BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:**08.12.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.(MD)No.45 of 2020

K.Gopalakrishnan ... Petitioner

Vs.

The Commissioner,
Adi Dravidar and Tribal Welfare Department,
Chepauk,
Chennai – 600 005. ... Respondent

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the respondent in Na.Ka.No.E1/37092/2008, dated 29.10.2019 and quash the same as illegal and unlawful and direct the respondent to disburse Rs.2,06,449/-, which was recovered from the petitioner's salary and pensionary benefits along with 22% of interest till the date of its payment, more particularly, within a time frame as may be stipulated by this Court.

For Petitioner : Mr.J.Pooventhera Rajan
For Respondent : Mr.G.V.Vairam Santhosh, Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner challenging the impugned order of the respondent in Na.Ka.No.E1/37092/2008, dated 29.10.2019 and to direct the respondent to disburse Rs.2,06,449/-, which was recovered from the petitioner's salary and pensionary benefits along with 22% of interest till the date of payment, within a stipulated time.

2. The case of the petitioner is that the petitioner joined services as a Post Graduate Teacher in the respondent Department on 22.02.1979 at Government Nandhanar Boys Higher Secondary School, Chidambaram and thereafter, he was promoted as Headmaster in Government Adi Dravidar Higher Secondary School, Thuraiyur, Thiruchirapalli District and in the year 2006, he was promoted as Regional Assistant Director of Adi Dravidar and Tribal Welfare and on attaining the age of superannuation, he retired from service on 30.11.2010.

3. The grievance of the petitioner is that while he was in service as Headmaster between 2001-2006, the petitioner was served in various schools including Government Tribal residential Higher Secondary School, Pathukaani, Kanyakumari District. While so, on 25.01.2008, he was served with a show-cause notice issued by the District Adi Dravidar and Tribal Welfare Officer, Kanyakumari District, calling for objection from the petitioner as against the audit report about the excess expenditure of Rs.2,06,449/- made by the petitioner towards the food charges of the inmates of the hostel for the period from April 2001 to August 2003. For that, the petitioner sent a detailed reply on 11.03.2008. However, without considering the explanation offered by the petitioner, recommendation was made to confirm the proposal and to recover the said sum of Rs.2,06,449/-. Based on the recommendation of the District Adi Dravidar and Tribal Welfare Officer, Kanyakumari District, the respondent herein issued a show-cause notice on 18.03.2009 calling for explanation to recover the above said sum. The petitioner submitted his explanation on 20.03.2009. However, without considering the same, recovery order was passed and a sum of Rs.2,06,449/- was

recovered from the death cum gratuity fund. As against the same, the petitioner preferred an appal before the Secretary to Government, Adi Dravidar and Tribal Welfare Department. Since the same was not considered, the petitioner filed a writ petition in W.P(MD)No.6502 of 2013 and the same was disposed of by this Court with a direction to consider and dispose of the appeal filed by the petitioner within twelve weeks. Pursuant to which, the respondent passed the impugned order rejecting the appeal. Challenging the same, the petitioner has filed this writ petition with the aforesaid prayer.

4. The learned counsel appearing for the petitioner would submit that the recovery of the alleged excess expenditure was made only based on the internal audit objection. However, the fact remains that for the crucial period, the total amount sanctioned for 26 months was R.7,29,066.20/-, whereas the amount utilized towards food expenditure was only Rs.6,98,341.25/- and therefore, there was surplus only. The said fact was not properly considered by the respondent while passing the impugned order and therefore, prayed for allowing of this writ petition.

5. The learned Additional Government Pleader appearing for the respondent would submit that the petitioner was working as Headmaster in Pathukaani Tribal Residential Higher Secondary School from 10.07.1995 to 22.08.2003 and based on the audit objection, it was recommended to recover the excess expenditure of Rs.2,06.449/- from the petitioner. Further, the petitioner was permitted to retire from service subject to payment of the said sum. However, after retirement from service, the petitioner challenged the recovery made from him. It was found that the petitioner has sanctioned the bills for procuring meat and firewood, violating the quantity and apportionment of food to hostel students as instructed in G.O.Ms.No.3231 Social Welfare Department, dated 12.12.1986 and G.O.Ms.No.191, Adi Dravidar and Tribal Welfare Department, dated 13.08.2003. Considering all these aspects, the respondent has passed the impugned order which is perfectly in order and therefore, prayed for dismissal of this writ petition.

6. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondent and perused the materials placed before this Court.

7. Admittedly, the petitioner worked in the residential school at Pathukaani, from the year 2001 – 2006 and there was an audit objection for the period from April 2001 to August, 2003 and it was noticed that the petitioner made excess expenditure. For that, prior to retirement, a show-cause notice was issued to the petitioner and the petitioner has also given his explanation. However, the explanation of the petitioner was not accepted and thereafter, the petitioner sent a letter to the Department giving consent to deduct the said excess expenditure of Rs.2,06,449/-. Accordingly, the said amount was deducted at the time of retirement of the petitioner. Thereafter, the petitioner preferred an appal before the first respondent and as the same was not considered, the petitioner filed a writ petition in W.P(MD)No.6502 of 2013 and same was disposed of by this Court with a direction to consider and dispose of the appeal filed by the petitioner within twelve weeks. Pursuant to which, the respondent passed the impugned order rejecting the appeal.

8. It is an admitted fact that at the time of retirement, the petitioner agreed to deduct the said sum and therefore, the amount was deducted

and therefore, he cannot seek for direction to pay the amount recovered from him, which is not sustainable. Further, the petitioner did not challenge the recovery order at the relevant point of time. Without challenging the recovery order at the relevant point time, the petitioner cannot challenge the impugned order passed in the appeal filed by the petitioner, which is not sustainable. Therefore, the prayer sought for by the petitioner cannot be granted.

9. In the result, this writ petition is dismissed. No costs.

08.12.2022

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Index:Yes/No

To

The Commissioner,
Adi Dravidar and Tribal Welfare Department,
Chepauk,
Chennai – 600 005.

M.DHANDAPANI,J.

pm

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