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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE **S.VAIDYANATHAN**

W.P(MD)No.2865 of 2017

and

W.M.P(MD)No.2332 of 2017

Giriya

... Petitioner

vs.

1)The General Manager,
Thanjavur District Cooperative Milk
Producers Union Limited,
Thanjavur.

2)The Manager(Accounts),
Thanjavur District Cooperative Milk
Producers Union Limited,
Thanjavur.

... Respondents

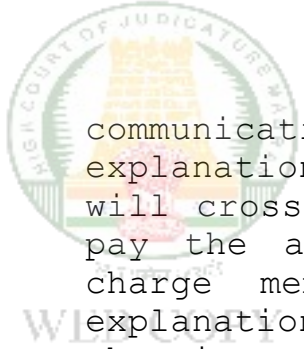
Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings in Na.Ka.No.1283/Tho.U/2008 dated 08.02.2017 and quash the same.

For Petitioner : Mr.B.Prahalad Ravi
For Respondents : Mr.K.P.Krishnadass,
Government Advocate

ORDER

The prayer in this writ petition is for issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings in Na.Ka.No.1283/Tho.U/2008 dated 08.02.2017 and quash the same.

2.The case of the petitioner is that she is working as Milk Recorder in the respondents department and she was served with a charge memo dated 04.03.2009 for shortage of stock and also for the loss caused to the society. The petitioner has given an explanation on 05.09.2007 prior to the issuance of the charge memo when she was called to explain about the shortage vide



communication of the respondent dated 01.09.2007 and by the explanation dated 05.09.2007, the petitioner submitted that she will cross check the stock and if there is any deficit, she will pay the amount claimed by the respondents. In the meantime, charge memo dated 04.03.2009 was issued for which another explanation dated 07.03.2009 was submitted by the petitioner, wherein, she sought for 15 days time for cross checking the documents. Since the petitioner did not take effective steps, on 08.05.2009 an order of recovery to the tune of Rs.27,900/- together with interest at 18% per annum from May 2009 was passed stating that the said amount would be recovered from the salary of the petitioner. Challenging the order of recovery dated 08.05.2009, the petitioner has approached this Court by filing W.P (MD)No.4362 of 2009 and obtained an interim order and she was enjoying the interim order and finally for the reasons best known to her, she has withdrawn the writ petition. After the withdrawal of the said writ petition, the, respondent department has issued a communication dated 08.02.2017 asking the petitioner to pay the amount of Rs.27,900/- together with interest at 18% per annum from 22.08.2007. Challenging this order, the petitioner has filed the present writ petition.

3.The learned Government Advocate appearing for the respondents would submit that having withdrawn the earlier writ petition, the petitioner shall not be shown any indulgence and that the petitioner did not rectify the defect and she is liable to pay the entire amount with 18% interest per annum. According to him, due opportunity was given and the petitioner did not take steps to tally the records and she has caused the deficit.

4.Though strictly speaking that having withdrawn the earlier writ petition, the petitioner may not be entitled to the relief sought for in this writ petition, the only reason for interference is that after the withdrawal, the respondents did not enquire and then pass appropriate orders. This Court makes it very clear that since there was no enquiry, only on that ground, the impugned order is interfered with and it is open to the respondents to proceed against the petitioner on day-to-day basis, as the incident is of the year 2007 and 9 years have gone-by and that the petitioner is 56 years old. The petitioner shall co-operate with the enquiry. The petitioner shall also give an undertaking before the respondents that in case, the enquiry is not completed before her retirement, her terminal benefits can be withheld till the issue is resolved. It is open to the respondents to withhold the amount due as per the impugned order on the date of relieving of the petitioner from the services and only after conclusion, the amount can be paid subject to the fate of the issue.



With the above direction, the impugned order dated 08.02.2017 is set aside and this Writ Petition is allowed to the extent indicated supra. No costs. Consequently, W.M.P(MD)No.2332 of 2017 is closed.

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sd/
Assistant Registrar (Protocol)

/True copy/

Sub Assistant Registrar

To

1)The General Manager,
Thanjavur District Cooperative Milk
Producers Union Limited,
Thanjavur.

2)The Manager (Accounts),
Thanjavur District Cooperative Milk
Producers Union Limited,
Thanjavur.

W.P(MD)No.2865 of 2017
28.02.2017

JM/CM MSA/13.03.2017/3P/3C