

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.17975 of 2012 and
M.P.No.2 of 2012

K.Vimala

... Petitioner

Vs

1.The Block Development Officer (Village Panchayat),
Jeyankondam Panchayat Union,
Jeyankondam Taluk,
Ariyalur District.

2.The Block Development Office,
Koradacheri,
Needamangalam Taluk,
Thiruvavarur District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records from the 1st respondent pertaining to the impugned order in Na.Ka.A1/2077/2011, dated January 2012 and its following urgent memo in Na.Ka.2207/2011/A1, dated 06.06.2012 and quash the same.

For Petitioner : Mr.P.Vijendran

For Respondents : Mr.P.S.Sivashanmugasundaram for R1

: Mr.P.P.Purushothaman,

Addl. Government Pleader for R2

O R D E R

Heard Mr.P.Vijendran, learned counsel for the petitioner and Mr.P.S.Sivashanmugasundaram, learned counsel appearing for the first respondent and Mr.P.P.Purushothaman, learned Additional Government Pleader appearing for the second respondent.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorari, to call for the records from the 1st respondent pertaining to the impugned order in Na.Ka.A1/2077/2011, dated January

2012 and its following urgent memo in Na.Ka.2207/2011/A1, dated 06.06.2012 and quash the same."

3. The case of the petitioner is as follows:-

The petitioner was appointed as overseer in the year 2008 at Panchayat Union, Koradacheri. She was regularised in 2009 and posted at Jeyankondam and thereafter, transferred to koradacheri Panchayat Union. The nature of work attached to the petitioner was to supervise all the works including the Rural Free Housing Scheme which was called Green House Scheme. The beneficiaries of the Scheme was identified by the Government originally and a sum of Rs.75,000/- was to be sanctioned for putting up construction by supply of various materials like cement bags, steel rods etc. and subsequently, the same was enhanced to Rs.1,80,000/-.

4. The petitioner was in put in charge for overseeing the housing scheme in respect of two Utkottai panchayats 7 houses and Periyavalayam Panchayats 5 houses and in different Panchayat Unions. As per the instructions of her superiors, the petitioner supervised the progress of the housing scheme in respect of places allotted to her. There was no complaint against the petitioner's discharge of duties in respect of overseeing the housing scheme.

5. While so, by proceedings dated 08.11.2011, the petitioner was directed to give her explanation, stating that the petitioner refused to supervise the work properly and there was no progress at all in the work which came under her supervision. In response to the show cause notice, the petitioner submitted a representation denying the allegations. However, the respondent passed an order on 03.01.2012, seeking to recover a sum of Rs.1,65,880/- from the petitioner on the ground that she had supplied excess package of cement and iron rods and she did not supervise the work properly as there was no progress in the construction.

6. Thereafter, another notice was issued on 06.06.2012, directing the petitioner to give further reply for which a detailed reply was sent by the petitioner on 27.06.2012. In the reply, the petitioner had stated that she acted as per the instructions of the superiors. There was no lapse in her discharge of her duties. However, no further orders were passed and while so, the salary payable to the petitioner was discontinued on the instructions of the respondents from 01.09.2011. Against the above action of the respondents, the petitioner has approached this court. While admitting the writ petition, this Court has granted interim stay for the impugned recovery order.

7. Upon notice, learned counsels appearing for the respondents, entered appearance and filed a detailed counter affidavit.

8. The short case of the petitioner is that before the order of recovery of such huge amount of Rs.1,65,880/-, no enquiry was conducted and no specific charges have also been issued in this regard. Even otherwise, the explanation submitted by the petitioner was not taken into consideration at all as such consideration is not disclosed in the impugned order passed by the respondents, seeking to recover the amount from the petitioner. There was no finding of fact that the petitioner was responsible for any lapse in her duties and in the absence of such finding on the basis of materials, the impugned proceedings is liable to be interfered with.

9. On the other hand, learned counsel appearing for the respondents would submit that the petitioner being an overseer, failed to oversee the progress of construction of the housing scheme and in the absence of proper supervision, there occurred a loss to the Government by supply of excess cement bags and iron rods and therefore, as per the Government Orders in force, the recovery was ordered from the salary of the petitioner.

10. This Court has considered the rival submissions of the learned counsels and perused the materials and pleadings placed on record. The recovery order appears to be passed against the petitioner without conducting any enquiry against the petitioner in order to establish the fact that the petitioner was responsible for the construction not being put up by the beneficiaries of the housing scheme. According to the petitioner, she acted entirely in terms of her superiors direction. As rightly contended by the learned counsel for the petitioner that the impugned order does not spell out any consideration of the explanation offered by the petitioner. But, merely proceeded to hold that the petitioner was liable to make good the compensation to the Government to the tune of Rs.1,65,880/-.

11. When a huge amount is to be recovered from the salary of the Government employee, the petitioner herein, it is imperative on the part of the respondents to conduct some kind of enquiry and fix responsibility before the action of recovery initiated. In this case, no such enquiry has been conducted, seeking to recover huge amount as mentioned in the impugned proceedings. The mere obtaining explanation from the petitioner is not enough to make the petitioner liable for any kind of lapses in discharge of her duties, unless a specific charge is framed and proved in the enquiry before the impugned action was taken against the petitioner. In this case, no such procedure has been followed, therefore, the impugned order passed by the

respondents suffers from the vice of arbitrariness and the same is also violative of established principles of natural justice.

12. For the above said reasons, the impugned proceedings in Na.Ka.A1/2077/2011, dated January 2012 are not sustainable in law and therefore, the same is set aside. Therefore, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

gsk

To

1.The Block Development Officer (Village Panchayat),
Jeyankondam Panchayat Union,
Jeyankondam Taluk,
Ariyalur District.

2.The Block Development Office,
Koradacheri,
Needamangalam Taluk,
Thiruvarur District.

+1 CC to Mr.P.Vijendran , Advocate sr 26190.

+1 CC to Mr. S. Sivashanmugasundaram, Advocate sr 27339.

सत्यमेव जयते

W.P.No.17975 of 2012

SP(14/05/2018)

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