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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

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THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.17355 of 2008

R.Kumarasamy

... Petitioner

Vs.

1. The Regional Deputy Director
The Tamil Nadu Khadi & Village
Industries Board, Tirupur - 3.

2. The Chief Executive Officer,
Khadi Village Industries, Erode.

... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to Proceedings Na.Ka.No.1468/66/D3, dated 10.03.2008 issued by the first respondent confirming the Proceedings Na.Ka.No.34105/E2 (3)/2005, dated 30.01.2006 issued by the second respondent, quash the same and direct the respondents to return Rs.91,973/- deducted from the petitioner's gratuity.

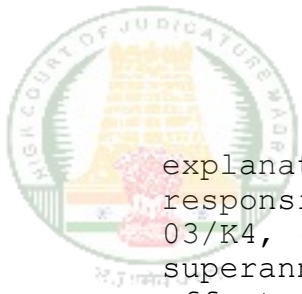
For Petitioner : Mr.R.Jaikumar

For Respondents : Mr.S.K.Bose

O R D E R

The Writ Petition is directed against a recovery order passed by the respondent to the tune of Rs.91,973/- deducted from the petitioner's gratuity.

2. The petitioner was working as Assistant in Khadi Board. He was posted in Reddypalayam Branch, in the year 1996. He took charge from one Sudan, Khadi Assistant. Thereafter, he was transferred to Tiruppur Central Warehouse, by order dated 21.07.1999. He handed over the charge to his successor namely, A.Rameswari on 23.07.1999. An intimation was given that there was a deficit of Rs.2,304.15 and a recovery order was issued by the Assistant Director in Proceedings Na.Ka.4143/99/A2, dated 23.07.1999 and the amount was said to have been recovered. Thereafter, a show cause notice dated 12.08.2005 was issued to the petitioner with regard to unusable condition of stock handed over by the petitioner to his successor. He submitted an



explanation and the recovery of Rs.91,973/- was ordered fixing responsibility on the petitioner in Proceedings Na.Ka.No.7151/03/K4, dated 25.01.2006. The petitioner had attained the age of superannuation and was permitted to retire from service with effect from 31.01.2006. The order was passed for recovery of money from his terminal benefits. Against which, the petitioner made an appeal to the first respondent and the same was rejected by Proceedings in Na.Ka.No.1468/06/D3, dated 10.03.2008. Aggrieved over the same, the petitioner has preferred the present Writ Petition.

3. I have heard the submissions and perused the materials placed before this Court.

4. At the outset, it is seen that the petitioner was relieved from Reddypalayam Station on 20.07.1999. He handed over the charge to his successor and deficit of Rs.2,304.15 found at the time of handing over charge, was also recovered from the petitioner. After a period of six years, it was found that the stock remained unsold and became unusable. Therefore, proceedings were initiated after a period of six years to fix the responsibility and the responsibility was fixed on the petitioner.

5. On perusal of the punishment order, no reason has been assigned for fixing the responsibility on the petitioner for making the Textile unusable. Relying on the inspection report of the year 2001, wherein, there was a shortage of weight in respect of the cloth bundles. The petitioner was fixed with the responsibility for the loss. It is not comprehensible as to why the responsibility was fixed on the petitioner while he already handed over the charge as early as 1999. There was no complaint or remarks at the time of handing over charge in the year 1999 as there was loss of weight or the cloth was unusable. The inspection was conducted in the year 2001 two years after the transfer of the petitioner. There is no whisper as to why the responsibility was not fixed on his successor, who was incharge of the stock or his predecessor, who had procured the materials. It is not in dispute that he had taken charge in the year 1996 from one Sudan, Khadi Assistant of the stock. It was not procured during his time and that he had power to procure the stock. He passed on the entire stocks as received by him to his successor in the year 1999. If there is any weight loss or the stock was in unusable condition, it shall be attributed to the person, who was incharge of the same at the relevant point of time. By any stretch of imagination, it cannot be attributed to a person, who was in the custody of the stock without assigning reasons and without any material evidence.

6. From the perusal of the materials placed before this



Court, it is seen that there is no complaint about the shortage of weight at the time of handing over the charge to his successor. It is stated by the disciplinary authority that the inspection was conducted in the year 2001 after he got relieved from the post. That means, he was not responsible for the weight loss or the cloth becoming old and unusable. Therefore, at no stretch of imagination, action initiated after a period of six years on the eve of the retirement of the petitioner can be accepted. If at all, the stock of the respondent / organization, the responsibility shall be equally fixed on all, who are responsible for running of the shop. In that event, the predecessor and successor of the petitioner as well as the Manager, Superintendent, Assistant Director were equally responsible.

7. In the absence of any specific act or negligence or dereliction of duty on the part of the petitioner, the responsibility ought not to have fixed on him. It is also pertinent to note that the petitioner has brought details of stagnation to the Assistant Director and the Inspector of Khadi Board while he was taking charge in the year 1996 itself and he has also communicated the factum in his monthly returns submitted to the higher officials. He has also brought it to the knowledge of the Manager. Therefore, it is crystal clear that the petitioner had received the stock in the very same condition and that they are stagnated for long time even at the time of his taking over the charge in the year 1996. It is also stated by the petitioner that he had communicated the factum of stagnation in writing to the Assistant Director and it was read out in the monthly meeting and the Managers of other Branches were requested to take delivery of the same. Since none of the Managers had come forward to take delivery, it remained in the stock. Even after extracting the facts in his order passed in appeal, the appellate authority has failed to discuss the same. No reason has been stated in the appellate order as to how the petitioner was responsible for deterioration of quality or loss of weight. Based on inspection report of 2001, without rhyme or reason, the petitioner was fixed the responsibility on the eve of retirement. The action of the respondent in passing order of recovery without any reason fixing the responsibility on the petitioner on the eve of his retirement and that too when he was not incharge of the stock for six years is arbitrary and mala fide. The petitioner has been made a scapegoat by the Superior Officials to set right loss caused to the society and to safeguard themselves from recovery.

8. I do not have any hesitation to set aside the impugned order of recovery in Proceedings Na.Ka.No.1468/66/D3, dated 10.03.2008 issued by the first respondent and hence, the same is set aside.



9. In the result, the Writ Petition is allowed. The respondents are directed to disburse the recovered amount to the petitioner within a period of six (6) weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Regional Deputy Director
The Tamil Nadu Khadi & Village
Industries Board, Tirupur - 3.
2. The Chief Executive Officer,
Khadi Village Industries, Erode.

+1CC to the Government Pleader, High Court, Madras,
Sr.No.31169/21

W.P.No.17355 of 2008

GP (CO)
K.RK. (02.08.2021)