

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.04.2017

DATE OF DECISION : 11.04.2017

CORAM :

The Hon'ble MR.JUSTICE M.SUNDAR

W.P.No.737 of 2010

and

M.P.No.1 of 2010

K.M.Devaraj

... Petitioner

Vs.

- 1.The Commissioner of Social Welfare,
Chepauk, Chennai-5.
- 2.The District Social Welfare Officer,
Tiruvallur District
at Tiruvallur.
- 3.The District Treasury Officer,
Tiruvallur District,
at Tiruvallur.
- 4.The Accountant General (A&E),
No.361, Anna Salai,
Teynampet, Chennai-18.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the second respondent herein in his proceedings Na.Ka.No.1188/A1/06, dated 8.12.2009 ordering recovery of Rs.2,59,169/- from the DCRG amount due to the petitioner and ordering recovery of Rs.61,326/- from his retirement benefits and quash the same and consequently, to direct the respondents herein to pay the DCRG amount of Rs.2,59,169/- and Rs.61,326/- to the petitioner without any further delay.

For Petitioner : Mr.Ravi Shanmugam

For Respondents: Mr.R.Vijayakumar, AGP

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ORDER

With the consent of both parties, the writ petition itself is taken up for disposal.

2 Writ petitioner is a retired Government employee, who retired more than a decade ago on 31.7.2006. An order of recovery dated 8.12.2009, passed 3-1/2 years post retirement by the second respondent, has been called in question in the instant writ petition. It may be necessary to give a thumbnail sketch of facts for appreciating this order.

3 Factual Matrix :

(a) The writ petitioner joined government service as a Junior Assistant on 17.2.1971 at Kilpauk Medical College, Madras. Thereafter, between 1976 and 1982, the writ petitioner had worked in the Treasuries and Accounts Department, after which, the writ petitioner was posted in the Social Welfare Department in 1982, from where he ultimately retired on 31.7.2006 after putting in 35 years of service.

(b) It is not in dispute between the parties that when the writ petitioner retired on 31.7.2006, he was paid General Provident Fund ("G.P.F.", for brevity) amount and leave salary amount alone. Other retirement benefits were, admittedly, not paid to the writ petitioner, though no disciplinary proceedings were pending against him on the date of his retirement.

(c) In the course of his 35 years of service, as aforesaid, the writ petitioner had also held additional charge as Special Officer of 'Sri Annapoorna Weaning Food Corporation Society' (hereinafter referred to as 'said society' for brevity) from 2002 upto his date of retirement on 31.7.2006. It is to be noted that this is an additional charge and the writ petitioner is entitled to additional charge allowance, which also admittedly remains unpaid.

(d) The entire writ petition pertains to certain happenings during the aforesaid four years period when the writ petitioner was holding additional charge as Special Officer of the said society.

(e) Alleging that the writ petitioner had caused loss to the said society, the Project Coordinator, in and by an order dated 13.3.2007 had issued recovery proceedings. The loss alleged to have been caused by the writ petitioner to the said society was quantified at Rs.1,95,744/- and the same was directed to be recovered from his Death-cum-Retirement Gratuity (hereinafter referred to as "D.C.R.G.", for brevity).

(f) It would suffice to state that the alleged loss was said to have been caused by the writ petitioner, owing to delayed despatch of 12,158 Kgs. of nutritious flour (rj;J kht[]). Besides the delayed despatch, it is also the case of the Special Officer that the said flour had gone bad (infested by insects) and therefore, returned by the procuring entity in Kanchipuram. There is also an allegation that 12,158 kgs. of the said flour, which had gone bad, was destroyed without proper intimation to the department.

(g) Therefore, the entire allegation pertains to 12,158 Kgs of the said flour. The allegations are twofold. (i) Delayed despatch, resulting in flour going bad, which in turn resulted in it being returned by the procuring entity and (ii) destruction of the said flour (that had gone bad) without suitable intimation to the department.

(h) Immediately, the writ petitioner submitted a detailed report to the Project Coordinator in this regard. This representation is dated 3.4.2007. In this representation, the writ petitioner stated that he is not responsible for the alleged loss, and that the entire responsibility has to necessarily be fixed on his predecessor, one Mr.V.Venkatachalam.

(i) The Project Coordinator, accepted the plea of the writ petitioner vide his proceedings dated 17.7.2007 and held that the writ petitioner's predecessor, one V.Venkatachalam, (a retired Special Officer) alone is responsible for the aforesaid loss to the said society. On that basis, the Special Officer rescinded the earlier recovery proceedings, ordering recovery of Rs.1,95,744/-, but modified the same as Rs.48,935.95, holding that this part of the loss has to be mulcted on the writ petitioner, as it pertains to destruction of the said flour, which had gone bad.

(j) Not accepting mulcting of Rs.48,935.95 also, the writ petitioner preferred a statutory appeal. The statutory appellate authority is the Secretary to the Government, Social Welfare and Nutritious Meal Programme Department. This appeal is dated 25.10.2007. As there was a delay in disposal of the appeal, the writ petitioner filed a writ petition being W.P.No.12845 of 2009 before this Court, seeking mandamus to direct the appellate authority to dispose of the statutory appeal, dated 25.10.2007, pertaining to recovery of Rs.48,935.95. Vide order dated 13.7.2009, this Court disposed of the writ petition directing the statutory appellate authority to pass orders and dispose of the appeal within a time frame of 12 weeks. Interestingly and intriguingly, no orders have been passed until this day though more than 7 years have rolled by. This position is not in dispute as between the parties before me. Under the circumstances set out supra, it is the case of the writ petitioner that he was not paid even his remaining retirement

benefits by withholding Rs.48,935.95.

(k) Therefore, the writ petitioner filed one more writ petition being W.P.No.12662 of 2009 before this Court with a prayer to direct the respondents to pay his retirement benefits, such as pension, dearness allowance, D.C.R.G. amount of Rs.2,96,159/-, commutation of pension of Rs.2,55,000/- and other monetary benefits with interest at the rate of 10% per annum for the delayed period. This writ petition came to be disposed of by this court on 18.9.2009 (this court acceded to the prayer of the writ petitioner). The operative portion of the said order is paragraph 5 and the same may be usefully extracted to make the factual matrix complete. Paragraph 5 reads as follows:

"5. Therefore, on a consideration of the above said judgment of the Hon'ble Division Bench, this Court is of the opinion that inasmuch as the payment has not been made to the petitioner within a reasonable time due to the fault of the respondents 1 and 2, the respondents 1 and 2 are also directed to pay 10% interest on the amount payable to the petitioner. The amount shall be computed for the payment of interest with effect from 01.08.2006 since it can be reasonably presumed that it could take few months for the respondents to make the payment of retirement benefits in the normal circumstances."

(l) The writ petitioner was waiting eagerly in the fond hope that the respondents would comply with the aforesaid order of this court. Without preferring an intra-court appeal (thereby giving quietus to the order), the District Social Welfare Officer, Tiruvallur District, slapped the writ petitioner with an order dated 8.12.2009, bearing proceedings Na.Ka.No.1188/A1/06. In this order dated 8.12.2009, recovery of a sum of Rs.3,20,495/- has been ordered. It has been stated in this order that the D.C.R.G. amount due to the writ petitioner being Rs.2,59,169/- is withheld and he was called upon to pay the balance amount of Rs.61,326/-. It was, further, ordered that Rs.61,326/- will be recovered from his other retirement benefits.

(m) It is not in dispute that this order was passed without notice to the writ petitioner. This order dated 8.12.2009 passed by the second respondent is hereinafter referred to as the 'impugned order', for the sake of brevity, convenience and clarity.

4 Discussion :

(a) As stated supra, the impugned order was passed 3-1/2 years after the retirement of the writ petitioner. The impugned order was passed without prior notice or opportunity to the writ petitioner. There is no dispute on this factual aspect.

(b) Besides being passed without notice or opportunity, it is seen that the alleged loss, which was originally Rs.1,95,744/- and scaled down to Rs.48,935.95, has suddenly been hiked to Rs.3,20,495/-, without assigning any reason whatsoever.

(c) It is the case of the writ petitioner that the figure of Rs.3,20,495/- has been arrived at arbitrarily without any rhyme or reason. It is the specific case of the writ petitioner that the respondents being irked by the aforesaid order dated 18.9.2009 passed in W.P.No.12662 of 2009, had passed the impugned order with the intention of depriving and denying the writ petitioner of his retirement benefits. It is the further case of the writ petitioner that the figure of Rs.3,20,495/- has suddenly been hiked (without assigning any reason whatsoever) only with the objective of ensuring that it is in excess of D.C.R.G. amount due to the petitioner, i.e., Rs.2,59,169/-.

(d) The writ petitioner would submit that the impugned order has, therefore, been passed with the intention of nullifying the earlier aforesaid order of this court and also depriving the writ petitioner of the entire D.C.R.G. amount.

(e) Therefore, the impugned order is assailed on four grounds, which are as follows :

(i) The impugned order has been passed without prior notice or opportunity to the writ petitioner;

(ii) It has been passed close on the heels of / immediately after the order of this court, dated 18.9.2009, directing payment of retirement benefits to the writ petitioner with interest;

(iii) The sum of Rs.3,20,495/- has suddenly been brought up, arbitrarily and there is no explanation as to how this sum was arrived at while even according to the respondents, the quantum earlier was Rs.1,95,744/-, and that the same was scaled down to Rs.48,935.95;

(iv) The above cannot be done when the categorical finding of the Special Officer that the writ petitioner is not responsible for the loss to the society and that only his predecessor one Mr.V.Venkatachalam is responsible, has become final and given quietus by the respondents.

(f) The third respondent has filed a counter affidavit dated 8.4.2010. The second respondent has filed a counter affidavit dated 7.4.2017.

(g) A perusal of both counter affidavits and the contents of the same would reveal that none of the aforesaid four points have been met, much less is there any convincing explanation for the above. It is also not in dispute that the writ petitioner was not put on notice and no opportunity was given before the impugned order was passed.

(h) With regard to the sum of Rs.3,20,495/- being arbitrarily arrived at, there is no explanation whatsoever. All that have been stated in this regard is paragraph 5 of the counter filed by the second respondent, dated 7.4.2017. Paragraph 5 reads as follows :

"5. With regard to the allegations made by the petitioner in paras 9 to 16 of the affidavit this respondent submits that as per the Commissioner of Social Welfare proceedings Na.Ka.No.28107 Admn 4(2)/2006 dated 28.10.2009 it has been ordered to recover a sum of Rs.3,20,494/- from the petitioners pensionary benefits and as per Na.Ka.Rc.No.1188/A1/06 dated 08.12.2009 the following recoveries have been made and paid to the respective societies.

1) Audit Objection -1	Rs.2,49,250/-
2) Audit objection 2	
(Excess amounts towards rental lorries)	
	Rs.72,245/-
Total Recovery	Rs.3,20,495
Amount so far recovered	Rs.2,59,169
Balance to be recovered	Rs.61,326/-
Director payment by the petitioner	Rs.61,326/-
Balance due	- Nil

This respondent humbly submits vide letter No.28107/Admn.4(2)/2006 dated 11.10.2006, of the Director of Social Welfare, the pensionary benefits have been claimed and paid to the petitioner. Further vide letter No.28107/Admn.4(2)/2006 dated 30.04.2009, opinion has been sent to the Accountant General Office approving the grant of pension and commutation of pension amounts to be paid to the petitioner. Since a sum of Rs.48,936/- has to be recovered from the petitioner which is to be paid to Annapoorna Supplementary Food Manufacturing Women's Development Cottage Co-operative Society Limited, Tiruvallur District towards the settlement of Audit Recovery,

pension and commutation of pension amounts paid to the petitioner are adjusted towards audit recovery. The pensionary benefits of Rs.2,59,169/- has been recovered from the petitioner and paid to the respective societies. The balance recovery amount of Rs.61,326/- was paid by the petitioner in cash. Hence at this stage the question of payment of retiral benefits to the petitioner does not arise. Now, the petitioner is due to pay a sum of Rs.48,936/- towards the misappropriated amount / audit recovery to the Annapoorna Supplementary Food Manufacturing Women's Development Cottage Co-operative Society Limited, Tiruvallur."

(i) Mr.Ravi Shanmugam, learned counsel for the writ petitioner would draw my attention the following authorities :

- "(i) Sahib Ram Vs. State of Haryana
[1995 Supp.(1) SCC 18]
- (ii) Syed Abdul Qadir and others Vs. State of Bihar and
others [(2009) 3 SCC 475]
- (iii) Uma Nath Pandey and others Vs. State of U.P.
and another [2009 (2) CTC 185 = (2009) 12
SCC 40]
- (iv) M.S.Munivenkatappa Vs. State Bank of India
[2007 (2) CTC 135] "

(j) The above authorities have been relied on for three propositions, viz., (a) that an order of recovery cannot be passed without giving notice or opportunity, (b) principles of natural justice have to be adhered to scrupulously irrespective of whether the particular proceeding is judicial or administrative in nature and (c) alternate remedy is not always a bar to entertain a writ petition. These 3 propositions are well settled and therefore, there is no difficulty in straight away accepting this proposition.

(k) However, for the purpose of making this discussion complete, it may be useful to extract relevant paragraphs from the above said citations and they are as follows.

(l) In Sahib Ram case, the Supreme Court has held in paragraph 5, as follows:

"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid

his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission....."

(m) In Syed Abdul Qadir case, the Supreme Court has held in paragraphs 57 and 59 as follows :

"57.This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

59.Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

(n) The Supreme Court, in Uma Nath Pandey case, in paragraphs 15 and 19, held as follows:

"15..... What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

19. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice."

(o) As stated supra, the last of the aforesaid four citations (M.S.Munivenkatappa case) has been pressed into service to emphasize that the availability of alternate remedy is not always a bar to entertain a writ petition. Relevant paragraph is paragraph 23, which reads as follows:

"23..... It is well settled in law that availability of alternate remedy is not always a bar to entertain a Writ Petition and it is the discretionary jurisdiction given to the High Court under Article 226 of Constitution of India even to admit a Writ Petition where alternate remedy is also provided. Hence the contention of the learned counsel for the respondents made on this ground is also rejected."

(p) As stated supra, there is no explanation much less convincing explanation for the recovery amount suddenly being hiked to Rs.3,20,495/-.

(q) Learned Additional Government Pleader, Mr.R.Vijayakumar, would say that the sum has been arrived at based on the audit objections, but, as stated supra, the sum was Rs.1,95,744/- earlier (that was also scaled down to Rs.48,935.95). There is no explanation whatsoever in this regard in the two counter affidavits.

(r) With regard to the pendency of the statutory appeal and with regard to scaled down amount of Rs.48,935.95, notwithstanding an order from this court dated 13.7.2009 in W.P.No.12845 of 2009, the counter affidavits are silent.

(s) Therefore, I have no hesitation in holding that the writ petitioner cannot be mulcted even with the scaled down amount of Rs.48935.95, as the statutory appeal has not been disposed of inspite of the order of this court.

(t) Owing to all that have been stated supra, I am convinced that this writ petition deserves to be allowed.

(u) Considering the fact that the writ petitioner has retired from service more than a decade ago, I deem it necessary to emphasis that disbursement of the retirement benefit to the writ petitioner pursuant to this order brooks no delay. The same needs to be done forthwith.

5 Decision :

The writ petition is allowed. The impugned order dated 8.12.2009 passed by the second respondent is set aside. The respondents are directed to disburse the retirement benefits due to the writ petitioner, namely D.C.R.G. amount of Rs.2,59,169 and Rs.61,326/-, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CSIV)

True Copy

Sub-Assistant Registrar

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To

- 1.The Commissioner of Social Welfare,
Chepauk, Chennai-5.
- 2.The District Social Welfare Officer,
Tiruvallur District
at Tiruvallur.
- 3.The District Treasury Officer,
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+1 cc to M/s.Ranishanmugam Advocate sr 21739
+1 cc to the Government Pleader sr 22117

W.P.No.737 of 2010

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