



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.(MD) No.6647 of 2010
and
M.P.(MD) No.2 of 2010
and
W.P.(MD) No.6830 of 2010

D.Devasahayam ... Petitioner in W.P.(MD) No.6647 of 2010
A.Ramalakshmi ... Petitioner in W.P.(MD) No.6830 of 2010

-vs-

1.Principal District Judge,
Tirunelveli.

2.Additional District Judge
Fast Track Court No.I
Tirunelveli.

... Respondents in both writ petitions

PRAYER (in W.P.(MD) No.6647 of 2010): Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records on the file of the 1st respondent in pursuant to the impugned recovery proceedings passed by him in Order A.No.16/2009 dated 20.04.2010-D.No...../10, dated....04.2010 and quash the same as illegal in so far as the petitioner is concerned and consequently directing the respondents to release the leave salary which is withheld and pending on the file of the 2nd Respondent to the petitioner within the time stipulated by this Court.

PRAYER (in W.P.(MD) No.6830 of 2010): Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records on the file of the 1st respondent pursuant to the impugned recovery proceedings passed by him in Order A.No.16/2009 dated 20.04.2010-D.No...../10, dated....04.2010 and quash the same as illegal in so far as the petitioner is concerned and consequently directing the respondents to repay the amount to



the petitioner if any recovery is made within the time stipulated by this Court.

For Petitioner : Mr.K.Gurunathan
(in both W.Ps.)

For Respondents : Mr.Pala Ramasamy
(in both W.Ps.)

C O M M O N O R D E R

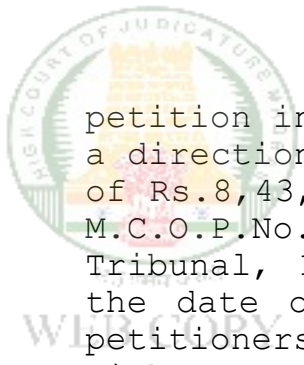
[Order of the Court was made by T.S.SIVAGNANAM, J.]

The petitioners are aggrieved by an order of punishment imposed by the Principal District Judge, Tirunelveli / first respondent, vide order dated 20.04.2010, by which a sum of Rs.1,23,946/- has been directed to be recovered from the retirement benefits / leave salary of Mr.D.Devasahayam (petitioner in W.P.(MD) No.6647 of 2010 and a sum of Rs.29,910/- has been directed to be recovered from the salary of Tmt.A.Ramalakshmi (petitioner in W.P.(MD) No.6830 of 2010) on monthly instalment basis.

2. The order of recovery came to be passed on account of the alleged lapse in investing the compensation amount, awarded in a motor accident claim petition and deposited by the Insurance Company, into an interest bearing account in a Nationalized Bank.

3. A claim petition in M.C.O.P.No.922 of 2002, was filed on the file of the Fast Track Court No.I, Tirunelveli, in which a total compensation of Rs.6,43,000/- was awarded together with interest. There was a direction to deposit the award amount in a Nationalized Bank in an interest bearing account. The Insurance Company deposited the total sum of Rs.8,43,963/- before the Fast Track Court No.I, Tirunelveli, on 28.10.2005 and the amount was brought to the Civil Court Deposit (CCD) Account of the Principal District Court, Tirunelveli, on 23.12.2005. Though the amount was brought to the CCD Account, the same was not invested in the Nationalized Bank till 06.01.2009. This resulted in issuance of memos to the petitioners calling upon them to explain as to why the amount was not immediately deposited. The petitioners submitted their explanation pointing out the period during which they were functioning as Assistants in the said Court and that the deposit was with the Principal District Court and not with the Fast Track Court No.I and they are innocents and they should not be penalized. While the memos issued to the petitioners were pending, one of the petitioners Mr.D.Devasahayam attained the age of superannuation and retired from service on 30.06.2009.

4. The claimants in M.C.O.P.No.922 of 2002 filed a writ



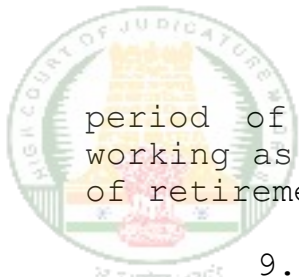
petition in W.P.(MD) No.2919 of 2009, before this Court, seeking for a direction to the respondents therein to pay interest on the amount of Rs.8,43,963/- at the rate of 8% per annum lying in the credit of M.C.O.P.No.922 of 2002, on the file of the Motor Accident Claims Tribunal, Fast Track Court No.I, Tirunelveli, from 24.12.2005 till the date of realization. In the said writ petition, the present petitioners were not arrayed as respondents, but the District Court, High Court and the Government of Tamil Nadu alone were arrayed as respondents. The writ petition was filed claiming interest on account of the delayed deposit of the amount in the Nationalized Bank in the interest bearing account. The Division Bench of this Court, by order 17.08.2009, held that the claimants are entitled for payment of interest, but not at 8% as claimed by them, but only at 6% from 24.12.2005 to 06.01.2009 and they were permitted to withdraw the compensation amount deposited by the Insurance Company along with accrued interest.

5. Since the reply given by Mr.D.Devasahayam to the memo was not considered and his leave salary was withheld, he submitted a representation on 11.09.2009 and reminder on 16.11.2009. Thereafter, the impugned order of recovery has been passed as stated above.

6. We have heard Mr.K.Gurunathan, learned counsel appearing for the petitioners and Mr.Pala Ramasamy, learned counsel appearing for the respondents.

7. Admittedly, the punishment of recovery imposed on the petitioners is a major penalty. Therefore, charges should have been framed and the procedures contemplated under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules have to be followed. Admittedly, the said procedure has not been followed and the impugned order has been passed solely based upon the memos and recording the explanation given by the petitioners. Therefore, the impugned order is vitiated on the said ground.

8. On a reading of the impugned order, it is evidently clear that the same has been passed on account of the directions issued by this Court vide order dated 17.08.2009 in W.P.(MD) No.2919 of 2009, for payment of interest to the claimants. This order has been referred to in the impugned order in Reference No.14. Admittedly, the petitioners were not parties to the said writ petition. Furthermore, in the said writ petition only the Government was directed to pay the interest to the claimants and there was no direction to the administration of the Court to recover the same from the Court staff. Even assuming that there was an inaction on the part of the Court staff in promptly depositing the amount in the Nationalized Bank in the interest bearing account, the first thing to be done is to fix responsibility, this more so in the instant case, because, Tmt.A.Ramalakshmi was working as Assistant in Fast Track Court No.I, Tirunelveli, from 07.06.2006 to 11.01.2007, for a



period of seven months and four days and Mr.D.Devasahayam, was working as Assistant in the said Court from 12.02.2007 till his date of retirement i.e. 30.06.2009.

9. From the counter affidavit, it is clear that between the period from 20.01.2004 to 06.06.2006, one Mr.Karthik was working as Assistant in the Fast Track Court No.I, Tirunelveli. Subsequently, from 11.01.2007 to 29.01.2007 one Mr.Selvam was working as Assistant and from 30.01.2007 to 30.04.2007, one Mr.Murugesan was in-charge and it was only thereafter, on 12.02.2007, the petitioner Mr.D.Devasahayam was posted as Assistant in the said Court. The respondents would state that action could not be initiated against Karthik, because he died on 13.12.2007. Even that is so, without fixing responsibility on the staff, who was working as Assistant during the relevant period, the impugned order of recovery could not have been passed.

10. Furthermore, in the counter affidavit, it has been admitted that there was no CCD Account for the Fast Track Court Nos.I and II in Tirunelveli and the deposit was maintained in the Principal District Court, Tirunelveli, ever since the date of constitution of Fast Track Courts and hence, the amount was remitted to the CCD Account of the Principal District Court, Tirunelveli. In the counter affidavit, it has also been admitted that only after the instant case, a separate CCD Account was opened for the Fast Track Courts. Thus, all these facts would clearly show that the petitioners could not be solely held responsible for the delayed deposit of compensation in the Nationalized Bank. As pointed out earlier, without framing charges and conducting enquiry, a major penalty could not be imposed.

11. Thus, for all the above reasons, the writ petitions are allowed and the impugned order in A.No.16/2009 dated 20.04.2010-D.No...../10, dated....04.2010 is quashed. The respondents are directed to release the withheld amount of Rs.1,23,946/- to Mr.D.Devasahayam (petitioner in W.P.(MD) No.6647 of 2010, on or before 16.12.2019. Insofar as Tmt.A.Ramalakshmi (petitioner in W.P.(MD) No.6830 of 2010) is concerned, since a sum of Rs.29,910/- has already been recovered from her salary on monthly instalment basis, the entire recovered amount shall be re-credited to her salary account, on or before 16.12.2019, if any required to be done. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)



To:

1.The Principal District Judge,
Tirunelveli.

2.The Additional District Judge,
Fast Track Court No.I,
Tirunelveli.

+2 CC to M/s.K. GURUNATHAN, Advocate (SR-91837 and 91838[F] dated
15/10/2019)

+1 CC to M/s.PALA.RAMASAMY, Advocate (SR-92167[F] dated 16/10/2019

W.P. (MD) No.6647 of 2010
and
M.P. (MD) No.2 of 2010
and
W.P. (MD) No.6830 of 2010
14.10.2019

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