



W.P.(MD) No.5814 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 23.02.2024

ORDERS PRONOUNCED ON : 26.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.5814 of 2021

and

W.M.P.(MD) No.4568 of 2021

Ramarajan

... Petitioner

Vs.

1.The Chairman cum Principal Chief
Conservator of Forest,
Arasu Rubber Corporation Ltd (ARC),
Tamil Nadu Bio University Green Project,
Project Management Unit Office,
Nanmangalam, Medavakkam Post,
Chennai.

2.The Managing Director cum
Chief Conservator of Forest,
Arasu Rubber Corporation Ltd (ARC),
No.75, Vadasery,
Nagercoil, Kanyakumari District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue
Writ of Certiorarified Mandamus to call for the records pertaining the



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proceeding of the 2nd respondent vide proceedings No.Se.Mu.Aa.No.P2/11802/18-3 dated 14.10.2019, confirmed by the order of the 1st respondent in proceedings No.CH-1/2020 dated 02.12.2020 and quash the same as erroneous and illegal and direct the 2nd respondent to repay the amount recovered from the petitioner's salary pursuant to the impugned order from November, 2019.

For Petitioner	:	Mr.K.P.Narayanakumar
For R1	:	Mr.D.Sasikumar Additional Government Pleader
For R2	:	Mr.A.K.Manikkam Special Government Pleader

ORDER

Aggrieved by the order passed by Respondent No.2 in proceedings in Se.Mu.Aa.No.P2/11802/18-3, dated 14.10.2019, as confirmed by Respondent No.1 in Proc.No.Ch-1/2020, dated 02.12.2020, imposing the punishment of postponement of increment by one year without cumulative effect and ordering for recovery of an amount of Rs.1,91,100/- from the petitioner, the present writ petition has been filed.



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2.1. The brief facts, that are relevant for the disposal of this writ petition, are as under:

2.2. The 2nd respondent conducted auction sale in respect of 757 rubber trees in Bit No.III of Coupe No.26A on 21.02.2018 and sale was confirmed in favour of one Thiru S.Lawrence at the rate of Rs.3,765/- per tree. Accordingly, the said Contractor entered into an agreement on 28.05.2018 and the Divisional Manager, Manalodai Division had issued order for cutting and removal of trees to the Contractor on 28.06.2018. Accordingly, the Contractor had felled 253 rubber trees in first strip, thereby leaving a balance of 504 trees. But the said Contractor made a complaint on 31.07.2018 alleging that there is shortage of trees in Strips 2 and 3 of Coupe No.26A and accordingly, re-enumeration of trees in Strips 2 and 3 of Bit No.III of Coupe No.26A was conducted and it was found that there are only 442 trees including 49 broken stumps. Thus, there is shortage of 111 trees out of 504 trees. However, the Contractor has come forward to pay for the 400 trees out of 504 trees and therefore, the petitioner, who was working as Field Assistant, the Field Officer concerned and the Divisional Manager were subjected to disciplinary proceedings by issuing charge memos.



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2.3. The petitioner was asked to show cause as to why the loss suffered by Respondent No.2 to an extent of 35% should not be recovered from the petitioner while proposing to recover the balance amount in the ratio of 25% and 40% from the Divisional Manager and the Field Officer in terms of G.O.Ms.No.1, Environmental and Forest Department, dated 03.01.1994. In response to the same, the petitioner submitted his explanation contending that the original enumeration of the trees was conducted in the month of January, 2018 and thereafter auction notice was issued on 21.02.2018 in the absence of the petitioner, as he was working at the relevant time in different division and was transferred to the Manalodai Division only on 07.05.2018 and therefore, he cannot be made responsible for the shortage of trees and it is necessary to verify with the Field Assistant, who was working at the relevant point of time.

2.4. The petitioner also contended that the agreement was entered into with the Contractor on 28.05.2018 and any shortage of trees is to be reported by the Contractor within seven days from the date of agreement in



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terms of the said agreement. But no such complaint was made within the time and it is only belatedly after cutting 253 trees, the Contractor made a complaint on 31.07.2018. The petitioner also contended that the coupe in question was allotted to the petitioner only on 23.05.2018 and thus, there is long gap between the date of enumeration in the month of January and the date of handing over the coupe to the petitioner. Therefore, he requested Respondent No.2 to consider the said aspects. Though through the show cause notice, it was proposed to recover 35% of the loss from the petitioner in terms of G.O.No.1, dated 03.01.1994, in the impugned order, the petitioner was made liable to 50% of the loss on the ground that the Divisional Manager was severely warned and further proceedings against him were dropped.

3. Heard Sri K.P.Narayanakumar, learned counsel for the petitioner, Sri D.Sasikumar, learned Additional Government Pleader appearing for Respondent No.1 and Sri A.K.Manikkam, learned Special Government Pleader appearing for Respondent No.2 and perused the material on record.



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4. From the perusal of the order dated 14.10.2019 passed by Respondent No.2, it is noticed that the explanation submitted by the petitioner was not at all considered, but it is only on coming to the conclusion that the petitioner failed to show any cause for the missing trees, Respondent No.2 proceeded to pass the order imposing the punishment and ordering for recovery. When the petitioner filed an appeal against the order passed by Respondent No.2 before Respondent No.1, Respondent No.1 once again having narrated the entire factual aspects, without even referring to the grounds of appeal raised by the petitioner, confirmed the order passed by Respondent No.2 confirming the punishment imposed on the petitioner.

5. Through G.O.No.1, dated 03.01.1994, the Tamil Nadu Forest Department Code was amended by adding Note (4) in Section 143 of the said Code which provides for recovery of the financial loss caused due to irregularities, so far as the inadmissible items of expenditure or excess expenditure, etc., in the ratio of 25%, 40% and 35% among the District Forest Officer, Rangers and Foresters and Forest Guards. It is pursuant to



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the said Note (4) of Section 143, the amounts are sought to be recovered from the petitioner.

6. As seen from the counter affidavit, the Divisional Manager, Manalodai Division was seriously warned and further disciplinary proceedings were dropped against him. But as to why the recovery of 25% in terms of Note (4) of Section 143 of the Tamil Nadu Forest Department Code is not effected is not stated in the counter affidavit. When the Forest Code mandates recovery of loss in a particular mode, any such recovery should be done in accordance with the said code. But in the instant case, Respondent No.2 without recording any reason for exonerating the Divisional Manager from his liability for the loss caused to the Government, fixed the liability at the rate of 50% each on the Field Assistant and Field Officer. Such discretion exercised by Respondent No.2 is not supported by any provision of law. When Respondent No.2 intended to act in terms of the Forest Department Code, he is supposed to act strictly in accordance with the same and in case, if Respondent No.2 intends to deviate from the same, he has to give specific reasons for the same provided there any such



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provision for deviating from the code. There is no clarity on this aspect either in the impugned order or in the counter affidavit filed by the respondents. Further, one of the contentions raised by the petitioner stating that the Contractor is expected to raise objection about the number of trees within a period of one week from the date of agreement also has not been considered by the respondents in both the impugned orders.

7. Further, the impugned orders came to be passed only on receipt of explanation from the petitioner without conducting any enquiry of whatsoever nature. No doubt, the punishment of stoppage of one increment without cumulative effect is a minor penalty. The same being a minor punishment, may be justified in the absence of any enquiry. But recovery of an amount of Rs.1,91,100/- is concerned, the same would definitely cause great prejudice to the petitioner and the same is going to have an impact on the take home salary of the petitioner for about 59 months. Therefore, the respondents are expected to act more diligently and provide all reasonable opportunity to the petitioner to defend himself, who is a lower rank officer in Respondent No.2.



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8. In the light of the above, this Court is of the considered view that both the impugned orders are not sustainable under law for want of consideration of the stand of the petitioner herein at both the stages, that is, while passing the original order dated 14.10.2019, and the appellate order dated 02.12.2020.

9. Accordingly, both the impugned orders are set aside and the matter is remanded back to Respondent No.2 for considering the matter afresh by duly affording an opportunity of personal hearing to the petitioner, duly taking into consideration the observations made hereinabove and the amounts, if any, recovered pursuant to the impugned orders shall be subject to result of the orders to be passed by Respondent No.2 pursuant to this order.

10. Accordingly, this Writ Petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

26.03.2024

NCC : Yes/No
Index : Yes/No
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MUMMINENI SUDHEER KUMAR, J.

abr

To

1.The Chairman cum Principal Chief
Conservator of Forest,
Arasu Rubber Corporation Ltd (ARC),
Tamil Nadu Bio University Green Project,
Project Management Unit Office,
Nanmangalam, Medavakkam Post,
Chennai.

2.The Managing Director cum
Chief Conservator of Forest,
Arasu Rubber Corporation Ltd (ARC),
No.75, Vadasery,
Nagercoil, Kanyakumari District.

Pre-delivery Order made in
W.P.(MD) No.5814 of 2021

26.03.2024