

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-12-2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22507 of 2013

G.Sivakumar

.. Petitioner

-VS-

1.The State of Tamil Nadu,
Represented by its Commissioner
and Secretary to Government,
Handlooms, Handicrafts, Textiles and
Khadi Department,
Fort St. George,
Chennai-600 009.

2.The Tamil Nadu Khadi and Village Industries Board,
Represented by its Chief Executive Officer,
Kuralagam,
Chennai-600 108.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent's show cause memo bearing reference No.43210/E3(1)/2001 dated 26.2.2001 and quash the same and to direct the second respondent to disburse the amount of Rs.11,703/- illegally withheld from the petitioner's retirement benefits contrary to the Tamil Nadu Pension Rules, together with interest at 18% per annum.

For Petitioner - Mr.C.Saravanan

For Respondent-1 - Mr.K.Thangapandi,
Government Advocate.

For Respondent-2 - Mr.S.K.Bose.

ORDER

A show cause memo bearing Reference No.43210/E3(1)/2001 dated 26.2.2001 is sought to be quashed and a direction is sought for the second respondent to disburse the amount of Rs.11,703/- illegally withheld from the writ petitioner's

retirement benefits contrary to the Tamil Nadu Pension Rules.

2. The learned counsel, appearing on behalf of the writ petitioner, states that the writ petitioner was an employee of the respondent-Board and after rendering 34 years of service, he was voluntarily retired from service on 31.10.2002. However, the impugned show cause notice was issued in proceedings dated 26.2.2001, directing the writ petitioner to deposit the deficit amount of Rs.11,703/-. However, the writ petitioner has moved this writ petition only on 31.7.2013 after a lapse of about 12 years from the date of issuance of the impugned show cause notice.

3. A writ against a show cause notice can be entertained only on exceptional circumstances if the show cause notice is issued by the authority having no jurisdiction or competency, if an allegation of mala fides are raised or if the same is in violation of the statutory rules in force. Even in case of raising the allegation of mala fides, the authority against whom such an allegation is raised to be impleaded as a party in writ proceedings in his personal capacity. In the absence of any of these legal grounds, no writ can be issued against a show cause notice.

4. This apart, in the case on hand, the impugned show cause notice was issued on 26.2.2001 and the writ petition was filed only on 31.7.2013. Thus, the writ petitioner has filed the writ petition after a lapse of about 12 years from the date of issuance of the impugned show cause notice.

5. The learned counsel for the writ petitioner is attempting to convince this Court by stating that on merits, the writ petitioner has got a good case. Further, it is stated that no proper enquiry was conducted before issuing the impugned show cause notice and therefore, the writ petitioner had no opportunity to explain his statement in this regard.

6. However, in relation to the merits and the demerits of the case, this Court need not adjudicate at this point of time and it is left open to the writ petitioner to submit his explanations/objections and participate in the process. Even in that case, this Court is unable to accept the contention in view of the fact that the writ petitioner has slept over his right for about 12 years. A person, who slept over his right, cannot wake up one fine morning and knock the doors of the Court for redressing his grievances.

7. The learned counsel for the writ petitioner states that till the date of filing of the writ petition, the respondents have not passed any final orders. Therefore, there is a delay in challenging the impugned show cause notice. If no final orders are passed then it is left open to the writ petitioner to submit his explanations/objections on the show cause notice and participate in the proceedings, if any conducted by the respondents. It is for the respondents to consider all these objections/explanations and pass final orders, if no orders are already passed.

8. Thus, this Court is of the opinion that the present writ petition filed on 31.7.2013, challenging the order dated 26.2.2001, cannot be entertained and it is to be rejected on the ground of laches. Such an enormous delay of about 12 years, cannot be condoned by this Court. More-so, the learned counsel for the writ petitioner also states that the proceedings are still on. Such being the factum of the case, no further adjudication is required in this writ petition.

9. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Svn
To

1.The Commissioner and Secretary to Government,
State of Tamil Nadu,
Handlooms, Handicrafts, Textiles and
Khadi Department,
Fort St. George,
Chennai-600 009.

2.The Chief Executive Officer,
Tamil Nadu Khadi and Village Industries Board,
Kuralagam,
Chennai-600 108.

+1 cc to Mr.C.Saravanan Advocate sr86654

+1 cc to Govt Pleader sr87458

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