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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.02.2020
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.21418 of 2014
and
M.P(MD)No.1 of 2014

M.Jalaludheen ... Petitioner

vs.

1)The Commissioner of Municipal Administration,
6th Floor, Elizlagam,
Chennai-5.

2)The Commissioner,
Karur Municipality,
Karur.

3)The Commissioner,
Bodinayakanur Municipality,
Bodinayakanur,
Theni District. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records relating to the impugned recovery order passed by the 2nd respondent in his proceedings in Na.Ka.No.A1/233/12 dated 10.12.2014 served to the petitioner on 23.12.2014 and quash the same as illegal in so far as the petitioner is concerned.

For Petitioner : Mr.M.Ajmal Khan, Senior Counsel for M/s.AJMAL ASSOCIATES
For R1 : Mr.D.Muruganandham Additional Government Pleader
For R2 : Mr.T.Senthil Kumaraiah
For R3 : Mr.Karuppasamy Pandian

ORDER

This writ petition has been filed for issuance of a Writ of Certiorari, calling for the records relating to the impugned recovery order passed by the 2nd respondent in his proceedings in Na.Ka.No.A1/233/12 dated 10.12.2014 served to the petitioner on 23.12.2014 and quash the same as illegal in so far as the petitioner is concerned.

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2.The petitioner would submit that he was initially appointed as Junior Assistant on 21.03.1995 at Bodinayakanur Municipality, Theni District, and his services were regularised with effect from 03.07.1997 by G.O.Ms.No.487 dated 14.09.2010. Subsequently, the petitioner was promoted as Revenue Inspector on 27.10.2010 at Karur Municipality and he was instructed to take in-charge for Division-I from Mr.K.Ragupathy, Revenue Inspector, in-charge for the Division-II. After completion of three years as Revenue Inspector at Karur Municipality, the 1st respondent by proceedings dated 19.09.2013 transferred and posted the petitioner as Assistant in the 3rd respondent Municipality. While so, the 2nd respondent issued a memo dated 07.02.2014, calling upon the petitioner to submit his explanation within three days alleging that the concerned revenue inspector and writer failed to report about the judgment and decree passed by the District Munsif Court, Karur, in O.S.No.43/2011 dated 19.04.2012 filed by one Mr.Arumugam, thereby caused revenue loss to the tune of Rs.2,02,718/- to the 2nd respondent Municipality towards payment of further interest. On receipt of the said memo, the petitioner submitted his explanation on 06.03.2014 and 30.06.2014 to the 2nd respondent refuting the allegation stating that he is in no way connected with the said allegation and the consequent loss.

3.He would further submit that the 2nd respondent by proceedings dated 11.07.2014 passed the recovery order to pay a sum of Rs.1,38,900/- in 24 monthly instalment at Rs.1929/- per month. The said recovery order has been challenged before this Court in W.P(MD) No.13539 of 2014 and the petitioner has obtained interim stay for the said recovery order. While so, the 2nd respondent once again issued the impugned recovery order by proceedings dated 10.12.2014 for the time barred non collection of property tax which relates to the year 1999-2000. According to the petitioner, his predecessor was responsible for non collection of the time barred taxes and even assuming if any authority failed to recover the time barred non collected taxes, then the responsibility should be fixed collectively as per the ratio fixed by the 1st respondent in his proceedings dated 23.06.1993. Hence, challenging the same, the petitioner has filed this writ petition.

4.Learned counsel for the petitioner would submit that the impugned recovery order has been passed without issuing any charge memo and without affording opportunity of personal hearing or enquiry to put forth his grievance and therefore, the same is liable to be set aside on the ground of violation of principles of natural justice. He would further state that the 2nd respondent without resorting to issue recovery order against the predecessor in respect of the time barred arrears for the period from 1998-1999, has chosen to issue the impugned recovery order against the petitioner which is discriminative. It is further contended that the impugned recovery order passed without fixing the collective responsibility is contrary to the 1st respondent's proceedings dated 23.06.1993 and therefore, it is liable to be set aside. Further, as per rule 8(1)

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of the Tamil Nadu Municipal Services (D&A) Rules 1970, if any representation is preferred by the petitioner, the same shall be taken into consideration before passing the order imposing penalty and therefore, non consideration of the petitioner's representation dated 27.01.2014 is contrary to the above rule. He would rely on the order passed in W.P(MD)No.8600 of 2011, dated 02.03.2012 M.Arumugam vs. The Commissioner, Tirunelveli Corporation, Tirunelveli. Thus, he would pray for setting aside the impugned order.

5.The 2nd respondent has filed counter affidavit. Learned counsel for the 2nd respondent would state that since the petitioner has not collected the arrears of property tax from 1999 to 2000, the impugned recovery order was passed in respect of the loss which occurred during 1999-2000. He would further state that Municipality has power to collect the arrears of property tax from the Revenue Inspectors as per G.O.Ms.No.117/2008, Municipal Administration and Water Supply Department, dated 26.06.2008 and Section 345 of the Tamil Nadu District Municipalities Act and based on the same, the impugned order has been passed after considering the explanation given by the petitioner. He would also state that as per the proceedings dated 23.06.1993 of the 1st respondent, the 2nd respondent has rightly fixed the ratio of 30% against the petitioner towards non collected tax amount at Rs.2,48,681/-. Thus, he would pray for dismissal of the writ petition.

6.Heard both sides.

7.Perusal of record shows that the impugned order of recovery dated 10.12.2014 relates to the time barred non collection of property tax for the year 1999-2000. It is an accepted fact that the petitioner has joined the Karur Municipality only in the year 2010 and worked therein till 2013 and during his tenure in Karur Municipality, the petitioner collected property tax including arrears and for the time barred non collection of property tax for the year 1999-2000, the petitioner cannot be held responsible as his predecessor alone is responsible for the same. It is also seen that before passing the impugned recovery order, no opportunity has been given to the petitioner and no charge memo has been issued to the petitioner to submit his explanation. Therefore, the petitioner has filed this writ petition challenging the order of recovery. It is stated by the learned counsel for the petitioner that based on the memo issued, the petitioner gave a detailed representation and he would rely on rule 8(1) of the Tamil Nadu Municipal Services (D&A) Rules 1970, by which, if any representation is preferred by the petitioner, the same shall be taken into consideration before passing the order imposing penalty. So, the learned counsel for the petitioner would state that since the above rule has not been followed by not considering the petitioner's representation, the impugned order is bad in law. He would also rely on the order passed in **W.P(MD)No.8600 of 2011, dated 02.03.2012 M.Arumugam vs.**

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The Commissioner, Tirunelveli Corporation, Tirunelveli, wherein, this Court at paragraphs 12 to 14 has held as follows:-

''**12**.Similarly in another decisions made in W.P.Nos.31133 of 2006 etc.., dated 24.08.2009 a learned Single Judge of this Court has held that non collection of municipal due cannot be solely fastened on the subordinates. At the maximum the court can only fix the negligence on the part of such officials and not to recover the amounts due instead of recovering it from the licensesees. The relevant paragraphs of the said judgment is extracted hereunder:

"5.This Court in a number of Writ petitions have held that non collection of municipal due cannot be solely fastened on the subordinates. At the maximum the court can only fix the negligence on the part of such officials and not recover the amounts due, instead of from the licensesees but to the subordinate officers.

6.This Court in one such decision in N.Mani Vs. Director of Municipal Administration and others reported in 2006(1) CTC 632 has taken a similar view.

7.The Supreme Court in Syed Abdul Qadar Vs. State of Bihar and others reported in 2009(3) SCC 475 has held that in such circumstances, not only the recovery is illegal and the court has got power to direct refund of certain amounts

8.In the light of the same, the Writ petitions are allowed. The 2nd respondent is directed to refund the entire amount recovered from the petitioner within a period of three months from the date of receipt of a copy of this order. With reference to the illegal recovery of the amount, the respondents are also directed to pay 6% interest from the date of deduction till the date of payment. If the terminal benefits had not been paid to the petitioner, the same shall be paid forthwith."

13.Likewise in another judgment made in W.P.No.15749 of 2008 dated 25.06.2010 the learned Single Judge of this Court has quashed the charge memo in an identical circumstances. The relevant paragraphs 3 and 4 are extracted hereunder:

"3.The learned counsel appearing for the petitioner mainly contended that the petitioner cannot be held liable for the time barred tax arrears. He also relied on several decisions of this Court made in W.P.Nos.3364 to 3369 of 1976 dated 23.11.1976, the judgment reported in 2006(1) CTC 632, the order of this Court made in W.P.No.49053 of 2005 dated 25.01.2007 and the order of this Court dated 21.02.2008 made in W.P.No.34458 of 2007 etc.,

4.This Court in the judgment reported in 1988 WLR 38, V.Nagarajan V. Commissioner, Salem Municipality, Salem has

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held that the tax collectors cannot be held liable for the time barred arrears of taxes. This decision has been followed by this Court in very many matters. In fact, in W.P.No.35458 of 2007 and etc., batch, this Court by order dated 21.02.2008, relied on the communication of the Director of Municipal Administration, Chepauk, Chennai-5 and held that such recovery cannot be made. It would be useful to extract the said proceedings.

"The Municipal Employees Associations are demanding cancellation of recovery orders for time barred arrears among other things. In the meeting convened on 08.07.1994 in the chambers of Secretary, Municipal Administration and Water Supply Department to discuss with the office bearers of the Rural Development and Municipal Employees Association Federation the following decision was taken on the above demand.

The Director of Municipal Administration has already granted time upto 03.09.1994. Time barred arrears need not be recovered from the DCRG etc., from the retired employees."

14. In view of the above said decisions rendered by this Court on several occasions on similar issue, I find every justification in allowing the writ petition in W.P.(MD)No.8600 of 2011 and consequently, the impugned charge memo in Na.Ka.No.666/2005/C3 dated 20.10.2005 is quashed. As the impugned charge memo itself is quashed the right reserved by the respondent in the other impugned proceedings dated 31.10.2005 to continue the disciplinary proceedings is also quashed.

8.In my considered opinion, the above judgment is squarely applicable to the facts and circumstances of the present case and therefore, I am inclined to interfere with the impugned order.

9.Accordingly, the impugned recovery order passed by the 2nd respondent in his proceedings in Na.Ka.No.A1/233/12 dated 10.12.2014 is quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

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To

The Commissioner of Municipal Administration,
6th Floor, Ezlizlagam,
Chennai-5.

+1 CC to Mr.M.KARUPPASAMY PANDIAN, Advocate (SR-7920[F] dated 24/02/2020)
+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-7839[F] dated 24/02/2020)
+1 CC to Mr.J.SENTHIL KUMARAIAH, Advocate (SR-7941[F] dated 24/02/2020)

ORDER MADE IN
W.P(MD)No.21418 of 2014
DATED : 24.02.2020

MK (13.03.2020) 6P 5C

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