



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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Orders Reserved On 19.04.2022	Orders Pronounced On 25.04.2022
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W.P.(MD) No.7324 of 2019
and
W.M.P.(MD) No.5852 of 2019

S.Balasubramanian

.. Petitioner

-vs-

The Commissioner,
Madurai Corporation, Madurai.

.. Respondent

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records relating with the order of the respondent made in MaNil/26977/2015 dated 18.03.2019 and quash the same as arbitrary and illegal.

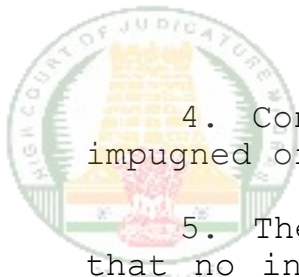
For Petitioner : Mr.R.Suriya Narayanan
For Respondent : Mr.B.Saravanan
Standing Counsel

ORDER

The order of recovery dated 18.03.2019 is sought to be quashed in the present writ petition.

2. The petitioner is working as Assistant in the Madurai Corporation. A show cause notice was issued to the writ petitioner on 02.12.2015 seeking explanation from the petitioner regarding the allegation of causing financial loss to the Corporation to the tune of Rs.3,17,972/- regarding the erroneous fixation of upset price for the auction to the Kochadai Lorry Parking Bay and toilet near New College House and also renew the license to the toilet at South Chitrai Veethi without auction and for non-crediting the lease amount through demand draft for a sum of Rs.1,41,054/-.

3. The petitioner submitted his explanation on 18.12.2015 stating that he is not responsible for any such financial loss to the Corporation and the procedures were followed and thus, the actions are to be dropped.



4. Considering the explanation, the respondent passed by the impugned order of recovery.

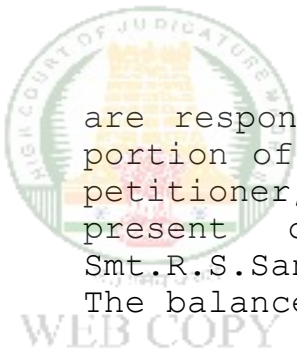
5. The learned counsel for the petitioner made a submission that no inquiry was conducted before issuing the impugned order of recovery. When a show cause notice was issued and the petitioner submitted an explanation denying the allegations, an inquiry is to be conducted with reference to the financial loss. However, without conducting any such inquiry, the impugned order of recovery has been passed. Thus, the writ petition is to be considered.

6. The learned Standing Counsel appearing on behalf of the respondent objected the said contention by stating that it is not a departmental disciplinary proceedings initiated against the writ petitioner. Financial loss was assessed by the competent authorities of the respondent-Corporation and the persons who all are responsible and dealing with the files during the relevant point of time, were directed to compensate the financial loss proportionately and therefore, there is no infirmity in respect of the order of recovery passed, which is impugned.

7. This Court is of the considered opinion that the authorities found that while fixing the upset price for the auction to the Lorry Parking Bay and in respect of certain other aspects, the respondent-Corporation suffered financial loss. When the authorities found that the financial loss caused due to certain errors, mistakes or irregularities committed by the staffs concerned, then they have to initiate the recovery proceedings to make good the financial loss caused to the Corporation. Thus, the recovery of financial loss caused due to mistake or error cannot be construed as a disciplinary proceedings initiated under the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

8. Whenever there is a financial loss noticed in any Government Department on account of varieties of reasons, then such financial loss is to be compensated by recovering the said amount from the persons, who all are fixed with the responsibility and accountability for such financial loss. Therefore, such recovery proceedings are not akin to that of the departmental disciplinary proceedings. Even if there is no misconduct or otherwise in respect of such financial loss, the same may be recovered in the public interest, as the public money is to be protected by the competent authorities and the officials who all are responsible and accountable are liable to compensate the financial loss in such circumstances, when certain errors, mistakes or irregularities in following the procedures are identified or traced out.

9. In the present case, the total financial loss was assessed as Rs.3,17,972/-. Therefore, the respondent has issued a show cause notice and the impugned recovery order has been passed fixing the financial loss to the officials who all



are responsible and accountable for such financial loss. Thus, a portion of the recovery amount is directed to be recovered from the petitioner, who was working in the post of Assistant. In the present case, the recovery of 20% was imposed on one Smt.R.S.Santhimai, Assistant Commissioner, who retired from service. The balance amount is sought to be recovered from the petitioner.

10. The tax payers' money collected by the Corporation for providing infrastructure facilities to the public at large is to be protected at all levels. In the event of any financial loss occurred due to the negligence, mistakes, error or otherwise, such financial loss caused to the Corporation is to be recovered from the employees, who all are responsible and accountable. Therefore, the disciplinary proceedings initiated under the Discipline and Appeal Rules cannot be compared with the recovery of financial loss occurred to the local bodies or to the Government Departments.

11. In view of the facts and circumstances, this Court is of the considered opinion that show cause notice was issued to the writ petitioner and he submitted his explanation and the authorities considered the explanation and passed the order of recovery. Recovery of financial loss occurred to the Corporation is the summary proceedings and therefore, no departmental enquiry akin to that of the disciplinary enquiry is not required.

12. In view of the facts and circumstances, this Court is of the opinion that the petitioner has not established any acceptable ground for the purpose of considering the relief and consequently, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To
The Commissioner,
Madurai Corporation, Madurai.

+1 CC to M/s.B.SARAVANAN, Advocate (SR-21070[F] dated 26/04/2022)

Order made in

W.P.(MD) No.7324 of 2019

25.04.2022

KS (CO)

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