

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2017

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.24060 of 2003

P.Viswanathan

[Petitioner]

Vs

- 1.The Government of Tamil Nadu,
represented by Secretary to Government,
Handlooms, Handicrafts, Textiles and
Khadi Department, Chennai-600 009.
- 2.The Chief Executive Officer,
The Tamil Nadu Khadi and Village Industries Board,
Kuralagam, Chennai-600 108. [Respondents]

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records of the second respondent in Pro.No.4080/E3(2)/2001 dated 13.04.2001 and that of the first respondent in G.O.(D) No.46, Handlooms, Handicrafts, Textiles and Khadi Department, dated 11.06.2003 and quash the same.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.A.Zakir Hussain,
Government Advocate for R1
Mr.S.K.Bose for R2

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O R D E R

This writ petition has been filed to quash the proceedings of the second respondent in Pro.No.4080/E3(2)/2001 dated 13.04.2001 and that of the first respondent in G.O.(D)No.46, Handlooms, Handicrafts, Textiles and Khadi Department, dated 11.06.2003.

2.The case of the petitioner is that the petitioner retired from service as Assistant Director of Khadi and Village

Industries Board, while he was on deputation as Assistant Project Officer (Industries), Perambalur, on 31.03.1998. After nearly a period of three years of the retirement of the petitioner, the second respondent issued a show-cause memo dated 24.01.2001 in Na.Ka.No.4080/83(2)/2001 under Rule 9(2)(b) of the Tamil Nadu Pension Rules for the alleged failure on the part of the petitioner in taking steps to collect the arrears of loan amount to the tune of Rs.20.48 lakhs disbursed under the Hill Area Development Scheme by the Tamil Nadu Khadi and Village Industries Board, while he was working as Apiarist, Grade-I in the office of the Assistant Director of Khadi and Village Industries, Uthagamandalam from 02.08.1991 to 26.08.1992 and from 12.01.1995 to 09.12.1997. On the petitioner called upon to submit his explanation, he gave a detailed explanation on 05.02.2001. After conducting enquiry, the second respondent, on 13.04.2001, fixed the responsibility against the petitioner and passed the impugned order holding that the charges made against the petitioner has been proved and also ordered for recovery of Rs.12,000/- from his pension invoking Rule 9(2)(b) of the Tamil Nadu Pension Rules.

3.The learned counsel for the petitioner has submitted that the petitioner was one of the officer deputed to supervise collection of arrears out of several officers of the Department. He also submitted that the petitioner took steps to collect the loan amounts in question, which was disbursed by the Assistant Director of Khadi and Village Industries, who was having jurisdiction at the relevant point of time, but the same was not able to be collected since most of the beneficiaries had left their residential addresses noted in the records. Therefore, fixing the responsibility on the petitioner is unsustainable. He has also placed reliance upon the decision of this Court in W.P.No.10012 of 1999 dated 05.04.2002 in V.N.Kulandaisamy v. Khadi and Village Industries Board and another.

4.The learned Government Advocate appearing for the first respondent and the learned counsel for the second respondent have submitted that the petitioner has not taken any steps to collect the amount which has been disbursed by him during his tenure and hence the orders under challenge in this writ petition does not require any interference and the writ petition has to be dismissed.

5.Heard the learned counsel on either side and perused the materials available on record.

6.It is not in dispute that the petitioner was one of the officer deputed to supervise collection of arrears out of several officers of the Department. There were several other

persons also deputed for such task. Therefore, fixing the responsibility against one person is unsustainable.

7. In an earlier occasion, under similar circumstances, this Court, in W.P.No.10012 of 1999, directed the authorities to release the payment to the petitioner therein, which was recovered from the pensionary benefits, with interest, by making the following observation in the order passed on 05.04.2002, after following the earlier view of this Court in the order made in W.P.No.5982 of 1987 dated 03.07.2001:

"4. In the above facts and circumstances, it is pertinent to note an order passed by a learned single Judge of this Court in W.P.No.5982 of 1987 dated 3.7.2001 wherein under identical circumstances in respect of another employee of the very same respondents Board, when a similar attempt was made to withhold the sum of the pensionary benefits, the learned Judge has held:

"It is not disputed that the amounts allegedly due are referable to the purchases made by the Government servants attached to the Department. I fail to understand how the said amount could be recovered from the petitioner or how he could be held responsible to make good the said dues. While acting as a Manager, he is only a staff of the Board. When the purchases are permitted to be made on credit by Government servants, the Khadi Board undertakes the risk of supplying the materials on credit. In order to ensure the prompt payment of the dues in Form-13, the Government also obtains an undertaking from the purchaser to the effect of authorising his pay drawing officer to recover the amount from the monthly pay. Even apart from the entitlement for such recovery under Section 23, the Khadi Board is entitled to proceed against the purchaser to recover the said amount as arrears of land revenue. By no stretch of imagination, a staff of the Board can be held responsible for the recovery of the said amount much less can there be any hold on the retirement benefits."

With such observations, the learned single Judge of this Court had set aside the impugned order therein, following which another learned single Judge of this Court in W.P.Nos.497 to 499 of 1997, by his order dated 11.10.2001 while setting aside the impugned orders, had directed the respondents to release the

payment which was withheld with interest at the rate of 12% p.a. from the date the same was withheld till the date of payment.

5. Since the subject matter is one squarely falling in line with both the above said orders earlier passed by this Court, this Court is of the firm view that a similar order passed in this matter also would meet the ends of justice."

8. Accordingly, I am inclined to follow the above decision of this Court in W.P.No.10012 of 1999 dated 05.04.2002. Hence, the writ petition is allowed and the impugned orders are quashed. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

KM

To

1. The Secretary to Government,
Government of Tamil Nadu,
Handlooms, Handicrafts, Textiles and
Khadi Department, Chennai-600 009.
2. The Chief Executive Officer,
The Tamil Nadu Khadi and Village Industries Board,
Kuralagam, Chennai-600 108.

+1cc to the Government Pleader, Sr. 56333

+1cc to Mr.S.K.Bose, Advocate Sr. 56056

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SS(CO)
VR(01/09/2017)