.No.1829 of 2024 : Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, calling for the records of the 2nd respondent in connection with the impugned letter in letter/memo No.8728/2018/E2 dated 29.12.2023 and quash the same.

In all W.Ps

For Petitioner : Mr. K.Venkataramani (Senior Counsel)
for Mr.Muthappan
For Respondents : Mr.S.Arumugam
Government Advocate

ORDER

These Writ Petitions have been filed challenging the show cause notice issued by the second respondent, thereby given an opportunity of making representation on the penalty as proposed above under Rule 17(c)(i)(1) of the Tamil Nadu Civil Services (Discipline and Appeal) rules.



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2. All the petitioners had entered into service as Forester and Forest Guard. When they were in service, they were involved in a criminal case registered in Crime No.RC.3/(S)/95 on the file of the CBI/SEP, Madras. After filing a final report, the same has been taken cognizance in S.C.No.117 of 1996 on the file of the District Sessions Court, Dharmapuri. There were 236 accused including the petitioners. The petitioners were arrayed as accused. They were charge sheeted for various offences including the offence under SC/ST Act. As far as the petitioner in W.P.No.1809 of 2024 is concerned, he was convicted with the following punishments :

- (1) 147 IPC ? 2 years RI
- (2) 342 r/w 149 IPC ? 1 year RI with fine Rs.1,000, in default 3 months SI
- (3) RI for 1 year with fine Rs.1000, in default 3 months SI
- (4) RI for 1 year with fine Rs.1000, in default SI for 3 months
- (5) RI for 1 year
- (6) 3 (2)(iii) of SC/ST Act - 3years RI, fine Rs.1000, in default 9 months SI
- (7) 3(1)(x) of SC/ST Act – 3 years RI, fine of Rs.1000 in default 9 months SI
- (8) RI for 3 years and fine Rs.1000, in default 9 months SI

3. As far as the petitioner in W.P.No.1815 of 2024 is concerned, he was convicted with the following punishments :

- (1) 147 IPC ? 2 years R.I



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(2) 342 r/w 149 IPC ? 1 year RI with fine Rs.1,000, in default 3 months

(3) 323 IPC ? 1 year RI with fine Rs.1,000, in default 3 months SI

4. As far as the petitioner in W.P.No.1829 of 2024 is concerned, he was

convicted with the following punishments :

(1) 147 IPC ? 2 years R.I

(2) 342 r/w 149 IPC ? 1 year RI with fine Rs.1,000, in default 3 months

SI

(3) 323 r/w 149 IPC ? 1 year RI with fine Rs.1,000, in default 3 months

SI

5. Aggrieved by the same, the petitioners preferred appeals before this Court. All the accused filed separate appeal and a batch of Criminal Appeal Nos.618, 622, 625, etc of 2011 were filed before this Court. Pending appeal, the petitioners were served with Show Cause Notice by invoking Rule 17(c)(i)(1) of TNCS (D&A) Rules. The show cause notices were challenged before this Court in a batch of Writ Petitions. This Court, by an order dated 10.10.2023, directed the respondents to conduct an enquiry and not to pass final orders. By another order dated 02.02.2021, this Court issued a direction to complete the disciplinary proceedings and pass orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of the order. This Court dismissed the appeals and the punishment imposed by the Trial Court was confirmed.



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6. Aggrieved by the same, the petitioners preferred appeal before the Hon'ble Supreme Court of India and their surrender was exempted till the Special Leave Petition is taken for hearing. However, the conviction was not stayed by the Hon'ble Supreme Court of India. Therefore, based on the order of conviction passed by this Court in the appeals, the second respondent, now, issued show cause notice dated 29.12.2023, thereby directed the petitioners to submit reply within 30 days from the date of receipt of a copy of the order.

7. The learned Senior Counsel appearing for the petitioners submitted that the impugned show cause notice issued to an individual proposing a punishment should only mention, as if, it is a minor or major punishment for conviction in the criminal case and direct the Government officials to submit a reply for the proposed punishment. However, the impugned show cause notice contains the proposed punishment of dismissal from service and proposing a punishment in a show cause notice clearly shows that the authorities have already decided to impose a major punishment and submitting a reply is only an empty formality. Therefore, there is no point in submitting a reply for the show cause notice.



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8. He further submitted that the show cause notice must contain valid reasons and it should be suggestive in nature. It should not mention the proposed punishment and in such cases, submitting a reply will become an empty formality. When there are more than one major punishment available under Rule 8 of the TNCS (D&A) Rules, without hearing the petitioner, imposing a particular punishment is in total violation of principles of natural justice, besides it is in violation of Article 311(2) of the Constitution of India.

9. A perusal of the show cause notice reveals that the petitioners were tried for their respective charges by the Trial Court and the same was confirmed by this Court in a batch of appeals. Now, they preferred appeals before the Hon'ble Supreme Court of India and it is pending. Therefore, the Criminal Court had already convicted the petitioners for the charges as mentioned in the show cause notice. Article 311 of the Constitution of India states as follows :

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. -

(1) No person who is a member of a civil service of



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the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges Provided that where it is proposed after such inquiry to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed :

Provided further that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry ; or



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(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

10. No person shall be dismissed or removed without giving reasonable opportunity of being heard in respect of the charges. However, the said clause shall not apply, where such person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. In the case on hand, the petitioners were admittedly convicted by the Trial Court and the same was confirmed by this Court. Therefore, the petitioners are not entitled for any show cause notice. However, in order to apply Rule 17(c)(i)(1) of TNCS (D&A) Rules, the petitioners were served with a show cause notice.

11. Rule 17(c)(i)(1) of TNCS (D&A) Rules is extracted



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hereunder :

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Rule 17(c) : Procedure to be followed when a Government Servant is convicted on criminal charge / convicted by Court Martial / absconded or other reasons :

(1) The requirements of sub rule (b) shall not apply where it is proposed to impose on a member of a service any such penalty as is referred to in clause of that sub-rule on the basis of facts which have led to his conviction in a criminal Court (whether or not he has been sentenced at once by such Court to any punishment) ; but he shall be given a reasonable opportunity of making such representation that he may desire to make such representation, if any, shall be taken into consideration before the order imposing the penalty is passed.

12. Further, in the show cause notice, it was mentioned that the petitioners have been convicted on Vachathi criminal charge. The said conviction was imposed by the Trial Court and the same was also confirmed by this Court. Therefore, the conduct of the petitioners is very much mentioned categorically. Therefore, this Court finds no infirmity or illegality in the show cause notice issued by the second respondent and the writ petitions lacks merits and it is liable to be dismissed.



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13. Accordingly, these Writ Petitions stands dismissed.

Consequently, connected miscellaneous petitions are closed. No costs.

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Internet : Yes

Index : Yes/No

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G.K.ILANTHIRAIYAN, J.

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