



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on 04.07.2017

Judgment pronounced on 11.07.2017

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CORAM:

THE HONOURABLE MR.JUSTICE **K.K.SASIDHARAN**

AND

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.A. [MD] .No.1215 OF 2013

AND

M.P. (MD) No.1 of 2013

1. The Commissioner,
Tirunelveli Corporation,
Tirunelveli.

2. The Assistant Commissioner,
Tirunelveli Corporation,
Melapalayam Region,
Tirunelveli.

: Appellants/Respondents

Vs.

C.Chelladurai

: Respondent/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 20.03.2012 made in W.P.(MD).No.13305 of 2011, on the file of this Court.

Prayer in WP(MD). 13305/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the records relating to the impugned order passed by the 1st Respondent in his proceedings in Na.Ka.No.12260-08-C1, dated 23-07-2009 and quash the same as illegal and consequentially direct the Respondents to refund the amount recovered from the Petitioner gratuity cum retirement benefits with 18% interest with in the period that may be stipulated by this Honourable Court.

For Appellants : Mr.Aayiram K.Selvakumar,
Government Advocate

<https://hcservices.ecourts.gov.in/hcservices/>
For Respondent : Mr.C.Venkatesh Kumar for
M/s.Ajmal Associates

**JUDGMENT**

[Judgment of the Court was delivered by **G.R.SWAMINATHAN, J.**]

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The Commissioner, Tirunelveli Corporation is on appeal, challenging the order dated 20th March 2012, allowing W.P.(MD) No.13305 of 2011, filed by the respondent herein.

2.The respondent herein was appointed as Health Assistant in the appellant Corporation on 04th December 1979 and was promoted as Sanitary Inspector on 06th October 1994. He reached the age of superannuation on 31st March 2009. Before he reached the age of superannuation, he was issued with a charge memo on 14th March 2009. The said charge memo contains 4 articles of charge. The first article of charge alleged that the writ petitioner was responsible for causing loss to the tune of Rs.1,85,637/-, by his omission to collect certain statutory dues payable to the Corporation. The charge Nos.3 and 4 were to the effect that the writ petitioner had committed misappropriation. Since the charge memo was issued on 14th March 2009, the writ petitioner obviously would have had to face enquiry and he would not have been allowed to retire in the normal course of events. The writ petitioner, thereafter, submitted a handwritten letter requesting the appellant Corporation to deduct the amount in question and drop the disciplinary proceedings initiated against him. He also executed a bond dated 17th March 2009 in this regard. The writ petitioner had specifically consented for deduction of sum of Rs.1,65,884/-, Rs.200/- and Rs.5250/- from the DCRG amount payable to the writ petitioner. Accepting the said request made by the writ petitioner, the Commissioner, Tirunelveli Corporation, by proceedings in rpl1/12260/08 dated 31st March 2009, permitted the writ petitioner to retire from service subject to the condition that the amount in question would be deducted from the employee's DCRG. After retirement from service, the writ petitioner submitted a representation dated 29th November 2010, seeking refund of the said recovery amount. He thereafter, filed W.P.(MD) No.13305 of 2011.

3.The learned Judge took the view that disciplinary action cannot be initiated for omission to recover time barred tax arrears. The earlier decisions of this Court, particularly, the decision reported in **2006(1) CTC 632 (N.Mani V. Commissioner, Villupuram Municipality)** were referred to. Since the very basis of the main charge against the petitioner was found to be unsustainable, the writ petition was allowed and the appellant Corporation was directed to refund the amount recovered from the retirement benefits of the petitioner.

4.Aggrrieved by the said order allowing the writ petition,



the Corporation is on appeal.

5. Heard the learned counsel appearing on either side.

6. The counsel for the respondent/writ petitioner strongly urged this Bench to sustain the order passed by the learned single Judge. We may note that what was questioned in the writ petition was only the proceedings dated 23rd July 2009 passed by the Commissioner, Tirunelveli Corporation in Na.Ka.No.12260-08-rp1. The order dated 31st March 2009, whereby, the writ petitioner was allowed to retire on condition that the amount in question would be deducted from the retirement benefit, was not challenged.

7. The conduct of the writ petitioner has to be necessarily taken note of. It is not in dispute that the writ petitioner gave a handwritten letter as well as executed a bond consenting for the above said recovery from his retirement benefits. If the writ petitioner had not executed such a consent letter, the Corporation would have taken further action pursuant to the charge memo dated 14th March 2009. It is pertinent to mention here that the charge was not only causing of loss to the Corporation, but, also committing an act of misappropriation. Having induced the employer to permit him to retire from service by executing a consent letter, it is not open to the writ petitioner to turn around after availing the benefit of going on retirement. The writ petitioner is clearly estopped from doing so.

8. The learned single Judge did not take into account the conduct of the writ petitioner. At the cost of repetition, we may point out that the writ petitioner was allowed to retire subject to the condition of recovery. The proceedings dated 31st March 2009 stands unchallenged. Therefore, we find substance in the contentions raised by the learned counsel for the appellant. We set aside the order allowing the writ petition and consequently allow the instant writ appeal.

9. The writ appeal is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl side)

/True copy/

Sub Assistant Registrar

To

<https://hcservices.hc.madras.gov.in/Commissioner>,
Tirunelveli Corporation,
Tirunelveli.



2. The Assistant Commissioner,
Tirunelveli Corporation,
Melapalayam Region,
Tirunelveli.

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+1 cc to M/S.Ajmal Associates , Advocate in SR.No. 64509

Arul

AE/MR KKR/SAR1/19.07.2017/3P/4C

**JUDGMENT MADE IN
W.A. [MD] .No.1215 OF 2013
AND
M.P. (MD) No.1 of 2013
11.07.2017**