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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.01.2017
CORAM:
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.3116 of 2011

P.Manthiramoorthy ... Petitioner

Vs.

1.The Mananging Director,
Tamilnadu Civil Supplies Corporation Limited,
Head Office,
No.12, Thambuchamy Street,
Keelpauk,
Chennai - 10.
2.The Regional Manager,
Tamilnadu Civil Supplies Corporation Limited,
Ramanad Region,
Ramnad,
Ramanathapuram District.
3.The Regional Manager,
Tamilnadu Civil Supplies Corporation Limited,
Dindigul Region,
Dindigul,
Dindigul District. ... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings R.C.No.AE4/31442/2010 dated 27.08.2010 in respect of withholding of Export Transport Charges incurred towards movement of Food Grains to Kodaikanal to the tune of Rs.1,52,499/- from the retirement benefits and the consequential order passed by the 2nd respondent in his proceedings Na.Ka.No.E1/7999/2009 dated 21.01.2011 and to quash the same as illegal and consequently directing the respondents to pay the petitioner a sum of Rs.1,52,499/- recovered from the petitioner without any enquiry with interest at the rate of 12% per annum.

For Petitioner :Mr.B.Saravanan

For Respondents 1 to 3 : Mr.C.Arul Vadivel @ Sekar

O R D E R

The prayer in the writ petition is for a writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings R.C.No.AE4/31442/2010 dated 27.08.2010, in respect of withholding of Export Transport Charges incurred towards movement of Food Grains to Kodaikanal to the tune of Rs.1,52,499/- from the

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retirement benefits and the consequential order passed by the 2nd respondent in his proceedings Na.Ka.No.E1/7999/2009 dated 21.01.2011, and quash the same as illegal and consequently directing the respondents to pay the petitioner a sum of Rs.1,52,499/- recovered from him without any enquiry with interest at the rate of 12% per annum.

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2.The case of the petitioner is that when he was working as Superintendent at the respondent Corporation a Show Cause Notice was issued against him on 03.11.2005, whereby he was directed to Show Cause as to why a sum of Rs.1,52,499/- should not be ordered to be recovered from him towards the incorrect calculation of transport charges for the movement of stocks to Kodaikanal Godown. In response to the said Show Cause Notice, the petitioner by letter dated 28.12.2005, had requested the respondents to provide certain documents so that he can give a suitable reply to the Show Cause Notice. However, the documents sought for by the petitioner was not given. Further, no enquiry was conducted pursuant to the Show Cause Notice. Therefore, the petitioner was under the impression that there would be no further proceedings on the Show Cause Notice. In the meanwhile, the petitioner attained the age of superannuation on 31.08.2010. Just three days before his retirement the first respondent passed the impugned order, whereby the first respondent has directed the third respondent in the following terms:

> "4.The Regional Manager, Ramnad Region is requested to adjust the sum of Rs.3375/- (Rupees three thousand three hundred and seventy five only) from Earned Leave encashment and to withhold the sum of Rs.1,52,499/- (Rupees one lakh fifty two thousand four hundred and ninety only) pending towards audit objections till finalisation of the Audit objections and to adjust the recovery if any issued on the audit to be completed for the period from 01.04.2010 to 31.08.2010 from the E.L. encashment payable to the individual at the credit as on 31.08.2010 A.N.
>
> 5.The Manager (P.F.), Manager (Gratuity), Head Office and the Regional Manager, Ramanad are requested to settle the terminal benefits due to the individual by observing usual formalities and as per rules in force as ordered above."

Since the petitioner has to retire on superannuation on 31.08.2010 and in view of the proposed order passed against him i.e., impugned order, before which the petitioner was directed to give an undertaking that whatever amount to be paid during unaudited period, in case any audit objection in future for the said period, the same can be recovered from him and the remaining amount whatsoever available which is due to him can be paid to him. This kind of undertaking was obtained from the petitioner on 27.08.2010. Therefore, only based on the undertaking from the petitioner and pursuant to the impugned order passed by the first respondent, just few days prior to the retirement, the petitioner

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was permitted to retire by the proceedings of the second respondent. Therefore, after the retirement of the petitioner on 31.08.2010, the consequential impugned order dated 21.01.2011 was issued, whereby the second respondent withheld a sum of Rs.1,53,361/- from the petitioner's retirement benefits and only remaining amount was directed to be paid by him. Challenging both the orders dated 27.08.2010 and the consequential impugned order dated 21.01.2011, the petitioner has come out with the present writ petition.

3.Heard both sides.

4.The learned counsel appearing for the petitioner would submit that a Show Cause Notice was issued on 03.11.2005 for the alleged loss of Rs.1,52,499/-, for which the petitioner had responded seeking certain documents from the 3rd respondent by his letter dated 28.12.2005. Thereafter, nothing had come from the respondents. In the meanwhile since the petitioner had attained the age of superannuation on 31.08.2010, he was forced to give an undertaking dated 16.08.2010 and thereafter he was permitted to retire on 31.08.2010. Just 3 days prior to his retirement, the impugned order dated 27.08.2010, was passed stating that as per the audit objections the petitioner has to pay the said amount of Rs.1,52,499/- and subsequently after retirement the consequential impugned order dated 21.01.2011 was passed, through which the 2nd respondent has withheld the said amount payable to the petitioner and only the remaining amount was paid.

5.Before the issuance of the impugned order, no enquiry was conducted and no documents were produced and it is not known to the petitioner on what basis such a calculation was arrived for the alleged loss to the respondent Corporation. If at all any audit objection was raised, a copy of the same has to be furnished to the petitioner and on what basis the said liability has been fixed ought to have been furnished to the petitioner and after getting explanation from the petitioner if any decision to be taken for recovery of the same can be taken only after ascertaining who is responsible for the loss. Without resorting to any of the action as contemplated in the service jurisprudence straightaway the impugned order was passed, the learned counsel for the petitioner contended.

6.No doubt the petitioner has given an undertaking. But that undertaking was obtained on the situation where the petitioner has to retire very shortly and if no such undertaking was given, the petitioner would not have been permitted to retire peacefully and therefore, the petitioner had no option except to give an undertaking and merely because the undertaking given to the respondents that will not take away the right of the petitioner to challenge the impugned order. In this regard, the

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learned counsel for the petitioner relied on the decision of this Court made in W.P.(MD) No.195 of 2011 dated 16.12.2016, in the matter of P.Subbian v. The Managing Director, Tamil Nadu Civil Supplies Corporation Limited and another, wherein the view taken by Me is that mere giving an undertaking would not ipso facto give a free hand to the respondents to make recovery under whatever head without giving a reasonable opportunity to the petitioner by putting him on notice and after ascertaining his view. By quoting the judgment of Mine, the learned counsel appearing for the petitioner would submit that here the petitioner is also similarly situated and against the very same respondents this petition has been filed, which itself would show the way in which the respondents are acting when the employees are attaining the age of superannuation. If this kind of compulsory undertaking is obtained from the employees, taking advantage of the situation that the employees would be at the verge of retirement, would result in the respondent Corporation recovering the hard earned money of the employees, who after retirement have to go out by loosing huge amount without even knowing the reasons. This kind of attitude of the respondents is also reflected in the present case and the learned counsel for the petitioner would submit that the impugned orders are liable to be quashed and it would not stand before the legal scrutiny.

7.The learned counsel for the respondents would contend that based on the audit objections Show Cause Notice was issued to the petitioner, for which no reply was given except asking for certain documents, which are totally irrelevant to the issue and therefore, those documents were not given to the petitioner. Thereafter, since the petitioner was to retire on superannuation as an usual practice, the petitioner was put on notice by stating that the recovery proceedings pertaining to the earlier show cause notice is pending against him and unless the said undertaking to that effect is given, he may not be permitted to retire. Therefore, accepting the same, the petitioner had given an undertaking on 16.08.2010 i.e., prior to his retirement. Even before his retirement the order of recovery was issued by the first respondent, which is impugned herein and only consequently the impugned order was passed by the second respondent and therefore, after having accepted his liability to pay the amount arrived at by the respondent Corporation the petitioner now cannot turn around and say that he would not be liable to pay the amount and the said challenge cannot stand under the legal scrutiny.

8.This Court has considered the rival submissions made by the respective learned counsel for the parties.

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9.Admittedly, after the show cause notice dated 03.11.2005, no further proceedings was initiated against the petitioner. Assuming that Show Cause Notice was issued pursuant to the audit objection raised, alleging loss incurred to the respondent Corporation for which the petitioner is liable, then certainly after ascertaining his view by way of reply an enquiry need to be conducted or otherwise the calculation as to how such amount was arrived at had to be given to the petitioner. Though Show Cause Notice was issued to the petitioner during 2005, nothing had happened for five years and only at the time of retirement, the respondents obtained an undertaking from the petitioner. This kind of mode is adopted not only in respect of the petitioner but also usually the respondent Corporation is adopting this kind of mode. This fact is proved from the judgment of this Court in the matter of P.Subbiah v. The Managing Director, Tamil Nadu Civil Supplies Corporation Limited (cited supra), wherein a similar issue was taken up for consideration, and this Court in paragraph No.13 of the judgment, held as follows:

> "13.Therefore, there can be no quarrel for recovering the said amount of Rs.93,129/- under the third head. However, in respect of other heads, namely, 1, 2 and 4, the petitioner is disputing the said amounts, as no such loss has occurred and on what basis these calculations have been made by the respondents have also not been communicated to the petitioner and in fact before making such calculations, the petitioner has not been put on notice. As has been rightly pointed out by the learned counsel for the petitioner, though the petitioner had given an undertaking before the retirement to the respondents that he would accept the recovery, if any noticed for the unaudited period, i.e., from 01.07.2007 to 30.11.2007 such undertaking ipso facto, would not give a free hand without giving a reasonable opportunity to the petitioner by putting him under notice and after ascertaining his views. The calculations or arrival at of the figure under various heads ought to have been made. Here, in this case, there is no proof to show that before the impugned order, such notice was issued. No such procedure was adopted by the 1st respondent for arriving at such a conclusion under head Nos.1, 2 and 4 under the impugned order. Therefore, in that view of the matter, this Court is of the considered view that the impugned order in respect of head Nos.1, 2 and 4 is liable to be quashed and accordingly quashed."

10.Here in this case also similar fashion has been adopted, where undertaking was obtained from the employee i.e., the petitioner herein and only based on which the impugned orders were passed. Therefore, it is obvious that the petitioner has been fixed without any basis or without conducting any enquiry or even without giving a reasonable opportunity of being heard by putting him on notice and the present impugned orders are passed against the petitioner is in violation of principles of natural justice and therefore, this Court has no hesitation to hold that the impugned orders are liable to be quashed.

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11.Resultantly, the impugned orders are quashed and the writ petition is allowed. However, the matter is remanded back to the respondent Corporation and now it is open to the respondent Corporation to issue fresh Show Cause Notice, if they are advised to do so, and after giving an reasonable opportunity of being heard, a reasonable decision can be taken on the question whether the petitioner was really responsible for the alleged loss occurred to the respondent Corporation and ultimately a reasoned order has to be passed by following the procedures as indicated above. The aforesaid procedure shall be done by the respondents within a period of three months from the date of receipt of a copy of this order. If no action as indicated above is taken within the said period, then the petitioner is entitled to claim the withheld amount pertaining to the present impugned order and once such claim is made, the same shall be disbursed to the petitioner within a period of two weeks from the date of receipt of such claim. No costs.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To
1.The Mananging Director,
Tamilnadu Civil Supplies Corporation Limited,
Head Office,
No.12, Thambuchamy Street,
Keelpauk,
Chennai - 10.

2.The Regional Manager,
Tamilnadu Civil Supplies Corporation Limited,
Ramanad Region,
Ramnad,
Ramanathapuram District.

3.The Regional Manager,
Tamilnadu Civil Supplies Corporation Limited,
Dindigul Region,
Dindigul,
Dindigul District.
+1cc to Mr.B.Saravanan,Advocate, 4689
+1cc to Mr.C.Arul Vadivel @ Sekar,Advocate, Sr no.4250

W.P.(MD)No.3116 of 2011
25.01.2017

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