

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.04.2018
CORAM
THE HON'BLE MR.JUSTICE M. DHANDAPANI
W.P.No.25420 of 2006

N. Subramanian

Petitioner

Vs.

The Commissioner
Horticulture and Hill Plantation Department,
Chepauk, Chennai-5.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the respondent herein in Proceeding No.Mu.Mu.A4/7457/2005-2, dated 20.09.2005 and to quash the same and consequently to direct the respondent herein to pay the salary and arrears of salary to the petitioner.

For Petitioner : M/s. Anand & Suryas

For Respondent : Mr.K. Ravi Kumar
Additional Government Pleader

O R D E R

The petitioner has filed this writ petition challenging the order of recovery passed by the respondent herein in proceeding No.Mu.Mu.A4/7457/2005-2, dated 20.09.2005, to quash the same and consequently to direct the respondent herein to pay the salary and arrears of salary to the petitioner.

2. The case of the petitioner is that the petitioner joined the services as a Horticulture Officer in the year 1989. While he was in service as Horticulture Officer, he was served with an order of recovery on 31.03.2006 by the respondent herein in Proceedings No.Mu.Mh.A4/7457/2005-2, dated 20.09.2005, wherein, based on the audit objection there was a loss to the Government to the tune of Rs.3,01,296/- and the same was directed to be recovered from his salary in 100 installments of Rs.4,296/- as first installment of Rs.3,000/- each from 2nd to 100th installments. The said recovery order has been passed by the respondent as per the audit objection raised in the special audit conducted in the office of the Assistant Director of Horticulture, Kancheepuram District for the year 2002-03.

3. However, the said recovery order was passed by the respondent without conducting any enquiry before passing the order of recovery. No opportunity was given to the petitioner to explain for the loss caused to the Government. The entire order of recovery was passed behind his back and it is a clear violation of principles of natural justice.

4. The learned counsel appearing for the petitioner would submit that the said order of recovery was passed without giving an opportunity to the petitioner and it is non-est-in law and any recovery order has to be passed after proper notice enabling the petitioner to satisfy the Authority with regard to the loss to the Government. However, in the present case, no opportunity was given to the petitioner without conducting any enquiry, the order of recovery passed by the respondent is non-est-in law.

5. On perusal of the impugned order it shows that no opportunity was given to the petitioner before passing the recovery order. The said recovery order was passed on the audit objection. Even if there is an audit objection, the respondent has to necessarily issue show cause notice calling upon the petitioner to give explanation. Without offering any opportunity for explanation from the petitioner, the above recovery order has been passed against the petitioner which is unsustainable one.

6. In view of the above, this court is inclined to set aside the order passed by the respondent herein in Proceeding No.Mu.Mu.A4/7457/2005-2, dated 20.09.2005. Accordingly this matter is remanded back to the Authority for fresh consideration after affording an opportunity to the petitioner and after following due process of law.

7. Accordingly, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CSVIII)

//True Copy//

Sub Assistant Registrar

msm

To:

The Commissioner
Horticulture and Hill Plantation Department,
Chepauk, Chennai-5.

+1 cc to M/s.Anand and suryas Advocate sr 29457
+1 cc to the Govt pleader sr 30371

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