



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.11.2018

CORAM:

WEB COPY

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

W.P. (MD) .No.182 of 2015
and M.P. (MD) .Nos.1 & 2 of 2015

S.Shanmugam

.. Petitioner

-Vs-

The District Collector,
Trichy District, Trichy.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari calling the records relating to the proceedings of the Respondent made in Na.Ka.Tha.1/15292/2009, dated 22.01.2014 and quash the same.

For Petitioner	: Mr.M.Suresh Kumar
For Respondent	: Mr.J.Gunaseelan Muthiah Additional Government Pleader

ORDER

This writ petition has been filed for the issuance of a Writ of Certiorari to quash the proceedings of the Respondent made in Na.Ka.Tha.1/15292/2009, dated 22.01.2014.

2.Heard the learned counsel for the petitioner and the respondent.

3.The petitioner herein was former Block Development Officer of Manikandam Panchayat Union. While he was in service, he was trapped for receiving bribe to issue free house site patta. The trial Court found him guilty and convicted. Later, on appeal he got acquittal. Meanwhile, pending appeal he was suspended from service. On 31.07.2000 he attained the age of Superannuation. Pursuant to the acquittal by the High Court in the appeal preferred by the writ petitioner, his suspension was revoked and he was allowed to retire vide order, dated 15.07.2004 and his period of suspension between 10.07.1991 to 31.07.2000 was treated as period of service by invoking Rule 54 (b) of the Fundamental Rules. The retirement benefits and arrears of pay and other benefits were calculated and paid to him after regularizing his service. While calculating the arrears by giving notional promotion to him, error had crept in and as a consequence a sum of Rs.2,01,999/- has been paid in excess. This was pointed out during the audit and there on, the District Collector has passed the order for recovery of Rs.2,01,999/-. The



said recovery order is now challenged by the writ petitioner on the ground that while passing the impugned order he was not given any opportunity to explain further.

4. The learned counsel for the petitioner contended that the notional promotion given to him for arriving the benefits was based on the promotion given to his immediate Junior and there is no error in the calculation or date of notional promotion granted to him as Deputy Block Development Officer, Block Development Officer and Assistant Director of Rural Development. Further, it is contended that the impugned order for recovery after a period of eight years is unjust.

5. It is also contended by the learned counsel appearing for the petitioner that there are catena of judgments by the High Court and Supreme Court. Wherein it is held that any excess payment made inadvertently cannot be recovered from the beneficiary, when the payment is not made due to false claim or mis-representation by the beneficiary. It is also contended by the counsel that there is no proper calculation in the impugned order as how the sum of Rs.2,01,999/- has been arrived at. It is also submit that the petitioner is 76 years old and recovering the huge sum of Rs.2 lakhs will cause great hardship to him.

6. The learned Additional Government Pleader has filed his counter affidavit wherein, he would submit that the petitioner has already filed a writ petition for similar relief in W.P.(MD).No.2261 of 2015. In the counter it is also stated that the writ petitioner was under suspension due to criminal prosecution for nearly 10 years. On acquittal, by invoking Rule 54 (b) of Fundamental Rules, notional promotions were given to him. The suspension period was regularised and all his attendant benefits were given to him. He was notionally promoted as Deputy Block Development Officer with effect from 29.07.1992 and as Block Development Officer with effect from 27.08.1993 vide order of the District Collector, dated 17.04.2006. Even though the petitioner did not complete the two years of qualifying service in the cadre of Block Development Officer, by invoking Rule 48 of the Tamilnadu Service Manual framed under Tamilnadu State Subordinate Service General Rules, relaxation was given and he was notionally promoted as Assistant Director of Rural Development. While calculating the pensionary benefits, excess amount of Rs.2,01,999/- was paid to the writ petitioner. The excess payment has been made due to wrong calculation of his payment for the period from 29.07.1992 to 26.08.1993 in the cadre of Deputy Block Development Officer and from 27.08.1999 to 31.01.2000 in the cadre of Block Development Officer. The error in the office proceedings leading to excess payment is bound to be recovered. It appears that show cause notice and method of calculation in arriving for recovery of Rs.2,01,999/- was issued to the writ petitioner and in response to the show cause notice, he gave his reply on 12.11.2014, requesting 10 days time to the respondent to submit his consent letter to the charge memo. However, he did not give any



consent letter or response to the charge memo. Instead had filed this writ petition and obtained interim stay of recovery.

7. Considering the averments made in the affidavit and the counter affidavit and on perusal of the impugned order, this Court finds no merit in the writ petition. The contention of the writ petitioner that no opportunity was given to him before passing of the impugned order is false. From the counter, we came to know that the show cause notice was issued to the petitioner and on 12.11.2014, the petitioner had sought time to reply, but he has not submitted his response which has lead to passing the impugned order.

8. A person who has wrongly enriched himself at the cost of the exchequer is bound to repay it. Rs.2,01,999/- has been paid to him in excess by error. Since the money involved in this case is public money, the public servant is bound to return the money. Neither his age nor the act of the staff who calculated his pensionary benefits erroneously can be a reason for refusal to repay.

9. It is to be taken into consideration that the petitioner herein was under suspension for nearly 10 years and on acquittal, he was notionally promoted and paid the pensionary benefits and all other benefits which are payable to him. While doing so, error has crept in and excess sum of Rs.2,01,999/- has been paid to him.

10. By suppressing the fact that the petitioner was issued with show cause notice and in response to the same, he sought time to give his consent letter, the petitioner had approached this Court and obtained exparte stay. Thereby, he had delayed the process of recovery by three years. In this context this Court is of the opinion the writ petition is bound to be dismissed.

11. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The District Collector,
Trichy District, Trichy.

+ 1 CC TO Mr.M.SURESH KUMAR, ADVOCATE IN SR No. 94736
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 94771

TM