



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2021

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.19720 of 2013

and

M.P (MD) No.1 of 2015

WEB COPY

R.Kathirvelu

... Petitioner

Vs.

1. The Commissioner of Social Welfare,
Chepauk,
Chennai - 60 005.
2. The Principal Secretary cum
Special Commissioner,
O/o.The Principal Secretary cum
Special Commissioner of ICDS,
Tharamani, Chennai - 113.
3. The District Social Welfare Officer,
Pudukkottai - 622 005. ... Respondents

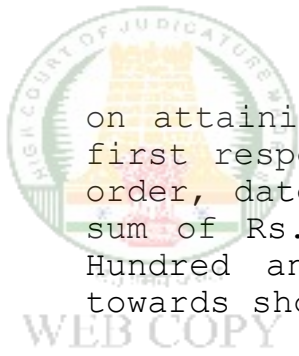
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent dated 23.10.2013 made in Se.Mu.Na.Ka.No.43407/Nir 4 (2)/2013 so far as the order of recovery of sum of Rs.91,602/- from the petitioner's gratuity, quash the same and consequently directing the first respondent to pay the entire gratuity with interest at the rate of 9% within the time frame fixed by this Hon'ble Court.

For Petitioner : Mr.P.Pandiarajan
For Respondents : Mr.M.Linga Durai
Government Advocate

O R D E R

The petitioner has filed the above Writ Petition to quash the proceedings of the first respondent, dated 23.10.2013 made in Se.Mu.Na.Ka.No.43407/Nir 4 (2)/2013 so far as the order of recovery of a sum of Rs.91,602/- from the petitioner's gratuity and consequently directing the first respondent to pay the entire gratuity with interest at the rate of 9%.

2. The petitioner was working as Industrial Co-operative Officer before the third respondent at the time of his retirement,



on attaining the age of superannuation on 31.01.2010. However, the first respondent permitted the petitioner to retire from service by order, dated 29.01.2010, w.e.f. 31.01.2010, subject to payment of a sum of Rs.3,11,473.80 p. (Rupees Three Lakhs Eleven Thousand Four Hundred and Seventy Three and Eighty Paise) by the petitioner, towards shortage.

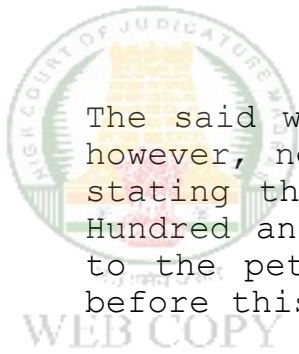
3.It is the case of the petitioner that he was working in "Sulur Energy Food Manufacturing Women Development Industrial Co-operative Society Limited", for the period from 07.11.2000 to 12.06.2003. It is also admitted that a sum of Rs.3,11,473.80p. (Rupees Three Lakhs Eleven Thousand Four Hundred and Seventy Three and Eighty Paise) was accounted as loss in the Auditor's report. In the manufacturing process, it was found that there was some shortage and therefore, the petitioner was held liable for the amount towards value of goods found to be in short.

4.The further case of the petitioner is that the manufacturing process involved weaning food ingredients like Wheat, Ragi, Bengal Gram, Maize, Green Gram, Dhall and etc. Therefore, the likelihood of reduction of moisture content in food materials in small quantities.

5.The main point that was urged by the learned counsel for the petitioner is that the petitioner is saddled by an order of recovery based on an audit, which was reported seven (7) years earlier from the date of retirement. The recovery is at the age of retirement without an explanation for long delay.

6. It is the further case of the petitioner that the amount was arrived at on the basis of some inspection without affording an opportunity to the petitioner. It is to be noted that the petitioner had challenged the order, dated 29.01.2010 in W.P.(MD) No.3350 of 2011. This Court having noticed that the order, dated 29.01.2010, was without any notice to the petitioner, quashed the order of recovery by allowing the writ petition. The relevant portion of the order reads as follows:

"3.In view of the above stated position, I am inclined to set aside the order of the first respondent dated 29.01.2010 on the sole ground that the said order came to be passed by the first respondent without due notice to the petitioner and without conducting enquiry. The writ petition therefore, stands allowed. It is needless to say that the first respondent is at liberty to pass orders afresh after due notice to the petitioner and after conducting enquiry. Consequently, connected miscellaneous petition is closed. No costs."



The said writ petition was disposed of by order, dated 23.03.2011, however, nearly 2 1/2 years later, the impugned order is passed now stating that a sum of Rs.91,602/- (Rupees Ninety One Thousand Six Hundred and Two) is sought to be recovered from the amount payable to the petitioner towards gratuity. This order is now challenged before this Court in this writ petition.

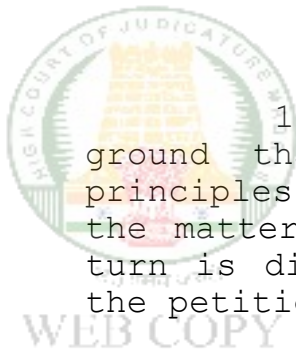
7. Reading of the order, dated 23.10.2013 indicates that the respondents have once-again failed to observe the principles of natural justice before passing an order. Hence for the very same reason, assigned by this Court for allowing the earlier writ petition, should be applied. Though the amount to be recovered from the petitioner has been now reduced to Rs.91,602/- (Rupees Ninety One Thousand Six Hundred and Two) from Rs.3,11,473.80p. (Rupees Three Lakhs Eleven Thousand Four Hundred and Seventy Three and Eighty Paise) the learned counsel for the petitioner states that the recovery amount of Rs.91,602/- (Rupees Ninety One Thousand Six Hundred and Two) is not preceded by an enquiry, and no opportunity was given to the petitioner.

8. It is settled that the proceedings for recovery on account of shortage or other reason should be initiated within a reasonable time after giving an opportunity to the employee concerned and after fixing the responsibility.

9. In this case, admittedly, there was no notice issued to the petitioner before the recovery proceedings were initiated against him. Despite an order of this Court quashing the earlier order on the ground of violation of principles of natural justice, the respondents have passed the impugned order once again for the lesser amount without following the principles of natural justice.

10. The learned counsel for the petitioner further states that the amount now sought to be recovered from the petitioner is only a sum of Rs.91,602/- (Rupees Ninety One Thousand Six Hundred and Two) the respondents can be directed to disburse the remaining amount of Rs.2,65,998/- (Rupees Two Lakhs Sixty Five Thousand Nine Hundred and Ninety Eight).

11. The first respondent himself has now restricted the amount to be recovered from the petitioner as to Rs.91,602/- (Rupees Ninety One Thousand Six Hundred and Two). Hence, there is no scope for initiation of a recovery proceedings to the tune of Rs.3,57,998/- (Rupees Three Lakhs Fifty Seven Thousand Nine Hundred and Ninety Eight) which is payable to the petitioner towards gratuity. The amount which the petitioner is entitled to, has been held to be the property of the petitioner and the petitioner had been successfully prevented from getting the amount under the pretext of enquiry proceedings. Therefore, the petitioner is entitled to a statutory interest, which according to the petitioner



12. In the result, the impugned order is quashed on the ground that the order, dated 23.10.2013, is in violation of principles of natural justice. Since the impugned order is quashed, the matter is remitted once again to the first respondent, who in turn is directed to conduct an enquiry and give an opportunity to the petitioner before passing further orders.

13. The respondents are directed to pay the balance amount of Rs.2,65,998/- (Rupees Two Lakhs Sixty Five Thousand Nine Hundred and Ninety Eight) with interest @ 9% per annum to the petitioner within a period of twelve weeks from the date of receipt of copy of this order.

14. With above directions, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Commissioner of Social Welfare,
Chepauk,
Chennai - 60 005.
2. The Principal Secretary cum
Special Commissioner,
O/o. The Principal Secretary cum
Special Commissioner of ICDS,
Tharamani, Chennai - 113.
3. The District Social Welfare Officer,
Pudukkottai - 622 005.

+1 CC to M/s.SPL GP (SR-25345[F] dated 05/08/2021)

W.P. (MD) .No.19720 of 2013
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