BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.07.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.655 of 2013
and
M.P.(MD)No.1 of 2013

1.The Commissioner of Agriculture,
Agricultural Department,
Chepauk, Chennai-5.

2.The Joint Director of Agriculture,
Agricultural Department,
Collectorate, Thoothukud District,
Thoothukudi.

3.The Regional Accounts Officer (Audit),
Agricultural Department,
No.11, Lady Doak College Road, Chinnachokkikulam,
Madurai. ... Appellants

Vs.

1.A.Natarajan (Died)
2.N.Praveen Kumar ... Respondents

(The second respondent was impleaded vide order of this Court, dated 05.07.2023 in C.M.P.(MD)No.7859 of 2023)

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 18.04.2013 passed by this Court in W.P(MD)No. 3462 of 2010.

For Appellant	:Mr.M.Sidharthan Additional Government Pleader
For Respondents	:Mr.Vikraman for Mr.R.Anand

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JUDGMENT

(Judgment of the Court was delivered by **R.VIJAYAKUMAR, J.)**

The respondents in the Writ Petition are the appellants herein. The first respondent herein, as petitioner, had filed the Writ Petition challenging an order, dated 31.08.2009, wherein, a sum of Rs.8,16,260/- was retained from the terminal benefits of the Writ Petitioner on the ground that he has suffered an audit objection, while he was working as Agricultural Officer, Killikulam, Tuticorin District. This amount of Rs.8,12,260/- relates to the period between 1993 and 1994 and a special audit objection of the period between 1993 and 1994.

2.According to the Writ Petitioner, he had attained superannuation on 31.07.2009 and when he was awaiting for his monetary benefits, the order impugned in the Writ Petition has been passed ordering to recover a sum of Rs.8,12,260/-. He had contended that without conducting any enquiry or issuing any show cause notice, the recovery order has been passed.

3.The appellants/respondents had filed a counter in the Writ Petition contending that the Writ Petitioner was responsible for the maintenance of Coconut Nursery, production of quality coconut seedlings, maintenance of records and registers of coconut nursery, maintenance of cash book, procurement of quality nuts, stock of coconut nuts, stock of coconut seedlings and others on a day-to-day basis. When the Writ Petitioner was working as an Agricultural Officer, he had violated the departmental rules and hence, disciplinary action has been initiated by the Commissioner of Agriculture and final order has been passed on 17.09.2007 imposing one year stoppage of increment without cumulative effect and for recovery of Rs.31,500/-.

4.According to the respondents, the lapses of the Writ Petitioner have been pointed out in the Regional Accounts Officer (Audit) at Madurai in paras 10 and 13 of 1993-94 audit and audit para No.3 of Special Audit 1993-94. The total amount of the audit paras mentioned above is Rs.8,12,260/-. The respondents have further contended that the Writ Petitioner himself has given a declaration letter on 06.07.2009 and an indemnity bond on the same day. He has also given a consent letter on 07.07.2009 to recover the said amount from his terminal benefits. Based upon the said consent letters and indemnity bond, the order impugned in the Writ Petition has been passed and therefore, they prayed for dismissal of the Writ Petition.

5.The Writ Court had an occasion to consider a letter, dated 08.06.2012, which purported to have cleared three audit objections, which were the basis of withholding the Writ Petitioner's retirement benefits. According to the Writ Court, all the audit objections have been cleared on 13.06.2012. However, after going through the letter, dated

08.06.2012 addressed by the Regional Accounts Officer (Audit) to the Commissioner of Agricultural at Chepauk, we are not in a position to agree with the Writ Court that the three audit objections have been cleared under the said order.

6.The Writ Court had set aside the order of recovery and has remitted the matter back to the second respondent to consider the report of the Regional Accounts Officer, dated 08.06.2012 and to ascertain whether all the audit objections have been cleared. In case, if the audit objections have been cleared, the amount shall be disbursed to the Writ Petitioner within a period of eight weeks.

7.In view of the fact that the communication, dated 08.06.2012 does not reflect the removal of audit objections, we do not find any reason for remanding the matter back to the second respondent for conducting fresh enquiry. No records have been placed before us indicating the fact that all the three audit objections have already been removed. In fact, the communication, dated 24.09.2012 clearly indicates that the audit objections have been removed only on the ground that the said amount of Rs.8,12,260/- has already been recovered from the Writ Petitioner. Therefore, the present appeal has been filed only to bring to the notice of the Court that already amounts have been recovered and only on the basis of the recovery, the audit objections have been removed.

8.When the recovery has already been effected and the audit objections have been removed only on the basis of the said recovery, no purpose would be served in remitting the matter to the second respondent for conducting fresh enquiry. However, since the order of remand to the second respondent has not been challenged by the Writ Petitioner, we are not in a position to consider the order impugned in the Writ Petition on its own merits.

9.The Writ Petitioner had challenged the order of punishment imposed upon him in the disciplinary proceedings before the appellate authority and the same is said to be pending. In case, if the appellate authority arrives at a finding that the Writ Petitioner has to be exonerated, that should be taken into account by the authorities for disbursement of the terminal benefits withheld due to three audit objections.

10.In view of the above deliberation, the order of the Writ Court is set aside and the Writ Appeal stands allowed with the aforesaid observations. No costs. Consequently, connected miscellaneous petition is closed.

[A.S.M.J.,] & [R.V.J.,]
05.07.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes

cmr

DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Judgment made in
W.A.(MD)No.655 of 2013

Dated:
05.07.2023
(2/2)