

W.P.(MD)No.18171 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 19.12.2024

DELIVERED ON : 10.01.2025

CORAM:

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.P.(MD)No.18171 of 2017

and

W.M.P(MD)Nos.14626 & 14627 of 2017

M.Sathiyamoorthy (Died)

1.Vimala

2.Gowrisankar

3.Muthuraman

... Petitioners

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Environment and Forests,
St.George Fort,
Chennai-14.

2.The Principal Chief Conservator of Forest,
Panagal Maligai,
Saidapet,
Chennai.

3.The District Forest Officer,
(Social Forestry Division),
J.K.Nagar,
Kajamalai Post,
Trichy.

4.The Divisional Forest Officer,
Regular Forestry Division,
Vallam Road, Trichy.

... Respondents



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Prayer in W.P(MD)No.18171 of 2017 : 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 in Se.Mu.No. 4034/2010/pa, dated 22.06.2017 order passed by 4th respondent and quash the same as illegal an consequently to direct the 3rd respondent reinstated the petitioner in the super numeric plot watcher in Thanjavur Division, Kumbakonam Range, Anankarai Section with continuity of service as well as all attend monitory benefits from 16.10.2010.

Prayer in W.M.P(MD)No.14626 of 2017 : Writ Miscellaneous Petition filed under Article 226 of the Constitution of India, praying this Court to dispense with the original production of Se.Mu.No.4034/2010/pa, dated 22.06.2017 pending disposal of the above WP.

Prayer in W.M.P(MD)No.14627 of 2017 : Writ Miscellaneous Petition filed under Article 226 of the Constitution of India, praying this Court to stay of all further impugned proceedings in Se.Mu.No.4034/2010/pa, dated 22.06.2017 order passed by 4th respondent, pending disposal of the above WP.

For Petitioner : Mr.M.Venkatesan

For Respondents : Mr.J.Ashok

Additional Government Pleader



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ORDER

WEB COPY Heard both sides.

2. This writ of certiorarified mandamus has been filed to call for the records of the impugned order dated 22.06.2017, quash the same, and direct the 3rd respondent to reinstate the petitioner in the supernumerary post of watchman in the Tanjore Division, Kumbakonam Range, Anankarai section, with continuity of service and all attendant monetary benefits.

3. The petitioner was initially appointed 09.12.1982 as a Social Forestry worker in the Trichy division. After sixteen years of insecure service conditions, he started a legal battle through W.P(MD)No.7353 of 2008, seeking a direction to regularise his service in the post of Office Assistant, Mali, or Office Watchman. The said writ was allowed, and consequently, the petitioner and others were appointed/converted to supernumerary posts by an order dated 31.08.2009. While he was working under the 4th respondent, criminal cases STOR No.5 of 2010 and STOR No.6 of 2010 were registered against him and 11 others for illicit felling of teak trees. The petitioner was suspended on 16.07.2010.

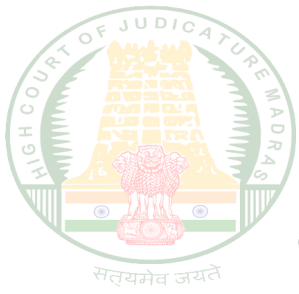


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4. The 3rd respondent initiated disciplinary proceedings against the petitioner by framing charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, alleging: (i) The petitioner submitted a false medical certificate for the period from 15.06.2010 to 15.07.2010 as a defence of alibi. (ii) The petitioner was responsible for the theft of 36 teakwood logs, causing a loss of Rs.13,75,000/- to the Government.

5. After an inquiry, the charges against the petitioner were proven, and he was dismissed from service by an order of the 3rd respondent dated 31.08.2016. Aggrieved by the dismissal, the petitioner preferred an appeal before the Conservator of Forests, Trichy Circle. The Conservator of Forests, by an order dated 20.01.2017, observed that the supernumerary post was temporarily created and not governed by the Fundamental Rules or any service rules. Thus, the disciplinary inquiry conducted under the Tamil Nadu Civil Services (Discipline and Appeal) Rules was deemed inapplicable, and the appeal under these rules was not considered. Following this, the 4th respondent, by a letter dated 09.03.2017, cancelled the dismissal order dated 31.08.2016 passed by the 3rd respondent.



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6. Subsequently, the 3rd respondent issued a charge memo dated 09.03.2017, reiterating the same allegations as the earlier proceeding. The petitioner submitted his explanation on 18.04.2017. However, unsatisfied with the reply, the 4th respondent passed the impugned order dated 22.06.2017, discharging the petitioner from service.

7. The petitioner was appointed to the supernumerary post on 31.08.2009, suspended on 16.07.2010, and attained the age of superannuation on 30.06.2022. Thus, the prayer for reinstatement has become infructuous. The 3rd respondent had initially conducted a disciplinary proceeding after giving sufficient opportunity to the petitioner and arrived at a logical conclusion on merits. However, the Conservator of Forests rejected the application of the Tamil Nadu Civil Services (Discipline and Appeal) Rules to the temporarily created supernumerary post and declined to consider the appeal on merits. This led to the cancellation of the dismissal order passed by the 3rd respondent.

8. Regardless of whether the petitioner's service conditions fall within the scope of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the appellate authority was obligated to decide the appeal



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on its merits. However, we cannot examine the correctness of the Conservator of Forests' order here, as the dismissal order has already been cancelled. The main issue now is whether the impugned order is valid.

9. It is an established rule of law that the services of a temporarily appointed person can be terminated by the appointing authority if the services are no longer required or are unsatisfactory, without conducting a formal inquiry. However, if specific allegations or accusations are made against a temporary employee, the principles of natural justice must be followed, and the employee should be given sufficient opportunity to defend themselves. A formal domestic inquiry must be conducted.

10. In this case, the 4th respondent issued a charge memo dated 09.03.2017, alleging that the petitioner committed theft of teakwood, submitted a false medical certificate, and caused a loss to the state exchequer. Without conducting an inquiry, the 4th respondent concluded, after the receipt of the petitioner's reply, that the charges were proven and discharged him from service. This action violates the basic principles of natural justice, as no formal inquiry was conducted. Hence, the impugned order is liable to be quashed.

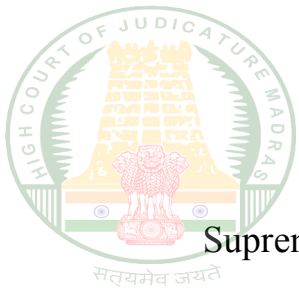


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11. Regarding the theft of teakwood, criminal cases STOR No.5 of 2010 and STOR No.6 of 2010 were filed against the petitioner for the same incidents. However, the petitioner was acquitted in these cases. The petitioner relied on the judgment in W.P(MD)No.27231 of 2019 dated 16.12.2022 and sought a similar order. In the case cited by the petitioner, after a departmental disciplinary inquiry, the employee was removed from service. When the employee filed an appeal, the appellate authority set aside the removal order and directed the appointing authority to conduct a fresh inquiry. The appointing authority, instead of immediately complying with the appellate authority's direction dated 05.05.2017, issued a charge memo only on 05.11.2019. Due to this significant delay, the charges were framed after the remand order was quashed.

12. However, in the present case, there is no undue delay attributable to the respondents, nor was the issue of delay raised. Here, the second charge memo was issued within less than two months from the appellate authority's order dated 20.01.2017, specifically on 09.03.2017. Thus, no delay occurred in this instance. Moreover, in the judgment relied upon by the petitioner, the Court also observed the acquittal order passed by the criminal Court. It is a settled position of law, as laid down by the



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Supreme Court in *Corporation of The City of Nagpur vs. Ramachandra and Others, 1981 SCR (3) 22*, that an acquittal by a criminal Court does

not preclude the continuation of departmental inquiries. This is a matter for the department to decide, taking into account the nature of the findings issued by the criminal court.

13. Typically, if an individual is acquitted honourably and completely exonerated of charges, it may not be appropriate to continue departmental proceedings. However, an acquittal does not automatically divest the concerned authority of its power to proceed with a departmental inquiry. This principle has been reiterated by the Madras High Court in *M.M. Rubber Company Ltd. vs. Presiding Officer (Addl.) Labour Court, (1986) 1 MLJ 426*, which stated that departmental proceedings cannot be considered barred simply because the criminal case concluded in favour of the delinquent. The Supreme Court's ruling in the *Corporation of The City of Nagpur* case overrules any contrary interpretation. Thus, the judgment relied upon by the petitioner does not assist their case, as the facts and circumstances differ significantly.

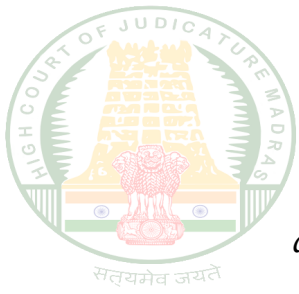


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14. As noted earlier, the impugned order passed by the 4th respondent without conducting an inquiry is not acceptable, as allegations have been imputed against the petitioner. The Apex Court, in **Kanhialal vs. District Judge and Others (AIR 1983 SC 351)**, held as follows:

2. It is clear on the facts of the present case and particularly from the order passed by the Administrative Judge on 20th November 1980 while disposing of the representation of the appellant that the only reason why he was discharged from service was that he was prima facie responsible for the loss of some document from the judicial record on account of his negligence and carelessness." The order of discharge passed against the appellant was, therefore clearly penal in-character and there can be no doubt that even if he was a temporary servant, he was entitled to the protection of Article 311(2) of the Constitution and hence no penal order could be passed against him without complying with the requirements of that Article. Since admittedly the requirements of Article 311(2) were not satisfied in the case of the appellant before terminating his service, we are of the view that the order passed by the Learned District Judge terminating the service of the appellant must be held to be void. We accordingly allow the appeal and set aside the order terminating the service of the appellant. But while doing so, we may make it clear that it will be open to the district judge or any other appropriate



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authority to take disciplinary action against the appellant, if thought fit and nothing that has been said in this judgment will act as a bar against their doing so.”

15. After a careful examination of the facts and circumstances of the case, this Court concludes that the impugned order suffers from procedural and technical flaws. Consequently, the impugned order is quashed. However, given the significant delay already encountered in this matter, the appointing authority is granted liberty to initiate fresh disciplinary proceedings against the delinquent in strict accordance with the law. The appointing authority is directed to expedite the process and endeavour to complete the proceedings within six (6) months from the date of receipt of this order. It is emphasised that the appointing authority must strictly adhere to the principles of natural justice, ensuring that the delinquent is provided with sufficient notice, a fair opportunity to defend himself, and that all procedural formalities are properly followed. This Court explicitly states that no opinion has been expressed regarding the merits of the allegations, and the appointing authority shall consider the matter independently based solely on the evidence presented.



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WEB COPY 16. This Writ Petition stands disposed of. No costs. Consequently,
connected Miscellaneous Petitions are closed.

10.01.2025

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

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To

- 1.The Secretary,
Department of Environment and Forests,
St.George Fort,
Chennai-14.
- 2.The Principal Chief Conservator of Forest,
Panagal Maligai,
Saidapet,
Chennai.
- 3.The District Forest Officer,
(Social Forestry Division),
J.K.Nagar,
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- 4.The Divisional Forest Officer,
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DR.A.D.MARIA CLETE, J.
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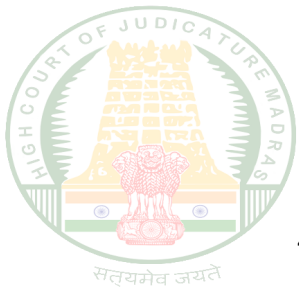
WEB CO **A.D.MARIA CLETE, J.**

Today, this matter is listed under the caption "Being Spoken to".

Both side counsels are present, and the following order is passed:

2. In this writ petition, an order was pronounced on 10.01.2025. However, due to oversight, the Court failed to notice the death of the original writ petitioner. Subsequently, the counsel for the petitioners brought this fact to the Court's attention, noting that the legal heirs of the deceased writ petitioner had already been brought on record.

3. Upon perusal, it was found that the legal heirs of the deceased writ petitioner had filed W.M.P(MD)No.16119 of 2023 for substitution, which was allowed on 11.09.2024. Despite this, no consequential amendments to the prayer were sought by the legal heirs. Hence, the original prayer in the writ petition to quash the impugned order dated 22.06.2017 and for a direction for reinstatement remains unamended.



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4. In the original order dated 10.01.2025, the Court concluded in

paragraph 15 as follows:

“After a careful examination of the facts and circumstances of the case, this Court concludes that the impugned order suffers from procedural and technical flaws. Consequently, the impugned order is quashed. However, given the significant delay already encountered in this matter, the appointing authority is granted liberty to initiate fresh disciplinary proceedings against the delinquent in strict accordance with the law. The appointing authority is directed to expedite the process and endeavour to complete the proceedings within six (6) months from the date of receipt of this order. It is emphasised that the appointing authority must strictly adhere to the principles of natural justice, ensuring that the delinquent is provided with sufficient notice, a fair opportunity to defend himself, and that all procedural formalities are properly followed. This Court explicitly states that no opinion has been expressed regarding the merits of the allegations, and the appointing authority shall consider the matter independently based solely on the evidence presented.”

5. As the original writ petitioner has since passed away, the directions regarding initiating fresh disciplinary proceedings cannot be carried out. Consequently, the latter portion of the order in paragraph 15, from "However, given the significant delay.." to "...based solely on the



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evidence presented," is hereby deleted and substituted with the following

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"However, since the original writ petitioner is deceased, the respondents are directed to treat the original writ petitioner as having died in harness and to consider the claims of the substituted petitioners/legal heirs of the writ petitioner per law, expeditiously."

6. After this amendment, paragraph 15 shall read as follows:

"15. After a careful examination of the facts and circumstances of the case, this Court concludes that the impugned order suffers from procedural and technical flaws. Consequently, the impugned order is quashed. However, since the original writ petitioner is deceased, the respondents are directed to treat the original writ petitioner as having died in harness and to consider the claims of the substituted petitioners/legal heirs of the writ petitioner per law, expeditiously."



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WEB COPY 7. Except for this amendment in paragraph 15, all other portions of the judgment remain unaltered.

24.01.2025

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A.D.MARIA CLETE,J.

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Order made in
W.P(MD)No.18171 of 2017

24.01.2025