

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2018
CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.21282 of 2008
&
MP.No.2 of 2008
&
WMP.No.12890 of 2017

A.Venugopal ... Petitioner

Vs.

1. The District Collector,
Salem District, Salem-636 016.
2. The Block Development Officer,
Panchayat Union, Ayodhyapattinam,
Salem Town, Salem.
3. The Chief Engineer,
Agricultural Engineering Department,
No.487, Anna Salai,
Nandanam, Chennai-600 035.
4. The Director of Rural Development Department,
Panagal Building,
Saidapet, Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the entire records relating to proceedings in Na.Ka.No.07/2003/A3, dated 04.12.2003 on the file of the 1st respondent and consequential proceedings in P.A2/18788/05, dated 06.02.2008 on the file of the 3rd respondent and quash the same.

For Petitioner : Mr.N.S.Sivakumar

For Respondents: Mr.K.S.Suresh

Government Advocate for R1,R3 & R4
No appearance for R2

O R D E R

The writ petition has been filed to call for the records relating to the proceedings in Na.Ka.No.07/2003/A3, dated

04.12.2003 on the file of the 1st respondent and the consequential proceedings in No.P.A2/18788/05, dated 06.02.2008 on the file of the 3rd respondent and quash the same.

2.The case of the petitioner is that he was appointed as Assistant Engineer in the Agricultural Department on 09.08.1982. Subsequently, he was deputed as Union Engineer in the Adhikaripatty Panchayat Union during the year 1997 and was engaged in the work of issuing cement bags for construction work of Panchayat Union. While so, the 1st respondent in his proceedings in Na.Ka.No.7/2003/A3 dated 4.12.2003, initiated action against the petitioner for the alleged shortfall of amount found in the annual Audit as if he did not enter the actual quantity of cement issued in the Measurment Book. Consequently, the 3rd respondent herein issued recovery proceedings vide Order in P.A2/18788/05, dated 6.2.2008 to recover a sum of Rs.1,37,638/- towards discrepancies for the Audit period 1998-1999, 1999-2000 and 2000-2001. Aggrieved over the same, the petitioner is before this court with the present writ petition.

3.According to the learned counsel for the petitioner, the respondents, without providing any opportunity of personal hearing to the petitioner, have passed the orders impugned in this writ petition. Relying on the decision reported in (1973) 1 SCC 120 (State of Punjab v. K.R.Erry and Sobhag Rai Mehta and another), the learned counsel submitted that the impugned orders are liable to be set aside, as the same are in violation of the principles of natural justice. However, the learned counsel submitted that the petitioner already filed an appeal on 26.12.2003 as against the order impugned herein, which is yet to be taken up for hearing. Due to pendency of the appeal, the petitioner was not permitted to retire from service with effect from 13.11.2017 and has not received any terminal benefits till date. As such, it would suffice, if the said appeal is to be disposed of by the respondent concerned.

4.On 29.08.2008, when this writ petition was taken up for consideration, this Court passed an order of interim stay in respect of recovery alone.

5.The challenge made in this writ petition is against recovery of Rs.1,37,638/- from the petitioner, which, by an order dated 29.08.2008, was stayed and is in force till date. According to the learned counsel for the petitioner, without providing an opportunity of personal hearing to the petitioner, the impugned order of recovery came to be passed by the respondent authority and hence, the same is illegal and against the principles of natural justice.

6. In the decision in State of Punjab v. K.R. Erry and Sobhag Rai Mehta (cited supra), the Supreme Court held that "where a body or authority is characteristically administrative, the principle of natural justice is also liable to be invoked, if the decision of that body or authority affects individual rights or interests, and having regard to the particular situation, it would be unfair for the body or authority not to have allowed a reasonable opportunity to be heard."

7. The learned counsel for the petitioner ultimately submitted that the petitioner would be satisfied, if the appeal filed by him is directed to be considered by the first respondent. In view of the same, this court directs the first respondent to take up the appeal filed by the petitioner dated 26.03.2003 and dispose of the same, on merits and in accordance with law, after following the principles of natural justice, within a period of eight weeks from the date of receipt of copy of this order. The interim order already granted by this Court on 29.08.2008 shall continue and will stand modified in terms of the final outcome of the appeal.

8. Accordingly, this writ petition is disposed of. No costs. Consequently, MP.No.2 of 2008 is disposed of. Other Miscellaneous Petition stands closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

av/ia

To

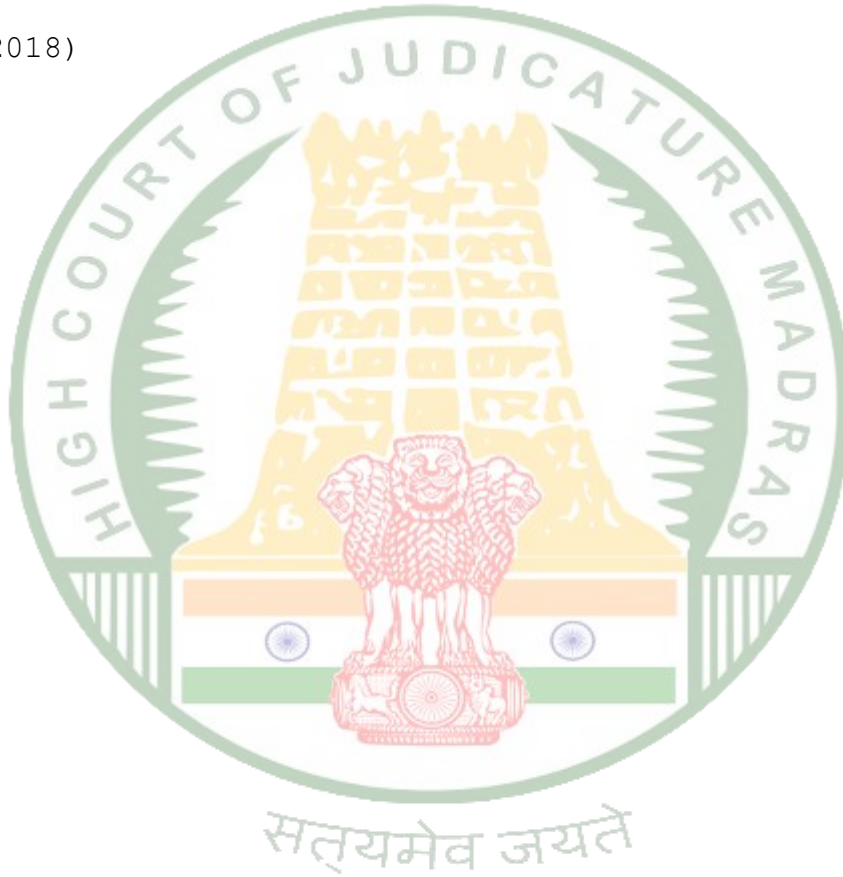
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+1cc to Mr.N.S.Sivakumar, Advocate, S.R.No. 55600
+1cc to the Government Pleader, S.R.No. 55337

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VDNII (CO)
GN (20/09/2018)



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