IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition No.27144 of 2004 and
W.P.M.P.No.33036 of 2004

G.Sambandham ... Petitioner

Vs

Assistant Director,
Khadi and Village Industries,
Vellore, Vellore District. ... Respondent

Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records relating to the order passed by the respondent in Na.Ka.472/04/E dated 19.5.2004 and quash the same.

For petitioner : Mr.S.Kamadevan

For respondent : Mr.B.Dinakaran

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O R D E R

Challenging the order passed by the respondent in Na.Ka.472/04/E dated 19.5.2004, the present Writ Petition has been filed.

2. The case of the petitioner is that he was working under the respondent Khadi and Village Industries. According to the respondent, when he was working as Manager in the respondent Industry, he failed to collect the amount of Rs.4,900/- as time barred arrears. Hence, the respondent issued a recovery order dated 19.05.2004 against the petitioner. Challenging the same, the present Writ Petition came to be filed.

3. Heard both sides and I have also perused the materials available on record carefully.

4. In an identical circumstance, this Court in V. Nagarajan vs. Commissioner, Salem Municipality, Salem in W.P.No.91/1982, has allowed the said Writ Petition. It is useful to extract the same hereunder:

''The petitioner is a Bill Collector of the respondent. He is being penalised and is being called upon to pay the profession taxes, on the ground, he allowed their collection and recovery from the tax payers become time-barred. The view of this Court with regard to liability of the Bill Collector of a Municipality to recoup it on the allegation of his failure to collect the taxes and allowing them to become time barred, has been expressed by Mohan,J. in A.Selvaraj and others V. The Commissioner, Tiruvarur Muncipality, saying-

"Having regard to these provisions, I find it rather impossible to appreciate the stand of the Municipality as to how a Bill Collector could cause pecuniary loss to the Municipality by his failure to collect the taxes. Firstly, it does not lie within his powers to allow the recovery of taxes to become time barred. The very elaborate procedure relating to collection of taxes mentioned in paragraph 65 of Municipal Volume I would clearly indicate that it is the duty of the Executive Officer to have periodic verification of the arrears. If he had failed to do the duty and thereby the arrears of tax had become time barred for recovery, that liability cannot be passed on to the Bill Collector."

The above view has been followed by V.Ramaswami,J. As he then was, in S.Nagarajan V. Commissioner of Ramanathapuram Municipality, by Padmanabhan,J in S.Nagarajan V. Commissioner, Ramanathapuram Municipality and by me in S.Srinivasan and others V. The Special Officer,Tiruvallur Municipality. My attention has not been drawn to any pronouncement of this Court, taking a contrary view. The respondent in the present case seemed to have acted against the petitioner under the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, but withheld recovery process on account of stay by the Government. Now, by virtue of the Government vacating the stay, the process of recovery from the salary of the petitioner is being set in motion by the present order of the respondent . It is only in that context, a writ of Mandamus is being asked for by the petitioner, to forbear the respondent from recovering from the salary of the petitioner, the time-barred profession taxes. Basically, there are no grounds at all to pin down the liability on the petitioner, as now being done. The proceedings taken in this behalf are the result of a misconception of the legal position. They have to stand ignored and cannot be implemented. Taking note of the ratio of this Court, I have to hold that the petitioner cannot be mulcted with liability on this account. In view of this, this writ petition so far as the petitioner is concerned, is allowed. No costs.''

The above said judgment is squarely applicable to the case on hand. Accordingly, I am inclined to grant the relief to the petitioner as prayed for by him and the impugned order passed by the respondent dated 19.05.2004 is set aside and the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

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To

Assistant Director,
Khadi and Village Industries,
Vellore, Vellore District.

W.P.No.27144/2004

GP(CO)
T.R (09/10/2017)