IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.09.2021

CORAM:

THE HON'BLE Dr.JUSTICE ANITA SUMANTH

W.P. No.23564 of 2009

N.Murugesan .. Petitioner

Vs

1. The Director,
   Local Fund Audit,
   IV Floor, Kuralagam,
   Chennai - 600 018.

2. The Director of Municipal Administration,
   Chepauk, Chennai - 600 005.

3. The Commissioner,
   Erode Municipal Corporation,
   Erode. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records relating to the order passed by the 1st respondent in proceedings No.ni.mu./16684/n.o.s.(1)/09 dated 15.07.2009 and consequential order passed in ni.mu.no.n.o.v.-7/40772/2009 dated 20.10.2009 and quash the same and direct the respondents to refund the attached amount of Rs.7,223/- with 18% interest which was recovered in the head of arrears of Time Barred Arrears Debt Rs.2,14,348/- from the date of retirement till the date of payment.

For Petitioner : Mr.A.R.Nixon

For Respondents : Mr.C.Selvaraj,
Government Advocate - R1 & R2
Mr.P.Srinivas
Senior Panel Counsel - R3

O R D E R

The petitioner was appointed as an Office Assistant (OA) in the Erode Municipality/R3 in March 1973 and promoted as Revenue Assistant (RA) on 31.12.1973, in which post he served for 32 years.

2. There was a revision of Professional tax on shops and business establishments in the State of Tamil Nadu on 01.10.1993 and the petitioner had the responsibility and duty of collecting the taxes in this regard, in his position as Bill/Tax Collector ('TC'/'BC'). Aggrieved against the levy, several shop owners in the State of Tamil Nadu filed Writ Petitions, and, according to the petitioner, in view of the interim orders passed in several cases, he was unable to collect the arrears of professional tax as was the case of other Bill/Tax Collectors as well.

3. Though the professional tax imposed in October, 1993 was reduced on 01.10.1998, many of the assesses had vacated their shops by then, as a result that several BCs including the petitioner were still unable to recover the arrears from defaulting assessees.

4. The arrears of professional tax had thus become barred by time. The Commissioner, Municipal Administration, vide circular No.Mu.75380/94/R1 called for details of time barred debts of professional tax, to be placed before the Municipal Council and such details were collected from the petitioner as well as other BCs.

5. Disciplinary action appears to have been initiated as against several BCs for non-collection of the statutory dues in time, whereas some BCs did not face such adverse action. A slew of litigation was initiated by BCs before this Court and in some cases, this Court has held that no recovery of the time barred debts should be effected from out of the retirement benefits of the concerned BC or in cases where such recovery had been so effected, that the amounts be refunded to the concerned BCs.

6. In E.Chandramohan V. The Director of Municipal Administration and two others (W.P.No.23542 of 2008 order dated 07.09.2018), a Revenue Assistant had been mulcted with recovery of the uncollected and time-barred tax arrears from his Death-cum-Retirement Gratuity (DCRG) benefits and challenged the same. On the grounds that the petitioner therein had attained superannuation, the impugned order directing recovery was passed without any prior enquiry and that the impugned action for recovery had been taken after a period of 10 years from when the professional tax had, in fact, become due, the impugned recovery was set aside and the amount collected directed to be returned to that petitioner.

7. The aforesaid case of E.Chandramohan (supra) is distinguishable from the petitioner's case for the reason that the petitioner before me had been charged with negligence and delay in collection of the tax arrears and causing delay to the State Exchequer, and had suffered an order of suspension with effect from 01.04.2005 for non-collection of arrears of professional tax for the periods 1992 to 2005. No charge or

disciplinary action appears to have been taken as against E.Chandramohan.

8. A charge memo dated 26.07.2005 had been issued upon the petitioner and he was called upon to submit an explanation. Upon completion of enquiry, the petitioner was re-instated in service and the period of suspension, five months in all, stood adjusted as against available earned leave. The enquiry was completed and the charge of negligence and delay in non-collection of professional tax and causing loss to the Treasury, stood proved as against the petitioner.

9. The time-barred arrears of professional tax was computed at a sum of Rs.12,99,284/- and an order came to be passed on 27.09.2005 to the effect that the balance tax due should be recovered from the concerned staff including the petitioner, who were held liable negligent and responsible for the loss caused to the State Exchequer. The amount was directed to be recovered at the rate of Rs.1000/- per month from the monthly salary of the petitioner and his colleagues with effect from November, 2005. The amount to the debit of the petitioner was a sum of Rs.2,14,348/-.

10. Order dated 27.09.2005 came to be challenged by the petitioner and his colleagues in W.P.Nos.39185 to 39188 of 2005. Initially an order of interim stay of recovery was granted for a period of eight weeks and subsequently the matters were all dismissed as withdrawn on 29.07.2015, 20.08.2020 and 23.07.2012 respectively. The Writ Petition filed by this petitioner in W.P.No.39186 of 2005 came to be dismissed as withdrawn on 20.08.2020.

11. I am unable to fathom as to why the above Writ Petition was withdrawn and neither of the learned counsel before me are able to throw any light in this regard. Perhaps it was for the reason that the order of interim stay was limited and recovery had been effected thereafter, pending that writ petition.

12. The petitioner was permitted to retire on 31.08.2007. Prior to his retirement, a sum of Rs.2,14,348/- was ordered to be recovered from out of his DCRG, vide proceedings dated 16.08.2007. The petitioner has not challenged this communication, evidently for the reason that a copy of the same has not been issued to him. However, he challenges a subsequent communication dated 20.10.2009 under which recovery of a sum of Rs.7,223/- with 18% interest has been made and seeks refund of the same.

13. Impugned order dated 15.07.2009 has come to be passed long after the retirement of the petitioner on 31.08.2007 quantifying the balance of the arrears to be collected at a figure of Rs.7,223/-. Consequent upon order dated 15.07.2009, an order has been passed on 20.07.2010

recovering the amount of Rs.7,223/- along with 18% interest in full settlement of the amount of Rs.2,14,348/-.

14. The Hon'ble Supreme Court in the case of State of Punjab and others v. Rafiq Masih (White Washer) and others (2015 4 SCC 334) held that in the case of a superannuated employee in whose case payments have been made, there should be no recovery effected pursuant to superannuation.

15. The ratio of the aforesaid judgment would, normally, apply to cases of recovery effected post retirement of employees. However, in view of the distinguishable facts as noted in the paragraphs aforesaid, there is no justification for any intervention in the impugned orders. The petitioner having not pursued his challenge to order dated 27.09.2005 under which the charges laid upon him stood confirmed, and recovery of a sum of Rs.2,14,348/- was ordered and choosing to withdraw of Writ Petition No.39186 of 2005, is liable to settle the score with the respondent and satisfy the payment of arrears in full.

16. This Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Director,
Local Fund Audit,
IV Floor, Kuralagam,Chennai - 600 018.

2. The Director of Municipal Administration,
Chepauk, Chennai - 600 005.

3. The Commissioner,
Erode Municipal Corporation, Erode.

+1 cc to Mr.A.R.Nixon, Advocate Sr.NO. 48784
+1 cc to Government Pleader Sr.NO. 49029

W.P. No.23564 of 2009

A.SK(11.10.2021)