



WEB COPY



W.P.No.17659 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.17659 of 2013

K.M.Krishnasamy

...Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by the Chief Executive Officer,
Tamilnadu Khadi and Village
Industries Board,
“Kuralagam Buildings”
Chennai – 600 108.
2. The Regional Deputy Director,
Khadi and Village Industries Board,
Tirupur Region,
Tirupur.
3. The Assistant Director,
Khadi and Village Industries Board,
Tirupur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent bearing Na.Ka.No.8714/121/2009 dated 25.02.2011 rejecting the appeal to quash the same and direct the respondent to refund the sum of Rs.2,98,640/- to the petitioner deducted from the retirement gratuity.



WEB COPY



W.P.No.17659 of 2013

For Petitioner : Mr.S.Baskaran

For Respondents : Mr.S.K.Bose

ORDER

This writ petition has been filed challenging the order dated 25.02.2011 passed by the second respondent in Na.Ka.No.8714/1/2009, thereby rejecting the appeal filed by the petitioner as against the order passed by the third respondent, thereby ordered to recovery of Rs.2,71,160/- from the petitioner subject to the audit report.

2. The petitioner joined the service in the Khadi and Village Industries Board on 10.12.1984 and attained the age of superannuation on 31.10.2009. While he was working as Khadi Assistant Grade-II at Perumanallur Sub-centre, Tirupur, by an order dated 20.02.2009, the third respondent directed the petitioner to hand over the stock in village weaving centres at Annampalyam, Chokanur and Ettiveerampalayam to the successor. While handing over the stock, there was no excess and there was a deficit in stock to the value of Rs.2,71,160/-. The petitioner also agreed and signed in the stock statement.



W.P.No.17659 of 2013

3. On the strength of the same, the third respondent passed an order of recovery of Rs.2,71,160/- from the petitioner. Subsequently, he attained the age of superannuation on 31.10.2009 and he was allowed to retire by an order dated 29.10.2009, on condition that the petitioner shall file an undertaking in a stamp paper valued Rs.20/- attested by Notary Public to the effect that he will accept any responsibility that would arise on the finalization of audit paras and abide by the orders issued at the time, for recovery of amount from his pensionary benefits.

4. In the mean while the petitioner also filed an appeal as against the order of recovery passed by the third respondent dated 29.10.2009. The said appeal was dismissed by the second respondent by an order dated 25.02.2011, which is impugned in this writ petition. In pursuant to the dismissal order passed by the second respondent, the first respondent by an order dated 21.02.2013 deducted a sum of Rs.2,98,640/- from his gratuity amount and sanctioned the other retirement benefits and pensionary benefits. Hence, the petitioner filed this present writ petition with the above said prayer.



W.P.No.17659 of 2013

5. The learned counsel appearing for the petitioner submitted that admittedly, the said deduction was made from his gratuity amount.

Before passing the order of recovery of the said amount, no enquiry was conducted and without giving any opportunity to the petitioner, they straight away ordered for recovery. After dismissing the petitioner's appeal, without even referring and looking for the audit report, the first respondent straight away deducted the amount from gratuity. It is against law and no recovery has to be made from gratuity amount and it cannot be attached at any cost. Hence, he prayed to allow this writ petition.

6. Heard the learned counsel appearing on either side and perused the material placed before this Court.

7. On perusal of the counter filed by the first respondent revealed that the petitioner was in-charge of the stocks and he was directed to handover the stocks as he was due to retire on 30.11.2009. At that time, it was found that the stock to the value of Rs.2,71,160/- was found short. The petitioner also acknowledged the deficit in stock by signing in the stock sheet. Therefore, the respondents ordered to recover the said amount subject to audit report.



W.P.No.17659 of 2013

WEB COPY

8. In this regard, it is relevant to extract the provision under

Section 4(b)(1)(a) of the Payment of Gratuity Act, 1972 as follows :-

*“4(6) Notwithstanding anything contained in
Sub-Section(1)-*

*(a) the gratuity of an employee, whose service
have been terminated for any act, wilful omission or
negligence causing any damage or loss to, or
destruction of property belonging to the employer, shall
be forfeited to the extent of the damage or loss so
caused;”*

Thus, it is clear that the gratuity of an employee shall be forfeited to the extent of the damage or loss so caused. Therefore, the loss caused to the employer viz., the third respondent, can be recovered from the gratuity amount payable to the petitioner.

9. That apart, the petitioner accepted the shortage to the value of Rs.2,71,160/- and therefore, the recover order was passed by the third respondent. In fact, the recovery order was challenged by the petitioner and the same was also dismissed and confirmed the order passed by the third respondent. After passing the dismissal order by the second



W.P.No.17659 of 2013

respondent, after deducting the said amount from the gratuity, the first respondent ordered to disburse the other benefits and ordered to pay pension. Therefore, this Court finds no infirmity or illegality in the order passed by the respondents.

10. Accordingly, the Writ Petition stands dismissed. There shall be no order as to cost.

01.08.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

rts



W.P.No.17659 of 2013

WEB COPY To

1. The Chief Executive Officer,
State of Tamil Nadu,
Tamilnadu Khadi and Village
Industries Board,
“Kuralagam Buildings”
Chennai – 600 108.
2. The Regional Deputy Director,
Khadi and Village Industries Board,
Tirupur Region,
Tirupur.
3. The Assistant Director,
Khadi and Village Industries Board,
Tirupur.



WEB COPY



W.P.No.17659 of 2013

G.K.ILANTHIRAIYAN. J.

rts

W.P.No.17659 of 2013

01.08.2023