



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:05.07.2019
CORAM

THE HON'BLE MR.JUSTICE **S.M.SUBRAMANIAM**
CONT P (MD) No.597 of 2018
in
W.P.(MD) No.16976 of 2015

P.L.Muthu

...Petitioner/ Petitioner

-vs-

- 1.Mr.Ganesh, I.A.S.,
District Collector,
Pudukkottai District,
Pudukkottai.
- 2.Mr.Singaravel
Block Development Officer,
Panchayat Union, Annavasal,
Pudukkottai District.
- 3.Mr.Singaravel,
Commissioner,
Annavasal Panchayat Union,
Annavasal, Pudukkottai District.

..Contemnors/Respondents

Prayer: Contempt Petition filed under Section 11 of the Contempt of Courts Act, to punish the respondents herein for their deliberate and wilful disobedience of the order passed by this Court in W.P(MD) No.16976 of 2015 dated 31.1.2017.

Prayer in WP(MD). 16976/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impuged order passed by the 2nd respondent in Na.Ka.A4/100/2014, dated 28.07.2015, quash the same, and consequently direct the respondents to pay the arrears of salary as per the order passed by the 3rd respondent in his proceedings Na.Ka.A1/5478/2013, dated 04.08.2014.

For Petitioner : Mr.M.Siddharthan

For Respondents : Mr.D.Muruganantham



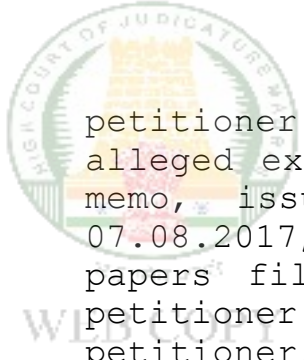
petitioner is found liable to pay the amount. No costs. Consequently, connected miscellaneous petitions are closed."

5.The very order of the Court states that the case was remanded back to the authorities for providing an opportunity to the writ petitioner and take a decision and pass orders. In this regard in paragraph No.6 of the counter affidavit filed by the third respondent, it is enumerated that "In view of the order passed by this Court, an amount of Rs.1,26,414/- recovered from the petitioner based on the recovery order dated 28.07.2015 was returned to the petitioner in two installments on 16.06.2017 and 14.07.2017. Thereafter, notice dated, 07.08.2017, 01.12.2017 and 06.03.2018 were given to the petitioner seeking for explanation as to why the amount disbursed to the petitioner shall not be recovered? After receipt of the notices, the petitioner did not appear and give any explanation in this regard. In these circumstances, the petitioner filed the Contempt Petition (MD) No.597 of 2018 before this Court. While pending this Contempt Petition, this Court indicated to comply the order of the Court dated 31.01.2017."

6.It is contended in paragraph No.6 of the counter affidavit that even before the notice issued on 07.08.2017, 01.12.2017 and 06.03.2018, notices were given even during the year 2016 on 15.03.2016, 31.03.2016 and on 22.04.2016, requesting the petitioner to bring all records with regard to Audit Para Objections. Therefore, it is not a case where the petitioner was not aware of the Audit Objections or about the order of recovery. Even after the order of this Court, notice was issued to the writ petitioner and pursuant to the notice, the writ petitioner also had submitted his explanation, even as per the statement made by the contempt petitioner in the contempt petition.

7.The objections sent by the writ petitioner was enclosed in the typed set of papers filed along with the contempt petition. In page 37 of the typed-set of papers, the explanation, dated 14.09.2017 is enclosed. Thus, the writ petitioner has submitted his explanation, pursuant to the notice issued to him after passing of the order of this Court in W.P.(MD)No.16975 of 2015.

8.The legal principles in the matter of recovery is now settled by the Hon'ble Supreme Court of India in umpteen number of decisions. Recovery is permissible, if there is a misrepresentation or otherwise on the part of the employee concerned, so also if the employee has given an undertaking at the time of receiving salary or arrears of salary then also recovery is permissible. Only in cases where there is no such undertaking or misrepresentation, then alone the recovery can be quashed, in respect of the employees working in the Cadres of Group-III and Group-IV as well as the retired employees. As far as the writ petitioner is concerned, it is clearly admitted that the writ



petitioner has given an undertaking at the time receiving the alleged excess salary and such an undertaking is referred in the memo, issued by the Commissioner in his proceedings, dated 07.08.2017, which is enclosed in page 34 of the typed set of papers filed along with the contempt petition by the contempt petitioner himself. The undertaking given by the contempt petitioner, which was referred in the said memo more specifically, cited as 5th reference. In the event of such undertaking, the recovery from the employee, if there is any Audit Objections is permissible as per the Supreme Court Judgments., this being the legal principles to be followed.

9.This Court is of the opinion that the order of this Court dated 31.01.2017 passed in W.P.(MD)No.16976 of 2015 has been complied with and opportunity as directed was given to the writ petitioner and the writ petitioner also availed the opportunity and submitted his explanation and a decision was taken thereafter by the competent authorities. This being the factum, this Court has no hesitation in coming to the conclusion that the respondents have not committed any wilful disobedience of the order of this Court.

10.With the above observation, this Contempt Petition stands closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

To

1.Mr.Ganesh, I.A.S.,
District Collector, Pudukkottai District, Pudukkottai.

2.Mr.Singaravel
Block Development Officer,
Panchayat Union, Annavasal, Pudukkottai District.

3.Mr.Singaravel,
Commissioner, Annavasal Panchayat Union,
Annavasal, Pudukkottai District.

+1 CC to M/s.P.KALAIYARASI BHARATHI, Advocate SR-73833.
+1 CC to SPL GP SR-73902.

CONT P (MD) No.597 of 2018
in

W.P. (MD) No.16976 of 2015
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