BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2018

CORAM:

THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

W.P.(MD)No.8291 of 2011

T.M.Mahalingam ... Petitioner

Vs.

1.The Director of Municipal Administration,
Chepauk, Ezhilagam Annexe, Chennai - 5.

2.The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli District, Tirunelveli. ... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 2nd respondent by his proceedings Na.Ka.No.C1/ 8377-08 dated 02.01.2009 and quash the same as illegal and consequently to direct the respondents to refund a sum of Rs.1,81,760/- recovered from the petitioner death cum retirement gratuity with 18% of interest per annum within the period that may be stipulated by this Court.

For Petitioner	:	Mr.H.Mohamed Imran for M/s.Ajmal Associates
For Respondents	:	Mr.S.Dhayalan, G.A.for R1 Mr.Aayiram K.Selvakumar, AGP for R2

O R D E R

The petitioner has come forward with the present to quash the proceedings Na.Ka.No.C1/ 8377-08 dated 02.01.2009 passed by the 2nd respondent and consequently to direct the respondents to refund a sum of Rs.1,81,760/- recovered from the petitioner towards death cum retirement gratuity with 18% of interest per annum within a time frame.

2.The case of the petitioner is that initially he was appointed in the service as Health Assistant on 27.06.1974 at Puliyankudi Municipality and during the year 1990 the said post was merged with the post of Sanitary Inspector.

3.The grievance of the petitioner is that he has received an intimation as a sum of Rs.2,52,688/- towards Dangerous and Offensive Trades Licence fee and a sum of Rs.10,480/- towards licence fee under Prevention of Food Adulteration Act were not collected by him for the year between 1995 - 1996 and 2007 - 2008. Hence, the petitioner was compelled to executed a bond in Rs.20/- non judicial paper stating that if any audit objection or dues would be raised in future, the said amounts could be recovered from DCRG. The petitioner has also given a consent letter to that effect on 12.06.2008. Thereafter, the petitioner was permitted to retire from service on 30.06.2008. The 2nd respondent, on 02.01.2009, has issued a proceedings in Na.Ka.No.C1/8377/08 for recovering the above said amount.

4.The further case of the petitioner is that no notice was issued by the second respondent before passing the said impugned order. Even though he has given an undertaking before his retirement, a Sanitary Inspector is not expected to demand and collect licence fee and hence, there is no statutory obligation or duty cast upon the petitioner except to file a report to that effect before the Licensing Authority. Hence, it is stated that the petitioner cannot be foisted the responsibility of non collection of licence fee and hence, there cannot be any recovery.

5.The learned Additional Government Pleader appearing for the second respondent has filed a counter and contended that the petitioner was permitted to retire on 30.06.2008 after getting an undertaking and also a bond. The second respondent has issued a notice to the petitioner indicating the non collection of the arrears due to the Corporation. Even though the petitioner was aware of the fact that there were arrears pending for the year between 1995 - 1996 and 2007 - 2008 he has failed to take appropriate action to collect the arrears. A Sanitary Inspector is employed to collect licence fee for every year. Hence, it is the obligation on the petitioner to collect the entire arrears so as to avoid finance loss to the Corporation. Hence, prayer sought for is devoid of merits.

6.Heard the learned counsel for the petitioner, the learned Government Advocate appearing for the first respondent and the learned Additional Government Pleader appearing for the second respondent.

7.It is not in dispute that the petitioner was working as a Sanitary Inspector from 1990 onwards. The duties of a Sanitary Inspector read as follows:

"SANITATION: The duties of a sanitary inspector coming under the head Sanitation are as follows:

a) Dwelling houses

b) Water supply

c) Food and drink

d) Offensive trade

e) Communicable diseases

f) Disposal of the dead

g) Fairs and festivals

h) Prosecutions

(iii) IN DOOR DUTIES: Under the heading indoor duties

a) The sanitary inspector shall maintain dairy and submit it daily to the Chairman through the District Surgeon, Civil Surgeon or the local medical officer if the last named is of the rank of Assistant Surgeon, or through the Health Officer if there is one. He shall attend to all correspondence issue of notices, etc., relating to his sanitary duties and the maintenance of registers of stores, plant and accessories, disinfectants, etc., in his charge.

b) General - The sanitary inspector should cooperate with officers and subordinates of other departments of the municipality, as for instance by bringing to their notice any conditions unconnected with sanitation dangerous to human life and safety which he may have observed during his daily peregrinations.

c) He should help in the work of registration of births by enquiry during his inspections, and by bringing to notice, cases of concealment of births and deaths, especially deaths of infants attempts to evade registering etc.,

d) He should on no account he detailed for collection of taxes of any kind. He should confine his attention to his legitimate duties as laid down above. If requested to do other duties, he should obey under protest and forthwith bring the matter to the notice of the Director of Public Health or the Assistant Director of Public Health in writing through the proper channel."

Therefore it is very clear from the above, a Sanitary Inspector is not empowered to demand and collect licence fee from any one. It is the duty of the Sanitary Inspector to bring it to the attention of his Superior with regard to collection of licence fee. Admittedly, the petitioner was not issued with memo stating that with regard to non remittance of licence fee, he has not brought to their attention to his superior. If that has been done, certainly the respondents are entitled to reject the claim of the petitioner. In the absence of the same, the recovery of amount towards the arrears of licence fees based on a bond executed by him at the verge of his retirement and also issuing a memo after his retirement, do not justify the respondents.

8.It is settled that if an undertaking is given for recovery of amount, in respect of any wrong fixation, there is no hard and fast rule to do so. In this case on hand, there is no question of wrong fixation, but the allegation is that the petitioner has not collected licence fee which he need not do as it is not a statutory rule. It is very unfortunate that the respondents have allowed the fraudulent activities to take place and thereafter, fixing the responsibility on some other person, on whom the responsibility is not fixed and the respondents have not only woken up from the slumber, but also did not choose to collect licence fee due to the Corporation.

9.As the duties of the Sanitary Inspector clearly does not compel the petitioner to recover the amount, this Court has no other option except to allow this Writ petition. It is needless to mention that if any amount with regard to licence fees are recoverable, it is for the authorities to collect the same by fixing the responsible person. Further, if any amount is deducted from the petitioner, the same shall be refunded to him within a period of 45 days from the date of receipt of a copy of this order, failing which, such amount shall carry 12% interest from the date of passing this order and the said amount shall be recovered from the personal amount of the officers concerned. No costs.

Sd/-
Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1.The Director of Municipal Administration,
Chepauk, Ezhilagam Annexe, Chennai - 5.
2.The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli District, Tirunelveli.

+ 1 CC TO M/s.AJMAL ASSOCIATES, IN SR No. 79179
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 79101

NBJ

TE/SKN/SAR-1 : 27/09/2018 : 4P/5C